

Real Estate Leasing: Oklahoma

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A Q&A guide to commercial real estate leasing law for landlords and tenants in Oklahoma. This Q&A addresses state laws and customs that impact commercial leasing, including the execution and enforceability of leases, disclosures, transfer taxes, rents and security deposits, permitted assignments, financings, remedies, and automatic terminations in foreclosure actions. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Leasing: State Q&A Tool).

Real estate and construction transactions are currently being impacted by emergency measures enacted in response to the 2019 novel coronavirus disease (COVID-19). For current updates on certain state and local laws impacted by COVID-19, including eviction and foreclosure moratoriums, business closures, electronic signatures, recordings and notarization laws, and general crisis management guidance in handling real estate and construction matters, see [Real Estate Global Coronavirus Toolkit](#).

Execution and Enforceability

1. Describe any formal requirements for the execution of a lease. In particular specify if:

- Witnesses are required.
- Acknowledgments are necessary.
- Counterpart signatures are enforceable.
- There are any homestead law requirements.
- There are any other important requirements in your state.

Witnesses

Witnesses are not required in the execution of a lease in Oklahoma.

Acknowledgments

Acknowledgements are not required in the execution of a lease in Oklahoma.

Counterpart Signatures

The parties may execute an Oklahoma lease using counterpart signatures.

Homestead Laws

Under normal circumstances, both spouses must sign a lease conveying an interest in the homestead (Okla. Stat. tit. 16, § 4). Stating the marital status of the spouses is not required in Oklahoma.

However, regarding vesting title in homestead property to a grantee, the grantor's or grantors' marital status must be stated and both spouses must subscribe the instrument (Okla. Stat. tit. 16, ch. 1, app., Standard 7.2).

Other Requirements

There are no additional important requirements in the execution of a lease in Oklahoma.



2. Must a memorandum of lease (or any other instrument) be recorded for a lease to be enforceable against third parties? If so, must an amendment to a recorded memorandum of lease be recorded if there is a further (material or non-material) amendment to the lease?

A memorandum of lease is not required to be recorded in Oklahoma. However, it is common to record a memorandum of lease, particularly where the lease affords the tenant certain options or rights of refusal to purchase the property or contains exclusive use provisions or other rights.

If a memorandum of lease is filed and the lease is forfeited, a lessee is responsible for releasing the lease from the applicable county's records. Failure to do so results in a misdemeanor and up to a \$100 fine against the lessee. (Okla. Stat. tit. 41, § 40.) Possession of leased premises puts a purchaser on inquiry notice regarding the occupant's rights (*Young v. Chapman*, 130 P. 289, 291 (Okla. 1913)). If a tenant is not in possession of the property, recording a memorandum of lease may be necessary to protect against the rights of a bona fide purchaser (see *Harrison v. Gragg*, 503 B.R. 835, 843 (Bankr. N.D. Okla. 2013)).

3. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

Oklahoma recognizes two types of acknowledgements that may be used in documents affecting real estate: a long form and a short form. Which form to use is a matter of preference. The forms below are the short form acknowledgements (Okla. Stat. tit. 49, § 119).

Individual

STATE OF OKLAHOMA

ss.

COUNTY OF [NAME OF COUNTY]

This instrument was acknowledged before me on [date] by [name(s) of person(s)].

Notary Public

My Commission Expires:

SEAL

Corporation

STATE OF OKLAHOMA

ss.

COUNTY OF [NAME OF COUNTY]

This instrument was acknowledged before me on [date] by [name(s) of person(s)] as [president, vice president, chairman or vice chairman of the board of directors, as the case may be] of [ABC Corporation, Inc.], an Oklahoma corporation.

Notary Public

My Commission Expires:

SEAL

Limited Liability Company

STATE OF OKLAHOMA

ss.

COUNTY OF [NAME OF COUNTY]

This instrument was acknowledged before me on [date] by [name(s) of person(s)] as [manager(s)/managing member(s)] of [ABC, L.L.C.], an Oklahoma limited liability company.

Notary Public

My Commission Expires:

SEAL

Limited Partnership

STATE OF OKLAHOMA

ss.

COUNTY OF [NAME OF COUNTY]

This instrument was acknowledged before me on [date] by [name(s) of person] as general partner(s) of [XYZ Limited Partnership], an Oklahoma limited partnership.

Notary Public

My Commission Expires:

SEAL

Trustee

STATE OF OKLAHOMA

ss.

COUNTY OF [NAME OF COUNTY]

This instrument was acknowledged before me on [date] by [name of trustee], Trustee of the [name of trust], dated [date of trust].

Notary Public

My Commission Expires:

SEAL

Disclosures, Certifications, and Implied Uses

4. Are there any statutory or legal disclosures required by the landlord or the tenant either at the beginning or end of the lease term? Are there any compliance certificates the tenant may request from the landlord?

In commercial leases in Oklahoma, there are no statutory disclosures required by the landlord or tenant. Customary disclosures include:

- That the landlord has the right to lease the premises.
- The landlord's organizational structure and good standing.

- That the party signing on behalf of the landlord has authority to sign.
- That the lease is binding and does not violate any laws or agreements to which the landlord is a party.
- That the property is in compliance with all legal requirements.
- That the landlord has no knowledge of a violation of environmental or any other laws affecting the property.

Although beyond the scope of this resource, in residential leases, the landlord must disclose:

- The identity of:
 - the owner of the property;
 - the person or persons authorized to manage the premises; and
 - the person authorized to receive service of process and notices.
- If the premises has been flooded within the past five years.
- If the premises was used in the manufacture of methamphetamine.

(Okla. Stat. tit. 41, §§ 113a, 116, and 118(C).)

It is also customary to disclose the landlord's right to lease the premises, but the landlord is not required to provide any compliance certificates to a tenant unless otherwise agreed in the terms of the lease.

5. Is a lease deemed to include an implied warranty of fitness for intended use?

Under Oklahoma law, there is no implied warranty that the leased premises is suitable for purposes for which it is rented (*Arbuckle Realty Trust v. Rosson*, 67 P.2d 444 (Okla. 1937); *Lavery v. Brigance*, 242 P. 239 (Okla. 1926)).

Term, Renewal, and Early Termination

6. Are there any legal restrictions which:

- Limit the maximum term of a lease (including any renewals)?
- Require the landlord to allow the tenant to renew its lease?
- Allow the tenant to terminate its lease before the express expiration date?

Limit on Maximum Term

In Oklahoma, there is no legal limit on the term of a lease outside of the rule against perpetuities.

Tenant Renewal

A lease with a term not exceeding one year is automatically renewed on the same terms and for the same time when a tenant remains in possession of the real property after the expiration of the lease and the landlord accepts rent from the tenant, unless notice of termination is given (Okla. Stat. tit. 41, §§ 35, 36).

A written lease with a term of one or more years is not automatically renewed, but where the tenant continues to occupy the premises with the landlord's assent, the tenant is deemed to be a tenant at will. Leases that are not in writing expire by limitation with the calendar year, without notice. (Okla. Stat. tit. 41, § 2; *Stephenson v. O'Keefe*, 154 P.2d 757, 758 (Okla. 1944)).

Early Termination

A tenant may not terminate a commercial lease before the express expiration date unless otherwise provided in the terms of the lease.

A tenant of a residential lease has the right to terminate if either:

- The landlord materially breaches the lease and fails to cure the breach within 14 days after tenant's notice of the breach.
- The landlord willfully or negligently fails to supply heat, running water, electric, gas, or other essential service.
- The landlord's noncompliance with the lease renders the dwelling unit uninhabitable or poses an imminent threat to the health and safety of the occupants.

(Okla. Stat. tit. 41, § 121.)

7. Is the landlord required to provide the tenant with a notice before the effective date of a renewal when the lease term automatically renews?

Oklahoma law does not require the landlord to provide the tenant with notice before the effective date of a renewal when the lease automatically renews (Okla. Stat. tit. 41, § 35). It is customary to provide notice only when there are different terms, such as a rent increase, associated with the automatic renewal.

Rent and Security Deposits

8. Are there any legal restrictions on:

- How much rent the landlord may charge?
- Whether certain operating expenses (or other additional rent) may be passed through to the tenant?

Maximum Rent

Oklahoma law does not impose restrictions on the amount of rent a landlord may charge.

Operating Expenses

Operating expenses may be passed through to the tenant as set out in the lease.

9. For security deposits:

- Must the landlord maintain security deposits in a separate bank account for each tenant?
- Must a security deposit be in an interest bearing account?
- Must the landlord pay all interest earned to the tenant or can the landlord retain a percentage of the interest earned as an administrative fee?

Commingling Permitted

Oklahoma law does not prohibit commingling security deposits for commercial leases.

Although beyond the scope of this resource, in residential leases, Oklahoma law requires landlords to place security deposits in escrow accounts with a federally insured financial institution. Misappropriation of the security deposit constitutes a misdemeanor offense punishable by both:

- A term in jail not to exceed six months.
- A fine.

(Okla. Stat. tit. 41, § 115.)

Interest Bearing Account

Oklahoma law does not require landlords to put security deposits in an interest bearing account.

Administrative Fees

Oklahoma law does not require landlords to pay tenants the interest earned on security deposits. Accordingly, a landlord may retain interest earned on security deposits.

Transfer Taxes and Other Taxes

10. Are any state or local transfer taxes triggered when a lease is signed or in the later assignment of a lease? If so, please specify the:

- Rate for the tax and how it is calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

Rate and Calculation

There are no transfer taxes in Oklahoma on real property leases.

Returns

There are no transfer taxes in Oklahoma on real property leases.

Timing

There are no transfer taxes in Oklahoma on real property leases.

11. Are state or local transfer taxes triggered when the tenant undergoes a (direct or indirect) transfer of its ownership interests? In particular, please specify the:

- Percentage of ownership interest that triggers the taxes.
- Rates for the taxes and how they are calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

Percentage of Interests

There are no transfer taxes in Oklahoma on real property leases, regardless of whether the tenant undergoes an ownership change.

Rate and Calculation

There are no transfer taxes in Oklahoma on real property leases, regardless of whether the tenant undergoes an ownership change.

Returns

There are no transfer taxes in Oklahoma on real property leases, regardless of whether the tenant undergoes an ownership change.

Timing

There are no transfer taxes in Oklahoma on real property leases, regardless of whether the tenant undergoes an ownership change.

12. Describe any state or local taxes (rental or other) that the landlord must collect from the tenant.

Landlords in Oklahoma are not required to collect any taxes from tenants, although leases commonly address payment of property taxes.

Assignment, Financing, and Transfers

13. Describe any laws allowing the tenant to assign its lease, or sublease its premises, without the landlord's consent. Is a reasonableness standard implied when the lease is silent on whether the landlord's consent to an assignment or sublease may be reasonably or unreasonably withheld?

In Oklahoma, a tenant may not assign or transfer its interest in a lease without the assent of the landlord if either:

- The lease has a term of two years or less.
- The tenancy is at will.
- The tenancy is at sufferance.

(Okla. Stat. tit. 41, § 10.)

When the lease is silent, there is no reasonableness standard implied regarding a landlord's failure to give consent.

14. If the lease does not expressly define the term “assignment” and there is no other express restriction in the lease to the contrary can the:

- Tenant’s corporate ownership interests be freely transferred without the landlord’s consent?
- Tenant freely place a lien on its leasehold interest, or pledge its corporate ownership interests, in connection with a financing without the landlord’s consent?

Transfer of Ownership Interests

There is no legal restriction on a tenant’s ability to transfer its corporate ownership interests, but leases in Oklahoma commonly address this issue.

Security Lien or Pledge of Ownership Interests

There is no legal restriction on a tenant’s ability to place a lien on its leasehold interests or pledge its corporate ownership interests, but leases in Oklahoma commonly address this issue.

15. When a lease requires a landlord’s consent for an assignment and defines the term “assignment” to include a transfer of the tenant’s corporate ownership interests, would an indirect transfer of the tenant’s interests trigger the landlord’s consent requirement?

In Oklahoma, an indirect transfer of the tenant’s interests requires the landlord’s consent if the lease agreement both:

- Contains a provision requiring landlord consent for an assignment.
- Defines “assignment” by the tenant to include a change of ownership.

16. Is the tenant/assignor deemed released from future liability under the lease when the lease is silent on whether the original tenant will be released in the event of an assignment?

In Oklahoma, unless otherwise provided in the terms of the lease or other agreement recognizing an assignment of the lease, a tenant’s future liability under the lease is not released on assignment (see *Buck v. J.M. McEntee and Sons*, 275 P.2d 984, 987 (Okla. 1954)).

17. Describe any restrictions on the landlord’s ability to transfer the real property subject to the lease. Does this transfer affect the tenant’s rights or obligations?

In Oklahoma, a landlord may transfer the real property subject to the lease without the consent of the tenant, but the new owner may not collect from the tenant any rent paid to the original landlord before the tenant was given notice of the sale (Okla. Stat. tit. 41, § 12). The transfer of real property is subject to the tenants’ rights and obligations under the lease.

Remedies

18. If a tenant breaches the lease:

- Are there any implied remedies available to the landlord, such as the acceleration of rent?
- Is there a limitation on the landlord’s ability to exercise self-help?
- Is there a common form of an eviction proceeding and, if so, what is the typical length of time for the proceeding?
- Are there specific mechanisms for expedited remedies, such as waiver of jury trial or arbitration?
- Is the landlord required to mitigate its damages without an express obligation to do so?

Implied Remedies

Landlords in Oklahoma have certain rights regarding the taking, disposing, and selling of the personal property left at properties where a tenant has either abandoned, surrendered possession or been evicted. The notice requirements and procedures differ depending on whether the lease is residential or non-residential. (Okla. Stat. tit. 41, §§ 52, 130.) Other remedies are available to landlords of farmlands.

Self-Help

Under Oklahoma law, a landlord may not resort to self-help to gain possession of realty, but must regain possession through action at law (*Ramirez v. Baran*, 730 P.2d 515, 517 (Okla. 1986)).

Eviction Proceeding

To evict a tenant, the landlord must give the tenant notice to quit, demanding payment of rent and vacation of the premises under the applicable statutes (Okla. Stat. tit. 41, §§ 6 to 8). The landlord may file an action for forcible entry and detainer with the district court if the tenant has not vacated the premises in the time demanded by the notice, which is set by statute based on the length of the tenancy. (Okla. Stat. tit. 12, §§ 1148.1 to 1148.16).

Hearings are set not less than five nor more than ten days from the filing of the affidavit commencing the action (Okla. Stat. tit. 12, § 1148.4). Assuming the tenant was served properly and does not request a jury trial or continuance, the court renders judgment at the hearing (Okla. Stat. tit. 12, §§ 1148.7).

Expedited Remedies

The lease may provide for expedited remedies, such as waivers of jury trials and arbitration provisions. Oklahoma courts generally enforce these terms.

Mitigation of Damages

Landlords of non-residential properties have no duty to mitigate.

Aggrieved parties under the Residential Landlord Tenant Act have an affirmative duty to mitigate their damages (Okla. Stat. tit. 41, § 105).

Automatic Termination of a Lease in a Foreclosure Action

19. When a landlord's lender forecloses on its lien recorded against the landlord's property, would the lease interest that is subordinated to the lender's lien automatically terminate? If so, how do the parties avoid automatic termination of subordinated lease interests?

Assuming the lien is recorded against the landlord's property before the execution of the lease, the lease interest is automatically subordinate to the lender's lien. Lease termination on foreclosure is not automatic. The lender may elect to terminate the lease during the foreclosure proceedings. To avoid this outcome, the landlord, tenant, and lender typically execute a subordination, non-disturbance and attornment agreement.

For more information, see [Standard Documents, Subordination, Non-Disturbance, and Attornment Agreement \(SNDA\) \(Pro-Lender\)](#) and [Subordination, Non-Disturbance, and Attornment Agreement \(SNDA\) \(Pro-Tenant\)](#).

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