

Real Estate Leasing: Nebraska

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A Q&A guide to commercial real estate leasing law for landlords and tenants in Nebraska. 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.

For information on Nebraska's adoption of e-signatures/e-recording and remote online notarization, see Question 20.

Witnesses

Witnesses are not required to execute a lease in Nebraska.

Acknowledgments

Acknowledgments are not required to execute a lease provided the lease is:

- Signed by the party to be charged (*Pallas v. Black*, 414 N.W.2d 805, 806 (Neb. 1987); *Prigge v. Olson*, 47 N.W.2d 344 (Neb. 1951)).
- Not intended to be recorded with the register of deeds (Neb. Rev. St. § 76-214).
- Not the lease of a homestead (Neb. Rev. St. § 40-104).

Counterpart Signatures

Counterpart signatures are commonly used in Nebraska, and there is no authority supporting the proposition that their use affects the enforceability of the underlying lease.

Homestead Laws

Homestead laws in Nebraska require leases of homesteads to be executed and acknowledged by both spouses (Neb. Rev. St. § 40-104).

Other Requirements

There are no other requirements under Nebraska law for the execution of a lease.



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?

In Nebraska, a memorandum of lease is not required to be recorded for a lease to be enforceable against third parties if the third party had actual or constructive knowledge of the lease (Neb. Rev. St. § 76-238).

Actual possession of the premises by a tenant generally is sufficient to put third parties on notice of the tenant's rights (*Grand Island Hotel Corp. v. Second Island Dev. Co.*, 214 N.W.2d 253, 257 (Neb. 1974); *Dengler v. Fowler*, 143 N.W. 944, 946 (Neb. 1913)).

While a Nebraska case has not yet specifically held that a memorandum of lease must be amended if the lease is amended, the Nebraska Supreme Court has enforced a purchase option in a lease against subsequent purchasers of real property, even though the purchase option was:

- Negotiated after the lease was recorded.
- Not included in the recorded instrument.

(*Dengler*, 143 N.W. at 945-46.)

The court based its decision on the fact that the prospective purchaser had actual notice of the tenant's possession and therefore was on inquiry notice regarding the tenant's rights in the property (*Dengler*, 143 N.W. at 946).

3. Provide the statutory form of acknowledgment for:

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

Section 64-206 of the Nebraska Revised Statutes provides the following short forms of acknowledgment. These forms do not preclude the use of other forms that meet the requirements of the Uniform Recognition of Acknowledgments Act (Neb. Rev. St. §§ 64-201 to 64-210).

For Nebraska notarizations performed using remote online notarization (RON) (see Question 20), the online notarial certificate must contain:

- The online notary public's signature, online notary seal, title, and commission expiration date.
- Any other required information about the date and place of the online notarial act.
- The completed wording of an acknowledgment notarial certificate.
- A notation that the notarial act is an online notarial act.
- An electronic certificate of authority demonstrating the authenticity of the electronic signature and notary seal containing substantially the following language:

I [NAME], [TITLE], [JURISDICTION OF COMMISSIONING OFFICIAL], certify that [NAME OF ONLINE NOTARY PUBLIC], the person named as an online notary public in the attached or associated document, was indeed registered as an online notary public for the State of Nebraska and authorized to act as such at the time of the document's electronic notarization. To verify this Certificate of Authority for an Online Notarial Act, I have included herewith my electronic signature this [DATE] day of [MONTH], [YEAR].

[ELECTRONIC SIGNATURE AND SEAL OF COMMISSIONING OFFICIAL]

(Neb. Rev. St. §§ 64-402(8), 64-411(5), and 64-415(2).)

Once the signatures are complete, a time-stamped seal is generated on the electronic certification.

There may be other detailed requirements for performing RON in Nebraska. Reference should be made to the statutes, any applicable emergency orders, and any rules promulgated by the applicable state authority to understand all RON requirements and conditions (see Question 20).

Individual

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF PERSON ACKNOWLEDGED].

Given under my hand this [DATE] day of [MONTH], [YEAR].

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

Corporation

STATE OF [STATE])

COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF OFFICER OR AGENT], [TITLE OF OFFICER OR AGENT] of [NAME OF CORPORATION ACKNOWLEDGING], a [STATE OR PLACE OF ORGANIZATION] corporation, on behalf of the corporation.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

Limited Liability Company

STATE OF [STATE])

COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ACKNOWLEDGING [MEMBER OR AGENT]], [member or agent] on behalf of [NAME OF LIMITED LIABILITY COMPANY], a limited liability company.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

Limited Partnership

The form below is acceptable for all forms of partnerships:

STATE OF [STATE])

COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ACKNOWLEDGING [PARTNER OR AGENT]], [partner or agent] on behalf of [NAME OF PARTNERSHIP], a partnership.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

Trustee

The form below is acceptable for any public officer, trustee, or personal representative.

STATE OF [STATE])

COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF TRUSTEE], [TITLE OF POSITION].

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

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 Nebraska, there are no statutory disclosures required from either the landlord or the tenant in commercial leases.

The only compliance certificates that either party must provide to the other are those certificates that are specified in the lease.

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

Under Nebraska law, there is no implied warranty of fitness for intended use in commercial leases (*Gehrke v. Gen. Theatre Corp.*, 298 N.W.2d 773, 775 (Neb. 1980)).

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

There is no defined maximum term for which real property may be leased in the state of Nebraska.

Tenant Renewal

The landlord is not statutorily required to offer a lease renewal in Nebraska unless the lease expressly provides for a renewal option.

Early Termination

The landlord is not statutorily required to allow a tenant to terminate its lease before the lease term expires unless the lease expressly provides for early termination.

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?

In Nebraska, the landlord is not required to provide the tenant with a notice before the effective date of a renewal if the lease term renews automatically.

Rents 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

Nebraska does not impose any legal restrictions on how much rent the landlord may charge under a freely executed commercial lease.

Operating Expenses

Nebraska does not impose any legal restrictions on whether a landlord may pass certain operating expenses (or additional rent) through to a tenant under a commercial 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

There are no statutory regulations or requirements in Nebraska regarding security deposits for commercial leases.

Interest Bearing Account

Unless the lease provides otherwise, landlords are not required to keep security deposits for commercial leases in an interest-bearing account.

Administrative Fees

There is no requirement that commercial landlords keep security deposits in an interest-bearing account. If a landlord does keep a security deposit in an interest-bearing account, the landlord is entitled to retain any interest earned on it, absent a contractual agreement with the tenant to the contrary.

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.

There are no transfer taxes in Nebraska for leases (Neb. Rev. St. § 76-902(22)).

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.

There are no transfer taxes in Nebraska for leases (Neb. Rev. St. § 76-902(22)).

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

In Nebraska, commercial landlords are not required to collect taxes on rent or other taxes from tenants.

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 Nebraska, absent a provision in the lease to the contrary, the tenant may assign its lease or sublet its premises without the landlord's consent (see *Chesnut v. Master Labs.*, 27 N.W.2d 541, 549 (Neb. 1947)).

If the lease requires the landlord's consent to an assignment, then an assignment by the tenant without that consent is ineffective (*Am. Cmty. Stores Corp. v. M.J. Newman*, 441 N.W.2d 154, 158 (Neb. 1989)).

When the lease is silent on whether the landlord's consent to an assignment or sublease must be reasonable, Nebraska law requires a landlord to have a good faith and reasonable objection to the assignment of lease or subletting (*Newman v. Hinky Dinky Omaha-Lincoln, Inc.*, 427 N.W.2d 50, 53-54 (1988)).

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

Nebraska follows the common law rule against restraints on alienation and allows the transfer of property interests freely without a landlord's consent unless the lease

provides otherwise (see *Spanish Oaks, Inc. v. Hy-Vee, Inc.*, 655 N.W.2d 390, 397-400 (Neb. 2003)).

Security Lien or Pledge of Ownership Interests

Nebraska courts have not addressed whether a tenant may freely place a lien on its leasehold interest or pledge its corporate ownership interests in connection with a financing without the landlord's consent.

Nebraska courts have clearly stated that a tenant, unless it is acting as a landlord's agent, may not encumber the underlying fee (*Franksen v. Crossroads Joint Venture*, 599 N.W.2d 603, 611 (1999); *Landmark Enters., Inc. v. M.I. Harrisburg Assocs.*, 554 N.W.2d 119, 122-23 (Neb. 1996)).

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?

Nebraska courts have not definitively resolved whether an indirect transfer of the tenant's corporate ownership interests triggers the landlord's consent requirement when a lease requires a landlord's consent for an assignment and defines an assignment to include a transfer of the tenant's corporate ownership interests.

The Nebraska Supreme Court has held that assignments by operation of law due to corporate dissolution or death do not trigger an assignment provision unless explicitly provided for in the lease (*Chesnut v. Master Labs.*, 27 N.W.2d 541, 548-49 (Neb. 1947)). The *Chesnut* case stands for the proposition that Nebraska courts disfavor restrictions on alienation (including assignments) and construe these restrictions in the lessee's favor.

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 Nebraska, if the lease is silent on whether the original tenant is released in the event of an assignment, the original tenant/assignor is not released from future liability unless either:

- The lease expressly releases the tenant from future liability.

- The landlord otherwise releases the assignor from future liability under the lease.

(See *Mayer v. Dwiggin*s, 206 N.W. 744 (Neb. 1925).)

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 Nebraska, there are no statutory restrictions on the landlord's ability to transfer real property subject to the lease. Unless a lease provides otherwise, a landowner may sell its fee and the sale is subject to the lease if the purchaser has actual or constructive knowledge of the lease, either through recording or the tenant's possession (*Grand Island Hotel Corp.*, 214 N.W.2d at 257; see Question 2).

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

There are no implied remedies in Nebraska.

Self-Help

Nebraska law disfavors the use of self-help remedies by landlords as contrary to public policy (*Bass v. Boetel & Co.*, 217 N.W.2d 804, 807 (Neb. 1974)). Nebraska's forcible entry and detainer statute is the proper means to recover possession of the premises (Neb. Rev. St. §§ 25-21,219 to 25-21,235).

Eviction Proceeding

Under Nebraska's forcible entry and detainer statute, a landlord must give a tenant written notice to quit at least

three days before starting an action to evict (Neb. Rev. St. § 25-21,221).

If the tenant does not exercise its right to an appeal and post the necessary bond that allows a tenant to remain in the premises pending the appeal (Neb. Rev. St. §§ 25-21,233 to 25-21,235), a landlord can typically retake possession of the premises within 10 to 14 days after filing the complaint.

Expedited Remedies

There are no expedited remedies other than those for eviction.

Mitigation of Damages

Under general contract principles, a landlord has a duty to mitigate damages by taking all reasonable steps to reduce damages (*Hand Cut Steaks Acquisitions, Inc. v. Lone Star Steakhouse & Saloon of Neb., Inc.*, 905 N.W.2d 644, 657-58 (Neb. 2018); *S.N. Mart, Ltd. v. Maurices Inc.*, 451 N.W.2d 259, 262 (Neb. 1990) (landlord has a duty to mitigate damages by re-letting premises that tenant abandoned)).

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?

In Nebraska, unless the tenant is served and made a party to the foreclosure action, a foreclosure by a landlord's lender does not automatically terminate the lease (*Kleven v. Brunner*, 429 N.W.2d 384, 386 (Neb. 1998)).

The most effective way to prevent an automatic termination of a tenant's subordinated interest is for the tenant to require a subordination, non-disturbance, and attornment agreement (SNDA) that is executed by the landlord, the tenant, and the landlord's lender. An SNDA provides that the foreclosing lender will not disturb the tenant's occupancy if specified conditions are met. A lender also requires SNDAs from tenants of its borrower-landlord to evidence the subordination of the leasehold interests to the lender's lien.

Electronic Signatures, Recording, and Notarization Laws

20. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Note that despite adoption of the applicable electronic laws referred to below, the transaction parties or recording offices may not be required to accept documents executed or notarized electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures and/or remotely notarized documents and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.

Electronic Signatures

Nebraska has adopted the UETA (Neb. Rev. St. §§ 86-612 to 86-643).

Electronic Recording

Nebraska has not adopted the URPERA. However, the register of deeds or county clerk must provide electronic recording services to accept electronically submitted real estate documents for recording (Neb. Rev. St. § 86-611(8)).

Remote Online Notarization

Nebraska has adopted RON (Neb. Rev. St. §§ 64-401 to 64-418).

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Nebraska also has a separate Electronic Notary Public Act (Neb. Rev. St. §§ 64-301 to 64-317) allowing electronic notarization but requiring the principal to be physically present.

There are detailed requirements for performing RON (for more information, see Question 3). Reference should be made to the statutes, any applicable emergency orders, and any rules promulgated by the secretary of state or

other state authority to understand all RON requirements and conditions.

For a state-by-state chart covering key provisions of RON laws, emergency orders permitting RON during the COVID-19 pandemic, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#).

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