

Lease Checklist

If your Chapter or Field Office is looking for office space, has a current office space with a lease that is expiring, or is considering leasing equipment – you must read this checklist very carefully and follow Sierra Club lease review procedures *prior* to submitting your lease to National.

The Sierra Club lease review process typically takes three weeks. Negotiations with landlords and/or vendors are time-consuming and can result in no agreement at all. That is why it is very important for your Chapter or Office to start this process long before the office space or equipment becomes an immediate necessity.

If your lease does not meet the following criteria, the lease does not need to be submitted to National for the review process. An authorized agent at the Chapter/Office level (i.e. member of ExCom) may sign the lease on behalf of the entity. However, if you still have questions or need assistance reviewing the lease, please contact National for help:

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The following types of leases need to be reviewed by National staff *and signed* by a corporate officer for all Sierra Club entities:

Chapter Property Leases:

- Over one (1) year in duration; or
- Constitute total rent in excess of \$20,000; or
- Constitute total rent in excess of the Chapter's unencumbered cash balance

Field Office Leases: All

Equipment Leases: Over one (1) year in duration and/or with a value greater than \$10,000.

In order to have your lease reviewed, parties who are empowered to request the lease (chapter chair, field office manager, program manager, the departmental national finance manager, etc.) must review and be satisfied with the terms of the lease as presented. Include a memo to the Finance staff along with your lease to the effect that you have reviewed the lease, are satisfied with the conditions of the lease, and that you request to have the lease executed, or identify which components would need to be modified to make the lease acceptable. Any suggested changes will be reviewed by departmental management and finance personnel and communicated back to the lessor. Program managers must also ensure that the finance manager for their department has reviewed the lease to ensure that the proposed lease amount is within budget and the departmental finance manager must sign off prior to submission (any over budget condition should be noted).

The following guidelines should be used in conjunction with your "business sense" when discussing and negotiating potential leases with landlords. It is our intent that the Club's interests be fairly represented in leases that we execute. As such, leases we execute should balance the interests of both the Club and the potential landlord in such a way as to not expose the Club to undue or unnecessary risk nor attempt to take advantage of a property owner.

Typically, landlord leases are written such that the terms of an agreement are beneficial or advantageous to the landlords; they attempt to minimize liability responsibility of the building owner, pass as much cost as possible onto the tenant through fees and assessments, keep their rights flexible while diminishing the rights of tenants and restrict the activities on tenants (hours, access, alterations).

Additionally, all lease clauses will need to be reviewed from an operational perspective to ensure that your operations will not be negatively impacted by lease provisions.

OFFICE/BUILDING LEASES

VERY IMPORTANT: The Sierra Club Board of Directors has mandated that all Club entity offices and meeting places are ADA compliant (i.e. locations which fully meet the physical requirements for access by the mobility impaired). Therefore, you must limit your search for office space to ADA compliant buildings and premises.

The following clauses **MUST** be included in the lease. These are known as "deal breakers". If the prospective landlord does not agree to these terms, the lease will not be executed. (Please note that this list contains suggested language drafted by National with the assistance of legal counsel. Language can be modified somewhat at landlord's request, subject to National's approval.)

ADA Compliance. Landlord represents and warrants, to the best of their knowledge, that the leased premises are ADA compliant and fully accessible in that regard, including but not limited to building and premises entrances, common areas of the building and restrooms used in conjunction with the premises. If, at any time during the term of this lease, a regulatory body (either local, state or federal) determines the building and/or premises to not be in compliance with ADA, Landlord will make all required modifications at Landlord's sole expense within a reasonable period of time or Tenant shall have the right to terminate this lease. Landlord further agrees that any future building improvements shall be ADA compliant.

(Also acceptable, in lieu of this clause, would be a letter from a professional (i.e. architect, contractor or inspector) certifying the building fully meets ADA regulations.)

(2) *Hazardous Materials.* Landlord represents and warrants that, to the best of their knowledge, no hazardous materials exist in, on or about the building. If Landlord becomes aware of the presence of hazardous materials or conditions that jeopardize the welfare of occupants, Landlord will notify Tenant in writing immediately upon awareness of the problem. Landlord will remedy the problem at Landlord's sole expense within a reasonable period of time or Tenant shall have the right to terminate the lease. In the event that the Landlord conducts a hazardous materials test, the Landlord will provide the tenants copies of the test and test results within 30 days.

(3) *Mutual Indemnification.* This section usually has one-sided language beneficial to the landlord. When reviewing this section ensure that the language states that the Sierra Club is only responsible for claims, loss, damages that are caused by the Sierra Club and any of its agents and/or representatives or arising from its occupancy. The landlord also should state that it is responsible for any claims, loss, damages that are caused by the landlord and any of its agents and/or representatives or arising from building ownership. If a landlord requests indemnification in a lease, it is mandatory that the Club be indemnified in return by the landlord. This is a complex issue, what you need to look for is that everything should be reciprocal between the landlord and tenant.

The following terms should be reviewed for acceptability, if applicable. These are not "deal breakers" but will typically require negotiation. (Please note that this list contains suggested language drafted by National with the assistance of legal counsel. Language can be modified somewhat at landlord's request, subject to National's approval.)

(4) *Rental Adjustment.* The annual determination of the direct expense within the lease should have language that ensures the methodology of the adjustment is consistent from year to year based on the building's occupancy level which should be assumed to be at or above 90%; and will use the same method of adjustment in the base year and all other lease years. Direct expenses the Club will agree to participate in must be defined to include variable expenses that are incurred in the direct operation of the building such as: heat, electricity, air conditioning, maintenance, cleaning and janitorial services, elevator services, window washing, security services, etc. The Club will *not* pay for any

INDIRECT costs associated with the operating expenses of a building. These costs include but are not limited to: depreciation, construction other than normal repair and maintenance, financing costs (interest), art objects, and allocated overhead.

(5) *Tenant Improvements ("TI")*. Generally, we want the landlord to commit to some dollar per square rentable foot to accommodate our need to build-out or remodel the office area in which we will occupy. This amount usually is reflected in the tenant's cost per square foot. The TI amount should be satisfactory to cover the cost of construction related to tenant's space build-out needs. We have seen TI's range from \$15 to \$50 per square foot. Some leases do not allow for independent design, but rather conform to the building owner's requirements; in that case a TI will not be applicable. Requirements of this nature need to be carefully considered in light of how you, the user, want to use the premises. This type of clause could be a deal breaker and that should be determined before a lease is submitted for review.

(6) *Alterations*. Any language that suggests that the Sierra Club has to use the landlord's contractor for any alterations at the Sierra Club's expense, should be changed to language that allows the Sierra Club to choose its own contractor for alterations. If alterations are included as incentive to move in which are accompanied by a TI (tenant improvement), the Club may be required to use a landlord's contractor. Generally, the landlord will reserve the right to approve build-out or modifications.

(7) *Insurance*. Landlords will typically require tenants to have personal property insurance covering losses pertaining to office furniture and equipment; Sierra Club entities are covered under the national property insurance policy in this regard. Landlords will typically also require the tenant to carry general liability insurance in an amount of \$500,000 (this amount will vary). Again, Sierra Club entities are covered under the national general liability insurance policy with a limit of \$1,000,000.

If landlord states requirements for tenant insurance, the following language should be included in the lease: Landlord agrees to keep in force throughout the term of this lease "all risk" property insurance covering the building with coverage in commercially reasonable amounts consistent with the amounts and types of coverage by others of similar buildings. Landlord shall also carry general liability and indemnity coverage with respect to its obligations under this lease. It is very common for a lease to state that tenant must provide landlord with a certificate of insurance annually, naming the landlord as an additional insured. Contact National to process this request.

(8) *Remedies*. This section usually has language that requests the Sierra Club to pay attorney fees and waive rights that are permitted under the law. This section should state that the Sierra Club will pay attorney fees if the Landlord prevails and the Landlord will pay the Sierra Club attorney fees if the Sierra Club prevails, whether through judicial proceedings or arbitration. Also, the Sierra Club does not waive any rights permitted under the law.

(9) *Limitation of Landlord's Liability*. The first sentence in this section usually reads in the following way: Redress for any claim against the Landlord under this Lease shall be limited to and enforceable only against and to extent of Landlord's interest in the Building. The following statement should be added to this sentence: "including, without limitation, any insurance proceeds or condemnation proceedings with respect to the building and any proceeds of the sale of the building or an interest therein."

(10) *Eminent Domain*. The following language should be added to this section if it does not appear: "Upon becoming aware of any pending or threatened condemnation proceedings which may affect the rights of the Sierra Club under this Lease, the Landlord will promptly notify the Sierra Club of such proceedings in writing."

(11) *Relocation*. Some landlords will include a clause that gives them the unilateral right to relocate a tenant to a comparable space within the building. This type of clause may not be compatible with Club program needs; consider limiting relocation to once every three years, or so.

(12) *Termination*. Tenant should be able to terminate the lease if the landlord materially breaches their responsibilities under the lease, if the premises are uninhabitable for more than sixty (60) days, the owner becomes insolvent, fails to provide or loses adequate insurance coverage, building is not maintained in good working order (including maintenance services), etc. Language should reciprocate landlord's language for tenant's breach of non-monetary terms.

Rules and Regulation. Carefully consider whether you can live with the building rules and regulations.

Inability to Occupy the Premises. Some agreements require that the tenant continue to pay rent for a period of time even though the tenant cannot occupy their space through no fault of their own. Typically, we agree not to terminate the lease if the space becomes unavailable for use for some short period of time, however, we require that the rent be abated during that period of time or partially abated if a portion of the lease space is unusable.

Repair and Maintenance. "Landlord shall maintain, repair and replace, as necessary, and keep in good order and condition: (a) the heating, ventilating and air conditioning systems; (b) the plumbing, sprinkler and electrical lines and systems serving the premises and the common areas of the building; and (c) the interior and exterior structure of the building.

Disputes. The Club encourages that contractual clauses on disputes be settled by arbitration.

EQUIPMENT LEASES

In addition to the typical clauses that may be encountered when reviewing property leases, there also typical clauses that maybe encountered when reviewing equipment leases. The following are what the clauses are, what to look for, or what to include:

(1) *Price Guarantee*. Equipment leases that have a term greater than a year will often have an annual escalating price. Ensure the price on the lease is a fixed rate for the entire of the lease.

(2) *Program Change Option*. Equipment changes on the lease often require the lease to be extended the same length time as the initial lease agreement (i.e. if it is a three year lease and changes are made the lease will extend for another three years). The lease should allow equipment changes without term extensions.

(3) *Assignment*. Many companies sell their lease to a 3rd party leasing company. This company will normally require payment for the equipment whether it works or not. If the lease is going to be sold to a 3rd party language should be incorporated into the lease that would eliminate payment for non-performing equipment.

If the lease is sold to a 3rd party leasing company, the buying company should agree to and abide by all the terms that are contained within the lease.

(4) *Warranties*. Most equipment leases use the terminology "AS IS" when referring to the type of equipment that will be received. This terminology contradicts any warranties that maybe stated within the body of the lease and should be removed.

(5) *Performance Guarantee*. Equipment leases often provide a performance guarantee for the equipment only. Get in writing that compensation will be provided for things outside of the equipment malfunctions such as constant billing problems, dispatch problems (i.e. equipment technician never arrives at the scheduled time), etc.

(6) *Service & Supplies*. The lease may state that all supplies are provided per manufacturer specifications. The manufacturer specifications may set a limit to the amount supplies needed per time

frame and anything supplies over the limit will be at the cost of the leasee. Unlimited amounts of supplies can be added to the lease at no cost to the leasee.

In the event it becomes necessary to cancel the lease get in writing that future service and supplies will not be invoiced. A breakdown of equipment cost and service and supply cost should be requested. In most cases the service and supply cost is included in the total pricing for the equipment stated in the lease.

(7) *Renewal*. If a written is not given within the prescribed as stated in the lease will automatically renew for a period of one year. The lease should renew on a month to month basis and can be canceled with thirty (30) day written notice from the lessor or leasee.

(8) *Choice of Law*. The state jurisdiction for of all legal matters should be the same state where the equipment will be used.