

# Get Right to Make Tenant Execute Renewal as a Lease Amendment or New Lease

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July 29, 2024

A lease amendment is usually simpler and easier—but not always better.

Lease amendment or new lease? It's easy to overlook the importance of controlling the mechanics of the renewal process. Consider the scenario where a tenant exercises its option to renew the lease. Normally, you'd execute the renewal by having the tenant sign a lease amendment that lists the new renewal rent and termination date while leaving all of the other original lease terms unchanged.

The problem is that you might have made important changes to your standard lease form *after* you signed the original lease with the tenant. If you want to apply those changes to the renewal lease, the simple amendment approach won't do. What you'll need is the right to require the tenant to sign a new lease containing the new terms.

That's why attorneys say you should ensure your lease gives you the flexibility to decide *how* renewals are executed. Specifically, include language in the lease renewal option that gives you the right to require the tenant to sign either a lease amendment or a new lease. You can still use the simple lease amendment approach if the original lease terms still work for you. The important thing is that you get to choose whichever method works best for you.

## When a New Lease Is Better than an Amended Lease

While a lease amendment is usually simpler and easier, there may be situations where you're better served by having renewing tenants sign a new lease. Examples:

- If you've improved, revised, or updated your lease form for the building or shopping center since the renewing tenant signed the original lease, you'll want to ensure that the renewal lease is governed by the improved, revised, or updated terms;
- You'll want your renewal lease to reflect any changes in ownership or corporate entities that have occurred since the original lease was signed; and/or
- You may want to ensure that the renewal lease incorporates changes that you made as a result of structural changes to the building or center—for example, a new clause establishing a tenant's rights and duties with regard to the use of a newly constructed recreation room, parking lot, or other common area or amenity.

## What Your Lease Should Say

Here's language you can add to a tenant's renewal option to give yourself the right to choose whether a renewal agreement should be executed as a lease amendment or a new lease agreement:

### **Model Lease Language**

In the event that Tenant exercises the foregoing renewal option, Landlord and Tenant shall execute and deliver an amendment to the Lease or, at Landlord's sole option, a new lease on the form then in use for the Building/Shopping Center that reflects the *[insert details of the renewal option]*.

## Compromise Approach

A clause allowing the landlord to select the mode of executing a lease renewal is fairly noncontroversial, according to attorneys. "Tenants aren't likely to take issue with this kind of a technical provision, especially if it means risking the loss of a renewal option," notes the California attorney who drafted the above language.

However, some tenants may express concerns about the landlord's using the provision to impose a new lease that contains unfavorable terms. You should be able to allay these concerns by adding language indicating that a new lease executed in accordance with the provision may not result in any changes that are "materially adverse" to the tenant. If the tenant insists, you can also agree that the new

lease will contain all or specifically designated provisions in the original lease that the parties negotiated for inclusion in that agreement.

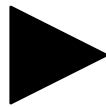
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