

MODEL LEASE CLAUSE

Notify Tenants About Asbestos

The following Model Lease Clause was drafted with the help of Connecticut environmental attorneys Andrew N. Davis and Cindy J. Karlson and San Francisco attorney Michael J. Steel. Use it if your building or shopping center was either built before 1981 or built in or after 1981 and you know it contains asbestos. Adapt the Model Lease Clause to local or county requirements.

Paragraph a notifies the tenant of the presence of asbestos in or around its space (delete Paragraph a(i) if you haven't had an asbestos survey conducted). Paragraph b requires the

tenant to notify its employees and contractors and get a signed acknowledgment.

By adding this or a similar clause to your lease, you'll lessen the risk that you or the tenant will inadvertently violate OSHA's rule on asbestos. Add the clause to the section of the lease where you mention asbestos or hazardous materials, but first show it to your attorney. Get the tenant to sign or initial paragraph a(ii) of the clause as extra proof that the tenant has read the notification. **CLLI0014**

NOTIFICATION OF ASBESTOS

a. Notification of Asbestos

Landlord hereby notifies Tenant, in accordance with the Occupational Safety and Health Administration asbestos rule (1995), 59 Fed. Reg. 40964, 29 CFR §1910.1001 *et seq.* and 1926.1101 *et seq.*, clarification 60 Fed. Reg. 33974 ("OSHA Asbestos Rule"), of the presence of [*choose one or both: asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs")*] (as such [*term is/terms are*] defined in the OSHA Asbestos Rule), in the following locations within the Premises: [*insert locations of any ACMs or PACMs*].

In addition, Landlord hereby notifies Tenant that signs required by the OSHA Asbestos Rule ("Signs") have been posted in the following locations [*insert locations of signs*] within the [*Building/Shopping Center*].

- (i) Such notification by Landlord is made pursuant to the [*Building/Shopping Center*] inspection survey issued by [*insert name of asbestos inspector*] on [*insert date of issuance of survey*] (such survey is attached hereto as Exhibit [*insert #*]).
- (ii) Tenant acknowledges receipt of such notification in Paragraph a hereof and understands, after having consulted its legal counsel, that the purpose of such notification is to make Tenant, its agents, employees, and contractors aware of the presence of ACMs and/or PACMs in the [*Building/Shopping Center*] in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant acknowledges that it is aware of its own obligations under the OSHA Asbestos Rule due to the presence of ACMs and/or PACMs in the Premises and shall not remove or deface any of the Signs. [*insert Tenant's signature block*]

b. Acknowledgment from Tenant's Contractors/Employees

Tenant shall deliver to Landlord a copy of a signed acknowledgment (in the same form as Exhibit [*insert #*] attached hereto) from any contractor, agent, or employee of Tenant prior to the commencement of any of the following activities within or about the Premises:

- (i) Removal of thermal system insulation (TSI) and surfacing ACMs and/or PACMs (i.e., sprayed-on or troweled-on material, such as textured ceiling paint or fireproofing material);
- (ii) Removal of ACMs and/or PACMs that are not TSI or surfacing ACMs and/or PACMs;
- (iii) Repair and maintenance operations that are likely to disturb ACMs and/or PACMs;
- (iv) Custodial and housekeeping activities where even minimal contact with ACMs and/or PACMs may occur;
- (v) Salvage of structures with ACMs and/or PACMs;
- (vi) Construction, alteration, repair, maintenance, or renovation of structures or substrates with ACMs and/or PACMs (e.g., plumbing, electrical, or HVAC work); and
- (vii) Transportation, disposal, and storage of products containing ACMs and/or PACMs on a construction site.