

MODEL LEASE CLAUSE

What to Say in Landlord Leasing Covenant

Atlanta attorney R. Robinson Plowden recommends using the following lease clause when giving a tenant a landlord leasing covenant. Show this clause to an attorney in your area before putting it into your lease.

a. Landlord Leasing Covenant. So long as Tenant is:

(i) Not in default of the Lease beyond any applicable cure period and

(ii) Open for business fully staffed, stocked, and fixtured as a [*insert type of use, e.g., modern toy or children's specialty store*] ("Tenant's Primary Use"), Landlord hereby covenants and agrees that from and after the date of full execution of this Lease through the date that is [*insert #, e.g., six (6)*] months prior to the expiration of the Term of this Lease, it will not knowingly and intentionally enter into a lease as to premises containing more than [*insert #, e.g., 10,000*] square feet within that portion of the Shopping Center in which the Landlord owns a fee simple or leasehold interest to a tenant for use as a [*insert use, e.g., modern toy or children's specialty store*].

b. No Exclusive. The covenant in Paragraph a hereof (the "Covenant") is not an "exclusive" granting Tenant the right to be the only [*insert use, e.g., modern toy or specialty children's store*] in the Shopping Center, but rather a personal covenant between Landlord and Tenant. Landlord's representations and covenants contained in the Covenant shall not be binding on or apply to any third party.

c. Restrictions on Covenant. The Covenant shall not:

(i) Restrict any tenant from changing its use to one that competes with the Tenant's Primary Use, or subletting its premises or assigning its lease to a party that will compete with Tenant's Primary Use;

(ii) Prohibit Landlord from entering into a lease containing an "open" use clause or other use clause not restricting a tenant's use (i.e., a provision permitting any use or any lawful use or words of similar import); or

(iii) Restrict Landlord from renting any premises to a tenant that [*insert use, e.g., sells toys, children's clothing, or other merchandise intended to be used by or for children*], provided that such tenant is not [*insert prohibited use, e.g., operating a modern toy or children's specialty store*].

d. Termination of Covenant. If, at any time during the Term of this Lease, Tenant is in default beyond any applicable cure period or Tenant ceases to use the Premises for Tenant's Primary Use, the Covenant shall be of no further force or effect.