

MODEL LEASE CLAUSE

Get Maximum Security Deposit Protection

The following security deposit clause was drafted with the help of Marc L. Ripp, Esq., senior associate general counsel at Mack-Cali Realty Corp. It contains key points about

how to effectively hold, spend, and return a cash security deposit you collect from a tenant. Show this clause to your attorney before using it in your lease.

SECURITY DEPOSIT

- a. **Payment of Security Deposit.** Tenant shall, upon execution of this Lease, deposit with Landlord as security for the faithful performance and observance by Tenant of the terms, provisions, covenants, and conditions of this Lease, and any modification, extension, or renewal thereof, the sum of \$[insert amt.] (such security deposit shall hereafter be called the "Security").
- b. **Application of Security.** If Tenant defaults in its payment of Rent or performance of any of its other obligations under this Lease, and any renewals or extensions thereof, Landlord may, at its sole option, whether before or after enforcing its remedies against the Tenant under Clause [insert # of remedies clause] hereof, retain, use, or apply the whole or any part of the Security to the extent required for payment of any:
 - (i) Base Rent;
 - (ii) Additional Rent;
 - (iii) Any other amounts Tenant is obligated to pay under the Lease;
 - (iv) Any amount that Landlord may expend or may be required to expend by reason of Tenant's Default of this Lease;
 - (v) Loss or damage that Landlord may suffer by reason of Tenant's default, including, without limitation, any damages incurred by Landlord or deficiency resulting from the reletting of the Premises, whether such damages or deficiency accrues before or after summary proceedings or other reentry by Landlord; or
 - (vi) Costs incurred by Landlord in connection with the cleaning or repair of the Premises upon expiration or earlier termination of this Lease.
- c. **Remedies Not Affected by Security.**
 - (i) In no event shall Landlord be obligated to apply the Security. In addition, the application of the Security is not a prerequisite to Landlord's right to resort to its remedies against Tenant under Clause [insert # of remedies clause] hereof or by law or in equity; and
 - (ii) Landlord's right to resort to its remedies under Clause [insert # of remedies clause] hereof, including, but not limited to, its right to bring an action or special proceeding to recover damages, or to obtain possession of the Premises, whether before or after Landlord terminates this Lease for nonpayment of Rent or for any other reason, or by law or in equity, shall not be affected by Landlord's decision not to apply the Security.
- d. **Security Does Not Limit Damages.** The Security shall not be a limitation on Landlord's damages or other rights and remedies available under this Lease, or at law or equity; nor shall the Security be a payment of liquidated damages.
- e. **Security Is Not Advance on Rent.** The Security shall not be an advance payment of the Rent.
- f. **Restoration of Used Portion.** If Landlord uses, applies, or retains all or any portion of the Security, Tenant shall restore the Security to its original amount within [insert #, e.g., 5] days after written demand from Landlord. Tenant shall be in Default of this Lease if Tenant fails to timely comply with this Paragraph.
- g. **Return of Security.** Subject to Paragraph h hereof and provided that Landlord has determined, in its sole discretion, that Tenant has fully and faithfully complied with all the terms, provisions, covenants, and conditions of this Lease, and any modification, extension, or renewal thereof, Landlord shall return any unused part of the Security to Tenant within [insert #, e.g., 60] days after the expiration or earlier termination of the Lease.
- h. **Delivery of Security to Assignee.** If Landlord, in its sole discretion, has sufficient evidence that the Security has been assigned to an assignee of this Lease, Landlord shall deliver the Security to the assignee and Landlord shall thereupon be released by Tenant from all liability for the return of the Security to Tenant.
- i. **Sale or Lease of Landlord's Interest.** In the event of a sale or foreclosure of the Property or the [Building/Center] or any part thereof which includes the Premises, or a lease of the [Building/Center], Landlord shall have the right to transfer the Security to the purchaser or tenant, as the case may be, and Landlord shall thereupon be released by Tenant from all liability for the return of the Security; and Tenant agrees to look solely to the purchaser or tenant for the return of the Security.
- j. **Security Does Not Make Lease Effective.** The acceptance by Landlord of the Security submitted by Tenant shall not render this Lease effective unless and until Landlord delivers to Tenant a fully executed copy of this Lease.