

# Real Estate Leasing: Illinois

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A Q&A guide to commercial real estate leasing law for landlords and tenants in Illinois. This Q&A addresses state laws and customs that impact commercial leasing, including the execution and enforceability of leases, disclosures, transfer taxes, rents and security deposits, permitted assignments, financings, remedies, and automatic terminations in foreclosure actions. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Leasing: State Q&A Tool).

## Execution and Enforceability

### 1. Describe any formal requirements for the execution of a lease. In particular specify if:

- Witnesses are required.
- Acknowledgments are necessary.
- Counterpart signatures are enforceable.
- There are any other important requirements in your state.

For information on whether Illinois has adopted electronic signatures, electronic recording, or remote online notarization (RON), see Question 20.

### Witnesses

In Illinois, witnesses are not required to execute a lease.

### Acknowledgments

In Illinois, acknowledgments are not required to execute a commercial lease. If a lease or memorandum of a lease is recorded, however, the signatures must be acknowledged (765 ILCS 5/35c).

### Counterpart Signatures

In Illinois, commercial leases executed in counterparts are enforceable.

## Other Requirements

In Illinois, there are no other statutory requirements to execute a lease.

### 2. Must a memorandum of lease (or any other instrument) be recorded for a lease to be enforceable against third parties? If so, must an amendment to a recorded memorandum of lease be recorded if there is a further (material or non-material) amendment to the lease?

Under Illinois law, a commercial lease is enforceable against third parties with actual or constructive notice of the lease when receiving their interest in the leased property. Recording a memorandum of lease ensures constructive notice to third parties (record notice) (765 ILCS 5/30). Constructive notice may also be inquiry notice when evidence of possession by someone other than the owner of the property raises the duty to inquire about the apparent interest (*Bryan v. Lakeside Galleries*, 402 Ill. 466, 477-78 (1949)). If a memorandum of lease is recorded and the lease is later modified, recording an amendment to the memorandum of lease reflecting any material changes assures constructive notice of those material changes.

Confirm the necessary recording procedures with a title company or by contacting the applicable recording office directly.

**3. Provide the statutory form of acknowledgment for:**

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

Illinois statutory law provides model short form acknowledgment certificates (5 ILCS 312/6-105). However, they do not preclude the use of other forms. The examples below are:

- Based on the statutory short forms.
- Sufficient for use assuming the acknowledgment meets all other requirements (5 ILCS 312/6-103).

Illinois has adopted remote online notarization (RON) (5 ILCS 312/1-101 to 312/8-104; Question 20). There are specific requirements for acknowledgments certified using RON. For more information, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart: Illinois](#).

**Individual**

STATE OF [STATE] )

COUNTY OF [COUNTY] )

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME].

[SEAL] \_\_\_\_\_  
[SIGNATURE OF NOTARY PUBLIC]

**Representative Capacity (Corporation, Limited Liability Company, Limited Partnership, or Trust)**

STATE OF [STATE] )

COUNTY OF [COUNTY] )

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME] as [TITLE OR AUTHORITY] of [ENTITY NAME].

[SEAL] \_\_\_\_\_  
[SIGNATURE OF NOTARY PUBLIC]

**Disclosures, Certifications, and Implied Uses**

**4. Are there any statutory or legal disclosures required by the landlord or the tenant either at the beginning or end of the lease term? Are there any compliance certificates the tenant may request from the landlord?**

In Illinois, there are no statutory or legal disclosure requirements for commercial leases for either the landlord or the tenant.

Compliance certificates are not statutorily required.

**5. Is a lease deemed to include an implied warranty of fitness for intended use?**

Illinois law does not impose an implied warranty of fitness for intended use to commercial leases (*JB Stein & Co. v. Sandberg*, 95 Ill. App. 3d 19, 25 (1981)).

**Term, Renewal, and Early Termination**

**6. Are there any legal restrictions which:**

- Limit the maximum term of a lease (including any renewals)?
- Require the landlord to allow the tenant to renew its lease?
- Allow the tenant to terminate its lease before the express expiration date?

**Limit on Maximum Term**

In Illinois, there are no statutory restrictions on the maximum term of a commercial lease.

**Tenant Renewal**

In Illinois, a landlord is not required to allow a tenant to renew a commercial lease.

**Early Termination**

In Illinois, commercial tenants generally cannot terminate a lease before the stated termination date, unless the lease provides otherwise.

For more information on terminating a lease early, see [Practice Note, Key Considerations for Terminating Commercial Leases: Overview \(IL\)](#).

### **7. Is the landlord required to provide the tenant with a notice before the effective date of a renewal when the lease term automatically renews?**

Illinois law does not require a landlord under a commercial lease to provide the tenant with notice before the effective date of an automatic lease renewal unless a provision in the lease provides otherwise. The enforceability of automatic lease renewal clauses varies by locality.

## Rents and Security Deposits

### **8. Are there any legal restrictions on:**

- How much rent the landlord may charge?
- Whether certain operating expenses (or other additional rent) may be passed through to the tenant?

### **Maximum Rent**

In Illinois, there are no legal restrictions on the amount of rent a landlord may charge in a commercial lease. The Illinois Rent Control Preemption Act prohibits municipalities from restricting the amounts landlords can charge as rent (50 ILCS 825/5(a)).

### **Operating Expenses**

In Illinois, there are no restrictions on the amount of operating expenses that may be passed through to the tenant.

### **9. For security deposits:**

- Must the landlord maintain security deposits in a separate bank account for each tenant?
- Must a security deposit be in an interest-bearing account?
- Must the landlord pay all interest earned to the tenant or can the landlord retain a percentage of the interest earned as an administrative fee?

### **Commingling Permitted**

In Illinois, there are no statutory regulations or requirements for security deposits for commercial leases.

### **Interest-Bearing Account**

In Illinois, commercial landlords do not have to hold security deposits in an interest-bearing account.

### **Administrative Fees**

In Illinois, commercial landlords are not required to pay tenants any interest earned on security deposits.

For more information about security deposit requirements across jurisdictions, see [Security Deposit Laws \(Commercial Lease\): State Comparison Chart: Illinois](#) and [Quick Compare Chart: Commercial Security Deposit Laws](#).

## Transfer Taxes and Other Taxes

### **10. Are any state or local transfer taxes triggered when a lease is signed or in the later assignment of a lease? If so, please specify the:**

- Rate for the tax and how is it calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

### **Rate and Calculation**

In Illinois, state transfer taxes are imposed on the transfer of ground leases that provide for a term of 30 or more years, when all options to renew or extend are included (35 ILCS 200/31-5 and 200/31-10; 86 Ill. Admin. Code 120.20(a)(2)(B)). The [Illinois Department of Revenue](#) (IDOR) states that the transfer tax does not apply to the creation of ground leases ([IDOR: Real Estate Transfer Tax](#)). The state transfer tax rate is \$0.50 for each \$500 (or fraction of \$500) of the value stated in the state transfer tax declaration (35 ILCS 200/31-10).

Counties and home rule municipalities may impose transfer taxes on new or transferred ground leases (Ill. Const. art. VII, § 6; 55 ILCS 5/5-1031.1; 65 ILCS 5/8-3-19).

The county transfer tax rate is \$0.25 for each \$500 (or fraction of \$500) of the value stated in the required transfer tax declaration (55 ILCS 5/5-1031). Municipality transfer tax rates vary (35 ILCS 200/31-65).

### Returns

The state of Illinois requires any ground lease subject to transfer taxes to be declared on the state's transfer tax declaration (35 ILCS 200/31-25). Counties and municipalities may require the use of the state transfer tax declaration form or their own declarations (Ill. Const. art VII, § 6; 55 ILCS 5/5-1031; 65 ILCS 5/8-3-19).

IDOR's website provides a system for filing the transfer tax declarations for Illinois, the City of Chicago, and participating counties ([IDOR: MyDec at MyTax Illinois](#)). The MyDec website lists the participating counties. For non-participating counties, the IDOR website provides a fillable version of the [transfer tax declaration form](#).

Counsel should check counties' and municipalities' websites for their transfer tax declaration forms.

### Timing

The county recorder collects transfer taxes through the sale of revenue stamps (35 ILCS 200/31-15). The state and county transfer tax declarations for a taxable transfer of ground lease and payment for the revenue stamps must be submitted to the county recorder within three business days after the transfer is effective or when the instrument transferring the ground lease is submitted for recording, whichever date is earlier (35 ILCS 200/31-25; 55 ILCS 5/5-1031).

Counsel should check with the municipality where the real property is located to determine when municipal transfer taxes (if any) are due. Obtaining revenue or transfer stamps from municipalities can involve time-consuming prerequisites (such as inspection) to paying the transfer tax.

Confirm any local transfer tax requirements with a title company or by contacting the applicable taxing authority or recording office.

For more information about transfer taxes in Illinois, see [Practice Note, Real Estate Transfer Taxes \(State Level\) \(Commercial and Residential Real Estate\) \(IL\)](#).

For more information about transfer taxes across jurisdictions, see [State Transfer Tax Comparison Chart](#) and [Quick Compare Chart: State Transfer Taxes](#).

### 11. Are state or local transfer taxes triggered when the tenant undergoes a (direct or indirect) transfer of its ownership interests? In particular, please specify the:

- Percentage of ownership interest that triggers the taxes.
- Rate for the taxes and how they are calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

### Percentage of Interests

In Illinois, transfer taxes are triggered by the transfer of:

- More than 50% of the fair market value of the ownership interest (controlling interest) in a real estate entity.
- A beneficial interest in real property.

(35 ILCS 200/31-5 and 200/31-10; 86 Ill. Admin. Code 120.20(a).)

Counties and home rule municipalities may also impose transfer taxes (Ill. Const. art VII, § 6; 55 ILCS 5/5-1031 and 5/5-1031.1; 65 ILCS 5/8-3-19).

### Rate and Calculation

The state transfer tax rate is \$0.05 for each \$500 (or fraction of \$500) of the value stated in the state transfer declaration (35 ILCS 200/31-10).

The county transfer tax rate is \$0.25 for each \$500 (or fraction of \$500) of the value stated in the required transfer tax declaration (55 ILCS 5/5-1031). Municipality transfer tax rates vary (35 ILCS 200/31-65).

### Returns

The state of Illinois requires transfers of these types to be declared on the state's transfer tax declaration (35 ILCS 200/31-25). Counties and municipalities may require the use of the state transfer tax declaration form or their own declarations (Ill. Const. art. VII, § 6; 55 ILCS 5/5-1031; 65 ILCS 5/8-3-19).

The [Illinois Department of Revenue](#) (IDOR) website provides a system for filing the transfer tax declarations for Illinois, the City of Chicago, and participating

counties (IDOR: [MyDec at MyTax Illinois](#)). The MyDec website lists the participating counties. For non-participating counties, the IDOR website provides a fillable version of the [transfer tax declaration form](#).

Counsel should check counties' and municipalities' websites for their transfer tax declaration forms.

### Timing

The county recorder collects transfer taxes through the sale of revenue stamps (35 ILCS 200/31-15). The state and county transfer tax declarations for a taxable transfer of ownership interests and payment for the revenue stamps must be submitted to the county recorder within three business days after the transfer is effective or when the instrument transferring the interest is submitted for recording, whichever date is earlier (35 ILCS 200/31-25; 55 ILCS 5/5-1031). The county recorder will not record any instrument subject to transfer taxes unless the proper stamps are affixed to it (35 ILCS 200/31-20; 55 ILCS 5/5-1031(a)).

Counsel should check with the municipality where the real property is located to determine when municipal transfer taxes (if any) are due.

Confirm any local transfer tax requirements with a title company or by contacting the applicable taxing authority or recording office.

For more information about transfer taxes in Illinois, see [Practice Note, State of Illinois Real Estate Transfer Taxes \(Commercial and Residential Real Estate\) \(IL\)](#).

For more information about transfer taxes across jurisdictions, see [State Transfer Tax Comparison Chart](#) and [Quick Compare Chart: State Transfer Taxes](#).

### 12. Describe any state or local taxes (rental or other) that the landlord must collect from the tenant.

In Illinois, a landlord is not required to collect state or local taxes from tenants.

Tax assessment, payment, and collection practices vary by jurisdiction. Consult with local counsel or a title company (or contact the applicable taxing authority directly) to verify these details.

## Assignment, Financing, and Transfers

### 13. Describe any laws allowing the tenant to assign its lease, or sublease its premises, without the landlord's consent. Is a reasonableness standard implied when the lease is silent on whether the landlord's consent to an assignment or sublease may be reasonably or unreasonably withheld?

The Illinois Appellate Court has held:

- A tenant generally has the right to assign the lease without the landlord's consent if the lease is silent about assignments (*Cole v. Ignatius*, 114 Ill. App. 3d 66, 70 (1983)).
- If a lease forbids any sublease or assignment without the landlord's consent, the landlord cannot unreasonably withhold its consent to a sublease regardless of the terms of the lease (*Golf Mgmt. Co., v. Evening Tides Waterbeds, Inc.*, 213 Ill. App. 3d 355, 360 (1991)).

### 14. If the lease does not expressly define the term "assignment" and there is no other express restriction in the lease to the contrary can the:

- Tenant's corporate ownership interests be freely transferred without the landlord's consent?
- Tenant freely place a lien on its leasehold interest, or pledge its corporate ownership interests, in connection with a financing without the landlord's consent?

## Transfer of Ownership Interests

The Illinois Appellate Court has held that a transfer of a tenant's corporate ownership interests without the landlord's consent does not violate a clause prohibiting assignment. A lease may, however, contain a provision giving the landlord the right to terminate the lease if the transfer of all or part of the tenant's corporate ownership interests results in a change in control of the corporation. (*Associated Cotton Shops, Inc. v. Evergreen Park Shopping Plaza of Del., Inc.*, 27 Ill. App. 2d 467, 474-76 (1960).)

### Security Lien or Pledge of Ownership Interests

Illinois case law is not developed on whether a tenant may freely place a lien on its leasehold interest or pledge its corporate ownership interests in connection with financing without the landlord's consent.

**15. When a lease requires a landlord's consent for an assignment and defines the term "assignment" to include a transfer of the tenant's corporate ownership interests, would an indirect transfer of the tenant's interests trigger the landlord's consent requirement?**

Illinois law does not address whether an indirect transfer of the tenant's interests triggers the landlord's consent requirements. Therefore, a commercial lease should specify whether the indirect transfer of a tenant's ownership interests requires the landlord's consent.

**16. Is the tenant/assignor deemed released from future liability under the lease when the lease is silent on whether the original tenant will be released in the event of an assignment?**

In Illinois, the tenant or assignor is not released from future liability under a lease in the event of an assignment absent a provision stating otherwise (*Leonard v. Autocar Sales & Serv. Co.*, 392 Ill. 182, 189 (1945); *Amelong v. Peacock*, 278 Ill. App. 142, 145 (Ill. App. Ct. 1934)).

**17. Describe any restrictions on the landlord's ability to transfer the real property subject to the lease. Does this transfer affect the tenant's rights or obligations?**

In Illinois, there are no restrictions on the landlord's ability to transfer real property subject to the lease. If the landlord transfers its interest in the real property, the tenant's rights and obligations remain the same unless the lease provides otherwise.

### Remedies

#### 18. If a tenant breaches the lease:

- Are there any implied remedies available to the landlord, such as the acceleration of rent?
- Is there a limitation on the landlord's ability to exercise self-help?
- Is there a common form of an eviction proceeding and, if so, what is the typical length of time for the proceeding?
- Are there specific mechanisms for expedited remedies, such as waiver of jury trial or arbitration?
- Is the landlord required to mitigate its damages without an express obligation to do so?

### Implied Remedies

In Illinois, a landlord's remedies for a tenant default under a commercial lease are either:

- Contractual (*Vill. of Palatine v. Palatine Assocs., LLC*, 2012 IL App (1st) 102707, ¶ 45).
- Express under statutory or common law.

A landlord may:

- Recover possession as well as rents and profits under the Illinois Ejectment Statute (735 ILCS 5/6-101 to 5/6-150). An ejectment action is proper only when the right to possession hinges on determining title to the real estate (*Harwood v. Harwood*, 412 Ill. 131, 135 (1952)).
- Recover possession and rent under the Illinois Eviction Act (formerly the Forcible Entry and Detainer Act) (735 ILCS 5/9-101 to 5/9-321; see Question 18: Eviction Proceeding).
- Seize the tenant's personal property for rent due by filing a distress warrant (735 ILCS 5/9-301 to 5/9-321).
- Seek equitable remedies including:
  - a declaratory judgment before asserting another remedy or taking action that could result in liability for the landlord (735 ILCS 5/2-701); or
  - an injunction addressing the tenant's future actions (735 ILCS 5/11-101 and 5/11-102).

For additional information on landlord remedies under an Illinois commercial lease, see [Practice Note, Landlord's Rights and Remedies \(Commercial Lease\) \(IL\)](#).

### Self-Help

Landlords do not have any self-help remedies in Illinois (735 ILCS 5/9-101; *Fortech, LLC v. R.W. Dunteman Co.*, 366 Ill. App. 3d 804, 814 (2006)).

### Eviction Proceeding

In Illinois, an eviction action is a summary proceeding designed to both:

- Provide a quick remedy that focuses on the issue of possession and matters germane to possession.
- Allow a claim for rent to be joined in an action for possession.

The landlord begins the forcible entry and detainer process by serving a tenant with a demand and notice (735 ILCS 5/9-102(a)(4), 5/9-104, 5/9-209, and 5/9-210). Once the time stated for compliance has passed, the landlord may file a complaint with the circuit court where the premises are situated, stating that:

- The landlord is entitled to the possession of the premises.
- The tenant is unlawfully withholding possession from the landlord.

(735 ILCS 5/9-106.)

The landlord must prove its allegations by a preponderance of the evidence (735 ILCS 5/9-109.5). If the landlord is successful, the court will issue to the landlord an order of possession that requires the tenant to vacate the premises. If the tenant fails to vacate within the period specified in the order, the landlord may provide the order to the sheriff's office for the county where the property is located to have the tenant physically removed from the premises.

### Expedited Remedies

Landlords and tenants may do either of the following, or both:

- Waive their right to a jury trial (735 ILCS 5/9-108).
- Agree to resolve disputes through arbitration.

### Mitigation of Damages

The landlord must take reasonable measures to mitigate the damages recoverable against a defaulting tenant (735 ILCS 5/9-213.1).

For more information about mitigation of damages across jurisdictions, see [Commercial Landlord's Duty to Mitigate: State Comparison Chart](#) and [Quick Compare Chart: Commercial Landlord's Duty to Mitigate](#).

## Automatic Termination of a Lease in a Foreclosure Action

**19. When a landlord's lender forecloses on its lien recorded against the landlord's property, would the lease interest that is subordinated to the lender's lien automatically terminate? If so, how do the parties avoid automatic termination of subordinated lease interests?**

Under Illinois law, leasehold interests that are junior to a mortgage will be terminated by judicial order if the tenant is specifically named in a foreclosure proceeding (735 ILCS 5/15-1404 to 5/15-1503). Illinois law is unclear regarding the treatment of leasehold interests that are junior to a mortgage when the tenant is not named in a foreclosure proceeding.

A tenant can enter into a non-disturbance agreement with the landlord's mortgagee to avoid automatic termination of the lease. Often the landlord, the tenant, and the landlord's lender enter a Subordination, Non-Disturbance, and Attornment Agreement (SNDA).

For an Illinois form of SNDA, see [Standard Document, Subordination, Non-Disturbance, and Attornment Agreement \(SNDA\) \(Pro-Lender\) \(IL\)](#).

### Electronic Signatures, Recording, and Notarization Laws

#### 20. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Despite Illinois's adoption of the applicable electronic laws referred to below, the transaction parties or recording offices may decline to accept documents executed or notarized electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures and/or remotely notarized documents and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.

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### Electronic Signatures

- Illinois has adopted the UETA (815 ILCS 333/1 to 333/99).

### Electronic Recording

Illinois has adopted the URPERA (765 ILCS 33/1 to 33/99).

### Remote Online Notarization

Illinois has adopted RON (5 ILCS 312/1-101 to 312/8-104; 14 Ill. Adm. Code 176.800 to 176.870).

There may be specific requirements for performing RON. Reference should be made to the statute, any applicable emergency orders, and any rules promulgated by the secretary of state or other state authority to understand all RON requirements and conditions (see [Illinois Secretary of State Notary Services Index: Electronic and Remote Notarization Updates](#)). For additional information on RON, see [Practice Note, Remote and Electronic Signature, Notary, and Recording Laws \(IL\)](#).

For a state-by-state chart covering key provisions of RON laws, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#). To view and customize comparison charts on electronic signatures, recording, and notarization laws across states, see [Quick Compare Chart, State Laws on Electronic Signatures, Electronic Recording, and Remote Notarization](#).