

Real Estate Leasing: Washington

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A Q&A guide to commercial real estate leasing law for landlords and tenants in Washington. 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](#)).

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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 homestead law requirements.
- There are any other important requirements in your state.

Witnesses

Witnesses are not required to properly execute a lease.

Acknowledgments

A lease for a term longer than one year:

- Must be in writing ([RCW 59.04.010](#)).
- Is treated as a conveyance of real property and the signatures of each party to be bound must be acknowledged by a notary ([RCW 64.04.020](#)).

Subleases and lease assignments for a term of more than one year must also be acknowledged by a notary.

Washington courts have excused the failure to satisfy the statute of frauds for a variety of reasons including circumstances when there are equities sustaining the lease or estopping denial of its validity such as past performance (*Stevenson v. Parker*, 608 P.2d 1263 (Wash. App. 1980)). Courts are more likely to excuse lack of a notary acknowledgment by the tenant on the theory that only the landlord is conveying a real property interest.

Counterpart Signatures

Counterpart signatures on commercial leases are enforceable. Each person or entity to be bound must sign if more than one party will be the tenant.

Homestead Laws

Washington has a homestead exemption, which:

- Is liberally construed (*Macumber v. Shafer*, 637 P.2d 645 (Wash. 1981)).
- Cannot exceed \$125,000 for lands and homes.
- Generally cannot exceed \$15,000 for other personal property that the owner uses as a residence.

([RCW 6.13.010](#) and [6.13.030](#).)

Washington is a community property state and treats domestic partnerships the same as married couples. Domestic partnerships can include:

- Gay and lesbian couples.
- Unmarried heterosexual couples when one partner is over the age of 62.

(RCW 26.60.030.)

In some instances, community property laws allow one spouse or domestic partner to bind community assets. However, it is ideal for both spouses or domestic partners to sign the lease to ensure access to all property (marital and separate) not covered by the homestead exemption.

Other Requirements

A lease with a term longer than one year must:

- Be in writing (RCW 59.04.010).
- Describe the leased premises sufficiently so a court would not need to review extrinsic evidence to identify the property leased.
- State the term and rent to be paid.
- Be signed by the landlord and tenant.
- Be acknowledged by a notary (RCW 26.60.020).

Oral leases for a term shorter than one year are enforceable if the lease terms can be established.

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?

It is not required in Washington to record the lease or a memorandum of lease. However, it is recommended because:

- It provides record notice of the leasehold interest.

- After recording, the tenant's rights have priority over any liens, claims, or conveyances subsequently recorded.
- Without a recording, enforcing the lease against third parties that take interest in the property without actual knowledge of the lease may be limited.

An amendment to a memorandum of lease should be recorded if any of the lease terms documented in the original memorandum of lease change.

3. Provide the statutory form of acknowledgment for:

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

In 2017, Washington State adopted the Revised Uniform Law on Notarial Acts which went into effect July 1, 2018. In addition to the statutory form of acknowledgment, Washington also accepts acknowledgments:

- In the form prescribed by the jurisdiction in which the notarization occurred ([RCW 42.45.130](#)).
- From federal authorities ([RCW 42.45.110](#)).
- From foreign authorities ([RCW 42.44.120](#)).
- Electronically if the notary public:
 - holds a commission as an electronic records notary public;
 - has selected one or more tamper-evident technologies to perform notarial acts that meet the standards set out in [RCW § 42.45.190\(4\)](#); and

- has notified the Department that she will be performing notarial acts with respect to electronic records and identify the technology to be used.

(RCW 42.45.190.)

Individual

State of Washington

County of [COUNTY]

This record was acknowledged before me on [DATE] by [NAME(S) OF INDIVIDUAL(S)].

Dated: [DATE]

[SIGNATURE]_____

(Seal or Stamp)

[NOTARY TITLE]_____

Title

My commission

expires [DATE]_____

(RCW 42.45.140(1).)

Corporation

State of Washington

County of [COUNTY]

This records was acknowledged before me on [DATE] by [NAME(S) OF INDIVIDUAL(S)] as [TYPE OF AUTHORITY] of [NAME OF PARTY WHOM INSTRUMENT WAS EXECUTED FOR].

Dated: [DATE]

[SIGNATURE]_____

(Seal or Stamp)

[NOTARY TITLE]_____

Title

My commission

expires [DATE]_____

(RCW 42.45.140(2).)

Limited Liability Company

Washington law provides a single form of acknowledgment that applies in any instance a person signs in a representative capacity (see [Corporation](#)).

Limited Partnership

Washington law provides a single form of acknowledgment that applies in any instance a person signs in a representative capacity (see [Corporation](#)).

Trustee

Washington law provides a single form of acknowledgment that applies in any instance a person signs in a representative capacity (see [Corporation](#)).

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 commercial leases, there are no disclosures required from either the landlord or the tenant.

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

In a commercial lease, a landlord may disclaim warranties of fitness for a particular use and may lease the space to the tenant on an "as is" basis. However, a Washington court would likely interpret the lease in favor of tenant in this situation. Therefore, the landlord should clearly state in the lease that the tenant is responsible for:

- Verifying the legality of its use.
- Determining the condition of the premises.

Most residential tenancies are covered by the Residential Landlord-Tenant Act (RLTA) ([RCW 59.18.010](#) to [59.18.912](#)). The protections of the RLTA cannot be waived ([RCW 59.18.230](#)).

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

There is no maximum term for commercial leases in Washington.

Tenant Renewal

No statutory provision requires the landlord to allow a commercial tenant to renew its lease. However, Washington courts have allowed tenants to renew leases without following restrictions in the lease if the court finds that equity weighs in the tenant's favor.

Early Termination

No statute allows a commercial tenant to terminate its lease before the express termination date.

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?

In Washington, a landlord is not required to notify the tenant before the effective date of a renewal.

Rent 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 Washington, there are no restrictions on commercial rent rates.

Operating Expenses

There are no restrictions on either party's ability to allocate responsibility for payment of taxes, operating costs, or other charges.

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 Washington, commercial security deposits may be commingled with the landlord's other funds unless the lease provides otherwise.

Interest Bearing Account

Commercial security deposits do not need to be held in an interest bearing account unless the lease provides otherwise.

Administrative Fees

Commercial tenants are not entitled to interest on the security deposit unless the lease provides otherwise.

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

Rate and Calculation

Washington has a real estate excise tax ([RCW 82.45.010](#) to [82.45.900](#)). The rate varies by jurisdiction but is usually 1.78%. This tax applies to a lease only if:

- The lease includes an option to purchase the property and that option is exercised (the tax is payable on the closing of the purchase).
- There is a transfer of the tenant's interest in the lease for valuable consideration and there are improvements constructed on the leased land and owned by the tenant.

(RCW 82.45.010(1).)

The calculation is based on the applicable rate multiplied by:

- The true and fair value of the property, if the tax is triggered by the exercise of an option to purchase the property.
- The true and fair value of the improvements, if the tax is triggered by the assignment of the lease.

There are various exemptions to the real estate excise tax including gifts, inheritance, divorce, and transfers where gain is not recognized under the US Internal Revenue Code ([WAC 458-61A-200](#) to [458-61A-217](#)).

Leases of publicly owned property are subject to a leasehold excise tax ([RCW 82.29A.030](#)).

Returns

The reporting forms for the real estate excise tax are only available by download from the [Washington State Department of Revenue](#). There are separate forms to report a sale of a controlling interest of an entity that owns real estate and the sale of the property itself.

Timing

The real estate excise tax is due on the sale of the property or the assignment of the lease. Interest and penalties apply if the transfer is not timely reported. The interest rate is set by statute, and if the tax is not paid within:

- One month of the date due, the penalty is 5% of the amount of the tax.
- Two months of the date due, the penalty is 10% of the amount of the tax.
- Three months of the date due, the penalty is 20% of the amount of the tax.

(RCW 82.45.100.)

Any unpaid tax becomes a lien on the property.

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.
- Rates for the taxes and how they are calculated.

- Returns required.
- Timing for filing the returns and paying the taxes.

Percentage of Interests

The real estate excise tax is triggered by a transfer of a controlling interest in an entity that owns real property, including a tenant's interest in leasehold improvements. A controlling interest is defined as:

- In the case of a corporation, either 50% or more of:
 - the total combined voting power of all classes of stock of the corporation entitled to vote; or
 - the capital, profits, or beneficial interest in the voting stock of the corporation.
- In the case of a partnership, association, trust, or other entity, 50% or more of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(RCW 82.45.033.)

For more information, see [Question 10](#).

Rate and Calculation

The real estate excise tax triggered by a transfer of a controlling interest will be calculated based on the true and fair value of the real property owned by the entity. For example, the true and fair value of a building owned by the entity and located on land leased by the entity. For rate and calculation of taxes in Washington, see [Question 10](#).

Returns

For returns required in Washington, see [Question 10](#).

Timing

For timing of filing in Washington, see [Question 10](#).

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

There are no rental or other taxes that a landlord must collect from a tenant. However, Washington has a business and occupation tax which does not apply to rental income but may apply to other related income received by a landlord or its property manager, including late fees.

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?

There are no Washington statutes regulating whether a tenant of a commercial lease may assign the lease. If a commercial lease does not restrict the tenant's right to assign or sublease, it may engage in transfers without the landlord's consent. However, the assignee must:

- Be legally capable of holding a leasehold.
- Consent to the transfer.

(*Frye v. Hill*, 43 P. 1097 (Wash. 1896).)

A landlord is generally allowed to act in its sole discretion when deciding to consent to an assignment or sublease, unless the lease requires a different standard. A landlord who agrees to act reasonably should clearly define that standard to avoid an adverse interpretation by a court, if challenged. Courts have held that the landlord must act as a "reasonably prudent person in the landlord's position" would (*Ernst Home Ctr., Inc. v. Sato*, 910 P.2d 486, 493 (Wash. App. 1996)).

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

In Washington, unless the lease says otherwise, the tenant can sell its corporate ownership interests without landlord approval.

Security Lien or Pledge of Ownership Interests

Unless the lease says otherwise, the tenant can place a lien on its leasehold interest or pledge its corporate ownership interests in connection with a financing without landlord approval. However, the tenant may not place a lien on the landlord's interest. Security instruments should be reviewed carefully to ensure that the landlord's interest is not encumbered.

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?

Washington courts construe anti-assignment clauses narrowly and the language used in the lease is critical to the determination of whether landlord consent is required. A landlord seeking to restrict ownership transfers at the parent level should address this specifically in the lease.

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 Washington, absent an express provision in the lease, the assignment of a lease does not relieve the tenant of its contractual undertakings in the lease.

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?

There are no statutory restrictions on a landlord's ability to transfer real property subject to a lease. The transferee is bound if it has actual or record notice of the lease at the time of the transfer.

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

Acceleration of rent is allowed only if the right is expressly provided in the lease.

Other remedies include double damages for the period a tenant is unlawfully in possession if these damages are identified in the complaint ([RCW 59.12.170](#)).

Self-Help

Unless expressly provided for in the lease, self-help is generally not favored in Washington. Leases are subject to an implied covenant of quiet enjoyment, and a landlord may not unreasonably deprive the tenant of the right to possession and use of the leased premises.

Even if a lease expressly reserves self-help remedies, a landlord should consult counsel before exercising those rights.

Eviction Proceeding

In Washington, the eviction proceeding is an expedited remedy when the tenant is in "unlawful detainer" (see [Expedited Remedies](#)).

Expedited Remedies

When a tenant holds over or continues possession of a property after the expiration of the term of a lease, a court may deem the tenant to be an unlawful detainer. The landlord may use an expedited eviction proceeding against the unlawful detainer. ([RCW 59.12.030](#).) The unlawful detainer proceeding against the tenant:

- Is filed in the Superior Court in the county where the premises are located.
- Provides a relatively fast method to evict the tenant.
- Allows the landlord to recover damages, rent, and other amounts that may be due under the lease.

([RCW 59.12.010](#) to [59.12.230](#).)

If the defaults are not cured, the landlord may serve the tenant with a summons and complaint. The summons must specify a response date that is no less than seven and no more than 30 days from the date of service. ([RCW 59.12.070](#).) The tenant and any subtenant in possession must be named as defendants ([RCW 59.12.060](#)). The landlord does not have to file the action with the court before serving the tenant.

The tenant may answer at any time before the date specified in the summons. The answer may assert:

- Factual issues.
- Certain procedural issues.

Counterclaims are not allowed unless they relate directly to the issue of possession.

If the tenant does not appear or answer within the time specified, the action can be filed (if not filed before service) and the landlord can move for a default judgment and a writ of restitution ([RCW 59.12.120](#)).

If the tenant answers, the landlord may either:

- Set an ex parte show cause hearing. A show cause hearing is a summary proceeding to determine the issue of possession.
- Elect to proceed to trial, if there are factual issues relating to possession to be decided.

The tenant has the burden of showing why a writ of restitution should not be issued ([RCW 59.12.090](#)).

The landlord may apply a writ of restitution restoring possession of the property to itself ([RCW 59.12.090](#)). The landlord can apply for the writ when, or at any time after, the action is commenced. The writ of restitution, when issued by the court clerk, directs the county sheriff to restore possession to the landlord. The court must issue the writ, but if judgment has not yet been entered, the landlord must post a restitution bond.

An unlawful detainer trial takes precedence over all other civil cases ([RCW 59.12.130](#)). Trials are to be scheduled within 30 days. The statute does not address expedited discovery but a motion can be directed to the court.

On proper application, the county sheriff serves the writ on the tenant. The writ will be enforced after a three-day waiting period ([RCW 59.12.100](#)). The landlord needs to coordinate with the sheriff to have the tenant's possessions removed.

The tenant may delay enforcement if it provides a bond ensuring payment of all damages and costs ([RCW 59.12.100](#)).

A court can reinstate the lease within 30 days after forfeiture if the tenant:

- Pays all past due rent.
- Cures the outstanding defaults.

([RCW 59.12.190](#).)

An unlawful detainer proceeding to recover possession of commercial property can take several months to complete if the tenant forcefully contests the action, but an uncontested action that is diligently pursued can be completed in a few weeks.

If the tenant vacates while the case is pending, the case is converted to a standard court case and the landlord does not get the benefit of the expedited court calendar.

Mitigation of Damages

Courts in Washington require both parties to mitigate their damages under common law principles. Parties should not assume that a court will permit the parties to waive this requirement even in a lease between sophisticated parties.

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?

In Washington, a lease subordinate to the lender's lien may be terminated in a foreclosure when the landlord's lender does not recognize the lease, if either:

- The lender's lien existed before the lease.
- The lease existed before the lender's lien, but by its terms is subordinate to a future lender's lien.

(RCW 62A.2A-309.)

To avoid an automatic termination of the lease, parties may execute a **subordination, non-disturbance, and attornment agreement** (See [Standard Documents, Subordination, Non-Disturbance, and Attornment Agreement \(SNDA\) \(Pro-Lender\)](#) and [Subordination, Non-Disturbance, and Attornment Agreement \(SNDA\) \(Pro-Tenant\)](#)).