

Sublease Security Keep Landlord and Lease Protections in Mind When Subleasing



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IF YOU ARE A REAL ESTATE MANAGER REPRESENTING A LANDLORD IN TODAY'S TOUGH MARKET, YOU MAY HAVE WITNESSED TENANTS EXPERIENCING FINANCIAL HARDSHIP, STRUGGLING TO PAY RENT, OR REQUESTING CONCESSIONS. Many tenants have turned to subleasing for relief. Here are some essentials for a landlord to consider when working through a sublease transaction.

Know the Subtenant: At a minimum, landlords should request the name and address of a proposed subtenant, certified financial information for a set period of time and a copy of the proposed sublease. The lease may also contain a more detailed list of required information to help evaluate whether a subtenant is suitable.

Protect Landlord's Rights: A lease may require a landlord to be reasonable in accepting a subtenant, but don't overlook other lease protections if that subtenant is not desirable. Provisions stipulating permitted use of premises, gross sales or customer traffic requirements, tenant mix, use of parking or common areas, and a tenant's reputation or non-violation of previous property leases, are valuable tools landlords can use to maintain control of their properties or preserve their ability to enter into direct tenant leases with proposed subtenants.

Improve the Lease: Landlords who find an acceptable but less-than-ideal subtenant, may use the opportunity to improve their position under the lease. For any sacrifices landlords make in a subtenant lease arrangement, renegotiating tenant-friendly provisions should be considered. Removal of tenant termination rights, co-

tenancy exclusives, renewal options, purchase options, expansion rights of first offer and refusal, and other restrictions on leasing to potential property tenants existing in the underlying lease, are all possible new wins for landlords. Shore up any holes in lease documentation, such as term commencement certificates and lease exhibits, and make sure all tenant credit support, like guarantors, have affirmed the lease and especially the sublease transaction.

Maintain the Integrity of the Lease When Giving Consent: To avoid inadvertently establishing direct contractual relationships with subtenants, landlords should use a form of consent, clearly stating their positions as separate from tenant/subtenant relationships. In this form, the consent to the sublease should in no way release tenants from any of the covenants, agreements, liabilities and duties under a lease. Also, a landlord's consent to the sublease should not constitute approval or affirmation of any of the provisions of the sublease document; the sublease must be subordinate to the terms of the lease. Whether the sublease implies any "extra" responsibilities for a landlord, he or she must make it clear that no obligation or liability exists under the sublease. Finally, landlords should condition any sublease consent on a tenant affirmation that the lease is currently in good standing and no landlord or tenant defaults currently exist.

Once all parties have agreed to the form of consent, make sure the landlord's file is complete with the new subtenant information, fix all documentation discrepancies, check for signatures and attachments on final documents and confirm all credit support is affirmed. Then, welcome the new subtenant! ■