Sublease Negotiation Tips

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Overview

- Why Now?
- Sublease v. Assignment
- Misconceptions
- Different Approaches to Drafting a Sublease

General Issues

- Structure of Transaction
  - Limits Established by Prime Lease
  - Termination of Prime Lease = Termination of Sublease
- Relationship of Parties
  - Privity of Contract
  - Solutions:
    1. Sublandlord as the Enforcer
    2. Assignment of Rights
    3. Self-Help
    4. Pass-Through Remedies/Rights
    5. Recognition Agreement

General Issues

(continued)

- Modification of Prime Lease
  - Sublandlord will want to retain right to modify the Prime Lease without subtenant's consent.
  - Limit subtenant's consent rights to modifications which would:
    - Adversely affect subtenant's rights.
    - Increase obligations of subtenant.
    - Decrease size of subleased premises or shorten term of sublease.
    - Sublandlord can amend the excluded obligations without subtenant consent.

General Issues
(continued)

- Other Factors to Consider:
  - Entire Premises v. Partial Premises
  - Length of Term
  - Rent Amount
  - Time Periods for Performance and Notification

Issues

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