

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

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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.

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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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"Subleases: Negotiation Tips"