



Simplify your sublease and save money and time

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If your business leases space but you're not using all of it, a sublease can benefit your bottom line. There are costs involved in entering into a sublease, but the way a sublease is structured can save you money and time, both at the outset and during the term.

An important early consideration is the complexity of the master lease under which your business occupies the space and the extent to which the subtenant's obligations can be kept separate. If, for example, you occupy space in a large building, the lease may contain lengthy provisions concerning: (i) rent; (ii) additional rent such as property taxes, operating expenses, common area maintenance charges, and utilities; and (iii) escalation formulas for these items.

It's easy to agree in general terms that the subtenant will assume all responsibilities for the space that it will occupy and that rent and additional rent will be allocated between the parties; but consider what this may give rise to. Not all master lease provisions are appropriate to apply to a subtenant. You'll need a sublease prepared that references only the relevant provisions, and clearly states how monetary obligations will be allocated and other responsibilities that the subtenant will be assuming. Finally, since the landlord's prior consent to a sublease is almost always required, a complex sublease could generate further costs because many leases require the tenant to reimburse the landlord for legal fees incurred in reviewing the proposed sublease. On the other hand, if you've been in the space for some time, then you probably have a good feel for what the actual expenses are and how they might increase over time. If so, then you might be able to greatly simplify the process by agreeing with the subtenant on a single all-inclusive figure for rent and a fixed annual percentage increase. This strategy can also apply to non-monetary obligations, such as the duty to make repairs. For example, if the sublease provides that the subtenant's responsibility will be only for damages it actually caused, then it wouldn't have to be concerned with the repair obligations under the master lease.

Another aspect to consider is administration of the sublease going forward. While "professional landlords" have systems to track and calculate adjustments, if you are subletting your space and you're not in the "landlord business," there's a strong likelihood that you'll overlook collecting scheduled increases. An oversight will require an adjustment which can give rise to dispute with the sub-tenant and issues of collectability. Keeping the structure for rent, additional rent and escalations simple will help to minimize these potential problems. The risk can be further reduced by taking the time to include a table that sets forth calendar dates (as opposed to "during the third year of the term") and shows the actual dollar amounts of rent and additional rent that will be due during various periods.

Consider how complex your arrangement with a subtenant really needs to be. Keeping it simple will save time and money.

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