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COUNSELORS

Assignments vs Subleases: *What are the Differences?*



Bruce Rosen
BRosen@REDC.com
(202) 868-2755



Peter Pokorny
Peter@REDC.com
(703) 850-9099

- **Introduction** – A tenant who no longer needs its space may want to assign or sublet their premises. Or a business who needs space, may consider subleasing a space, or having that tenant assign its lease to them.

Although assignments and subleases are similar, they have distinct legal consequences. Some of the key issues are set out below.

ASSIGNMENT:

What is it? An assignment is the transfer of the a party's entire interest in a lease. When a tenant assigns its lease, the assignee takes over the tenant's obligations under the lease and deals directly with the landlord.

When is it typically used? Assignments are typically used when a party is taking over the entire leased space, for the entire remaining term, and will take on the existing lease economics. One common example is when a business is sold, existing leases are assigned to the new buyer.

Advantages:

- The assignee gets to deal directly with the landlord on any issues it has under the lease.

SUBLEASE:

What is it? A sublease is the transfer of all or a portion of the premises for less than the entire term of the lease. A transfer of all of a tenant's space for a term that is 1-day less than the lease term qualifies as a sublease.

When is it typically used? Assigning tenants often sublease when market rents have fallen (as they can't find an assignee to pay the rate under the lease). Parties needing space typically sublease to get space already built-out at a lower rate than they could as a direct tenant.

Advantages:

- The subtenant gets space already built-out and ready to use.



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DC: (202) 868-2755
MD: (240) 252-3386

NY: (646) 820-3013
VA: (703) 740-1766



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ASSIGNMENT:

Advantages (cont.):

- Since the assignee pays rent directly to the landlord, the assignor is not involved in receiving and relaying money each month.
- Although it's not common, depending upon the circumstances, an assignor may get released from all future lease obligations.

Disadvantages:

- The assignee takes over the entire leased space. It can't negotiate to occupy (and pay rent on) a smaller space.
- The assignee takes over any existing liability under the lease that the assigning tenant may have. An indemnity can help with this.
- The assignee cannot negotiate the rental rate – it must pay whatever the lease charges.
- The assignor forfeits all rights to use the premises and cannot choose to return later.

SUBLEASE:

Advantages (cont.):

- The subtenant can negotiate the rental rate and other business terms with its Sublandlord.
- The subtenant may negotiate for a shorter term than a landlord would agree to for a direct tenant.
- A subtenant may enjoy the benefits of amenities like kitchens and conference rooms it shares with its Sublandlord.

Disadvantages:

- The subtenant does not have a direct relationship with the landlord. This means it cannot sue the landlord for landlord defaults under the lease (like landlord's failure to maintain the building).
- The subtenant must get consent of both the landlord and its Sublandlord for issues like alterations and signage.
- During the term of the sublease, if the tenant defaults under the lease, the subtenant could be evicted by the landlord (even if the subtenant is not in default under the sublease).

- **Your Transaction** – The issues discussed in this article may not necessarily apply to your transaction, and your transaction may raise issues not addressed in this article. In all cases, we advised you to consult an experienced commercial leasing broker and experienced commercial real estate attorney to make sure the issues for your transaction are properly addressed.

