

10 ESSENTIAL SUBLEASE CLAUSES

To Have In Your Commercial Real Estate Lease

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For commercial real estate landlords, the sublease section of their lease is critical because it dictates the rules, processes and procedures for subleasing space in their buildings. While it's ultimately up to each landlord and their attorney to decide what to attempt to include in the sublease section when negotiating a tenant's lease, our extensive experience reading, abstracting and administering leases has shown that the most ironclad leases include these 10 sublease clauses:

1. Landlord Consent

A strong Landlord Consent clause that stipulates that the landlord must formally consent to any sublease agreement for the agreement to become valid. This gives the landlord final authority to approve or reject any proposed sublease agreement.

2. Recapture Rights

A Recapture clause that gives the landlord the right to repossess the space from the tenant rather than agree to a sublease. Recapture clauses are included in most leases to give the landlord an extra degree of control over the space in their building.

3. Subtenant Due Diligence

A clause formalizing your right to conduct due diligence on any prospective subtenants and specifying what this entails, which might include reviewing the organization's recent financial statements, checking its credit report and conducting background checks on its principals or officers.

4. Sublease Profits

A provision entitling you to a share of any sublease profits. Besides the Landlord Consent and Recapture clauses, this is probably the most important provision to have in the sublease section of your lease because it has the potential to increase your revenue. In our experience, the landlord's share of profits typically ranges from 50%-100% but can vary by tenant, space, building or market.

5. Leasing Additional Space and Services

Additional space, services and amenities in the building, like parking, storage and external signage, are profit centers, so you should consider including a clause in your lease allowing you to directly solicit subtenants to take advantage of those resources.

6. Sublease Documentation

While revenue and profits are important, so is good documentation. When reviewing your lease, it's smart to confirm there's a clause requiring tenants to provide copies of all documents related to the sublease to the landlord within a specific timeframe.

7. Non-Solicitation of Subtenants

Should a tenant who is subleasing space to a subtenant default on their lease or vacate the balance of their space for any reason, as landlord, you should have the right to work directly with the subtenant. When reviewing your sublease clauses, it's important to make certain this right is intact, so you can intervene, collect rent directly and then work with the subtenant to remain in the building.

8. Transfer of Tenant Rights to Subtenants

The Landlord consent will confirm if any of the tenant's rights, such as renewal or ROFO/ROFRs, will transfer to the subtenant. It is important to make certain this is properly addressed in your lease so the subtenant does not receive any rights unless expressly approved by the landlord.

9. Subleasing Expenses

Oftentimes, a landlord will incur expenses when a tenant subleases. Consequently, your sublease clause should state in detail what expenses the tenant must reimburse you for to help avoid future disputes over subleasing expenses.

10. Sub-Subleasing

Whether you're going to allow subtenants to sublease or not, it's a good idea to say so in your lease so there's no confusion on anyone's part. Generally, it makes sense to allow it, for the same reasons subleasing makes sense. But then, just like with subleasing, it's smart to lay out all the rules, rights and obligations so you have full control over the process.

About Realogic

Realogic is a best-in-class commercial real estate consulting firm based in downtown Chicago. Our company was founded in 1992, and in the 30 years since, has developed a well-earned reputation for our unmatched commercial real estate knowledge, experience, skills and expertise, as well as for the unrivaled quality, integrity and accuracy of our work. We offer a wide range of services, support and insights to help commercial real estate organizations of any type or size maximize the returns on their investments, including due diligence, underwriting, lease abstraction, lease administration, financial modeling, loan abstraction, closing support and commercial real estate training.