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*You Keep Me Hangin' On* 

## Sublease Recognition Agreements: Planning Ahead for the Direct Lease

When a Subtenant bargains for a recognition agreement from the Landlord, it is tempting for both parties to think that all they need to do is add a short statement that the Landlord will recognize the Sublease as a direct lease with the Landlord in the event the underlying Lease is terminated. But will that approach really suffice? Probably not.

**LESSON:** Both the Landlord and the Subtenant should carefully review the Lease and Sublease and think through how the terms of the direct lease will vary from the terms of the Sublease, *and they should state those modified terms in the recognition provision in the Landlord's Consent to Sublease*. Waiting until the direct lease takes effect is too late!

**LANDLORD-FAVORABLE PROVISIONS** to consider addressing in the recognition provision include:

- Require Subtenant to provide a new security deposit directly to Landlord when the direct lease takes effect.
- Include a disclaimer by Subtenant of any responsibility of Landlord for the security deposit delivered by Subtenant to Sublandlord.
- Increase the rental rate under the direct lease to the rental rate that was provided for in the Lease if it is greater than the rental rate under the Sublease.
- Provide that Landlord will not be bound by any modifications of the Sublease not approved in writing by Landlord.
- State that Landlord will not be required to provide any special services provided by Sublandlord to Subtenant under the Sublease.
  - State that Landlord will not be required to provide furniture and/or equipment leased by Sublandlord to Subtenant under the Sublease.
  - Provide that Landlord will not be liable for any defaults by Sublandlord under the Sublease.



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