



January 4, 2010

I Walk the Line

Suggestions for Seeking Landlord's Consent to a Sublease Transaction (Part Two)

So the Tenant has found a Subtenant and is ready to enter into a Sublease. How should the Tenant go about getting the Landlord's consent? The answer is contained in the Tenant's Lease ... and the Tenant's best strategy is to consult the Lease early and often and to follow closely the instructions it provides.

WHEN SHOULD THE SUBTENANT ASK FOR CONSENT?

- The Lease may specify a certain amount of notice that must be given to the Landlord in advance of entering into the Sublease.
- The Lease may allow the Tenant to request the Landlord's preliminary consent (or a waiver of Landlord's recapture rights) in advance of marketing the subleased premises or entering into sublease negotiations.
- The Tenant may need to seek an additional consent from the Landlord if the terms of the sublease transaction change.

WHAT SHOULD THE TENANT PROVIDE TO THE LANDLORD?

- The Lease may require that the Tenant provide a fully executed copy of the proposed Sublease (in which event the effectiveness of the Sublease should be contingent upon receipt of the Landlord's consent) or may require only that the Tenant provide all of the terms of the proposed Sublease and the consideration to be paid by the Subtenant.
- The Lease may require additional information about the Subtenant, including financial statements and/or references.
- The Lease may require that the Tenant execute an estoppel certificate in favor of the Landlord.
- If a transfer premium exists and the Landlord is entitled to some or all of it, then the Tenant should provide a calculation of the premium in accordance with the Lease terms.
- The Tenant should endeavor to provide the Landlord with a complete package of all documentation and information required by the Lease. In many instances, the Landlord's review period will not commence until all of the required documentation and information is provided.

WHAT SHOULD BE EXPECTED FROM THE LANDLORD?

- The Lease will specify whether or not the Landlord may unreasonably withhold its consent to the Sublease.
- If the Landlord cannot unreasonably withhold its consent, the Lease nevertheless may stipulate certain grounds for reasonably withholding consent. Such grounds vary from lease to lease. The Tenant should make sure that its proposed transaction is not in contravention of any of those grounds – or should be prepared to discuss the situation with the Landlord.
- The Landlord may have the right to recapture the subleased premises.
- The Landlord may require that the Tenant and the Subtenant execute the Landlord's standard form of tri-party Sublease Consent.

- The Lease may or may not specify a response time for the Landlord. The Tenant and the Subtenant should understand that the Sublease is probably not a top priority for the Landlord. Accordingly, the sublease transaction should allow ample time and flexibility for requesting and obtaining the Landlord's consent.

KNOWING, UNDERSTANDING AND FOLLOWING THE LEASE PROVISIONS IS THE BEST APPROACH WHEN SEEKING TO OBTAIN THE LANDLORD'S CONSENT TO A SUBLEASE.



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