

THE VALUE OF AN ATTORNMENT AGREEMENT

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The word “attorn” simply means to recognize someone as your landlord and to have that person recognize you as his tenant. In the current market where subletting is virtually the order of the day subtenants must understand the importance of getting an attornment agreement from the owner.

A sublease involves three parties: the owner, the tenant (or sublandlord) and the subtenant. The sublease requires that the subtenant pay rent to the tenant, who in turn pays it to the owner. But what happens if the tenant fails to pay his rent? The owner can terminate the lease and when he does so, the sublease will automatically terminate as well.

There are various ways that the subtenant can protect himself from losing his sublease in this manner. For example, the subtenant could pay his rent into a “lockbox” at a bank with instructions that the bank pay the owner first and then pay any remaining balance to the tenant. But if the subtenant’s rent is not at least as much as the tenant’s rent this arrangement will not work.

The better way is usually for the subtenant to obtain an attornment agreement from the owner. This agreement provides that if the tenant defaults the owner will give the subtenant a notice of that default and an opportunity to cure it. When the subtenant cures the tenant’s default he then steps into the tenant’s shoes and takes over the lease, thus “attorning” to the owner.

But what if tenant is renting 10,000 square feet and the subtenant is only renting 2,500? Or what if the tenant’s rent was twice as much as the subtenant’s rent? The subtenant may not be able or willing to take over the tenant’s lease. In that case the agreement could instead provide that the owner will step into the shoes of the tenant, thereby allowing the subtenant to continue in possession under the same terms as before the tenant’s default.

It is important that the subtenant get the attornment agreement at the same time as the sublease is signed. If not, then the owner will be under no obligation to accept the subtenant’s attornment. If the owner is not willing to be cooperative then the subtenant may want to look elsewhere for space to rent.