

## ***Understanding Landlord's Concerns on Consenting to a Sublease***

*You no longer need your office space. You signed your lease in the height of the market three years ago and you have two years remaining on your rental obligation. You are prepared to take a discounted rental rate to simply cut your losses. You offer the space with furniture and your phone system remaining as an enticement to attract an immediate tenant. You have made all of the right moves to sublease your space in a very difficult leasing environment. You have hired a good broker who brings you a tenant that needs to move in within the month. Everything looks like it is going smoothly until you contact your landlord to seek consent to sublease and they do not return your phone calls.*

*Almost all leases require the landlord to consent to any sublease of any kind. Usually landlords cannot be unreasonable in providing such consent and also need to provide their approval or justification for rejection within a 30 to 45 day period. This time delay is the first problem for a sublease to be completed. Like any lease transaction from the time that an offer is made to a time when a sublease document is actually signed by both the sublessor and the sublessee more days can go by then what was originally expected. In all of the sublease transactions I have done, it is not unusual for the signing of the leases to fall just days before the intended occupancy. This is also where pressure to get the landlord to commit right away occurs and this is where the landlord can create a delay, which could kill such a transaction.*

*First, you have to understand the motivation of the landlord to sign such consent. In most cases there is no benefit to the landlord particularly in a soft market. As long as the landlord knows that the sublessor is not potentially in a position to default if they do not sublease, the landlord has no financial gain and in some cases could be in a financial loss position for signing such consent.*

*With high vacancies, a "below market" sublease often times competes with the landlord for the same tenant. Since the landlord already gets rent from the existing tenant, agreeing to a sublease can actually cost them a new tenant.*

*Second, consent to subleases requires the landlord to take time to complete their due diligence as to the worthiness of the tenant. A new tenant's financials and occupancy use needs to be evaluated just like a new tenant but again without any benefit to the landlord. In most leases landlords do pass on either an administrative charge or an attorney charge to review*

*documents but it in no way covers the overall cost of the due diligence of a prospective new tenant.*

*Third, subleases open up additional potential liability to the landlord. A sublessee is not party to the original lease between the tenant and the landlord. They must conform to the rules and regulations of the building but the landlord can only enforce such rules through the sublessor. If the sublessor has moved out of the building, often times a decision maker to deal with a potential conflict with the sublessee is not as easily found or available.*

*Fourth payment of rent and other charges can become more work for the landlord. If the sublessee has additional charges to be collected for things such as after hours electricity charges or above standard janitorial often times these charges are harder to pass on to the sublessor and becomes items for future dispute.*

*All of the above are reasons why the landlord does not feel the urgency to grant a consent and may not be as accommodating to help resolve the time pressures that the sublessor and potential sublessee may be facing in order to meet their expected occupancy date of transfer.*

*What can you do to expedite the process? First, if you are a tenant and you decide to sublease immediately inform the landlord of your decision to do so. Next, request a copy of a sublease document that the landlord would accept in the event you are successful in subleasing. Often times, the landlord will say that the sublessor shall present his or her own document for review at the time of the pending sublease. I have been involved in many transactions where this leads to delays. Even though the landlord claims that they would accept the sublessor's own form, they rarely do. To avoid this problem don't wait to get the form approved. Send the sublease document over right away as soon as you decide that you are planning to sublease your premises. If the landlord approves the form make sure you confirm that the form is acceptable in writing.*

*If the landlord later decides not to use the form and it delays or potentially jeopardizes your sublease, it may give you options to claim that the landlord failed to be "reasonable" in its consent and give you a legal claim that the landlord has defaulted on the lease.*

*Second, submit all financials and any information on a prospective tenant as soon as you have received the documents. This often times comes with the initial offer. Press the landlord to confirm that the tenant would be acceptable as a sublease.*

*Third, confirm that the potential tenant does not have any unusual requirements that the landlord could use to disqualify a tenant. An example would be noise transmission. If the tenant is in the multi-media business, the landlord could become concerned about potential noise issues that could impact other tenants. Find out if these types of issues exist as early as possible so that you can work out solutions before you are pressed to do so at the time of seeking the consent of the landlord.*

*There are positives that you and your broker can also present to the landlord that would make them motivated to move quickly to consent. Often times, tenants that choose subleases do so because their business maybe in flux and they cannot commit to longer terms. Particularly in start-up companies, if the potential is that a company could become much larger after the initial sublease the sublessor can promote the fact that this tenant could become a larger long-term tenant in the building on a direct lease basis. Also, there is a strong likelihood that the landlord can extend an existing sublease to a new direct deal with less down time of vacancy and payment of additional tenant improvements and brokerage fees.*

*The important thing is to have an experienced broker on your team that is working with you, the tenant, from the moment you decide to sublease. Your broker should begin the communication with your landlord and insure that the landlord will be ready to respond to any request to consent to a sublease as quickly as possible.*