



Lease agreements – 8 things you need to know about assignment and sub-letting clauses

When you are looking at signing a lease on a commercial property, one thing you will want to be clear of from the start is who is your landlord.

Typically, this should be a straightforward question, but this is not always so as it may be the case that the freehold of the building is owned by an investor while you are in fact renting your space from an existing tenant and taking an 'assignment' of an existing lease.

Make sure you check this before you sign on the dotted line.

Equally you will want to see what provisions there are, if any, for you to assign your lease or sub-let to another tenant. This kind of situation sometimes comes up if you find you have surplus space and want to rent it out, but you will need to see what your contract says or be prepared to negotiate a solution.

Below David Hershkorn, a partner in the property department of law firm Joelson in London, details 8 things you need to look out for.

“The provisions for assignment and sub-letting are important elements of a lease agreement. These clauses are key for tenants who will want to know what flexibility the lease gives them, should the needs of their business change (they may want to downsize or expand at some point in future).

Landlords, meanwhile, will generally want assurances that their interest isn't harmed by having a lease sub-let or assigned to another party who could present them with problems (this is particularly true in cases where the existing tenant is reliable).

1. It is important therefore for both parties to have a clear understanding of what the clauses mean and their general responsibilities under law.
2. Remember that the lease will always specify the requirements that a tenant needs to satisfy before they can assign or sub-let a commercial property.

3. In the majority of cases, a landlord will need to give consent to any transfer through a "license to assign" document.
4. The circumstances in which a landlord may choose not to give consent are ordinarily set out in a lease agreement's section on alienation.
5. It is important that tenants understand that there are key differences between assigning and sub-letting.
6. In an assignment, a direct relationship will exist between the new tenant and the landlord, with the latter collecting rent directly.
7. On an assignment of a commercial lease it is usual for a Landlord to insist on the tenant entering into an Authorised Guarantee Agreement (AGA). This means that if the new tenant does not pay the rent the Landlord can come back to the prior tenant for the rent and fulfil the obligations under the lease.
8. In a sub-letting arrangement, the original tenant will retain responsibility for the various conditions set out in the lease agreement, even if the rent is now being paid by a third party.