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GETTING THE MOST FROM YOUR SUBLEASING RIGHTS

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It is easy to gloss over subleasing and assignment provisions when negotiating a lease. During periods of economic growth, corporate executives have difficulty imagining a time when they will want to dispose of unneeded space. But during periods of economic uncertainty and corporate cutbacks, many companies need to get rid of unused office, manufacturing, and distribution space. Unfortunately, they find that subleasing space during a recessionary period is considerably more difficult than they expected.

Corporations seeking to sublease often find that potential tenants and their brokers are reluctant to consider subleasing space when there is so much other space available directly from landlords. In addition to competing with the deep discounts offered by landlords, corporations seeking to sublease often have to spend money to reconstruct the space for a new tenant. Not only is it difficult to find a subtenant and work out an acceptable transaction, but many corporations also discover that their subleasing or assignment rights are highly restricted and nearly impossible to execute.

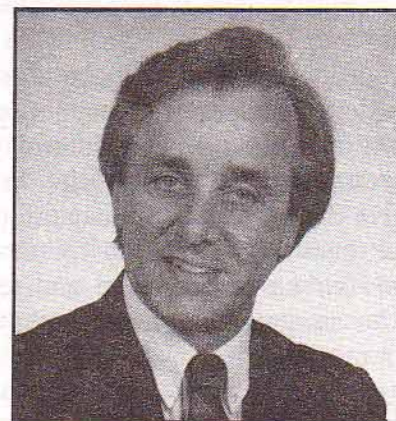
This report will examine a number of provisions frequently found in sublease and assignment lease clauses and explain the problems they can cause for the tenant seeking to dispose of unneeded space. The minefields which landlords are quick to call Standard Office or Industrial Leases should be traversed with the negotiating assistance of a sophisticated tenant broker/consultant and attorney. At times some of the provisions discussed below can be negotiated out of the lease in their entirety; in other cases that may not be possible. Therefore, skillful negotiations are necessary to reach a compromise which is satisfactory to the landlord and protects the tenant.

Sale of Business May Not Release the Seller's Lease Obligation

The sale of a subsidiary or part of a corporation's business may not release the corporation from its lease obligations even if the Bill of Sale language states that the buyer assumes existing lease obligations. If the new tenant ceases to occupy the space, fails to pay rent, or otherwise defaults on the lease and the landlord has not agreed to fully release the original tenant from the lease and accept the new tenant, then the landlord could seek relief from the original tenant. For example, if the buyer (new tenant) relet the premises at a lower rental rate, the original tenant would be responsible for paying any deficiency in rent due the landlord.

Transfer Of Corporate Stock May Cause Lease Default

A tenant may be shocked to find that, per their lease, the transfer of a majority of the issued and



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Dr. Pollina is a nationally recognized expert in the areas of corporate real estate consulting, brokerage, and negotiations. In addition to representing some of the largest corporations throughout the United States, he has served on the faculties of two Universities and written over 40 articles and books. As a frequently quoted real estate economist, Dr. Pollina's opinions have appeared in the *Wall Street Journal*, *Business Week*, *Financial Times of London* and other business publications.