

# THE FIVE STAGES OF SUBLEASING COMMERCIAL PREMISES

There are times in your business cycle when things shift. These shifts can happen for many reasons, a pandemic, an economic downturn, an economic upturn, competition, health, a merger, retirement, etc. We work with clients who need to grow unexpectedly and clients who could downsize and reduce costs. Perhaps your firm is somewhere in between, contemplating what the future looks like, or maybe now have employees working from home, and your business is thriving. Your premises needs have changed for one reason or another, and your business model no longer suits your premises or the lease that you originally entered. Can you downsize? Can you sublease all or a portion of your office? How can you facilitate expansion? Subleasing all or a portion of your premises is one option that may be available to you, and below are five points to consider.

## 1. Need

The first step in determining if you should consider subleasing your premises is a needs analysis. In its simplest form, this usually starts with you trying to make your current situation work. Perhaps you have stacked people in offices that use to accommodate one or have offices and workstations that have become a storage area with employees working happily from home. You know there is a more efficient way to operate and that things should change, but you have a lease.

Step one is to do an assessment.

If you did not have a lease, what would you do? If your answer is something different than how you are currently operating, then it is time to consider your options.

## 2. Analysis

Once you have decided your premises needs have changed, the first step is to review your lease. Some points to consider include:

- ▶ How much term is there left on your lease, and what are your total costs?
- ▶ Do you have a provision in your lease for subleasing, or maybe even a termination provision?
- ▶ Is there any language in your lease that will affect your ability to sublease your space successfully?

After you review your lease and create a lease summary, next is a physical review of the space. What is right about your premises? What can you improve? If you intend to occupy a portion of the space, you will need to ensure you can separate the balance of the space from a practical, zoning, and costs perspective. Review your floorplan and make notes, then have a qualified planner review your floorplan and provide recommendations. The planner must take into consideration all building codes and exiting requirements, etc. Then, determine what the probable range of costs are. If you are subleasing a portion of your space, what is the cost and timing of constructing a demising wall and creating a second entry? How much should you budget for legal fees and commissions? Then ascertain, how long before revenue could be realized and what total revenue you can achieve. The total potential benefit versus the costs can determine if subleasing is worth serious consideration.

## 3. Implementation

Once you have determined that subleasing your space is a good idea, it is time to market your premises for sublease. You can do this by hiring a subleasing expert, or you can try and post the opportunity on various websites and see if you can have success on your own. Remember to review your lease and make sure your marketing efforts are in accordance with what your lease specifies, as your Landlord may have the right to approve all marketing, and it may not be possible to market your actual rental rate. While we recommend hiring a leasing expert with a track record in your area, every tenant and situation is unique.

A leasing broker will work on your behalf to find a subtenant for your space as soon as possible. They may even be able to have your lease terminated with the Landlord, depending on your situation. Once you have entered into an agreement with a leasing broker, they will begin marketing your space and handling all inquiries and tour requests. Be careful not to commit to any costs (demising the space, etc.) until you know you have a firm commitment in hand.

### 4. Risk Assessment

Once a seemingly suitable Subtenant has been secured, but before committing to subleasing your space, make sure you understand the potential risks associated with doing so. Having a subtenant relieve you of all or a portion of your rental payments is great, but you remain responsible for your lease even if your subtenant stops paying.

As a sublandlord (original tenant), you will remain liable to the Landlord until the end of the lease term, including any damages to the leased premises. It is crucial for you to understand who the potential subtenant is and ensure that they are a creditworthy tenant in good standing. You will want to understand the business history of the subtenant and review their financial statements. You may also want to run a credit check. These steps will help determine the likelihood of the subtenant honouring their lease commitment and securing the money you invested in making a sublease possible. If you are not comfortable with the subtenant from a financial perspective, you may consider prepaid rent or increased deposits to help offset any risk you may face.

### 5. Completion

After you have an agreement to sublease with a subtenant, it should be subject to the final approval of your Landlord. The last step is to get agreement or formal consent from your head landlord per your lease. It is important that you seek consent and provide notice and the required documents to your Landlord exactly how your lease specifies. Too often, agents and tenants ask for consent and do not follow the process outlined in the lease. A misstep at this stage can delay or prevent your sublease from being approved. You may choose to seek independent legal advice and have someone guide you through the sublease requirements and understand the process to request consent from your Landlord. You should also be prepared to pay a consent and documentation fee to your Landlord, which usually ranges from \$500 to \$2,000. Lastly, there may be a formal consent to sublease or a sublease document that your Landlord may require.

After your sublease is complete, and your subtenant has taken occupancy, make sure you have all contact information with various people of authority for the subtenant. You will want to keep on record their mobile numbers, e-mails, and alternate addresses if possible. If your subtenant is ever late with their rent, act quickly, send notice, and follow up with a demand letter. You are now a sublandlord.

The above is a quick guide designed to help you understand the basics of subleasing. Our team is well versed in subleasing, and we are happy to analyze your lease and provide you with the answers you need to see if subleasing is an option you should be considering. We provide guidance and analysis and only charge a fee if we successfully reduce your lease obligation.



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