



Services | Solutions | Insights

Commercial Real Estate Lease Administration Best Practices

**Expert Tips and Insights to Help Property Owners, Managers and Investors
Maximize Revenue, Minimize Expenses and Increase Profits Through
Skilled and Savvy Lease Administration.**



- MAXIMIZE REVENUE
- MINIMIZE EXPENSES
- INCREASE PROFITS

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INTRODUCTION

As anyone who owns, manages or invests in commercial real estate property knows, lease administration can have a substantial impact on the profitability of a commercial real estate building. Managed carefully and professionally, lease administration can increase the amount of revenue generated by a building while reducing operational expenses. Approached too casually, the result can be the complete opposite: lost revenue opportunities, increased expenses and precious time wasted rectifying easily avoidable mistakes.

If you work in lease administration or have even dabbled in it, you also know that lease administration is a broad term for a complex and interrelated set of activities tied to managing tenant leases, and that each separate component of lease administration is learned and perfected over time, through hands-on experience and execution.

The members of Reallogic's lease administration team are experts in the entire process of lease administration. Many of our team members have worked in commercial real estate for several decades, including me. We've administered leases for all types, sizes and classes of buildings and currently administer leases for over 130 million square feet of commercial space. Some of us have worked as property or asset managers. All of us are expert in our craft.

As a result, we've developed a well-earned reputation as an authority on commercial real estate lease administration. We've learned what makes the difference between excellent and merely passable lease administration—the knowledge, insights, techniques and proven best practices that can make the difference between a commercial building running smoothly and efficiently and meeting or even exceeding its profit and revenue goals, or consistently struggling and falling short.

We share our lease administration experience and expertise with Reallogic's clients through the work we do, and now we're going to share that knowledge and experience with everyone who has an interest in commercial real estate through this eBook on lease administration best practices. The purpose of the eBook is to help commercial property owners and managers and anyone who supports them understand lease administration better, and to provide them with information and best practices to help them administer their leases more efficiently, productively and profitably.

CHAPTER 1: SUBLEASING

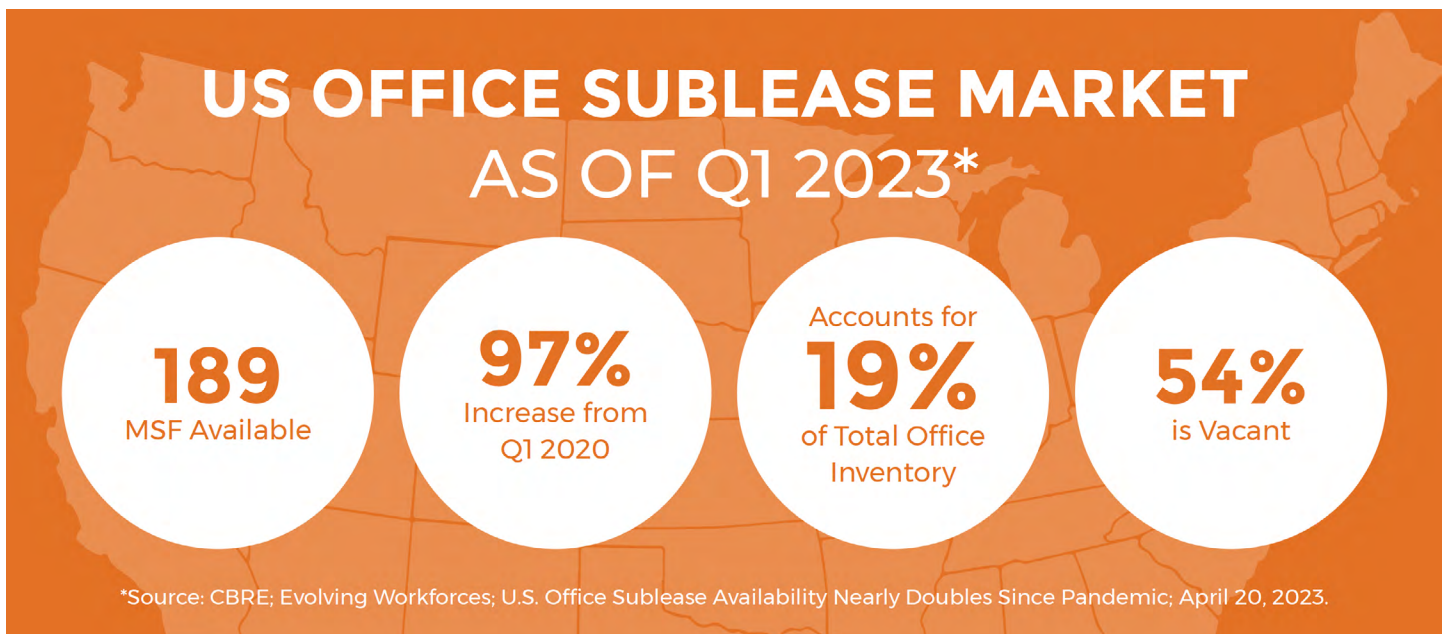
The first topic we're going to address is subleasing, a particularly timely and relevant subject to anyone who owns, manages, supports or invests in office buildings. Traditionally, office properties have been considered one of the safest and most stable commercial real estate sectors, and for that reason have been a favorite of institutional investors. However, the Covid-19 pandemic completely upended the office sector and set in motion a series of events that continue to send shockwaves through the sector today.

Between corporate layoffs, financial disruptions, social distancing recommendations and remote and hybrid work, companies are re-thinking their office space needs and considering how to best utilize their office space going forward. As a result, many office users have been "right-sizing" their offices, or adjusting the amount of space they use. This in turn has led to an enormous and rapid increase in the amount of office space available for sublease in the US since the onset of the pandemic in March 2020.

The Current Sublease Market

As of Q1 2023*:

- Approximately 189 million square feet of office sublease space was available in the US, nearly double the 96 million square feet that was available in Q1 2020.
- Sublease space accounted for 19% of all available office space in the US, up from 13% three years ago.
- 54% of available sublease space was vacant, while 46% was occupied.
- The overall office vacancy rate was 17.8%



Top Office Sublease Markets

The markets with the most available office sublease space as of Q1 2023 were:

- Manhattan: 22.5 MSF
- Chicago: 11 MSF
- Washington, DC: 10 MSF
- Dallas-Ft. Worth: 9 MSF
- San Francisco: 9 MSF

Office Sublease Space By Industry

The industries accounting for the most office sublease space in Q1 2023 were:

- Technology: 23%
- Finance and Insurance: 15%
- Business and Professional Services: 15%

Office Sublease Spaces By Number and Size

Count-wise, spaces measuring between 10,000 and 20,000 square feet accounted for the most available office sublease spaces in Q1 2023 —1,670— followed by office spaces between 20,000 and 30,000 square feet, of which 968 were available.

Square footage-wise, spaces of 100,000 square feet or more accounted for the largest percentage of available office sublease space—33%.

The Sublease Space Discount

According to CBRE, asking rents for sublease space are typically discounted 20%-40% depending upon the market, class of the building and remaining term of the lease, presenting an additional challenge for landlords that are trying to lease up vacant space in their buildings.

Review The Sublease Section of Your Lease

Our first subleasing best practice to share is the most important: conduct a thorough review of the sublease clause in your tenant lease with an experienced and reputable commercial real estate attorney. This is critical because when it comes to subleasing, your sublease clause is the final word.

If a critical protection is missing from your sublease clause, or your lease doesn't give you complete authority over subleasing, or the subclauses are poorly written or ambiguous, it could cause you some very big and very expensive headaches at some point.

It's ultimately up to you and your attorney to decide what to attempt to include in the sublease clause while negotiating a tenant's lease. But, based upon our extensive experience reading, abstracting and administering leases, we've found that the most thorough and protective clauses include the following:

Landlord Consent

An ironclad Landlord Consent clause that stipulates that the landlord must formally consent to any sublease agreement for the agreement to become valid. This gives the landlord final authority to approve or reject any proposed sublease agreement. It also helps ensure that any tenant who wants to sublease asks permission from the landlord and that the landlord knows all the details about the proposed sublease.

Recapture Rights

A Recapture clause that gives the landlord the right to repossess the space from the tenant rather than agree to a sublease. A landlord might want to repossess the space for a variety of reasons, including future leasing opportunities or if the subtenant is not creditworthy. Recapture clauses are included in most leases to give the landlord an extra degree of control over the space in their building.

A note about Landlord Consent and Recapture rights: Many leases stipulate that Landlord Consent is implied if the landlord doesn't respond to the tenant's sublease proposal within a specified timeframe. Likewise, many leases stipulate that the landlord loses its recapture rights if it doesn't respond to the tenant's proposal within a certain timeframe.

For that reason, it's imperative to know if your lease has those provisions and the respective timeframes for responding. Then, it's critical to respond to the tenant's sublease proposal within the allotted timeframes so you don't lose your consent or recapture rights, which are your best protections against inappropriate subleases and subtenants.

Subtenant Due Diligence

A clause formalizing your right to conduct due diligence on any prospective subtenants and specifying what this entails, which might include reviewing the organization's recent financial statements, checking its credit report and conducting background checks on its principals or officers. You may want to include language giving you the right to reject a subtenant because you feel they don't fit with the building's character.

Sublease Profits

A provision entitling you to a share of any sublease profits. Besides the Landlord Consent and Recapture clauses, this is probably the most important provision to have in the sublease section of your lease because it has the potential to increase your revenue. In our experience, the landlord's share of profits typically ranges from 50%-100% and can vary by tenant, space, building or market.

Leasing Additional Space and Services

Additional space, services and amenities in the building are profit centers, so you might want to consider including a clause in your lease allowing you to directly solicit subtenants to take advantage of the following:

- Parking
- Data center usage
- Storage
- External signage
- Rooftop space
- Conference rooms
- Fitness centers

Sublease Documentation

While revenue and profits are important, so is good documentation. When reviewing your lease, it's smart to confirm there's a clause requiring tenants to provide copies of all documents related to the sublease to the landlord within a specific timeframe. This includes:

- Sublease agreements
- Sublease amendments
- Landlord consents
- Explanation of landlord's denial of sublease
- Floor plans for any TI work
- Notice of termination from subtenant to tenant
- Sublease extensions
- Move in notices
- Chattel mortgages
- Vacancy notices

Abstract any documents that have critical dates or other actionable information. Enter the information into your lease administration/accounting system so it can be tracked, reviewed and managed accordingly, and so that you can pull detailed reports to give your accounting and operations teams insight into your properties and help them make smarter, more informed business decisions.

Non-Solicitation of Subtenants

Should a tenant who is subleasing space to a subtenant default on their lease or vacate the balance of their space for any reason, as landlord, you should have the right to work directly with the subtenant. When reviewing your sublease clauses, it's important to make certain this right is intact, so you can intervene, collect rent directly and then work with the subtenant to remain in the building.

Transfer of Tenant Rights to Subtenants

The Landlord consent will confirm if any rights of Tenant will be transferred to the subtenant, such as renewal or ROFO/ROFRs. It is important to make certain this is properly addressed so the subtenant does not receive any rights unless approved by landlord.

Expense Reimbursement

Oftentimes, a landlord will incur expenses when a tenant subleases, so your sublease clause should state in detail what expenses the tenant has to reimburse you for in order to avoid future disputes over subleasing expenses.

Sub-Subleasing

Finally, Sub-Subleasing. Whether you're going to allow subtenants to sublease or not, it's a good idea to say so in your lease so there's no confusion on anyone's part. Generally, it makes sense to allow it, for the same reasons subleasing makes sense. But then, just like with subleasing, it's smart to lay out all the rules, rights and obligations so you have full control over the process.

Subleasing Clause Checklist

For your convenience, we created a handy checklist of essential sublease clauses to include in your tenant lease and included it at the back of this eBook.

Watch For Signs of Unapproved Subleasing

While most leases require the tenant to inform the landlord when they intend to sublease, and to get formal approval from the landlord, this doesn't always happen, for a variety of reasons.

In fact, over the years, we've seen many cases where a tenant was subleasing space and the landlord had no idea. For that reason, you should continually remind the building's staff to watch for any activity that hasn't been approved by the landlord that might indicate an unauthorized sublease.

This includes furniture or office equipment being moved into the building unexpectedly, a sudden and sustained increase in foot traffic on a certain floor or elevators, or common areas and amenities being more crowded than usual. Staff should alert you immediately if they see any signs of an unauthorized sublease.

Establish Lines of Communication Between Building Staff

In our experience, it's also important to establish formal lines of communication between property managers, property accountants, attorneys representing the property owner and the building's staff. This will help avoid lapses in communication and help prevent anything important slipping through the cracks. It will also help ensure the entire team is aware anytime a tenant has approval to sublease, knows the important details of the sublease agreement and is prepared when a new subtenant moves into the building.

Subtenant Contact Information

Check to make sure that you have the correct legal and DBA names for all of the subtenants in your building, along with the names and titles of the primary contacts and their contact information, since it's inevitable that you will need to contact them at some point.

Track and Collect Your Sublease Profits

You'd be surprised at how often landlords forget to collect their profits from subleased space. If you're entitled to collect a profit on a subleased space, enter all the details into your property accounting software. Then, track the payments as you would track any rent or revenue stream to make sure you are paid what is owed.

One Last Subleasing Best Practice

There's a simple, easy, no-cost way to help any tenant that wants to sublease: help them get the word out. Give some thought to what other tenants in the building might be interested in the sublease space. Let them know it's available and, if anyone is interested, have them contact the tenant who is subleasing. All parties will benefit. And, as anyone who has ever managed a building knows, happy, appreciative tenants renew their leases, expand their spaces and recommend the building to prospective new tenants.

CHAPTER 2: ENCUMBERED SPACE

In this chapter, we're going to share some best practices and insights on administering encumbered space. We chose this topic because encumbered space has increasingly come up in our recent discussions with the property owners, managers, accountants and attorneys we work with, and is an area of concern for everyone involved in the process of leasing and managing commercial real estate portfolios.

Right of First Refusal vs Right of First Offer

As you're likely aware, encumbrances are a right or claim to space in a commercial property. The two most common types of encumbrances are Right of First Offer (ROFO) and Right of First Refusal (ROFR), although they can have a variety of other names, such as "Right of First Opportunity" or "Right of Second Offer", for example. While somewhat similar and often confused for one another, there are very important differences between the two.

A ROFR option gives a tenant the right to match an offer the landlord has received for the space and take the space itself, or to decline to match the offer and let the landlord lease the space to the tenant that made the initial offer.

A ROFO option, on the other hand, gives the tenant the initial right to a space- subject to any other tenants who may have prior rights- before the landlord offers it to other prospective tenants.



The Benefits of ROFO/ROFRs

Tenants benefit from a ROFO/ROFR because they can lease additional or other space in the building before the space is leased to someone else.

Landlords benefit in that ROFO/ROFR options automatically provide them with prospective tenants for space that may become vacant.

When Encumbrances Aren't Administered Carefully

If not administered carefully, ROFO/ROFR options can haunt landlords several ways.

First, a landlord can inadvertently lease encumbered space to a new tenant without first allowing the existing tenant or the tenant who has the option to exercise it. The landlord then must rectify the situation, which can be costly and time-consuming, especially if the landlord has to offer concessions to either party to appease them, or worse, if legal action is sought.

The second consequence of not administering encumbrances carefully is that the landlord may hold off on leasing space they mistakenly believe is encumbered but is not, thus, allowing the space to sit vacant, resulting in lost revenue.

Best Practices for Administering Encumbered Space

So, what are some best practices we can suggest for managing encumbered space in commercial real estate properties?

- When abstracting leases, be sure to note any encumbrances, including ROFO/ROFO options. Enter the critical dates and important details into your lease administration/accounting system so you can track the encumbrances and critical dates closely and avoid missing opportunities to lease space and generate revenue, and so you don't inadvertently lease encumbered space without first checking with the tenant with rights to the space.
- Before leasing any space, make absolutely sure that it is not encumbered. Check the lease abstract for potential encumbrances and the lease file for any previous ROFO/ROFR offers. It is always recommended to check the lease itself for the full description of the rights, then defer to the language in the lease. Determine if any existing ROFO/ROFR may be expired based on prior offers and timing.
- If a space is encumbered, regardless of whether the encumbrance is a ROFO or ROFR, follow the process for executing the right as provided in the Lease. Send all required notices to all parties within the correct time frames, as specified in the lease. State that if the party does not respond within their time frame, it is assumed they have rejected the offer. This allows you to move on without waiting for a response.

- Remember that leases, including ROFO/ROFR options, are binding agreements between the tenant and the building. So, if a building is sold and new owners and/or management takes over, the current leases, including tenant rights and encumbrances, carry over and remain in effect.
- As with all tenant documents and communications, save copies of all ROFO/ROFR letters and notices and make certain they are sent to the lease file—not just correspondence—so the file contains all the information required to determine the current status of any options, including offer letters that may have been provided to tenants.
- If the tenant rejects the offer, or doesn't respond to your ROFO/ROFR notices, check the lease to determine if the ROFO/ROFR is still in effect. Will it expire completely, or just for the offered space? Does the right come back after a certain period? Will you need to re-offer the space if you offer it at a lesser rate to another party? There are many potential variances depending on the language provided in the lease, so check these items carefully.
- If the encumbrance has expired, then there's no need to send additional notices. As long as you've done what was required in the lease, you can then lease the space to another tenant.

Superior Rights vs Subordinate Rights

Finally, when it comes to encumbered space, there are actually two types of rights a tenant could have, superior rights or subordinate rights. Both give tenants certain rights and claims to space, but superior rights supersede subordinate rights.

Through our work, we're finding that commercial real estate landlords are paying closer attention to superior and subordinate rights and adding more detailed language to their leases that clarifies which tenants have which rights and exactly what those rights entail.

So, when determining whether a space is encumbered, it's also important to determine if more than one tenant has an option on the space and, if so, who has superior rights and who has subordinate rights and what those rights mean. Often, this is based on the date that the option is awarded to the tenant, so you will need to confirm exactly which document contained the offer, and when the offer was granted.

Always Defer to the Lease

As with any option or encumbrance, when working with superior and subordinate rights, always defer to the language in the lease for guidance. An abstract is a summary of a right, but for these type of details, the lease is the final word.

Then, when it comes time to lease an encumbered space where superior and subordinate rights are involved, follow the process laid out in the lease. Send all required notices and communications to all required parties. Save copies of all documents in your lease files to confirm that you offered the space, should this ever come into question.

CHAPTER 3: LETTERS OF CREDIT AND STORAGE REVENUE

In this chapter, we're going to address two subjects: letters of credit and storage revenue. In the bigger picture of lease administration and commercial real estate in general, letters of credit and storage space might seem like minor concerns and completely unrelated. But, as we'll explain, if not administered properly, both can have an outsized impact on the profitability of a commercial real estate property.

Commercial Real Estate Letter of Credit

First, as you're probably aware, a letter of credit is a document, usually issued by a bank or financial institution, that guarantees payment to a specified entity under specified conditions. Much like a conventional loan, the entity requesting the letter of credit generally must provide collateral to secure it.

In commercial real estate, letters of credit are frequently used by landlords and tenants to guarantee rent payments, security deposits and other financial obligations in leases. In addition, letters of credit are sometimes used to guarantee certain types of commercial real estate loans, particularly when construction or significant renovations of a property are involved.

For our purposes, we're going to focus on the use of letters of credit as they relate to landlords, tenants and lease obligations.

The Benefits of Letters of Credit

Both landlords and tenants can benefit from the use of letters of credit.

The benefits for tenants include:

- Not having to come up with the funds for a security deposit. This is especially helpful if the required security deposit is large or the tenant is a relatively new business and capital is tight.
- Freeing up valuable capital so it can be used for things besides a security deposit, like new equipment, expansion or marketing.
- A letter of credit can be offered to the landlord in lieu of a personal guarantee, if the tenant doesn't want to risk their personal assets.

The benefits to landlords include:

- The guarantee that a trustworthy, financially sound third-party will pay the tenant's outstanding rent and other financial obligations, if needed.
- The flexibility of being able to draw upon the letter of credit as needed.
- The ability to lease property to tenants that don't have the capital for a large security deposit or to cover other upfront expenses.
- Letters of credit can help landlords avoid the time and expense of going to bankruptcy court to collect outstanding debts.

Letters of Credit – A Cautionary Tale

While letters of credit may seem like a low priority, don't be fooled. In one memorable case, a large tenant in a building owned by a major institution in the real estate market fell behind with their rent payments and then declared bankruptcy. The building's owner had accidentally let the tenant's letter of credit expire, so they were unable to collect over \$1 million in back rent they were owed, all because an expired letter of credit had gone unnoticed. It was a painful and very expensive lesson on the importance of careful and detailed lease administration.

A MILLION DOLLAR LOSS



**Owner missed that
Tenant's letter of
credit expired**



**Tenant
fell behind
in rent**



**Tenant
declared
bankruptcy**



**Owner lost
\$1 million
in back rent**

Best Practices For Managing Letters of Credit

Based on our team's decades of experience administering leases for all types, sizes and classes of commercial real estate properties, here are some best practices for managing letters of credit that we can suggest to help you maximize the revenue from the properties you own, manage or support:

- Always ask your tenants for "evergreen" letters of credit, or a letter of credit that automatically renews every year, unless the bank terminates it. Because the letter of credit automatically renews, it is less likely to expire without you knowing. Even so, you still need to watch for a potential termination letter from the bank in case the tenant decides to let the letter of credit expire. However, an evergreen letter of credit usually doesn't have to be tracked as vigilantly as one that doesn't renew automatically and has a hard expiration date each year, requiring an amendment for renewal.
- Additionally, we've seen cases where a bank that's issued a letter of credit sends the landlord a notice of non-renewal, but it gets lost in the shuffle, sitting in someone's e-mail or inbox. So, even if you hold an evergreen letter of credit, many clients will still call the bank or financial institution that issued it every year to confirm that it hasn't expired. That way, you can intervene quickly and take steps to have the letter renewed or converted to cash before it expires.
- Make certain that all letters of credit are valid 30-60 days after the expiration date of the tenant's lease. That gives you time to confirm the tenant doesn't have any outstanding expenses, and ensures any final expenses are covered, such as delinquent rent or damage that occurred during move-out.

- Set up an effective system to track your letters of credit:

First, choose the right tool for managing them. At Realogic we use software specifically designed for the task of abstracting and administering commercial real estate leases, such as our proprietary rAbstract software. For those clients that request it, we track letters of credit via critical dates, that are automatically delivered to our clients weekly. If you do not subscribe to our system, an Excel spreadsheet will do.

Second, be sure to include all letters of credit in your lease abstracts. Enter the important details into your lease administration software, especially the expiration dates, and track them closely, as you would any important lease information or data.

Third, assign a responsible person or department in your organization to oversee letters of credit. Oftentimes, letters of credit come in from different sources and are not managed properly. They are just locked in a safe and forgotten about. But, if someone is responsible for managing your letters of credit, that person or team can make sure they're properly received, abstracted, tracked and safely stored.

- If you outsource your lease administration to a third party, have them manage your letters of credit as part of their services. They should provide you with expiration dates for your letters of credit so you're always aware of any that are expiring and can appropriately plan on drawing down on the letter.
- Once a letter of credit expires, the landlord has less recourse. So, if a letter of credit does not renew automatically, always contact the tenant well ahead of the expiration date to have it renewed. If a letter of credit is in imminent danger of expiring, consider drawing down on it through the issuing bank to exchange it for a cash deposit to protect yourself. If the tenant has any delinquent expenses, draw from the cash deposit to pay them.
- Always keep your letters of credit in compliance with the lease, ie "make them whole". If you do a partial draw against a letter of credit for any reason, be sure to send the tenant a notice to re-up the letter of credit to the full, agreed upon amount to stay compliant with the terms of the lease.



Commercial Real Estate Storage Space

While storage space might rank near the bottom of a commercial property owner's or manager's list of priorities, especially if they own or manage a large portfolio of properties with hundreds or thousands of tenants, you might be surprised at how big of an impact storage space can potentially have on a building's revenue and profits.

Realogic once had a client that purchased a trophy office building with over 2 million square feet of space located in a major US city. An audit during the closing and set up process indicated that 20 storage spaces in the building were being used, but the tenants hadn't paid rent for them for years and none of the spaces were included in the tenants' leases. Had this not been discovered, our client could have lost upwards of \$80,000 a year in revenue, which, over just a few years, would have amounted to hundreds of thousands of dollars in lost revenue.

A CLOSE CALL



2 MSF
office building



20 storage spaces
were occupied



Tenants were not
paying rent on them



Owner was losing
\$80K rent/year



Audit caught the
mistake, stemming
the losses

Best Practices For Managing Commercial Real Estate Storage Space

It goes without saying that proper record keeping can prevent something like this from happening. More specifically, here are some best practices for managing commercial real estate storage space that we can recommend:

- Always memorialize storage space rent with an agreement, then include storage space in your lease abstracts, whether it's included in the original lease document or a subsequent agreement. Include critical dates to confirm what happens upon the expiration of the storage agreement. It is recommended that you either extend the term of the storage agreement through the term of the lease or place it on a month-to-month basis, so the storage agreement doesn't periodically expire, which is often how storage spaces fall between the cracks. If rent for the storage spaces will be increased periodically, set up critical dates to remind you about the increases so you don't forget.
- Always enter the information on storage spaces from your leases into your lease administration system. Treat storage space just like the other rentable space in your building.
- Conduct a physical audit of your storage spaces periodically. Note which storage spaces are occupied, then check your lease abstracts to confirm they're under lease, which tenants are leasing them and that monthly rent for the storage spaces is being collected from those tenants.

- Unfortunately, it's not all that uncommon for an aggressive tenant to commandeer storage space without asking or paying rent for it, especially if they believe you are not monitoring the spaces. Likewise, sometimes tenants don't clean out their storage space when the lease has expired, so they essentially continue using the space rent free. Conducting a periodic audit is a good way to catch these revenue leaks.

More Resources On Commercial Real Estate Leases

That concludes our ebook on commercial real estate lease administration best practices. I hope you learned something new and valuable that you can use in your job and that will help increase the profitability of the commercial real estate properties you own, manage, support or invest in.

If you'd like to learn more about commercial real estate leases, there are two resources in the Library on our web site—**www.reallogicinc.com**—that you might find helpful: The ABCs of Commercial Real Estate Leases, our primer on leases; and our handy Glossary of Commercial Real Estate Lease Terms, with definitions of 140+ terms, many helpfully explained using real world examples.

Also, we offer several training courses you might be interested in: a comprehensive introduction to leases called Understanding Commercial Real Estate Leases, and a class on lease abstraction. Both are taught by experienced members of the Reallogic consulting team.

For more information, visit **www.reallogicinc.com/staff-development-and-augmentation**



About The Author

Kathy Fera has over 30 years' experience in commercial real estate. She is currently a Director at Realogic, where she oversees lease administration for approximately 130 million square feet of office, retail and industrial space for Realogic's clients. She has previously worked as a property manager and as a consultant to several of the industry's largest property owners and service providers. You can reach Kathy at kfera@realogicinc.com.

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Cushman & Wakefield; *At A Glance: Office Sublease Space; North America | Q4 2021; February 2022*

10 ESSENTIAL SUBLEASE CLAUSES

To Have In Your Commercial Real Estate Lease

For commercial real estate landlords, the sublease section of their lease is critical because it dictates the rules, processes and procedures for subleasing space in their buildings. While it's ultimately up to each landlord and their attorney to decide what to attempt to include in the sublease section when negotiating a tenant's lease, our extensive experience reading, abstracting and administering leases has shown that the most ironclad leases include these 10 sublease clauses:

1. Landlord Consent

A strong Landlord Consent clause that stipulates that the landlord must formally consent to any sublease agreement for the agreement to become valid. This gives the landlord final authority to approve or reject any proposed sublease agreement.

2. Recapture Rights

A Recapture clause that gives the landlord the right to repossess the space from the tenant rather than agree to a sublease. Recapture clauses are included in most leases to give the landlord an extra degree of control over the space in their building.

3. Subtenant Due Diligence

A clause formalizing your right to conduct due diligence on any prospective subtenants and specifying what this entails, which might include reviewing the organization's recent financial statements, checking its credit report and conducting background checks on its principals or officers.

4. Sublease Profits

A provision entitling you to a share of any sublease profits. Besides the Landlord Consent and Recapture clauses, this is probably the most important provision to have in the sublease section of your lease because it has the potential to increase your revenue. In our experience, the landlord's share of profits typically ranges from 50%-100% but can vary by tenant, space, building or market.

5. Leasing Additional Space and Services

Additional space, services and amenities in the building, like parking, storage and external signage, are profit centers, so you should consider including a clause in your lease allowing you to directly solicit subtenants to take advantage of those resources.

6. Sublease Documentation

While revenue and profits are important, so is good documentation. When reviewing your lease, it's smart to confirm there's a clause requiring tenants to provide copies of all documents related to the sublease to the landlord within a specific timeframe.

7. Non-Solicitation of Subtenants

Should a tenant who is subleasing space to a subtenant default on their lease or vacate the balance of their space for any reason, as landlord, you should have the right to work directly with the subtenant. When reviewing your sublease clauses, it's important to make certain this right is intact, so you can intervene, collect rent directly and then work with the subtenant to remain in the building.

8. Transfer of Tenant Rights to Subtenants

The Landlord Consent will confirm if any of the tenant's rights, such as renewal or ROFO/ROFRs, will transfer to the subtenant. It is important to make certain this is properly addressed in your lease so the subtenant does not receive any rights unless expressly approved by the landlord.

9. Subleasing Expenses

Oftentimes, a landlord will incur expenses when a tenant subleases. Consequently, your sublease clause should state in detail what expenses the tenant must reimburse you for to help avoid future disputes over subleasing expenses.

10. Sub-Subleasing

Whether you're going to allow subtenants to sublease or not, it's a good idea to say so in your lease so there's no confusion on anyone's part. Generally, it makes sense to allow it, for the same reasons subleasing makes sense. But then, just like with subleasing, it's smart to lay out all the rules, rights and obligations so you have full control over the process.



ABOUT REALOGIC

Reallogic is a best-in-class commercial real estate consulting firm based in downtown Chicago. Our company was founded in 1992, and in the over 30 years since, has developed a well-earned reputation for our unmatched commercial real estate knowledge, experience, skills and expertise, as well as for the unrivaled quality, integrity and accuracy of our work.

We offer a wide range of services, support and insights to help commercial real estate organizations of any type or size maximize the returns on their investments, including due diligence, underwriting, lease abstraction, lease administration, financial modeling, loan abstraction, closing support and commercial real estate training.

**For more information, visit www.reallogicinc.com,
or contact us at info@reallogicinc.com or 312-782-7325**