



Client guidance note

Reducing office space post COVID-19

This publication gives general guidance only. It may not always apply and should not be relied on in place of specific legal advice.

At a time when speed is vital, reorganising and reducing your office space can feel a frustratingly slow process.

If you don't have a lease end or break option coming up, you may be considering transferring your lease or subletting surplus space.

This guide covers what you need to know and how to avoid some of the common causes of delay.

How to transfer, or assign, your lease

To transfer your lease to someone else, known as "assignment", we recommend taking these five important steps:

1. Get your paperwork in order

Find a copy of the lease and related paperwork such as licences to alter, rent review memorandum, EPC (Energy Performance Certificate) and service charge information.

These should have all been provided when you took on the lease. If there are any items you can't find, your landlord may be able to help fill in the gaps.

2. Be proactive to apply for landlord consent

Your lease is likely to say that you need landlord's consent to transfer the lease. No matter how keen you are to offload the space, there is little incentive for the landlord to fast-track your application.

Submit a formal written application to the landlord and follow up via the managing agents.

Make sure the tenant, to whom you are assigning the lease, has all their financial information available including the last 3 years' of their accounts.

This will reassure the landlord that the new tenant is financially robust enough to cover the rent and comply with the lease obligations.

3. Settle any arrears

It may sound obvious but if the landlord is owed rent or other payments due under the lease, they are unlikely to give consent.

4. Conduct your own financial due diligence on the new tenant

Your landlord will usually require you to guarantee the new tenant in complying with the lease obligations. This guarantee is known as an 'authorised guarantee agreement' (AGA). It is a standard requirement in many leases.

It means that, if the new tenant goes bust or fails to pay the rent, you could be asked to cover the arrears or even take a new lease for the remainder of the original term.

Make sure you're comfortable that your new tenant is financially stable and can afford the rent payments. This is especially important if you are paying them to take the lease from you.

5. Make sure the assignment is fit for purpose

Your lease will stay as it is, so you need to make sure it doesn't contain any restrictions that would stop the new tenant from using the space as they want.

What do I do if my landlord isn't dealing with my consent application quickly?

Contact your landlord to find out the reason for the delay. Explain that you need a decision from them quickly. If that doesn't work, you can serve a formal application for consent under the Landlord and Tenant Act 1988. This puts the landlord under a statutory duty to deal with your application in a reasonable period of time. A period of more than 28 days is generally accepted as putting the landlord at risk of a claim for 'unreasonably withholding consent'.

Can I avoid guaranteeing the new tenant?

In some leases, the terms will set out specific circumstances in which the landlord is entitled to require an AGA in order for the lease to be assigned. In others, the landlord would have to demonstrate that it is 'reasonable' to ask for one.

How is reasonableness defined in this context? Each case will ultimately depend on its own facts, but the usual starting point is to ask whether the incoming tenant is of comparable financial strength to you.

How to sublet your space

Subletting may be a good option for offloading some of the space you no longer need.

Please get in touch with us to discuss how this option could work for you.

It is unusual to sublet the whole of your space, unless you've signed up to a longer term lease, but subletting a proportion of your space may provide you with flexibility and reduce overheads.

To get started, the process is much the same as assigning the lease so you will need to consider steps 1-5 described in the first section of this note. Although you won't be guaranteeing the subtenant, you will be

relying on them paying rent so some financial due diligence is important.

Four key issues to consider when subletting:

1. Check the restrictions in your lease

Find out whether subletting part of your space is permitted in the lease and consider what restrictions and conditions apply. Legal input may be needed here. Please get in touch if you would like us to help.

2. Consider the physical split

Consider whether the floor can be split into distinct spaces capable of separate occupation. Work out access and use of shared facilities. Check whether the building infrastructure, such as cabling, can accommodate the split and how utility costs will be measured. Remember you may also need landlord's consent for the separation works so detailed plans will need to be submitted for approval.

3. Evidence market rent

Your lease is likely to restrict you from subletting at less than market rent. This could be a problem in these challenging times – both in evidencing what the market rent is and finding a tenant. Your landlord will have their own view of the market rent and that may not match yours.

4. Other important sublease terms

You won't be able to offer the sublease for any period beyond the term of your own lease, or beyond your next break date, if you have one.

To discuss your options, please call [Oliver Morris](#) for a free initial conversation.