

Assignment or Assumption of Lease



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These two terms essentially mean the same thing. The assumption of a lease is the agreement by a new tenant to take over the rights and obligations of the former tenant under the terms of an existing lease.

The assignment of a lease is the transfer of a lease by the existing tenant to the new tenant.

In essence, they are simply two ways of looking at the same legal transaction:

- 1) from the perspective of the new tenant, the **assumption** of the lease, and
- 2) from the perspective of the former tenant, the **assignment** of the lease.

It should be noted that these are not the only methods available whereby a new tenant, will takeover premises formerly occupied by another tenant.

Let's assume that Bob is the first tenant and he secures favourable premises at a good rate from Bill, the landlord. He's paying \$2,500.00 per month for 5 years. Jim comes along and wants to occupy the premises. The market value has now reached \$3,000.00, and it's Bob's view that the good deal was his, and he should keep the profit. So, Bob leases it out to Jim at \$3,000.00 per month, the current going rate. The deal would be structured with Jim signing a sublease with Bob, who will collect \$3,000.00 monthly and remit \$2,500.00 monthly to Bill. While this is something of a hassle, Bill figures that it's worth \$500.00 a month to him.

Now, let's assume the current rent is just what Bob is paying, namely \$2,500.00. there's nothing in this deal for Bob, so Bill may agree to permit Bob to surrender the old lease and issue a new lease directly in Jim's favour. This assumes that Jim is a good tenant and is just as likely as Bob to be able to pay.

The next situation assumes a slight drop in the market. Now, the going rate is \$2,000.00 per month. Bob is overpaying at \$2,500.00 per month. There's a \$500.00 monthly deficit that Bob has to make up. This transaction can be

structured in several ways. First, Jim pays Bob, and Bob adds \$500.00 and pays Bill. If Bob wants out of his obligations he could set up an arrangement to pay \$500.00 monthly for the remainder of the lease. This could be an annuity, or it could be a letter of credit from a bank. This might encourage Bill to agree to a surrender of the lease. What if Bob doesn't pay? If that happens, Jim is the one who gets kicked out. Jim's concern is a very real one. How can he get rid of this risk? He can ensure that Bob makes the payment up front or there is proper security for the payment. The next issue would be to have Bob off the lease. This means a surrender of the original, and the issuance of a new lease in Jim's favour. If Bill is insistent that the market is going down, and he wants both of them responsible, then this would be accomplished by an assignment of the existing lease, followed by a provision whereby Bob directs Jim to pay Bill directly. This way when the \$2,000.00 payment is made by Jim, it goes direct, and Jim does not have to worry whether Bill ever received the money. So, he won't be concerned about being kicked out for non-payment.

Generally, here's what works best. Bob generally wants out of the lease in its entirety. So a surrender is best. If Bill will not agree, then an assignment followed with a reasonable degree of supervision, since Bob is still responsible if Jim defaults.

Bill generally wants as many people responsible for the lease as possible. So, that means no surrender, the assignment is the preferred solution. The exception would be if Bob is a deadbeat, in which case his name on the lease has no value anyway, and since he might be entitled to notice of any legal proceedings, this would simply delay things without an upside.

From Jim's perspective, the best way is to have a direct lease with Bill, no third parties. Pay the rent to Bill, and be sure that it's paid. Again, the surrender route is preferable.

So, who decides all this? Actually, it depends on current market forces and both the landlord and the first tenant will control or at least influence the decision. Ultimately, the landlord must agree, or there simply is no deal. When it comes to Jim, he must simply follow along with whatever decision has been reached by the others. In these cases, it is very important to structure the documents to minimize the risks to the new tenant.

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