

Why Assumption Clauses in Amendments Matter

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Practice Area: Real Estate & Retail Real Estate

It is a regular occurrence in the retail real estate world. A letter arrives from your current landlord or tenant advising you of a change in ownership. You probably tuck it in your file and do not consult it again until it is time to renew the lease. When that time comes, what should you do to ensure that your lease reflects this change in ownership? The answer is to include an assumption clause.

What is an Assumption Clause?

An assumption clause is a provision which states that the new landlord or tenant entity (as the case may be) assumes all the obligations of the former landlord or tenant entity and agrees to honor all of the former entity's responsibilities and obligations under the lease.

Why Do I Need an Assumption Clause?

An assumption clause provides the continuity necessary to enforce the original agreement against the new entity. It is essentially a written guarantee from the new entity that it is going to honor the responsibilities and obligations of the entity that signed the original agreement. Without an assumption clause, in the event of a dispute arising under the lease, the new entity could try to claim that the lease is not enforceable against it since it was not an original signatory.

Including an assumption clause in an agreement is a whole lot easier than the alternative, which is to review the purchase documents to confirm the identity of the entity that agreed to assume the lease at issue. Most parties will not want to provide these documents due to confidentiality concerns, making an assumption clause the preferred method.

If a party refuses to provide either an assumption clause or accommodate a review of the purchase documents, then you will need to make a business decision whether to proceed with the amendment at issue. How much of a risk are you willing to take over this particular space? The answer likely depends on the profitability of this location.

In conclusion, an assumption clause should be included as a standard request when negotiating any amendment where the other party to the lease has changed, whether it be by sale of the property, conversion, or merger.

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