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# Real Estate

## INSTITUTE

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BRINGING EXCELLENCE TO CLE

Chapter X

## **Lease Assignment Agreements and Sublease Agreements: Compare and Contrast**

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## **INTRODUCTION**

The benefit of real estate leases may be transferred by assignment or subletting, and the advantages and disadvantages must be analyzed. Sometimes they can be the same for both transferor and transferee: for example, if a long-term lease or sublease is taxable for real estate transfer taxes, but an assignment of a long-term lease is not, both parties are drawn to the non-taxable transfer. Sometimes consequences have different effects for a transferor and transferee: for example, when the transferor is trying to be released from further liability under the lease, a goal outside the frame of a sublease structure; or, to mitigate its losses in the event of further default under the lease, a goal, in turn, outside the frame of an assignment structure. As a general rule, transferees prefer assignments, transferors prefer subletting if they are not released in an assignment. Some transferors will go to even further lengths when the tenant is a subsidiary and assignee of the transferor, usually as part of the sale of one of the transferor's business lines, by having the tenant reassign the lease back to transferor to allow the transferor to sublease and thereby retain remedies of damages for rent and eviction for possessions. Arranged below are some of the more troublesome issues and variations on that rule.

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