

Wisconsin Commercial Leases: When Do Landlords Have Control Over Their Own Consent?

Commercial leases often contain provisions that only allow tenant action upon "landlord consent." "Consent" may relate to any number of issues. It could involve consent to make physical alterations to the leased premises. It could involve consent to assign or sublet the leased premises. Consent provisions raise the question of when the landlord can or cannot withhold consent. How much discretion does the landlord truly have?

In some instances, the lease's language provides guidance. For example, a lease may allow a tenant to assign the lease "upon landlord consent, which shall not be unreasonably withheld." In such an instance, if the landlord wishes to prevent a proposed assignment, the landlord must have some reasonable basis to do so.

Wisconsin case law provides additional insight. Wisconsin courts have held that a landlord-tenant relationship is one which requires the parties to deal with each other in good faith and in a commercially reasonable manner. A reason to deny consent must be objectively sensible and of some significance. It cannot be based on caprice, whim or personal prejudice. With regard to assignments, legitimate factors a landlord may consider when denying consent include the financial responsibility of the proposed assignee, the suitability of the leased premises for the proposed new use, the legality of the proposed new use, and any alterations of the leased premises needed to facilitate the proposed new use. The tenant bears the burden of proving that the landlord's stated reasons for denial of consent are unreasonable.

Lease language can also be crafted to give the landlord greater discretion. For example, in contrast to the lease language cited above, a lease may allow an assignment "only upon approval in the sole and absolute discretion of the landlord." This language provides the landlord with more control.

Conversely, in the absence of clear lease language, an approval merely dependent "upon landlord consent," without further clarification, creates the implication that consent cannot be *unreasonably* withheld.

If you have any questions or need assistance, Reinhart has a team of attorneys that focuses on commercial leasing, including transactional work, litigation and dispute resolution.

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