

# MARKS & WEINBERG, P.C.

## ASSIGNMENT V MERGER (1996)

Take a look at your lease document. It probably contains the standard language that a lessee may not "assign" the lease to a third party. Remembering that an assignment is different from a sublease in that, under an assignment, the lessee is relieved of all liabilities and the lessor may look only to the assignee/new lessee, it is obvious why this is so important.

What about an "assignment by operation of law"? When a lessee is merged into another corporation or subsidiary lessee is dissolved and its assets transferred to its parent company, an assignment takes place.

Under a 1915 U. S. Supreme Court case, such an assignment is probably NOT covered by the no assignment clause in the lease. *Central Trust Co. of Illinois v. Chicago Auditorium Association*, 240 U.S. 581 (1915) applied to an assignment in a bankruptcy transaction and was decided in the days when federal courts delved into matters of state law. Most states, however, follow the same logic.

This means that a lessee may be merged into, or otherwise combined with, a company with a much lower net worth, engaged in a different sort of business (hauling of hazard materials, for instance) or otherwise unattractive to the lessor.

Take another look at your lease: Is there an express default for any merger, dissolution, consolidation or other change of the lessee's business?



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