

Memorandum 89-10

Subject: Study H-111 - Commercial Lease Law (Assignment and Sublease--
involuntary transfers)

Attached to this memorandum is a background study prepared by our consultant Professor Coskran on a subsidiary issue in the assignment and sublease study. The subsidiary study concerns the impact of a transfer restriction on an involuntary transfer of the tenant's interest in the lease. An involuntary transfer typically could occur at the tenant's death or as a result of action by the tenant's creditors to sell the tenant's interest in the lease.

Professor Coskran finds that lease transfer restrictions are generally construed not to cover involuntary transfers unless the restrictions are very specific in their application. The law on this matter is well-settled, and problems can be avoided by clear drafting in the lease. Professor Cosrakh recommends no curative or clarifying legislation in this area.

Respectfully submitted,

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Assistant Executive Secretary