



# ICLG

The International Comparative Legal Guide to:

## Real Estate 2013

**8th Edition**

A practical cross-border insight into real estate law

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## EDITORIAL

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Welcome to the eighth edition of *The International Comparative Legal Guide to: Real Estate*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of real estate.

It is divided into two main sections:

One general chapter. This chapter looks at non-performing loans in the CEE/SEE region.

Country question and answer chapters. These provide a broad overview of common issues in real estate laws and regulations in 39 jurisdictions.

All chapters are written by leading real estate lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Lagler of Schoenherr, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk)

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# Canada

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## 1 Real Estate Law

**1.1 Please briefly describe the main laws that govern real estate in Canada. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.**

The principal governing laws with respect to real property rights in Canada are the statutes of each provincial and territorial government. All provinces are common law jurisdictions, with the exception of Québec which is based on civil law. There are certain federal laws which also have application to real estate ownership such as the Competition Act, the Interest Act, the Criminal Code and the Investment Canada Act.

**1.2 What is the impact (if any) on real estate of local common law in Canada?**

Common law is the major source of law with many common law principles having been incorporated into statutory law. The major source of law in Québec is the Civil Code.

**1.3 Are international laws relevant to real estate in Canada? Please ignore EU legislation enacted locally in EU countries.**

International laws do not in themselves have an important direct impact on real estate law in Canada. Orders of a foreign court can, in certain circumstances, be rendered enforceable in Canada.

## 2 Ownership

**2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?**

An acquisition of Canadian real estate may trigger merger control provisions contained in the Investment Canada Act and anti-trust provisions contained in the Competition Act. In the Province of Ontario, there are generally no restrictions on foreign investors, although certain tax, reporting and registration provisions may apply. For example, the Ontario statute, the Extra-Provincial Corporations Act, requires foreign registered or foreign-controlled entities to obtain licences to carry on business in the province, which includes holding an interest (other than by way of security) in real estate. Québec and British Columbia have similar registration requirements.

Alberta imposes greater restrictions. Under the Agricultural and Recreational Land Ownership Act, and subject to certain prescribed exceptions, no foreign-controlled company can acquire an interest in certain controlled land (that is, privately owned land outside urban boundaries exceeding 20 acres, for example, farm land or rural recreational land) without government approval. In addition, the provinces of Saskatchewan, Manitoba and Prince Edward Island restrict land holdings by non-residents.

## 3 Real Estate Rights

**3.1 What are the types of rights over land recognised in Canada? Are any of them purely contractual between the parties?**

The types of rights over land are:

- a) freehold title - this right is tantamount to absolute ownership; and
- b) leasehold title - this right is similar to freehold title except that it is limited in time and it derives from a greater title.

Freehold or leasehold titles can be held on a co-ownership basis. Provincial legislation allows condominium ownership. Easements and restrictive covenants give rights over land that are specific to the land burdened and benefitted by such rights. A licence is a contract which may grant contractual rights to a person over land but is not seen as granting an interest in the land.

**3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?**

In certain circumstances, whether by way of severance of lots, or by lease, the interests in the lands and the buildings thereon can be segregated. In land titles jurisdictions, an agreement to sever ownership of property, such as a building from the underlying land, may be enforceable as between contracting parties, but persons having a registered interest in the land will generally have the equivalent priority to fixtures on the land, subject to fraud and other limited exceptions.

## 4 System of Registration

**4.1 Is all land in Canada required to be registered? What land (or rights) are unregistered?**

Title to real estate is evidenced through a public land registry

system. There are two systems:

- **Registry system.** Used in Québec, parts of Ontario, Newfoundland and Prince Edward Island, this system is an inventory of documents evidencing a series of transactions in which the buyer (or its lawyer) is responsible for determining the quality of title based primarily on priority in time of registration going back a period of years.
- **Land titles system.** Under this system, the government recording authority determines the quality of the title. This system is based on the Australian Torrens system. The Torrens system provides certainty in the proof of title to land, since title does not pass (and most encumbrances cannot be enforced) unless they appear on the land register. Once an interest is registered, the title cannot be declared void on the basis of a pre-existing flaw in the chain of title. The land titles system is used in most parts of Ontario, in British Columbia, Alberta and several other provinces and territories. However, some jurisdictions are still in the process of converting certain properties from the registry to the land titles system.

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#### 4.2 Is there a state guarantee of title? What does it guarantee?

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Under the land titles system (see question 4.1), there is a provincial government guarantee of title. If the land registrar considers title to be qualified in some manner (for example, by the interest of railway companies in certain land), such qualifications are reflected in the register. The government guarantee does not extend to the registry system (see question 4.1). In theory, the government's guarantee is intended to provide compensation where a person is wrongfully deprived of an interest in property due to an error in the registration system.

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#### 4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

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Though rights in land are not compulsorily registrable, it is very unusual for such rights not to be registered, as registration can provide access to the government compensation fund and provide notice to third parties as to the interests that are held in such land. Since a third party without notice is not bound by interests that are not registered, it is incumbent upon the owner of the interest to ensure that the registration of the interest is properly made.

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#### 4.4 What rights in land are not required to be registered?

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Certain governmental authorities or utilities may have statutory rights that do not need to be specifically registered to be effective as against the landowner and third parties. Certain short-term leasehold interests also do not need to be registered. Some of the land titles statutes provide that certain easements, adverse possession, inchoate liens, provisions of subdivision statutes and/or railway rights need not be specifically registered yet still affect title.

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#### 4.5 Where there are both unregistered and registered land or rights is there a probatory period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

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The various jurisdictions across Canada have different processes for registration, some of which involve a probatory period where a

document submitted for registration may be rejected or amended at the request of such authorities. This process generally applies in the land titles systems (Torrens System) and less so in the registry systems.

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#### 4.6 On a land sale, when is title (or ownership) transferred to the buyer?

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Registration of a deed or transfer is typically seen as the event which causes title to transfer. However, title can be transferred without registration taking place, though, in practice, this would rarely be the case for transactions between commercial parties.

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#### 4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

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Though the general rule is that time of registration will result in priority to the first registered interest, the following circumstances are exceptions to that rule:

- a) where a party registers its interest in the knowledge of an unregistered interest of a third party, it may take subject to such unregistered interest;
- b) certain rights can arise by prescription (e.g. adverse possession); or
- c) parties by contract may subordinate earlier to later registered interests.

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## 5 The Registry / Registries

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#### 5.1 How many land registries operate in Canada? If more than one please specify their differing rules and requirements.

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There are 13 distinct public land registries in Canada; each registry is governed by the Provincial or Territorial law in its relevant jurisdiction, and operates through various registration offices in its jurisdiction. Please see question 4.1 above for more information on the two systems of registration in Canada.

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#### 5.2 Does the land registry issue a physical title document to the owners of registered real estate?

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Regardless of which system is being used, land registries in Canada do not issue an original physical title document to a new owner of registered real estate. In order to complete registration, a transfer or deed is either registered electronically and certified by a land registrar, or is registered physically in a registry office and accepted by a land registrar. Once registration is completed, a copy of a transfer/deed or a copy of a certificate of title is provided to the new owner.

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#### 5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

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Real property transactions can be completed electronically in certain land titles jurisdictions, including Ontario and British Columbia. Electronic registration is possible (but optional) in Québec, but paper registration is still predominantly used in practice.

In most land titles jurisdictions, a transfer of land in a prescribed form is required to be registered to create an ownership right, which in some jurisdictions can be transmitted electronically for registration.

Ownership information can be obtained electronically in most land titles jurisdictions. However, in the registry jurisdictions, complete ownership information can only be obtained from records at land registry offices.

#### 5.4 Can compensation be claimed from the registry/registries if it/they makes a mistake?

Compensation can only be claimed where the land titles system is in use.

#### 5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

There are no restrictions on public access to the register and most information that a buyer might reasonably need regarding encumbrances and other rights affecting those lands can, to a large extent, be obtainable from the register. There are certain other claims which constitute encumbrances, such as real property taxes and certain utilities and there may also be claims of certain public authorities which can only be ascertained by obtaining information directly from public authorities or other entities and which may require the consent of the owner.

## 6 Real Estate Market

### 6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Canada? Please briefly describe their roles and/or duties.

#### a) Selling and purchasing agents (or realtors)

Real estate is typically identified and assessed by real estate agents or brokers, who are generally licensed under provincial legislation. The seller usually retains and pays for the services of a real estate agent to help market and sell the property (known as a listing agent). The buyer can also retain a real estate agent and the retainer agreement expressly defines the duties of the real estate agent to the buyer.

#### b) Lawyers

Typically, the purchaser's lawyer will draft the purchase agreement with both parties' lawyers settling it. The purchaser's lawyer typically performs investigations on title to the property, as well as various off-title enquiries (i.e. enquiries as to non-registered encumbrances, as described in question 5.5 above) and confirms the status of the vendor. Real estate lawyers act as escrow agents for deposits and closing funds pending completion.

#### c) Notaries

Generally, it is not necessary that documents be executed in front of a notary to be effective, with the exception of Québec, where notaries are involved in the registration of the deed of sale.

#### d) Others

The buyer will often hire **environmental consultants** to determine the environmental status of the property, **engineering consultants** to confirm that the improvements are in good condition, a **surveyor**

to ensure that the building and other improvements are properly located and **planning consultants** to confirm that any planned development will be possible. **Title insurers** are sometimes involved to supply title insurance to buyers.

### 6.2 How and on what basis are these persons remunerated?

Generally, real estate brokers are hired by the vendor and paid a percentage of the purchase price upon successful completion of the purchase. Lawyers charge fees for a transaction based on the hours worked, though other fee arrangements can be made. Other consultants listed above will charge either on a flat fee or hourly basis. Title insurers will charge based on the value insured and the size of the transaction.

### 6.3 How has the real estate market in Canada recovered or reacted following the global credit crunch and worldwide recession in 2008/2010? What were the most important real estate transactions in Canada in the past year? Please include both local and international investors in your answer.

Due to Canada's reliance on American prosperity, the downturn in the American economy has led to the downsizing of many American enterprises, as well as a decreased demand for Canadian products. Canadian markets were less affected by the recession than those of all other G-8 nations.

Generally the international demand for Canadian natural resources and products has kept the economy stable. Further, in response to the Canadian banking system's conservatism, the recognised transparency of our real estate market, and international acclaim, international investors have made Canada one of their top acquisition targets, citing Canada as a "safe haven".

The volume and size of transactions in 2012 continued to increase year-over-year and the commercial market capitalisation rates, especially for core office assets, continued to be compressed with investors attracted to Canada's stable, transparent and relatively robust real estate market. The C\$1.276 billion Dundee REIT/H&R REIT acquisition of the Scotia Plaza office tower in Toronto was the largest reported Canadian transaction in 2012, and set a new record for the purchase price of a single building. Other important transactions in 2012 included the purchase by Ontario Pension Board of the RBC Centre in Toronto from Cadillac Fairview Corporation for C\$300,000,000, the purchase by Bentall Kennedy of the Bentall V complex in Vancouver from Deka Immobilien GmbH for C\$401,000,000, and the sale by The Standard Life Assurance Company of a portfolio of properties in Ontario, Québec, Alberta and British Columbia. REITs and pensions continued to be very active in the Canadian real estate market.

### 6.4 Is there a trend in Canada towards the investment in retirement homes / nursing homes due to the increased ageing of the population?

The trend toward investment in retirement homes and nursing homes has been developing for the last several years in Canada. There has been substantial construction of new facilities, as well as the creation and expansion of REITs and other vehicles specialising in the development and management of such assets.

## 7 Liabilities of Buyers and Sellers in Real Estate Transactions

### 7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

For a purchase and sale agreement in respect of land to be enforceable, it must be in writing.

The minimum requirement to transfer title to land is the delivery and acceptance of a written (or electronic) transfer/deed of land.

### 7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

Generally, the seller is under no duty of disclosure in connection with the sale. The onus is on the purchaser to protect itself either by its own investigations or by obtaining representations from the vendor. A vendor has a duty to disclose a latent defect which renders the premises dangerous. The civil law regime in Québec imposes certain warranties though they may be excluded or limited by contract. Fraud, if found to exist, permits the court to impose remedies where none are found in the contract.

### 7.3 Can the seller be liable to the buyer for misrepresentation?

Generally, sellers are liable to buyers for misrepresentations unless all representations merge on closing.

### 7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

A continuing trend has been for sellers to give much more limited representations. Generally, representations are given with respect to matters that cannot be easily ascertained by the buyer on its own. Representations that confirm that all documents such as leases, contracts and environmental reports relating to the property in the vendor's possession or control have been provided are generally given. Further, representations as to the state of the vendor's knowledge with respect to environmental deficiencies or outstanding work orders are also usually obtainable. Such representations are important for informational purposes and allocate risk as between the buyer and the seller. Generally, a purchaser must carry out extensive due diligence as it would be very unusual for a seller to provide warranties sufficient to permit the buyer to forego due diligence.

### 7.5 Does the seller warrant its ownership in any way? Please give details.

Generally, a seller does not warrant that title is good. However, statutory provisions in certain jurisdictions result in certain warranties being implied unless specifically excluded.

### 7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

Generally, a buyer will assume liabilities that are associated with the ownership of the property, such as the landlord's obligations

under the leases affecting the property, the mortgages or other encumbrances affecting the property. Also, the buyer must pay any land transfer tax and typically pays registration fees.

## 8 Finance and Banking

### 8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

In some jurisdictions, there are statutory requirements requiring the registration of foreign corporations under provincial legislation to permit such entities to hold an interest in real estate by way of mortgage. Mortgage broker statutes may also apply. Further, federal banking and financial services regulations govern banks, trust companies and other financial institutions in lending money secured by real estate. Generally, there are no particular requirements that are different for individual persons and corporate entities; however, reference should be made to the Competition Act and the Investment Canada Act with respect to activities by non-resident lenders.

### 8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

A real estate lender will, almost invariably, insist on registration of a mortgage on title to the real estate being financed. A lender will often take additional security with respect to the personal property of the borrower, which may or may not be limited to that which is related to the real estate being financed.

### 8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

In Alberta, as for most common law jurisdictions, the most common method for realisation is through the judicial process, culminating in either an order for foreclosure, or an order for sale of the property which may permit a monetary judgment for a deficiency amount. Limiting rules exist for mortgages granted by individuals.

Ontario is one of the few jurisdictions in Canada where it is possible for a mortgagee to use a power of sale procedure to sell a property under a mortgage in default without involving court proceedings or the cooperation of the mortgagor.

### 8.4 What minimum formalities are required for real estate lending?

For a mortgage to be enforceable against an interest in land, it must be in writing.

### 8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

Registration of the mortgage renders the lender a secured creditor and a right to look to the property so secured to satisfy the debt should the borrower default. The lender's position is in priority to all unsecured creditors, subject to certain exceptions for debts payable to the government, fraud and certain other matters.

In common law jurisdictions, the lender, upon default by the borrower and after having given reasonable notice thereof, will generally have the right to take one or more of the following actions:

- a) attorn rents;
- b) appoint a receiver;
- c) carry out private power of sale proceedings;
- d) carry out judicial sale proceedings; and/or
- e) foreclose on the property.

The availability of such remedies varies significantly between jurisdictions in Canada.

## 9 Tax

### 9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

Land transfer taxes are payable in most provinces upon the transfer of title. In Ontario and Québec, this land transfer tax is imposed at graduated rates, but for most commercial transactions, it is approximately 1.5% of the total consideration. The City of Toronto, located within the Province of Ontario, also imposes an additional land transfer tax of approximately 1.5% of the total consideration up to C\$40,000,000 and 1% on the remainder of the consideration. The transfer tax payable in British Columbia is calculated at 1% on the first C\$200,000 of fair market value and 2% on the balance. While Alberta imposes no land transfer tax, it charges a registration fee for transfers at the rate of 0.02% of the value of the property. There are a number of exemptions or methods of effecting transfers available in Ontario, Québec and British Columbia to facilitate tax free transfers among affiliates.

### 9.2 When is the transfer tax paid?

Generally, land transfer tax is payable upon registration of the transfer, except in Québec where the amount is payable as part of the realty tax bill issued after closing.

### 9.3 Are transfers of real estate by individuals subject to income tax?

Transfers of real estate by individuals are subject to income tax unless the real estate is the primary residence of the vendor.

### 9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

Generally, the transfer of commercial real estate is subject to the goods and services tax ("GST") of 5%. If the purchaser is registered for GST purposes, the purchaser is required to self-assess the GST. Purchasers who are GST registered and are acquiring the commercial property for use or supply in the course of a commercial activity are entitled to claim an offsetting input tax credit to fully recover the GST. In addition, provincial sales taxes can be applicable and generally the onus is placed on the vendor to collect such tax subject to certain exceptions. No GST is payable on used residential buildings. Certain provinces have introduced a harmonised sales tax ("HST") which applies to commercial real estate sales and leases. The HST combines and replaces the general and provincial (if applicable) sales taxes that were levied on commercial real estate.

### 9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

Gains on the disposition of direct interests in real estate are subject to taxation. Capital gains are taxed at one-half the effective level of other earned income.

If the vendor is not a resident of Canada, a clearance certificate is required from the Canadian government pursuant to section 116 of the Income Tax Act, failing which the purchaser may hold back from the closing proceeds an amount equal to 50% of the purchase price.

### 9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Subject to general anti-avoidance provisions, the sale of shares would generally not be treated as an asset sale and, accordingly, different tax treatments can result.

## 10 Leases of Business Premises

### 10.1 Please briefly describe the main laws that regulate leases of business premises.

The main source is common law (other than for Québec), aspects of which have been restated in various statutes of the provinces.

### 10.2 What types of business lease exist?

Generally, commercial leases are described as being either net or gross. A fully net lease requires the tenant to pay a basic rent plus all costs that are not personal to the landlord in relation to the maintenance and management of the building, including real estate taxes, insurance, maintenance and upkeep of the building and common areas. A gross lease requires that the tenant pay a fixed amount.

### 10.3 What are the typical provisions for leases of business premises in Canada regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

#### a) Length of term

Usual term: 5 years with options to renew in favour of the tenant. Shorter and longer term leases are not unusual.

#### b) Rent increases

The rent payable during the initial term can include set increases.

#### c) Tenant's right to sell or sub-lease

Usually, the landlord may not unreasonably withhold its consent to an assignment or a subletting, but the landlord may also have rights to terminate should the tenant wish to assign or sublet rights to obtain any increased rent received from the assignee, and require the original tenant to remain fully liable notwithstanding such assignment.

#### d) Insurance

Generally, the landlord arranges to insure the building and obtains liability insurance with respect to the property. The cost of such insurance would be passed on to the tenant in accordance with the terms of a net lease. The tenant is usually required to insure its

personal property and its leasehold improvements located in the premises and to have liability insurance and business interruption insurance, all of which would be paid for by the tenant.

**e) (i) Change of control of the tenant**

Typically, change of control of a tenant requires the landlord's consent.

**e) (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger)**

Exceptions to obtaining the landlord's consent are often made where the tenant is a publicly traded company or for certain corporate reorganisations.

**f) Repairs**

Most leases require tenants to maintain their premises and repair any damage other than reasonable wear and tear, though some leases require the landlord to be responsible for structural and roof repairs.

**10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?**

Taxes payable are goods and services taxes on rent under a commercial lease and possibly provincial sales tax or a harmonised sales tax depending on the province or territory in which the property is located.

**10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?**

Generally, commercial leases terminate at the end of their term, subject to rights of renewal set out in the lease. Leases can also be terminated by the landlord should the tenant default and, in most leases, in circumstances of damage to the premises. Contractual provisions may be included in leases which provide renewal rights or costs payable on termination.

**10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?**

Generally, parties entering into a lease are liable to each other for their obligations, unless the lease provides that transfer results in a release by such party of its obligations. Typically, commercial leases provide that the landlord is no longer liable after it has transferred its interest in the lands to a third party.

**10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).**

Whether or not "green" lease obligations under a Canadian lease are binding or simply aspirational will depend in large measure on the bargaining power of the parties. For example, a green lease driven by the landlord will often make the tenant's green lease obligations

- such as to comply with the landlord's energy reduction or recycling initiatives - binding covenants (breach of which would cause a default under the lease), while making the landlord's green lease obligations - such as to build to a specific LEED standard - merely aspirational. A green lease driven by the tenant will more often find the landlord held to green obligations, and, depending on the tenant's bargaining power, may provide the tenant with certain self-help remedies in order to accomplish the specific green objectives. That said, green obligations of all sorts are increasingly showing up in Canadian leases, including obligations to comply with energy reduction and waste management programmes, to use certain environmentally-friendly building and cleaning materials, and to construct to certain environmental standards (whether LEED or other less stringent standards).

**11 Public Law Permits and Obligations**

**11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws.**

Each province promulgates laws which govern zoning and matters concerning the use and occupation of land and buildings. Municipal and regional governments may have the responsibility for either creating their own set of land use laws or may be required to administer the laws that are enacted by the province. Environmental laws are enacted by both the federal, the provincial and territorial governments.

**11.2 Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.**

Several public authorities and utilities have the power to force land owners to sell land to it. Compulsory purchases must usually be confirmed by an applicable approving authority. For example, in Ontario, where a municipality compulsorily purchases real estate for municipal purposes, the approving authority is the council of the municipality. In the case of Ontario hospitals, or other medical or health institutions, the Minister of Health is the approving authority.

Owners of the real estate are usually compensated on the basis of its market value, and are awarded damages caused by inconvenience and any special difficulties in relocation. The market value is usually stated to be the amount that the property might be expected to realise if sold in the open market.

**11.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?**

Local municipalities typically control and administer land and building use while provincial governments typically regulate environmental issues affecting land use. In addition, the federal government has enacted environmental legislation. Buyers must obtain information from public authorities directly.

**11.4 What main permits or licences are required for building works and/or the use of real estate?**

Construction of new buildings or renovations requires a site plan agreement or development permit, as well as a building permit.

### 11.5 Are building/use permits and licences commonly obtained in Canada? Can implied permission be obtained in any way (e.g. by long use)?

Buildings built or used in accordance with prior rules which may not conform to current standards may be deemed to constitute legal non-conforming uses or buildings.

### 11.6 What is the appropriate cost of building/use permits and the time involved in obtaining them?

The timing and costs for obtaining building permits depends on the particular jurisdiction in which the building is located, with the timing ranging from days to several months. Significant development charges may be a pre-condition to the granting of site plan approval or building permits.

### 11.7 Are there any regulations on the protection of historic monuments in Canada? If any, when and how are they likely to affect the transfer of rights in real estate?

A number of provinces have legislation under which structures or sites may be protected for historical, archaeological or other reasons. Generally, such designations affect the use, preservation and development of the property but do not restrict transfer of ownership of the property.

### 11.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in Canada?

Generally, purchasers will perform environmental site assessments of property in order to address contamination risk. Though some provinces maintain a depository of environmental site assessments which can be accessed by the public, this depository system is relatively new and is generally not a definitive record.

### 11.9 In what circumstances (if any) is environmental clean up ever mandatory?

Generally, environmental clean up is mandatory where provincial or federal authorities seek to reduce or mitigate potential dangers to human health or adverse environmental effects. In Québec, land remediation is mandatory where there is a permanent cessation of certain designated activities considered to be environmentally sensitive or where a person intends to change the use of land on which a designated activity once occurred.

### 11.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Canada.

While local building codes stipulate minimum energy efficiency requirements for new construction, existing buildings are generally not subject to any regulatory requirements for the on-going assessment and management of energy performance. However, there are a number of voluntary programmes in which building owners may participate and receive recognition for having implemented energy saving measures. For example, the Building Owners and Managers Association (BOMA) of Canada administers the national "Go Green" programme. This programme recognises buildings that meet or exceed the criteria set by BOMA for energy reduction measures.

## 12 Climate Change

### 12.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

Implementation of an emissions reduction system is still under development and awaiting the finalisation of legislative developments in the U.S. The current federal government indicated that it does not intend to pursue the creation of a cap and trade system for greenhouse gases and has recently withdrawn from the Kyoto Protocol.

In July of 2007, the Province of Alberta implemented an emissions intensity greenhouse gas (GHG) reduction regime that applies to industrial facilities emitting over 100,000 tonnes of GHG per year. The regime is aimed at reducing the quantity of GHG emissions generated by the emitter per unit of economic output. For example, in the oilsands context it is per barrel of oil. Facilities that exceed the 100,000-tonne limit must either contribute to the Climate Change Emissions Management Fund (Fund) (at an historical cost of C\$15 per tonne) or reduce their carbon footprint by purchasing emission offset credits or performance credits. Contributions to the Fund are paid to the Alberta Climate Change Emissions Management Corporation which uses the money to fund new GHG reducing technologies. In addition, the Alberta government in 2008 established a C\$2 billion fund for the development of carbon capture and sequestration technology.

Both of the Provinces of Québec and Ontario have adopted regulations requiring emissions reporting for GHGs and enacted enabling legislation to create a cap-and-trade system.

Québec has put in place an extensive action plan to achieve GHG reductions. The current Québec government has committed that by 2020 it will achieve a 25% reduction in GHG emissions in relation to 1990 levels. Québec's climate change action plan is financed through a tax on fossil fuels. Recently, Québec has put in place regulations that establish a cap-and-trade system for GHG emissions that is linked to the Western Climate Initiative (WCI) trading system.

The Province of Ontario has committed to the termination of its remaining coal-fired electrical power plants by 2014 and in 2009 enacted its Green Energy and Green Economy Act, which provides various financial and regulatory incentives for the development of renewable energy sources such as wind and solar energy, as well as increased energy efficiency.

The province of British Columbia (BC) has a carbon tax which applies to the purchase or use of fossil fuels within the province. As of July 1, 2012, the carbon tax is based on C\$30 per tonne of carbon dioxide equivalent emissions, which is translated into different tax rates for specific types of fuel. BC has also introduced legislation to create a cap-and-trade system for GHG emissions to enable the province to participate in the WCI's proposed emissions trading system. As part of the implementation of the cap-and-trade system, BC has issued a Reporting Regulation which requires certain operations in the province to report greenhouse gas emissions.

### 12.2 Are there any national greenhouse gas emissions reduction targets?

As of December 15, 2012, the federal government of Canada has withdrawn from the Kyoto Protocol. It had earlier signed the Copenhagen Accord with a reduction target of 17% below 2005 levels by the year 2020.

**12.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?**

A number of incentive-based programmes exist at the municipal and provincial levels to encourage sustainable building construction. Examples include rebates on building permit fees for projects that meet LEED or similar standards for construction, and the policy of the Province of Alberta that government-funded capital projects be built to a designated LEED standard.

The Québec Construction Code defines the minimal standards for buildings. The government has indicated its intent to review, at least every 5 years, the energy efficiency requirements for all types of buildings. Consequently, the commercial and institutional sectors will be subject to new standards starting in 2015, and those in the residential sector will be revised in 2017.

The government will elaborate a Québec sustainable building strategy that will focus on the environmental impact of a building

based on its life-cycle. It also intends to examine the scope of certain environmental certifications for buildings in the Québec context, e.g. LEED certification and BOMA, to determine if they should be adopted or adapted. In addition, regulations dealing with halocarbons will be revised to limit the use of halocarbons in cooling equipment in the commercial sector. It is expected that new requirements will apply to new systems in 2014 and existing systems in 2020.

In 2008, BC began amending its Building Code as part of the province's Energy Efficient Buildings Strategy. The amendments include the addition of energy efficiency and water efficiency objectives in respect of new single family homes and row houses, including changes to improve the energy performance of housing, solar hot water ready homes, requirements for high-efficiency toilets in new construction, and requirements to support the increased use of non-potable water for toilet flushing and sub-surface irrigation. The greening of BC's Building Code is an ongoing initiative and further amendments are expected.



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