

5th

# COMMERCIAL REAL ESTATE LEASES

Best practices toward getting the best deal

## course highlights

Best practices for dealing with operating cost issues  
Discover the latest trends in commercial lease negotiations  
Explore the latest leasing issues for franchises  
Learn about important rent provisions issues  
Incentives and inducements for landlords and tenants

## who should attend

Attorneys  
Lenders  
Owners  
Managers  
Brokers  
Leasing Agents  
Real Estate Developers and all others involved in landlord/tenant relationships and who deal with lease negotiation  
drafting  
defaults and litigation

## participating organisations

Benfield Canada Limited  
Bishop & McKenzie, LLP  
Colliers International  
Farris, Vaughan, Wills, & Murphy LLP

Fasken Martineau Du Moulin LLP  
Hopewell Development Corporation  
Macleod Dixon LLP



Course Leader  
Ian E. MacRae,  
Macleod  
Dixon, LLP



Chris  
Saunders,  
Colliers  
International



Gordon Love,  
Farris,  
Vaughan,Wills,  
& Murphy LLP



Michelle  
Pockey,  
Fasken,  
Martineau,  
DuMoulin LLP



Don Goyen,  
Hopewell  
Development  
Corporation



Douglas J.  
Hughes,  
Bishop &  
McKenzie, LLP



Denise Stroh,  
Benfield  
Canada  
Limited

## COURSE LEADER

### IAN E. MACRAE

Ian E. MacRae is a Partner at Macleod Dixon, LLP, practicing in the areas of commercial financing, banking, real estate law and related areas of pension law and securities law. He also has significant expertise in: commercial leasing; the purchase and sale of commercial properties; residential, industrial, retail and office development; commercial lending transactions; and structuring of co-ownerships, joint ventures and limited partnerships. In conjunction with the litigation department, he also provides advice on the enforcement of various agreements and related remedies and tactics.

## CO-LECTURERS

### CHRIS SAUNDERS

Chris Saunders is Associate Vice President and Partner with Colliers International in Calgary. His real estate experience has been on the brokerage side of the industry, where he has worked with two international firms in Calgary's industrial market. He brings an in-depth knowledge of inventory, market conditions, lease comparables, trends and financial analysis to each client circumstance, and he has contributed to over 700 lease and sales transactions since 1992.

### GORDON LOVE

Gordon Love, a Partner at Farris, Vaughan, Wills, & Murphy LLP, practices primarily in the areas of commercial lending and commercial real estate transactions, acting for lenders, borrowers, developers, landlords, tenants and local governments. He is involved in a wide variety of transactions including financing the acquisition and development of commercial real estate and the acquisition of businesses, including share purchases and asset purchase transactions, refinancing and restructuring of major loans.

### MICHELLE POCKEY

Michelle Pockey is a Partner at Fasken, Martineau, DuMoulin LLP. She advises organizations dealing with environmental requirements in day-to-day business operations and assists them in the development and implementation of environmental management systems. She conducts due diligence in a wide variety of business transactions in order to minimize environmental risks and liabilities, and she provides advice in relation to the environmental aspects of project development. She also works with regulators to resolve environmental issues on behalf of clients.

### DON GOYEN

Don Goyen is Manager, Retail Leasing at Hopewell Development Corporation and a former corporate/commercial lawyer. He is involved in all levels of the development process and is currently responsible for the leasing of retail projects in Calgary and Edmonton totaling in excess of 1,300,000 sq.ft. of GLA.

### DOUGLAS J. HUGHES

Douglas J. Hughes is a partner with Bishop & McKenzie LLP in Edmonton. He practices extensively in the commercial leasing area, acting for a number of national landlords, brokers and property managers.

### DENISE STROH

Denise Stroh is Senior Client Executive at Benfield Corporate Risk, part of one of the world's leading reinsurance and risk intermediary, Benfield Group Limited. She has 25 years of commercial risk experience in the insurance industry specializing in construction, development and realty risks. She was previously a Vice President at a major international broker.

## COURSE PROGRAM

### TRENDS IN COMMERCIAL LEASE NEGOTIATIONS

The real estate market is constantly reinventing itself to accommodate the changing needs of its many players. Today's lease negotiation strategies need to reflect these changes in the commercial market, such as security concerns and increased pressure to meet technology and tenant needs. This discussion will explore the trends in lease negotiations and the latest issues emerging in commercial, office and industrial leasing.

- Taking the pulse of the commercial and industrial lease environment
- The role of third-party service providers in the negotiation process
- Increasing revenues through nontraditional profit centres
- The nature of the landlord-tenant relationship, where it is heading and how it is affecting lease negotiations
- New trends in negotiating key lease agreement terms
- How do the trends in the suburbs compare with the downtown cores and other submarkets?

### DRAFTING AND NEGOTIATING LEASES TO GET THE BEST DEAL

Knowing the key provisions of a commercial real estate lease and how to effectively negotiate terms will enable you to enter into better lease agreements and avoid problems down the road. Learn the techniques of negotiating lease deals that will result in win-win situations with many long-term benefits. This discussion will provide you with helpful negotiating tips in order to enhance your ability to communicate your position and a willingness to structure a deal that works for both parties, as well as look at key clauses in each lease and the issues that really matter.

- Lease agreement terms applicable to the economic terms, rentable area, gross revenues, the parties to the agreement, structural and operating costs
- Avoiding jargon and ambiguity at the negotiation and drafting stage
- Evaluating face vs. effective rental lease structures
- Drafting favourable incentives, terms and options, performance guarantees and rent reviews clauses
- Documenting the lease deal: transition issues in going from offer to lease
- Types of preliminary agreements
- Use of boilerplate provisions

### DEALING WITH OPERATING COST ISSUES

How do you define what is a "reasonable expense" and who should be responsible for absorbing these costs? Cost charge-backs are often a sticking point in lease negotiations as well as being a target in tenant audits. This session will look at best practices with respect to new cost areas associated with commercial leasing and how traditional principles that allocate all costs to tenants may be subjected to more intense consideration.

- The treatment of repair and replacement costs
- Calculating operating costs and gross-up clauses for allocation of expenses
- Apportioning risks and operating expenses between lessors and lessees
- Net rent, lease audits, common area maintenance and operating cost charge-backs
- Operating expenses or capital expenditures
- Administrative and management fees
- How to exclude and deduct operating expenses
- Allocation for multiple tenant properties

### REPAIR AND SURRENDER OBLIGATIONS

Making certain that the commercial lease agreement clearly indicates what the landlord and tenant's obligations are for repairs, maintenance and restoration of the leased property is important to avoid potential costly disputes later on. An analysis of how the repair obligations in leases interact with the damage and destruction provisions will be considered in the context of consistency, the insurance provisions and other lease provisions. This presentation will explore the newest issues surrounding repair and surrender obligations when negotiating commercial lease deals.

- A tenant's repair, redecoration and make good obligations
- A landlord's obligations to repair and maintain
- Damage and destruction clauses: determining the parties' respective repair obligations
- Distinguishing between major and minor damage
- Timing issues: completion of repairs, making suitable alternate arrangements
- Lease termination clauses
- Distribution and allocation of insurance proceeds after termination
- Rent abatement issues

### ASSIGNMENT AND SUBLEASE NEGOTIATIONS

How do you provide the flexibility that tenants require and still retain control when negotiating the assignment and subletting provision in the lease agreement? What has been the impact of the current economy on absorption of commercial space and the rate of subleasing in the marketplace? These factors have a profound impact on property income streams and the economics of commercial leasing. In this session examine how to deal with negotiations for assignments and subleases.

- Controlling tenant mix and revenue stream
- When landlord's consent is not needed: standards for landlord's consent
- Recapture rights, splitting of profits and termination rights
- Assumption of leases in bankruptcy
- Potential liabilities, options to terminate and subletting restrictions
- Responding to requests for the right to sublet: potential liabilities, landlord's option to terminate and subletting restrictions

### INCENTIVES AND INDUCEMENTS FOR LANDLORDS AND TENANTS

The variety of inducements and incentives that are provided by landlords to tenants and by tenants to landlords is limited only by the creativity of the parties. However, the practical, legal and tax implications of these arrangements are often not readily apparent at the time they are being made. This session will look at best practices when using incentives and inducements so that you can get the biggest bang for your buck and avoid unexpected surprises down the road.

- Leasehold inducements and allowances
- Rent-free or rent-reduced periods
- Rights of first refusal and rights of first offer to lease
- Rights to expand
- Options to extend and renew
- Exclusive covenants
- Signage and parking
- Go dark and co-tenancy provisions
- Guarantee and indemnity issues
- Security interests and deposits
- Tenant construction allowance and turnkey deals
- Financial incentives for tenants

# DEFAULT AND REMEDY PROVISIONS

## LEADING ISSUES FOR FRANCHISES

Whether negotiating a commercial lease on behalf of a lessor or lessee when a franchise business is involved, there are other factors that come into play that will affect how the final lease is drawn up. This discussion will take a look at commercial leases from a franchise perspective, including the following issues:

- The advantages and disadvantages of the franchiser vs. the franchisee taking leases
- Use clauses, exclusive covenants and their enforcement
- Sublease issues and third-party conditional assignments
- OFDA impact on leasing issues in franchising
- Cross-termination provisions

## DEFAULT AND REMEDY PROVISIONS

How can landlords and tenants ensure that their leases have the remedies they need in case of default? What are some of the most effective measures that can be applied when a lease agreement is in default due to failure to pay rent, failure to maintain or repair, abandonment of the premises or bankruptcy? This discussion will focus on the default and remedy provisions of the lease and will provide you with negotiating tips to gain the protection that you need in your commercial lease deals.

- The inclusion of a cross-default clause in commercial lease
- Inclusion of a notice provision with your standard commercial lease
- Default remedies available to landlords and how they are utilizing them
- Forfeiture and distress
- Decision to preserve or terminate the lease on default
- Landlord's failure to repair and maintain
- Tenant's failure to abide by the use clause
- Arbitration clauses
- Construction liens relating to tenant improvements

## ENVIRONMENTAL CONCERNS IN LEASING

How are environmental issues negotiated into commercial lease agreements and, in today's world, of what concerns should a landlord or tenant be aware? It is necessary to understand the nature of the environmental problems that could be encountered when structuring your lease agreement or else you risk facing huge environmental liabilities and exorbitant clean up costs. This presentation will cover the environmental issues associated with leasing.

- Liability and responsibility for contaminated projects
- How to determine whether a property is contaminated
- Dealing with issues such as mold, water intrusion, asbestos and lead-based paint
- The use of environmental insurance
- Reliance on existing environmental assessments
- Green buildings: assessing the cost/benefit of green leases

### FEDERATED PRESS CUSTOM TRAINING

And now, bring a world of knowledge to your company with Federated Press' onsite seminars. Train groups of employees at a location of your choice and customize the content to meet your corporate needs. Choose from over 200 courses that can be delivered onsite; or create customized training with the experts at Federated Press—combine two or more courses, develop new content, tailor course materials to organizational needs. Our practical training courses cover every aspect of business effectiveness; our faculty include internationally-recognized lecturers, Fortune 500 executives and executives from Canada's top 1000 companies. For more information about Federated Press' customized training solutions, contact Jefferey Price Tel: (416) 665-6868 (236) e-mail: jefferey\_price@federatedpress.com

**Registration:** To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Calgary, call (403) 539-4389 or fax to (403) 539-4390. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

**Location:** Hyatt Regency Calgary, 700 Centre Street SE, Calgary, T2G 5P6

**Cost:** The attendance fee for the course is \$1725 per person and covers attendance for one person and the lecturers' presentation material. The fee further includes lunch on the first day, morning coffee on both days and refreshments during all breaks. You may purchase a Proceedings CD-ROM containing edited actual proceedings and materials from the course.

**Time:** Course registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at noon.

**Cancellation:** Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee will be provided upon cancellation in writing received prior to January 29, 2008. No refunds will be issued after this date.

**Discounts:** Federated Press has **special team discounts**. Groups of 3 or more from the same organization receive a **10% discount**. Groups of 7 or more from the same organization receive a **15% discount**.

**Phone: 1-800-363-0722    Calgary: (403) 539-4389    Fax: (403) 539-4390**

### TO REGISTER FOR COMMERCIAL REAL ESTATE LEASES

Name \_\_\_\_\_  
Title \_\_\_\_\_ Department \_\_\_\_\_  
Approving Manager Name \_\_\_\_\_  
Approving Manager Title \_\_\_\_\_  
Organization \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ Province \_\_\_\_\_ Postal Code \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ e-mail \_\_\_\_\_  
Please bill my credit card:     AMEX     VISA     Mastercard  
# \_\_\_\_\_ Expiration date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Signature: \_\_\_\_\_

WHEN CALLING, PLEASE MENTION PRIORITY CODE: MAIL COMPLETED FORM WITH PAYMENT TO:  
Federated Press P.O. Box 4005, Station "A"  
Toronto, Ontario M5W 2Z8

CREC0802/M1

### REGISTRATION COSTS

NUMBER OF PARTICIPANTS:   
COURSE: \$1725  
COURSE + PROCEEDINGS CD-ROM:  
\$1725 + \$125 = \$1850  
PROCEEDINGS CD-ROM: \$399  
NOTE: Please add 6% GST to all prices.  
Proceedings CD-ROM will be available 60 days after the course takes place  
Enclose your cheque payable to Federated Press in the amount of:  
  
GST Reg. # R101755163  
PBN#101755163PG0001  
For additional delegates please duplicate this form and follow the normal registration process