



IMPORTANT THINGS YOU SHOULD KNOW WHEN LEASING REAL ESTATE IN CANADA

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SOME DIFFERENCES BETWEEN CANADA & THE UNITED STATES

- **Small number of large landlords in Canada**
 - **Negotiate the critical business terms up front in the agreement to lease or letter of intent**
- **Binding vs. non-binding agreements to lease or letters of intent**
 - **Beware! Non-binding letter of intent can be considered binding due to the actions of the parties either by course of conduct or other written evidence exchanged between the parties**
 - **Courts of equity are alive and well in Canada**

WHAT IS A PRINCIPAL BUSINESS TERM?

- Hint: It is more than just the base rent, operating costs, the length of the term of the lease and the use clause

**A PRINCIPAL BUSINESS TERM, IS ANY THING THAT IS GOING TO
IMPACT YOUR BUSINESS IN A MATERIAL WAY AND/OR COST
YOU MONEY - \$\$\$!**



PRINCIPAL BUSINESS TERMS

- **Key business terms**
 - **Base Rent**
 - **Additional Rent or Operating Costs**
 - **Term of lease**
 - **Use**

PRINCIPAL BUSINESS TERMS

- Other principal business terms
 - Fixturing periods
 - Tenant improvement allowance
 - Exclusive use rights
 - Relocation provisions
 - Options to extend

PRINCIPAL BUSINESS TERMS

- Other principal business terms (continued)
 - Options to expand
 - Right of a tenant to go dark and not operate
 - Radius clause
 - Landlord's right to redevelop, demolish and renovate the building or shopping centre
 - Obtaining permits, licenses and approvals

PRINCIPAL BUSINESS TERMS

- **Other principal business terms (continued)**
 - **Co-tenancy provisions**
 - **Delay in construction provisions**
 - **Tenant's signage**
 - **Permitted transfers**
 - **Interruption of essential services**
 - **Self help remedies for tenant**

PRINCIPAL BUSINESS TERMS

- Other principal business terms (continued)
 - Tenant restoration obligations
 - Overholding rights
 - Indemnity or guarantee
 - Registering notices of lease
 - SNDA i.e. subordination and non disturbance agreements from prior encumbrancers

PERMITS, LICENSES AND APPROVALS

- **TIP: When Leasing Premises In Another Jurisdiction**
 - Use local people to assist in obtaining all of the required permits, licenses and approvals that will be needed to operate the tenant's business
 - Consider which permits, approvals and licences are required:
 - Building permit
 - Signage permit
 - Patio permit
 - Occupancy permit
 - Liquor license
 - Health permit
 - Electrical and/or fire permit or approval



PERMITS, LICENSES AND APPROVALS

- Time required to obtain required permits, licenses and approvals
- Appeal periods
- Don't waive conditions precedent until all permits, licenses and approvals are obtained and final and binding

AS WE ALL KNOW, TIME IS MONEY!



ENVIRONMENTAL LAW

- In some jurisdictions in Canada, our environmental laws are very different then those in the United States and other parts of the world
- Environmental concerns don't stop at underground storage tanks and hydro carbon contamination, which is typically, oil and gas
- Asbestos, PCBs and mould, can also raise very important environmental concerns.



WHO IS LIABLE FOR ENVIRONMENTAL CONTAMINATION?

- Generally speaking:

An owner, occupier or person in management or control of real property, is liable for any environmental contamination found in, on, under, and sometimes adjacent to, real property

- Fault is not a relevant factor in finding initial liability
- Tenant can potentially be held liable for pre-existing environmental contamination

RECORD OF SITE CONDITION

- Record of site condition, which has the effect, of establishing an environmental baseline for a property
- Records of site condition are not required in all jurisdictions or for all properties



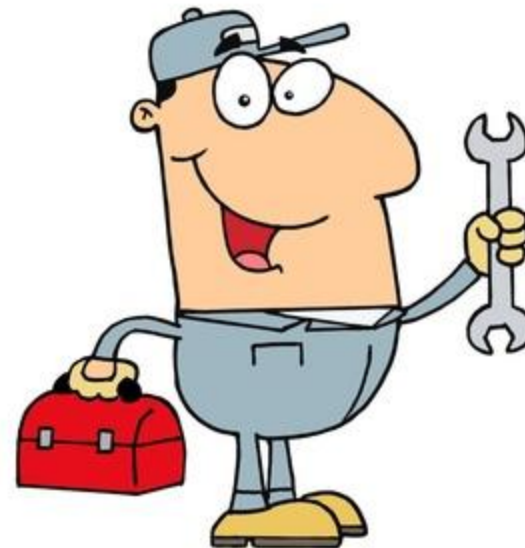
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SELF-HELP

- Landlord fails to provide services or make repairs
- Notice and cure
- Remedies/set-off



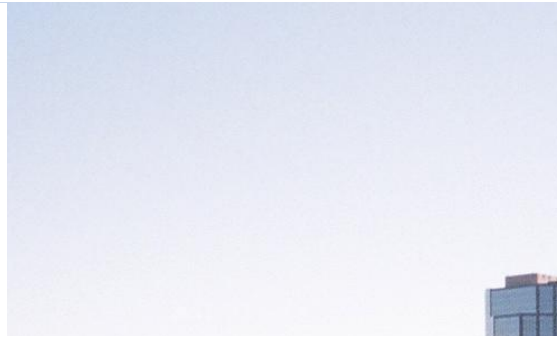
RESTORATION AND OVERHOLDING

- Does Tenant want Leasehold Improvements at the end of the Term? Does Landlord?
- Definition of Non Standard Leasehold Improvements
- Timing of Removal
- Overholding



GUARANTEES AND INDEMNITIES

- What is the difference?
- Compliance with Guarantees Acknowledgement Act



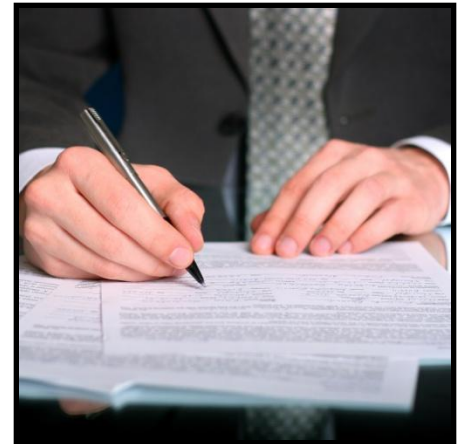
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OPERATING COSTS

- Largest component of additional rent
- Dependent on respective bargaining power
- No universal list
- Some very typical/market; some not
- Fees
- Ensure exhaustive list of costs
- Review statements
- Without duplication

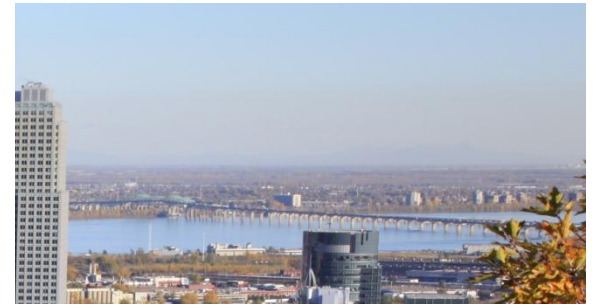
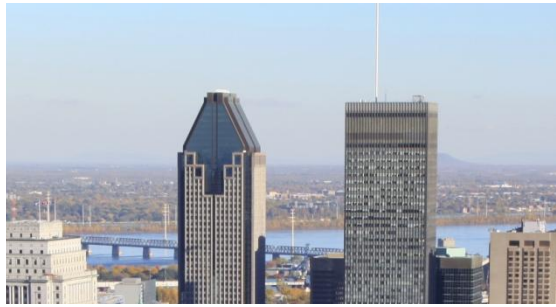
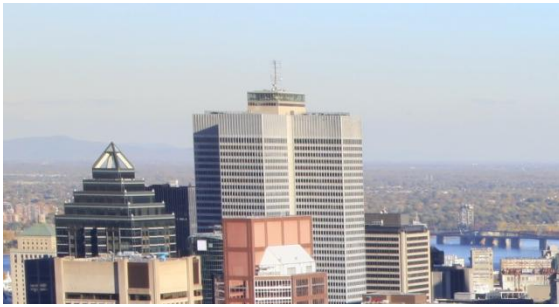


TAXES

- **Dependent on respective bargaining power**
- **Avoiding double taxation**
- **Administration fee**
- **Input tax credits**
- **Penalties and interest charges**

RELOCATION, DEMOLITION AND SUBSTANTIAL RENOVATION

- Control and flexibility over property
- Relocation concerns
- Quality of new premises, termination, approval, abatement, costs, change in rent, etc.
- Renovation concerns
- Hours, access, operating costs, etc.
- Demolition concerns
- Notice, costs, etc.



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USE CLAUSES

- Bargaining Power of Tenant
- Point of view of Landlord
- Point of view of Tenant



EXCLUSIVE USE RIGHTS

- **Inducement for Major Tenant**
- **Use of other tenants**
- **Importance of properly drafting such clause**
- **Remedies in case of default**

ASSIGNMENT AND SUBLETTING PROVISIONS

- Importance of such provisions
- Point of view of Landlord
 - Recapture right
- Point of view of Tenant
 - Offer to surrender
 - Permitted assignment and subletting

PROVINCE OF QUÉBEC, CANADA

- **Ground leasing**
 - **Definition**
 - **Ground Leasing in the Province of Québec**
- **Leasing and Land Transfer Tax**
 - **Term of Lease**
- **Language**
 - **French or English, your choice**



NOTICE OF LEASE AND NON DISTURBANCE AGREEMENT (Québec)

- Importance of Notice of Lease
- Legislation and standard practice
- Subordination and Attornment & Non Disturbance Agreement

SELF-HELP (Québec)

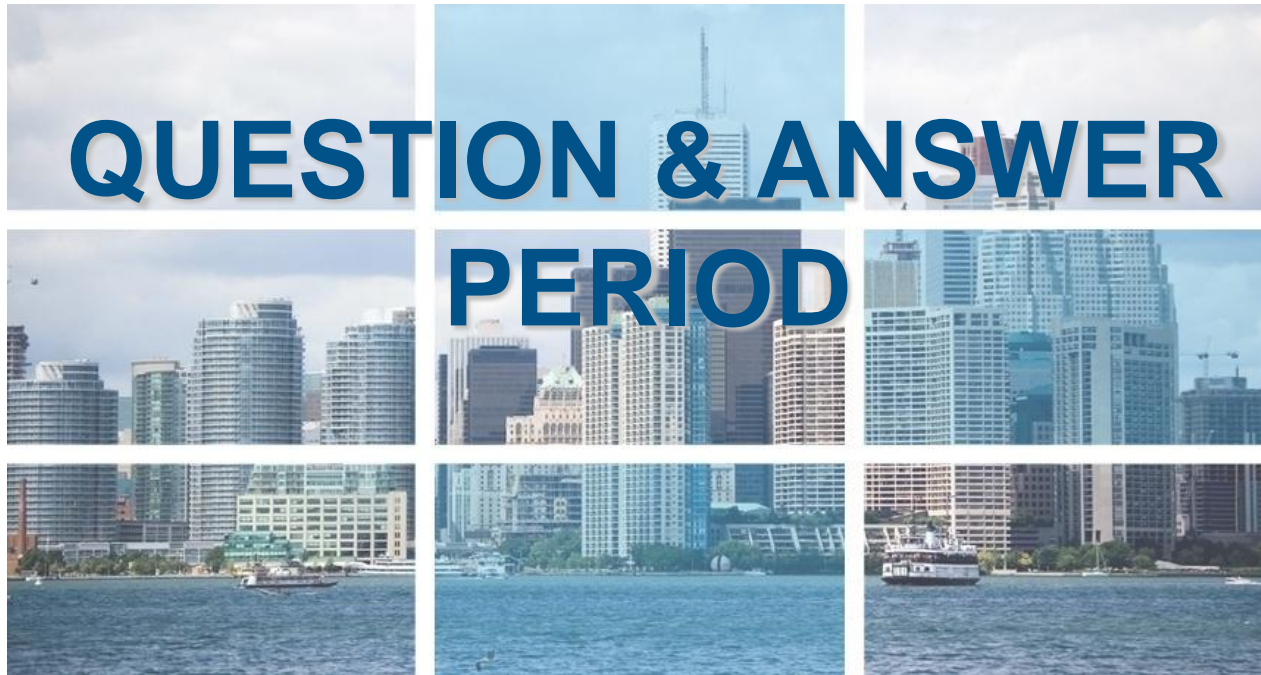
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Thank You

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