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COMMERCIAL REAL ESTATE

M A T T E R S

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BEWARE: Does your “non-real estate deal” trigger foreign ownership of land issues

by Annette Lambert

Whether buying land or otherwise acquiring an interest in land (including leasehold interests) as a result of a corporate change of control or share transfer, you must always consider whether such land is “controlled land” pursuant to the *Agricultural and Recreational Land Ownership Act* (Alberta). If it is, you must then determine what is required in order to comply with the *Foreign Ownership of Land Regulations* (Alberta). Bear in mind that there are a number of restrictions and prohibitions with respect to foreign controlled entities acquiring real estate interests in controlled lands in Alberta and there are additional filing and disclosure requirements with respect to non-foreign controlled entities.

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It should be noted, an acquisition of interest is deemed to have occurred in the event of a change in the membership or the ownership or the beneficial ownership of the shares of a corporation owning controlled lands.

In general terms, when submitting certain documents for registration at Land Titles (ie: transfers, caveats) with respect to controlled lands, entities that are not foreign-controlled must also submit a certain declaration in a prescribed form which lists the names and addresses of all shareholders holding a 5% interest or greater, including the names and addresses of the ultimate beneficial shareholders in instances where shares are held in trust. Moreover, the form of declaration for controlled lands held in trust, requires trustees of controlled lands to declare who they are holding the lands on behalf of, and requires corporations with share capital that are the beneficiaries of a trust to list the names and addresses of all shareholders owning 5% or more of outstanding shares. The obligation to disclose trust arrangements (both for holding shares or land in trust) applies regardless of whether the trust agreement is registered at the Land Titles Office.

Similarly, when submitting certain documents for registration at Land Titles (ie: transfers, caveats) with respect to controlled lands, entities that are foreign-controlled must also submit a certain declaration in a prescribed form claiming a prescribed exemption. If no exemption applies, the foreign-controlled entity is prohibited from registering the documents and from acquiring the interest. While the legislation provides for a number of exemptions, typically, the last recourse is the application for an exemption by Order in Council since this process can be quite lengthy and may be very costly.

It should be noted, an acquisition of interest is deemed to have occurred in the event of a change in the membership or the ownership or the beneficial ownership of the shares of a corporation owning controlled lands. Where such a change results in the corporation becoming a foreign controlled corporation and no exemption applies, generally, the foreign controlled corporation has 3 years to divest itself of the ownership or beneficial ownership of the interest in controlled land.

BOTTOM LINE: If you are contemplating a transaction involving real estate interests or involving a change in membership, ownership or beneficial ownership of entities holding any type of real estate interests, you must consider the impact of foreign ownership of land legislation for the transaction and for the corporation's future operations.



DEVELOPERS BEWARE: The Risks in Contracting with Municipalities

by Jennifer Varzari

INTRODUCTION

On a regular basis private parties, including developers, enter into contracts with municipalities. Oftentimes these parties view such “municipal contracts” as no different than contracts entered into with other private parties. Unfortunately, it is usually not until things go wrong with a municipal contract that it becomes apparent that this is not the case. In short, there are unique risks involved in contracting with a municipality.

FACTS

The unique risks involved in contracting with a municipality recently became apparent to a developer (“the Developer”) that entered into a Joint Venture Agreement (“the Agreement”) with the City of Calgary (“the City”).

In 2001, the City issued a proposal call to jointly develop some City owned lands. The Developer submitted a proposal, and, in June of that same year, the City selected the Developer to be its joint venture partner. The Developer and the City then negotiated and settled on the scope and terms of the Agreement, which was executed on January 20, 2003.

One City employee (“the City Employee”) was involved throughout the proposal call and consideration; the selection of the Developer as the joint venture partner; and the negotiation and finalization of the Agreement.

The Agreement contained terms that required the City to contribute land to the Joint Venture and required the Developer to contribute all the development costs to the Joint Venture. The Agreement also contemplated that once servicing and subdivision occurred, each party would be allocated net serviced lots based on its respective contributions.

The parties then proceeded to develop the lands in accordance with the Agreement.

Soon, the City realized that a storm water system contemplated by the Agreement had to be redesigned to accommodate the relocation of an LRT site. This entailed the Developer performing additional work (“the Additional Work”). The parties agreed that the Additional Work was not part of the scope of the Agreement and was therefore not part of the Developer’s development costs. They also agreed that the City would pay the Developer for the Additional Work at cost.

Again, the City Employee was involved throughout this process.

In February of 2004, the Developer and the City Employee had discussions about how the Developer would be paid for the Additional Work. These discussions led to a letter, which was signed by the Developer and by the City Employee (“the Letter”). The Letter modified the Agreement in a couple of ways. Most importantly though, the Letter said that the City would pay the Developer for the Additional Work, not with cash, but with land.

The City Employee believed that he was merely administering the Agreement by entering into the Letter. He therefore believed he had the authority to bind the City through the Letter, and consequently did not inquire into the bounds of his authority.

Servicing and subdivision were completed in 2005, and, based on the City and the Developer’s contributions, the City was allocated one Net Serviced Lot (“the Lot”). The Developer understood, based on the Letter, that it would be transferred the Lot as part payment for the Additional Work.

In June of 2005, the Developer contacted the City Employee to inquire about the transfer of the Lot for reimbursement for the Additional Work. In July of 2005, the City informed the Developer that it was seeking legal advice as to whether the City Employee had the authority to bind the City with the Letter. And at the end of September of 2005, the City confirmed to the Developer that it was its position that the City Employee was not authorized or empowered to execute the Letter. The City therefore refused to transfer the Developer the Lot.

The Developer then brought an Originating Notice in the Court of Queen’s Bench, and Mr. Justice LoVecchio ordered on May 24, 2007 that an arbitration tribunal would decide the fate of the Lot.

ARBITRATION DECISION

The arbitral tribunal (“the Tribunal”) therefore had to determine whether the City Employee had the authority to bind the City with the Letter such that the City was required to transfer the Developer the Lot as part payment for the Additional Work.

The Tribunal came to a split decision. Both the majority and the minority agreed that the *Municipal Government Act*¹, as modified by a City By-Law², set out rules for how contracts must be executed in order to be binding on the City. In particular, in order to bind the City, a contract authorized by City Council must be affixed with the official seal of the City and must be signed by two persons: (1) the City Clerk (or the Acting City Clerk); and (2) the Chief Executive Officer (or any employee of the City to whom the Chief Executive Officer delegates her/his signing authority, whether generally or specifically). Alternatively, the Chief Executive Officer may authorize agreements, which in her/his sole discretion are deemed appropriate, without the City seal and without the signature of the City Clerk (or acting City Clerk).

The majority and the minority also agreed that the Agreement complied with these rules of execution.

Finally, they agreed that a city employee who has overall responsibility for *administering* a properly executed contract has the authority to bind the City to transactions that are “trivial” or “administrative” to the Agreement³.

The majority and the minority disagreed on whether the Letter was a transaction that was “trivial” or “administrative” to the Agreement. Fortunately for the Developer, the majority sided with it and found that the Letter did nothing more than clarify the manner in which the net serviced lots would be allocated to the parties. It noted that:

For the City to take the position that the third concept contained in the Letter [namely that the City would pay the Developer for the Additional Work with land] resulted in a new agreement or contract which required full compliance with the City’s execution protocol is to disregard the commercial realities of a joint venture. Joint ventures require the parties to make constant decision to advance the project for the benefit of the co-venture partners.

Therefore, the majority found that the City Employee had the authority to bind the City with the Letter and therefore ordered the City to transfer the Developer the Lot as part payment for the Additional Work.

LESSONS TO BE LEARNED

While the Tribunal’s decision is private and therefore does not have the binding effect of a Court decision, it nonetheless provides some useful lessons to developers (and other parties) entering into contracts with municipalities:

1. Contracts with municipalities must be executed by the City in accordance with the *Municipal Government Act* and the Execution of Contracts Bylaw.
2. A City employee who has overall responsibility for administering a properly executed contract has the authority to bind the City to additional transactions that are “trivial” or “administrative” to the contract.
3. Whether an additional transaction is “trivial” or “administrative” to a contract is based on the unique facts of each scenario, and such a determination is often difficult to make on the facts because of the subjective nature of the terms “trivial” and “administrative”.
4. The commercial realities of a joint venture (such as the constant necessity of making decisions to advance the project for the benefit of the co-venture partners) likely do not permit city employees to constantly inquire into their authority to bind the City to additional transactions. Nor do the commercial realities permit private parties to constantly question city employees regarding authority. Furthermore, the realities of the City’s bureaucracy mean that City employees are often not aware of the bounds of their authority in administering City contracts, which means that even if private parties question City employees about their authority to bind the City to each additional transaction, they may receive incorrect information regarding authority from the City employees.

Footnotes

¹ R.S.A. 2000, c. M-26, s. 202

² Bylaw Number 43M99 Being a Bylaw of the City of Calgary to Provide for the Execution of Contracts and Other Documents (“the Execution of Contracts Bylaw”)

³ *Ottawa v. Letourneau*, [2005] 5 M.P.L.R. (4th) 73 (Ont. S.C.J)

The following is a brief discussion of the rights of landlords in insolvency situations, in particular, under the *Bankruptcy and Insolvency Act*¹ (“BIA”) and the *Companies Creditors’ Arrangement Act*² (“CCAA”).

LANDLORDS UNDER THE BIA

Except for two areas, the rights of landlords with respect to companies in bankruptcy are determined according to the laws of the province in which the leasehold property is located (BIA, s. 146). The two issues governed by the BIA are (a) the priority ranking of the landlord’s claim, as dealt with in s. 136(1)(f); and (b) the requirement for landlords to release to the trustee any property which is under seizure by the landlord as of the date of bankruptcy pursuant to s. 73(4). The obligation of the trustee to pay occupation rent as well as the trustee’s ability to disclaim or adopt leases and to assign leases in the course of the bankruptcy proceedings are all dealt with under provincial legislation.

Under section 30(1)(k) of the BIA, trustees have the ability to exercise any rights given under provincial law to retain, assign or disclaim leases. Accordingly, one must look to the relevant provincial act to determine what the trustee’s rights are. In Alberta, the legislation is the *Landlords’ Rights in Bankruptcy Act*³ (“LRBA”).

RENT UNDER THE BIA

The LRBA require trustees in bankruptcy to pay occupation rent calculated on the basis of the rent payable under the lease.

Section 136(1)(f) of the BIA gives the landlord a preferred claim for arrears of rent accruing in the three months immediately preceding a bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy (if the landlord is entitled to accelerated rent under the lease). However, the total amounts payable under s. 136(1)(f) cannot exceed the realization from the personal property of the bankrupt located on the leased premises. The claim for accelerated rent is not affected by the fact that a trustee disclaims or surrenders the lease shortly after the bankruptcy and the landlord obtains a new tenant immediately thereafter.

Landlords’ Rights In Insolvency Situations

by Doug S. Nishimura



If the lease provides that taxes and other charges are payable as rent, they can be included in the calculation of arrears of rent and accelerated rent. However, if such items are separate charges under the lease, they are mere unsecured claims in the bankruptcy.

TERMINATION OF THE LEASE UNDER THE BIA

If, prior to bankruptcy, a forfeiture has occurred and the lessor has taken some positive act to terminate the lease and take possession of the property, the lease is voided from that time and a trustee in bankruptcy cannot retain the lease. It is possible, however for relief from forfeiture to be granted, which must be sought in the ordinary civil courts and not the bankruptcy court. Since the 1997 amendments to the BIA, which removed the “dating back” of a bankruptcy to the date of the filing of the petition, it is now possible for a landlord to validly terminate a lease after the filing of a petition but before the granting of a the receiving order. Once the bankruptcy occurs it is too late for the landlord to terminate the lease because of the stay of proceedings in bankruptcy and the rights given to trustees under provincial law.

Typically, leases provide that the lessee will not assign the lease without leave. This provision is overridden by the rights of a trustee in bankruptcy to assign the lease. Those rights are governed by provincial law pursuant to a s. 146 of the BIA.

ASSIGNMENT UNDER THE BIA

In most provincial statutes, trustees are given the right to elect to retain and assign a lease. The provincial acts specify the procedure to assign a lease which, if not followed, may result in forfeiture of the lease to the landlord. The assignment procedures set out in the provisions of the provincial law may be waived by a landlord.

Under the LRBA, a bankruptcy trustee can assign a lease even where the assignment would otherwise cause the landlord to be in breach of its covenants to other tenants (ie. covenants not to rent to tenants in the same business as existing tenants): see *Re Little & Co.*⁴. In order to assign the lease in Alberta, the proposed assignee must be a “fit and proper person” to be put in possession of the leased premises, must covenant to observe and perform the

terms of the lease, and to conduct on the demised premises a trade or business that is not reasonably of a more objectionable or hazardous nature than that conducted on the premises by the original lessee. The purchaser must deposit with the landlord a sum equal to six months’ rent or provide a guarantee bond approved by the court in the sum of six months’ rent as security to the landlord. All arrears of rent must be paid prior to the assignment.

In Alberta the test for “fit and proper person” is whether the proposed tenant is both motivated and able to honour the covenants in the lease and the covenants under the provincial legislation. A court will consider the proposed tenant’s reputation in the community and evidence of the credit worthiness of the proposed tenant. However, in addition, the court will consider the status of the bankrupt estate, the availability of assets to meet the claims of creditors and the sum which would be realized for the creditors’ benefit from the assignment. See *Re Griff and Sommerset Management Services Ltd.*⁵ which has been adopted in Alberta.

Typically, leases provide that the lessee will not assign the lease without leave. This provision is overridden by the rights of a trustee in bankruptcy to assign the lease.

In Alberta, all overdue rent must be paid prior to an assignment (even if the amount exceeds the amount allowed for referred claims by section 136(1)(f) of the BIA). The proposed lessee must covenant to observe the terms of the lease and conduct a trade or business which is not reasonably of a more objectionable or hazardous nature than that previously on the premises. The business need not be of a similar nature to the bankrupt’s business, however, in at least one Ontario case, the court did consider the different nature of the proposed business in the context of a shopping mall with various business units and which contained a “user clause”, which restricted the types of businesses the tenant could operate in a lease. The court there left open the question of whether in some circumstances the user clause could be overridden by the court. Again, the test of the proposed assignee is “fit and proper”. The application is not made to the bankruptcy

court but to the ordinary civil courts. The court will not require the proposed assignee to give full security for future rent payments.

It should be noted that at least one case has held that, even if a lease permits subletting and assignment without leave, the provisions of the relevant provincial legislation still apply and must be complied with before a valid assignment of lease can be made by a trustee in bankruptcy.

CCAA

It is clear that, upon the approval by the court of a stay of proceedings under the CCAA, landlords can no longer forfeit leases or retain property seized by the landlord for rent arrears. “Proceedings” has been given a broad interpretation by the courts and, accordingly includes such steps. Further, in amendments to the CCAA which are not yet in force, the stay expressly includes termination by landlords.

TERMINATION UNDER THE CCAA

It is also clear that the court has the discretion to terminate certain leases as part of a Plan of Arrangement and can even give permission to the insolvent company to terminate leases as part of an Initial Order in the CCAA process. Usually, the Initial Order will provide that the termination of such leases will be on terms to be agreed upon by the landlord and insolvent company or, failing such agreement, any damages arising from the termination would be dealt with under the plan of arrangement. Since, in CCAA proceedings, claims are valued as they would be in bankruptcy, the total amount of damages a landlord can claim in the CCAA proceedings will be limited to the amount recoverable by landlords under the various provincial acts.

In the amendments to the CCAA (which have been passed but which are not yet in force), it is clear that debtor companies can terminate leases in which they are the lessee (in order to remove the burden of unwanted leasehold properties). However, the new section 32(2) of the CCAA says that the ability of debtor companies to terminate agreements does not apply in respect of, among other things, “a lease of real property ... if the debtor is the lessor”. In other words, the debtor company cannot evict its tenants under CCAA (in order for example, to obtain new tenants under more lucrative leases). It is

unlikely that such a termination would have been permitted prior to the amendments in any event, since such a termination would be extremely unfair to the tenant.

What is somewhat unclear under these amendments is whether a debtor company could terminate a head lease with its landlord if it has a sublease with a third party. In that case, the CCAA would expressly permit the termination of the head lease, but not the sublease (where the debtor company is the landlord). Obviously, the debtor company would not be purporting to terminate the sublease in such a situation, but with the absence of a head lease, could the sublease survive? It is quite possible that the court would deal with such a situation in the same manner as under the LRBA in a bankruptcy. In that case, a subtenant can step into the shoes of the head tenant. This is arguably a fair result, since the landlord receives the same rent as they always bargained for with the debtor company and the subtenant is not unnecessarily evicted.

In Chapter 11 bankruptcy cases in the United States (which are similar in nature to CCAA proceedings), the law is similar. Unexpired leases may be assumed or rejected by the debtor within 60 days of filing the petition for Chapter 11 (or a greater period of time if permitted by the court). Rejection of the lease gives rise to a pre-petition claim for damages (subject to a statutory cap).

ASSIGNMENT UNDER THE CCAA

A more difficult question is whether leases may be assigned during CCAA proceedings without landlord consent. While it would appear obvious that a plan of arrangement could contemplate the sale to a purchaser of the company's assets, including leases and such an assignment would be binding on landlords (if approved by the creditors and the court) what is less certain is whether leases may be assigned prior to the approval of a plan of arrangement.

The only instance known to the writer of assignments of leases by a CCAA debtor before a plan of arrangement was approved by the creditors, occurred in the CCAA proceedings of Nevada Bob's Golf Inc ("Nevada Bob's"). In that case, the insolvent company was the owner of a number of retail stores and, consequently the tenant in a number of commercial leases. As an ongoing means of sustaining itself and moving



...the debtor company cannot evict its tenants under CCAA (in order for example, to obtain new tenants under more lucrative leases).

towards a plan of arrangement, Nevada Bob's sold many of its stores, including leasehold interests. The purchasers became franchisees of the insolvent company. The order approving the sales provided that prior written consent of landlords to the assignments, where required under the relevant lease, was dispensed with and that the landlords were deemed to have approved of the assignment. The landlords were to be served with the order, which had a "comeback" provision whereby landlords could, within a set period of time, make an application to set aside or vary the order. There was no requirement for security for rent to be paid to the landlords. However, the order contemplated that all arrears of rent would be paid by the purchaser. Usually there was a corresponding adjustment to the purchase price for the assets.

While the court in the Nevada Bob's proceedings was satisfied that the assignment order granted was appropriate, no landlords actually brought an application to set aside or vary the assignment order. Accordingly, it is not known whether, on such an application, the assignment would be upheld or whether further conditions might have been added. It is submitted that, in proper cases, the court should uphold such assignments.

In Chapter 11 cases in the United States, assignments of leases are accepted and approved by the court. Accordingly, there is judicial authority for such assignments in debtor-in-possession legislation. Further, it is probable that, since the BIA provides for assignment of leases without landlord's

consent, the present CCAA, which is intended to be more flexible than the BIA, should permit at least the same relief and arguably should provide greater range for the assignment of leases with the criteria for such assignments, dependent on the circumstances.

Under the proposed amendments to the CCAA, on the application by a debtor company on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to a third party. The court considers whether the monitor approved the proposed assignment, whether the proposed assignee is capable of performing the obligations under the agreement and whether it would be appropriate to approve the assignment. All monetary defaults in relation to the agreement (aside from defaults relating to the commencement of the CCAA proceeds or the company's insolvency) must be remedied prior to the assignment. There is no provision in the proposed amendments for the requirement of consent of counterparties to an agreement and therefore it is arguable that consent might be done away with (although it would undoubtedly be a consideration). Accordingly, it is likely that the law under CCAA would more closely resemble the law under the LRBA with respect to assignment of leases.

Footnotes

- ¹ R.S.C. 1985, c.B-3
- ² R.S.C. 1985, c.C-36
- ³ R.S.A. 2000, c.L-5
- ⁴ (1988) 67 C.B.R. (N.S.) 23 (Alta C.A.)
- ⁵ (1978) 19 O.R. (2nd) 209 (Ont. C.A.)

At The Closing Table: Disposition of Property by a Single Purpose Corporation

by John Wilson and Kris Hildebrand,
Student-at-Law

- (1) Does the transaction constitute a sale, lease or exchange of property of the corporation?
- (2) If the answer to question one is yes, is it a sale, lease or exchange of all or substantially all of the property of the corporation?
- (3) If the transaction does constitute a sale, lease or exchange of all or substantially all of the property of the corporation, is it nevertheless in the ordinary course of the corporation's business?

Where a single purpose corporation holding a real estate asset looks to sell that asset answering the first two questions set out above does not present any issues. As such, the only question that remains is whether “the sale is in the ordinary course of the corporation's business”.

In considering this final question, the courts have provided guidance in some case-law by holding that where the property sold is integral to the corporation's traditional business, such that the sale strikes at the heart of the corporation's existence and primary corporate purpose, then such a sale is not in the ordinary course of business. See *Canadian Broadcasting Corp. Pension Plan v. BF Realty Holdings Ltd.*³ Similarly, the Ontario Court of Appeal stated that where such a sale effects a fundamental or defining change in the corporation so as to alter the basic nature of shareholders' investment in the corporation, then such a sale is not in the ordinary course of business of the corporation.

But wait — where the corporation's primary corporate purpose is to acquire, hold and ultimately dispose of a single real estate asset and where the shareholders invested on such a basis, couldn't the sale of that asset be considered to be in the ordinary course of the corporation's business? While the courts do not appear to have considered this question directly, it has been held in *Amaranth LLC v. Counsel Corp.*⁴ (“*Amaranth*”) that where a corporation's core business is the acquisition and sale of different businesses, the sale of any one such business, even if it constitutes all or substantially all of the assets of the corporation, may nevertheless be in the ordinary course of that corporation's business.

While it may be argued that the *Amaranth* case lends support to the argument that the sale of a real estate asset by a single purpose entity does not require shareholder approval, there is a key distinction in that the corporation in the *Amaranth* case had an ongoing corporate purpose following the disposition, whereas a single purpose corporation does not. Following the disposition of its sole asset, the single purpose corporation has completed its life cycle and is frequently wound up or amalgamated.

Prudent practice is to recognize that even though the sale by a single purpose corporation of its real estate asset may have been anticipated from the outset, it is nonetheless unlikely to be considered a transaction in the ordinary course of the corporation's business and as such requires shareholder approval.

Footnotes

¹ R.S.A. 2000 c.B-9

² R.S.C. 1985, c.C-44

³ (2002), 214 D.L.R. (4th) 121 (Ont. C.A.)

⁴ (2007), 27 B.L.R. (4th) 135 (Ont. S.C.)

Even where a corporation is created for the sole purpose of purchasing, holding and eventually disposing of a real estate asset, a shareholders' resolution approving the disposition should be tabled when closing such a sale transaction.

Section 190(1) of the *Business Corporations Act*¹ in Alberta and its federal counterpart, Section 189(3) of the *Canada Business Corporations Act*², are well known and provide that a sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders of the corporation.

In determining whether a particular sale transaction requires shareholder approval in accordance with the above provisions, the pertinent questions are:



Commercial Real Estate Practice

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BD&P's Commercial Real Estate Team provides advice and direction on all facets of the purchase and sale of commercial real estate including those associated with large and complex transactions. We act for clients buying or selling individual properties as well as portfolios of buildings, shopping centres, resort properties, condominium projects, mixed-use developments, assisted living facilities and development sites.

Our lawyers are experienced in the formation of real estate syndicates involving the use of joint ventures, limited partnership and other corporate vehicles. We work closely with other lawyers in the firm as part of a cross disciplinary team, drawing on the knowledge and skills of lawyers experienced in a variety of disciplines including the areas of tax, commercial transactions and securities law.

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If you would like any further information on any members of our team, such as a more detailed resume, please feel free to contact the Managing Editor. You may also refer to our website at www.bdplaw.com.



Cheryl C. Gottselig, q.c.:

Cheryl has a diverse commercial real estate practice including involvement in complex purchase and sale transactions and project financing, advising clients in joint ventures and limited partnership agreements, assisting lenders in the development of innovative approaches to financing and representing clients in land development negotiations in regards to land-use permits and classifications. Cheryl is a Past President of the Law Society of Alberta, served on all major committees of the Law Society of Alberta as a Bencher, is a Past President of the Calgary Bar Association, and has been a lecturer for the LSA Bar Admission Course, the Legal Education Society and the Calgary Real Estate Board.

Phone: (403) 260-0202 Email: cgc@bdplaw.com



Craig R. Hill:

Craig, the leader of BD&P's Commercial Real Estate Team, maintains a busy practice devoted to a variety of commercial real estate matters, including the development of multi-family residential, resort hotel and institutional condominium projects, commercial leasing, acquisitions and sales, land development joint ventures and real property financing. Craig has been a tireless volunteer in the cause of improving the affordable housing shortage in Calgary, being legal advisor to and past Board Chair Calgary Habitat for Humanity, member of the Board of Habitat for Humanity Canada as well as legal advisor to the Calgary Homeless Foundation and the Calgary Community Land Trust Society.

Phone: (403) 260-0187 Email: crh@bdplaw.com



Annette J. Lambert:

Annette's focus, while handling diverse commercial real estate matters, is in the lending practice of commercial real estate where she represents several chartered banks and institutional lenders in the active Calgary commercial real estate market. Annette has over 10 years of experience in corporate/commercial practice inclusive of a number of years with one of the large chartered banks as Manager of Documentation in the Commercial Markets. In this position, Annette acquired invaluable knowledge in the negotiation, drafting and preparation of a broad range of financing documentation.

Phone: (403) 260-0371 Email: ajl@bdplaw.com



John A. Peters, Q.C.:

John is a seasoned practitioner with over 25 years of experience both in private industry and private practice. John's practical experience is enhanced by his educational achievements, having attained both a Masters of Science in Business Management and a Masters of Laws in Securities Law since graduation from law school. John's focus in Commercial Real Estate is in the formation of real estate syndicates, including joint ventures and limited partnership arrangements. John is a member of the Urban Development Institute ("UDI"), an instructor with the Law Society's Bar Admission course and is a frequent author of legal articles.

Phone: (403) 260-5748 Email: jap@bdplaw.com



Beth E. Vogel:

Beth has over 20 years of broad corporate commercial experience both in private industry with some of Canada's pre-eminent commercial real estate companies and in private practice with a focus on the acquisition, disposition, development, financing, leasing and all other related aspects of major real estate projects. Beth has completed over \$10 billion in commercial transactions. Beth's current commercial real estate practice is concentrated in the purchase and sale of commercial property, leasing and development projects. Beth's clients benefit from her pre-law education as well, a Masters of Natural Resources Management, which focussed on the development, regulation and operation of a wide variety of resource development projects.

Phone: (403) 260-0301 Email: bzv@bdplaw.com



John P. Wilson:

John is the newest addition to the Commercial Real Estate Team, having been admitted to the Alberta Bar in 2006 and having joined the firm as an associate after his articles at BD&P. John's particular interests in commercial real estate are in land and condominium development, acquisitions and dispositions and real property financing and leasing. Having a business management background, John is able to bring his business acumen to the table in meeting our clients' objectives.

Phone: (403) 260-0396 Email: jpw@bdplaw.com



Leasing Practice Pointers

by Beth Vogel

LEASE NEGOTIATIONS

If it's important to you, make sure it is incorporated in the offer to lease, prior to reaching the stage of lease negotiations. Areas that should be considered (*apart from business terms*) include use, right to transfer or assign the lease to certain parties, exclusivity, relocation and demolition.

BINDING OFFERS TO LEASE

A Tenant should be careful when signing a binding offer to lease that requires the Tenant to sign the Landlord's standard form of lease. It is better to make the offer to lease conditional on the Tenant's review of the lease.

CAVEATS

A Tenant with a lease having a term greater than three (3) years must file a Caveat to protect its leasehold interest from a third party purchaser of the leased premises.

USE OF TITLE INSURANCE FOR TENANT CONSTRUCTION

A Tenant that wants to commence construction of its premises at a significant cost prior to registration of its caveat might consider using title insurance.

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Commercial Real Estate,

Editor-in-Chief

Craig Hill, crh@bdplaw.com..... (403)260-0187

Commercial Real Estate,

Managing Editor

Rhonda G. Wishart, rwishart@bdplaw.com..... (403)260-0268

Contributing Writers and Researchers:

Beth Vogel, Doug Nishimura, Annette Lambert, John Wilson,
 Jennifer Varzari and Kris Hildebrand

Contact

For additional copies, address changes, or to suggest articles for future consideration, please contact our Catherine Leitch in our Marketing Department at (403) 260-0345 or at cat@bdplaw.com.

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