



Legal Education
Society of Alberta

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Commercial Real Estate for Legal Support Staff

Edmonton, Alberta

Calgary, Alberta

Chair

Shannon Fleury

Field LLP

Edmonton, Alberta

Faculty

Erin Crocker

Stewart Title Guaranty Company

Edmonton, Alberta

Wendy D. Richardson

Ogilvie LLP

Edmonton, Alberta

Nancy Strong

Bishop & McKenzie LLP

Edmonton, Alberta

Darren J. Taylor

Gowling WLG

Calgary, Alberta

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Commercial Real Estate Purchase and Sale Transactions

Prepared by:

Darren J. Taylor

Gowling WLG



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PURCHASE AND SALE TRANSACTION

Where to Start2

We Start Where, or When, We Are Told2

 Letter of intent2

 Purchase and sale agreement.....3

Conditional Period.....5

 PSA review.....5

 Due diligence5

 Waiver.....9

 Deposit(s).....9

Pre-closing Period9

 Closing documents 10

 Financing..... 11

 Title insurance..... 12

 Trust conditions 12

Closing 12

Post-closing 13

Final comments..... 13

WHERE TO START

Rather than trying to write an academic paper with case references and significant detail, I have put together this paper that I hope will have some practical information and pointers that you can use. For more detailed information, checklists and explanations I refer you to the LESA Real Estate Practice Manual (Legal Education Society of Alberta, Real Estate Practice Manual (Edmonton: 2018)). It has more detailed information than I could possibly provide.

Although checklists and guides are very useful in a real estate practice, in commercial real estate I find that there are far more variations in commercial transactions, and you can't blindly rely on those checklists to complete a transaction. They remain helpful, but if you use them alone without considering the deal you could miss something very important. A couple of useful checklists or aids include a closing agenda and a critical dates memorandum. They may be prepared by the lawyer for the vendor or the purchaser and the critical dates information is often prepared by the realtors. These can be very helpful to make sure that you are covering all necessary steps and documents in a timely manner.

WE START WHERE, OR WHEN, WE ARE TOLD

The start of a purchase (and sale) transaction is dependent on when our clients decide to involve us. Some of our clients talk to us when they begin to think about buying or selling a property, but not many. In my experience most of them have already completed the majority of the business deal. They have talked to a vendor or purchaser and they have the deal basically underway and then they give us a call.

Letter of intent

There is some possibility that our clients will involve us at the letter of intent (LOI) stage of a transaction. This is not a necessary element of the transaction, but is sometimes used to get a transaction started, set out basic elements of a deal, and give the parties time to work out the balance of the details and enter into a purchase and sale agreement.

We may be provided with the LOI or we may be asked to draft it. Perhaps the biggest question with respect to an LOI is whether or not it is a binding letter of intent. In my experience they are rarely binding. The problem with making them binding is that they don't have enough detail. They will generally have the price, the parties (though often the purchaser will change by assignment or will be a nominee), conditions and other basic information. Generally, an LOI is used to allow the parties further time to negotiate and cease further "shopping" of a transaction.