Legalization of Recreational Cannabis and its Impact on Commercial Real Estate

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Legalization of Marijuana

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While the coming months and years will reveal the full extent of how the legalization of recreational cannabis will impact commercial real estate law, it is difficult to envision that there will be sweeping changes to the common law in Alberta respecting commercial tenancies, or large-scale amendments to the Land Titles Act or the Law of Property Act that would impact registration against title, priority, conveyancing practices or the enforcement of commercial mortgages, solely as a result of the legalization of recreational cannabis.

That said, the legalization of recreational cannabis has spawned a new pool of potential tenants and owner-occupiers, along with a number of new businesses who may be looking to obtain financing to facilitate operational growth. Consequently, these new players will have an impact on the Alberta real estate market, including the retail, office, industrial and investment sub-markets. For example, for those who may be looking to acquire a piece of serviced industrial land for the construction and operation of a cannabis production facility in Edmonton or the surrounding area, they may add to the imbalance between the supply and demand of serviced industrial land, leading to further escalations in land acquisition costs. For those in need of an administrative office to support their operations, the glut of supply of new office construction in both Edmonton and Calgary may lead to some positive absorption, although it would be hard to imagine that this absorption would have a material impact on office rental rates. Retail is generally seen as a strong and stable asset class in Alberta, and the influx of those looking to secure retail space to operate a dispensary may very well put upward pressure on rental rates, particularly in sought-after locations with high-foot traffic. Lastly, investors may have some challenges when valuing income generated from tenants who are involved with the production or retail sale of cannabis, as they may have little or no financial history prior to commencing operations from that space. Will pricing of these assets be compressed as a result of this heightened perceived risk?

Not only will the legalization of recreational cannabis impact our real estate market, it will also impact commercial real estate practitioners, as these new ventures require (and should demand) a degree of specialization in their legal services to help them navigate this new landscape. Nowhere is this more apparent than in the area of tenant representation in cannabis retail leasing.

There are a number of issues that a cannabis retailer and their solicitor must address at the offer to lease or letter of intent stage that are equally applicable to all tenants. These include: