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Happy Holidays



December 17, 2010

Volume XIII, Number 3

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Edmonton Milestone Night

While in Edmonton for the fall Board meetings, the REIC National Board took part in the REIC and IREM Edmonton Chapters Milestone night in which many members of the chapters were recognized for their long term commitment to the Real Estate Institute of Canada.

Members who were honoured were:

- Salim Johnson CRES, ARP - 10 years
- Lucien Roy FRI(E) CPM® CMOC - 10 Years
- Taras Chmil FRI, CRES - 10 years
- Chrystal Skead, CPM ARM® - 10 and 20 years
- Mahendra Tailor FRI, CLP - 20 Years
- C.H. William Cheung FRI - 20 Years
- Anita Fleming FRI - 20 years
- Larry Lunseth FRI - 20 years
- Robert Smith FRI, CLO - 20 years
- Frank Gibson, FRI - 25 years
- Kenneth Niziol FRI, CMR - 30 years

Congratulations to all these members for their longstanding achievement.

[View Pictures from the event here](#)

REIC Executive Director earns her own Designation

Recently, REIC Executive Director & CEO Maura McLaren attained her own designation through the Canadian Society of Association Executives (CSAE). McLaren earned her CAE® (Certified Association Executive) designation after much hard work and dedication.



McLaren with her CAE Designation

The CAE designation is conferred to candidates who demonstrate mastery of the Not-for-Profit Management Competencies, whether by completing the CAE courses and professional exam or by Prior Learning Assessment Recognition. Since 1972, CSAE has certified not-for-profit leaders in the practice of association management.

CSAE is many things to many people - a source of information, education, inspiration and motivation to name just a few. First and foremost, however, it is an association.

Considered by many as Canada's "association of associations," CSAE is the professional organization of the men and women who manage many of this country's



most progressive associations, as well as those who supply the sector with essential products and services.

"I want to thank everyone for their support .This truly means a lot to me," emphasizes McLaren. " Not only have I put allot of effort into obtaining my own designation but I also have gained a better understanding of what our REIC members put forth to earn one of our designations."

Congratulations to the REIC Executive Director & CEO!

REALTOR® REALITIES:

Get the Right REALTOR and get them working for you.

By William McCarthy, FRI CPM CLO

We live in truly unprecedented times with regards to our real estate markets. While real estate is traditionally focused at the local market level, our economies are now linked globally. For the past decade we have seen, and are still living through a cycle of real estate boom and bust, and great uncertainty. Therefore, more than ever, those who are actively engaged in the real estate industry, and the consumer seeking their services must be prepared for these new realities. The need for professionalism is paramount.

There are roughly 100,000 licensed Realtors across Canada, and hundreds of thousands of individuals work in the real estate markets and related fields such as finance and construction, yet only a few thousand are members of professional organizations such as the Real Estate Institute of Canada (www.reic.ca) and hold professional designations. If real estate is to continue to be the foundation of our society and economies, then it is incumbent for those working in this industry to commit themselves to professional development and excellence, and for the consumer to seek these individuals out.

Circumstances have now made the relationship between the Realtor and the Client more of a partnership than at any previous time. Ongoing changes to provincial Real Estate Acts and practices (in Canada real estate is governed by each individual province), and the pending tribunal between the federal Competition Bureau and the Canadian Real Estate Association (www.crea.org), ensure that the professional and the client must work closely together. Therefore, much like selecting a doctor or other professional, the client must have a sense of trust and confidence in their real estate practitioner, who in turn must earn this respect by way of their skill, knowledge, accreditation, and ethics.

What makes a successful real estate professional, and likewise, what should the client be seeking? The career real estate practitioner will have strong personality traits, show evidence of obvious and specific skill sets, and have a demonstrated commitment to ongoing professional development. These three components of success are:

1. PERSONALITY TRAITS

- Good Communicator
- Determination and Patience
- A focused Analytical Mind
- Goal Oriented and a Solid Work Ethic
- Sense of Timing / Can Prioritize
- A competent Presence / Inspires Confidence
- Confident / Inspires Confidence
- Honesty / Trustworthy / Ethical

2. SKILL SETS

- Skilled writer and document drafter.
- Excellent Negotiator.
- Can simultaneously comprehend, analyze & prioritize several tasks.

- Ability to select and lead a team of professionals.
- Mediation skills and ability to bridge.
- Able to sense hidden value, and problems.

3. PROFESSIONAL DEVELOPMENT

- Knows the importance of and is committed to ongoing professional development and accreditation.
- Membership in respected and relevant professional associations.
- Professional designation(s). i.e. FRI, CPM, ARM, CLO, CRF.
- Detailed knowledge of their respective market. Continuously updating data.
- Seeks out mentors. Have trusted advisors.
- Knows their current affairs, economic and business matters, and political and societal issues. Believes that knowledge truly is power.
- Regularly attends seminars and courses.
- Has designed their own professional development and education plan.

In turn, the prudent client will take advantage of the unprecedented wealth of information readily available on-line and through other sources. They will do some preliminary analysis on their own property, and then begin to evaluate Realtors and professionals. This process will include:

- Review the professional's resume, record, reputation, and that of their Agency.
- Assess the experience and energy of the professional.
- Review the professional organizations the professional belongs to, and their professional accreditations, standards, and Code of Ethics.

The client will be seeking a professional who will help them realistically assess their particular property and their goals and objectives. In this partnership, the professional will advise and prepare the appropriate listing agreements and contracts, the pricing of the property, and the marketing of the property and how to assess and respond to Offers and suggestions. They will be your trusted advisor throughout the entire process.

Therefore, having carefully considered the above, before you contractually engage a professional, take the time to study in advance those professionals active and knowledgeable about your market, and prepare to meet and interview several of them. Take your time. When you meet, consider how prepared and organized the professional is. Ask them about their marketing and pricing strategy for your property. This is the time to discuss the specifics of the listing agreement and your commission and fee structure. The client and the professional should be prepared to challenge one another to ensure that there is the potential for a good working relationship. In doing all these steps, the time and effort the client and the real estate professional commit, will ensure a productive and positive experience. This will be the future of client and agent relationships.

Please Note: This article will be printed in an upcoming Issue of "building Your Home Magazine". Look for it on your local news shelves early in 2011.

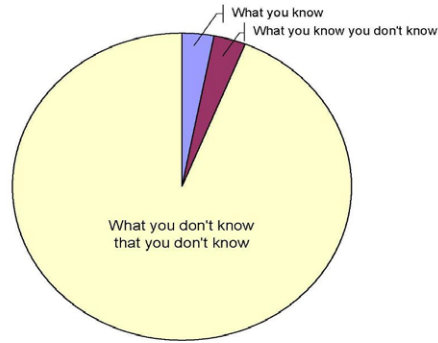
Commercial Leasing By Renaud Campbell, FRI(E) CLO

What You Know About Commercial Leasing

It is with this in mind that I propose a challenge to my real estate colleagues, particularly those who only do the occasional commercial lease. The challenge is this, are you willing to accept that there are elements of a lease that 'you don't know you don't know', but are still pretty important?

For instance, a lease, as we're told, must contain the following elements; the identity of the lessee and lessor, a description of the property, a term,

What you know...



and an acknowledgement of consideration (rent). You could get away with agreements that only included these items if you didn't want to address specific obligations of the parties during the lease term. However, in the many hundreds of years during which people have been leasing land and property, we've built up a pretty significant set of obligations, rights, and expectations that are important in defining the leasehold relationship between lessor

and lessee. Experience has taught us that if we omit these important elements, and the lessee does not 'enjoy' their property as they imagined they would, or the lessor does not benefit from the lease of their land in the way they imagined they would, costly arguments will arise. So we spend extra time up front to ensure we get as clearly defined a relationship as we possibly can between the two parties.

Here are a few areas of a lease that often get skimmed or ignored because they appear obscure, unlikely, or so obvious that it is seemingly senseless to write them down...well, write them down:

Reasonableness Clause

How can anyone 'reasonably' refuse a clause, the very first clause in a lease in fact, that states that everyone's going to act reasonably in the execution of their responsibilities under the lease? It sets a great tone for negotiations but, more importantly, it's the first thing that future readers will look at and understand as the basis upon which the rest of the agreement was built by the eminently reasonable negotiators. We all know the test of reasonableness is murky at best, but that's not the point. It's about setting a tone. For that reason, I highly recommend a reasonableness clause and caution that any balking at its inclusion is cause for concern.

Business Operating Standards:

When it comes to repair and maintenance obligations, the lessee is best served by knowing those essential building systems that are important to their business. This is a risk management issue, but moreover, a business continuity issue. Some common examples include power, telecommunications, water, etc. The question is, without caring who caused the interruption, how long could you go without power for your computers, elevators to your customer service desk, or telephone lines to your offices? Now care about who's responsible. If the lessee and lessor knew how important these elements were to the business, could they take steps to mitigate their impact? How about securing dedicated back-up power, ensuring a minimum number of operational elevators during annual maintenance, establishing a time-to-repair commitment, or securing redundant telecommunications providers? And if both parties agreed to their criticality, could it be written in the lease that certain systems must be given priority in the repair and maintenance obligations due to their critical nature, with penalties if they are not? Of course. The key is knowing your business, and the operational foundations of your business so well that these requirements are first part of the search and design parameters, and secondly, a part of the lease obligations. By the way, does your building's management have a business continuity/recovery plan?

Is it Important that I Register my Lease?

Yes! Depending on where you're located and the registry system used, you would want to register either a Notice of an Agreement for a Lease, or a Caveat (a heads up to the existence of a lease), the effect is the same though. The key benefits are that it acts as a public record and a public notice of your legal interest in the property. This is relevant when establishing 'priority of claims' (See SNDA section) and notice of key options and easements. Registration is cheap, easy, and typically

considered an annoyance by a lessor. However, with an SNDA in hand, it shouldn't offend any reasonable party.

Subordination, Non-Disturbance and Attornment (SNDA) Agreement: Is it worth fighting for?

First and foremost, if you knew enough based on the heading to answer 'yes' or 'no', you know a fair amount about commercial real property leases. Alongside the exhaustively careful language of insurance clauses, the SNDA is equally as important and misunderstood. The principle of an SNDA is that the "S" states that the lessee agrees that the landlord's mortgage lender has a higher priority claim than their own (regardless of when the lease or mortgage was registered) if a financial claim arises against a defaulting landlord. The "A" requires the lessee to recognize and honour their lease commitments to a new lessor that steps into the current lessor's shoes due to the owner's default. Finally, the "ND" makes it okay to agree to the previous two because the lender agrees that as long as the lessee is not in default, it will honour the lease.

It's tricky stuff, but properties change hands frequently, not always voluntarily. When that happens, both parties (the lessee and landlord's lender) are better protected with an SNDA.

Space Measurement

Someone once said, "the nice thing about standards is that there are so many to choose from". In a multi-tenant commercial building, there will likely be some standard that specifies a methodology for measuring the leased premises and, likely, the lessee's proportionate share of the common areas of the building. The building atrium, elevator shafts, hallways, mechanical spaces and more comprise the common areas of a building (those, for instance, that theoretically benefit all occupants or are not paid for by some other means). What happens, frequently, is that the lease states that the space will be measured against the then current measurement standard. Unfortunately, standards can change between renewals and the leased space may be remeasured according to a new standard which almost certainly will include new areas not previously thought of as 'common'. Simple wording changes in the clause containing the space measurement conditions can hold the measurement to a known and trustworthy standard, providing some predictability to the lessee's future costs.

The Final Word

Those are just a few of the often overlooked clauses contained within a typical commercial lease. So, back to the challenge. A lease is meant to protect certain rights and explain obligations. Without advanced and thorough leasing knowledge to navigate the twists and turns, the risk exists that a party with better knowledge will lead the other astray. Unfortunately, an executed lease is not always the result of a win-win negotiation. In fact, there is often one clear 'winner', and it's not always in the rent, term, or additional rent where we spend so much time negotiating. Those can be the red herrings that distract you from other important clauses that can come back to haunt you in the future.

A qualified real estate professional, trained in the speciality of commercial leasing, is an invaluable resource that should be relied upon to add to the 'what you know' piece of the knowledge pie. The first step though, is acknowledging those elements of a lease you 'know you don't know', and looking for qualified experts and education opportunities that will enhance 'what you know' about commercial leases.

Let me take you back in time to my first year of university. Day one of some now forgotten class. All forgotten except for the one insight that I have often referenced over the past 20 years. The professor drew an empty circle on the overhead projector (well, it was twenty years ago) and observed, "this circle represents the world's pool of knowledge". He drew a very small sliver to create the beginnings of a pie chart and said, "this small piece represents what you know". He drew a second small sliver next to the first one and labelled it, "what you know you don't know". For most, this includes knowledge about how to clone a sheep, build a nanobot, or perform open heart surgery. On the remaining 98 per cent of the pie chart he wrote, "what you don't know that you don't know". For a know-it-all freshman, this was a powerful concept. So powerful in its simplicity. It asked us to simply possess enough humility to be willing to open our minds to the possibility that we don't know everything. In fact, we don't even know...what we don't know...until some other

learned knowledge opens that door.

REIC National Office Holiday Hours:

Please be advised that the REIC National Office will close for the holidays at **4:00PM on Friday December 24th** and will re-open at 9:00 AM on **Monday January 3rd, 2011.**

All the best for the Holiday season and to a great 2011!

Please Remember to follow REIC on the web at:



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