Global Corporate Real Estate Guide - Canada

Leases

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# What are the usual forms of leases?

Ground leases

One form of a leasing arrangement is a long-term ground lease, in which a tenant leases vacant land and develops it. Once development is completed, the ground tenant may sublet space to retail, office or industrial tenants, depending on the type of development. Ground leasehold interests may be bought and sold in a manner similar to freehold property interests. The use of ground leases for development projects has become increasingly popular over the past 30 years.

Commercial leases

Most commercial office and retail space, and much of the standard industrial space in Canada is available only through a commercial lease. Most commercial lease transactions commence with an offer to lease, which contains the business terms agreed upon by the parties, including the space, term, rent and any tenant inducements.

Commercial leases usually fall into two categories: net lease or gross lease. The most typical form of a commercial lease is a net lease which requires a tenant to pay basic rent plus additional rent comprising a proportionate share of realty taxes, insurance, utility and common area maintenance charges. In a retail lease, a tenant may also be required to pay rent based on a percentage of its annual sales. In a gross lease the tenant agrees to pay a fixed amount and that fixed amount includes the tenant’s share of operating expenses and realty taxes.

Residential leases

Residential leases are regulated by provincial legislation; in some cases, the applicable legislation will override the terms of the lease contract, regardless of the intention of the parties. In some provinces, including Ontario, the ability of the landlord to increase residential rents is limited by provincial regulation.

# Are lease provisions regulated or freely negotiable?

Generally, lease provisions are not regulated and are freely negotiable. However, most provinces establish certain rights and obligations of commercial landlords and tenants that apply to all commercial leases which cannot be limited, changed or modified in the lease.

# Is there a maximum term for leases? Can these be extended?

Long term leases will sometimes trigger planning issues and land transfer taxes (these are generally not triggered by leases for terms of less than twenty years, including renewal and extension rights). Some provinces set a maximum term for leases. In Quebec, the maximum term of a lease, including renewals, is 100 years. In Ontario, unless planning consent is obtained or the lease covers only a portion of a building, a lease for a term of 21 years or more that only applies to a portion of the landlord’s real property is generally considered void. If a lease is for a term of 50 years or more it is subject to land transfer tax on the fair market value of the land.

# What are the usual lease terms?

Most commercial leases are for a 5-year or a 10-year term. Often, the leases will provide the tenant with extension or renewal rights.

# Are there instances where tenants may demand an extension of the lease?

Commercial tenants do not have a default legal right to renew or extend their leases. Renewal and extension rights are a matter of negotiation between landlords and tenants.

It must also be noted that there is a distinction between a renewal right and an extension right. The exercise of a renewal right terminates the existing lease and begins a new lease. Rights that are personal to the tenant, such as purchase rights, rights of first refusal and exclusivity rights will not apply during the renewal term, unless the lease expressly provides otherwise. By contrast, the exercise of an extension right continues the existing lease, including rights that are personal to the tenant.

# On what grounds may a lease be terminated?

Commercial leases generally terminate at the expiry of the lease term but can also be terminated when there is a breach or default of the lease or if there is a contractual right to terminate the lease early. Termination for breach or default of the lease is usually the result of a tenant’s failure to pay rent, insolvency of a tenant (subject to statutory restrictions) or tenant assigning or subletting the property without the consent of the landlord.

# Must rents be paid in local currency?

The parties are free to set the rent in other currencies, but arrangements for payment of rents in foreign currency are not typical in Canada.

# Is rent paid on a monthly basis? Is it required to be paid in advance?

This will depend on the agreement of the parties. Rent is usually paid monthly, at the beginning of the month, in advance.

# How is rent reviewed? Are there limits to the increase in rent?

Basic rent is usually fixed at the beginning of the initial term and will often increase each year during the term. Basic rent upon renewal or extension may also be fixed or may be adjusted to reflect the market value at the time of renewal or extension. In addition to the basic annual rent, commercial tenants will generally also pay a share of municipal taxes, insurance and common area maintenance costs on terms set out in the lease agreement.

Some provinces, like Manitoba, British Colombia and Ontario, set an allowable annual percentage increase in rent for residential leases.

# What are the basic obligations of landlords and tenants?

The following are usually required of landlords:

Repair and maintain the structure of the property, except when the tenant leases all of the property and makes improvements on it

Insure the property

Provide tenants with a valid notice of termination (in writing) if terminating the tenancy

Provide a non-defaulting tenant with quiet enjoyment of the property

The following are usually required of tenants:

Pay rent on time, including taxes and a share of the operating expenses for certain asset classes

Keep the property in good order

Inform the landlord if repairs are needed that are the landlord’s obligation and give the landlord access to the property to carry out repairs

Give the landlord access (often by appointment) for inspections and landlord’s work

Seek the landlord’s prior consent before making alterations to the property

# What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

Tenants are generally allowed to assign the lease or sublet the premises, provided that they obtain written consent from the landlord. The landlord is usually required to act in a commercially reasonable manner when considering the tenant’s request.

# What happens in the event of destruction of the leased premises?

If the premises are substantially damaged or destroyed by an act of God, the lease is often terminated. Rent generally abates according to the extent of the damage or destruction.

If the premises are damaged or destroyed due to causes attributed to the tenant, then the tenant may be liable for repairs or replacement.

# Who is usually responsible for insuring the leased premises?

Leases typically require that both the landlord and the tenant will obtain insurance, each for their respective interests in the leased premises and its contents. The Landlord typically carries business interruption insurance, “all risks” insurance on the structure (including leasehold improvements), boiler and machinery insurance and a general commercial liability policy. Tenants typically carry building “all risks” insurance, general commercial liability insurance, business interruption insurance and property insurance for the contents.

# Will the lease survive if the owner sells the leased premises?

Generally, lease agreements survive a sale and are binding upon the new owner of a property.

# Will the lease survive if the leased premises are foreclosed?

In the absence of a non-disturbance agreement, if a property is sold through a mortgage power of sale or foreclosure of a mortgage over the property that has priority over the lease, the lease will not survive at the option of the lender and may be terminable at the option of the tenant. Typically, a lender and tenant enters into a subordination and non-disturbance agreement that governs what will happen to a lease in the event of a foreclosure sale.

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.