## **Table of Contents**

# CHAPTER 1. THE LANDLORD'S ASSIGNMENT: THE TRANSFER OF A LANDLORD'S RIGHTS, OBLIGATIONS AND REMEDIES

§ 1:1	Introduction
§ 1:2	Statute
§ 1:3	Landlord's Interest
§ 1:4	Attornment by the Tenant
§ 1:5	Lease Covenants
§ 1:6	Landlord and Tenant Liability After Assignment
§ 1:7	Original Landlord Rights
§ 1:8	Original Landlord Obligations
§ 1:9	Assignee Landlord Rights
§ 1:10	Assignee Landlord Obligations
§ 1:11	Indemnity of Original Landlord
§ 1:12	Partial Transfer of Leased Lands
§ 1:13	Drafting the Transfer Provision—Landlord and
	Tenant Perspectives
§ 1:14	Landlord
§ 1:15	Tenant
§ 1:16	Due Diligence Obligations of Purchasers of Land
	Subject to a Lease
§ 1:17	Barriers to the Landlord's Assignment—Right of
	First Refusal/Option to Purchase
§ 1:18	Transfers of the Landlord's Interest to a Mortgagee
§ 1:19	Assignment of the Landlord's Interest to a Receiver

# CHAPTER 2. REMEDIES FOR A LANDLORD'S UNREASONABLY WITHHOLDING CONSENT TO A TRANSFER

§ 2:1 Background

Conclusion

§ 1:20

- § 2:2 Tenant's Available Courses of Action
- § 2:3 Grounds for Landlord Withholding a Consent
- § 2:4 Landlord's Risks in Withholding Consent
- § 2:5 Tenant's Possible Claims for Damages, Termination of Lease or Cessation of Rent

- § 2:6 Tenant's Potential Claims for Landlord's Failing to Act in Good Faith
- § 2:7 Conclusion

## CHAPTER 3. THE LEASE AS SECURITY— THE COMPETING INTERESTS OF THE LANDLORD AND THE TENANT'S SECURED LENDER

- § 3:1 Introduction
- § 3:2 Leasehold Mortgages and Charges
- § 3:3 —Assignment
- § 3:4 —Sublease
- § 3:5 —Charge
- § 3:6 Landlord's Consent
- § 3:7 Notice of Tenant's Defaults
- § 3:8 Duration and Amount of Security
- § 3:9 Lender's Entry and Possession
- § 3:10 Lender's Release
- § 3:11 Tenant's Bankruptcy
- § 3:12 Collateral Other than Leasehold Interest
- § 3:13 Conclusion

### CHAPTER 4. THE IMPACT OF THE USE CLAUSE ON AN ASSIGNMENT, SUBLETTING OR CHANGE OF CONTROL IN A COMMERCIAL LEASE

- § 4:1 Introduction
- § 4:2 Use Clause Overview
- § 4:3 Balancing the Needs of the Landlord and Tenant
- § 4:4 Landlord Beware Problems and Pitfalls
- § 4:5 The American Experience
- § 4:6 Drafting Tips for Landlords
- § 4:7 Conclusion

### CHAPTER 5. THE CONFLUENCE OF STREAMS, THE INTERTWINING OF ROPE, AND OTHER SOPHISTRY: AMALGAMATIONS AS AN ASSIGNMENT OF THE LEASE

- § 5:1 Introduction
- § 5:2 The "Mainstream" Canadian Position

#### Table of Contents

- § 5:3 Crescent Leaseholds
- § 5:4 Crescent Leaseholds, Forty Years Hence
- § 5:5 The American Position
- § 5:6 Policy
- § 5:7 Drafting
- § 5:8 Conclusion

# CHAPTER 6. LEASE ASSIGNMENTS AND INSOLVENCY

- § 6:1 Introduction
- § 6:2 Statutory Framework
- § 6:3 —Bankruptcy and Insolvency Act
- § 6:4 —Provincial Legislation
- § 6:5 Liability for Occupation Rent
- § 6:6 Assignment of Leases
- § 6:7 Subtenancies
- § 6:8 Restructuring or Reorganization
- § 6:9 Interim Receivership or Court-Appointed Receivership
- § 6:10 Privately Appointed Receiver
- § 6:11 Conclusion

# CHAPTER 7. SUBLETTING TRICKS AND TRAPS

- § 7:1 Introduction
- § 7:2 What is a Sublease?
- § 7:3 When is a Sublease Used?
- § 7:4 Privity of Contract
- § 7:5 Privity of Estate
- § 7:6 Termination of the Head Lease
- § 7:7 Surrender of the Head Lease
- § 7:8 Bankruptcy of the Head Tenant
- § 7:9 Subtenant's Waiver
- § 7:10 Sublease Under Periodic Head Lease
- § 7:11 Subtenant's Refusal to Vacate
- § 7:12 Conclusion

# CHAPTER 8. COMMENTARY ON A LANDLORD'S FORM OF SUBLEASE

- § 8:1 Introduction
- § 8:2 The Sublease
- § 8:3 Recitals
- § 8:4 Grant

#### Assignment, Subletting, and Change of Control

§ 8:5	Covenants and Acknowledgments of Subtenant
§ 8:6	—Section 21 of the Commercial Tenancies Act
§ 8:7	—Section 39(2) of the Commercial Tenancies Act
§ 8:8	—Section 17 of the Commercial Tenancies Act
§ 8:9	Covenants of Tenant and Subtenant
§ 8:10	Consent and Conditions
§ 8:11	Tenant's Exercise of Rights
§ 8:12	Notice
§ 8:13	Confirmation
§ 8:14	Binding
§ 8:15	Signing Page
§ 8:16	Schedule "A"

Appendix 8A. Sublease Precedent

§ 8:17 Appendix "A"—Indemnity Agreement

# CHAPTER 9. THE RIGHTS AND OBLIGATIONS OF THE ORIGINAL TENANT AND SUBSEQUENT TENANTS AFTER AN ASSIGNMENT OF LEASE

§ 9:1	Introduction
§ 9:2	Nature of a Lease
§ 9:3	Continuing Liability of Assignor—Privity of
	Contract
§ 9:4	—Privity of Estate
§ 9:5	-Right of T1 to Regain Possession on T2's Default
§ 9:6	—Release of T1
§ 9:7	—Renewal of Lease vs. Extension of Lease
§ 9:8	Liability of Assignee—Privity of Contract
§ 9:9	—Privity of Estate
§ 9:10	Impact of Enurement Clauses
§ 9:11	Renewal of Lease vs. Extension of Lease
§ 9:12	Liability of an Original Landlord After an
	Assignment

# CHAPTER 10. THE COVENANT NOT TO ASSIGN A COMMERCIAL LEASE WITHOUT THE LANDLORD'S CONSENT — MODERN DEVELOPMENTS

- § 10:1 Introduction
  § 10:2 Assignment of a Lease
  § 10:3 Section 23 of the Commercial Tenancies Act
- § 10:4 Wording of the Covenant

#### Table of Contents

10:5	Assigning without Consent
10:6	Landlord Ignoring the Tenant's Requests
10:7	Factors Considered by the Court in Determining
	Whether Withholding Consent is Unreasonable
10:8	Factors to be Considered when Premises are located
	in a Plaza
10:9	Remedies flowing from a finding of an Unreasonable
	Refusal to Consent by the Landlord

### **Table of Cases**

### Index