

Publisher's Note

2018 — Release 2

Previous release was 2018-1

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McDermott

Canadian Commercial Real Estate Manual

The *Canadian Commercial Real Estate Manual* addresses the unique requirements of the commercial real estate industry. It covers the critical stages of development from acquisition through property management. The primary tabs are: Financing, Taxation and Investment Analysis, Development and Conveyancing, Agreements, Precedents and Checklists.

This release features updates to case law and commentary in Chapters 6 (The Law of Mortgages), 8 (Remedies), 14 (Condominium Mortgages), 36 (Construction and Development), 38 (Acquisitions and Dispositions), 39 (Environmental Considerations), and 40 (Special Agreements).

Highlights

- **The Law of Mortgages — Priorities — Fraudulent Mortgages —** Where an exception in the title insurance policy excluded coverage for a fraudulent mortgage if the mortgage funds were paid to any person or entity other than the registered title holder or select others on an approved list, such exception did not apply where the mortgage funds were paid to the borrower's lawyer in trust for his or her client: *Node/ v.*

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Stewart Title Guaranty Co. (2017), 84 R.P.R. (5th) 330, 2017 ONSC 890, 2017 CarswellOnt 1642, 136 O.R. (3d) 676, [2017] I.L.R. I-5951 (S.C.J.), affirmed 2018 ONCA 341, 2018 CarswellOnt 5398.

- **Remedies — Foreclosure And Judicial Sale — Preliminary Considerations — Right to a Certificate of Pending Litigation — *NEW: Law and Applicable Test to Discharge a Certificate of Pending Litigation*** — Where there was a dispute between the parties concerning a letter of intent that they entered, and the investor obtained a certificate of pending litigation on an *ex parte* motion, it was ordered to be discharged where the investor failed to make a full and fair disclosure of all material facts, and did not present the case law regarding specific performance of letters of intent: *Twelve Gates Capital v. Eminence Living Inc.* (2017), 84 R.P.R. (5th) 88, 2017 ONSC 3506, 2017 CarswellOnt 8512 (S.C.J.), additional reasons 2017 ONSC 5671, 2017 CarswellOnt 14894 (S.C.J.).
- **Condominiums — The Purchase of New Condominium Units in Ontario — The Declaration** — Where the condominium declaration specifically permitted transient, short-term rental of the units, such provisions did not contravene the *Condominium Act, 1998* just because the condominium board could not make rules on short-term leasing, and did not contravene the restrictive covenant on title, which restricted commercial construction, not commercial use: *TSCC No. 1556 and No. 1600 v. Owners of TSCC No. 1556*, 2017 ONSC 6542, 2017 CarswellOnt 17193 (S.C.J.), additional reasons *TSCC No.1600 v. Owners of TSCC No. 1556*, 2018 ONSC 521, 2018 CarswellOnt 1653 (S.C.J.).
- **Acquisitions and Dispositions — Risks** — Where the purchase agreement involved a property located within a floodplain which was to be developed, the vendor breached the contractual warranty that it would provide all material information to the purchasers, when the vendor failed to inform the purchasers of the setback requirements in the *Riparian Areas Regulation*, B.C. Reg. 376/2004: *0759594 B.C. Ltd. v. 568295 British Columbia Ltd.* (2017), 85 R.P.R. (5th) 88, 2017 BCSC 1767, 2017 CarswellBC 2720, 4 B.C.L.R. (6th) 420, 44 C.C.L.T. (4th) 149, [2018] 2 W.W.R. 366.