

## Publisher's Note

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# Canadian Commercial Real Estate Manual

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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

- **Law of Mortgages — Priorities, Distinction between Land Titles and Registry Systems** — Where there was administrative error in failing to note right of way in both dominant property and servient tenement, owner of servient tenement could not rely on error to take title free and clear of easement: *Relaxmuskoka v. 2052219 Ontario Inc.* (2017), 82 R.P.R. (5th) 73, 2017 ONSC 5131, 2017 CarswellOnt 13307

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(S.C.J.), additional reasons 2017 ONSC 5964, 2017 CarswellOnt 15394 (S.C.J.).

- **Remedies — Foreclosure and Judicial Sale — Preliminary Considerations — Right to a Certificate of Pending Litigation** — Where creditor's claim against debtor was based on debt pursuant to promissory note, and although note was secured by property owned by others, creditor could not register certificate of pending litigation as claim was based on debtor and creditor relationship: *Bilin v. Sidhu* (2017), 84 R.P.R. (5th) 22, 2017 BCCA 429, 2017 CarswellBC 3407, 3 B.C.L.R. (6th) 284, reversing in part (2017), 84 R.P.R. (5th) 9, 2017 BCSC 36, 2017 CarswellBC 46.
- **Condominium Mortgages — Purchase of New Condominium Units in Ontario — By-laws and Rules** — It was common ground that since enactment of *Strata Property Act*, S.B.C. 1996, c. 43, strata corporation has obligation to repair and maintain common property, and this obligation extended to four windows and patio door of strata unit, which were common property: *Strata Plan NWS 254 v. Hall* (2016), 83 R.P.R. (5th) 329, 2016 BCSC 2363, 2016 CarswellBC 3584.
- **Construction and Development — Development Charges — Events Triggering Development Charges** — Where owner failed to obtain building permit in timely manner, prior to imposition of development charges under town's by-law, owner's claim of responsibility by its project manager and planning consultant was statute barred where he waited more than two years, after having knowledge of material facts, to commence his court action: *Gottlieb v. Malone Given Parsons Ltd.* (2017), 82 R.P.R. (5th) 70, 2017 ONCA 757, 2017 CarswellOnt 15093, affirming *Gottlieb (Trustee of) v. Minuk Construction & Engineering Ltd.* (2016), 82 R.P.R. (5th) 47, 2016 ONSC 7350, 2016 CarswellOnt 18866 (S.C.J.), additional reasons 2017 ONSC 600, 2017 CarswellOnt 1336 (S.C.J.).
- **Special Agreements — Analysis of Ground Lease Provisions — Drafting Considerations — Insurance — Named Insureds** — Where landlord agreed to and, in fact, did arrange for fire insurance coverage on leased building, premiums for which tenant contributed to through payment of additional rental, such coverage applied to where fire was caused by tenant's negligence. There would be no contractual benefit to tenant for contributing to payment of premium if coverage so obtained did not apply to such a fire: *Imperio Banquet Hall v. Gold Line Conversions Ltd.*, 2018 ONSC 280, 2018 CarswellOnt 217 (S.C.J.).