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## COMMERCIAL STRATA LOT LEASES

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Commercial strata lots are common, and are often found in mixed use developments. However, because a condominium development consists of separately titled strata lots which can and usually are owned by multiple owners, and where each owner pays a portion of the cost of maintenance of the building while only enjoying a vote (but not control over) common matters, leases of strata lots involve concepts not applicable to non strata leases. Strata leases involve two entities which control the leased premises, only one of whom, the landlord, enters into the lease with the tenant. The rights and obligations of the Strata Corporation must be borne in mind when a commercial strata lease is signed. It is common to find leases of commercial strata lots done on "standard form" leases intended for fee simple developments, but such leases will contain inappropriate and in some cases incomprehensible terms. Given these considerations some of the most important differences applicable to strata leases are set out below.

**INSURANCE.** Standard leases require the landlord to maintain insurance for the building. The landlord of a commercial strata lot cannot insure the building as insurance is within the control of the Strata Corporation only and not individual strata lot owners.

**AREA.** Strata lot areas are determined by rules in the Strata Property Act, normally to the mid point of walls. Standard leases that refer to BOMA standards will not make sense for strata lots.

**DEFINED TERMS:** Standard form leases should refer to and deal with specific Strata Property Act terminology including Common Property, Limited Common Property, Strata Corporation, Strata Council, and Strata Plan.

**OPERATING COSTS:** Standard leases generally apportion defined costs based on area. Strata lots are allocated a share of costs under the Strata Property Act which are not necessarily based on BOMA or other standards. Often strata lot tenants pay only common area costs charged by the Strata Corporation to the landlord unless the landlord wants to include extra costs such as a management fee or janitorial services.





**PROPERTY TAXES:** Standard leases apportion taxes based on area, but it is not appropriate for a strata lot tenant to pay a proportionate share of taxes for the building, as each strata lot is taxed separately and the area of the strata lot relative to the entire building will likely not equal the actual taxes for that strata lot.

**SPECIAL ASSESSMENTS:** Strata Corporations may levy special assessments against the strata lot. A strata lease should set out whether the landlord or tenant is responsible for such assessments.

**TENANT IMPROVEMENTS AND REPAIRS:** Standard leases generally require the tenant to obtain the approval of the landlord before undertaking improvements to the leased premises but in the case of a strata lease such approval must usually also be obtained from the Strata Corporation.

**LANDLORD COVENANT TO REPAIR:** The landlord cannot repair the strata building as the Strata Corporation is the only entity with that right.

**SPECIFIC TENANT RIGHTS:** If a tenant of a strata lease wants the exclusive right to carry on a type of business, or enjoy hours of operation, or rights to common signage or other generic rights, those rights must be approved by the Strata Corporation and cannot be granted only by the landlord.

**RELATION OF TENANT TO STRATA CORPORATION:** In general, a strata tenant should try to obtain a promise from the Landlord to keep the Tenant informed on strata matters, and to allow the Tenant to enjoy to the extent possible the benefits of the owner of the strata lot, such as access to common areas and voting on issues of concern at meetings of the Strata Corporation. This right can be a major concern if, for example, the Strata Corporation proposes to pass a bylaw which would prohibit the tenant from carrying on its business.

The main point to remember is that standard leases do not work for strata lot tenancies.

