

# In Touch *with the*



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AGM 2016

REIC National Conference  
Ottawa 2016

# In Touch with the



Vol. 45 - July 15, 2016

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## REIC Mission, Core Values, Vision

### Our Mission

The Real Estate Institute of Canada's objective is to advance professionalism in the real estate industry.

### Our Vision

An organization leveraging our diverse expertise to benefit all stakeholders

### Core Values

We believe in:

The value of high ethical standards  
The benefit of experience  
The power of knowledge and the importance of sharing it  
The strength of our diverse professional community

Discover the benefits of choosing a professionally designated REIC member.

## President's Message



Happy 2016 to our returning and new members, and welcome to what I envision will be another great year for the REIC Toronto Chapter. As you can see, the Chapter has been successful for the past 54 years.

While I have the pleasure of serving as the Chapter President for 2016, the success of the Chapter would not be possible without the active support of our members, Board of Directors and sponsors, and as your President would like to take this opportunity to recognize all of you for your prior and continued service to the Chapter.

We have a number of exciting programs and events planned for 2016 for our members, and would encourage you to continue to take advantage of the many opportunities these provide. Here are a few highlights for 2016.

- Industry Leaders Seminars
- Members and Volunteers Appreciation Networking event
- 2016 Awards Dinner
- Building Tours
- PM Expo

I trust you are as excited as I am about 2016, that you will help us continue to make 2016 a successful year for the Toronto Chapter. In order to do so, we request your continued involvement in as many events as possible and to encourage other colleagues who might not already be involved in the Chapter to become involved.

Please don't hesitate to reach out to me, any member of our Board of Directors or any committee chair with any questions, comments or concerns. Our website provides contact information for all of us, so you may reach us directly.

I look forward to hearing from you or seeing you at one of our many events this year,

Very truly yours,

Carmela Corrado, FRI, CLO

# Upcoming Events

August **17**

Building Tour - 23 Spadina Avenue 4:00-5:00pm

August **17**

Summer Social - Hunters Landing 5:00-7:00pm

October **5**

REIC Toronto Award Dinner - The Old Mill

November **30** - December **2** PM Expo

# New Members

Sean Aslambouli ARM®

Satinder Chane CLO

Kevin Green CRP

Mimi Khu FRI

Andrew Savage CPM®

Sukhjinder Toor FRI

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# Bill 135 – Energy and Water Reporting & Benchmarking



*Kevin Whitaker, Director of Utility Expense Management*

Grow revenue. Help the environment. Invest more wisely in efficiency. These are a few of the positive changes that the Ontario government hopes to accomplish, along with large building owners, by passing its flagship 2015/2016 energy bill, Bill 135. Though schedule 2 of Bill 135 portends major changes in Ontario energy policy and planning, owners need to focus now on the requirements made of

large building owners as a result of Schedule 1. Schedule 1 deals with large building Energy and Water Reporting & Benchmarking (EWRB). In preparation of this role out, we hope to give owners and managers of covered buildings some context regarding Bill 135 as well as the expected compliance requirements, and details regarding the most common compliance programs.

Measuring and reporting on energy and water consumption, as Bill 135 directs the Ministry of Energy to implement, is part of a larger global trend that is showing up in more and more jurisdictions each year. Already in the United States, at least 9 major cities and 1 state have EWRB requirements. These jurisdictions believe that the health and other benefits of a cleaner environment and better long term utility management are enough in the public interest to require EWRB. There can also be the added benefit of giving owners and managers insight and control into their

utilities in addition to providing the reporting necessary to make informed and cost saving choices. While Bill 135 is the first of its kind in Canada, we would anticipate seeing more such laws across Canada in the coming years.

By passing Bill 135, Ontario joins the growing number of global communities taking steps toward environmental responsibility. As an additional benefit, Bill 135 provides tools to allow Ontario to gain knowledge on how to reduce the costs surrounding utility expenses for its citizens, which is badly needed. For one thing, by understanding what is being used, apartment owners gain greater insights into their utility expense and tend to find ways to cut costs merely by having the information, which would reduce the burden on the energy grid and lower expense to the utility providers that can be passed onto the rate payers and tax payers. Also, by collecting information about utility usage by industry type, Ontario will be better equipped to make proactive, versus reactive, energy decisions. Such planned decisions tend to provide better solutions for a lower cost than reactive solutions.

Ontario’s current plan to implement EWRB involves phasing in requirements over a number of years:



*Brett Kraus, Senior Legal Counsel, Director of Sustainability Conserve*

Year	Commercial/Industrial	Multi-Unit Residential	Reporting Date
1	250,000 sq ft and larger	-	July 2017
2	100,000 sq ft and larger	100,000 sq ft and larger	July 2018
3	50,000 sq ft and larger	50,000 sq ft and larger	July 2019

Note that each reporting date is when the reporting is due for data from the previous year, not simply a date to begin recording and reporting consumption. Additionally, reporting will require whole building data.

This means that a multi-residential building greater than 100,000 square feet will need to ensure it is tracking consumption during 2017 in order to report that 2017 consumption by July of 2018.

In addition to utility consumption, there are other standard building data owners and managers will need to ensure they have available to include in the reporting. This includes information - such as gross floor area, parking garage square footage and times lit, pool square footage and type as well as some heating information - that will allow for better benchmarking comparisons and score assignments. By far, the most common way owners and managers ensure their compliance to similar regulations in other jurisdictions is by utilizing a trusted utility expense management partner, who are experts at making sure the owner's utility data gets where it needs to go, by the time it needs to get there, and in the format required for successful compliance. Utility Expense Management services typically already have utility data for the services they are providing owners, so it is a small step for them to provide that data to the required compliance platform, such as EnergyStar's Portfolio Manager, upon the owner's consent.

They are also better equipped to handle the bureaucracy of the various utility providers to obtain the necessary data.

EnergyStar Portfolio Manager is the compliance platform used in every EWRB jurisdiction in North America and the Ministry of Energy has indicated that this same program will be used in Ontario. Portfolio Manager is an online platform that measures, tracks, and benchmarks energy and water consumption. It also indicates greenhouse gas emissions associated with the energy tracked. Buildings can be compared against other buildings and assigned an efficiency score from 1 to 100. This score takes into account various factors, including weather normalization, unit density, bedroom density, square footage, and more.

Building owners and managers who wait until the last minute to create and implement a solid compliance plan may find themselves at a disadvantage and left to figure out a compliance process themselves. To meet some of the requirements, requests to the providers may need to be made months in advance of the due date. Also, experts and programs that assist in compliance may already be booked by the proactive owners and managers. Fortunately, right now there is still time to make sure your teams are prepared.

Don't delay meeting with the appropriate team members to determine the best way to keep your properties compliant.

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# Decarbonizing the Operation of a Building

We have all heard about the need to stop climate change and adapt to the changes that we have observed, which are likely irreversible. We have seen images of vast stretches of continents turning to deserts, species dying out, crops failing, displacement of vulnerable populations, and widespread tragedy. What most of us have not found is a handle on what we can do about it, practically and right now.

The intergovernmental panel on climate change (IPCC) collects research on climate change from around the world, and filters it through a consensus process to determine strategies for nations to consider. Current recommendations from the IPCC suggest that we aim to limit the global rise in temperature to 1.5 degrees C. This may be considered an arbitrary number, but when we look at the predicted consequences that might occur above 1.5 degrees C, we see the costs to nations will be immense, and at least equal to what it would take to decarbonize the economy. Global temperature rise currently sits just under 1 degree C, so we have to move quickly.

In order to achieve this goal, the IPCC says that carbon emissions must peak this year, 2016, and then need to steadily decline to an 80% reduction by 2050. Ontario and Quebec have both adopted these targets in hopes of doing their part to stabilize climate change. But consider that over 25 years, between the baseline year 1990 and 2015, Ontario has reduced its emissions by only 6%. This is good progress, but means that in the next 35 years Ontario needs to reduce emissions by another 74%. The one thing that is certain is that we need to change our approach if we are to meet these goals.

Ralph Torrie, a physicist who has been analyzing energy models for Ontario for 30 years, has noted that no single energy-user-type can make sufficient changes to meet Ontario's goals alone - not personal transport, nor buildings, nor industry. In every scenario Torrie has evaluated, buildings must effectively disappear from the demand for energy.

Why buildings? Buildings, unlike planes, can be run entirely on electricity, with technology that is already commercially available and relatively inexpensive. The electrical grid can be made carbon free with nuclear plants, although these are not without problems or expense. This is where conservation comes in - all of our buildings could run on less energy, and on green energy, to meet carbon reduction targets and avoid the need for more nuclear power.

There are 3 steps to decarbonizing the operation of a building:

1. Upgrade the entire building envelope including walls, windows, roofs, below-grade walls and basement floors. This reduces the average energy performance by two thirds, thus reducing the heating load. In the same process, cladding can

be upgraded to meet increased wind loads, aiding in adapting to climate change we are already experiencing.

2. Install smaller and more efficient electric heating, cooling, lighting, and ventilation systems. Depending on the building's occupancy type, this may include geo-exchange systems, displacement ventilation, LED lights, and on-demand lighting and ventilation.

3. Install solar panels to produce energy on site and reduce loads on the existing power grid.

What we in the architectural community have found is that building owners are reluctant to make improvements that no one can easily see. It is often easier to "sell" an energy retrofit when co-benefits are considered, such as:

- Envelope retrofits can be used to update the appearance of a building, adding value.
- As energy disclosure extends to more building types, energy efficiency will have more value.
- Low-energy buildings have less drafts, more stable humidity, and are more evenly heated, resulting in better thermal comfort.
- Buildings with energy-efficient windows admit less street noise, increasing the ability to concentrate, or sleep.
- Low-energy buildings can hold heat in for days during power outages, meaning they require less back-up power from generators, if required, and prevent pipes from freezing and potentially bursting.

The financial cost of decarbonizing buildings will be significant, but cheaper than dealing with floods, cladding failures, blackouts, and unforeseen consequences. The elephant in the room is that most people who are in positions of authority right now will not live to see 2050, and the beginning of the worst effects of climate change, so it does not really affect them. If we are doing this, we are doing it for future generations.

--  
Sheena Sharp, Principal  
Coolearth Architecture Inc.  
386 Pacific Ave.  
Toronto Ontario M6P 2R1  
p. 416-868-9774  
c. 416-575-5928



# Competition Bureau Launches Investigation into Condominium Renovations

*By Denise Lash, Lash Condo Law*



Canada's Competition Bureau (the "Bureau") has launched an investigation relating to the supply of renovation/contracting services to condominiums in the Greater Toronto Area. The Bureau obtained a court order compelling approximately 140 condominium corporations to produce all of their written and electronic records

relating to contracts between 2006 and 2014 for renovations and major repairs and replacements of common elements (i.e. requests for proposals, bids, contracts, board minutes and related correspondence). As condominium buildings age, multi-million dollar expenditures are required to maintain the condominium common elements, both to keep them in a state of good repair (e.g. roof replacement, elevator replacement, parking lot reconstruction, etc.) and to preserve the marketability of the units in the building (e.g. renovations of the lobby and recreational amenities.)

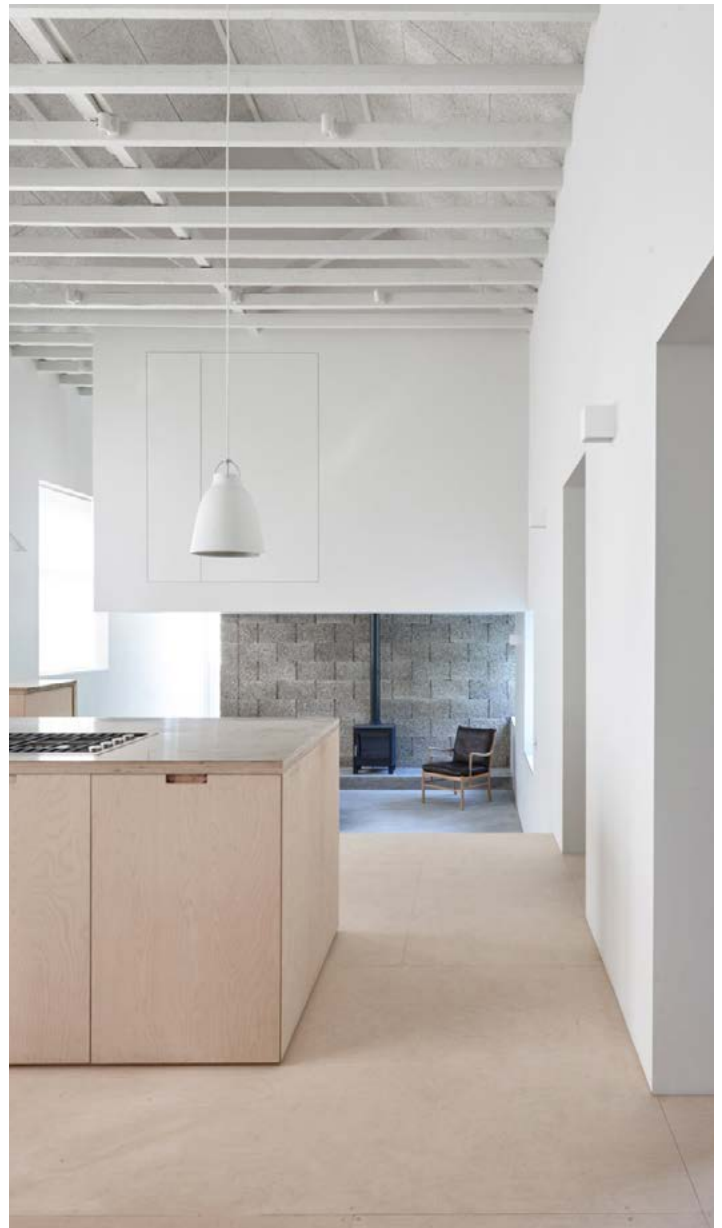
The Bureau's investigation is focused on determining if there has been any bid-rigging or conspiracy in the tendering, bidding and awarding of these contracts. Both bid-rigging and conspiracy are criminal offences under the Competition Act, punishable by fines and imprisonment. The commission of these offences results in reduced competition and artificially inflated prices for goods and services.

While the Bureau's investigations are conducted in private, it has been reported in the media that it is the suppliers of services to the condominium corporations that are being investigated, not the condominium owners or boards. If the investigation ultimately concludes that any of the service providers have in fact engaged in conspiracy or bid-rigging in relation to these contracts, then the condominium corporations that have overpaid for services are the victims. Section 36 of the Competition Act provides a statutory cause of action to victims who have incurred loss or damage as a result of a breach of the conspiracy or bid-rigging provisions of the Competition Act.

Because of the extent of this investigation, it will no doubt be some time before the investigation is concluded. Those condominium corporations that are compelled to provide the information to the Bureau must do so within 90 days. These corporations should be consulting with their legal

counsel to ensure that they adequately comply with the court order. Unfortunately, the search for and the collection, compilation and copying of the required records will be a time-consuming task for management.

Denise Lash is the founder of Lash Condo Law, she has over 25 years experience as a condominium lawyer representing condominium clients in all aspects of condominium law. Denise is known for her effective dispute resolution methods in dealing with issues between condominium corporations and developers as well as resolving complicated issues faced by her condominium clients.





# AGM 2016

New members, a hearty breakfast and an inspiring keynote speaker highlighted this year's Annual General Meeting on April 21, 2016 at the Radisson Inn Don Valley.

Harjit Khalsa FRI, CRES, Jessie Yu FRI, were sworn in for their new designations. We paid thanks to past serving board members Heidi Noel FRI and Katherine Weiss CPM who have stepped down from their roles. New board members were sworn in for 2016-17. Carmela Corrado FRI, CLO, Manjit Saggi FRI, CLO, CRES, Alex Pino FRI, Garry Chaura FRI, Vanessa Van Dette CRP, John Bowen CPM, ARP, Stephen Wall CPM, Sunil Singh CRP, Ramona Ursa FRI, CLO, and Natalka Falcomer CLO.

Thanks to B & B Associates who donated 2 sets of Blue Jays tickets as door prizes.

Keynote speaker - Kathryn MacKenzie B.A., M.Ed. DTM wowed us with many pointers on making Powerful Persuasive Presentations. We learned to take our audience on a journey, giving them a 3D experience, bringing your content alive with stories. Open with a BANG, and SELL for RESULTS! Close your presentation with a SALE. Kathryn is an awesome speaker with messages to remember. Visit [www.kathryn-mackenzie.com](http://www.kathryn-mackenzie.com) to sign-up for her free newsletter.



*Chapter President presenting John Bowen with door prize.*

*Carmela Corrado & Eugene Korneluk presenting new member Harjit Khalsa with his certificates*



*Past President Walter Lui swearing in the new Chapter Board.*



*Eugene Korneluk & Carmela Corrado presenting Jessie Yu with her certificate*





# Is the landlord and tenant board driving down the value of the GTA rental market

By Jonathan Maloney, Highgate Property Investments Inc.

1. No pet deposit allowed
2. No damage deposit allowed
3. No utility deposit
4. Landlord are not maintaining properties because they know they cannot get money back form tenant. Only way is small claims.
5. This is lowering rents and not allowing quality tenants to find a good property, which creates a vicious cycle.

*"105. (1) The only security deposit that a landlord may collect is a rent deposit collected in accordance with section 106. 2006, c. 17, s. 105 (1)."*

Is the Landlord and Tenant Board of Ontario, and their enforcement of the Residential Tenancy Act, driving down the value of the GTA rental market?

The Landlord and Tenant Board of Ontario has drawn the ire of many struggling landlords in the GTA. Since the induction of the Residential Tenancy Act in 2006, it has become illegal for a landlord to collect a deposit for utilities, pets, or damages. Simply speaking: the only legal security deposit in Ontario is a rent deposit for the tenant's last month's rent. And, as per the Residential Tenancy Act, the Landlord can only apply this deposit to charges for rent, and not towards damages caused by the tenant or the resulting necessary repairs.

Although many real estate agents and landlords are including such clauses in their lease agreements, and collecting additional deposits, they could face severe penalties from

the Landlord and Tenant Board, which typically includes: returning the additional deposit to the tenant immediately; paying interest to the tenant on the deposit at a percentage that is determined by an adjudicator at the Landlord and Tenant Board; and a fine imposed upon the landlord of real estate agent for breaking the law, which can be in the range of hundreds to thousands of dollars

From my experience, these laws and the illegality of collecting an additional deposit is specific to Ontario. Many of my clients, who are residents of different provinces, the United States, and even different countries, frequently ask me: did you collect a damage deposit? When I inform them that it is illegal for a landlord to collect a damage deposit in Ontario, they become quite surprised, informing me that it is a standard practice where they live. During one conversation with a client, they simply asked me: if I can have added security here, why wouldn't I just invest where I live? Eventually, this led me to believe that the laws in Ontario are dampening the rental market in the GTA.

When renting a property in the GTA, Landlords face an uphill battle with the upkeep and maintenance of their property. No landlord is spared from the costs and repairs that are required after a tenant moves out. The size of the property also bears little on the possible costs to bring the property back up to a sufficient standing. Instances have occurred where tenants have left condo units painted in black, broken microwaves by placing metal elements inside, pulled blinds off walls, broken closet mirrors, and pets have chewed up baseboards. Unfortunately, without a damage deposit, the



Landlord has little recourse to pursue the tenants for these damages. Their only way is to seek retribution in a small claims court, but this can often cost thousands of dollars, due to the legal costs, and takes years from the landlord to recoup his losses. Tenant's may be put on a payment plan that lasts a number of years.

Because of this, many landlords are now electing to maintain their properties to a lower standard, which helps them mitigate the losses from their property. However, these properties then show poorly, which then attracts a lower quality tenant, who are more likely to damage the property. As a result, this causes the cycle to repeat: the property is left damaged by a tenant; the landlord does the very bare minimum to maintain the property; this attracts a tenant of a lesser quality; and this tenant damages the property once again.

The effect that this has on the rental market is that it starts to slowly bring down the rents for the properties in the GTA. Properties are being rented for a lesser amount because they are being maintained to a lesser standard. This is no fault of the Landlord, as they are simply trying to mitigate their losses and make a profit from the property, but rather the Landlord and Tenant Board, which prevents the Landlord from protecting their property from damages. From a broader perspective, this may also dampen the real estate markets in the GTA, as potential investors may be less likely to purchase Toronto Real Estate if the rental rates are steadily declining.

However, in my experience, I have found a number of pre-

ventive measures can help ensure that the property is left in good standing and encourages a tenant to take good care of the property they are renting. The first is to conduct a move-in meeting with the tenant, and document the state of the property when the tenant first moves in. If the tenant has excessively damaged the property after leaving, you will be able to document these changes to the property. The second is to regularly inspect your property; an appropriate interval would be every three to four months. During your inspections, you can bring along a camera and note pad to document and issues that you may see with the property; this can help to create a paper trail and provide you with evidence if you should ever take the tenant to small claims. Lastly, I would recommend that you keep the property in good standing and follow up with the tenant's requests for maintenance in a prompt and timely manner. If you take good care of your property, the tenant is most likely to reciprocate the gesture and care for your property as well.

Jonathan Maloney  
HighGate Property Investments Inc.

For the last five years, Jonathan has served as the President of HighGate Property Investments Inc., a property management company based in Toronto that specializes in Residential and Commercial management and condominium management. For inquiries, please call Jonathan at 416-823-0093.



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- **Chapter forums** (members have access to their own chapter forum only; for chapter news, updates, activity, events, etc.)



*We encourage you to leverage REIC CONNECT to grow your personal network through discussions on topics of mutual interest.*

# The Mistake: Tenants Need to Know About Estoppel Certificates

By *Natalka Falcomer Hons B.A. JD*

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We all hear about the big commercial deal where millions or even billions exchanged hands. But what we don't hear about is an unusual document that can make or break that deal. Yet, few agents not only don't know about this document and even fewer address this document dur-

ing lease negotiations. This means that you can be leaving your clients exposed to risk and that you're not using your full negotiation power to get better terms.

## *What is this Document?*

This powerful document is the Tenant Estoppel Certificate (TEC). The TEC is a legally binding document where a tenant represents or promises certain things to be true. These "things" relate to the relationship between the landlord and the terms of the lease. Common "things" found in TECs are:

- Dates: when the lease started, when it was last renewed and its expiration date;
- Rent: how much rent the tenant pays and what's due over the term of the lease;
- Defaults: if either party defaulted on any rights and responsibilities under the lease;
- Contact information: the parties' addresses, phone numbers and email information;
- Deposits and Letters of Credit: if any deposits exist and if interest is being collected, how the deposit can be used and so on; and
- Renewals or Extensions: if such rights exist, the terms and the notification periods.

## *Why have it?*

The TEC is a promise made to a lender or a potential buyer. The lender or buyer want these promises because they

support whatever the landlord claims to be true about its leases, rent and so on. Clearly, the TEC is imperative to the due diligence process of the sale or refinancing of a property. After all, if you're going to spend significant amounts of money, you'll want the security that it won't be hit with financially devastating surprises.

In other words, a TEC prevents unsubstantiated surprises because it provides the buyer or lender with a "snapshot" of the status of the lease and because it legally precludes the tenant from maintaining any claims inconsistent with the terms in the TEC.

For example, after we acquired a property, I'd be inundated with tenants claiming they wouldn't be paying a few months of rent because the previous landlord owed them money for tenant improvements. Before I did a thing, I'd look at the TEC that the defaulting tenant signed. If what they said was inconsistent with the TEC, I'd tell them they had no claim or right to avoid paying rent.

## *What do I do if I see it?*

Recognize this as an opportunity to negotiate in certain terms into your lease. The TEC is very important to landlords and you can use this provision to extract better rent rates or other terms important to the tenant. To be clear, when the obligation to sign the TEC arises it's not the time to negotiate terms in the lease; rather, it's just the time to ensure that the terms in the lease are true.

The most common issues related to TECs are who pays for the preparation of the document, how many times the landlord may request a TEC and what terms the tenant will agree to in the TEC. Pay attention to these issues and ensure that you put in as many "caps" as possible. But, this is just scratching the surface....

Many leases will further include a "deeming provision" if the tenant does not object to or execute the draft estoppel within the required timeframe. This means that, if the TEC goes unsigned, the tenant is deemed to have accepted the representations in that draft TEC it received. Some leases will further allow the landlord to appoint its own agent who can sign the TEC on tenant's behalf. This is highly problematic, especially if the tenant disagrees with the representations in the TEC, because the tenant will be

held to the potentially incorrect statements in the TEC. Examples include exaggerated rental rates or the elimination of any specially agreed rights.

Tenant representatives should further request that the obligation to sign an estoppel certificate is mutual. This means that the landlord will also have to sign an estoppel certificate should a prospective subtenant request one, for example. Also, request that both parties must agree to all of the terms in the TEC, that the tenant has a right to add in her own comments and that the default isn't the landlord's standard TEC. This ensures that the tenant isn't unwittingly held to certain representations that are inaccurate and can advise the potential purchaser or lender if the landlord is not upholding its obligations.

Consider how much time the tenant has to review the TEC and what happens if the tenant doesn't respond on a timely basis. Ensure that you define your review period as X "business days" to avoid getting confusion over whether or not holidays and weekends are included in the calculation.

Finally, delete any language that deems the draft submitted approved or appoints an agent to sign the document should the tenant not reply in a timely manner. As mentioned, above, if the tenant misses the opportunity to review the document this may hold her to unfair or untrue terms.

### ***What Should I tell my tenant to do when the obligation arises?***

If you think a tenant doesn't have to provide a TEC, think again. The power to require a tenant to sign a TEC typically stems from a term in the lease, as alluded to above. And not providing a TEC could result in serious repercussions.

Distinguish yourself as an excellent agent by guiding your client through the potential pitfalls of a TEC. Consider the following as you help:

- Ask the tenant if she received the certificate under the stipulated time period and in the form that the lease provides. You want to make sure your tenant was given enough time to review the document and the landlord may have put itself under an obligation to provide the TEC a certain

number of days before the TEC must be executed.

- Review not only the lease, but also all of its amendments. Compare the terms of these documents to the estoppel provisions to ensure accuracy. For example, check that the names and addresses of all parties are correct and that all documents are included in the definition of "Lease". I've come across missing documentation during this process which could be problematic if there is a foreclosure or need for refinancing.

- Confirm that the landlord hasn't defaulted on its obligations. Speak with other tenants and walk the property to determine if the landlord has not yet fixed a defective HVAC, for example, as required under the lease.

- Be sure that the TEC reflects any special terms negotiated between the landlord and tenant. For example, does the TEC include the tenant's option to renew, expand or terminate early, as well as any tenant improvement rights, self-help remedies and audit rights? Confirm that the TEC doesn't negate any of these rights.

- Be specific when responding to any statements requiring the tenant confirm that the landlord has not defaulted on its obligations "to the best of tenant's knowledge". The tenant may only have knowledge about specific types of landlord obligations, especially if the tenant operates in multiple facilities.

- Confirm how much the tenant is paying by contacting the tenant's accounting department and reviewing the latest rent invoices.

- Don't let any landlords pull a fast one by using the TEC as an opportunity to expand the tenant's obligations or delete the tenant's rights. If something is unclear, qualify the language by inserting "as required under the Lease...."

Remember, success in the real estate business is all about the value you can provide to your client. By knowing a bit more about the secret TEC you'll be sure to stand heads and shoulders above the crowd, as well as protect your client.

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