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PROVINCIAL CROWN LAND LEASES 101



Whether helping a client to buy or sell a leasehold interest in a provincial crown lease, the licensee must investigate the lease.

A listing licensee should always ask for the tenant's original lease document. Later, the Crown Land Administration Division ("CLAD" or "the Administration") will require the original to process a transfer of the lease. If the tenant no longer has the original lease document, the tenant must ask the Administration for another and this may take some time.

Even though many leasehold properties are remote, the licensee should visit the property if it is accessible.

Next, read the lease. How many years are left on the lease? Are there improvements on the land? Do those improvements correspond to what the lease permits? Are the improvements contained within the land? Or, for example, does a septic field encroach onto neighboring crown land? If the buyer wants mortgage financing, a lender may require a survey certificate to confirm that all improvements are within the property lines.

What uses does the lease allow? For instance, suppose the lease only allows the tenant to use the property as a personal residence on a seasonal basis. Does the tenant's use comply with that restriction? Or, for example, is the tenant using the property to operate a business, such as a fishing lodge? If the tenant's use exceeds what the lease permits, the buyer must be told.

Government laws apply on provincial crown land, including the building code and any bylaws. Generally speaking, the building code applies to any new construction. If the land contains a relatively new structure, the listing licensee must check whether the structure requires permits or approvals and if so, whether they exist. Where a lease property contains an older structure, the authorities tend to regard it as a legal non-conforming use property. If, however, the old structure burns down, the tenant may only re-build in accordance with today's requirements, including any building code and set-back requirements.

Does the property have access by road, and if so, what is the legal status of the road? Does anyone maintain the road and if so, to what degree? For example, is there road access in winter?

Only a few crown leases contain an option for the tenant to buy the property from the crown. A licensee should *never* suggest buying a leasehold interest so the tenant can later buy the property from the crown. Instead, a buyer should only purchase a leasehold interest for what it is, exclusive possession for the balance of the years remaining under the lease. In the rare case where a lease does contain an option to purchase, the government may or may not consider the tenant's request to buy the land. If the government does consider the request, the authorities will have to consult with local First Nations peoples. This process may take a very long time.

A licensee must also inquire whether the lease is in good standing. If, for example, there are monies owing for unpaid taxes or unpaid rent, or the CLAD has previously determined that the tenant has otherwise breached the lease, the lease will not be in good standing. The Administration will not transfer the tenant's leasehold interest to the buyer until all outstanding problems are rectified.

A licensee should allow sufficient time for CLAD to approve the proposed transfer of the leasehold interest. In some cases, the authorities may have to consult with local First Nations before approving a transfer, and this may take considerable time. Always allow for delays.

Finally, when making inquiries of provincial government, a licensee should first contact the province's FrontCounterBC service (toll free: 1-877-855-3222). Depending on the inquiry, the FrontCounterBC staff may refer the licensee to someone at CLAD or some other office.

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