

COMMERCIAL REAL ESTATE QUIZ

How much do you know about commercial real estate? Test your knowledge with this quiz authored by Bradley McLellan, a partner at WeirFoulds LLP.

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1 An owner of commercial real estate in Ontario that obtained a consent, from the local land division committee under the Planning Act, for a mortgage granted by the owner five years ago (due to the fact that the owner owns adjoining lands) can now:

- (a) sell the mortgaged property without the need of obtaining a further consent;
- (b) grant a second mortgage on the property without the need of obtaining a further consent;
- (c) lease the property to a tenant for lease term of 21 years or more without the need of obtaining a further consent;
- (d) do all of the above; or
- (e) do none of the above.

2 In the sale of a commercial real estate property in Ontario, the GST certificate (in which the purchaser sets out its GST registration number) should be signed by _____ where registered title will be in the name of the trustee, to be held by that trustee for and on behalf of the beneficiary.

- (a) the trustee
- (b) the beneficiary

3 The purchaser and vendor sign a typical OREA form of agreement of purchase and sale for the sale of commercial property. There is substantial damage to the property two days before the closing. The purchaser insists that it receive an unconditional letter from the property insurer confirming the amount of insurance coverage and that the insurer will pay (i.e. that there are no exclusions from coverage) before the purchaser will make its election whether to complete the transaction or terminate the agreement of purchase and sale. The purchaser is entitled to require this. **True or False?**

4 An owner of commercial property in Ontario defaults under its mortgage of the property that is held by bank A. The nature of the default is that the owner has not paid any of the last three monthly mortgage payments to bank A. The interest rate under the mortgage held by bank A is quite favourable to the bank, due to recent decreases in mortgage interest rates. In order to obtain payment of the amount in default and protect itself, what should bank A do?

- (a) issue a power of sale notice under its mortgage;
- (b) commence foreclosure proceedings under its mortgage;
- (c) sue the borrower for the full amount of the mortgage loan; or
- (d) sue the borrower for the amount in arrears.

5 Where a lender holding a mortgage against commercial real estate that is second in priority on title wishes to issue a power-of-sale notice under its mortgage after default by the borrower, which of the following parties must be served with the notice of sale under the Mortgages Act (Ontario)?

- (a) the lender holding the first mortgage on title;
- (b) the lender holding a third mortgage on title;
- (c) execution creditors whose executions were filed prior to the time of the registration of the second mortgage; or
- (d) execution creditors whose executions were filed after the date the second mortgage was registered.

See answers on page 24

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A N S W E R S

1 (E) Although such a consent would run with the land under the Planning Act if it were for the sale of the property, it does not run with the property if granted only for the purpose of a mortgage.

2 (B) It is the beneficiary that must sign the GST certificate and provide its GST registration number.

3 FALSE. The standard wording in the OREA form of agreement of purchase and sale, and in most other typical agreements for the sale of commercial property, does not actually give this extensive a right to the purchaser. The case law indicates that the purchaser is entitled to a reasonable period of time to determine whether there is property insurance, the amount of the coverage, and whether the insurer will pay under the policy. However, the purchaser is not entitled to wait until it receives such an unconditional letter. Purchasers and vendors should consider amending this standard clause.

4 (D) By doing (a), (b), or (c), bank A may unwittingly trigger the owner's right to pay out the entire mortgage debt, and then the borrower could obtain a mortgage from another lender at a lower interest rate. Bank A could not loan out the money it is repaid by the borrower at a rate as favourable as the rate under the mortgage. By only suing for the arrears, bank A keeps the mortgage, and its higher interest rate, intact.

5 (B) AND (D) The parties whose interests on title are prior to the lender exercising the power of sale need not be served with the notice of sale.

YOUR RANKING?

One or fewer correct: There's room for improvement.

Two or three correct: You're movin' on up.

Four or five correct: Impressive. You've closed the deal.

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