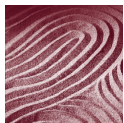
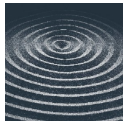
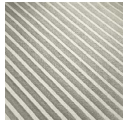


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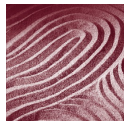
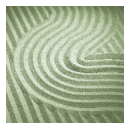
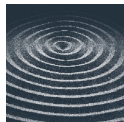
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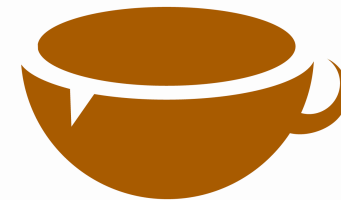


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# Leasing Space: The Do's and Don'ts

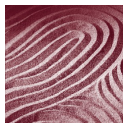
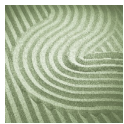
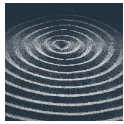
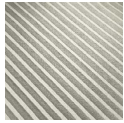
**David Holmes and Karima Kanani  
January 21, 2009**

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# AGENDA



- Regulatory approvals
- Key leasing issues for landlords
- Lease vs. License
- Key leasing issues for tenants



# REGULATORY APPROVALS

- Who must seek regulatory approval?
  - Hospitals must seek approval to lease as landlord or tenant under the *Public Hospitals Act*
  - FHTs are not subject to regulatory approval requirement
    - but may need MOHLTC approval to obtain funding
  - Similarly, Health Service Providers may need LHIN funding approval
  - Other healthcare organizations may be subject to specific regulatory regimes
    - e.g. *Residential Tenancies Act (Care Homes)*, *Long-Term Care Homes legislation (Nursing Homes)*



# REGULATORY APPROVALS

- Process for *Public Hospitals Act* approval:
  - Approvals triggered under the *Public Hospitals Act* require Minister approval from the delegated ADM
  - Approvals are obtained pursuant to a process now involving the LHIN, LHIN Liaison Branch, and the Ministry
  - Any proposal from a Hospital as lessee or lessor must be submitted to the LHIN for review before approval from the Minister can be obtained



# REGULATORY APPROVALS

- Hospital as Tenant

- Section 4(2) of the *Public Hospitals Act* provides:  
“no institution, building or other premises or place shall be operated or used for the purposes of a hospital unless the Minister has approved the operation or use of the premises or place for that purpose.”
- So, if leasing for purposes of a public hospital then approval required
- Approval not required for satellite locations/premises not approved for use as a Public Hospital (i.e., separately operated)
  - e.g. community mental health programs  
doctor office space  
Supportive Housing



# REGULATORY APPROVALS

- Hospital as Landlord
  - When space used for the purposes of a public hospital is leased to a third party Minister approval is required
  - Section 4(4) of the *Public Hospitals Act* provides:  
“no land, building, other premises or place or part thereof acquired or used for the purposes of a hospital shall be sold, leased, mortgaged or otherwise disposed of without the approval of the Minister.”
  - In our experience hospitals may license space in the hospital without having to obtain approval

# KEY LEASING ISSUES - LANDLORDS

- What does the Hospital “own”?
  - Land and Buildings: rights to lease (subject to regulatory requirements)
  - Building only: rights to sublease (subject to regulatory requirements and ground lease)
- Lease vs. License?
  - Key differences



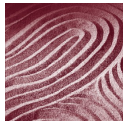
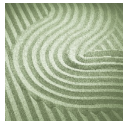
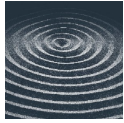
# LEASE VS LICENSE

- A Lease:
  - Creates a property interest that includes the right for the Tenant entity to possess the property
  - Relationship of Landlord and Tenant created
  - The *Commercial Tenancies Act* of Ontario applies (in most instances)

# LEASE VS LICENSE

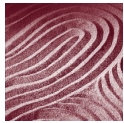
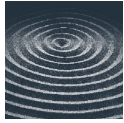
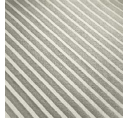
- A License:
  - Constitutes a contractual right to do something on a property, i.e. occupy; use
  - Relationship of Landlord and Tenant not created
  - No statutory protections provided to parties
  - Usually terminable on limited notice

# KEY LEASING ISSUES - TENANTS



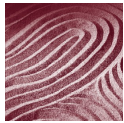
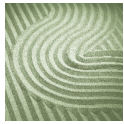
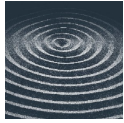
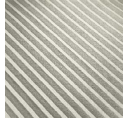
- Offer to Lease
  - The “starting point”
- Lease Provisions
  - Term of Lease
  - Amount of Rent – Basic/Minimum;  
Additional
  - What constitutes “Additional Rent”

# KEY LEASING ISSUES – TENANTS



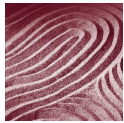
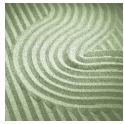
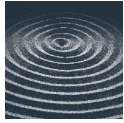
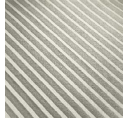
- Lease Provisions (cont'd):
  - Maintenance and repair obligations
  - Right to Extend Term
  - Right to Terminate Lease Early
    - Loss of Ministry Funding
    - Loss of Designation under *Public Hospitals Act*

# KEY LEASING ISSUES – TENANTS

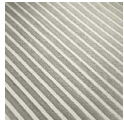


- Lease Provisions (cont'd)
  - Damage and Destruction
  - Assignment and Subletting Provisions
    - Subleases and Ongoing obligations
    - Licensing Rights

# CLOSING REMARKS



- Be aware that approvals may or may not be required depending on who you are and what you use the space for
- When approvals are required, plan ahead – they will take time to acquire!
- Leases are often presented as standard documents but from a risk management perspective there are key areas for negotiation whether as tenant or landlord

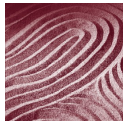
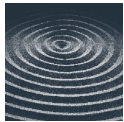


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