

SUSTAINABILITY: Include Environmental Management Plan in Commercial Leases



✘ In order for commercial property to be managed in an environmentally friendly manner, both the landlord and tenant must be in synch on environmental issues, such as waste management, water and energy consumption and use of non-toxic cleaning supplies and other chemicals. But commercial leases rarely address these issues. To fill this gap, the Real Property Association of Canada (REALpac) created a model 'green' lease. The centerpiece of the lease is the Environmental Management Plan (EMP). We'll explain the benefits of a green lease and the components of an EMP.

MODEL PLAN: Download a [model EMP](#) based on one from REALpac and give it to your company's lawyer to adapt and include in your next commercial lease.

Why Use a Green Lease

Many companies set environmental goals, such as improving the sustainability of the company's overall operations or reducing its carbon footprint. But even if your company has programs in place to achieve its environmental goals, the success of those programs can be undermined by your landlord's management of the property you're leasing. And a commercial tenant's poor environmental practices can undermine the landlord's sustainability goals. So it's critical that both commercial

tenants and landlords are on the same page when it comes to environmental issues impacting the use of the property to be leased.

That's why REALpac created its model green lease. The National Standard Green Office Lease incorporates the latest sustainability principles and objectives and enables landlords and tenants to set targets for energy, water, indoor air quality and recycling. It also enables landlords to carry out green renovations to existing buildings and provides for carbon offsetting by a landlord as well as future carbon trading. In addition, the green lease is flexible enough to accommodate adjustments required by changes in environmental operations and standards in the future.

Insider Says: REALpac's green lease was developed for commercial offices, but can be adapted for other types of properties. In addition, the environmental elements of the model lease are largely driven by the landlord. But again the lease can be adapted so that the tenant is driving these elements or so both parties share responsibility.

The Elements of an EMP

The REALpac's model green lease is a very long document. But the heart of the 'green' aspects of the lease is the EMP, which arises in several contexts. For example, the lease says that:

- The landlord must manage, maintain, operate and repair the property in accordance with the EMP;
- The tenant must let the landlord take reasonably necessary steps to comply with the EMP;
- The tenant must build, use, operate and maintain any improvements to the property and all furnishings, fixtures and equipment in the property in compliance with the EMP; and
- The tenant must use the property in a manner consistent

with the EMP.

We've created a Model Environmental Management Plan based on the one included in the REALpac green lease. You can give this model plan to your lawyer for modification and inclusion in your next commercial lease. Your EMP, like the model plan, should have three key components:

Environmental goals. The plan should first spell out the environmental goals for the leased property, including both the landlord's and tenant's goals. The goals can be broken down into general objectives, such as reducing energy use, providing healthy indoor air quality and maintaining any environmental certifications the property has achieved (such as LEED). You can also include very specific goals, such as:

- Limits on use of electricity, natural gas and water;
- Waste diversion rates; and
- Designated indoor CO₂ levels.

It's important to note that if after the lease is signed, the government imposes an environmental standard on the property, such as a resource reduction target, achieving that target will be automatically included in the plan's environmental objectives.

This section can also address carbon credits and offsets, including who pays the cost of offsets if necessary and who gets to claim the credits if earned. Lastly, spell out how you'll determine whether the landlord and tenant have complied with the plan's environmental objectives.

Implementation. The plan should also spell out how it'll be implemented. For example, state exactly what the tenant will do to:

- Maintain a healthy indoor air environment, such as using non-toxic chemicals and paints;
- Reduce energy consumption and GHG emissions, such as

- using smart meters;
- Reduce water consumption, such as using treated recycled or natural water in the bathrooms;
- Divert waste and recycle used materials, such as agreeing to use recycled materials; and
- Protect the property's external environment, such as minimizing soil erosion.

Assessment and reporting. Lastly, the plan should state that the tenant and landlord agree to cooperate in determining compliance with the plan's environmental goals. To that end, they should meet regularly to assess whether those goals have been achieved and any additional steps that could be taken to meet them.

MODEL PLAN: Download a [model EMP](#) based on one from REALpac. Because the model EMP is intended to be included in a commercial lease's legal document, it's written in appropriate legal language. You shouldn't try to adapt this plan yourself; give it to your company's lawyer to be used when negotiating the company's next commercial lease or a renewal of its current lease.

INSIDER SOURCES

REALpac's [National Standard Green Office Lease](#)

REALpac's [Green Lease Guide for Commercial Office Tenants](#)