

Thursday, November 4, 2021  
11:00 AM – 12:15 PM

Seminar 12

**Sale-Leasebacks and Financeable Leases: You Think You Own It, But You Actually Sold It — And Now You Have to Finance It**

**Joe M. Doren, Esq.**  
Senior Counsel- Corporate  
Transactions  
Texas Roadhouse  
6040 Dutchmans Lane  
Louisville, KY 40207  
Joe.doren@texasroadhouse.com

**Andrew L. Herz, Esq.**  
Of Counsel  
Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036  
alherz@pbwt.com

**Alan K. Sable, Esq.**  
Member  
Sable and Sable, LLC  
1341 Old Freedom Road  
Suite 102  
Cranberry Township, PA 16066  
alan.sable@sable.law

I. Sale-Leaseback Transactions

- A. Sale-Leasebacks Defined
- B. The Purposes of the Leaseback (and the Sale)
  - 1. Generate cash for seller by maximizing sale price
  - 2. Create guaranteed cash flow to third party purchaser
  - 3. Give seller/tenant flexibility beyond that normally given to operating tenants
  - 4. Ensure financeability of both fee interest and leasehold interest
- C. Who Does Sale-Leaseback Transactions?

II. Material Provisions of the Leaseback

- A. Parties to the Leaseback
- B. Term
- C. Use of Premises
- D. Premises Demised
- E. Rent
- F. Net Rent Concerns
- G. Insurance/Damage/Condemnation
- H. Defaults
- I. Assignment and Subleasing
- J. Environmental Concerns
- K. Leasehold Financing Concerns
  - 1. Right to encumber leasehold
  - 2. Approval of certain actions
  - 3. Leasehold mortgagee's right to receive notice of defaults and effectuate a cure
  - 4. Participation in decision making
  - 5. Need for estoppel certificates
  - 6. Merger of estates
  - 7. Right to a new lease
  - 8. Representations and warranties contained in leasehold mortgage

III. Leasehold Subordination and Priority