

Thursday, November 4, 2021
8:00 AM 9:15 AM

Workshop 8

**Making Diverse Tenant Mixes Work: An Advanced-Level Workshop on Exclusives, Prohibited Uses,
Radius Restrictions and Waivers**

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Introductions

- I. Exclusives
 - A. General
 - 1. Primary purpose
 - 2. Narrowly construed
 - 3. Alternative means of drafting
 - 4. Conditions
 - B. Breadth of Exclusive Use Restriction
 - 1. Specified uses - landlord concerns
 - 2. Geographic
 - 3. Typical exclusions
 - C. Remedies
 - 1. Rent abatement
 - 2. Termination right
 - 3. Lost profits
 - 4. Duration of remedies
 - 5. Rogue tenants
 - 6. Adequacy of rent abatement/termination
 - 7. Other remedies
 - D. Tenant's Agreement Not To Violate Other Exclusives
 - 1. Existing leases
 - 2. Future exclusives
 - E. Notice
 - 1. Recorded memorandum of lease
 - 2. Actual notice
- II. Prohibited Uses
 - A. Generally
 - 1. Definition

- B. Primary Purpose
 - 1. Parking
 - 2. Preserving nature of center
 - 3. Undesirable uses
 - 4. Odors/noise
- C. Precise Language
 - 1. Massage parlor/noise
 - 2. Noise
 - 3. Bar or tavern
- D. Notice of Prohibited Use
 - 1. Recordation
- E. Practical Issues in Changing Retail Environment
 - 1. Bankruptcy, internet sales, expansion of product mix, changing social patterns
 - 2. Drafting

III. Radius Restrictions

- A. General
 - 1. Definition
 - 2. Narrowly construed
 - 3. Breadth of restrictions
 - 4. Geographic restriction
- B. Common Carveouts
 - 1. Tenant's Acquisition of Chain
 - 2. Existing Locations
- C. Remedies
 - 1. Notice and cure
 - 2. Including gross sales of violating location
 - 3. Liquidated damages
 - 4. Equitable remedies; specific performance

IV. Waiver

- A. Kinds of waiver
 - 1. Exclusives
 - 2. Prohibited use
 - 3. Radius restriction
- B. Drafting and negotiations
 - 1. Legal principles
 - 2. Current events
- C. Limitations
 - 1. Geographic
 - 2. Sales volume
 - 3. Sales area
 - 4. Personal to landlord/runs with the land

D. Consideration

1. Cash
2. Rent Reduction
3. Alternatives

E. Fourteen ways to wind up in court

V. Draft Provisions

VI. Relevant Cases