



Directory

Ohio, Kentucky, Indiana, Michigan & Pennsylvania Retail Development & Law Symposium

For Lawyers and Real Estate Professionals

Retooling Retail Arenas: Version 20.19

Hilton Columbus/Polaris | Columbus, OH | February 28 – March 1, 2019 | #ICSC



THURSDAY, FEBRUARY 28

Registration

5:30 – 7:30 pm | Hilton Columbus/Polaris

Member-Hosted Reception

6:30 – 7:30 pm | Hilton Columbus/Polaris

Join your colleagues for refreshments and networking.

FRIDAY, MARCH 1

Registration

6:45 am – 4:45 pm | Polaris Foyer

Breakfast Served

7:15 – 8:00 am | Polaris Ballroom A-B-D-E

Roundtable Discussions

8:00 – 9:00 am | Polaris Ballroom A-B-D-E

Various topics will be presented in roundtable format for small-group discussion. All roundtable topics will be held twice, so participants may rotate to a different roundtable following the first 30-minute session.

A. Flying Above the Law? Commercial Drone Regulation in the U.S.

Patrick Abell, Esq.

Associate
Thompson Hine
Cleveland, OH

B. Importance of Concise Legal Drafting in Exclusives and Restrictions

Holly Ahrendt, Esq.

Senior Legal Counsel
Washington Prime Group
Indianapolis, IN

C. Ready for Your Closeup? Movie Licensing for Shopping Centers

David V. Allen, Esq.

Assistant General Counsel
Brookfield Properties/Forest City Realty Trust, Inc.
Cleveland, OH

D. Rights of First Refusal in Shopping Centers – Risks of Drafting Ambiguities

Caitlin Carey, Esq.

Associate
Honigman LLP
Kalamazoo, MI

E. Trying to Find Comfort – Letters of Intent and Similar Comfort Instruments – Enforceability and Related Issues

Kiamesha-Sylvia G. Colom, Esq.

Partner
Taft Stettinius & Hollister
Indianapolis, IN

F. Parking and Site Plan Issues: The Competing Interests of the Landlord and the Tenant

Joseph B. Conn, Esq.

Counsel
Ulmer & Berne, LLP
Cincinnati, OH

G. Access Agreements

David N. DeRoberts, Esq.

Attorney
Gallagher Kavinsky & Burkhart LPA
Cleveland, OH

H. Project Delivery and Pricing Methods

James T. Dixon, Esq.

Partner
Brouse McDowell
Cleveland, OH

I. Rooftop Generated Energy (Solar, Wind) and Ancillary Income Related Thereto

Joanne Goldhand

Partner
Ice Miller
Columbus, OH

J. Building Blocks: How Blockchain and Smart Contract Technology Could Revolutionize Commercial Real Estate Transactions

Nicholas R. House, Esq.

Associate
Vorys, Sater, Seymour and Pease
Cleveland, OH

K. Consolidating Parcels for Project Development

Kendall Kadish, Esq.

Associate
Keating Muething & Klekamp, PLL
Cincinnati, OH

L. Flexibility Needed By Startups in Commercial Leases

Adam M. Law, Esq.

Associate
Taft Stettinius & Hollister
Indianapolis, IN

M. 199A Business Income Deduction

Kevin F. McKeegan, Esq.

Partner
Meyer, Unkovic & Scott, LLP
Pittsburgh, PA

N. Holdover Tenancy and Holdover Provisions

Raymond D. Seiler, Esq.

Associate
Ulmer & Berne, LLP
Cleveland, OH

O. What Is (And Is Not) Retail? Negotiating Medical, Office, Educational and Other Uses in the Hunt for Tenants

Eric E. Landen, Esq.

Member
Frost Brown Todd LLC
Cincinnati, OH

P. Airport Retail Leasing

Robert C. Ziegler, Esq.

Partner
Ziegler & Schneider, P.S.C.
Covington, KY

Welcome and Introduction to the Program

9:00 – 9:15 am | Polaris Ballroom A-B-D-E

Melissa A. Breeden, Esq.

ICSC 2019 Ohio, Kentucky, Indiana, Michigan and Pennsylvania Retail Development & Law Symposium Program Planning Committee Co-Chair
Of Counsel
Dickinson Wright PLLC
Phoenix, AZ

ICSC UPDATE

Betsy Laird

Senior Vice President, Global Public Policy
ICSC
Washington, DC

Harlan W. Robins, Esq.

ICSC 2019 Ohio, Kentucky, Indiana, Michigan and Pennsylvania Retail Development & Law Symposium Program Planning Committee Co-Chair
Member and Deputy CEO – Finance/Diversity
Dickinson Wright PLLC
Columbus, OH

Concurrent Sessions

9:15 – 10:15 am

A. Ethics and Professionalism: You Make the Call Polaris Ballroom C-F

Vignettes of professional and unprofessional conduct using newly released videos produced by the Colorado and Denver Bar Associations will be shown. Topics will include: client and counsel communication differences, client focus failure, client control, and professionalism in transaction deals. Attendees will have voting devices. The voting results will be followed by discussions on the pros and cons of each point.

Joseph N. Gross, Esq.

Partner
Benesch, Friedlander, Coplan & Aronoff LLP
Cleveland, OH

B. Current Issues in Complex Commercial Mortgage Finance Transactions: How to Get Everything You Ever Wanted Without Trying Too Hard Gemini Ballroom

This informative session will set forth all of the provisions that originating lenders for securitized and syndicated loans are more than willing to give if the attorney makes the correct requests. This session will also present applicable counter arguments to when lender's counsel

says that such items are not "negotiable." We will provide all of those "have to have" provisions that any real estate borrower should be requesting!

MODERATOR

James H. Schwarz, Esq.

Partner
Taft Stettinius & Hollister
Indianapolis, IN

PANELISTS

Susan Cornett, Esq.

Partner
Thompson Hine
Dayton, OH

Geoff White, Esq.

Member
Frost Brown Todd LLC
Louisville, KY

Break

10:15 – 10:30 am | Polaris Foyer

Concurrent Sessions

10:30 – 11:30 am

A. Cannabidiol (CBD): A New Opening for Landlords in the Cannabis Industry and Other Concerns for Landlords in the Cannabis Space Polaris Ballroom C-F

The Controlled Substances Act, which designates cannabis (and all its cannabinoids) a Schedule 1 drug (i.e. with no recognized medical benefits), has greatly hampered the ability of owners to lease property to tenants in the cannabis space. Even if a state allows recreational or medical cannabis use, the threat of federal liability often prevents landlords from profiting from this industry. In a double-blind, placebo-controlled trial conducted at 30 clinical centers, the results of which were published in the New England Journal of Medicine (May 2018), Epidiolex, a drug that contains CBD, was found to dramatically reduce the occurrence of drop seizures in epileptic patients. CBD is not a psychoactive element. Based on these findings, the FDA approved the drug, and subsequently, the DEA reclassified any FDA-approved substances containing CBD as a Schedule 5 drug. In addition to cannabis-based CBD, industrial hemp naturally contains a high concentration of CBD compounds.

This panel will explore the medicinal benefits of CBD, its impact on current legislation and decisions that have been passed by various agencies and what this means to landlords as they attempt to navigate through the Controlled Substances Act.

MODERATOR

Joshua S. Weinberg, Esq.

Founder
Chatsford Law PLLC
Southfield, MI

PANELISTS

Martin H. Bluth, MD, PhD

Laboratory Director
Accutox Medical Diagnostics
Syosset, NY

Benton B. Bodamer

Member
Dickinson Wright PLLC
Columbus, OH

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PANELISTS (CONTINUED)

Scott C. Crow, Esq.
Member and General
Corporate
Dickinson Wright PLLC
Columbus, OH

Rob Sims, Jr.
Founder
Locker Room Consulting
Former NFL Player
Detroit, MI

Scott P. Kadish, Esq.
Partner
Ulmer & Berne, LLP
Cincinnati, OH

Brian McAllister, Esq.
Senior Director, Leasing Counsel
Washington Prime Group, Inc.
Columbus, OH

B. Opportunity Zones for Real Estate Investment: Miracle or Mirage?

Gemini Ballroom

The Tax Cuts and Jobs Act of 2017 brought us a new category of tax incentives for real estate investment, through investment in Opportunity Zones. There are 8,700 Opportunity Zones in the US, the Virgin Islands and Puerto Rico, many in what may be characterized as distressed areas, but also many in gentrifying and even "hot" development areas. The tax incentives include deferral, and (depending on the holding period) exclusion of part of the capital gain, plus tax relief as to appreciation in value. Not surprisingly, it's complicated, and while some regulations have been issued, more are to come. What are the requirements for accessing the tax benefits offered by the OZ program? What pitfalls do investors and developers need to avoid? How can developers also meld this program with other federal incentive programs and state incentives, like proposed Ohio House Bill 727?

MODERATOR

Linda A. Striefsky, Esq.
Partner
Thompson Hine LLP
Cleveland, OH

PANELISTS

Colleen M. Haas, Esq.
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Cincinnati, OH

Scott J. Ziance, Esq.
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Vorys, Sater, Seymour and Pease
LLP
Columbus, OH

Kris Brandenburg, Esq.
Associate
Thompson Hine LLP
Dayton, OH

Break

11:30 – 11:45 am | Polaris Foyer

Concurrent Sessions

11:45 am – 12:45 pm

A. Show Me the Retail Money: Multi-Channel Retail Solutions to the Retail Leasing Challenge Polaris Ballroom C-F

Today's most successful retailers have figured out how to implement a seamless multi-channel sales program. Because this requires a physical presence, multi-channel retail provides new opportunities for retail landlords. This presentation will discuss opportunities like pop-up stores and problems presented like showrooming in implementing a multi-channel retail program.

B. PACE Is the New Green: How PACE Provides a Green Financing Option for Building Transformation Gemini Ballroom

Property Assessed Clean Energy (PACE) is an innovative mechanism for financing energy efficiency and renewable energy improvements on private and public property, and PACE programs now exist for both commercial and residential properties. In this session, you'll learn how the up-front costs of energy and other eligible improvements can be financed under PACE, how PACE affects property tax bills and how to work with state, county and local governments known as "land-secured financing districts" or "energy special improvement districts" to get a PACE project approved.

MODERATOR

Thomas P. Vergamini, Esq.
Of Counsel
Taft Stettinius & Hollister
Covington, KY

PANELISTS

John Caleb Bell, Esq.
Partner
Bricker & Eckler LLP
Columbus, OH

Chris Jones
Executive Director
PACE Financing
Greater Cincinnati Energy
Alliance
Cincinnati, OH

Jeremy Druhot
Manager
Columbus Franklin County
Finance Authority
Columbus, OH

Lunch Served

12:45 – 1:15 pm | Polaris Ballroom A-B-D-E

No lunch service after 1:15 pm.

Keynote Presentation

1:15 – 2:15 pm | Polaris Ballroom A-B-D-E

Cool or Die: The New Paradigm for Experiential Retail

In this informative and entertaining session, Cushman & Wakefield's head of retail research, Garrick Brown, will discuss the current retail landscape and how new commerce has changed the traditional retail paradigm of convenience, value and experience. Among the topics that Mr. Brown will cover are the rise of Amazon, the impact of e-commerce on different retail categories (past, present and future), the drive towards live/work/play and the increasing amenitization of retail. During this session, Mr. Brown will discuss clicks-to-bricks concepts, elevated food and beverage (from eatertainment to food halls) and both the macroeconomic and demographic economic shifts that are driving it. In the new retail paradigm—driven by the millennial consumers—cool is anything but a frivolous word. When it comes to experiential retail, it truly is Cool or Die.

Garrick Brown

Vice President, Retail Intelligence – The Americas
 Head of Retail Research
 Cushman & Wakefield
 Buffalo, NY

Break

2:15 – 2:30 pm | Polaris Foyer

Concurrent Sessions

2:30 – 3:30 pm

A. The Doctor Is In: An Evolving Market for Medical Leasing

Polaris Ballroom C-F

It's a changing market for medical providers. No longer restricted to on-campus offices and nearby Professional Office Buildings (POBs), medical providers are ranging far afield, locating offices, clinics and micro-hospitals in locations driven by evolving market demographics and space opportunities.

Dudley Carpenter

Senior Vice President, Real Estate
 Emerus
 Houston, TX

Christopher Reinard

Counsel
 Highmark Health
 Pittsburgh, PA

Dusty Elias Kirk

Partner, Global Real Estate
 Practice Group
 Reed Smith
 Pittsburgh, PA

Jonathan Winer

Senior Managing Director
 Seavest Healthcare
 New York, NY

B. That Was Then, This is Now: Dealing with Existing REAs in Today's Evolving Retail Centers

Gemini Ballroom

This session will focus on the frequent need to amend an REA to accommodate a proposed redevelopment of an existing shopping center versus amending and restating the REA in its entirety. The discussion will address the competing desires and requirements between the developer entity and the other big box/anchor store parties to an REA for value enhancing changes such as additional permissible building areas, outparcels, hotels and residential components. Practical approaches, considerations and solutions will be explored.

Derek K. Koget, Esq.

Partner
 Meyer, Unkovic & Scott LLP
 Pittsburgh, PA

Christina M. Sprecher, Esq.

Member
 Frost Brown Todd, LLC
 Cincinnati, OH

Tandy C. Patrick, Esq.

Partner
 Bingham Greenebaum Doll, LLP
 Louisville, KY

Break

3:30 – 3:45 pm | Polaris Foyer

Concurrent Sessions

3:45 – 4:45 pm

A. Assumption, Rejection or What's Behind Door No. 3: What's a Landlord to Do About Sales of Leases in a Retail Chapter 11 Bankruptcy?

Polaris Ballroom C-F

The recent surge in retail bankruptcy filings often leaves commercial landlords in the frustrating position of waiting until their debtor-tenant decides whether to assume or reject an unexpired lease. Assumption, with its attendant cure of past defaults, is often met with a sigh of relief. Rejection, on the other hand, may leave a landlord scrambling to find a tenant to fill suddenly vacated space. But some very recent chapter 11 debtors, including Toys "R" Us and The Bon Ton Stores, have even added some additional twists to this often frustrating scenario. First, they delay assumption-rejection decisions until after they know if the sale of their assets, including unexpired leases, will be to an operating or a liquidating buyer, often leaving previously negotiated lease modification agreements in limbo. Then, if the buyer is of the liquidating kind, this will mean that the debtors' rights under their leases are in the hands of such third parties, who will have their own agendas, motivations and strategies. This panel will (i) explore the various issues facing commercial landlords caused by these debtor strategies, (ii) discuss the options available when confronted with these strategies, and (iii) identify ways in which commercial landlords may use these strategies to their own advantage.

MODERATOR

Bruce J.L. Lowe, Esq.

Partner
 Taft Stettinius & Hollister
 Cleveland, OH

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 Chase Properties
 Beachwood, OH

David W. Ross, Esq.

Shareholder
 Babst Calland
 Pittsburgh, PA

Dov Y. Frankel, Esq.

Of Counsel
 Taft Stettinius & Hollister
 Cleveland, OH

B. Cybersecurity is the New Black: How Are You Securing Your Data?

Gemini Ballroom

More cybersecurity incidents occur every day. More data privacy legislation and court rulings emerge at both the state and federal levels. Now cybersecurity is critical at every stage of business operations and in every industry, including real estate. This session will survey the current U.S. cybersecurity landscape. We will look at the new or soon-to-be privacy laws and the data privacy and cybersecurity issues at the forefront in the real estate

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industry. You will learn the security-item checkpoints that should be on your radar as you start to go down the rabbit hole of just how secure your business is... or isn't.

MODERATOR

David A. Fantauzzi, Esq.

Assistant Counsel
The Cafaro Company
Niles, OH

PANELISTS

Nicholas S. Cerni, Esq.

Vice President of Operations
Donald P. Pipino Company, LTD
Boardman, OH

Sara H. Jodka, Esq.

Member
Dickinson Wright PLLC
Columbus, OH

Frances Floriano Goins, Esq.

Partner and Co-Chair
Cybersecurity & Privacy and
Financial Services & Securities
Litigation Groups
Ulmer & Berne LLP
Cleveland, OH

Symposium Adjourns

4:45 pm | Polaris Foyer

Program information current as of February 25, 2019.

ICSC has been approved for Continuing Legal Education (CLE) credits for the states of Indiana, Kentucky, Ohio and Pennsylvania.

ICSC has been approved for the state of Ohio for Continuing Real Estate credits (Salespersons/Brokers/Agents).

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David L. Huprich, Esq. (dec.), Attorney at Law

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