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

Hilton Columbus/Polaris
Columbus, OH | February 27 – 28, 2020
#ICSC
Ohio, Kentucky, Indiana, Michigan and Pennsylvania Retail Development & Law Symposium

THURSDAY    FEBRUARY 27

Registration
5:30 – 8:00 pm  ▶ Hilton Columbus/Polaris

Member-Hosted Reception
7:00 – 8:00 pm  ▶ Hilton Columbus/Polaris

FRIDAY    FEBRUARY 28

Registration
6:45 am – 4:45 pm  ▶ Polaris Foyer

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

Roundtable Discussions
8:00 – 9:00 am  ▶ Polaris Ballroom A-B-D-E
Join expert-led discussions to find out more about the topics that interest you. All roundtable topics will be held twice, so participants may rotate to a different roundtable following the first 30-minute session.

A. Your Retailer Tenant Has Declared Bankruptcy – Now What?
David M. Blau
Senior Counsel
Clark Hill PLC
Birmingham, MI

B. Great Beginnings and Happy Endings – Best Practices For Tenant Move-In/Move Out
Michele Knapp Boal
General Counsel
Zeisler Morgan Properties
Cleveland, OH

C. The Call of Duty to Mitigate Damages – Modern Concerns
Alexander S. Conn
Associate
Ulmer & Berne LLP
Cincinnati, OH

D. Handling Common Operational Defaults
David DeRoberts
Associate
Gallagher Kavinsky & Burkhart LPA
Columbus, OH

E. Bank Construction-Lending Considerations – Leverage, Preleasing, Structure and More
Michael Dostal
Managing Director and Commercial Real Estate Regional Manager
CIBC
Cleveland, OH

F. Lease Provisions – What Really Matters to the Client
Thomas FitzSimmons
Of Counsel
Singerman Mills Desberg & Kauntz Co. LPA
Cleveland, OH

G. Litigating the Deal – Practical Considerations for Real Estate Witnesses
Leigha Hanby
Corporate Counsel
Dick’s Sporting Goods
Pittsburgh, PA

H. Navigating Deals in Ground-Up Development
T.J. Hess
Associate
Kayne Law Group
Columbus, OH

I. Closing the LLC Loophole in Ohio
Kendall P. Kadish
Associate
Keating Muething & Klekamp PLL
Cincinnati, OH

J. Autopilot Leases – Negotiating Single Tenant Leases Ready for Your Savvy 1031 Buyer
Eric E. Landen
Member
Frost Brown Todd LLC
Cincinnati, OH

K. Going Dark – The Rise of Dark Kitchens and Other Co-Op Style Licenses and Subleases
Megan Roberts
Senior Legal Counsel – Real Estate
The Wendy’s Company
Cleveland, OH

L. Landlord Rights and Obligations – Transgender Bathrooms, Changing Rooms and Other Areas
Katherine E. Schuett
Associate
Thompson Hine LLP
Cincinnati, OH

M. P-What?!? – Should We Be Asking About PFAS Chemical During Due Diligence? (Hint – Yes, We Should)
Chelsea R. Spickelmier
Associate
Taft Stettinius & Hollister LLP
Indianapolis, IN

N. Lights, Camera, Action! Filming-Location Agreements and Shopping Centers
Maxwell Briskman Stanfield
Associate
Meyer, Unkovic & Scott LLP
Pittsburgh, PA
Welcome and Introduction to the Program
9:00 – 9:15 am ▶ Polaris Ballroom A-B-D-E
Kevin F. McKeegan
Ohio, Kentucky, Indiana, Michigan and Pennsylvania Retail Development & Law Symposium Program Planning Committee Co-Chair
Partner
Meyer, Unkovic & Scott LLP
Christina M. Sprecher
Ohio, Kentucky, Indiana, Michigan and Pennsylvania Retail Development & Law Symposium Program Planning Committee Co-Chair
Partner
Frost Brown Todd LLC
Betsy Laird
Senior Vice President, Global Public Policy
ICSC

Concurrent Sessions
9:15 – 10:15 am
A. My Way or the Highway, or Meet Me Halfway: Hotly Contested Letter of Intent and Purchase Agreement Issues ▶ Polaris Ballroom C-F
This session will focus on the most contentious issues in letters of intent and purchase agreement negotiations. In-house and outside counsel to buyers and sellers will share preferred provisions, and offer compromise approaches to help get deals done. The session also will feature an experienced dealmaker, who will share the business perspective on current deal trends and critical risk-management issues.
PANELISTS
Madeline McGrane
Legal Counsel III
Site Centers
Robyn Minter Smyers
Partner
Thompson Hine LLP
Ben Snyder
Senior Vice President
Matthews REIS™

B. Preparing for the Worst: Will Your Lease Hold Up If Disaster Strikes? ▶ Gemini Ballroom
Insurance, indemnity and casualty provisions are often quickly dismissed in lease negotiations as “it doesn’t matter; it won’t happen” – but when a disaster strikes, how do those provisions hold up? This session will examine both typical and commonly-negotiated insurance coverage, indemnification, and casualty provisions in retail leases. The panelists will discuss the actual implications of those provisions in the aftermath of a casualty. This panel will also include an overview of the typical insurance claim process to provide a better understanding of the position in which tenants, landlords and insurers may actually find themselves following a casualty incident.
MODERATOR
Michele Knapp Boal
General Counsel
Zeisler Morgan Properties
PANELISTS
Eric Cotton
Deputy General Counsel & Chief Compliance Officer
Site Centers
Kathryn Kramer Gaydos
Partner
Benesch Friedlander Coplan & Aronoff LLP
John Mark Tichar
Vice President, Sales Leader Real Estate
Oswald Companies

Concurrent Sessions
10:15 – 10:30 am ▶ Polaris Foyer

Concurrent Sessions
10:30 – 11:30 am
A. A Rule Forbidding Bias? – Diversity and Legal Ethics ▶ Polaris Ballroom C-F
This session will cover proposed Rules of Professional Conduct and contemplate whether or not there is an ethics case for diversity in our profession. Participants will gain a better understanding of discrimination, harassment, and unconscious bias and how these concepts impact our legal work. We will also talk through hypotheticals so that participants walk away with practical knowledge and tools after the session.
PANELISTS
Kimberly S. Amrine
Director of Diversity & Inclusion
Frost Brown Todd LLC
John G. Cameron, Jr.
Member
Dickinson Wright LLP

B. Why Lenders Do the Things They Do (And Why Counsel Needs to Care if Bad Things Happen) ▶ Gemini Ballroom
This presentation will focus on why particular lenders do the things they do and compare and contrast loan documentation from banking institutions, insurance companies, CMBS lenders and private equity lenders. The presentation will offer insights from borrower’s counsel and lender’s counsel perspective.
The panel will also focus on what needs to be included in loan documentation in the event the project does not proceed as set forth in the pro-forma.

PANELISTS
Susan C. Cornett  
Partner  
Thompson Hine LLP

James H. Schwarz  
Partner  
Taft Stettinius & Hollister LLP

Geoffrey M. White  
Member  
Frost Brown Todd LLC

Break  
11:30 – 11:45 am  ▶ Polaris Foyer

Concurrent Sessions  
11:45 am – 12:45 pm

A. Pass the Legos: Assembling the Capital Stack  
▶ Polaris Ballroom C-F

Today, the typical commercial or multi-family mixed-use project features a financing plan with many sources. These may include not only a “first” mortgage, but also a mezzanine loan; Tax Increment Financing (TIF); state, country and/or city loans or grants; and possibly Historic Tax Credits, New Market Tax Credits or Low Income Housing Tax Credits. How do you build this stack of financing in a way that both provides the developer with funds as and when needed and satisfies the requirements of the various sources of funding? This panel will provide insights and tips on how to build this capital stack and keep it standing.

MODERATOR  
Tracey A. Nichols  
Director of Financial Services  
Project Management Consultants LLC

PANELISTS
Steve Schoeny  
City Manager  
City of Upper Arlington

Scott J. Ziance  
Partner  
Vorys, Sater, Seymour and Pease LLP

B. “That Was Not What the Parties Intended” and Other Phrases Nobody Wants to Hear: Drafting to Avoid (Win) Litigation  
▶ Gemini Ballroom

Visionary, insightful, careful and informed drafting is invaluable, but the potential for litigation is ever present. Like it or not, even well-written documents are subject to question as attorneys zealously advocate for the interests of their clients. Any of us may be asked to “find” another way to construe one phrase or interpret another. The ability to manufacture an ambiguity or uncover a latent one seems to be a specialty. Twisting a phrase to cover a fact pattern has become an art form. This session will review a selection of lease and real property contract provisions that are frequently the subject of litigation, provide drafting tips to reduce the risk of litigation and discuss strategies if litigation becomes inevitable.

PANELISTS
Robert E. Dauer, Jr.  
Partner  
Meyer, Unkovic & Scott LLP

Paul Magy  
Member  
Clark Hill PLC

Karen R. Pifer  
Partner  
Honigman LLP

Lunch Served  
12:45 – 1:15 pm  ▶ Polaris Ballroom A-B-D-E

Keynote Presentation  
1:15 – 2:15 pm  ▶ Polaris Ballroom A-B-D-E

If All Bets Are Off, Where Do We Go From Here?  

MODERATORS  
Harlan W. Robins  
Member  
Dickinson Wright, PLLC

Christina M. Sprecher  
Ohio, Kentucky, Indiana, Michigan and Pennsylvania Retail Development & Law Symposium Program Planning Committee Co-Chair  
Frost Brown Todd LLC

SPEAKER  
Michael Glimcher  
ICSC Past Trustee  
CEO  
Starwood Retail Partners

Break  
2:15 – 2:30 pm  ▶ Polaris Foyer

Concurrent Sessions  
2:30 – 3:30 pm

A. Re-place Your Bets: Things to Consider Before Going “All-In” on Shopping Center Redevelopment and Repositioning  
▶ Polaris Ballroom C-F

Convincing stakeholders who went “all-in” on the prior shopping center development to now change their bets is a daunting task. Yet, as the games change, players are forced to search for sweeter odds. And with every new retailer, every bankruptcy, every mixed use concept, the odds makers themselves are re-shuffling the deck and serving up new stakes. The panel will discuss existing rules of engagement (restrictions in leases, building codes, enterprise zones, finance documents, partner requirements, owners associations, etc.) and how those rules no longer suit the new game. From casinos to churches, offices to dwellings, skirted by scooters and drones, the betting options are as endless as fresh high rollers in the new game. All traditional bets are off. Time to make a new wager.

PANELISTS
David V. Allen  
Director, Counsel, Mixed Use Group  
Brookfield Properties
Tandy C. Patrick  
Partner  
Dentons Bingham Greenebaum LLP

B. Recent Environmental Developments Impacting Real Estate Transactions and Commercial/Retail Developments  
▶ Gemini Ballroom

This session will cover several recent environmental developments impacting real estate transactions and property developers, including changes to U.S. EPA’s guidance on CERCLA landowner liability defenses; expansion of vapor intrusion criteria; emerging issues with PFAS in soils and groundwater; and the new definition of “waters of the U.S.” affecting the proposed filling of streams and wetlands. The panelists will share their perspectives on these developments and emerging issues, discuss the associated risks to real estate transactions and commercial/retail developments, and discuss strategies to minimize the risks.

PANELISTS
Stephen N. Haughey  
Member  
Frost Brown Todd LLC

Chris Kim Kahn  
Managing Associate  
Frost Brown Todd LLC

Anna M. Maiuri  
Member  
Dickinson Wright PLC

Sharon R. Newlon  
Member  
Dickinson Wright PLLC

Break  
3:30 – 3:45 pm  ▶ Polaris Foyer

Concurrent Sessions  
3:45 – 4:45 pm

A. Real Estate Joint Ventures – How to Keep Your Client’s Relationship from Becoming Risky Business  
▶ Polaris Ballroom C-F

A real estate practitioner’s guide to understanding how to get your clients into and out of JV relationships. We will explore essential tips every real estate lawyer should know when working on joint venture deals.

PANELISTS
Melissa A. Breeden  
Of Counsel  
Dickinson Wright PLLC

Dusty Elias Kirk  
Partner  
Reed Smith LLP

Michael A. Kostiew  
Partner  
Reed Smith LLP

B. Meet Me in the Middle – A Mock Lease Negotiation  
▶ Gemini Ballroom

The panelists will discuss what happens during the negotiation of a retail lease for space in a shopping center. The panel will be conducted in a point-counterpoint format, with Shannon S. Vukmir representing Tenant and Brian McAllister representing Landlord, so that the audience can understand the rationale for each side’s position. The panelists will also discuss what is “market” and what are frequently negotiated positions on common lease issues.

PANELISTS
Brian McAllister  
Senior Director, Leasing Counsel  
Washington Prime Group

Shannon S. Vukmir  
Partner  
Sitko Bruno LLC

Symposium Adjourns  
4:45 pm

Sessions and speakers are subject to change.

Continuing Legal Education (CLE) credits have been approved for the states of Indiana, Kentucky, Ohio and Pennsylvania.
TRUSTEE AND VOLUNTEER LEADERSHIP
Luke Petherbridge, ICSC Trustee and Central Division Vice President, ShopCore Properties
Edward Eickhoff, CRX,CLS, ICSC Central Division Government Relations Chair, PFMG Development, LLC
Donna Pugh, ICSC Central Division Operations Co-Chair, Foley & Lardner LLP
Erin Pogge, CCIM, ICSC Central Division Innovations Chair, Noddle Companies
Heather Rowe, ICSC Central Division P3 Public Chair, Village of Libertyville
Warren Terrace, ICSC Central Division P3 Private Chair, First Commercial Realty & Development Co., Inc.
Jim Pye, ICSC Central Division Retail Chair, Famous Footwear
Dustin Marks, ICSC Central Division Next Generation Chair, Colliers International

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Christina M. Sprecher, Esq., Ohio, Kentucky, Indiana, Michigan and Pennsylvania Retail Development & Law Symposium Program Planning Committee Co-Chair, Frost Brown Todd LLC
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David V. Allen, Esq., Brookfield Properties
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Paul S. Magy, Esq., Clark Hill PLC
Maria Manley-Dutton, Esq., Site Centers Corp.
Brian McAllister, Esq., Washington Prime Group, Inc.
Robyn Minter Smyers, Esq., Thompson Hine LLP
Tandy C. Patrick, Esq., Dentons Bingham Greenebaum LLP
Harlan W. Robins, Esq., Dickinson Wright PLLC
Alan Sable, Esq., Sable and Sable
James H. Schwarz, Esq., Taft Stettinius & Hollister LLP
Linda A. Striefsky, Esq., Thompson Hine LLP
Thomas P. Vergamini, Esq., Taft Stettinius & Hollister LLP
Shannon Vukmir, Esq., Sitko Bruno

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