

Program



Marriott Marquis San Francisco | San Francisco, CA
November 3 – 5, 2021
#ICSCLaw



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WEDNESDAY, NOVEMBER 3

Registration

12:00 – 8:00 pm

GENERAL SESSION 2:00 – 3:15 pm

General Session 1

Recent Developments 2021: Despite, Including and During the COVID-19 Pandemic

The panel will discuss, analyze and provide key takeaways from the most notable cases in the last year, including issues relating to (or created by) the COVID-19 pandemic as well as perspectives of vendors, purchasers, landlords and tenants.

PANELISTS

Brian Huben

Ballard Spahr LLP
Los Angeles, CA

James Mayer

Nixon Peabody LLP
Chicago, IL

Sara Wilson

Faegre Drinker Biddle & Reath LLP
San Francisco, CA

SEMINARS 2:00 – 3:15 pm

Seminar 1

Restaurant, Entertainment and Alternative Retail Leasing: Do You Want to Build a Snowman...While Sampling 21 Varieties of Beer?

This seminar will provide a practitioner's guide to unique issues presented by restaurant, entertainment and alternative retail leasing. Panelists will discuss some key considerations when leasing to non-retail users (restaurants, entertainment facilities, fitness centers, medical clinics and hotels—and what happens when you combine the two, e.g., leasing to a restaurant within a hotel) and focus on the multitude of nuances associated with non-retail users. Plus, find out how to work within traditional retail environments to include these non-retail users and keep developments operating and thriving.

PANELISTS

Abbye Dalton

Hartman Simons & Wood LLP
Atlanta, GA

Bindi Dharia

Goldfarb & Fleece LLP
New York, NY

Seminar 2

Snap, Crackle and Pop-Up: Serial Issues Related to Pop-Up Leasing

Are pop-ups a fleeting concept or permanent part of the retail landscape? No matter your perspective, temporary leasing is here to stay. Pop-up operators can both fill vacant space and create excitement within our projects. Join us to hear about the different types of retailers that “pop-up,” the pros and cons of leasing to such tenants, and of course, get a legal road map to navigate the myriad of unique issues these deals present.

PANELISTS

Evan Harms

EDENS
Washington, DC

Amelia Elze

Elze Law PLLC
Oakton, VA

WORKSHOPS 2:00 – 3:15 pm

Workshop 1

ETHICS

Practical Tips for Avoiding Trouble When Working Remotely: Privilege, Confidentiality, Technology Competence and More

Join this interactive discussion as we focus on important developments in ethics specifically relevant to the practice of law, including multistate practice, work-from-home issues, how the coronavirus has affected what we do, and more.

FACILITATORS

John Cameron

Dickinson & Wright PLLC
Grand Rapids, MI

Pamela Westhoff

Sheppard Mullin
Los Angeles, CA

Workshop 2

The Good, the Bad and the Unintended in Cannabis Retail Leasing

This discussion will focus on the challenges encountered in the leasing of cannabis retail operations and address cannabis industry-specific issues facing landlords and tenants such as licensing and zoning. The unique risks and complex nature of leasing to cannabis retailers will be explored, including the emergence of REITs as landlords, antiquated covenants, conditions and restrictions governing shopping centers and quirky zoning laws.

FACILITATORS

Thomas Haren

Frantz Ward LLP
Cleveland, OH

Steve Katkov
Cozen O'Connor
Minneapolis, MN

PEER TO PEER 2:00 – 3:15 pm

Peer to Peer 1

ADVANCED

Everyone Wants to Rule the World: Quest for Control in Supermarket Leasing

As the supermarket business evolves post COVID, operators are expanding their control over all elements of the shopping center. This session will focus on controversies, including use provisions, common area rights, exclusives and restrictions and the impacts of the “new normal” on the grocery business. The speakers will also highlight compromises to facilitate flexibility for the balance of the shopping center while working within the demands of these industry giants.

FACILITATORS

Audra Esrey
Stanley, Esrey & Buckley, LLP
Atlanta, GA

Melissa Rivers
Goulston & Storrs
Boston, MA

GENERAL SESSION 3:30 – 4:45 pm

General Session 2

From Billy Idol to Billie Eilish: Repurposing a 1980s Shopping Center

The evolution of shopping habits during the pandemic has accelerated the timeline for repurposing 1980s-era shopping centers. Our speakers will focus on the “three Cs” of redevelopment: COVID, consents and co-tenancy. In particular, the panel will:

- Consider owner concerns with respect to redeveloping and re-tenanting a shopping center
- Examine issues relating to consents required in connection with a redevelopment
- Discuss how landlords and tenants have been renegotiating co-tenancy provisions during the pandemic

PANELISTS

Jared Oakes
Benesch, Friedlander, Coplan & Aronoff LLP
Cleveland, OH

Ryan Rivera
Hartman Simons & Wood LLP
Atlanta, GA

Ruth Schoenmeyer
Eversheds Sutherland (US) LLP
Chicago, IL

SEMINARS 3:30 – 4:45 pm

Seminar 3

Getting Along in the Sandbox in a Shifting Landscape of Exclusives, Prohibited Uses and Restrictive Covenants – Then and Now

As time marches on and the desires and mores of the consumer change, so must the documents that build the foundation of a shopping center. Bring your shovel and pail to this seminar as we dig through the evolution of exclusives, prohibited uses and restrictive covenants in documents like CC&Rs, REAs and tenant leases. The panelists will discuss the impact these documents have on what tenants can and cannot do when operating at a shopping center, and how landlords and tenants can work together to navigate these issues during times of a changing retail landscape.

PANELISTS

Thomas Phillips
Brown Rudnick LLP
Boston, MA

Daniel Villalpando
Cox, Castle & Nicholson LLP
Los Angeles, CA

Seminar 4

Balancing the Competing Sides to Every Policy Provision in Your Lease

Balancing the interests of all parties to the lease relating to good faith and fair dealing, habitability, quiet enjoyment, social justice, queuing of customers outside the premises, controlling first amendment rights and labor issues provisions. Join this session to hear creative solutions to these policy concerns in our new normal.

PANELISTS

Eric Bernheim
FLB Law, PLLC
Westport, CT

Walker Kennedy III
Woodbury Corporation
Salt Lake City, UT

WORKSHOPS 3:30 – 4:45 pm

Workshop 3

Tomato, Tomahto; Guaranty, Guarantee: Let’s Call the Whole Thing Off and Pursue the Guarantors

Although guaranties of every size and shape are commonly utilized in commercial transactions, this interactive workshop will focus on retail lease guaranties as well as commercial mortgage loan guaranties. Speakers will discuss the circumstances where guaranties are generally required, the fundamentals of guaranty agreements and some of the features often negotiated. Plus, learn about the enforcement of guaranty agreements, including considerations that should be taken into account when dealing with non-U.S. domiciled persons or entities.

FACILITATORS

David Freedman
Alston & Bird LLP
New York, NY

Peter Oxman
Seyfarth Shaw LLP
Houston, TX

Workshop 4

Purchase and Sale of Retail Developments: A Puzzling Array of Issues

This interactive workshop will explore special issues relating to the purchase and sale of retail developments. The panelists will discuss complications of splitting up a shopping center, including issues relating to exclusive and prohibited uses, co-tenancy requirements and protected areas. Additionally, the discussion will include rights of first offer and refusal, prorations and holdback agreements.

FACILITATORS

Susan Cornett
Thompson Hine LLP
Dayton, OH

Andi Wang
Udell Wang LLP
Los Angeles, CA

Workshop 5

ADVANCED

Real Estate Joint Venture Negotiations: Watching for Pitfalls

This workshop will explore market practice and trends in real estate joint venture agreements, focusing on complex issues that, if not carefully negotiated, become susceptible to disputes among the parties or other unintended consequences. Speakers will examine sample key provisions in joint venture agreements, including distribution waterfalls, contribution obligations and remedies, governance rights and obligations, and exit strategies and mechanics. The discussion will also cover common pitfalls in a real estate joint venture and best practices for avoiding them as well as how to manage and discuss them with the various parties in a clear and mutually satisfactory manner.

FACILITATORS

Gerd Alexander
Paul Hastings, LLP
New York, NY

Joshua Hanna
Kirkland & Ellis LLP
Chicago, IL

PEER TO PEER 3:30 – 4:45 pm

Peer to Peer 2

ETHICS ADVANCED

“Not Now; I’m on a Zoom Call!” Multi-Jurisdictional Practice in a Virtual World

During the pandemic, the practice of law has become increasingly virtual. Nonetheless, lawyers have the same ethical duties of compliance, diligence and communication. This session will explore how such duties are affected by the virtual practice of law, including best practices for competence, confidentiality and supervision.

FACILITATORS

Desmond Connall, Jr.
Ballard Spahr LLP
Baltimore, MD

Nancy R. Little
McGuireWoods LLP
Richmond, VA

First-Timers’ Reception

5:00 – 6:00 pm

Welcome Reception

6:30 – 8:00 pm

THURSDAY, NOVEMBER 4

Registration

7:00 am – 6:00 pm

Continental Breakfast & Welcome Remarks

7:00 – 7:45 am

SEMINARS 8:00 – 9:15 am

Seminar 5

Mortal Kombat: Surviving as a Leasing Attorney (f/k/a Leasing Bootcamp I)

Difficult lease negotiations can sometimes feel like “survival of the fittest,” which can be intimidating for all attorneys, but particularly for those who are still in the early stages of their careers. This seminar will cover the basics of lease negotiation and drafting, including practical strategies on how to negotiate common lease provisions, how to strategically approach difficult leases, and how to “think” like a dealmaker.

PANELISTS

Rosemarie DelMonte
DelMonte Landblom Law, LLC
Aurora, CO

David P. Resnick
Robbins, Salomon & Patt, Ltd.
Chicago, IL

Seminar 6

ADVANCED

Digging Deep into the Ground Lease

Ground leases are often thought of as a stripped down and simplified version of the commercial real estate leases we otherwise encounter. In fact, there are numerous nuances and concerns that need to be addressed beyond simply protecting reversionary rights in the long term. Join this seminar to learn about some of the unique opportunities and challenges of the ground lease.

PANELISTS

David Camp
Senn Visciano Canges P.C.
Denver, CO

David Skrilow
Law Offices of David Skrilow
New York, NY

Seminar 7

Mixed-Use or Mixed Blessing: Managing Operational Issues on Mixed-Use Projects

Combining residential and non-residential uses, or retail and office uses, in a single development can present a developer and the end-users with many benefits. Developer benefits often include investment stability, density, flexibility with site constraints and establishment of a captive consumer audience. End-user benefits often include residential affordability, a sense of community and convenience to amenities. However, inserting different uses in a single integrated development has its potential pitfalls and management challenges. Drawing from several of the presenters' real-life client experiences, this seminar will explore the good and the bad of horizontal and vertical mixed-use development, focusing on economic, developmental, operational and management issues.

PANELISTS

Kenneth Kraft
Parker, Hudson, Rainer & Dobbs LLP
Atlanta, GA

Thomas Smallwood
Stinson LLP
St. Louis, MO

WORKSHOPS 8:00 – 9:15 am

Workshop 6

Opportunity Zones: Deferring, Reducing and Eliminating Capital Gains in Real Estate (and Business) Transactions

The Qualified Opportunity Zone (QOZ) program was created in December 2017 as part of the 2017 Tax Cuts and Jobs Act (TCJA) to spur economic development in distressed areas throughout the United States. QOZ investors enjoy tax deferrals on their invested capital gains and favorable tax treatment upon the sale of the related QOZ property or business. No wonder that in the three-plus years following the passing of the TCJA, over \$16 billion has been funded by your clients and other investors into QOZ funds (QOFs). This session will explore, among other things, various strategies and considerations for QOF investments in a variety of asset classes and explore where the OZ program may be heading legislatively

FACILITATORS

Steven Kamen
Sills Cummis & Gross P.C.
Newark, NJ

Brad Molotsky
Duane Morris LLP
Philadelphia, PA

Workshop 7

ETHICS

But I'm Not Biased! – Solving Intentional and Unintentional Bias in the Workplace

We all agree that bias in the workplace is unacceptable, and most organizations have policies against bias of any kind. Why is it still around? Join us for a poll of lessons learned about workplace bias as well as some ideas for tackling bias in your own workplace.

FACILITATORS

R. Marshall Grodner
McGlinchey Stafford, PLLC
Baton Rouge, LA

Patricia Voth Blankenship
Foulston Siefkin LLP
Wichita, KS

Workshop 8

ADVANCED

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

As today's centers welcome uses that were formerly disfavored or even unwelcome, and as the nature of retail operations continues to change (think in-car pickup and pop-up restaurants), barriers imposed by existing exclusive and prohibited-use clauses are increasingly scrutinized and addressed. The need for flexibility requires that future exclusive, prohibited use and radius clauses be crafted in a more tailored manner, while affording necessary protection. This advanced workshop will facilitate discussion to address these challenges. The presenters will also deal with drafting clauses that are enforceable and ensure that a party has adequate, yet appropriate, remedies in the event of a violation.

FACILITATORS

Howard Lind
Wendel Rosen LLP
Oakland, CA

Mary Walker
Citi Trends
Savannah, GA

PEER TO PEER 8:00 – 9:15 am

Peer to Peer 3

ADVANCED

Franchisor Lease Addendums: Thought You Were Done Negotiating the Lease? Think Again

You've finalized negotiating the lease for a new franchisee location in your center, but then you are presented with the "Franchisor Addendum." What is it and why is it necessary? This session will examine a franchisor addendum and how it interacts with the rest of the lease.

FACILITATORS

E. Steven Thompson
Arnall Golden Gregory LLP
Atlanta, GA

Theodore I. Yi
Quarles & Brady LLP
Chicago, IL

Peer to Peer 4

ADVANCED

Co-Tenancy in a Post-COVID World: Has/Should Anything Change?

The COVID-19 pandemic has changed the way we work, socialize and complete our day-to-day tasks, including how we shop for goods and services. As we transition into a post-COVID world there are different schools of thought on how these changes will impact our society moving forward. Are we forever changed, or will it be back to business as usual? Join us to explore a couple of fact patterns identifying how COVID-19 has impacted co-tenancy provisions in retail leases. We'll also address if it has or should change how we negotiate this critically important provision that is included in most sophisticated retail leases.

FACILITATORS

Gary Glick
Cox, Castle & Nicholson LLP
Los Angeles, CA

Robert Ondack Jr.
Benesch, Friedlander, Coplan & Aronoff LLP
Cleveland, OH

GENERAL SESSION 9:30 – 10:45 am

General Session 3

The COVID Litigation Update: Emerging Issues, Themes and Lessons

Just as COVID-19 has produced lasting changes to life as we knew it, it has forced us to reconsider what we thought were well-settled principles of law. The litigation came quickly and it filled courts across the country (remotely anyway). Like the pandemic itself, the results over the past 20 months have been unsettling for landlords and tenants alike. This general session will survey these decisions and provide predictions about what's next.

PANELISTS

Derek Domian
Goulston & Storrs
Boston, MA

Michael Geibelson
Robins Kaplan LLP
Los Angeles, CA

SEMINARS 9:30 – 10:45 am

Seminar 8

Assignment, Subletting & Other Transfers: How to Negotiate Your Lease with a Realistic Mindset and Practical Solutions

Negotiating transfer provisions is one of the most important parts of lease negotiation, impacting future operations, control, profits and obligations continuing after transfer. Topics to be discussed in this seminar include change in control, splitting of profits, continuing liability, capital raise and much more. We encourage participation from both landlord and tenant perspectives and hope to hear your actual experiences in negotiating these provisions.

PANELISTS

Elliot Arditti
The Hirschel Group, P.C.
Gaithersburg, MD

Lisa R. Cahn
Gresham Cahn LLC
Gaithersburg, MD

Seminar 9

Are We Covered? Construction Insurance, Indemnity and Risk Management Strategies for Retail Projects

As construction risks for retail projects continue to evolve, various risk management strategies, such as insurance, indemnity, surety and casualty coverage, continue to grow in importance and complexity. Developers, landlords and tenants are recognizing the changing landscape of liability risks in retail construction projects and continue to refine their strategies to minimize exposure to losses. Speakers will examine various risk management options and winning strategies on thoughtful risk assignments for commercial development projects of all sizes.

PANELISTS

Trip Thomas
Gallagher
Glendale, CA

Bill Toliopoulos
Laurie & Brennan, LLP
Chicago, IL

Seminar 10

Impacts of Innovations on Contemporary Grocery Store Leasing and Development

The seminar begins with a brief description of developments in grocery shopping from the early twentieth century to date that have impacted retail leasing and development. The past will set the stage for a discussion of contemporary innovations and market changes driving creative approaches to retail leasing and development in the current marketplace. The seminar will conclude with two hypothetical situations to demonstrate negotiation strategies and positions to address the subject innovations and changes.

PANELISTS

Damon Osborne
DLA Piper LLP (US)
Washington, DC

Bruce Ritter
Larsson & Scheuritzel
Jericho, NY

WORKSHOPS 9:30 – 10:45 am

Workshop 9

ADVANCED

Unmasking the Social Distance Between Title and the Rest of the World!

Title and survey immunization against today’s vexing real estate issues. Our interactive discussion will include remote notarization laws, changing uses from retail to medical offices or to multifamily housing, and related mechanics’ liens concerns arising out of repurposing such uses. We will also cover certain title endorsements as well as the 2021 changes to ALTA/NSPS Survey Standards.

FACILITATORS

Shawn Elpel
Stewart Title Guaranty Company
Seattle, WA

S.H. Spencer Compton
First American Title Insurance Company
New York, NY

Workshop 10

Work Letters: The Construction Contract Hiding in Your Lease

Construction contracts are distinct from most typical real estate agreements. For this reason, many real estate attorneys are unfamiliar and somewhat uncomfortable with tenant work letters, which effectively are mini-construction contracts embedded within leases. This interactive workshop will explore some of the most important characteristics of work letters, including construction-related issues, tenant improvement allowances and disbursement conditions.

FACILITATORS

Laura Lee Garrett
Hirschler Fleischer
Richmond, VA

Marcus Mollison
Dorsey & Whitney LLP
Minneapolis, MN

Workshop 11

Paradise Reclaimed: Placing (Solar) Panels in the Paved Parking Lot (and Up on the Roof)

This (panel-free) workshop casts a bright light on the highly charged subject of integrating solar energy and EV charging stations into shopping centers. Issues to be discussed, from the landlord, tenant and lender perspectives, include solar project development options (ownership vs. leasing vs. purchasing electricity production), impact on electricity costs, warranties/rep/covenants and other key contract provisions, potential tax benefits and retail lease implications. The discussion promises to be energized, and the goal is to give you information you can convert to power in your negotiations.

FACILITATORS

Jon Brooks
Freeborn & Peters LLP
New York, NY

Donald Simon
Wendel Rosen LLP
Oakland, CA

PEER TO PEER 9:30 am – 10:45 am

Peer to Peer 5

ADVANCED

The Evolution of Exclusive and Prohibited Uses in a Changing Retail Landscape

With retail vacancies up, and new service providers expanding the pool of potential tenants, does the standard roster of prohibited uses remain fully relevant? With technology driving new ways of retailing and a year of COVID restrictions shaking up uses, should we rethink how we draft an exclusive use clause? This session will focus on future-proofing use restrictions to allow landlords to adapt their centers, and tenants to protect their interests, all while navigating unprecedented waters.

FACILITATORS

Nicholas Dierman
Federal Realty Investment Trust
El Segundo, CA

Margaret Petersen
Petersen Law PLLC
Ann Arbor, MI

GENERAL SESSION 11:00 am – 12:15 pm

General Session 4

Reunited and It Feels So Good: Co-Tenancy Negotiations in a Post-COVID World

With vaccinations increasing and normalcy on the horizon, can we just go back to business as usual when negotiating co-tenancy terms in retail leases? A thousand times No! This general session will address things practitioners should consider when negotiating co-tenancy provisions in light of COVID-19.

FACILITATORS

Matthew Irwin
Gap Inc.
San Francisco, CA

Roy Ruda
Kitchens Kelley Gaynes, P.C.
Atlanta, GA

Kathryn Sherwood
Macerich
Dallas, TX

SEMINARS 11:00 am – 12:15 pm

Seminar 11

ETHICS

Count on Consent – Do Not Expect Forgiveness

Identifying and resolving conflicts of interest is not only a critical first step in evaluating new clients and new business opportunities, it is a professional responsibility to do so to avoid running afoul of the professional conduct conflict rules. In this seminar, the panelists will explore common, and some difficult to identify, conflicts that arise in retail and real estate industry practice and how to best resolve those conflicts. In the current legal environment, securing consent is possible in many cases—but obtaining forgiveness for not doing so is much more problematic.

PANELISTS

Randy Curato
ALAS
Chicago, IL

Martin Fantozzi
Goulston & Storrs
Boston, MA

Seminar 12

ADVANCED

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

Join this in-depth discussion of sale-leasebacks and financeable leases, including the development of outparcels. Topics will also include reasons for sale-leasebacks, critical but also sometimes subtle terms and provisions of the transaction documents, important elements affecting the “financeability” of leases from both (or all) of the landlord, tenant and lender perspectives, and planning issues, including the future unwinding of sale-leaseback transactions.

PANELISTS

Joe Doren
Frost Brown Todd LLC
Louisville, KY

Andrew L. Herz
Patterson Balknap Webb & Tyler, LLP
New York, NY

Alan Sable
Sable and Sable, LLC
Cranberry Township, PA

WORKSHOPS 11:00 am – 12:15 pm

Workshop 12

Experience is a Good School, But the Fees are High

Join this workshop discussion on how the pandemic changed the operations, practices and relationships of retail landlords and tenants. Speakers will also focus on adaptive uses, changes in operations and practices that landlords and tenants implemented during and after the pandemic.

FACILITATORS

Byron Alterman
Byron P. Alterman LLC
Marietta, GA

Nick Egelanian
SiteWorks Retail
Annapolis, MD

Workshop 13

Privacy and Data Security: E-Notaries, E-Closings and E-volving State Laws

Online and digital business continues to grow. At the same time, privacy laws and regulations are rapidly evolving. This session will explore the intersection of the real estate industry with privacy and data security requirements.

FACILITATORS

Gary Kibel
Davis & Gilbert LLP
New York, NY

Orlando Lucero
Fidelity National Title Group
Albuquerque, NM

Workshop 14

Avoiding the Tragedy of the Commons: Best Practices for New Uses in the Common Area

This workshop will delve into the practical and legal implications of the ever-changing demands on the use of common areas. Landlords are looking to monetize parking areas; tenants are competing for the best drop-off and pickup locations and what do you do with the food trucks? Audience participation will be encouraged as we explore the evolution of common areas from a sea of asphalt to productive retail uses.

FACILITATORS

Jennifer Ioli
Sherin and Lodgen LLP
Boston, MA

Kevin McKeegan
Meyer, Unkovic & Scott LLP
Pittsburgh, PA

PEER TO PEER 11:00 am – 12:15 pm

Peer to Peer 6

ETHICS

Show Me Assign: Take Assignment and Subletting to the Limit, One More Time

Assignment and subletting provisions are often among the most heavily negotiated portions of a lease. In this session, we will present hypothetical provisions and situations and invite attendees to participate, working in small groups, and explore the issues presented by those provisions and situations and to propose informed insight and solutions to the issues. We will encourage input and discussion from the perspective of landlords, tenants, lenders and any other affected parties.

FACILITATORS

Thomas Cahill
Thomas B. Cahill Attorney at Law P.C.
Naperville, IL

John Lewis
Hartman Simons & Wood LLP
Atlanta, GA

50th Anniversary Tribute & Lunch

12:15 – 1:00 pm

Keynote

1:00 – 2:00 pm

GENERAL SESSION 2:15 – 3:30 pm

General Session 5

ETHICS

Ethics at the Kitchen Table – and in the Coffee Shop: Navigating Ethical Issues in the New Remote Work World

Post-COVID-19, our work lives as lawyers will never be the same. This session will address new ethical challenges and solutions resulting from the changes to the traditional systems on which we relied, including “systems” issues, such as unauthorized practice of law, concerns resulting from our retreat to different geographic areas, and “people” issues when ethically managing workplace culture and supervision obligations in this new environment. Finally, we will give some practical coffee shop food for thought regarding succession planning, reasonable fees and a lawyer’s obligation to act with diligence.

PANELISTS

Marc Israel
MIT National Land Services
New York, NY

Nancy Rapoport
UNLV Law School
Las Vegas, NV

SEMINARS 2:15 – 3:30 pm

Seminar 13

The Wonderful World of Co-Tenancies: The Ins and Outs of These Evolving Clauses

This seminar will examine co-tenancy provisions and their impacts on landlords and tenants. Speakers will focus on strategies implemented by each party to limit risks, such as implementing sales tests, addressing replacement tenants and anchor tenant closings and negotiating permitted closures. The discussion will also cover the recent impact of governmental-required closures on these provisions and how some parties have addressed them.

PANELISTS

Scott Grossfeld
Cox, Castle & Nicholson LLP
Los Angeles, CA

Damon Juha
Freeman, Freeman & Smiley LLP
Los Angeles, CA

Seminar 14

Seeing Through the Fog: Drafting Leases That Clients, Lawyers and Judges Will All Understand Clearly

The transactional lawyers and parties have thoroughly negotiated and executed the lease, but the parties nevertheless have ended up in court. Contrary to the clarity the parties thought they achieved when they negotiated the lease, the lease interpretation and enforcement is left in the hands of a judge or jury, none of whom

have ever seen such a lease before. Two lawyers, experienced in this precise scenario, will share their insights and experiences and review how courts have treated those carefully drafted provisions. They will also provide practical tips for those who draft leases to think about for future leases.

PANELISTS

Howard K. Jeruchimowitz
Greenberg Traurig, LLP
Chicago, IL

Amy M. Williams
Williams Legal Advisory Group, LLC
Oakland, NJ

WORKSHOPS 2:15 – 3:30 pm

Workshop 15

The Property Insurance Mirage: Are Your Insurance and Your Tenant's Insurance Sufficient?

In this workshop, a risk management professional and real estate attorney will describe the property damage and business income risks faced by landlords and tenants, propose solutions, and lead discussions on the following:

1. Who should insure what part of the leased property and the improvements to it,
2. The types of property insurance that should be required and maintained, including during tenant's alterations (including structural and sub-surface work),
3. The business income and rental loss concerns of each party and how to harmonize them and
4. The value of requiring professional liability insurance from a tenant's engineers and environmental consultants.

FACILITATORS

Marie Moore
Cher Garner Cahill Richter Klein & Hilbert, L.L.C.
New Orleans, LA

Lennie Morgan
The Corporate Protection Group, LLC
Plymouth, MI

Workshop 16

Leasing in the Time of COVID: Landlord and Tenant Strategies to Survive a Pandemic.

The COVID-19 pandemic has had an unprecedented and devastating effect on leasing in many industries. This workshop will look at some of the strategies that landlords and tenants adopted to adapt to the new economic reality. The speakers will focus on what worked, what didn't, and how leasing is expected to evolve in response to the pandemic.

FACILITATORS

Eben Hansel
Ballard Spahr LLP
Baltimore, MD

Jessica Rose
Reed Smith LLP
Pittsburgh, PA

Workshop 17

Is the Earthquake Over Or Should We Brace For Aftershocks?: Landlord-Tenant Bankruptcy and Lease Renegotiation Issues During and After COVID-19

Join this interactive discussion highlighting some changes in the bankruptcy code as well as how COVID-19 added additional complexity to retailer bankruptcies—from pre-filing deferred rent deals to rent suspension motions and extension of time to assume and reject leases. The discussion will also cover how the negotiations between landlord and tenant have shifted because of these changes and how DiP lenders or new sponsors can directly or indirectly impact those conversations.

FACILITATORS

Katherine Hopkins
Kelly Hart & Hallman LLP
Fort Worth, TX

Ivan Gold
Allen Matkins Leck Gamble Mallory & Natsis LLP
San Francisco, CA

John Kane
Kane Russell Coleman & Logan, P.C.
Dallas, TX

PEER TO PEER 2:15 – 3:30 pm

Peer to Peer 7

ADVANCED

Late Delivery & the Rent Commencement Date: When Good Delivery Goes Bad

This Peer to Peer session will cover various conditions that a landlord must meet in order to achieve "delivery of possession." Topics will include a fact pattern that addresses what it means to deliver possession and what happens when the parties cannot agree whether "possession" has, in fact, been delivered. We will review these issues from both a transactional and litigation lenses.

FACILITATORS

Karen Levine
Watson Farley & Williams LLP
New York, NY

David Vallas
Polsinelli
Chicago, IL

Diversity Reception
4:00 – 5:00 pm

Dessert Reception
9:00 – 11:00 pm

FRIDAY, NOVEMBER 5

Registration
7:00 am – 1:15 pm

Continental Breakfast & ICSC Update
7:00 – 7:45 am

SPEAKER
Betsy Laird
Senior Vice President, Global Public Policy
ICSC
Washington, DC

Breakfast Roundtable Discussions
7:45 – 8:45 pm

GENERAL SESSION 9:00 – 10:15 am

General Session 6

Seeking Normalcy in Retail: Shopping Centers and Bankruptcy on a Swiftly Tilting Planet

A panel of veteran bankruptcy attorneys representing a variety of parties and viewpoints will discuss how the evolution of shopping centers and retail leasing is impacted by the bankruptcy process. The panel will explore how the global pandemic accelerated ongoing trends and forced brick-and-mortar retailers, landlords and the courts to confront novel issues. The discussion will also examine recent case outcomes, the repurposing of retail real estate, recent changes in the law, and the impact of the bankruptcy process on the ongoing transformation of shopping centers and retail leasing.

PANELISTS
Ryan Dahl
Ropes & Gray LLP
New York, NY
Cathy Hershcopf
Cooley LLP
New York, NY
Robert LeHane
Kelley Drye & Warren LLP
New York, NY

SEMINARS 9:00 – 10:15 am

Seminar 15

Leasing Boot Camp II: All the Fun of Leasing Boot Camp I, but with Twice the Roman Numerals!

Join us for a deeper dive into the fundamental provisions of commercial leases, including a more detailed explanation of common concepts and considerations for drafting and negotiating retail leases. Prepare to hear helpful tips, strategies, anecdotes and “war stories” from both a landlord and tenant perspective. You will leave this session better prepared to take on your next negotiation.

PANELISTS

Nida Shakir-Ghaffar
Husch Blackwell LLP
Chicago, IL

Brian R. Smith
Stanley, Esrey & Buckley, LLP
Atlanta, GA

Seminar 16

ETHICS

Leasing for Cannabis-Related Uses

Cannabis businesses were a net new-job generator over the last year, contributed millions of dollars to local and state government economies through tax revenue, and was deemed an “essential business” during the pandemic, allowing dispensaries and grow facilities to remain open during lockdown. This seminar will focus on current trends impacting the industry, the risks to commercial landlords in connection with the leasing of real property to plant-touching businesses (a/k/a tier one cannabis-related business), and best practices for attorneys navigating the challenges presented by this industry on behalf of their clients.

PANELISTS

Robert M. DiPisa
Cole Schotz P.C.
Hackensack, NJ

Douglas A. Praw
Holland & Knight LLP
Los Angeles, CA

WORKSHOPS 9:00 – 10:15 am

Workshop 18

Rights and Remedies in Changing Times: Whose Default Is It Anyway?

With the world of retail real estate evolving in record time, should the lease language of covenants, defaults, occurrences, violations and remedies evolve too? This workshop explores litigation issues brought into focus and exacerbated during the pandemic, with more to come because of the changes in brick-and-mortar use and occupancy issues that were stimulated. Facilitators will offer alternatives for your consideration and promises a provocative exchange of ideas. Additional topics to be discussed include:

- Do routine landlord default provisions stand up under the growing weight of distressed or insolvent landlords?
- How do the views of landlords and retailers differ on these subjects? Is there common ground?
- Are there any effective remedy alternatives that can be employed to avoid or limit exposure to the expense and delays of litigation?

FACILITATORS

Jessica Berets
First Washington Realty, Inc.
Bethesda, MD

Paul Magy
Clark Hill PLC
Birmingham, MI

Workshop 19

ADVANCED

Drafting Lease Insurance Requirements: You Can't Always Get What You Want, But Did You Get What You Need?

This session will focus on drafting insurance clauses in leases to conform with the parties' allocation of risk and liability and using specific language that addresses the risk transfer limitations of current ISO forms. The discussion will include indemnity provisions, the need to provide for primary/noncontributory language, the effect of subrogation, obtaining status as an additional insured, best practices for confirming coverage and claims examples.

FACILITATORS

Bryant Eaton
Alliant Insurance Services
Newport Beach, CA

Scott Osborne
Foster Garvey PC
Seattle, WA

Workshop 20

Mixed-Use Developments: Putting the Puzzle Together Today; Providing Flexibility to Rearrange Tomorrow

While mixed-used developments come in a variety of shapes and sizes (a multi-block new urbanism development, a vertical high-rise development or a repurposed regional mall), the challenges are often similar: how to integrate uses that may have competing interests or conflicting needs, how to provide a framework for each use to be successful and how to equitably allocate project related operating expenses.

This workshop will explore declaration, governance and dispute resolution issues, parking challenges, equitable allocation schemes for CAM, insurance and taxes, operational issues, compatibility of uses and relevance of traditional shopping center provisions, such as exclusives, use prohibitions, parking ratios, co-tenancy and hours of operation. In addition, this workshop will touch on lender issues unique to mixed-use developments.

FACILITATORS

Mark Eisemann
Lewis Rice, LLC
Kansas City, MO

Karen Pifer
Honigman LLP
Bloomfield Hills, MI

PEER TO PEER 9:00 – 10:15 am

Peer to Peer 8

ADVANCED

Risky Business or Business as Usual – Advanced Issues in Purchase and Sale Agreements

This interactive workshop will focus on the factors that are most likely to raise issues when negotiating purchase-and-sale agreements for multi-tenant retail facilities. Hypothetical situations will be used to guide the discussion through the process of getting a letter of intent completed and then negotiating a purchase-and-sale agreement for a grocery-anchored shopping center. Lessons learned from the pandemic regarding delinquent tenants and other issues driven by events of 2020-2021 will be shared to keep the discussion relevant.

FACILITATORS

Charles Brake Jr.
Miller & Martin, Attorneys at Law
Atlanta, GA

David Lima
Real Solutions, PLLC
Eden Prairie, MN

GENERAL SESSION 10:30 – 11:45 am

General Session 7

Current Issues in Liability Insurance: Whose Fault is It Anyway?

Almost all commercial leases contain requirements that tenant and/or landlord carry liability insurance. However, leases are typically written by lawyers—not insurance professionals—so how do we make sure our standard language adequately protects our clients? This session will explore the fundamentals of liability insurance and their corresponding provisions, so you can better understand why this coverage is necessary, and how to best document it. Speakers will also touch on recent developments regarding coverage trends and what can be expected from liability insurance going forward in a post-COVID-19 world.

PANELISTS

Charles Comiskey
RiskTech, Inc.
Houston, TX

Abe Freeland
Alliant Insurance Services, Inc.
Nashville, TN

Kathryn Gaydos
Benesch, Friedlander, Coplan & Aronoff LLP
Cleveland, OH

SEMINARS 10:30 – 11:45 am

Seminar 17

ETHICS

Bias Busters: Changing Our Unconscious Bias Behaviors in the Workplace

Our awareness of unconscious bias is evermore critical as we grapple with how our complex system can deny access and alter opportunities based upon individual biases. This seminar will explore the activities of our employers and the role we play as principals in our firms and companies. We will explore how knowing about unconscious bias can help us have a more stable, motivated and engaged workforce, making our firms stronger economically as well as creating better workplaces. Most importantly, we will highlight concrete individual and corporate actions that can be utilized to disrupt bias.

PANELISTS

Oscar R. Rivera
Siegfried Rivera
Plantation, FL

Terri K. Simard
Target Corporation
Minneapolis, MN

Jane Snoddy Smith
JAE Law Group, PLLC
Austin, TX

Seminar 18

Hot Topics in Bankruptcy: The Changing Landscape for Tenants and Landlords

While retailers have experienced disruption and distress for nearly a decade, the real estate industry and, specifically, landlords have organized to protect themselves in the face of tenant distress. During the COVID-19 era, additional uncertainty has forced quick thinking and creative solutions. This seminar will discuss how companies can protect themselves in a changing, distress environment and what innovative solutions that retailer and real estate players alike have implemented to address the current state of affairs.

PANELISTS

Brian Audette
Perkins Coie LLP
Chicago, IL

Jamila J. Willis
DLA Piper LLP (US)
New York, NY

WORKSHOPS 10:30 – 11:45 am

Workshop 21

Retail Leasing in the Post-COVID New Normal: Best Practices and What Not To Do

COVID-19 and recent episodes of civil unrest have forced retail real estate practitioners to adapt to new and constantly evolving circumstances. To ensure that each potential retail lease transaction results in a signed lease and every existing retail tenant with a viable business can survive and thrive, all aspects of retail leasing and tenant retention are up for grabs—whether it be the business terms, the lease itself or the standard operating procedures of the landlord and tenant. We'll discuss the emerging dos and don'ts in this unprecedented period of turmoil and uncertainty.

FACILITATORS

Joe Nuñez
Vantage Law Group
Minneapolis, MN

Ellen Sinreich
The Sinreich Group
New York, NY

Workshop 22

ADVANCED

Loan Workout Strategies for the Pandemic and Post-Pandemic Economies: Putting Humpty Back Together Again

This workshop will bring “all the king’s horses and all the king’s men” together to discuss various methods to work out a defaulted loan. The topics will address strategic decision-making from both the lender’s and the borrower’s perspectives. We will also analyze the ripple effects of various COVID-19-related policy decisions (e.g., moratoria on foreclosures and evictions) and the impact on the loan workout processes.

FACILITATORS

Jason Grinnell
Thompson Coburn LLP
Los Angeles, CA

Gib Saydah Jr.
Montgomery McCracken Walker & Rhoads LLP
New York, NY

Lica Tomizuka
Faegre Drinker Biddle & Reath LLP
Minneapolis, MN

Workshop 23

To Infinity and Beyond: Remedies Beyond Specific Performance and Return of the Deposit

This workshop will take an in-depth look at when specific performance may not be available and explore other remedies available to buyers and sellers in real estate purchase contracts. The presenters will discuss case law and work through a number of hypothetical scenarios involving various defaults and potential remedies.

FACILITATORS

Karim Ali
Porter Wright Morris & Arthur LLP
Columbus, OH

Michael Kostiew
Reed Smith LLP
Pittsburgh, PA

PEER TO PEER 10:30 – 11:45 am

Peer to Peer 9

ADVANCED

Ground Rules for Ground Leases: Be Careful Out There, It's Not as Easy as It Looks!

This Peer-to-Peer session will focus on the “what ifs”, “ands” and “buts” of ground leases. The discussion will cover how ground leases work and what happens if and when they don't. We will compare ground leases and space leases, and the variances between the two.

FACILITATOR

Kathleen M. Vlasek
Benesch, Friedlander, Coplan, & Aronoff LLP
Cleveland, OH

SEMINARS 12:00 – 1:15 pm

Seminar 19

Frustration, Impossibility and Force Majeure: A Litigator's View of Whether COVID-19 Can Be Invoked to Avoid Lease Obligations

COVID-19 has unleashed a wave of litigation between landlords and retail tenants. In this seminar, experienced litigators will analyze whether courts have granted, will grant and should grant tenants relief from rent and other lease obligations based on the pandemic. The speakers will discuss major pending cases, key court rulings, historical case precedents and applicable statutes and government orders that will inform and predict future litigation decisions.

PANELISTS

Jason Abel
Honigman LLP
Detroit, MI

Marco Quazzo
Bartko, Zankel, Bunzel & Miller
San Francisco, CA

Seminar 20

ADVANCED

Scoring a Touchdown for Your Client on the Toughest Purchase-and-Sale Provisions: Fight for Every Yard or Fight to Make a Deal?

This seminar will address the most difficult provisions a buyer and seller will negotiate in connection with the purchase and sale of a retail property. Topics that will be covered include due diligence

parameters, representations and warranties (including survivability, security, caps and floors), estoppels and other closing conditions, closing prorations and surviving indemnifications. While structured as a seminar, the speakers will engage with the attendees to find solutions to common points of conflict.

PANELISTS

Jonathan Block
Honigman LLP
Bloomfield Hills, MI

Bradley Siegel
Maynard, Cooper & Gale, PC
Birmingham, AL

Megan Vallerie
Seyfarth Shaw LLP
New York, NY

Seminar 21

ALTA Policy Forms Revisions—Again!

2020 has brought on many changes to the industry, including the new 2021 ALTA policy forms. Please join us for this informative seminar for a discussion on the revisions to the ALTA Policy forms and any newly introduced endorsements. This session will also include a discussion of the revisions to any endorsements, the commitment and the CPL.

PANELISTS

Lia Albizo
Chicago Title Insurance Company
Dallas, TX

Melanie Kido
CATIC
Waltham, MA

WORKSHOPS 12:00 – 1:15 pm

Workshop 24

The COVID Dilemma in Landlord/Tenant Disputes

COVID-19 and the fallout from its impact on shopping centers have given rise to many challenges not seen in our lifetime. This workshop will focus on recent litigation as well as strategies that landlords and tenants have implemented when faced with these unprecedented dilemmas. The discussion will also highlight suggested changes in lease language to protect both landlords and tenants if another crisis occurs.

FACILITATORS

Kevin Kaplan
Coffey Burlington
Miami, FL

Andrea Martin
Burns & Levinson LLP
Boston, MA

John Wiles
Wiles & Wiles, LLP
Marietta, GA

Workshop 25

You Agreed to What? The Five Critical Provisions of Your Construction Contracts

Construction contracts are often a compilation of separate but interrelated documents, all of which must be carefully correlated to avoid gaps that lead to misunderstandings, disappointed expectations and disputes. Through this interactive workshop, the facilitators will explore the five most important provisions among owner/designer/contractor/subcontractor participants in the construction project that can serve to minimize that risk. These provisions are most often cited as the source of disputes during and after construction, and when not resolved, are at issue in arbitration or trial.

FACILITATORS

John Hanover
Alston & Bird LLP
Los Angeles, CA

Stuart Sobel
Siegfried Rivera
Coral Gables, FL

PEER TO PEER 12:00 – 1:15 pm

Peer to Peer 10

ADVANCED

Anchor's Away! What's an Owner To Do? Repurposing Shopping Centers to Include Distribution Centers and Other Nontraditional Uses

Shopping center owners are increasingly considering whether to fill their anchor vacancies with, or to redevelop their shopping centers to include, fulfillment and distribution centers and other non-traditional retail uses. While adapting shopping centers to a changing retail economy may be necessary for survival, the introduction of new, non-retail uses may be hampered by (1) logistical concerns (2) incompatible covenants and agreements with existing tenants (3) neighborhood and community opposition, and (4) outdated zoning laws prohibiting such uses. Finding effective workarounds can add value and can mean the difference between project success and failure. In this session, participants will consider hypotheticals and will strategize together to come up with ways to overcome impediments to adding a large distribution center or other non-traditional retail uses to a struggling suburban shopping center.

FACILITATORS

Steven L. Dube
Saul Ewing Arnstein & Lehr LLP
Washington, DC

Louis K. Raymond
Irvine Company
Irvine, CA

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