

OUTLINE:

**14th ANNUAL KENTUCKY COMMERCIAL REAL ESTATE CONFERENCE:
PANEL DISCUSSION: COMMERCIAL LEASING 2024**

Louisville, Kentucky

WEDNESDAY, NOVEMBER 6, 2024

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1. CURRENT TRENDS/MARKET DEMANDS

14 MINUTES

- Impact of interest rate changes on different asset classes
- Office building delinquencies, receivership [survivors vs. non-survivors]
- Permanent change in office occupancy – never 100% ‘5 days’ again
- Seller financing
- Ground lease structure [layers of owners/debt]
- Flight to quality
- Growth in rental properties [senior living, student housing]
- Retail evolution/repurposing of shopping malls
- Industrial remains strong
- Store-in-a-Store (retail)

2. RECENT COURT DECISIONS REGARDING COMMERCIAL LEASING 14 MINUTES
ISSUES - TANDY PATRICK

- *Cummins Properties, LLC v. Hines*, 201 N. E. 3d 295 (Mass. 2022)
 - Can landlord enforce default provision by terminating lease and accelerating remaining rent owed under the lease?
- *Sourcing Unlimited, Inc. v. Cummins Properties, LLC*, No. 21-P-1054 (Mass. 2023)
 - Is email from tenant effective notice to respond to nonrenewal when lease prohibits electronic notice?
- *Cody Real Est., LLC, v. G&H Catering, Inc.*, 219 Conn. App. 773 (2023)
 - Is lease guaranty enforceable when guarantors did not sign or acknowledge Lease Modification and Extension Agreement?
- *Brandywine Dev. Grp., L.L.C. vs. Brinker Rest. Corp.* (Del. Super. Ct. May 16, 2023)
 - Does original tenant remain liable under lease after assignment of lease to assignee that met minimum "net worth" requirement?
- *CM Com. Realty, Inc. v. Alpha Trust Real Est., LLC* (2023 Del.)
 - Is broker entitled to commission when original lease (including all extensions) expires and lease amendment providing further extensions failed to mention broker?
- *NCO Fin. Sys. V. Montgomery Park, LLC*, 40 F. 4th 123 (4th Cir. 2022)
 - Does landlord have a duty to attempt to re-let space when tenant defaults and vacates?
- *Garrison Southfield Park L.L.C. v. Aspen Specialty Ins. Co.*, 2022-OH-709 (Ct. App.)
 - Is landlord entitled to coverage for pollution clean-up under tenant's insurance policy when landlord failed to notify insurance company within the policy period?
- *Pioneer Plaza of Georgetown, LLC v. Georgetown Apothecary, PLLC* (Ky. Ct. App. April 1, 2022)
 - Does tenant's failure to pay for repairs following lease expiration make tenant a "holdover tenant" who must continue to pay rent to landlord?
- *Dika-Homewood, L.L.C. v. Office Max, Inc.* (N.D. Ill. 2023)
 - Is tenant allowed to withhold rent for cost of installation of new HVAC and LED lighting when landlord failed to pay tenant the improvement allowance described in the lease?

- *Eighty Hundred Clayton Corp. v. Lake Forest Dev. Corp.*, 2022 Mo. App. LEXIS 472 (App. Ct. July 26, 2022)
 - Is tenant deemed to have renewed a commercial lease when tenant fails to give written notice of renewal to landlord but continues to make rental payments which are accepted by landlord?

3. CHANGES IN RETAIL LEASING - CLAY HUNT

14 MINUTES

- CURRENT MARKET NUMBERS:
 - o AVAILABILITY: 6.8%
 - o BIG BOX: \$11.74/SF/YR
 - o SMALL SHOP: \$19.01/SF/YR
- NOTES AND COMMENTS ON CURRENT MARKET
 - o LIMITED AVAILABILITY
 - o FLIGHT TO QUALITY
 - o ACTIVE USERS
- MARKET ACTIVITY:
 - o PUBLIX
 - o GROCERY ACTIVITY: KROGER, HYVEE, BJS, PUBLIX
 - o OTHERS ACTIVE & NEW
 - Wawa
 - Banks
 - Restaurants
 - o Closings/Bankruptcy
 - o Growth outside of traditional city: Louisville & Lexington growth areas.
- Challenges
 - o Availability
 - o Cost of Construction
 - o City approvals/zoning/development corridors
 - o NNN – Expenses
- Investment Market
 - o Cap Rates

4. CHANGES IN OFFICE LEASING - DOUG OWEN

14 MINUTES

- Debt markets and the impact of office product.
Loan maturity and refinancing issues.
Operating in a building under receivership.
Pitfalls for the City of buildings going into default/receivership now and the City's/State's potential roll to avoid the long-term impacts.
- Conversion of existing office produce to hotel or residential.
Cost, demand.
Code issues, existing floor plate obstacles, plumbing.
- Return to office/Office Redesigns to encourage employees back to the office.
Nearly half of employees express dissatisfaction with their personal comfort and overall experience at the office.
A shift toward people first design is reshaping workplaces, with an emphasis on creating spaces that support both remote and on-site collaboration and focus.
Hybrid workers value workplaces that support collaboration and socialization. While the social side of the office is important, so are private workstations, acoustics and other factors that support desk-based work. Employers need to understand which factors boost performance and identify shortcomings in existing offices.

5. WHAT'S NEXT/QUESTIONS

4 MINUTES