

Real Estate Session

Time: The program will begin at 1:00 P.M. and end around 4:00 P.M.. It will be followed by a cocktail reception starting around 5:15 P.M. and lasting until around 6:30 P.M..

Session Title: Sharpening Your Basic Commercial Real Estate Skills. For experienced real estate lawyers, the session will provide an opportunity to relearn basic skills. General practitioners can expect to learn useful tools to expand the range of their practice. Young lawyers and others looking for a chance to specialize will get a taste of what it's like to be a transactional real estate lawyer.

Program Format:

The room will have two rectangular tables and between three and six round tables. One rectangular table will be the head table, and one will be needed for refreshments. The head table will seat ten. Each round table will be a discussion table and seat fourteen people. Each discussion table will have its own moderator.

A completely separate program will be conducted at each discussion table simultaneously. Although the topics are separate, when taken together, they constitute an integrated course in important basic commercial real estate skills. Attendees may choose the topic they prefer merely by sitting at the table at which the topic will be discussed.

The number of courses will depend on the number of attendees, and the courses will be selected from those described in the discussion outlines.

The discussions will last approximately forty-five minutes.

After the first forty-five-minute period, the moderators will leave the tables at which they're sitting and rotate to another table. Then, they'll start again with a new crew of students. After the second forty-five-minute period, the instructors will leave the round tables and sit together at the rectangular table. Each will summarize the discussion at his or her table.

The discussions will end around 4:00 P.M.. In about an hour, the cocktail party will begin. Now, on their feet and presumably stimulated by the discussions, ABA people and members of other bar associations will get a chance to know each other better and exchange business cards.

Discussion Outlines:

Table 1: Buying Land for a Real Estate Building Project

1. What a Developer Can Afford to Pay for Land?
 - a. Negotiating the Purchase Price.
 - i. Comparing the Premises with Comparable Parcels.
 - ii. Relationship of Land Value to the Project's Potential Cash Flow.
 - b. Terms of Payment.
 - i. The Contract Deposit.
 - ii. Will the Deposit Be Held in Escrow?
 - iii. Scheduling Deferred Purchase Price Payments.
 - iv. Purchase Money Mortgages.
 - v. Organizing a Purchase Money Mortgage to Continue after Construction or Permanent Financing
 - c. Subordination.
 - d. Substitute Security.
2. Representations by the Seller.
 - a. Seller Owns the Property.
 - b. Have the Seller List the Encumbrances He or She Knows About.
 - c. Land Area of the Premises.
 - d. The Seller Should Advise the Buyer If of Any Lawsuits or Condemnation Proceedings Relating to the Land.
3. Site Investigation and Rights of Entry.

- a. A Buyer Needs the Seller's Permission to Make Test Borings, Percolation Tests and Other Important Tests and Surveys.
- b. A Buyer Also Needs the Seller's Permission to Erect a Sign Structure to Advertise the Forthcoming Project.
- c. Protection for the Seller During Buyer's Entry.
 - i. Require Buyer to Indemnify Seller.
 - ii. Require Buyer to Carry Liability Insurance.
 - iii. Require Buyer to Discharge Liens.
 - iv. Require Buyer to Fill Holes and Repair Damage.
 - v. Restrict Movements of Buyer to Avoid Injuries to Seller.
- 4. Zoning and Other Municipal Approvals.
- 5. Examining Title to the Property.
 - a. Mortgages.
 - i. Do They Encumber Other Property as Well?
 - ii. Prepayment Privileges.
 - b. Easements.
 - i. Does an Easement for a Utility Pipe Burden the Entire Property Being Purchased?
 - ii. Distinguish Between Burdening Servitudes and Appurtenant Easements.
 - iii. Restrictive Covenants in Old Deeds.
 - c. Buyer's Right to Approve the Title.
- 6. Buyer's Rights of Cancellation.
 - a. Under What Circumstances Can the Buyer Cancel?
 - b. Will the Seller Be Required to Return the Deposit?
 - c. Seller's Claim for Buyer's Plans and Permits.
- 7. Buyer's Default.
 - a. Limitation of Liability.
 - b. Liquidated Damages.
- 8. The Closing.
 - a. Preclosing Procedures
 - b. Closing Checklist. A Lawyer's Goals for a Closing.
 - c. Closing in Escrow.
 - d. Post-closing Procedures

Table 2: Construction Contracts

- 1. Issues Between a Developer and Contractor.
 - a. Defining the Work
 - b. Shifting Real Risk to the Contractor.
 - c. Bonding.
 - d. Extras.
 - e. Force Majeure.
 - f. Strikes.
- 2. Paying the Contract Price.
 - a. Defining the Contract Price
 - b. Subcontractors.
 - c. Mechanics' Liens.
 - d. Retainage.
 - e. Payment Schedule.
 - f. Certification.
- 3. Contractor Guaranties.
- 4. Work Stoppages.
- 5. Builder's Risk Insurance.

6. Relationship with Architect.
 - a. Role of Architect.
 - i. Before Construction Begins.
 - ii. After Construction Begins.
 - b. Developing Plans and Specifications.
 - c. Paying the Architect.
 - d. Design Builders.

Table 3: Office Leasing

1. Dealing with Office Leasing Brokers.
 - a. Who Pays the Broker?
 - b. Authorizing a Broker to Negotiate for the Tenant
 - c. Exclusive Authority for the Broker?
2. Pitfalls.
 - a. Leasing *Rentable* Space.
 - i. Defining *rentable* space.
 - ii. Buildings That Expand Without Physical Change.
 - b. *Porter Wage* Clauses. Legal Pocket Picking?
 - c. Ventilation after Normal Business Hours.
 - d. Excluding Cleaning Service.
 - e. Flat Fees for Utilities.
3. Basic Economic Elements.
 - a. Basic Rent.
 - b. Tax Escalation.
 - c. Operating Escalation.
 - d. Construction Arrangements.
 - i. New Tenant Alteration.
 - ii. "As Is".
 - iii. Alterations by Landlord for New Tenancy.
 - e. Services by Landlord.
 - i. Cleaning.
 - ii. Ventilation, Heating, Air-conditioning.
 - iii. Parking.
 - iv. Electricity.
 - f. Term of the Lease.
 - i. Original Term.
 - ii. Options.
 - g. Tenant's Rights for Early Cancellation.
 - h. Assignment and Recapture.
4. Special Subletting Problems.
 - a. Subtenants should check whether their base year for escalation payments begins on their own initial occupancy date or their sublandlord's original occupancy date.
 - b. Nondisturbance from Landlord.
5. Problems of Leasing Previously Occupied Space.
 - a. Should Existing Partitions be Removed Entirely?
 - b. Buying Furniture and Carpets from Previous Tenant.
6. The "Work Letter."
 - a. Employing an Architect.
 - b. What Does "Building Standard" Mean?
 - c. Planning the Work Letter to Avoid Extras.
 - d. Avoiding Unnecessary Construction Costs.

Table 4: Purchasing Multi-tenanted Property for Investment

1. Review the Seller's "Set-Up" to See If It Represents the Operating Income of the Property Accurately.
 - a. Income.
 - i. Occupancy Rents less Allowance for Vacancies.
 - ii. Income from Accessory Facilities.
 - (1) Washing Machines (apartment house)
 - (2) Parking Spaces (apartment house)
 - (3) Kiosks (shopping centers)
 - (4) Signs (shopping centers, apartment houses, office buildings)
 - (5) Vending Machines
 - (6) Fees for Use of Recreational Facilities (apartment house)
 - iii. Income from Tenant Reimbursements
 - (1) Tax Increases
 - (2) Operating Escalation (office buildings)
 - (3) Insurance Increases (shopping centers)
 - (4) Common Area Contributions (shopping centers)
 - b. Expenses.
 - i. Mortgage Interest.
 - ii. Mortgage Amortization.
 - iii. Real Estate Taxes.
 - iv. Salaries.
 - v. Supplies.
 - vi. Electricity.
 - vii. Insurance.
 - viii. Parking Area Maintenance.
 - ix. Recreational Facility Maintenance.
 - x. Heat.
 - xi. Management.
 - xii. Repairs.
 - xiii. Professional Fees.
 - xiv. Advertising.
 - xv. Commissions.
2. Purchasers of Investment Properties Evaluate a Building on the Basis of its Cash Flow. How Is Cash Flow Computed?
3. The Purchase Price as a Multiple of Cash Flow.
4. Investigations to Be Made by Purchaser Before Signing a Contract.
5. Structure of the Purchase Price.
 - a. Down Payment.
 - i. Escrow Provisions.
 - ii. Using a Letter of Credit.
 - b. Payment at Closing.
 - i. Distortion of Cash Requirements by Closing Adjustments.
 - ii. Effect of First Mortgage Amortization.
 - iii. Refinancing before Closing.
 - c. Purchase Money Mortgage.
 - i. Maturity Date.
 - ii. Interest Payable.
 - iii. Mandatory Payments of Principal.
 - iv. Prepayment.
 - v. Manipulation of Method of Payment of Purchase Prices as Leverage.

- vi. Requirements to Subordinate to Refinanced First Mortgage.
- 6. Inspecting the Occupancy Leases.
- 7. Representations by Seller.
 - a. Rent Roll.
 - b. Utility Services Furnished.
 - c. Appliances Furnished.
 - d. Is Furniture Included?
 - e. Rent Control.

Table 5: Real Estate Financing

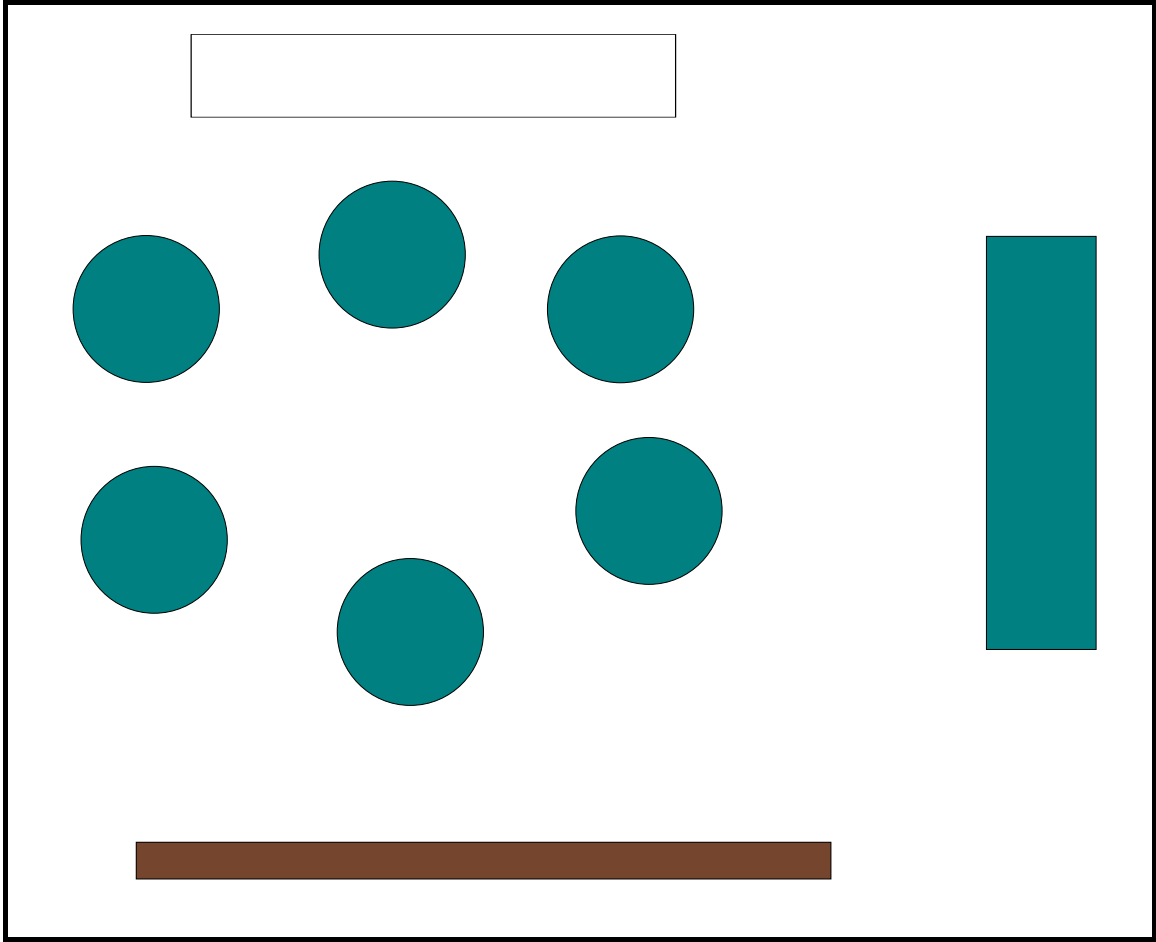
- 1. Preparation for Pleasing the Mortgagee:
 - a. Title.
 - b. Value of site.
 - c. Construction.
 - d. Design.
 - e. Credit of Tenants.
 - f. The Leases.
- 2. Stages of Financing.
 - a. Development.
 - b. Construction.
 - c. Permanent.
 - d. Sale-leaseback.
 - e. Sell the Leasehold.
 - f. Second Mortgage.
- 3. The Mortgage Broker - Mortgage Banker
 - a. The Difference.
 - b. What Does He or She Get, and When?
 - c. Can You Do Without Him or Her?
 - d. Servicing.
- 4. Structuring the Loan.
 - a. The Cash Flow.
 - b. Term of Leases.
 - c. Vacancy and Expense Factors.
 - d. Credit or Exculpation.
 - e. Relationship between Repayment and Term of Leases.
- 5. Development Loans.
 - a. Equity kicker.
 - b. Subordination.
- 6. Construction Loans.
 - a. Credit of borrower.
 - b. Improvements and Completion.
 - c. Bond - Guaranty - Take Out - Tripartite Agreement.
 - d. The Leases.
 - e. Interest/Points.
 - f. REITS and Banks.
 - g. How the Loan is Prepaid.
 - h. Predicament of the Lender if There is a Foreclosure - Sinking Good Money After Bad.

Table 6: Shopping Center Leases

- 1. How Does the Businessperson Look at Rent?

- a. Percentage of Sales, Fees or Commissions.
 - b. Other Costs of Operating a Store, Office or Factory.
 - c. Rental Structure Elements.
 - i. Minimum Rent.
 - ii. Percentage Rent.
 - iii. Cost of Living.
 - iv. Common Area Charges.
 - v. Tax Contributions.
 - vi. Insurance Contributions.
 - vii. Merchant's Association Dues.
 - d. Relationship of Rent to Economic Variables.
 - i. Credit of Tenant.
 - ii. Term of Lease.
 - iii. Cost of Construction.
 - iv. Financing Cost.
 - v. Services Rendered by Landlord.
2. Construction Arrangements.
- a. Cost Stop.
 - b. Net Lease.
 - c. Turnkey Job.
 - d. Shell and Allowance.
 - e. Ground Lease.
 - f. Parceling.
3. Tenant Mix for a Shopping Center - with Whom Will a Retailer Share a Shopping Center?
- a. Department Stores.
 - b. Supermarkets.
 - c. Drug Stores.
 - d. Shoe Stores.
 - e. Apparel Stores.
 - f. Restaurants and Luncheonette.
 - g. "Candy Stores."
4. The Demised Premises.
- a. Condition of the Premises:
 - i. Repairs.
 - ii. Surrender.
 - iii. Compliance.
 - iv. Environmental.
 - v. Destruction.
 - vi. Condemnation.
 - b. Insurance and Indemnity
 - i. Tenant's Indemnity.
 - ii. Liability Insurance.
 - iii. Property Insurance
 - iv. General clauses on Insurance.
 - c. Tenant's Operations:
 - i. Continuous Operations.
 - ii. Alterations.
 - iii. Store Signs.
 - iv. Mechanics Liens.
 - v. Reentry Rights.
5. The Common Area
- a. Defining the Common Area.
 - b. Tenant's Easement to Use the Common Area.

- c. Condition of the Common Area.
 - i. Repairs.
 - ii. Maintenance
 - iii. Compliance.
 - iv. Environmental.
 - v. Destruction.
 - vi. Condemnation.
 - d. Insurance and Indemnity
 - i. Landlord's Indemnity.
 - ii. Liability Insurance.
 - iii. Property Insurance
 - iv. General clauses on Insurance.
 - e. Landlord Operations:
 - i. Co-tenancy Clauses.
 - ii. Landlord's Rights to Make Changes to the Common Area.
 - iii. Shopping center Sign Towers.
6. Transfer of Interest
- a. Assignment.
 - b. Subletting.
 - c. Subordination and Nondisturbance.
 - d. Estoppel Certificates.
7. Default.
- a. Late Fees.
 - b. Self-Help.
 - c. Termination.
 - d. Defining Event of Default.
 - i. Notice of Default.
 - ii. Cure Periods.
 - iii. Notice of Termination.
 - iv. Summary Proceedings.
 - v. Reentry.
 - vi. Reletting.
 - vii. Liquidated Damages.



Room Arrangement