

PROPOSED PROGRAM OUTLINE
ABA 13TH ANNUAL REAL PROPERTY SYMPOSIUM
SAN FRANCISCO, CALIFORNIA
APRIL 25 AND 26, 2002

***“AFTER THE GOLD RUSH:
WHAT EVERY LAWYER AND CLIENT SHOULD KNOW
IN A REAL ESTATE MARKET MARKED BY
DECLINING VALUES, ENERGY CRISES AND TERRORISM”***

(Morning Program: 1½ Hours)

I. Introduction to the Morning and Afternoon Program

The events of September 11, 2001 have had a profound impact on America. In many ways, they will forever change the way we live, think and conduct business. Commentators and economists now believe that the tragic terrorist acts in New York and Washington may have contributed to a further slowing of our economy and brought us into the current recession. Even before September 11, however, the U.S. economy was showing signs of a substantial downturn. That downturn was arguably felt most profoundly in the San Francisco Bay Area, the site of today’s Symposium. As venture capital investment dried up, dot.coms and high tech companies that were once the darlings of investors all across the world, began to fail. Many buildings that once had 100 percent occupancies at record commercial lease rates lost floors of tenants as one company after other folded. Bankruptcy filings increased. And while property values remained steady thanks in large part to declining interest rates, developers found money hard to get from banks and other financial institutions. This has forced many “thin pockets” to walk away from their projects and “deep pockets” to put their development plans on hold.

It is somewhat ironic that we are here in San Francisco, a city that enjoyed tremendous growth as a result of the 1849 Gold Rush. The 1990’s – especially in California – was a Gold Rush as well, albeit a different kind of one – with silicon chips replacing gold dust. The San Francisco Bay Area also enjoyed tremendous growth as a result, particularly in the real estate industry. Like the 1849 Gold Rush, this one too appears to have run its course and the commercial, industrial, residential, resort/hospitality markets are showing the aftereffects of that demise. This program will explore the end of the Second Gold Rush as it relates to real estate in San Francisco, California, and the entire nation. The lessons that we learned and continue to learn here have application everywhere. This program is for lawyers (both transactional and litigation) and for their clients. In it, we will look at several key business and legal issues attending the local and national real estate market and discuss from a legal perspective the impact that the dot.com crash, the recent terrorist events, and the current energy crisis has had on that market. The program has been divided into two sections:

- A. Leasing, Development, Finance
- B. Resort, Hospitality, Timeshares, Gaming

II. What Happened to the Commercial Leasing Market?

- A. What do we do with all this space? Renegotiation of leases and lease subordination issues.
- B. What's happening in the leasing market mirrors what the dot.com crash. Tenants laden with cash drove rents up (SF's South of Market area is a great example), but did not put much down as a security deposit and did not have many assets. Landlords took stock options/warrants as kickers or as security deposits which became valueless. We can talk about creative forms of security deposits for the future.
- C. The danger of landlords spreading themselves too thin by leasing too much space to high-paying high-risk tenants. New use of "concession recoupment" provisions (i.e., tenant concessions).
- D. Should the broker share the risk too? Broker's commissions with high risk tenant.
- E. What happens when the tenant or landlord is in bankruptcy? Lease rejection rules and the statutory limitation on the landlord's right to recover rent.
- F. The energy crisis. California's own issue and the actual (or potential) national issue. The rise in energy costs in view of the current situation in the Middle East.
- G. Impact on fire, life safety and security systems as a result of terrorist activities. Who pays for this (and other issues)?
- H. Relocation: Is there insurance for this?
- I. Government funding for new ventures? A local, state and national look.

III. Down But Not Out: Investment and Development in America

- A. Is it really now a buyer's market? If so: impact on contract negotiations: reps and warranties; buyer's contingencies; liquidated damages; development issues.
- B. Anticipating the return of the new economy.
- C. Financing Issues