

Allen Matkins

American Corporate Counsel (ACC)

# Trends in Commercial Real Estate

*Speakers:*

Seth Garrett  
Jonathan Lorenzen  
Mike Holmes

March 2022

# **Trends in Commercial Real Estate:**

## **Tips on How to Best Negotiate, Renew, or Protect Your Lease Terms**

by Seth A. Garrett, Esq.

# Overview

- COVID-19 Has Disrupted All Businesses
- Rent Relief / Extended Lease Terms
- Eviction Moratoria
- Work From Home Policies
- Lender Implications

# Legal Rights of Tenants

- Force Majeure
- Access to Premises
- Interruption of Essential Services
- Governmental Action

# Tenant Approaches

- Rent Forgiveness
- Rent Deferral
- Month-For-Month Extension
- Blend & Extend
- Early Full Extension
- Security Deposit Burn Down

# Preliminary Considerations

- Accounting
  - Refurbishment
  - Right Size
  - Credit Enhancement
  - Timing
- Leverage
    - Who Is Tenant?
    - Who Is Landlord?
    - What's the Market?
    - Underlying Lease Language
    - Is There a Lender?

# Landlord Asks and Tenant Guidance

- Financial and Other Information
- Confirmation From Tenant's Insurer
- Documentation for Government Assistance
- Financial Statements
- Do Not Withhold Rent
- Do Not Ask for Help if It Is Not Actually Needed

# Force Majeure Provisions

- Pandemic and Epidemics Defined
- No Excuse for Non-Payment of Rent
- Actual Delays; Remedies [see **Preliminary Considerations**]
  - Pre-Rent Commencement Date
  - Post-Rent Commencement Date



# **Trends in Commercial Real Estate: Tenant Improvement Challenges and How to Overcome Them**

by Jonathan Lorenzen, Esq.

# Work Letters and Tenant Improvements

- Delays in Construction
- Material Unavailability
- Contracts with General Contractors
- Trends in Tenant Improvements

# Delays in Construction

- COVID
  - Government Mandates
  - Outbreaks
- Unavailability of Contractor or Labor
  - Contractors specified in Work Letter
- Delay impacts on:
  - Construction Schedule
  - Lease Commencement Date
  - Rent Commencement Date

# Material Unavailability

- COVID Impacts on Material Availability
- Tenant Delay
- Substitution of Materials
- Increased Costs – Who Bears the Burden?

# Contracts with General Contractors

- Aligning the Delay Concepts in the Construction Contract with the Work Letter
- Locking in Prices for Materials and Labor
- Liquidated Damages

# Trends in Tenant Improvements: **Office Leases**

- Less Open Concept Plans
- More Individual Offices
- Space for Social Distancing

# Trends in Tenant Improvements: **Retail/Restaurants**

- Retail Generally
  - Smaller Inventory, Larger Online Presence
  - Pick Up Windows/Designated Areas for Customers to Pick Up Orders
- Restaurants
  - Outdoor Dining
  - Less Emphasis on Dining Rooms for Fast Food
    - Example: Taco Bell Defy Restaurant Concept



# **Trends in Commercial Real Estate: Everyone Is Back From Quarantine With Their Dogs and ADA Attorneys**

by Michael J. Holmes, Esq.



# Service Animals

- A service animal is individually trained to do work or perform tasks for a person with a disability.
  - Only dogs (and sometime miniature horses)
  - No license, vest or other documentation required
  - Limited inquiry

# Service Animals

- Service animals vs. emotional support animals
  - Landlord's obligations
  - Different standards for employers, airlines and housing
  - Resolution of tension between tenant employer and landlord

# ADA Disclosure Statute

- Civil Code § 1938
  - Disclosures are made in lease documents
  - Public accommodations
  - Any inspection report prepared by a CASp

# Required Disclosures

1. Civil Code § 1938(a): “A commercial property owner or lessor shall state on *every lease form or rental agreement* executed on or after January 1, 2017, whether or not the subject *premises* have undergone *inspection by a Certified Access Specialist (CAsp)*.”

# Required Disclosures

2. Civil Code § 1938(b): “If the subject premises have undergone inspection by a CASp and ... there have been no ... *alterations* ... the commercial property owner ... shall provide ... a copy of *any report prepared by the CASp* ....”

# Required Disclosures

3. Civil Code § 1938(c): “The prospective ... tenant shall have the opportunity to review *any CAsp report* prior to execution of the lease ....”

## Required Disclosures

4. Civil Code § 1938(d): If the CASp report “meets applicable standards,” then owner must provide a copy of the current disability access inspection certificate and any inspection report to tenant within 7 days after execution of the lease.

# Required Disclosures

5. Civil Code § 1938(e): If the premises have not been issued a disability access inspection certificate, the property owner must state the following:

“A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, *the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant.* The parties shall mutually agree on the arrangements for the *time and manner* of the CASp inspection, the *payment of the fee* for the CASp inspection, and the *cost of making any repairs* necessary to correct violations of construction-related accessibility standards within the premises.”



# Contact



**Mike Holmes, Partner**

619.235.1552

mholmes@allenmatkins.com



**Jonathan Lorenzen, Partner**

619.235.1562

jlorenzen@allenmatkins.com



**Seth Garrett, Senior Counsel**

619.235.1548

sgarrett@allenmatkins.com

600 W Broadway 27<sup>th</sup> Floor San Diego, CA 92101 | [allenmatkins.com](https://allenmatkins.com)