Southern Nevada CCIM Chapter

PERSPECTIVE

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A BI-MONTHLY PUBLICATION OF THE SOUTHERN NEVADA CCIM CHAPTER

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An Evolution - Not Recession - in the Retail Market

Retail Recession, Retail Correction or Retail Evolution? That's the question on the mind of many retail experts worldwide. We have all read reports of big-box retailers closing stores or filing bankruptcy: Sports Authority, Sports Chalet, Gander Mountain, HH Gregg, Macy's, JC Penney, Sears and Sav-A-Lot, to name a few. The list is even longer for smaller retailers. What does this mean for retail real estate?

For many years, experts have predicted that the internet will kill the brick and mortar retailer. I agree with that statement to some degree, but (and that is a HUGE but) I believe that the retailers who embrace technology such as Omnichannel, will be the best suited for the future. Retailers have been reluctant to discuss how technology will play a part in the retail environment. I feel no one has perfected the Omnichannel experience.

As I reflect on recent store closings, I think about how we got here. The internet, mostly Amazon, has provided a new shopping outlet and social media has created brand awareness, however technology shouldn't shoulder the blame alone. The outlet malls created a new venue for direct-to-consumer shopping and now understand their customers even better. Many manufactures have opened brand-specific stores which have reduced the product demand from department stores and general merchandise retailers. For example, Nike was originally sold in sporting goods stores like Sports Authority, however now retailers experienced success with direct-to-consumer outlet stores; they started opening flagship stores on High Street.

Another segment of the market that has proliferated is the discount retailer. The value shopper has more access to Burlington, TJ Maxx, Home Goods and Ross as their store counts have exploded. The discount retailer has now penetrated more neighborhoods with smaller footprints than traditional department stores.

Restaurants have been one of the segments leading the internet-proof retail growth. Quick Service Restaurants (QSR) have copied the successful model pioneered by Chipotle. Several restaurants are so similar that a simple signage change (and some equipment) can become at least five different brands.

Recently the saturation of restaurants has impacted the same store sales year-over-year to the point where several restaurant brands have closed or sold to new equity partners. However, I believe the new retail shopping center will include other internet-proof concepts, along with retailers that understand their customers better and deliver an excellent experience. While there may be fewer brick and mortar establishments in the future, they will never become extinct. Kids will not have online birthday parties; families will not eat food, enjoy happy hour or feel fabric on the computer. Experience could be the future; this is an Evolution not Recession.
LEGISLATIVE UPDATE

Besides being the 2017 president of the Commercial Alliance Las Vegas (CALV) and an active member of CCIM, I also have the privilege of serving as the Legislative Affairs Chair for the Southern Nevada CCIM Chapter. As part of this position, I'm participating in a group called the CCIM Chapter Presidents Roundtable. The roundtable consists of at least one member from every CCIM chapter in the U.S.

The group’s goal is to create a flow of information concerning local and state legislative and regulatory initiatives from the local chapters to the national CCIM Institute. In the spirit of sharing information with our peers, for this month’s article submitted as part of CALV’s partnership with CCIM, I’d like to highlight what this industry group is tracking on a federal level.

First, I’m looking forward to participating in the National Association of Realtors® annual legislative meetings in Washington, D.C. I will be attending Capitol Hill visits on behalf of CALV on May 18th, when we meet with Nevada’s representatives in Congress to discuss issues of importance to our industry. So, if you have any important issues you’d like us to raise with our congressional representatives, please let me know.

Secondly, and thanks to interactions with the CCIM Institute and NAR’s Commercial Legislative and Regulatory Advisory Board, I want to share some highlights of federal issues these industry groups are tracking:

- On the regulatory side, federal agencies are still filling key positions and attempting to work with President Donald Trump’s “1-in, 2-out” executive order for new rules. To that end, NAR is monitoring regulatory reform attempts from federal agencies, and creating relationships with the new administration. Of special interest will be reforms to the Dodd-Frank Act and other financial regulations.
  - Legislative issues include the Americans with Disabilities Act reform bill. NAR is supporting HR 620, the ADA Education and Reform Act of

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Although the subject of ADA liability may not be of paramount interest to real estate agents and brokers, ADA compliance issues warrant attention because they have become more common and expensive over the past two decades. The subject now requires far more consideration during most commercial real estate transactions, even though compliance issues often do not arise until a lawsuit has been filed to force a business with commercial facilities or “public accommodations” to comply with the requirements of Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101-12213 and 47 U.S.C. 225 and 611) (the “ADA”). The problem is that by the time a lawsuit is filed, it will be too late for your client to shift any of the liability to the former owner or landlord. As such, the subject should be addressed when the property is being leased and/or purchased to avoid exposing your clients to tens or even hundreds of thousands of dollars of liability.

The ADA was enacted in 1990 by Congress to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” Unquestionably, the ADA has made a huge impact on society, and it has quite literally changed the lives of all people with disabilities by allowing them to share the same experiences many of us take for granted. Unfortunately, the ADA is also an immensely complex set of laws, regulations and standards, which is seldom understood by real estate agents, brokers and their clients. For example, the 2010 Standards that became applicable in 2012 consist of numerous regulations found at 28 CFR Part 36, Subpart D, that differ from the original ADA Accessibility Guidelines (ADAAG) at 36 CFR part 1191 (appendices B and D). These two large sets of regulations sometimes conflict, and they can even be overridden by other laws that affect similar subject matters such as the Fair Housing Act and Title V of the Rehabilitation Act of 1973, or other laws or regulations that provide greater protection for individuals with disabilities. Thus, determining whether any given building is ADA compliant can be challenging, especially since minor alterations or renovations can

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trigger the Alteration to Path of Travel Rule, which can require the application of new standards, which in turn can impact a significant portion of the premises.

Litigation over ADA Violations
Nearly every day lawsuits are filed by organizations of individuals who have teamed up to force compliance with the ADA. Unfortunately, the primary goal of these suits is not always to protect people with disabilities. Many attorneys around the country make their living by collecting attorneys fees and costs awarded under 42 U.S.C. §12205 due to a technical violation. There have even been cases where the named plaintiff has been unaware of the lawsuits filed in his name, and/or was not even disabled!

Regardless of whether the suit was brought with the intention to earn fees or to achieve access for people with disabilities, there is really no defense to such suits so, the business sued, almost always ends up footing the bill for both parties’ attorneys fees and costs, as well as the expenses necessary to bring the premises into compliance. Sadly, there is often substantial money that is needlessly spent on attorneys and experts, who end up arguing over what is in all reality an inevitable conclusion.

Avoiding Liability for ADA Deficiencies
There are a couple of ways to protect your clients. First, strongly encourage any client who is buying or leasing a building for commercial purposes to have the property reviewed by an ADA expert during the due diligence period. This is where you can literally save your clients tens or even hundreds of thousands of dollars by transferring the correction costs to the lessor or seller (or by allowing your client to select a property that is compliant to begin with). Second, ensure that any purchase agreements or leases place the burden of ADA compliance on the other party whenever possible. This can be done by requiring landlords or sellers to warrant that the premises are ADA compliant, or by having the buyer or lessee assume full responsibility for ensuring the premises meet their needs including ADA compliance issues.

Thus, if your client is purchasing property with the intent to build, leasing a new location, or purchasing or leasing with the intent to remodel any part of an existing location, have the property and/or plans reviewed by an ADA expert before you close the transaction or begin construction. In a purchase, for example, it is usually possible to force the seller to make some or all of the ADA corrections prior to closing escrow if you object during the due diligence period. Your client then goes from being saddled...
**Southern Nevada CCIM Dealmakers!**

**Leases:**

**Eric Larkin, CCIM of NAI Vegas**, represented the tenant, Premium Waters, Inc., in a lease of a 60,000 square foot industrial property located at 4390 Flossmoor St., Las Vegas, NV with a value of $761,852.16.

**Brian Sorrentino, CCIM & Jennifer Ott, CCIM of ROI Commercial Real Estate**, represented Foothills Nevada, LLC in a lease of a 28,000 square foot retail property located at 1450 Horizon Ridge Pkwy., Henderson, NV with a value of $1,149,288.00.

**Brian Sorrentino, CCIM & Jennifer Ott, CCIM of ROI Commercial Real Estate**, represented the Grand Bazaar Shops and **Phillip Dunning, CCIM of Colliers International** represented the tenant, M&K Enterprises, in a lease of a 3,199 square foot retail property located at Flamingo Rd. and Las Vegas Blvd. for an undisclosed amount.

**Sales:**

**Liz Clare, CCIM of Avison Young**, represented 4343 N Rancho Drive, LLC in a sale of a 61,881 square foot retail property located at 4343 N. Rancho Dr., Las Vegas, NV with a value of $5,850,000.00.

**Marlene Fujita Winkel, CCIM**, represented DIG TQE, LLC in a sale of a 54,101 square foot office/industrial property located at 6620, 6640 & 6670 S. Tenaya Wy., Las Vegas, NV with a value of $7,475,000.00.

**Marlene Fujita Winkel, CCIM of CBRE**, represented FEFOS, LLC in a sale of a 13,969 square foot retail big box property located at 3220 S. Nellis Blvd., Las Vegas, NV with a value of $890,000.00.

**Cathy Jones, CPA, SIOR, CCIM of Sun Commercial Real Estate, Inc.**, represented the seller in a sale of a 12,046 square foot inline retail property located at 1940 W. Baseline Rd., Mesa, AZ with a value of $2,100,000.00.

**Eric Larkin, CCIM, of NAI Vegas**, represented the seller, Robison Seidler, Inc., in a sale of a 5,040 square foot office property located at 2534 Anthem Village Dr., Henderson, NV with a value of $1,261,000.00.

**Eric Larkin, CCIM, of NAI Vegas**, represented the buyer, Pulmonary Solutions, LLC, in a sale of a 6,286 square foot office property located at 7660 W. Sahara Ave., Las Vegas, NV with a value of $1,187,000.00.

**Devin Lee, CCIM & Antone Brazill, CCIM of Northcap Commercial**, represented ACVII-Hacienda, LLC in a sale of a 252-unit multifamily property located at 5060 W. Hacienda Ave., Las Vegas, NV with a value of $28,500,000.00.

**Devin Lee, CCIM & Antone Brazill, CCIM of Northcap Commercial**, represented Hazelwood Investments, LLC in a sale of a 76-unit multifamily property located at 3851 Hazelwood St., Las Vegas, NV with a value of $4,250,000.00.

**Devin Lee, CCIM & Antone Brazill, CCIM of Northcap Commercial**, represented Theobald Investments, LLC in a sale of a 20-unit multifamily property located at 1937 Sunset Cir., Henderson, NV with a value of $1,185,000.00.

**Devin Lee, CCIM & Antone Brazill, CCIM of Northcap Commercial**, represented Theobald Investments, LLC in a sale of a 16-unit multifamily property located at 609 & 611 S. 11th St., Las Vegas, NV with a value of $930,000.00.

**Charlie Mack, CCIM of Mack Realty**, represented Mountain Blue 12 Irrevocable Business Trust in a sale of 4.92 acres of vacant land located at the SEC of Rainbow Blvd. and Pebble Rd., Las Vegas, NV with a value of $2,525,000.00.

**Michael Tabeek, CCIM, SIOR of Newmark Grubb Knight Frank**, represented Gamma Pecos-McLeod, LLC in a sale of a 29,700 square foot office property located at 3760 Pecos-McLeod Interconnect, Las Vegas, NV with a value of $5,250,000.00.

*Publications are limited to designees who are Chapter and Institute members in good standing. Announcements are for publication in The Perspective, but submissions may also appear on the website. All parties are aware that space is limited and are accepted at a minimum value of $500,000.00 and published by largest dollar volume within each submission section.

Please contact Eric J. Larkin, CCIM for the submission form at elarkin@naivegas.com or 702-534-1713.
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with a potential liability to knowing that he or she is compliant. Finding the ADA violations before your client buys or leases can quite literally save tens or even hundreds of thousands of dollars down the road by either avoiding correction costs or allowing you to force the seller and/or landlord to pay those expenses.

Even if your client has an existing facility which he plans to sell or lease, it may still behoove you to know whether the property is ADA compliant, or at least know enough to put the onus on the buyer or lessee to make the property ADA compliant. And if a buyer of a property you are listing insists on ADA compliance, it will certainly be beneficial to know what needs to be done and devise a plan to correct those problem areas. Even if correction is not financially feasible at that time, the parties may be able to split the costs and still get some protection by putting together a plan to bring the property into compliance. Such a plan needs to be reviewed yearly, but it takes the wind out of a plaintiff’s case if you can prove that you are already proceeding to correct the ADA deficiencies.

Hire an ADA Expert
Advise your clients to hire an ADA expert. Your client may think that the architect or contractor they hired to
design and build their tenant improvements must know the applicable rules, but advise your clients not to bet on it (at least not without warning them in writing to consult an actual ADA expert!). Specific requirements of the ADA are often overlooked or misunderstood by architects and contractors due to the sheer complexity of the regulations and standards (and the fact that the standards sometimes conflict with a preferred design or construction method). Similarly, your clients cannot rely upon the city or county building departments to advise them that their plans do not meet the ADA requirements. This is a field that requires expertise, and if your clients fail to seek expert advice they may end up in litigation over issues such as handrail placement, ramp slopes, counter heights, toilet access, thermostat and fire alarm locations and similar items subject to tight tolerances.

**Most Common ADA Violations**

Over my career, I have had the opportunity to work with Suzanne Thomas¹, an ADA and disability expert. Suzanne has provided the following list of the most commonly overlooked ADA violations that you and your clients should watch for whenever you are working with properties that are accessible by the public:

- Accessible parking space locations are not diversified in the parking lot / garage.
- No accessible route provided within the site from accessible parking spaces or public streets and sidewalks and public transportation stops to the accessible building or facility entrance they serve.
- No accessible route connecting accessible buildings and facilities on the same site.
- Curb ramps and transitions to the street are non-existent or improper.
- Exterior door maneuvering clearances often have a slope greater than 2% in all directions.

If you see any of the above issues, they will likely just be the tip of the iceberg, as there will likely be far more compliance issues revealed upon a closer inspection. And do not assume that these issues may be grandfathered into compliance because that is almost never the case. There is no "grandfathering" for buildings constructed before the ADA was passed, so non-compliant features should have been corrected by January 26, 1992, unless not readily achievable (an exception that must be proven by your client).

Given the myriad of ADA issues that may impact your clients, keeping an eye out for obvious ADA violations and advising your clients to hire an excellent ADA consultant, are wise moves for any agents and brokers looking out for their clients’ best interests.

Scott A. Marquis is a real estate attorney and shareholder with the Las Vegas law firm of Marquis Aurbach Coffing. He can be reached at (702) 382-0711 or visit the firm’s website at www.maclaw.com

¹Suzanne is well respected in the legal community because she has worked in this field for over four decades and is an excellent expert. Suzanne can be reached through her website: www.NewDayADA.com
2017, sponsored by Rep. Poe (R-Texas). This bipartisan bill would make common-sense reforms to the ADA requiring a notice period before violation suits can be filed against businesses for minor infractions. This issue is also a high priority to IREM.

• The National Flood Insurance Program will expire on Sept. 30, and NAR is leading a group of other commercial real estate industry groups including ICSC, BOMA, NMHC, and RER to provide guidance on commercial priorities for its reauthorization. These include general improvements (better flood maps and a long-term reauthorization), as well as commercial-specific reforms such as expanded coverage options (such as business interruption or multiple buildings) for those who are willing to pay more. We will be sharing information and seeking feedback from industry leaders on this issue.

• Basel III HVCRE risk-weight rule: NAR is working with other industry groups on a bill reforming the “High Volatility Commercial Real Estate” (HVCRE) risk-weight requirements for lenders for Acquisition, Development and Construction (ADC) commercial loans. Basel III raised the risk-weight for these loans from 100 percent to 150 percent, which makes CRE loans less attractive to lenders. It will be sponsored by Rep. Pittenger (R-N.C.), and will likely be introduced sometime this spring.

• Commercial appraisals: Across the board, the real estate industry is struggling with a shortage of appraisers. This impacts the cost and timeline of sales. NAR Policy Representative Sehar Siddiqi discussed this issue with our board during a recent conference call, along with upcoming changes to the appraisal industry and NAR’s actions on this issue. More information on this issue can be found by visiting: https://www.nar.realtor/appraisal/advocacy.

Jennifer F. Ott, CCIM is the 2017 Commercial Alliance Las Vegas (CALV) President. She can be reached at 702-550-4935 or jott@roicre.com. For information on CALV visit www.calv.org.

CALV is the commercial real estate division of the Greater Las Vegas Association of REALTORS®. For more information or to join CALV, visit www.calv.org or call (702) 784-5050.
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