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Fundamentals of Commercial Leasing in a Depressed Economy

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I. Overview of Today's Presentation

"Depressed" Economy

- Lawyer's have not been immune to the turmoil in the market since late 2007.
- Layoffs have affected us, as well as the general population. The best estimate for 2009 lawyer firings was 12,000.
- A number of firms have pushed back the start dates of new associates. Summer associate offers hit a 17 year low, according to a March 3, 2010 release by the National Association for Law Placement.
- The usual "leg up" for young lawyers in "new" areas of specialization seems tempered by the number of seasoned lawyers having time on their hands.
- It is fair to say that this is a somewhat depressing time to be starting out a legal career!

The First Quarter of 2010 Has Seen Some Good Signs

- A March 29, 2010 story in Time magazine reported that Wall Street is hiring again.

- After 2 years of layoffs, investment banks and brokerage companies are significantly adding new staff for the first time since the fiscal crisis.

- There is a sense that the healthcare and energy sectors in particular are recovering.

A Super Bowl at Last for the Saints

- On the 7th day of February, the New Orleans Saints defeated the Indianapolis Colts to claim the 44th Super Bowl.
- Previously, the teams was sometimes derogatorily referred to as the "Aint's" by its circa 1980 fans.
- This year, celebration abounded in the Crescent City, less than 5 years after Hurricane Katrina.

The Crimson Tide Returns to National Prominence

- Both of your co-presenters today are graduates of the University of Alabama.
- After multiple years of virtual mediocrity, Alabama's fans were proud of their team's performance, right through the 7th of January.

But We Digress…

- We will first examine some economic indicators that have relevance to the commercial leasing business in the US.
- Next, we will summarize key fundamental leasing provisions, some of which have been in use for many years.
- Finally, we will conclude by describing some current techniques to deal with today's challenging environment in commercial leasing.

II. How Did We Get Into This Mess?

The presenters have made substantial use in this Part II of the facts and figures contained in the February 10, 2010 Oversight Report concerning Commercial Real Estate Losses and the Risk to Financial Stability, submitted by the Congressional Oversight Panel under Section 125(b)(1) of Title 1 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343. A full copy of this report can be obtained at the link HTTP://COP.Senate.Gov/Reports/Library/Report-021110-COP.CFM

Erosion of the Commercial Real Estate Market Since 2007

- Between 2010 and 2014, around $1.4 trillion of commercial loans will reach the end of their terms.
- Nearly 50% of these loans are currently "under water".
- Values have fallen more than 40% since the beginning of 2007.
- Bank losses alone could range as high as $200-$300 billion for 2011 and beyond.

Some Current Data About Commercial Multifamily Communities

- Nearly 1 in every 3 households in the US rent. Over 14% live in multifamily apartment complexes.
- The 2007 median household income of renters was $25,500, well below the national median of $47,000.
- Multifamily properties are susceptible to competition, since barriers to entry are low.
- The incidence of apartment units, and median rents by region, are reflected in the following graphic:

Region	Number of Units	Percent of Total Units	Median Monthly Rent	Multifamily Property Size by Number of Units in Each Category				
				5-9 Units	10-24 Units	25-49 Units	50-99 Units	100+ Units
Northeast	3,950	23%	$714	871	1,062	679	577	762
Midwest	3,556	20%	550	1,110	1,299	404	357	386
South	5,577	32%	640	1,840	2,510	435	260	532
West	4,305	25%	800	1,317	1,603	586	373	427
Total U.S.	**17,389**	**100%**	**675**	**5,138**	**6,473**	**2,104**	**1,567**	**2,107**

How Commercial Real Estate is Financed

- Acquisition, construction and development (ACD) loans are usually short-term facilities, provided by depository institutions, bearing interest at an adjustable rate based on a "spread" over the prime rate or London Interbank Offered Rate. These loans almost always are "recourse" in nature.

- After construction is completed, and an income stream in place, the ACD loan is usually replaced by "permanent" financing. In actuality, these loans are usually for 3-10 years, with an amortization schedule of 20-30 years, and a "balloon" payment at maturity. These loans almost always are "non-recourse," subject to "bad boy" clauses.

- A source of "permanent" loan funding became available with the Real Estate Mortgage Investment Conduits authorized in 1986. In this financing, the collateral mortgage-backed security ("CMBS") issuer typically stratified the risk of debt among various classes of investors ("tranches").

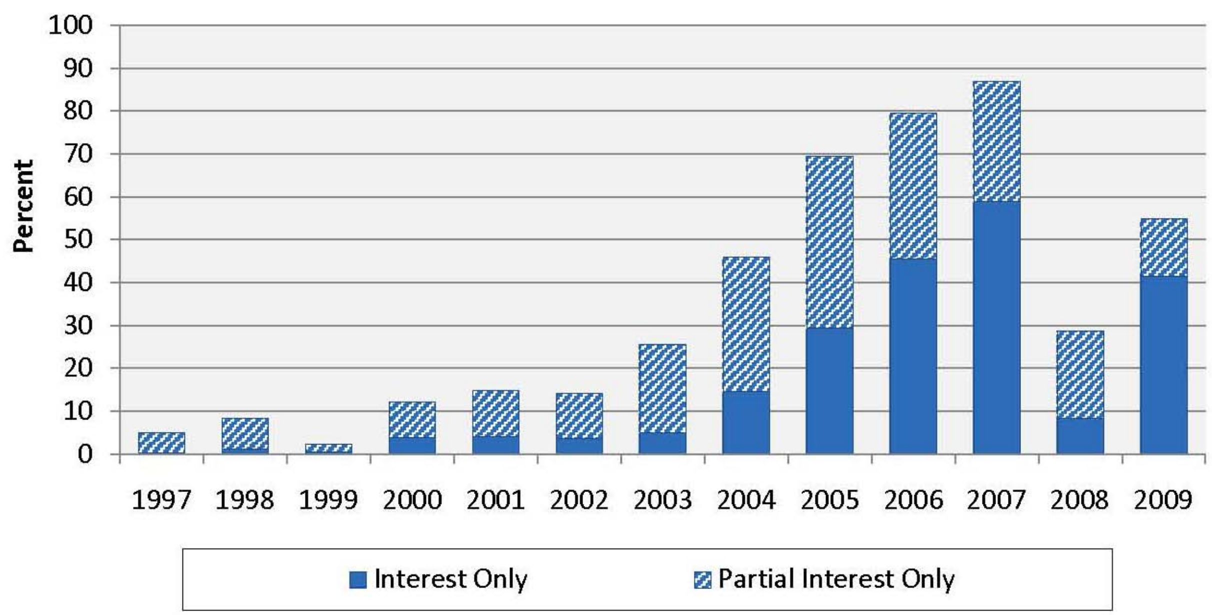
- The CMBS market was able to syphon off high-quality commercial loans, through lower interest spreads and more allowable leverage.

The Cyclical Nature of Commercial Real Estate

- Historically, the market has been subject to oscillation between booms and busts.
- The last significant US real estate-related financial crisis, before the 1980s, was the Great Depression.
- The 1980s saw real estate values fall between 30% and 50% in a 2-year period.
- Between 1986 and 1994, 1,048 thrift institutions and 1,248 banks failed. The 25 largest institutions held 29.3% of insured deposits in 1980, and 42.9% in 1994.

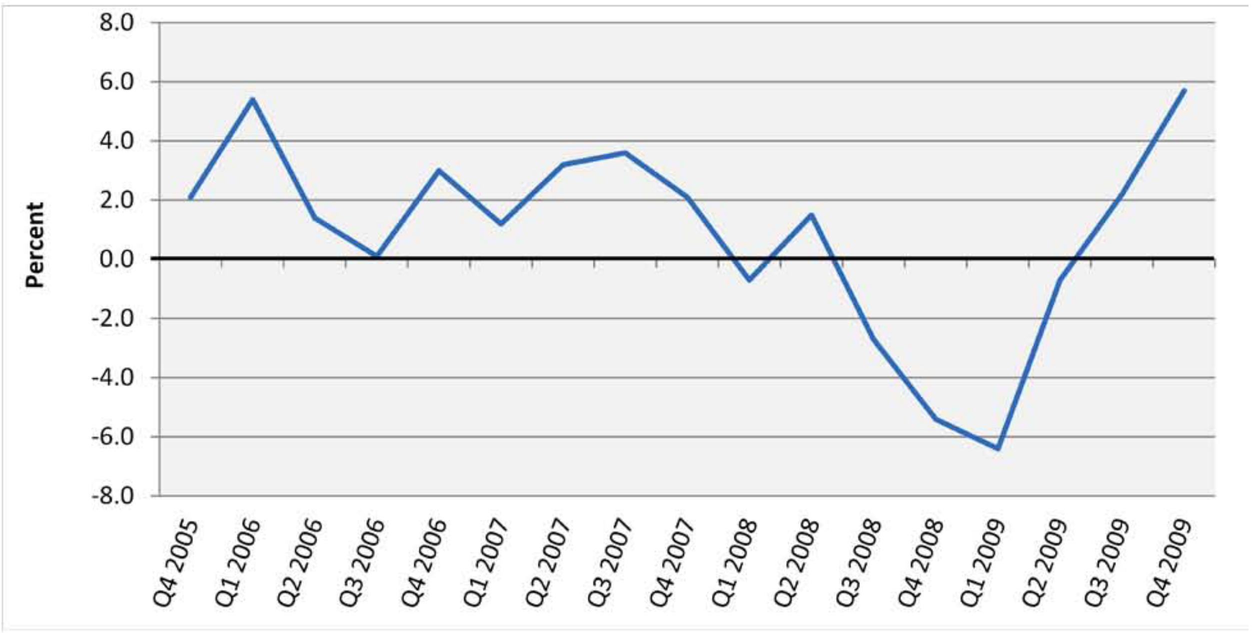
Problematic Underwriting of CMBS Loans

- Lax underwriting standards were evident in CMBS transactions from 2005-2007.
- Loans were originated based on overly aggressive rental or cash flow projections.
- Interest-only loans amounted to only 6% to 9% in the CMBS market in the late 1990s. These loans were the majority in 2005-2007:



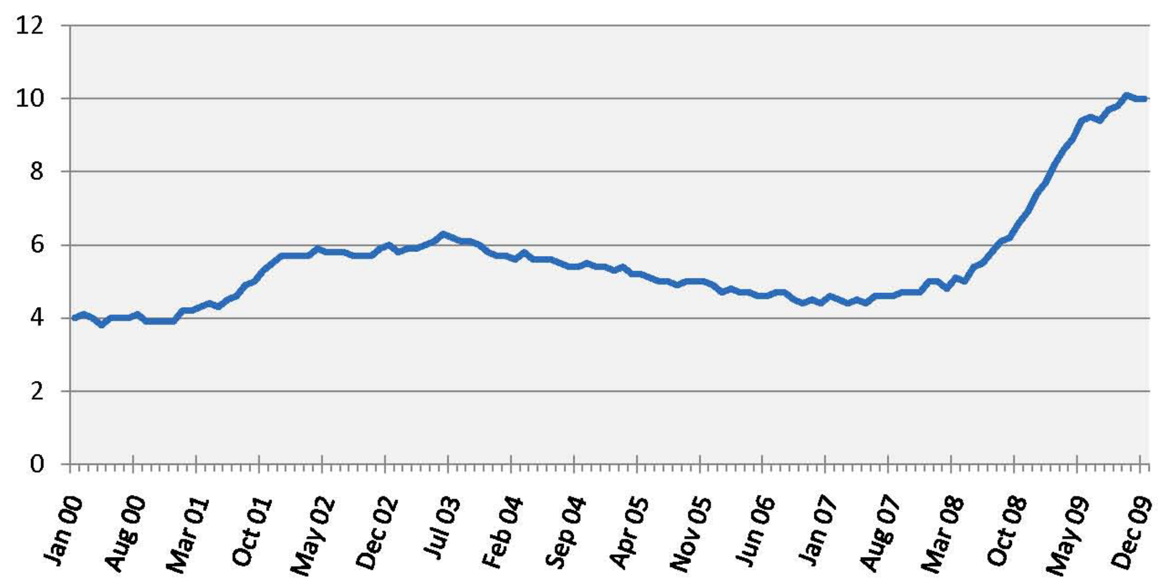
Mixed Economic Measures

- Economic indicators are sending mixed signals as to whether or not the worst is over.
- There have been recent positive Gross Domestic Product numbers.



Deteriorating Market Fundamentals?

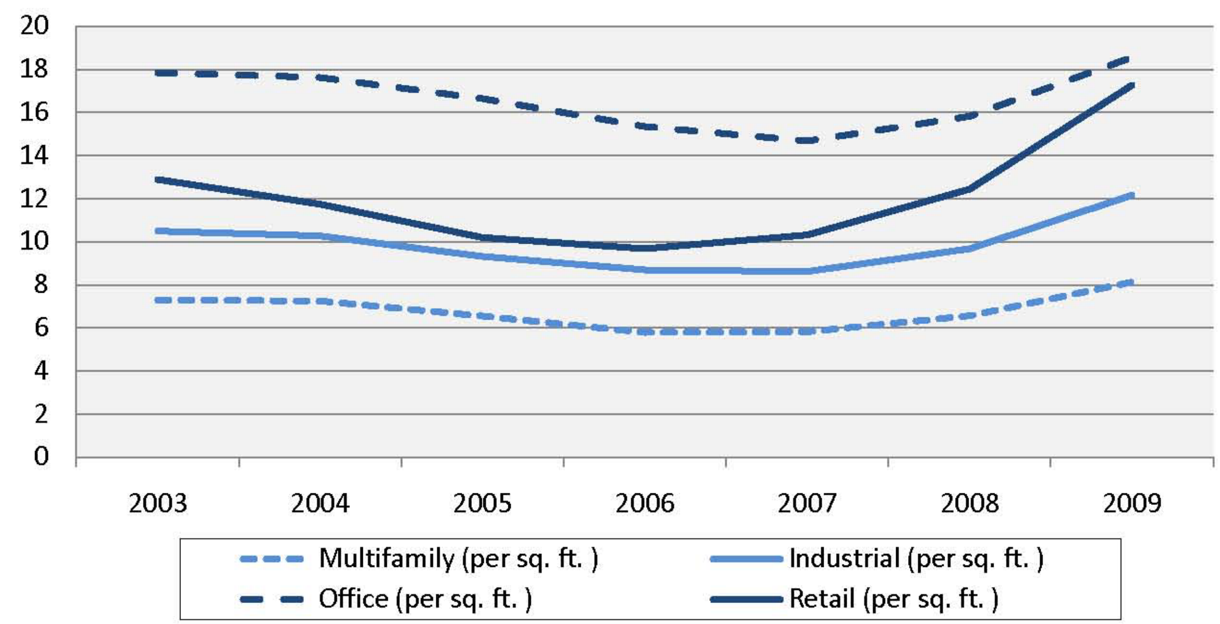
- Yet, unemployment figures have risen to levels not seen in decades.

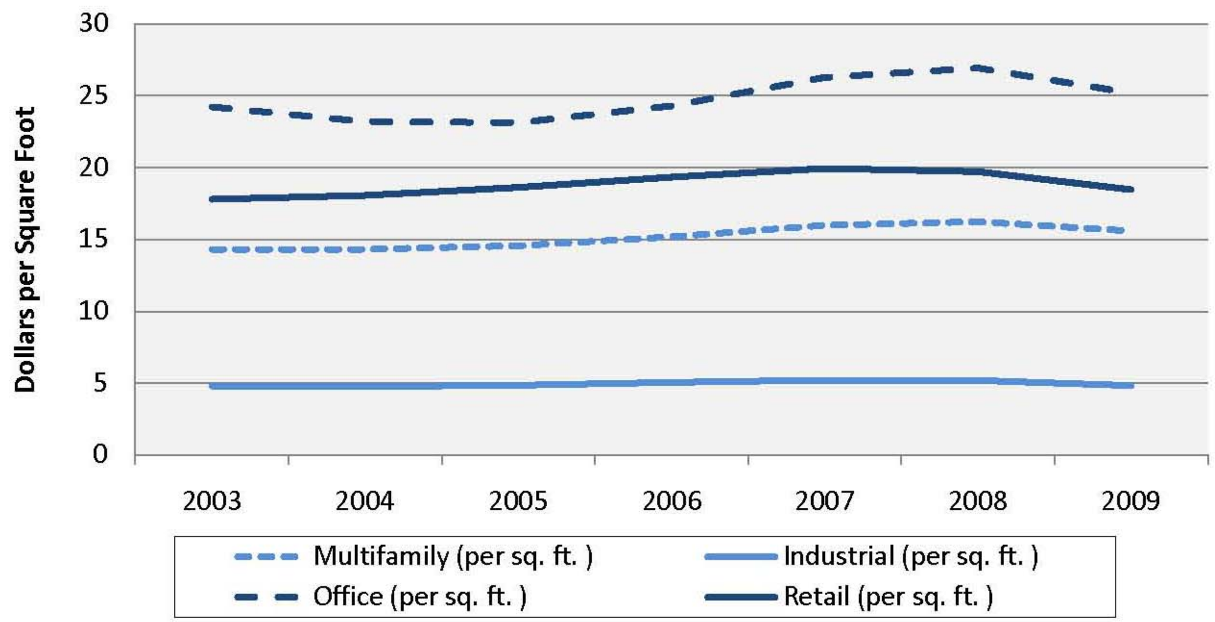


- Personal consumption has declined from its peak in 2007, oscillating over the last 5 quarters.

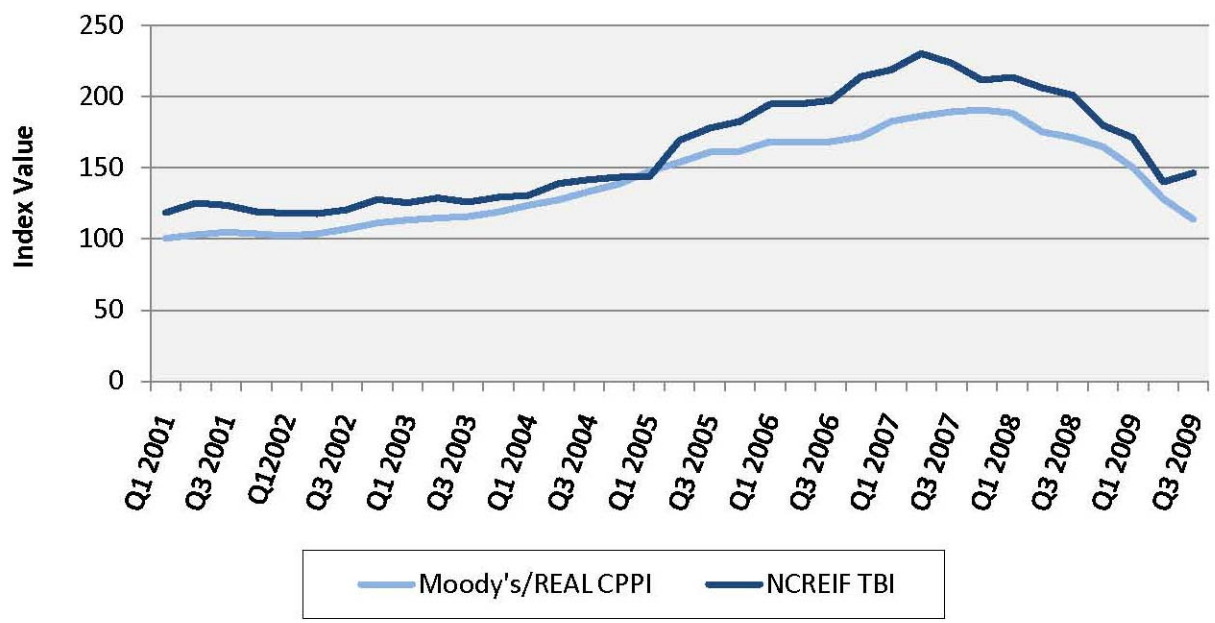
Commercial Vacancies, Rental Rates and Prices

- These data points are shown below. Vacancies and rentals are reflected by property type. The 3rd chart shows that values have fallen over 40% since the beginning of 2007.





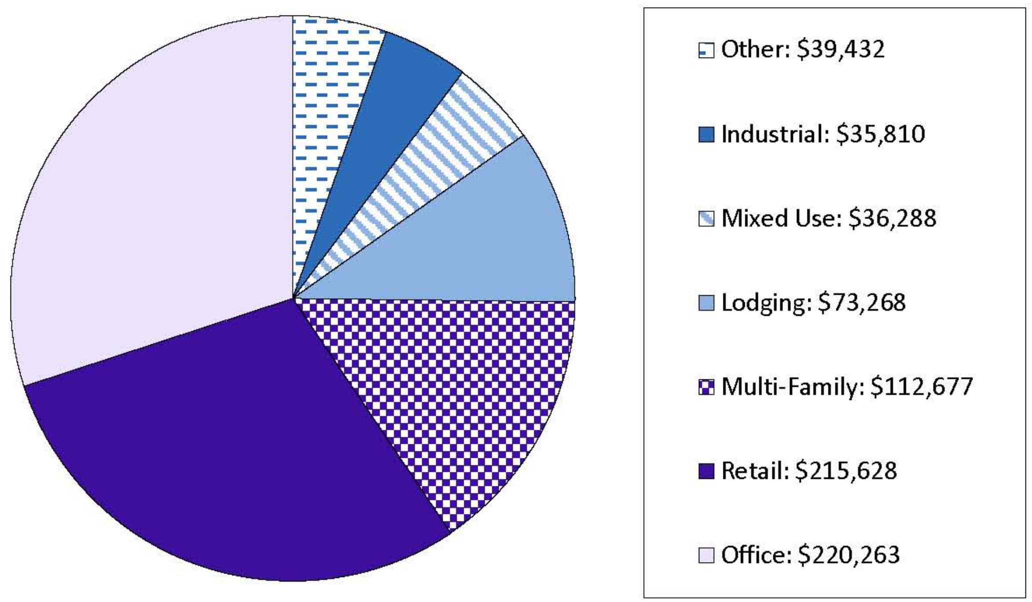
30
25
20
15
10
5
0
Dollars per Square Foot
2003
2004
2005
2006
2007
2008
2009
Multifamily (per sq. ft.)
Industrial (per sq. ft.)
Office (per sq. ft.)
Retail (per sq. ft.)



250
200
150
100
50
0
Index Value
Q1 2001
Q3 2001
Q12002
Q3 2002
Q1 2003
Q3 2003
Q1 2004
Q3 2004
Q1 2005
Q3 2005
Q1 2006
Q3 2006
Q1 2007
Q3 2007
Q1 2008
Q3 2008
Q1 2009
Q3 2009
Moody's/REAL CPPI
NCREIF TBI

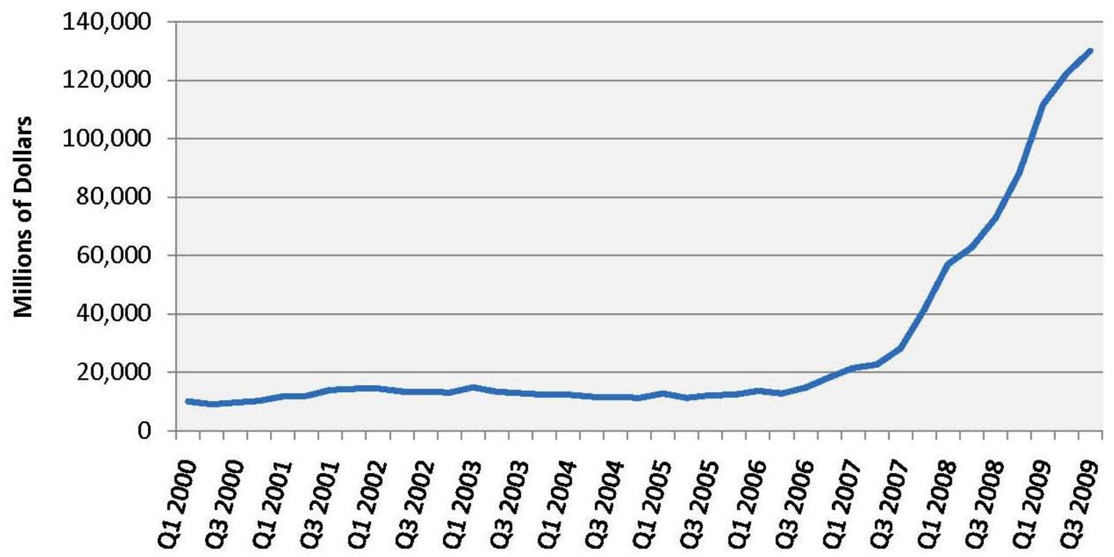
CMBS Loans by Property Type

- As the following chart illustrates, the outstanding CMBS debt, with a combined balance of approximately $709 billion, consists of roughly 30% office, 29% retail, 15% multifamily, 10% lodging (hotel) properties and 16% for industrial, mixed use and "other" properties.



Prognosis for Small Bank Failures?

- The extent of the ultimate loss is yet to be determined. Yet, to experienced analysts, the failure of some small and regional banks appears to be inevitable.
- 30-day delinquencies, across all commercial property types, continue to rise.



Refinancing in the Current Market

- The commercial real estate debt market will likely show only minimal growth over the balance of the decade. Refinancing of maturing debt amounted to 80% of loan originations in 2008, compared to 35% during 2000-2007.

- To qualify for refinancing under current conditions, a borrower must meet 3 tests: (1) the new loan must be at least equal to the existing balance, (2) the LTV ratio must be no greater than 70% (perhaps even 60-65%), and (3) projected cash flow must support a DSCR of 1.3, at an interest rate of 8% and an amortization term of 25 years.

Stalled Construction Projects

- The total delinquency rate is already 16% on construction loans.
- Given the low interest rates currently being experienced, some construction debt remains technically "performing". Losses could increase dramatically when reserves are exhausted.
- Smaller and regional banks have the highest exposure in this area. Their losses in construction financing could prove dramatic.
- Currently a wide variety of projects have been delayed or abandoned, ranging from high-profile to smaller-scale developments.
- Examples of stalled projects include Streets of Buckhead (Atlanta), Filene's (Boston), a mixed-use building in Phoenix, the Fountainebleau casino-hotel (Las Vegas) and the Xanadu retail project in the New Jersey Meadowlands.

Choices for Resolving Defaulted or Non-Performing Loans

- In cases where the real estate fundamentals are very poor, and the project is unlikely to recover under any likely scenario, foreclosure is the best alternative.
- Some 21 states have only costly and time consuming procedures pertaining to foreclosure. In 23 states, there is a significant redemptive period after foreclosure.
- To minimize foreclosure costs and delays, the lender may be willing to accept a friendly foreclosure, such as a deed in lieu or a "short" sale.
- Subject only to a few limited exceptional cases, a term extension has little to offer the borrower. The most promising extensions are for borrowers that have sufficient property income, but are unable to refinance due to market difficulties.

Workout Strategies and Problems

- Loans with viable fundamentals, which could support slightly lower payments, may benefit from modifications, such as a rate or principal reduction.

- Many CMBS Pooling and Servicing Agreements require the consent of most or all investors, of the various tranches, to modify the terms of any loan in the pool. This can make changes to CMBS loans difficult.

Are Workouts Actually Happening?

- Publicly available information is extremely limited, and is lacking in details about the workout strategies employed.
- CMBS servicers normally report workout only to their clients or investors. Banks report their loan losses, but typically do not reveal the strategies.
- The consensus seems to be that workout activity has increased significantly, but no quantification is available.

The Status of Troubled Loans

- Delinquent or defaulted commercial mortgage assets in the US are reported to have the following current classifications:

Assets	Number of Properties	Volume in Millions of Dollars
Troubled	6,425	$139,500.6
Restructured/Modified	725	17,109.4
Lender Real Estate Owned (REO)	1,411	21,992.1
Total Current Distressed	8,651	178,602.1
Resolved	1,314	24,508
Total	**9,875**	**$203,110.4**

- Troubled: Properties in the process of being foreclosed, in bankruptcy, or undergoing workouts.
- Restructured/Modified: Properties where the lender has implemented a workout strategy, including loan extensions of less than two years.
- Lender REO: Properties that lenders have taken back through foreclosure.
- Resolved: Properties that have moved out of distress via refinancing or through a sale to a financially stable third party.

Current Recovery Rates on Foreclosure Properties

- The "recovery rate" is that proportion of the loan balance which the lender ultimately recoups, after foreclosure or a workout.
- Declining recovery rates are an ominous indicator of future losses that may be expected.

Recovery Rate Data

- The 2 following charts show some relevant measures concerning current recovery rates:

Loan Type	Q1-Q3 2009		Q4 2009		2009 Total	
	Mean	Weighted Average	Mean	Weighted Average	Mean	Weighted Average
Development/Redevelopment	57%	49%	52%	50%	56%	49%
Acquisition/Refinancing	69%	69%	63%	55%	67%	66%
Overall	65%	61%	59%	52%	63%	59%

Property Type	Outstanding Balance *(millions of dollars)*	Number of Defaulted Mortgages	Mean Recovery Rate
Office	$1,746.7	47	64%
Industrial	153.7	29	72%
Retail	568.3	26	73%
Hotel	360.2	25	67%
Multifamily	1,913.4	130	63%
Development Sites	404.6	13	46%
Land	471.0	24	50%
Total	**$5,617.8**	**294**	**63%**

III. Fundamental Concepts of Commercial Leasing

The Evolution of American Retail Leasing

- General Stores offered “dry goods”, such as flour, dry beans, canned foods and baking powder.
- Perishable products were the domain of specialty markets, including butchers, fishmongers, dairies and greengrocers.
- Piggly Wiggly, opened in Memphis in 1916, was likely the first self-service grocery establishment.
- 1950 saw the advent of enclosed shopping malls, including designs by Victor Gruen, an influential architect of the Twentieth Century.
- Ala Moana Center, Honolulu, built in 1957, remains the largest open-air mall in the world.

The Last 25 Years in Retail

- Wal-Mart Stores, Inc. opened its first superstore in 1988, advertising one-stop shopping.
- Big Box prototype, The Home Depot, Inc., recently occupied its 1,976th store in the US and territories.
- Outlet malls surfaced in the 1980s, with recent renewed popularity at the upper and lower price ranges.
- Lifestyle centers proliferated in the earlier 2000s, going from 30 in 2002 to 120 at the end of 2004.
- E-Commerce sales for 2009 are estimated as 3.7% of total retail sales. Internet sales increased by 2.0% from 2008 to 2009, while total retail sales actually <u>decreased</u> 7.0% in the same period.

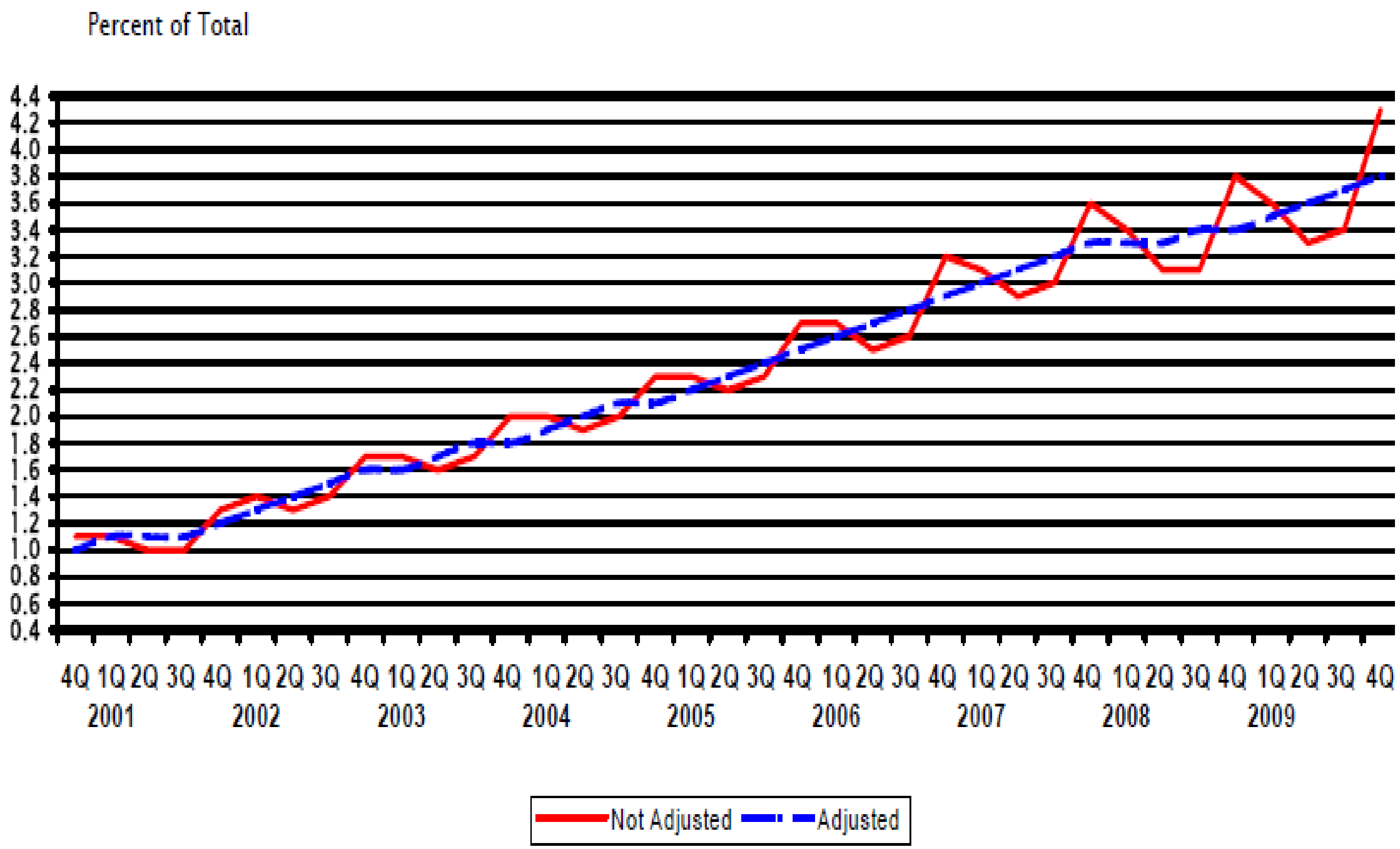
Current Sales Statistics by Industrial Classification - 2008

motor vehicle and parts dealers	788,657,000
gen. merchandise stores **(dept., discount, superstores and warehouse club)**	596,935,000
food and beverage **(grocery, supermarket, beer, wine and liquor stores)**	573,619,000
gasoline stations	499,366,000
food services and drinking places	458,161,000
non-store retailers **(electronic shopping, mail orders houses and fuel dealers)**	319,938,000
building materials, garden equipment and supplies	306,667,000
health and personal care stores	247,308,000
clothing and clothing accessories	216,584,000
office supply, stationery, gift, novelty and souvenir stores	115,871,000
electronics and appliance stores	109,086,000
furniture and home furnishings stores	101,059,000
sporting goods, hobby, book and music stores	84,067,000
total	$4,417,318,000

Estimated Quarterly U.S. Retail E-Commerce Sales as a Percent of Total Quarterly Retail Sales:

4th Quarter 2000 – 4th Quarter 2009

Source:



The Landlord's Traditional Leverage in Retail Lease Negotiations

- The landlord-oriented shopping center form lease contained provisions thought by developers and lenders to be of major importance to operation and financing.

- Such fundamental clauses included a narrowly drafted restrictive use; a covenant to operate with a specific trade name; an obligation to operate, fully staffed, for specified hours; percentage rent, with a radius clause to prevent diminishment; assignment and subletting prohibitions; landlord's right to alter the center; a full pass through of repairs, taxes, insurance and common area maintenance; and an absence of rental offsets.

Loss of Leverage in Retail Lease Negotiations

- Supermarket tenants decreased the landlord's power. Evolving businesses could not be subject to restrictive uses. A new location that was undesirable or outmoded must be freely assignable to a large universe of users. Competition might be precluded, even after closure. Material site plan changes required approval. "Caps" were used on necessary expenses. Self-help and offset rights were obtained. Termination rights applied if casualty was not restored quickly.

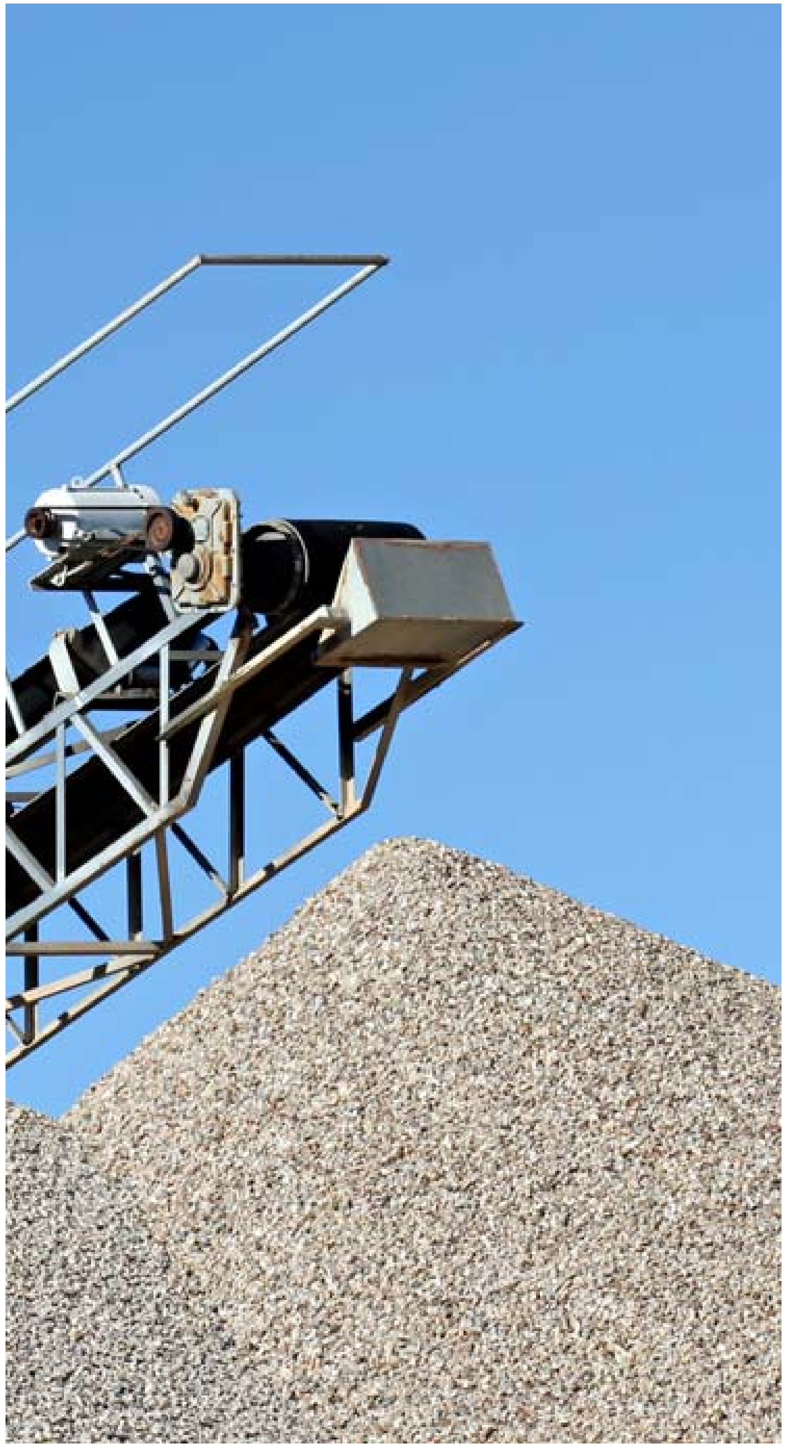
- The only saving grace for the landlord was that the community center contained only 1 such lease, or perhaps 2 (a drug store).

The Transformation Brought About by Big Box Tenants

- These centers have 3 or more "category killers". The emergence of such businesses has taken a toll on traditional department stores.
- Co-tenancy conditions are in the big box leases. GLA must be operated by retail business, by national tenants, or even by big box tenants under specific trade names.
- The big box landlord is powerless to satisfy co-tenancy requirements. Tenant remedies for breach: payment of nominal percentage rents, or lease termination rights.
- Remedies may be available, even though the big box tenant may not have suffered any damage.
- These leases are freely assignable. This increases the possibility that exclusives may be violated.

Various Office Properties in America

- Historically, many businesses have chosen to lease office space, rather than own it.
- For local businesses, ownership is often not an option. For national and regional operators, funds may be better invested in their primary businesses, instead of real estate.
- By the mid-20th century, office parks became commonplace. These projects are usually in suburban locations, taking advantage of lower land costs.
- Standford Research Park, built in 1951, claims to be the world's first technology-focused office park. The facilities cover 700 acres, in 162 buildings, holding 23,000 employees, who work for 140 different companies.



Industrial and Light-Industry Parks

- A more specialized use is for offices and light industry, such as the assembly of products.
- Industrial parks are usually sited outside the main residential areas of a city. Locations are closer to transport facilities such as highways, railroads, airports and ports.
- A relatively recent use is for product fulfillment of ordered merchandise. For example, an e-Commerce system could significantly reduce its shipping and materials costs.
- Silicon Valley is an example of a “business cluster”. A surge in the number of start-up businesses in the 1990s led to a “cluster effect” in the capital market, in turn amplifying the effect in the labor market.
- Supply chain management is the modern term for involving multiple enterprises, including suppliers, manufacturers and retailers, working together, to meet customer needs.

Contractual Agreement Predating the Tenancy

- In a number of cases, either or both parties have contingencies that must be satisfied before the tenancy will commence.
- One or both of the parties may desire to create an enforceable agreement, subject only to narrowly worded conditions.
- The Landlord may insist that the Tenant satisfy itself as to the appropriateness of its operations under applicable zoning law.
- The condition could merely be that the Landlord's mortgagee approve the terms of the lease and the credit-worthiness and reputation of the Tenant.
- Where the Tenant is to take over space currently occupied, the Landlord may negotiate for a condition that the existing Tenant vacate the space, before the new lease takes effect.
- The replacement Tenant may agree to this, but will likely want a specific deadline imposed.
- If the premises are to be constructed, or retrofitted, a number of details may exist upon lease execution.

Landlord's Late Delivery of Premises

- Landlords have increased exposure for timely delivery under supermarket, big box and other leases.
- The time may be affected by the Tenant's action or inaction during the planning and construction phases.
- It will probably be necessary to obtain approvals from governmental bodies, who adhere to their own timetables.
- The obligations of the landlord should be subject to *force majeure,* although an outside date may be required.
- *American Multi-Cinema, Inc. v. Southroad, LLC,* 115 F. Supp. 2d (D. Kan. 2000) found a lease abatement to be unreasonable, under the facts presented.
- Landlord should make every effort to pass along as much liability as possible to its contractor.

When Does Rent Begin?

- If market conditions so indicate, there may be a period after the Tenant occupies the space at a reduced or free rental rate.

- Especially in certain office leases, the Tenant may agree to pay its pro-rata share of operating expenses, but expect to receive a reduction or elimination of “net rents” for some period.

- In retail leases, a “black-out period” may be specified during which the Tenant has the right to defer acceptance of the premises – as long as October 1 to March 15, but realistically mid-November to mid-February.

- If the Landlord fails to timely deliver the premises, rent may be abated for each day that the Landlord is late.

Duration of the Lease Term

- Grocery store leases, in neighborhood centers, typically had initial terms of 20 years.
- Drugstores and similar national or regional retail tenants were expected to sign on for roughly 15 years.
- "Mom and Pop" retail tenants might have terms of 3-5 years. The hope existed to raise the rent on these spaces to expand the spaces occupied by credit tenants, or to enhance the tenant mix.
- In the office market, a term of 10-12 years might be necessary from the major tenants. A not insignificant portion of the Landlord's investment could be recouped over such a term.
- As in retail leasing, the commercial landlord broke up the smaller space over shorter times. One purpose was to reserve space for the majors to exercise expansion rights.

The Hotel Room Example

- The term rental of a hotel room is the extreme example. In an upward market the inn keeper could raise the rate daily.
- In a declining market, the room could be unoccupied for substantial periods.

Rent Adjustment Provisions

- Rents may be increased (or decreased) over the term and extensions. Amounts may be scheduled, or expressed as the market rate, taking named factors into account.
- If the parties fail to reach agreement, the lease may call for litigation or an ADR procedure. One method is the "baseball" arbitration approach.
- If the rent determination occurs after its effective date, there should be “catch up” provisions with interest.
- If the rental once arrived at, is more than the Tenant wants to pay, it may expect an escape clause. This would give the Tenant 2 bites at the apple.

Percentage Rent

- Rent is based off a percentage of a tenant's sales.
- Percentage rent exists, for the most part, only in retail/shopping center leases.
- Percentage rent is usually coupled with base rent (fixed rent) and limited to a percentage of sales above a certain number.
  - For example: Base rent of $25 per square foot, plus 5% of sales over $300 per square foot.
- Occasionally, tenants are demanding percentage rent only.
  - Examples include Sears, McDonald's, and Old Navy

Who Benefits From Percentage Rent?

- Percentage rent is certainly low risk for some tenants (smaller tenants, tenants concerned about location, etc.)
- For tenants with consistently high sales, base rent is usually preferred.
- A poor base rent/percentage rent mix can work against a landlord; a good mix, or even a pure percentage rent, can be very lucrative.
- There is also a smaller risk of inflation if rent is tied to sales.
- What about lenders?
  - Historically, lenders preferred base rent.
  - Now, lenders are more concerned with sales.

The Growing Trend

- Percentage rent is still only a small percentage of total rent at present (less than 5%).

- However, as incentives for tenants become more and more important, this number is sure to rise.

Commercial General Liability ("CGL") Insurance

- Should cover claims for bodily injury, property damage, medical expenses, personal injury (including defamation), and advertising injury. The most common form is ISO Form #CG 00 01.
- Can be issued on an "occurrence" or a "claims made" basis, but "occurrence" coverage is better.
- "Occurrence" polices cover incidents that occur during the policy period, even if they are reported after the policy period has ended.
- "Claims made" policies cover claims made during the policy period but may not cover claims made after that period.

Amount of CGL Insurance Coverage

- CGL insurance limits are the maximum dollar amount the insurer will pay.
- Single limits are the maximum for a single occurrence. Aggregate limits are the maximum during a fixed period.
- Umbrella or excess liability covers additional amounts when the insured's liability exceeds the "occurrence" and "aggregate" limits.
- Deductible amounts should be viewed as self-insured amounts.

ISO Building and Personal Property Insurance

- Basic ISO Building and Personal Property Coverage Form #CP 00 10 describes what is insured, but the "Covered Cause of Loss" must be covered by another form that describes the type of property policy.

- <u>Basic Form</u> covers common, listed risks, such as fire, lightening, windstorm, vehicles, aircraft, or civil commotion (generally ISO Form #CP 10 10).

- <u>Broad Form</u> provides basic form coverage as well as coverage for listed additional perils, such as structural collapse, sprinkler leakage, and losses caused by ice, sleet or snow weight (generally, ISO Form #CP 10 20).

Special Form Coverage

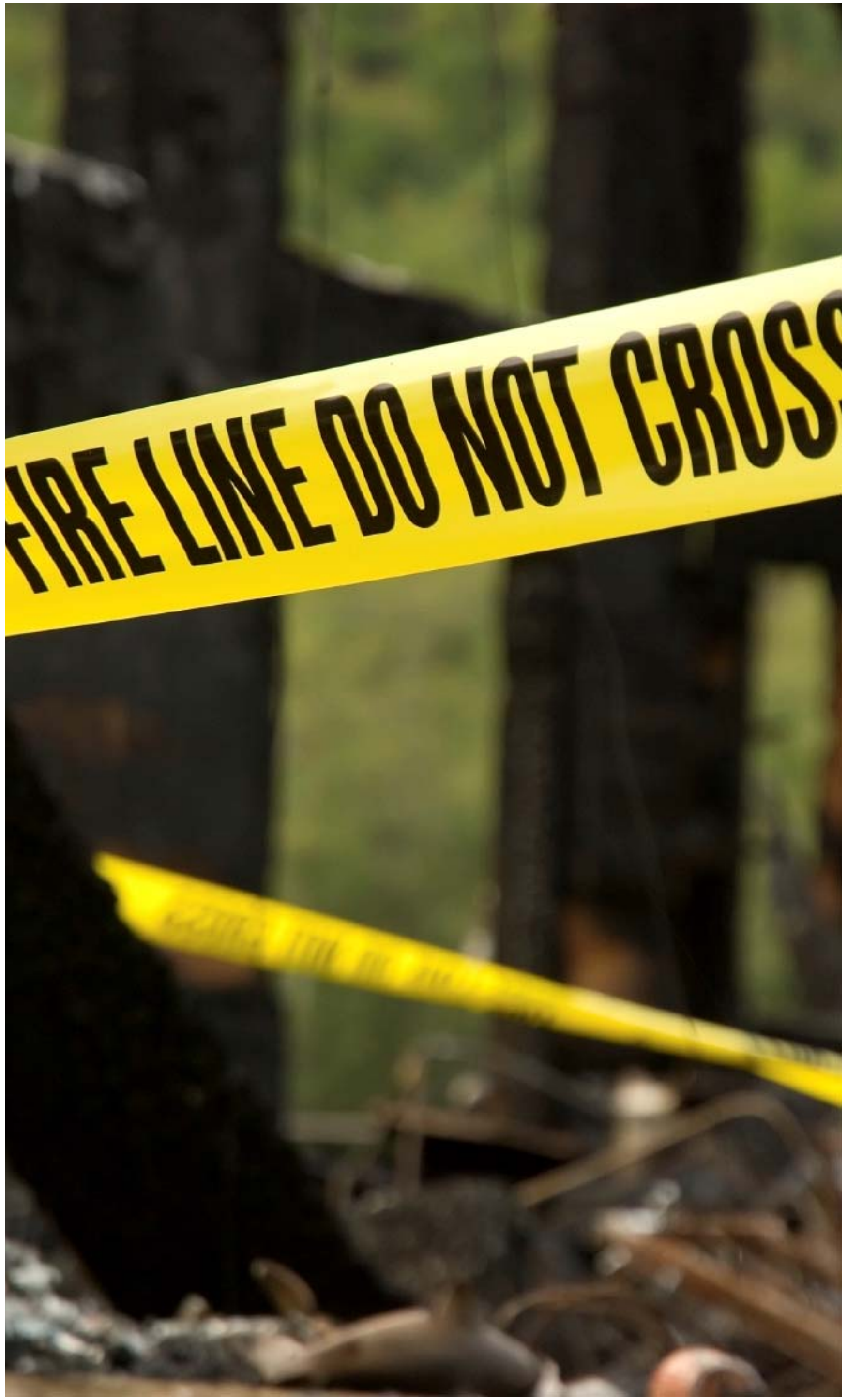
- Special Form (this is the best) covers all “risks of direct physical loss” (hence the former name of this policy: “All Risk”) except those perils that are specifically excluded (generally ISO Form #CP 10 30). Examples of exclusions from Special Form:
  - Water (flood and other water-related occurrences),
  - Military action,
  - Earth movement (earthquake),
  - Governmental action,
  - Nuclear hazard,
  - Utility services,
  - Boiler and machine failure,
  - Dishonest acts,
  - Pollutants,
  - Terrorism,
  - Insects and vermin,
  - Mold,
  - Wear and tear.

Special Types of Coverage (When Appropriate)

- Windstorm needs to be added as an included risk. This might be an exclusion in some locations (coastal areas).
- Flood insurance is obtained through National Flood Insurance Program, A FEMA program. Current limits:

One to four-family structure	$250,000
One to four-family home contents	$100,000
Other residential structures	$250,000
Other residential contents	$100,000
Business structure	$500,000
Business contents	$500,000
Renter contents	$100,000

- Always check current laws – coverage and limits may change.
- Additional coverages may be available from private insurers, but are expensive



Amounts of Coverage

- The parties should require Special Form coverage in the following amounts:
  - Without "replacement cost" coverage, the insurer will generally pay the lesser of the cost to repair, rebuild, or replace the property, less fair and reasonable physical depreciation ("actual cash value"), or the state policy limits.
  - If the "replacement cost" is insured, the insurer will be required to pay the lesser of: the cost to replace on the same premises the lost or damaged property with other comparable property, with no deduction for depreciation; or the stated policy limits.

Independent vs. Dependent Property Covenants

- The covenants flowing to the Tenant were historically viewed as independent of the covenant to pay rent and other covenants the Tenant is charged with.

- Louisiana is a state which typically viewed landlord's rights as judicially protected, subject only to an "Abuse of Rights Doctrine" that was seldom applicable.

- The "modern" trend reads contractual ideas into leases. In these states, a lease is not interpreted solely as an instrument of conveyance. Concepts of equity, fair dealing, good faith and interdependence are relevant.

Contractual Remedies in Leases

- Where the covenant to pay rent was viewed as independent, the Tenant's remedy for a landlord breach was usually limited to damages.
- The foregoing analysis applies only so long as the lease is silent.
- Supermarket chains, big box users and other tenants with leverage negotiated for termination rights upon the breach of <u>any</u> terms by landlord, after notice and cure rights are extended to landlord and lender.
- Query: In a shopping center lease calling for 5 parking spaces per 1,000 square feet of GLA, can the tenant terminate because the ratio is 4.7?

Consent to Subletting or Assignment

- In the absence of any provision to the contrary, a lease may be freely assigned or sublet.

- If assignment and subletting require landlord's approval, the “majority" rule remains that landlord need not be reasonable.

- A growing "minority" holds that every lease is comparable to a contract, with an implied covenant of good faith and fair dealing.

- In the "minority" jurisdictions, consent need not be reasonable, where the landlord has bargained for the right to reject a party proposed by tenant in landlord’s “sole discretion”.

“Kick Out” Clauses Negotiated By Tenants and Landlords

- Both landlord and tenant desire to have the option to terminate a lease, based on poor sales at a location.
- These clauses are usually predicated on a level of sales over an agreed period. The right may be "one time" or periodic.
- When the landlord exercises this right, tenant might negotiate for the right to stay, by increasing the rent to a predetermined amount.
- The party against whom the Kick Out right is exercised might expect specified payments: unamortized leasehold improvements, re-letting expenses, etc.

The Right to Relocate a Tenant

- Landlords seek relocation rights for office and retail leases, to accommodate expansion of other tenants, or to "re-merchandise" a mall.
- Tenants should require a significant event to make this right available to the landlord.
- Retail tenants particularly should insist on substantially equivalent space, taking into account pedestrian and vehicular access, sight lines and ingress/egress.
- Landlord should pay the entire cost, including any unavoidable tenant downtime.
- The tenant might negotiate for a termination right, if it does not wish to be relocated.

The Bankruptcy Limitations

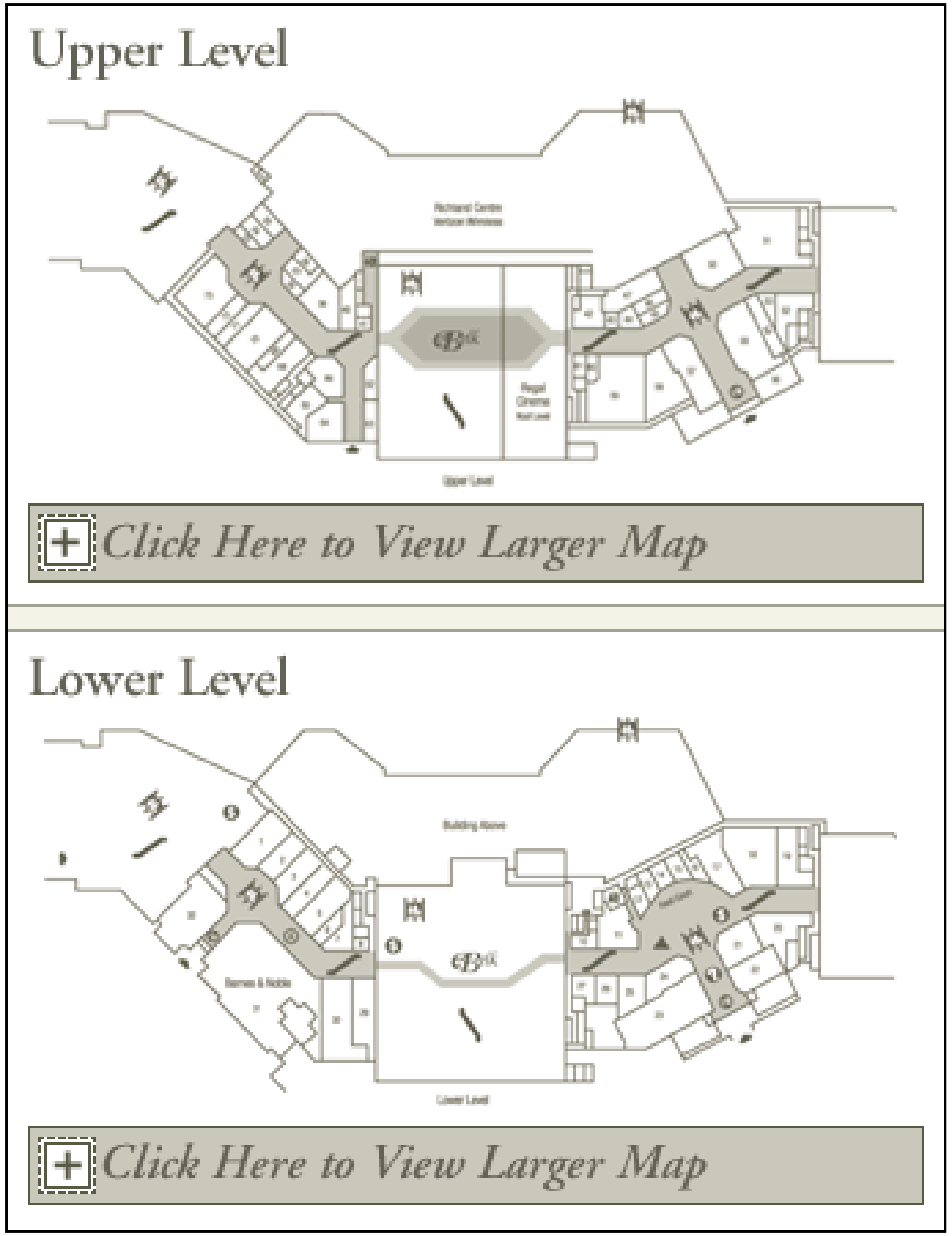
- Automatic stay of proceedings. 11 U.S.C. Section 362.
- Possible assumption of the lease by the debtor, with adequate assurance of future performance. 11 U.S.C. Section 365.
- Rejection of the lease by the debtor, and resulting breach. 11 U.S.C. Section 356(g).
- Administrative claim for rent due from filing to rejection. 11 U.S.C. Section 356(d)(3) and 503(b).
- Limitation on landlord's damages to "the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease" calculated from the earlier of the date on which the bankruptcy petition is filed or the date on which the landlord takes back or the tenant surrenders the premises, plus any unpaid rent due (without acceleration) on the earlier of these dates, capped at 3 years' rent. 11 U.S.C. Section 502(b)(6).
- Landlord's lien is a "statutory lien" that can be avoided. 11 U.S.C. Sections 101(53) and 545(3) and (4).

The Ways Landlords Can Protect Themselves

- Review the tenant's (and its guarantors') financial statement before entering into the lease or on the amount of the tenant improvements allowance.
- Require a guaranty from the parent if the tenant is a subsidiary or sister company, or from the individual owners if it is a small company.
- Require a cash security deposit.
- Consider a letter of credit

Key Provisions

- Interest and late charges on past due payments.
- If permitted in the state, the right to re-enter and keep collecting rent.
- If permitted in the state, the right to accelerate the rent.
- Reasonable limitations on the landlord's obligation to mitigate its damages.
- In a retail lease, liquidated damages for failure to operate that are sufficiently large to keep the tenant open.
- <u>The landlord's right to terminate the lease</u>.
- To the extent permitted, the right to continue to collect rent after termination.
- <u>A reasonable stipulation of the damages for loss of rent after a default termination</u>.



The History of Richland Fashion Mall

- This property first opened in the late 1960s as a strip center on the eastern side of Columbia, SC. It was enclosed and renamed Richland Fashion Mall in 1988.

- Original anchors were Bonwit Teller, J. B. White and Parisian. Today the only anchor is Belk, and the name has been changed to Midtown at Forest Acres.

- Verizon Wireless occupies a call center in former mall space.

The Barnes & Noble Negotiation at RFM

- RFM and Barnes & Noble signed a letter of intent in June 1996, for a 15 year lease.
- B&N submitted its form lease later that summer. The lease terms were negotiated extensively, partly because the leverage of the 2 parties was comparable.
- RFM was facing competition from recently opened malls along the I-20 corridor to the north and west. Thus, it needed B&N.
- B&N wanted a store in this area. It initially would pay only a percentage of gross sales as rental.
- The lease was signed in September 1996. B&N remain a tenant today, occupying 21,730 feet.

Particular Lease Terms Agreed to by RFM and B&N

- The percentage rent was subject to a periodic "lock in," so that there were minimum guaranteed rents after the first 2 years of occupancy.

- There were a number of agreed exemptions from B&N's gross sales, but RFM negotiated for an overall limit on such exclusions.

- Assignments and subleases were subject to disapproval if the proposed assignee or subtenant had a net worth of less than $250,000,000.

- The proposed assignee or subtenant could not be an existing occupant, a party who operates within a 3.5 mile radius, or a prospect with whom RFM had negotiated over the previous 6 months.

Recalcitrant Pharmacy Had Leverage over Replacement Grocery Store

- Client had negotiated a drug store lease which gave the tenant an exclusive over pharmacy products, subject to an exception in favor of "Winn-Dixie".
- Relying on *Jefferson Square, Inc. v. Hart Shoes, Inc.,* 388 S.W.2d. 902 (Ark. 1965), landlord argued that the exception was not "personal' to Winn-Dixie.
- The true intention of the parties permitted 2 pharmacies in the center, 1 in the drug store, another in the supermarket, irrespective of who operated there.
- Landlord also cited *Hill v. Rice,* 505 So. 2d. 382 (Ala. 1987) arguing that "all doubts and ambiguities" must be resolved against the drug store.
- The parties settled their dispute for a cash payment to the drug store. The prospective replacement supermarket was not willing to take <u>any</u> risk.

Right of First Offer from Ground Lessor

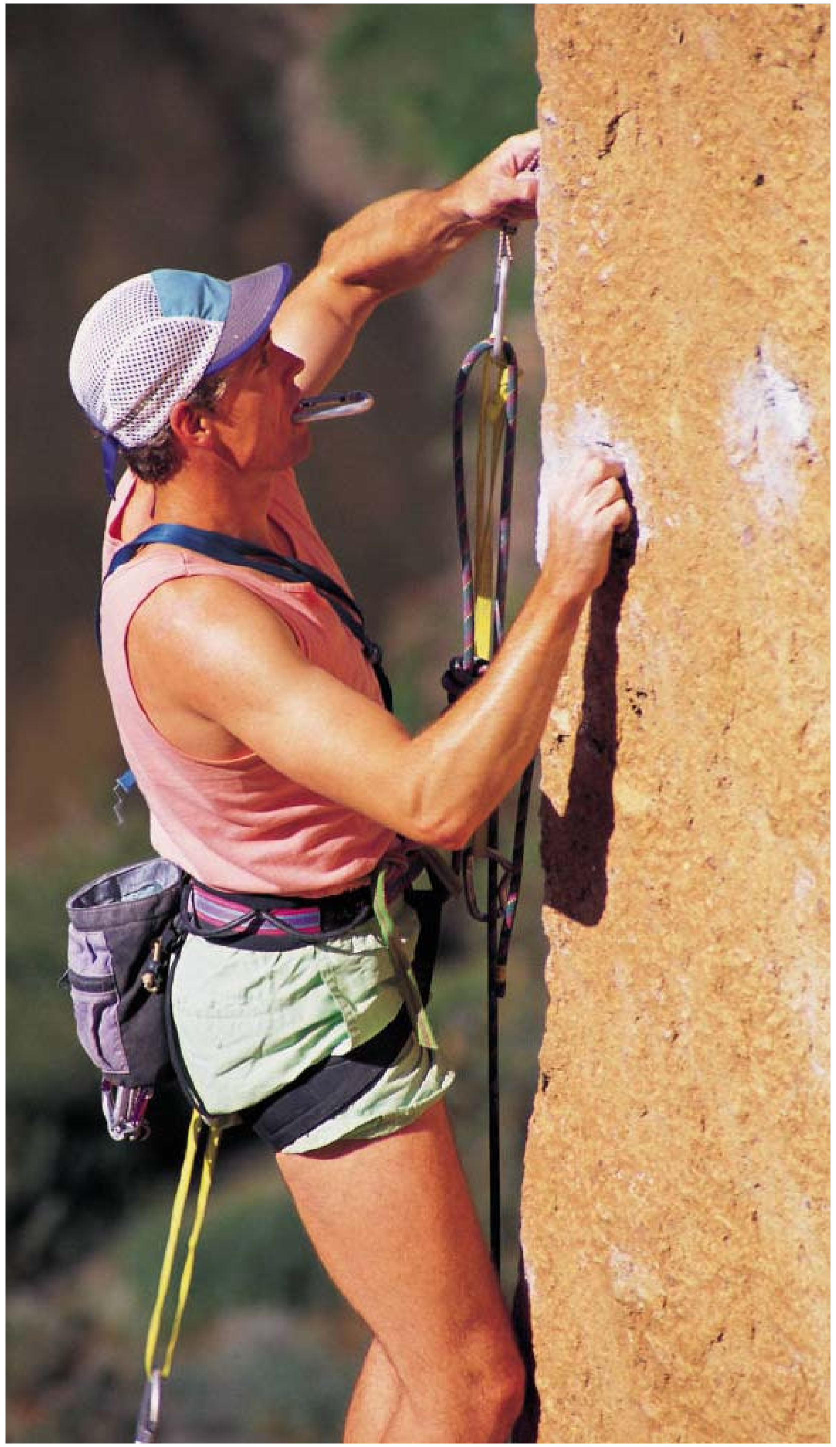
- Landlord entered into a 20-year ground lease with The International House of Pancakes (IHOP), with 4 five-year options. (IHOP currently operates 1,456 restaurants in the US, Canada, Mexico, Puerto Rico and the US Virgin Islands).
- Among the lease terms was a right of first offer, pursuant to which the premises is to be offered to IHOP before it could be listed for sale. Only a sale of the premises "separate and apart from any adjoining property" would invoke the provision.
- A sale of the premises itself, to affiliates and family members, was also exempted from the procedures.
- If IHOP declines the terms offered, the lessor is free to sell the premises, for 180 days, at a price of not less than 97.5% of that offered to IHOP (permitted "slippage" factor).

Prohibition Against Competitive Uses of Adjoining Property

- The IHOP ground lease generally prohibited the location of a "Competitive Restaurant" on the balance of the landlord's land. Competitive Restaurants were defined as full service, moderately priced, full order (breakfast, lunch and supper) eating establishments.
- 10 brand names were listed as non-exhaustive illustrations, including Shoney's, Denny's and Waffle House, that had locations in the Birmingham market. 8 entire categories of restaurants were expressly excluded from the term "Competitive Restaurant", including a list of 40 named operations.
- If the Restricted Property is under separate, non-affiliated ownership at the time of a breach, IHOP must proceed directly against the owner of the Restricted Property, its tenants, etc.
- If an institutional mortgagee acquires title to the IHOP site through foreclosure or deed in lieu, IHOP will not cancel its ground lease, or withhold rents, so long as the mortgagee takes "reasonable steps" to enjoin any violation.

Special Leasing Issues for Technology Companies

- Many of the leasing issues of importance to technology firms became evident in the ".com" era. Many of the same concerns exist today.
- Speed in consummating the negotiation and delivering the space may be more critical than rental rate and other standard office lease issues. Landlords who are ill equipped to deal with this time compression may lose prospective tenants.
- The tenant's balance sheet may be lacking in a traditional view. Some companies show a sizable capital investment in research, and a respectable cash reserve (earmarked for production), but no hard assets.



Additional Issues for Technology Companies

- Due to the potential for explosive growth, a technology company may insist on dramatic expansion rights. A termination option may be required if the landlord is unable to comply.
- These companies may have different work schedules, and sometimes unique office amenities - - - a rock climbing wall, for instance?
- A technology company may have a much heightened awareness of security precautions concerning safety and industrial espionage.
- The tenant may demand a termination right upon a substantial casualty. Business interruption insurance may not adequately cover the growing technology firm.

IV. Legal Techniques For Dealing With The Current Market

The Default Alternatives

Should the Landlord Keep the Tenant in the Premises?

- The rent will continue (with luck).
- The premises will remain occupied, avoiding co-tenancy issues in a retail lease.
- The landlord will probably have to make rent or other accommodations.
- The landlord will have the administrative headache of keeping the tenant in lease compliance.

Is Rent Acceleration an Option?

- What does "acceleration" mean in your state? Is mitigation required?
- This right to either type of "acceleration" must be granted in the lease.
- The states that permit rent acceleration without a mitigation factor may restrict the landlord's right to re-enter the space if it exercises this remedy.

Various Default Scenarios

Landlord Re-Entry Without Lease Termination:

- Not enforceable in some states except in abandonment.
- This right must be granted in the lease.
- Rent is generally payable only as it comes due.
- The landlord will probably be obliged to mitigate its damages, though the lease can explain that the landlord is not obligated to lease if other space is available or to lease for another use.
- The landlord's obligation to mitigate conflicts with the principle that the lease remains in effect and mitigation attempts may lead to termination.
- California requires that the lease permit the tenant to sublease or assign the space, subject to reasonable standards, if the landlord wishes to re-enter and continue to collect rent.

Landlord Lease Termination:

- Traditional law requires that this right be granted in the lease.
- The landlord's termination of the lease may cut off its right to continue to collect rent.
- If the termination is in a circumstance in which the landlord is permitted to continue to collect rent (for example, abandonment), the landlord may be obligated to mitigate its damages.
- Courts have difficulty awarding damages for loss of future rents unless the lease provides for liquidated damages.

Legal Techniques for Dealing with the Current Market

- Realistic Rent/Rent Concessions
- Fixed CAM (Common Area Maintenance costs)
- Space Reduction
- Tenant Improvements/Tenant Allowance
- Term
- Co-tenancy
- Dark Space
- Renegotiation
- Local vs. National Tenants

Realistic Rent Under New Leases

- Even is this down economy, new leases are still being signed.

- In order to make these new deals happen, both parties need to understand the local market conditions and work together to agree on "realistic rent" and other costs, at least for the short term.

- Under current market conditions the following alternatives and short term solutions are possibly available, depending on leverage of the respective parties:
  - Deferred Rent
  - Percentage Rent
  - Rent Forgiveness-Free Rent

Deferred Rent

- The parties agree on a base rental (and/or base rental plus percentage rental) for the term of the lease.

- A portion of the base rent may be deferred up front (i.e., first six months free with the amount that would have been paid during that period being recaptured over the last twelve months of the term).

Percentage Rent Only Leases

- Some retail tenants are negotiating short term leases with percentage rent only, with no breakpoint for short terms.
- The upside for the tenant is that rent is tied to actual sales (but the term "actual sales" needs to be clearly defined in the lease for the protection of both parties).
- The upside for the landlord is that rent increases with sales.

Modified Percentage Rent Leases

- A more likely scenario is for the tenant to pay a reduced or nominal base rent, plus percentage rent, with a reduced breakpoint based on base rent.
- Based on information from industry contacts, these percentage rent provisions are generally limited to at most 2 to 3 years, with Landlord termination rights.
- Some tenants are negotiating for the right to reject the landlord's termination and resume paying market rental (i.e., the rate that a *bona fide* replacement tenant would be paying).

Rent Forgiveness or Free Rent

- A less pervasive trend, though not unheard of in this economy, is for the tenant to receive a specified period of entirely free rent, exclusive of pass-through costs like CAM and taxes.

- Less likely is for the "free rent" or "abatement" period to occur during the initial months of the lease. The more likely scenario is for the tenant to receive one or more periods of free rent after the first year of the term and/or during the last years of the term.

Rent Concessions Under Existing Leases

- In a healthy economy, rent concessions during an existing lease term are almost non-existent.
- In the current economy tenants are requesting (or demanding, depending on leverage) rent concessions during existing lease terms, and landlords are granting concessions.
- Landlords, however, are **not** granting concessions "across the board" in response to mass mailings from national and/or regional tenants. But are instead, working with tenants on a site-by-site basis.
- Rent concessions during existing lease terms mirror the concessions noted in the earlier discussion of "realistic rent" for new leases. One exception to this trend is that tenants under existing leases have not been successful in negotiating "free rent".
- Rent concessions will be less generous as the expiration of the term (including renewal options) nears, unless the landlord is attempting to negotiate an extended term or new lease.

Fixed CAM (Common Area Maintenance costs)

- **Gross lease** - rent includes CAM, non-separately metered utilities and taxes

- **Fixed CAM only lease** - rent includes CAM at a fixed cost per square foot of leased space, but utilities and taxes (pro-rata) are paid as "additional rent".

- The trend over the last few years has been toward the gross lease. In the current economy, as more and more states are raising (or attempting to raise) property taxes to subsidize dwindling coffers, the true gross lease is being supplanted by the “fixed CAM only” lease.

Tenant Allowance (TA) For Tenant Improvements (TI)

- One of the most significant current "new lease" issues from the tenant perspective is whether the agreed tenant allowance funds will be available to the tenant for completion of tenant improvements. Alternate forms of tenant assurance include the following:
  - SNDA-Lender's are reluctant to agree to continue to fund TA if the landlord/borrower defaults on the mortgage.
  - Letter of Credit-Costly for landlord
  - Cash Escrow-Costly for landlord
  - Front Load (tenant gets more TA funded before construction starts instead of making draws as work progresses)
  - Deep rent concessions (including free rent) for specified period during initial lease term permitting tenant to control and fund TI

Co-tenancy in Retail Leases

- Tenants and owners want:
  - Named retail anchors and inducement tenants
  - A high occupancy percentage (75%-85%) for the entire center.
- Landlords want:
  - No named anchor or inducement tenant co-tenancy requirements
  - The right to replace named anchor and inducement tenants with “suitable replacements (including non-retail users)” as opposed to other named anchors and tenants
  - An overall occupancy percentage requirement only for the tenant’s zone or area of influence in the center or a lesser occupancy percentage (60%-65%) for the entire center.

Dark Space in Retail Leases

- "Dark Space" occurs as more tenants consolidate, go out of business or default on leases.
- Landlord co-tenancy violations may permit in-line tenants and anchors to "bust" their lease or "operating covenant" respectively.
- In healthy economic climates, use restrictions will prevent "dark space" from being occupied by non-traditional users.
- In the current economy, tenants and landlords are working together to modify use restrictions in favor of non-traditional retail users provided heavy traffic from a retail friendly consumer is anticipated.

Renegotiation of Existing Leases

- Rent Concessions have been previously discussed.
- Lease terms are shortened in exchange for rent concessions, subject to landlord termination rights (both as previously discussed).
- Space Reduction
  - Direct-between tenant and landlord
  - Assignment and subletting–between tenant and third party, but this usually requires consent of landlord
  - Parties need to assess costs of sub-dividing space (including demising walls, separately or sub-metered utilities, access and other operational considerations) to determine economic feasibility before actively pursuing this option.

Problems With Maintenance - Self-Help

- Problems with Maintenance:
  - Customary maintenance provisions require tenant to maintain the leased premises space (including electrical and plumbing) and landlord to maintain building structural elements and systems.
  - If either party fails to fulfill maintenance obligations under the lease, the other party, depending on leverage, may have self-help rights to perform the required maintenance (usually after notice to and opportunity to cure by the non-performing party) and receive reimbursement.
  - Failure to reimburse gives rise to various other remedies, depending upon lease provisions, including right to off-set rent, lien the property, and/or pursue available legal remedies.
  - A creative solution to tenant's maintenance concerns in this economy, was noted in a recent office lease reviewed by the author, whereby the tenant was responsible for the operation and maintenance of the entire building, in lieu of cash rental payments.

What Happens If Your Landlord Files Bankruptcy

- In the commercial property field, there is a tendency to contemplate that the tenant, not the landlord, will file bankruptcy.
- This situation is addressed by Section 365(h)(1)(A) of the Bankruptcy Code.
- Section 365(h)(1)(A)(i) provides that the lessee may treat the lease as terminated in certain events.
- Under Section 365(h)(1)(a)(ii), the lessee may retain its rights in a lease, if the term has commenced, "to the extent that such rights are enforceable under applicable nonbankruptcy law".

Lessons of the Precision Industries Case

- *Precision Industries, Inc. v. Qualitech Steel SBQ, LLC*, 327 F. 3d 537 (7th Cir. 2003), illustrates a potential for losing a leasehold when the landlord seeks protection under the Bankruptcy Code.
- Qualitech filed a motion to sell its assets "free and clear of liens" under Section 363 of the Bankruptcy Code. Precision did not object, for some reason.
- The bankruptcy court held that the Section 363 sale extinguished Precision's leasehold. The district court found otherwise, but the 7th Circuit held for Qualitech again.
- Literally read, Bankruptcy Code Section 363(f)(2) would appear to require an actual consent by Precision, not merely a failure to object.
- Commentators have said that Precision should have been entitled to "adequate protection" under Section 363(e) of the Bankruptcy Code - most likely a cash payment equal to any value for the remainder of the lease, the expense of moving, Precision's investment in leasehold improvements, and so on.
- Also, obviously, a leasehold mortgagee should protect against the loss of its collateral in the event of a proposed sale under Section 363.

Letters of Credit in Bankruptcy

- A letter of credit ("LOC") may be obtained by the landlord, in order to secure the obligations of its tenant under the lease.
- Increasingly, the tenant is also interested in an LOC, as an assurance of certain landlord obligations, particularly if rental offset is not a satisfactory remedy.
- An LOC transaction involves 3 parties: landlord, tenant and the issuing bank. An LOC creates 2 independent obligations: 1 is between the beneficiary and issuing bank; the 2nd between the bank and its customer.
- A lease is supported by a properly drafted LOC will not limit the landlord's recovery to the amount computed under Bankruptcy Code 502(b)(6).
- The issuing bank may be entitled to security for the debtor's obligations under the reimbursement agreement. The net effect may be a smaller recovery by other creditors.

V. Current Retail Opportunities And Problems

An “Environmentally Healthy” Shopping Experience

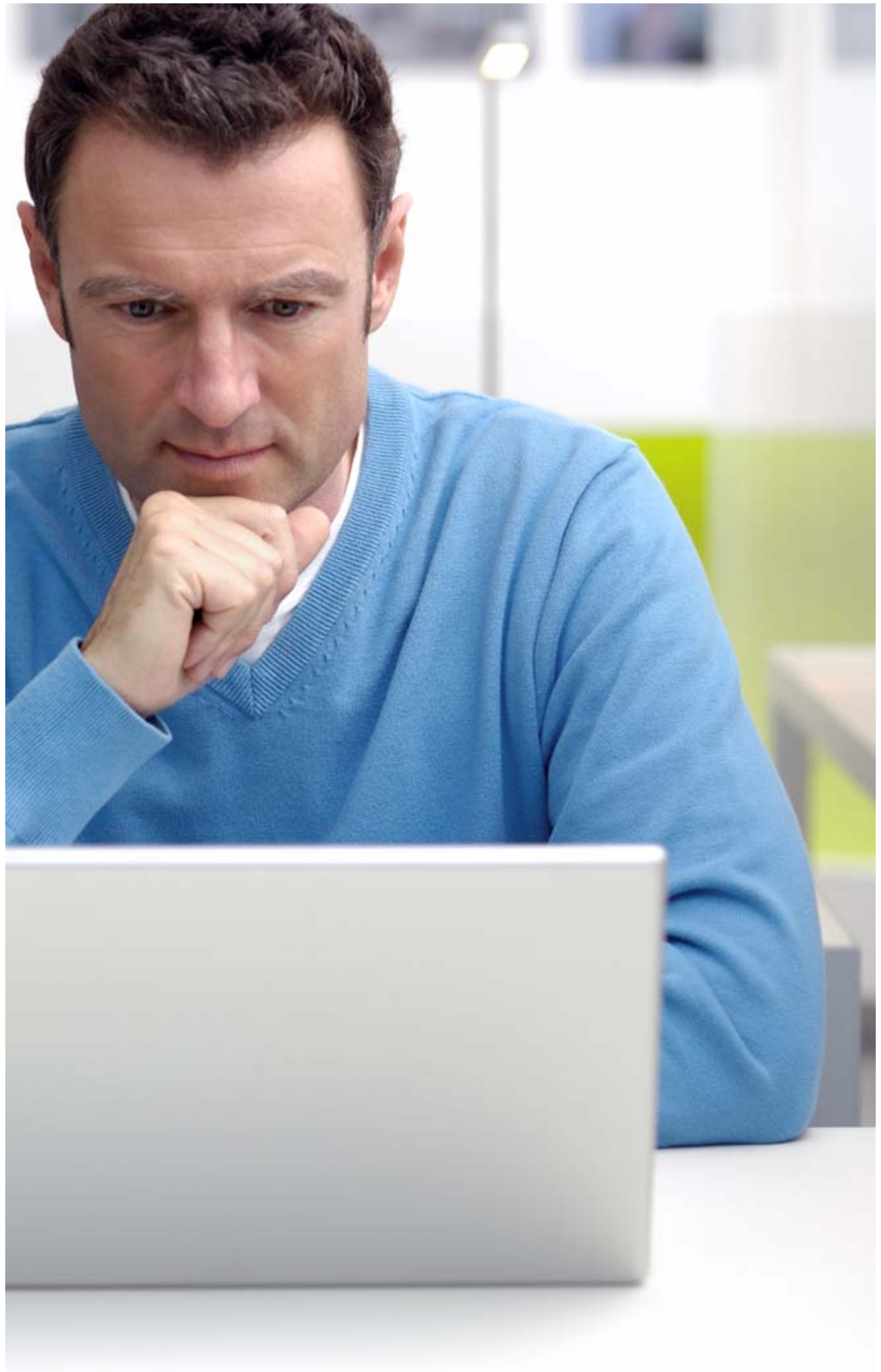
- Manchester Designer Outlets (MDO) is touted as America’s first environmentally healthy shopping experience.
- Located near the southwestern corner of Vermont, MDO features 33 shops housed in separate stand-alone buildings. Most shops are 3,000-5,000 square feet.
- The newest buildings incorporate such “green” elements as zero volatile organic compound paints and floor coatings, natural cotton insulation and cedar lumber, instead of chemical pressure-treated wood.
- Among the retailers at MDO are Giorgio Armani, Theory, Furla, TSE, Movado and Kate Spade.

Drive-Thrus; New Opportunity in a Weak Economy

- End caps of struggling shopping centers become low-cost alternatives for fast-food and other drive-thru operators.
- Less costly than building a free-standing store.
- The corner location is good exposure.
- Popeyes Chicken and Biscuits uses end caps to train new franchisees.
- End cap players include Panera Bread, Applebee's, Quiznos, Pizza Hut, Subway, Taco Bell, McDonald's and Jamba Juice.

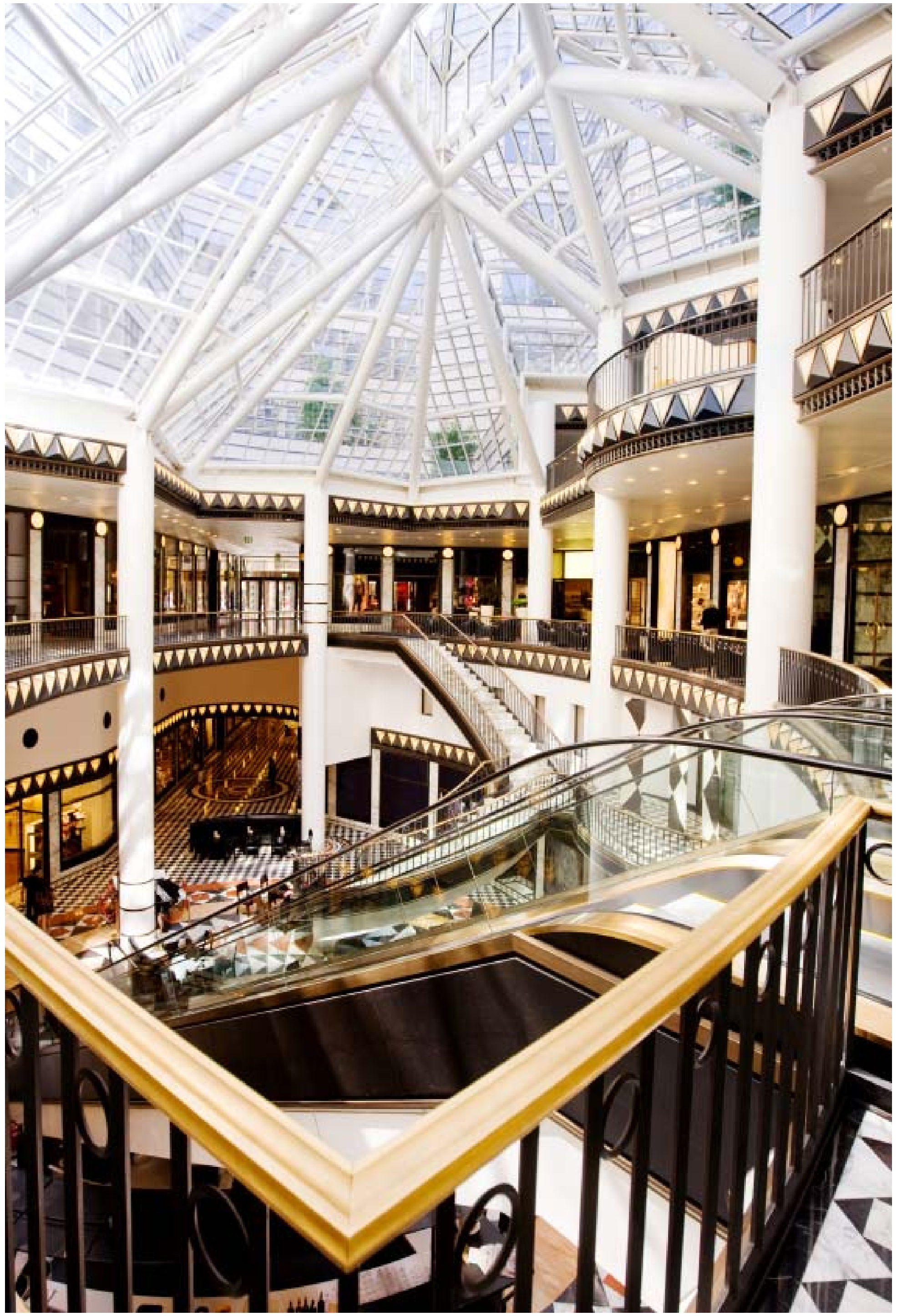
A Philly Boutique, Financed In An Innovative Fashion

- A boutique opened at 1700 Sansom, in Philadelphia, late last August.
- About 80% of the products carried are made in Philadelphia.
- Seamstresses and tailors make up a workforce that created 20 jobs locally.
- The Philadelphia Industrial Development Corp. lent assistance to financing. PIDC and a local bank each invested 45%. The remaining 10% is equity.
- A separate grant from Philadelphia Workforce Development enabled an 8 week training program for new employees.



Is Apple's Newest Creation the iStore?

- The first Apple store opened in 2001 in Tyson's Corner, McLenn, VA.
- There are now over 240 stores in 7 countries
- Reported sales exceed $1 billion per quarter.



The Apple Phenomenon Effects Shopping Centers

- Gateway had computer stores, attracting roughly 250 customers per week. Apple stores attract over 10,000 per week.
- One reason is location. Apple locates its stores only in high-end retail locations. Only 2 stores are in Alabama, at the Summit in Birmingham, and Bridge Street in Huntsville.

The Apple Experience

- Apple stores are simple, elegant, and without clutter.
- Customers do not feel pressured into purchasing. *Staff is generally helpful, without agenda.
- Apple stores have the Genius Bar, a trouble-shooting area, and regular classes on Apple products.
- The high-class locations and the elegant, relaxed atmosphere combine with Apple's brand to produce a lifestyle experience that benefits the entire retail center.

Impact of Baby Boomers Anticipated

- The U.S. population aged 65 and over is expected to double, to 72 million, by 2030.
- The earliest baby boomers celebrated their 60th birthdays in 2006.
- By 2009, many had reached typical retirement age.
- Florida (17.6%), Pennsylvania (15.6%) and West Virginia (15.3%) have the highest percentages of people aged 65+.

Senior Living Facilities

- There were several critical factors over 2008-2009 which negatively impacted senior living facilities, and their ability to obtain financing for start-ups, expansions and refinancing of existing debt.

- The affordability of senior housing projects declined due to the dramatic fall in home prices and in the stock market.

Real Estate Trends in the Medical Marketplace

- The 1990s saw a decentralization of services, such as ambulatory surgery centers, imaging centers and medical office buildings, beyond the acute care hospital.
- In some instances, medical facilities have occupied vacant retail space.
- The medically related commercial real estate market has been relatively resilient during the general slump.
- With the recently passed federal legislation, there will be an increased population served.
- An effect of the changes will likely be a reversal of the trend to suburban locations.
- The differential in reimbursement, which has been a factor in the proliferation of ASCs and imaging centers, will be reduced.

The Popularity of the Ethnic Mall

- As early as the late 1980s there were in Los Angeles, Miami and Newark malls specializing in sub-cultural tastes and frequented by the corresponding ethnic groups.
- An 80,000 square foot Asian market was described in *The Christian Science Monitor* last August as having 10% increases in sales for the last 2 years.
- Fort Worth Town Center is now a 1.1 million square foot Latino mall, with 150 retailers. In 2005, this aging 1960s structure was only 10% occupied.
- Many ethnic malls are doing well. Factors cited include customer loyalty, cultural attitudes about savings and the growing population of these demographics.
- The typical ethnic mall focuses on a narrow, underserved group of shoppers.

A November, 2009 Ribbon Cutting

- Millenia Crossing, a 90,000 square foot retail center, opened In November, 2009, with an occupancy rate of 74%.
- The property was anchored by Nordstrom Rack, a popular store at which prices are discounted 50-60%. Heavy traffic is expected.
- The Nordstrom Rack outlet was only its second location in the state of Florida.
- Millenia Crossing was 1 of the few retail projects completed and opened in the Orlando market in 2009.

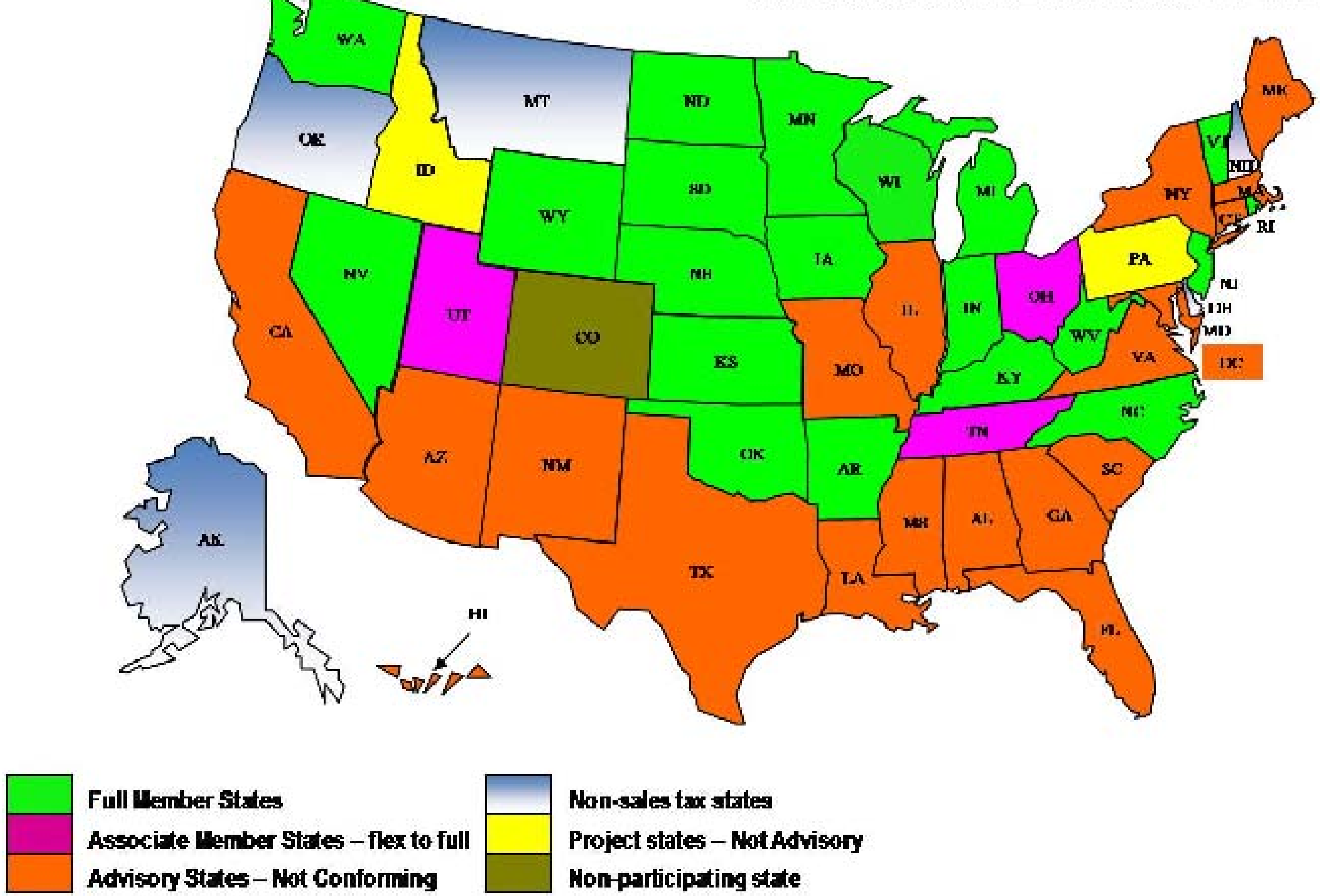
Online Retail Sales Set a Single-Day Record

- Tuesday, December 15, 2009, was the first day ever to top the $900 million mark, according to ComScore, having estimated e-retail sales of $913 million.
- For the 5 days ended December 18, 2009, 45% of web retail sales included free shipping, up from 38% during a similar period in 2008.
- Free shipping can be used by e-commerce retailers to encourage higher spending. *During the week ended December 6, 2009, for example, the average order involving free shipping was $134, while orders for which the customer paid shipping averaged $103.

E-Sales Effect State and Local Taxes

- Alabama and its local governments lost an estimated $104 million in 2009, because of online retailers.
- That figure could climb as high as $170.4 million by 2012.
- The state is considering tax rules to comply with the standards of the Streamlined Sales Tax Governing Board, Inc.
- This group is working to simplify tax processes, so that online retailers can collect, and send the money to the appropriate jurisdictions.

Streamlined State Status 10-01-09



7,600 Taxing Jurisdictions

- A "single source" taxing regime faces many problems.
- There is a multiplicity of taxing jurisdictions, each with separate rates and exemptions.
- Imposition of taxes on out-of-state companies may runs afoul of interstate commerce considerations.
- A firm must have a physical presence in your state, in order to collect sales tax from it.
- This is unlikely, since the explosive growth of e-commerce.

The End of the Road for Circuit City

- Circuit City was founded in 1949 as a television store.
- It grew to 722 US outlets.
- The company filed for protection on November 10, 2008.
- Among its largest creditors were Hewlett-Packard ($118 million), Samsung ($116 million) and Sony ($60 million).
- Circuit City obtained a court order for liquidation in January, 2009.

Reasons Given for the Failure of Circuit City

- The problems began in the late 1990s, when the company failed to secure prime stores. Inconvenient locations led consumers to go elsewhere.

- Circuit City did not move aggressively into e-commerce, as 50% of electronics sales moved online.

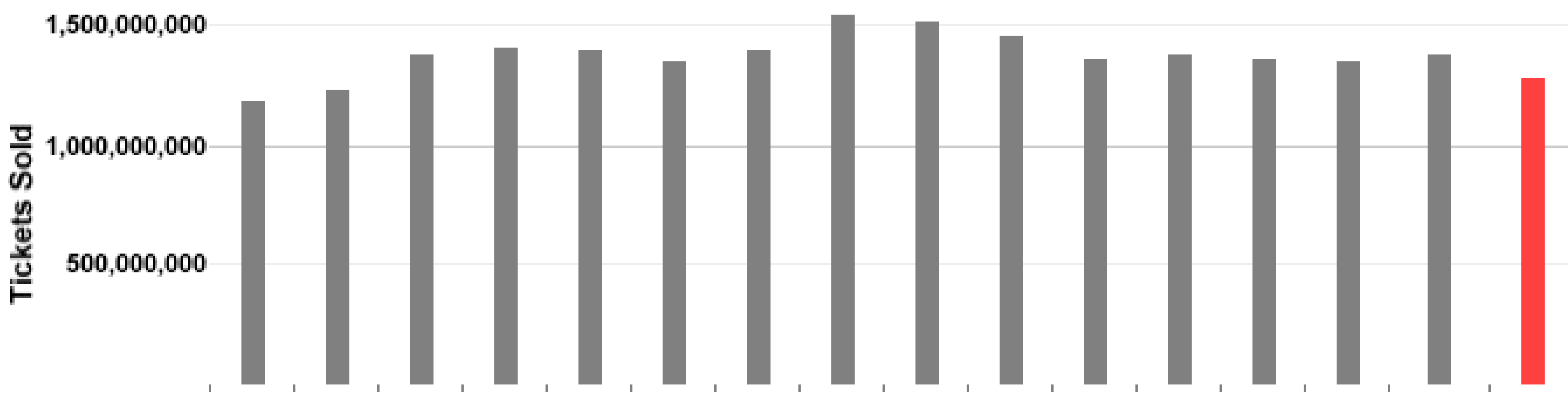
- In March, 2007, Circuit City announced plans to lay off its higher paid (and more experienced) salespeople, and replace them with lower paid employees.

- The largest electronics retailer, Best Buy, reported a quarterly profit of $200 million in August, 2008. Circuit City had a loss of $239 million.

- 30,000 employees received their 60 days notices. Circuit City's CEO received $7 million in compensation for 2008.

Let’s Go To the Movies?

- There always will be an irreplaceable experience to catching a matinee, or going on a late-night movie date.
- Yet, the theatrical distribution system has been a slow growing business, at best.

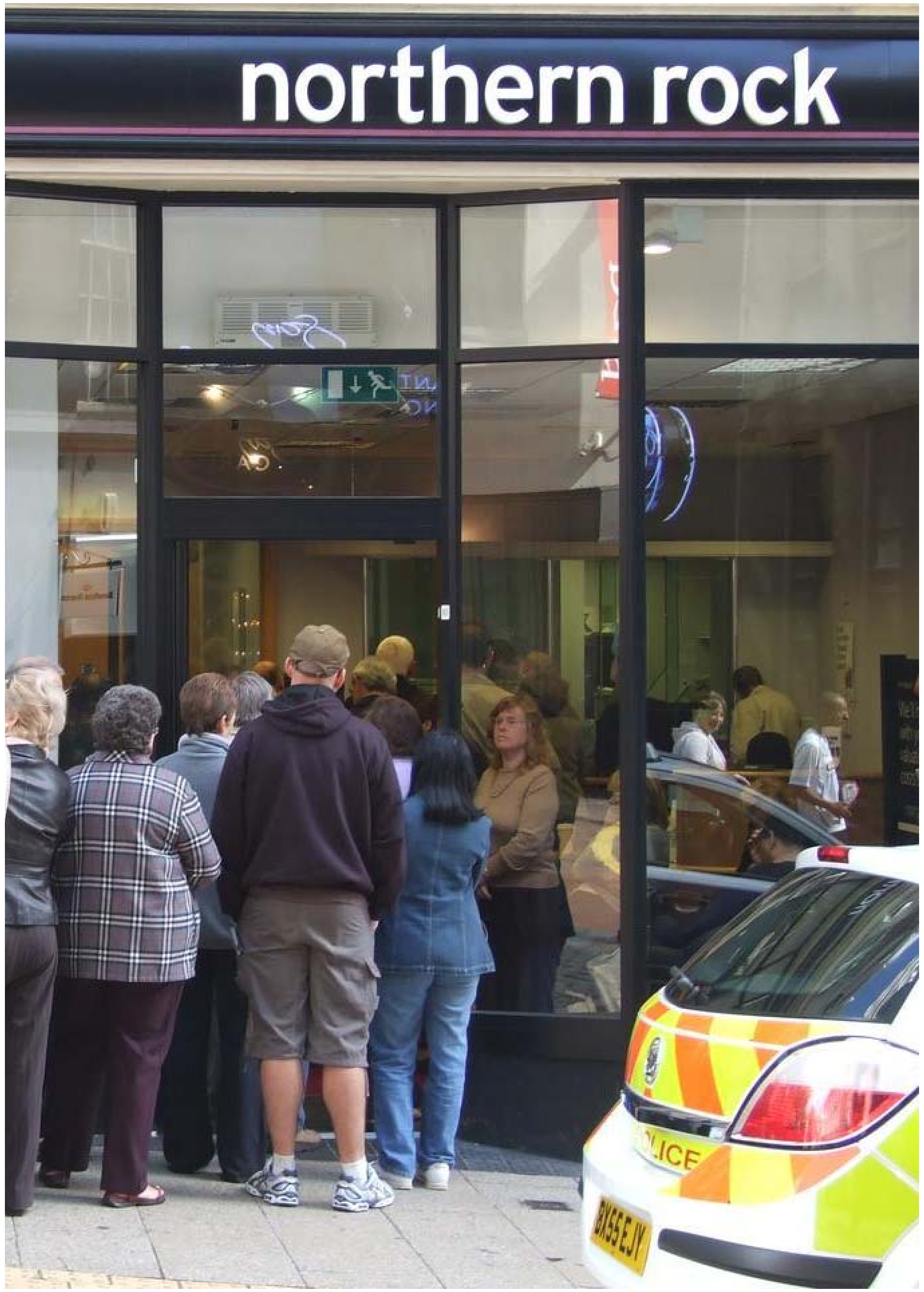


	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
ickets (billion)	1.22	1.26	1.42	1.44	1.44	1.39	1.44	1.58	1.55	1.49	1.40	1.41	1.40	1.39	1.42	1.32
evenue ($bn)	$5.29	$5.59	$6.51	$6.77	$7.30	$7.48	$8.13	$9.19	$9.35	$9.27	$8.95	$9.25	$9.63	$9.95	$10.64	$9.90

ote: Figures for 2010 are at an annualized rate.

More Movie Statistics

- America accounts for over 22% of world wide movie tickets purchased annually. India buys almost 45%.
- Movie theaters face growing pressure from alternatives, such as DVDs, television and on-demand internet services.
- Film studios benefit from higher margins with the alternate distribution channels.
- NetFlix, an on-line DVD delivery service, has 100,000 titles in stock, and 10 million subscribers.
- The company ships 1.9 million movies daily. On April 2, 2009 NetFlix delivered its 2 billionth movie.



What Happens If Your Issuing Bank Fails?

- In most bank failures, the Federal Deposit Insurance Corporation ("FDIC") is successful in finding a purchaser to assume contingent liabilities, including the failed bank's obligations for outstanding LOCs.
- The FDIC has authority to "repudiate" ongoing contracts of a bank, apparently including LOCs, under 12 U.S.C. Section 1821 of the Federal Deposit Insurance Act.
- Something similar occurred with the receivership and liquidation of Penn Square Bank in 1982. Ultimately, claimants received $.55 on a dollar for "proven claims" in what is 1 of the FDIC's most publicized, difficult and colorful bank resolutions.