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# COVID-19 Trends on Real Estate Leases: Selected Topics and Articles

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## **Selected Topics and Articles:**

1. Troutman Pepper - Is Coronavirus Infecting Your Commercial Contracts? Excusing and Enforcing Performance Amidst Worldwide Uncertainties
2. Troutman Pepper - Commercial Leases Changing Day by Day During COVID-19 Crisis
3. Troutman Pepper - COVID-19 Commercial Leasing Trends (Pod Cast)
4. Newmark Capital Market Data Sheets

## Articles & Publications

INSIGHTS > IS CORONAVIRUS INFECTING YOUR COMMERCIAL CONTRACTS? EXCUSING AND ENFORCING PERFORMANCE AMIDST...

# Is Coronavirus Infecting Your Commercial Contracts? Excusing and Enforcing Performance Amidst Worldwide Uncertainties

03.12.20

Panic over the new coronavirus (COVID-19) is continuing to cause significant disruptions in the global supply chain. During uncertain times, suppliers seek to escape existing contractual obligations they can no longer timely fulfill, and customers seek to secure commitments from their suppliers. As the virus continues to spread, contracting parties are seeking to excuse or delay performance under contracts based on force majeure or common-law doctrines that could arguably justify what would otherwise constitute breach.

Regardless of which side of the pandemic impact you find yourself, below are items you should consider.

### **Force Majeure**

Many contracting parties anticipated unforeseeable impacts on a party's ability to perform by including an express force majeure provision in their contract. A force majeure provision typically dictates that a contracting party is not responsible for its violations of the contract, including delayed performance, to the extent due to circumstances or events not within the reasonable control of the party. How broad or narrow the force majeure provision is drafted will determine whether COVID-19 or the impacts thereof amount to force majeure. Depending on that determination, a force majeure provision may be dispositive of issues relating to liability for delay or other inability to perform. Many force majeure clauses include broad catch-all provisions, but even a broadly worded provision may not excuse performance unless the force majeure clause makes some specific reference to the event at issue. See *Team Mktg. USA Corp. v. Power Pact*,

*LLC, 839 N.Y.S.2d 242 (2007)* (stating that if “the event that prevents performance is not enumerated, but the clause contains an expansive catchall phrase in addition to specific events, the precept of ejusdem generis as a construction guide is appropriate—that is, words constituting general language of excuse are not to be given the most expansive meaning possible, but are held to apply only to the same general kind or class as those specifically mentioned.”) Some force majeure provisions also track common law principles and only exculpate an obligated party to the extent the force majeure event or circumstance was “unforeseeable.” Each party should carefully review the force majeure provisions to ensure that COVID-19 is included within the events for which a party may be excused. As a drafting note, force majeure provisions in contracts entered into currently should specifically include “pandemic, worldwide illness, epidemic, outbreak, quarantine, etc.” since COVID-19 is clearly known and may not otherwise be included as an unforeseeable event.

Many state courts construe force majeure provisions narrowly, and “[o]rdinarily, only if the force majeure clause specifically includes the event that actually prevents a party’s performance will that party be excused.” See *Kel Kim Corp. v. Central Markets, Inc.*, 70 N.Y.2d 900, 902–03 (1987); see also *Constellation Energy Servs. of New York, Inc. v. New Water St. Corp.*, 46 N.Y.S.3d 25, 27 (N.Y. App. Div. 2017) (“[W]hen the parties have themselves defined the contours of force majeure in their agreement, those contours dictate the application, effect, and scope of force majeure.”)

Buyers and sellers alike should pay special attention to any notice requirements associated with the occurrence of a force majeure event as failure to comply with such requirements in some states will preclude the avoidance of contractual obligations under the guise of force majeure, even if no damages from such failed notice are actually shown. Upon the occurrence of a force majeure event, some contracts may entitle one or both parties to suspend performance until the event ceases and may further entitle one or both parties to terminate the agreement or applicable purchase order where such event continues beyond a specified period of time. On the other hand, some force majeure provisions specifically exclude certain obligations, including shipping obligations, or specifically require the obligated party to overcome the force majeure event rather than extending relief.

In any case, in connection with any decision to suspend or terminate performance, buyers and sellers should critically analyze the risk of improperly invoking the right to avoid performance and the responsibility for mitigating damages despite an entitlement to avoid performance.

### **Exclusions and Limitations of Damages**

Contractual provisions excusing a party from liability for consequential damages and capping the liability of a party are common in commercial contracts and are especially important to consider here. Consequential damages typically include, without limitation, lost profits and lost revenues – each of which can quickly accumulate over an extended delay. Even if such damages stem directly from failures of performance related to COVID-19, exclusions of consequential damages will generally be enforced to prohibit the imposition of such damages against the non-performing party. While these provisions don’t allow you to avoid performance, they may allow you to avoid some of the liability associated with your failure to perform.

Another place to look for contract language limiting your exposure to liability for delay are liquidated damages provisions. While many sellers typically reject the imposition of liquidated damages as a benefit, in scenarios where damages from delays are uncertain, especially where no consequential damages are excluded, liquidated damages provisions work to strictly limit liability for delay to the amount of designated liquidated damages. On the buyer side, liquidated damages provisions are generally easier (and cheaper) to enforce than bringing an action for actual damages suffered as a result of delay (especially with respect to continuing delays). Depending on the reasonableness of the designated damages (noting that unreasonable amounts will not be enforced) these provisions can serve to benefit both sides of the supply chain simultaneously.

### **Insurance**

Some lines of insurance such as health, workers' compensation and life will most likely have covered claims with respect to COVID-19. The same may not be true with respect to business interruption and travel insurance. Whether on business or personal travel, temporary or extended, all insureds should review their coverages with a risk management specialist to determine whether claims associated with COVID-19 are covered.

### **Non-Contractual Considerations**

While courts will typically enforce the express terms of the contract negotiated between the contracting parties, consideration should also be given to common law and non-contractual principles which may impact or serves as a defense to a party's performance obligations. Courts have traditionally been sympathetic to parties whose performance has been made impossible or impractical by intervening and unforeseeable events such as catastrophic events which are extraordinary and beyond their control. These common law defenses to breach of contract claims are known as "Impossibility," "Commercial Impracticability" and "Frustration of Purpose."

The "impossibility of performance" doctrine applies when a party cannot execute their obligations under a contract because doing so has become effectively impossible. In addition to applicable case law, the Restatement (Second) of Contracts and Article 2 of the Uniform Commercial Code related to the sale of goods also address impossibility of performance. As explained by the New York Court of Appeals, "the excuse of impossibility of performance is limited to the destruction of the means of performance by an act of God, vis major, or by law." See *Kel Kim Corp. v. Central Markets*, 70 N.Y.2d 900 (1987). Thus, if one party to the contract cannot perform due to an event that the parties could not have foreseen when negotiating their contract, the other party cannot recover for breach of contract. See *407 E. 61st Garage v. Savoy Fifth Ave. Corp.*, 23 N.Y.2d 275, 282 (1968). In other words, if one party no longer has the means of carrying out the contract due to some event that the parties could not have foreseen when making their contract, the other party cannot recover for breach of contract.

Where performance is not impossible *per se*, two other doctrines known as "commercial impracticability" or the "frustration of purpose" may come into play.

“Commercial Impracticability” is a quasi-impossible defense to performance of a contract. In many cases, proving that the ability to proceed is outright impossible is too high of a burden. More realistically, performance may be technically possible, but nevertheless commercially impractical. In those situations, courts have found that a failure to perform should be excused under this doctrine. The Restatement (Second) of Contracts § 261 defines impracticability as “Where, after a contract is made, a party’s performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary.” For performance to be impractical, the triggering event must be unforeseeable and not be caused by the party charged with performance. Courts have held that a small shift in the degree of difficulty or expense does not amount to impracticability unless it goes way beyond and can be performed only at an excessive and unreasonable costs.

A related but different defense to impracticability is “frustration of purpose.” Whereas the impossibility and impracticability defenses focus on the inability of a party to perform, the frustration of purpose defense focuses on the reasons the parties entered into the contract. The Restatement (Second) of Contracts § 265 defines frustration as “Where, after a contract is made, a party’s principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or circumstances [of the contract] indicate the contrary.” In such situations, performance is not rendered impossible or impracticable, but the basic bargained for exchange between the parties cannot be accomplished. Frustration of purpose is often seen where the primary purpose of the party’s obligations is rendered moot based on unexpected events, such as the services of a service provider being no longer necessary because the overall project being canceled or delayed. Like impracticability, the frustration must be significant, unforeseen and not caused by the party charged with performance.

Courts look at whether a risk was foreseeable and whether the risk was assumed by the parties when making determinations about the impossibility, impracticability, or frustration. The party seeking to avoid the contract will most often be a defendant in a claim for damages brought by the party seeking to enforce the contractual obligations. In other words, these are defenses-to-defenses. One party argues breach, the opposing party argues impossibility (or impracticability or frustration), then the original party argues that the risk was assumed and/or foreseeable.

### **Moving Forward**

In conclusion, all supply chain participants should carefully review their contracts with the assistance of legal counsel to determine whether and how liability for failure of performance related to COVID-19 may be avoided. In addition, both buyers and sellers might also consider revisiting their contracts to more fairly allocate the risk associated with COVID-19 to the extent their supply chain allows. The extension of goodwill in a period of disarray may ultimately lead to unexpected windfalls.

Should you wish to discuss any of these concepts further and how they apply specifically to your situation, please contact any attorney listed in this advisory.

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## **Related Practices and Industries**

Corporate

Commercial Contracting

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## Articles & Publications

INSIGHTS > COMMERCIAL LEASES CHANGING DAY BY DAY DURING COVID-19 CRISIS

# Commercial Leases Changing Day by Day During COVID-19 Crisis

03.25.20

As state and local governments issue orders restricting business operations due to the COVID-19 outbreak, commercial landlords and tenants have many questions about the effects of these government restrictions on their leases. Although the situation is rapidly changing, this alert addresses common issues that are arising regarding commercial leases.

### **Is the COVID-19 outbreak considered a force majeure?**

Whether the COVID-19 outbreak triggers a force majeure clause depends on the wording of the lease. Broadly worded provisions (such as “any event outside of the reasonable control of a party”) may be too vague to be enforceable, as courts construe force majeure clauses narrowly.

What happens when the force majeure provision is triggered depends on the language of the lease. Generally, however, when such a clause is triggered in response to a government shutdown order, the landlord’s obligation to grant access to and maintain the premises would likely be excused. Conversely, the tenant likely would not be considered to have abandoned the premises under the terms of the lease. Typically, the payment of rent is specifically addressed in force majeure clauses and is not suspended during the time of force majeure, though one of the effects of this pandemic may be that this aspect of the customary force majeure clause changes going forward. The allocation of risk in the force majeure clause may provide evidence of the parties’ intentions and impact the application of common law principles, as the common law will always yield to the parties’ agreement. For further analysis of how force majeure clauses impact contracts, please see these other articles on the Pepper Hamilton/Troutman Sanders COVID-19 Resource Center: “Your Contracts in a Coronavirus World” and “Is Coronavirus Infecting Your Commercial Contracts? Excusing and Enforcing Performance Amidst Worldwide Uncertainties.”



## **In addition to force majeure, what arguments are tenants making to excuse their performance under commercial leases?**

In the absence of a provision allocating risk of loss to the landlord or the tenant, tenants are asserting common law arguments based on impracticability (or impossibility) of contractual performance and frustration of contractual purpose. In addition, some tenants are asserting that the government restrictions act as a condemnation under the lease.

### *Impracticability and Frustration of Purpose*

Generally, impracticability and frustration of purpose are construed narrowly and are highly fact-dependent. Impracticability excuses the performance of contractual duties when there is (1) an unexpected occurrence of an intervening act, (2) that was of such a character that its nonoccurrence was a basic assumption of the agreement of the parties, and (3) the occurrence of that intervening act made performance impossible, or at least commercially impracticable.

For example, the Pennsylvania Supreme Court has held, where a property was destroyed by fire, payment of rent by the tenant was excused under the theory of impossibility of performance. *Albert M. Greenfield & Co. v. Kolea*, 380 A.2d 758, 760 (Pa. 1977). Courts may use this type of holding as guidance for when the property is truly unavailable due to the COVID-19 pandemic or government-ordered shutdowns.

Relevant to government restrictions on business activities, impracticability can arise when the performance of a duty is made impracticable due to the requirements of a governmental order. See Restatement (Second) of Contracts § 264.

A similar doctrine, frustration of purpose, is also frequently being employed. It applies when a substantial purpose of the contract has been frustrated. Similar to impracticability, frustration of purpose applies when (1) the purpose was a substantial purpose of the contract, (2) the frustration is substantial, and (3) the nonoccurrence of the frustrating event must have been a basic assumption on which the contract was made. Issues regarding frustration of purpose are most applicable when there is a specific and identified permitted use in the lease or the intended use of the leased space is readily identifiable by the nature of the property that is being leased.

For both of these arguments, a party must act in good faith. Thus, if there are exemptions or other exceptions that would allow the business to continue operating, they must be pursued in good faith. Impracticability and frustration of purpose are not triggered by a change in market demand or financial condition, but rather the inability to conduct the activities or pursue the purpose that was the basic assumption of the landlord and the tenant.

If impracticability or frustration of purpose can be successfully applied, the next question is what is the appropriate remedy? Although termination is the often-cited remedy, abatement of rent may be more likely depending on the length of the impracticability or the frustrated purpose. When the impracticability of the contractual duty or the frustration of the contractual purpose is temporary, it is likely that these arguments would only serve to temporarily suspend the obligation to perform during the period of frustration (and afterward if the temporary issue makes performance afterward substantially more burdensome). See Restatement (Second) of Contracts § 269.

Tenants are also considering whether condemnation clauses in commercial leases may allow termination of the lease or rent abatement. Condemnation clauses generally provide that, if the leased premises is taken for any public or quasi-public purpose, the lease terminates or rent is abated for the portion of the leased premises that is condemned.

Although condemnation may seem like an attractive argument to terminate a lease when a government prohibits operations or restricts access to the property, it is unlikely to succeed because there is no transfer or acquisition of title (as there is under a traditional condemnation). Instead, in our situation with COVID-19, the state is temporarily exercising its police power to restrict activities for health and safety purposes. In addition, in a typical condemnation scenario, the landlord and sometimes a tenant receives compensation from the government for the acquisition of the property. If the condemnation clause is drafted broadly (which is rare), it could be argued that there is a temporary regulatory taking that triggers the remedies of the condemnation provision in the lease.

### **Can a landlord exercise self-help remedies (meaning evicting or locking out a tenant for failure to perform its lease obligations)?**

The ability of a landlord to evict a tenant during the COVID-19 outbreak may be impacted by executive or judicial orders issued in response to the pandemic. Many courts have closed or otherwise limited operations. See, e.g., New York Executive Order 202.8 (suspending residential and commercial evictions for 90 days); Delaware Justice of the Peace Standing Order Dated March 13, 2020 (suspending summary eviction proceedings); California Executive Order N-28-20 (authorizing local governments to suspend commercial and residential evictions for nonpayment of rent).

In the absence of eviction proceedings, many landlords may wonder if they can use self-help methods to evict or lock out tenants who fail to make rent payments. Generally, the law disfavors self-help. For example, in Pennsylvania, case law holds that, when the tenant is in possession of the premises, the landlord's self-help remedies are extremely limited, if not outright eliminated, and the landlord is required to pursue remedies under the Landlord and Tenant Act, 68 P.S. 250.101, et. seq. See, e.g., *Williams v. Kusnair's Bar & Tavern*, 288 Fed. App'x. 847, 850 (3d Cir. 2008) (citing cases for the proposition that self-help remedies by a landlord have been eliminated completely in Pennsylvania); *Spinks v. Equity Residential Briarwood Apartments*, 171 Cal. App. 4th 1004, 1038 (2009) ("Landlords thus may enforce their rights only by judicial process, not by self-help."); *1414 Holdings, LLC v. BMS-PSO, LLC*, 116 A.D.3d 641, 643 (App. Div. 1st Dept.) (self-help allowed for commercial leases only if expressly permitted under the lease). This applies equally to landlords for commercial tenants. *Lansaw v. Zokaites (In re Lansaw)*, 2015 Bankr. LEXIS 106 (Bankr. W.D. PA. 2015) (citing *2401 Pennsylvania Ave. Corp. v. Southland Corp.*, 344 A.2d 582 (Pa. Super. 1975) (courts to apply Landlord and Tenant Act to a commercial lease)).

Thus, self-help measures, such as changing locks or removing tenant property, may expose a landlord to civil damages, and a landlord should carefully consider and seek legal advice before acting.

## Demand for Cleaning and Quiet Enjoyment

Cleaning issues are likely to take center stage after the outbreak ends and business restrictions are lifted. Even if not expressly provided for in the lease or demanded by the tenant, landlords should take reasonable steps to maintain the property during and after the outbreak, following CDC guidelines for proper cleaning and disinfection.

Failing to maintain the property or failing to take appropriate steps to clean the property and prevent the spread of disease may be grounds for a breach of the common law right of quiet enjoyment or for constructive eviction. See *Sears, Roebuck & Co. v. 69th St. Retail Mall, L.P.*, 126 A.3d 959, 969 (Pa. Super. 2015) (upholding jury verdict for constructive eviction and breach of duty of quiet enjoyment when landlord allowed property to fall into severe disrepair, including rat infestation). Constructive eviction is a high bar, but issues related to the pandemic will provide opportunities for the development of case law applicable to our current circumstances.

As the length of business shutdowns grow, so will the scope and magnitude of issues that landlords and tenants need to navigate. The most effective method for dealing with the effects of the COVID-19 outbreak is for landlords and tenants to proactively communicate and avoid making rash decisions. Landlords may want to advise tenants of government loan programs, such as Economic Disaster Impact Loans available from the U.S. Small Business Administration, which are available to many areas affected by the COVID-19 outbreak. Creating open channels of communication between landlords and tenants is important, especially under our current circumstances because this is a dynamic situation that may look very different (for better or worse) in a short period of time.

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### Related Practices and Industries

Real Estate

Real Estate Litigation

Leasing

Coronavirus (COVID-19) Task Force

**Consumer Financial Services Law Monitor** 03.18.20

Troutman Sanders and Pepper Hamilton Launch COVID-19 Resource Center

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# Podcasts

INSIGHTS > COVID-19 COMMERCIAL LEASING TRENDS (PART ONE)

## COVID-19 Commercial Leasing Trends (Part One)

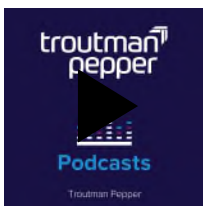
### Troutman Pepper COVID-19 Legal Issues Podcast Series

11.19.20

Troutman Pepper is producing a series of podcasts on legal and business issues faced by companies during the COVID-19 pandemic.

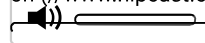
This episode features Troutman Pepper Real Estate Partners Monique Lashbrook (moderator), Gary Knopf, and Hannah Dowd McPhelin, who discuss commercial leasing trends on terminating and renegotiating commercial leases during COVID-19. Specific topics include:

- Terminating and renegotiating lease trends, including amendments to delay commencement dates, deferred rent, and rent abatement.
- Considerations when negotiating new leases.
- Force majeure clauses during a pandemic.
- Current changes in operating expenses due to COVID-19.



#### COVID-19 Commercial Leasing Trends Part One

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19:56

## SPEAKERS



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## Related Practices and Industries

Coronavirus (COVID-19) Task Force

Real Estate

Leasing

## Related Insights

**Podcasts** 03.15.21

COVID-19 Commercial Leasing Trends (Part Two)

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**COVID-19 Commercial Leasing Trends Podcast (Part One)**

Speaker	
Monique Lashbrook	<p>Troutman Pepper has been producing Podcasts focused on issues across all of our Practice Groups that clients will face due to the impact from COVID-19. Today's podcast is Part One of the two part series focusing on Terminating and Renegotiating Commercial Leases. We will discuss some considerations, per Tenant, about Commercial Leasing Trends during COVID-19. I'm Monique Lashbrook, a Real Estate Partner at Troutman Pepper, and joining me today, are my fellow Partners from the Real Estate Group, Gary Knopf, and Hannah Dowd McPhelin. Our discussion today is on Commercial Leasing During COVID-19. Gary, it's great to be here with you to talk about Terminating and Renegotiating Commercial Leases. What sort of renegotiations are you seeing between Tenants and Landlords, and how successful have these negotiations been?</p>
Gary D. Knopf	<p>Hi, Monique. Great to be here. Thanks for putting this together, and moderating. It's been interesting over the past nine months now we've been in this pandemic and seeing things all across the board. You're seeing renegotiations from amendments, to delaying that delayed commencement dates, and deferred rents, and rent abatement. Let's talk about it first from some of the retail client's perspective that we represent and mainly what we're seeing. First of all, we saw a big pause in the Spring when the height of the pandemic hit, and we were just seeing a lot of pause in deals, in general. And then, once those deals started picking back up again, we were really seeing renegotiating time periods and contingency periods. So, um created a lot of open-ended inspection periods, permitting periods, and a lot of what COVID type delays. So, really you can renegotiate and extend timeframes for any type of delays where there might be the stay-at-home work orders, or work-stoppages, and things of that nature. And then if deals were already signed-up, you'd be seeing a lot of deferred or Rent Abatement Requests or Rent Relief Requests. So, we were seeing a lot of that, especially in the retail context to space leasing. The smaller retail Tenant's asking for Deferred Rent, Rent Abatement. We are seeing we are going more towards a percentage rent type of situation, where you take out the fixed rent and just pay a certain percentage of sales over the course of the next few months, could be a year, to kind of get them through this period. From the office perspective, and on the landlord side, we're seeing a lot of, not as many requests for Rent Relief, but some in some cases, we were seeing tenant's use it as an opportunity to try to just get off leases that they don't want. You're seeing a lot of this frustration of purpose argument, which is really interesting, where Tenant's would come in and say, "You</p>

Speaker	
	<p>know, the purpose of my lease of using was just completing frustrated based on the Pandemic", which I don't think we've seen that payout in Courts based on research, you kind of. It's a little bit suspect, right now. But it was an interesting argument that they're making, and I think we'll kind of see how that plays out in the Courts over the next months, or even year, depending on how long the process takes. I think that what I'm seeing to be successful from an actual renegotiation standpoint, and to change the terms of the deal, it's really about reasonableness, in mind. Is the Tenant asking for something, and using it as an opportunity to take advantage, or are they asking for something that they really need it? No landlord wants to see the Tenant go out of business and create a vacancy. So I'd like to see most Landlords try to work with them as much possible to the extent they can. Anything different in California that you're seeing?</p>
Hannah Dowd McPhelin	<p>In California, I'm seeing landlords ask for Waiver of California Civil Code 1542 when entering into a Lease Amendment. So, the Landlord's, basically, asking for Tenant's to release the Landlord from any all prior claims against the Landlord that are known or unknown. And, I suspected the Landlord's will ask for this more and more as it relates to any liability pertaining to COVID-19.</p>
Monique Lashbrook	<p>Hannah, what do you think Tenant's and our Landlord's should be thinking about, or asking for when negotiating a new lease?</p>
Hannah Dowd McPhelin	<p>Thanks, Monique. Hi, to both you and Gary. It's nice to be here with you all. I think there are a lot considerations probably a little more on the Tenant's side, than the Landlord's side because we're seeing a lot of the requests come from Tenant's. The first question is, "What do they have to give?" So, to Gary's point we are seeing some Tenant's who are just taking advantage of the situation, where their business rally hasn't been impacted. In some cases, their business has actually grown because they gave the essential or providing some kind of essential product or service. So what does the Tenant has to give to the Landlord if the Tenant's really showing up hat-in-hand, asking for some type of relief, which is usually Rent Relief, or to push back start fee, or something like that. We've seen a lot of increased terms, so you may tack on to the end of the Tenant's current term a couple of months, if they're getting a couple months' Rent Abatement. Sometimes, we've seen Landlord's ask Tenant's to go ahead and exercise a Renewal Option early. So, adding a much more significant amount of time, like a number of years to a term in order to get more relief in the near term. Um, and sometimes we see if, sort of stacks of rent, right. So, it might just</p>



Speaker	
	<p>not be just that the Tenant gets a couple months free rent, but, they might pay twenty-five percent of their rent for the next two months, then fifty percent, then seventy-five percent, and there'd be some type of payback arrangement, or there may not be. So, the parties really have a lot of room to get creative. Also to what Gary mentioned earlier, I think it's really important that what the parties workout, fits the Tenant situation. So, the Tenant's really need to be considering what they came provide upfront, to substantiate the condition of their business. Instead of just saying that it has impacted them they need to be able provide data to show how it's impacted them, and that also, what their outlook is going forward. And, I think this is particularly important for Landlord's because they have to reach out their Lender's, for the most part. So they are going to need that information because they may need to get approval, relief, something from their Lender's and have to have that data, so that they can approve the deal, as well. The other difficulty is for Termination Payments. We've seen lots of requests by Tenant's to actually, just outright terminate their leases. Sometimes, this is because of business impacts. Sometimes, it's also because we're all, at least the three of us, working remotely, like lots of people, and companies may not need the office footprints that they used to use. They may be just trying to make good business decisions about what their needs are going to be going forward. The difficulty is, that there are a lot of unknowns in the real estate market all over the country, right now. It's sometimes difficult to figure out what a Termination Payment would be. We're seeing a lot of back and forth on that. Certainly, if the Landlord had provided some type of allowance filled out they've incurred brokerage fees. You'd expect to see some type of payback or the unamortized portion of those types of transaction costs. And, then, addition to that, perhaps, a certain number of month's rent as sort of a breakout fee. But, again, this is really being negotiated on a case-by-case basis, and we're seeing results that are sort of all over the spectrum. The Tenant should also think about any mitigation factors that are available to them. If the Tenant was planning to do a build-out, or planning to take advantage of an allowance they should think about whether they really need to do that because that might be a way to negotiate with the Landlord, that'd be less money out of the Landlord's pocket, that the Tenant may be could recoup, or to help lower the rent, which makes it a little bit easier for both parties. Also, if the Tenant has Contract Options, if their lucky enough to have an Early Termination Option, if they have anything that like that, which is coming up, and they want to use it, that's great for them. It may also be a bargaining chip that they can use, in terms of giving it up, something down the road that would be a nice option</p>

Speaker	
	<p>for them. They give it up today, they may be able to get something in the near term, it helps their business. On new leases, we're definitely seeing updated Force Majeure language, which we'll talk a little bit more about. And, then, we'll also talk about Tenant's wanting some type of Rent Relief built into their new leases, so particularly the retail contacts that they can't open, or they have to shut down, we now want our documents to reflect the situation that we're all in. I think the leases don't necessarily do that in a specific way. Sometimes, these provisions are specific to pandemics. Sometimes, they're not. I think on the retail side, in particular, one of the things we've been trying to think through, is the Supply Chain Impacts. So, dealing not only with a shutdown at a location, but also, a shutdown that affects the Supply Chain or Distribution Centers, but, maybe, doesn't necessarily affect the location. Just to make sure that the lease really gives the Tenant as much flexibility as possible.</p>
Monique Lashbrook	<p>Thank you for that insight, Hannah. Gary, turning back to you. Can you give us a few examples of some Force Majeure clauses to consider, including in contracts?</p>
Gary D. Knopf	<p>I think the biggest thing that I'm seeing in terms of added Force Majeure contracts is really adding in this concept of what it means to be in a pandemic. Who gets to make that justification, or what it is to be in a pandemic and what happens then? So who gets to make the calls? Is it the WHO, the World Health Organization? Is it based on local jurisdictions? That get to make this is a true pandemic. Is it justified that way? And, then what happens when that occurs, right? So, if you're in the pandemic, you're in a pandemic, what time periods get delayed? I'm also seeing how that Force Majeure clause affects Automatic Rent Deferral and Rent Abatement Provisions. So, what we're seeing now, is in some of these retail leases, you see that it, there is a pandemic, which kind of goes into a public health concern triggers the Force Majeure Provision. You get an Automatic Rent Deferral Provision that says, "You know, you get, if you can't open." Or, even what we'd like to see it from a Tenant's perspective is any sort of your business not being open, you get Rent Deferral. And, a lot of the times, that's getting negotiated down to only partial if you're, if you're business is partially open, it's not really fair to get a hundred percent of Rent Deferral during that Forced Closure. But, if it's not if it is completely closed down, then it is fair. So definitely more robust Force Majeure Provisions that include this type of public health concern language that we weren't really seeing before. And you're also seeing a lot more that's kind of like, especially when you have a</p>

Speaker	
	<p>Tenant that has a lot of leverage, you're seeing a lot more Force Majeure Provisions that kind of have the public concern language. But, also, it's more within the Tenant's discretion as opposed to something that might be within the Landlord's discretion, or something to that affect.</p>
<p>Monique Lashbrook</p>	<p>Are you seeing any Lender's weigh-in on these provisions at all? Has that come up yet, in terms of giving an Abatement? You know, if you have like a major lease?</p>
<p>Gary D. Knopf</p>	<p>Um, I haven't seen it yet. But, I have been part of those discussions. So, I think it kind of goes back to the amount of Rent Abatement that you're giving in the amount of Rent Deferral that you're getting. Hannah, have you seen anything, in particular?</p>
<p>Hannah Dowd McPhelin</p>	<p>Um, I've seen Lender's weigh-in on the sort of short-term abatements. A lot of what we're doing in the Spring and early Summer, and the ones that got done most quickly, we're the ones where the Landlord had taken the initiative to go to their Lender anticipating a number of requests from Tenant's and get a certain amount of relief from the Lender. And, then, they can turn around and make their deals with Tenant's. Again, these were not long-term things. But where businesses needed a couple of months to kind of hold everything off. I did see as long as the Lender was on board, and, like I said, I think the Landlord's were kind of ahead of it, managed better, and those were the least contentious deals that I worked on, so everybody was aligned. But, I haven't see in terms of longer terms terminations, things like that.</p>
<p>Monique Lashbrook</p>	<p>Okay. Thanks, Guys. Hannah, what do see in terms of Operating Expenses?</p>
<p>Hannah Dowd McPhelin</p>	<p>That we think they're going to be changes to Operating Expenses, but given that most leases have a fairly broad definition, Landlord's may still be in good shape to pass on, what I'll call, "New COVID Costs", without too much fanfare. Some of the examples that we would expect to see are either apps, other technology personnel needed to monitor access to the building. As you all know, for our offices, you now have to take your temperature and log in for an app before you arrive at the building. So, things like that that either building owners, or companies are putting in place. Um, enhanced cleaning seems like some sort of an obvious one. So, I think cleaning more often. There's obviously more risks for service providers. So, all of those things could lead to more costs. PPE for Landlord's Property Manager, also visitors. You know, in our office</p>

Speaker	
	<p>when you walk in on the Reception Desk, we have masks and hand sanitizer and all kinds of things that available. If somebody's coming to the office, and they are not equipped, or didn't bring their own mask, we're offering those things. We would expect to see Landlord's doing that. A lot of buildings, as well. And, then, updated directional signage is one of the first things that we saw Landlord's doing. There just a few of the examples of things I think Landlord's would probably, and a lot instances, be able to pass-through in Operating Expenses. I haven't seen too many arguments between Landlord's and Tenant's, so far. It may be a little too early for that. It may be coming. But, the broad nature of an Operating Expense definition being included, but not limited to, those are going to benefit Landlord's. A lot of times also, there are, there's language specifically allowing Landlord's to include expenses for Health and Safety Concerns for Tenant's or other occupants of the building. I think there's some standard lease provisions that actually are going to be helpful to Landlord's in being able to spend that money, and then also pass it through. The Tenant pushback would probably be, that these new measures are a Landlord cost of doing business, and shouldn't be passed through. I don't know how successful that's gonna be because, obviously, there lots of Operating Expenses that are Landlord costs of doing business, and running the building that Tenant's do agree to pay for. I could also see a situation where, as long as we're not talking about really major costs, the Tenant's are happy that the Landlord's are actually doing those things, and putting those in place because that could take a bit of the burden off the individual businesses, in terms of what they have to put in place to operate in their space. I think it's still to be determined, but it's something that we'll probably seeing a lot of over the next couple months.</p>
Gary D. Knopf	<p>Yes, especially, and just to add, especially as year end and you get to see true-ups and audit rights come kick in. It'd be interesting to see how many Tenant's audit Landlord's expenses, and, um try to really fight the Operating Expense revisions.</p>
Hannah Dowd McPhelin	<p>Yeah, I think it's going to be really interesting, too, to see where Operating Expenses end up given the various shutdowns, right? I mean, you'd expect to see some savings there. Um, but I think you're right, Gary. I think that's going to be a really interesting thing through the audit, in terms of what Tenant's are actually for. Are they auditing more this year, as of Landlord Relief.</p>

Speaker	
Monique Lashbrook	Thank you, both for that insight. Our last question. Gary, what do you think is the most important takeaway for Tenant's as they think about renegotiating or terminating leases?
Gary D. Knopf	I think it kind of goes back to what I was saying earlier in terms of just being reasonable. Just to draw on what Hannah said. When you're a retail tenant asking for a Rent Abatement or Rent Referral, you got to come in with something that shows that you actually need it. And, don't just ask for the world. Show that you can't afford rent. Show that your business is really suffering because of this, and show what can do. You know, you can say like, "Look. I'm doing alright. But, I can pay five to ten percent of gross sales to get me through this." And I think a lot of Landlord's will be receptive to that. And, then, if you're asking for a termination of the lease I think a lot of office Landlord's are going to want, you know, a pretty good size chunk of money not just to say I've had situation where a Tenant offered a year's worth of rent for on an eight year that's left. And Landlord's are not going to be receptive to that. Especially, when you're trying to take advantage of the situation. And, so, I think it's just it's about being reasonable, and it's about, um offering what's fair. If you want to terminate the lease, you got to come up with some sort of good calculation of what you can expect because the market, as we know, is really I don't I'd like to say it's good market, right now. We all seem to be really busy, but you don't know what it's like from a Landlord's perspective going out to lease hundred thousand square feet of new office space, so.
Hannah Dowd McPhelin	Just one last point. I would also say a couple months ago, I heard from a lot of brokers like, "Don't even think about subleasing or assigning leases." Just in the last month or so, I've actually seen some pretty good sublease deals get done, even in major metropolitan areas. I think it's worth, at least checking out that local market if you're somebody who can't use your lease, you can't negotiate a reasonable Termination Agreement. I wouldn't just write it off, right away. I would at least, look into that a little bit because I think we might see that come back a bit.
Monique Lashbrook	Thank you, both. In conclusion, I want to thank Hannah and Gary for joining us today to discuss these important issues. Thank you also to our listeners. For more information on topics we discussed today, or other real estate topics related to COVID-19, please visit the Troutman Pepper COVID-19 Resource Center, located at <a href="https://www.troutman.com/COVID-19">COVID-19.Troutman.com</a> . and, of course, if we can help you navigate any of the issues discussed during this podcast, please don't hesitate to contact any of your Panelists. You can subscribe and

<b>Speaker</b>	
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# Podcasts

INSIGHTS > COVID-19 COMMERCIAL LEASING TRENDS (PART TWO)

## COVID-19 Commercial Leasing Trends (Part Two)

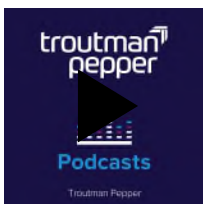
### Troutman Pepper COVID-19 Legal Issues Podcast Series

03.15.21

Please join Troutman Pepper for the second installment of its COVID-19 Commercial Leasing Trends Podcast series on legal and business issues confronted by companies in light of the COVID-19 pandemic.

Moderated by Troutman Pepper Real Estate Partner Gary Knopf, this episode features Troutman Pepper Business Litigation Partners Brian Watt and Justin Weber, who discuss recent and evolving litigation trends on commercial leases, including:

- The application and interpretation of force majeure clauses.
- The application of the common law doctrine of frustration of purpose.
- Case law interpretation of lease provisions.
- Unexpected real estate litigation issues arising from the pandemic.



#### COVID-19 Commercial Leasing Trends Part Two

on <http://www.hipcast.com/podcast/HsBKDC5k> Updated about 28 days ago.



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19:21

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Gary D. Knopf

Brian P. Watt

Justin G. Weber

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**Podcasts** 11.19.20

COVID-19 Commercial Leasing Trends (Part One)

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**COVID-19 Commercial Leasing Trends Podcast (Part Two)**

Speaker	
Gary Knopf	<p>Troutman Pepper has been producing podcasts focusing on issues across all of our practice groups that clients are facing due to the impacts from covid-19. Today’s podcast is part two of a two part series focusing on terminating and renegotiating commercial leases. We will discuss some litigation trends we have seen regarding commercial leasing during Covid-19. I'm Gary Knopf I'm a real estate partner at Troutman Pepper and joining me today are my fellow partners from the business litigation group, Brian Watt and Justin Weber. Our discussion today is on litigation outcomes and trends for commercial leasing during covid-19. Brian, it's great to be here with you to talk about this litigation surrounding commercial leasing. What sort of litigation are you seeing between tenants and landlords and what have the outcomes been?</p>
Brian Watt	<p>Hey, Gary! It’s great to be here with you as well. Hard to believe it’s been almost a year since the pandemic hit and I recall thinking back in March or April of 2020 that the pandemic would produce a wave of real estate litigation between landlords and tenants. And we did. We saw that over the summer. Cases were filed all over the country as a result of tenant’s facing challenges paying their rent or tenants not being able to operate their businesses due to government orders that shut down or restricted their business operations. Most of those cases were filed by landlords seeking to hold tenants responsible for rent that was accruing when the tenant did either close down the business or was facing significant declines in revenues because of the Pandemic, although we have seen some cases filed by tenants who went on the offensive trying to getting a Court to excuse their performance under a lease. Months have gone by and we are now starting to see the results of some of those cases as they wind their way through the Courts. I think it's still too early to make any sort of broad definitive statements but we are starting to see several trends coming out of those cases. The first and foremost I think it's going to be tough for tenants thinking to avoid their obligations on commercial leases because of the Pandemic. Again, there’s still many cases yet to be decided but the early results suggest that courts are reluctant to excuse commercial tenants from compliance with their leases simply because of the pandemic. There are some more nuanced trends emerging as well. For instance, I think we're likely to see Courts making a distinction between cases where a lease has a force majeure clause and where the lease does not contain a force majeure clause. Where the contract has a force majeure clause, we’re seeing Courts more likely to excuse a tenant’s performance under the theory that COVID-19 qualifies as a “natural disaster,” that is beyond the control of the parties. A district court in New York recently held that the pandemic fell within that item “natural disaster” that’s commonly found in force majeure clauses and in that case the tenant’s performance under a commercial lease was excused.</p>

Speaker	
	<p>Where the lease does not contain a force majeure clause tenants are usually left with common law doctrines of “impossibility of performance” or “frustration of purpose.” The other trend that I think we’ll see, which is starting to be borne out on the case law is that courts are more likely to excuse tenant’s performance based on frustration of purpose or impossibility where the object of the contract is some singular event, rather than an open-ended obligation like a multi-year commercial lease. And that makes sense because these doctrines impossibility and frustration of purpose when properly invoked are usually seen as a temporary suspension of contractual obligations and where the contract is based on a specific event like one case involved a wedding, another case involved an auction that was scheduled to take place on a date certain, then frustration of purpose or impossibility defenses are properly invoked because the object of the contract has been completely destroyed. On the other hand, where a contract is an exchange based on years of contemplated performance it’s a much harder argument for the tenant to say that the parties have been deprived of the contract’s value entirely because the business could come back and that’s what people are expecting. So, it’ll be interesting to see how these cases are decided over the coming weeks and months.</p>
<p>Gary Knopf</p>	<p>That’s really great analysis there. I’m really interested about the frustration of purpose argument and in particular, just being a transactional lawyer, we’ve been hearing it for some time now. In particular, Tenant’s will argue that an entire lease should be terminated because of a nuance where they wanted to use it for a particular purpose, but maybe the lease says it or doesn’t say it. Justin, can you talk a little bit about the frustration of purpose clause and what you’re seeing in terms of actual decisions as opposed to what Tenant’s may just be arguing in practice?</p>
<p>Justin Weber</p>	<p>Sure. Yeah, I’d be happy to. Thanks, Gary. Late last year, and certainly early this year we’ve been seeing a number of cases that have been decided that involved frustration of purpose. And many of these cases, not surprisingly have arisen in a bankruptcy context. So, by way of framework, frustration of purpose relates to the purpose of the contract rather than a party’s actual inability to perform the action that the party seeks to be excused. For example, there may be nothing that makes it physically impossible or impractical to pay the rent, but the purpose of the lease may still be frustrated. And in these cases, what we’re seeing is Courts initially looking to see whether the business risk was allocated by the Parties. If the Parties haven’t allocated that risk, then looking to apply the common law doctrines like frustration of purpose. In a couple of the cases, I think that I wanted to highlight, you see different approaches. So, recently, in the last several months there was a case in a bankruptcy court in the Southern District of Texas where the Court looked at leases that were drafted under Washington, California and North Carolina law. And the Court held that the</p>

Speaker	
	<p>frustration of purpose did not excuse the performance under those leases because the contracts had expressly allocated responsibility for the loss in the face of an event and the Parties had specified that in the contract. So the Court held essentially that there was no room to apply the common law doctrine of frustration of purpose. The Court held that the risk that those governmental regulations could and did disrupt the lease activities was specifically contemplated by the party through their force majeure provisions. That's not the result that all cases have reached, however, there's a recent case from the Superior Court in Massachusetts where the court found that frustration of purpose actually did excuse the obligations of a Party for a period of time. And that case involved the operation of a café and what was important about that case, and, as you mentioned, the language of the lease is really important. The lease provided that the premises could only be used to operate a café with a sit-down restaurant menu and for no other purpose. So the purpose that was identified was very narrow. The Court held that the Parties had not otherwise allocated the risk and that the obligation to pay rent was excused during the period of time when Massachusetts had ordered indoor dining to be eliminated. And so, for at least the period of time when indoor dining was eliminated, the Court held the purpose of the lease was frustrated and the obligation to pay rent for that period of time was discharged or suspended. There've been some other decisions, I think that I'm also, they're, noting it really shows that in the context of frustration of purpose or analyzing that, the lease language is really important. One of those cases was in the Bankruptcy Court in the Southern District of Florida and the Court discussed frustration of purpose at length, but then really focused on the language of the Parties Agreement and the Court held that payment of rent was excused during a period of time while the theatre was closed, but that the party was required to pay rent, full rent, even for the period of time when the theatre was only operating at 50% capacity. The Court discussed frustration of purpose but characterized a provision that it called an excuse of breach provision and held that the lease was actually extended for the period of time when the purpose was frustrated, or the theatre couldn't operate. And interestingly, the Court held that the Tenant would also have an obligation to pay rent during that period of time, during that extension period that would be tacked-on to the end of the lease term. So, although the Court focused on frustration of purpose, the analysis really hinged on the language of the Parties' agreement. And that's I think, a takeaway from the frustration of purpose cases that we're seeing. It's the advice we've been providing our clients from the outset. Which is, you need to know your lease language because it's going to dictate, or at least be a guide to the resolution of the case.</p>
Gary Knopf	<p>That's interesting. Brian and I are working on, or he's working on the case, but the mutual client, where, seems like the "use" clauses coming into play, really, it's really important. Where you draft, where you, especially when</p>

Speaker	
	<p>we draft a “use” provision in the lease, we draft it pretty narrowly, but when you say “for office purpose” you don’t specifically dictate what type of office that is. Brian, can you talk a little about that? About how to broad “use clauses” impact that kind of argument?</p>
<p>Brian Watt</p>	<p>Yeah, that’s right Gary. I think, broadly worded, use clauses will ultimately undermine a tenant’s reliance on frustration of purpose or impossibility defenses. As you just noted, if a commercial or an industrial landlord grants its tenant use of certain space for the typical language we see is for any lawful use or for, and the case that you mentioned, or for general office purposes. I think it’s a much harder argument for a tenant to make that the use contemplated by the Parties has been rendered impossible or impracticable by the Pandemic. A Tenant could still realize some value in the leased space, even if it needs to adjust its business model. And we’ve seen some cases, particularly out of New York State Court, where that’s been the holding, that the contemplated use in the lease is what controls, and if it— there’s a way to continue utilizing that space, consistent with the “use” provision, courts are loathed to excuse a Tenant’s obligations. On the other hand, if a lease expressly contemplates some specific use, Justin’s example a few minutes ago, about a specific type of restaurant that had to be open, perhaps, during certain times of the day, or the more common examples that we’ve seen, such as a theatre or a bowling alley or a gym, where the specific lease premises contemplate some specific use. Then, I think the Pandemic could be found to have fundamentally frustrated the intent of the Parties in entering into the lease.</p>
<p>Gary Knopf</p>	<p>Interesting. To switch gears a little bit, I guess to the natural disaster aspect of this argument. Transactional lawyers will draft leases to—we draft the condemnation revision, it gets negotiated hours on length, we got it all figured out— of this Condemnation. If it’s a Casualty, we got it all figured out if the building burns down. Which rarely happens, but it’s rare. Talk about, Justin, if you could, talk a little bit about why you focused on the natural disaster argument with respect to the Pandemic and how that affects your argument.</p>
<p>Justin Weber.</p>	<p>Yeah. That, the cases interpreting natural disaster are important, especially if the force majeure provision is general or narrow. So, if a force majeure provision talks about it applying, if there’s a force of nature or a natural disaster you may be wondering, can I use that provision, is it unlocked and can I use it or doesn’t it apply here? So many of the force majeure provisions that we see talk about government restrictions and talk about other types of events beyond the control of the parties, but some of them don’t, and are limited to natural disaster or similar events. And so, in looking at whether the Pandemic qualifies as a natural disaster, it might not be surprising that there’re some conflicting case law, at least that you can</p>

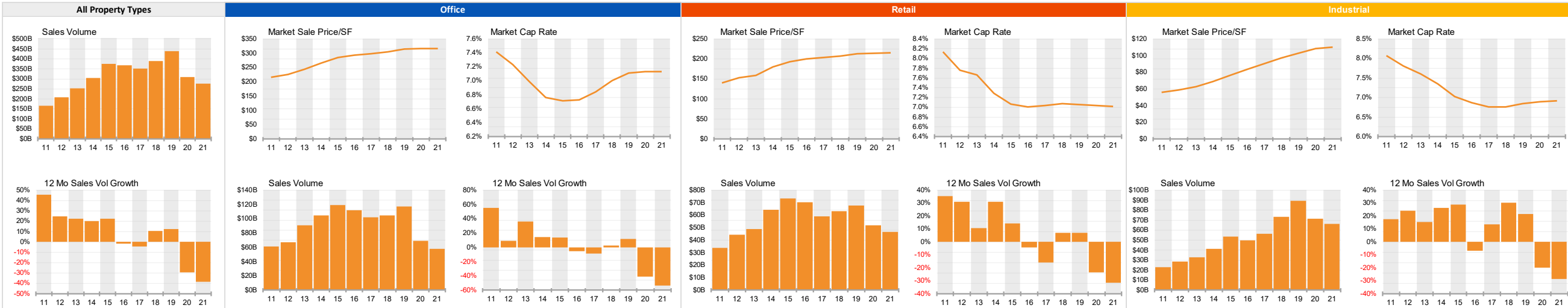
Speaker	
	<p>find decisions out there on either side. Now, Brian mentioned a case in New York earlier in this podcast, and one of the cases in New York held that the Pandemic did qualify as a natural disaster and allowed the defendant to invoke a Contract's Termination Clause and in there, the Court relied heavily on the Pennsylvania Supreme Court Decision that interpreted the governor's authority to issue executive orders under the Emergency Management Code. And so, query whether other cases that would be interpreting general common law would reach the same result. There're also decisions that hold that the Pandemic is not a force of nature. There's a district court in Texas that was interpreting the Texas Insurance Code and a provision that applied to when a force of nature occurred, and the Court held that the Pandemic was not a force of nature. So, in this context, if you have a narrow force majeure provision that applies when there's a natural disaster, or some other force of nature, I think it's important to look, you can find decisions on either side of the issue, but I would strongly advise that you look at cases that are not decided specifically in a statutory context, because in the statutory context there are other issues at play, but I think that whether you're trying to find whether your force majeure provision has been unlocked, you're going to be able to find case law authority on either side of that issue.</p>
<p>Gary Knopf</p>	<p>Interesting. So, we talked a lot about, really, Tenants and Landlords trying to either get out of a lease or keep a lease in effect. And that seems to be, at least in the early onset, what we thought would be the biggest disputes coming out of this or going into it. Brian, can you talk a little about some other unexpected disputes that we've seen?</p>
<p>Brian Watt</p>	<p>As you mentioned, most of the cases that we've seen arise out of a Landlord seeking to hold a Tenant responsible for some sort of obligation under a lease. That's sort of the typical COVID-19 real estate litigation that we've seen, but there have been some unexpected disputes arising from the Pandemic. Gary, you and I do a lot of work together and I remember talking with you about a year ago, I think it was March of 2020, where we thought that some of our retail and restaurant clients would just be decimated by the Pandemic. Especially, the restaurants that depended on dining rooms remaining open, but what we saw was, at least for some quick service restaurants that were forced to close their dining rooms, they saw huge increases in drive-thru traffic. Most of the time, these quick service restaurants have, what is called "Cross Access Easement Rights," over the common areas of the shopping center in which they're located, but what we're seeing is this increase in drive-thru traffic, where sometimes these drive-thru lines back up onto adjoining property. That's called the "Drive-Thru Stack" and sometimes it bleeds over onto adjoining properties and the neighboring businesses and landowners are, understandably, unhappy about that and they're complaining that the increased traffic amounts to an</p>

Speaker	
	<p>overburden of the easement. We've actually seen some litigation spawned as a result. We are actively involved in some of these cases. We're monitoring some other cases that are similar to these across the country, but so far, these are relatively new and it's probably too early to predict how these will play out in the long run.</p>
<p>Gary Knopf</p>	<p>Yeah, I do remember talking about that. It's hard to believe it's been a year. Sometimes it feels like a year. Sometimes it feels like a week. [Laughs] Funny how time flies like that. So, Justin, we represent a lot of landlords. We also represent a lot of tenants. Most of them are landlords, my tenant, not paying rent and I don't know what else to do and I want to pursue litigation. What's our takeaway here?</p>
<p>Justin Weber.</p>	<p>There are two takeaways, and the one that I already mentioned comes from the Case Law which is focused on the lease language which is going to be a guide to whether there's room for a tenant or a counter-party to assert a common law doctrine, but start and be grounded in the language of the lease, because that's going to be the best guide as to the outcome of the particular dispute, but the second takeaway is the parties' considering litigation. You really need to think about what remedy you want or you need. For example, in some jurisdictions "frustration of purpose" essentially requires a rescission of the contract. And so, if you're in a jurisdiction where the remedy for "frustration" is rescission, you better know that or know whether it's potentially an extension of the term of the contract, because you don't want to make an argument, only to find that the remedies to terminate a lease or to perhaps extend it rather than to excuse a lease obligation.</p>
<p>Gary Knopf</p>	<p>Well, thank you for that. Thank you both, actually. Thank you for joining us today to discuss these important issues. Really informative. Thank you also to our listeners. And for more information on the topics we discussed today, or other real estate topics related to COVID 19, please visit the Troutman Pepper COVID-19 Resource Center located at <a href="https://covid19.troutman.com">covid19.troutman.com</a>. And, of course, if we can help you navigate any of these issues discussed during this podcast, please do not hesitate to contact any of our panelists. You can subscribe and listen to other Troutman Pepper podcasts wherever you listen podcasts including Apple, Google and Spotify. Thank you for listening and stay safe.</p>
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Speaker	
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# Capital Markets Data Sheet

## United States of America



Year	All Property Types				Office							Retail							Industrial												
	12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	Asset Value	12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	SF Sold	Market Sale Price/SF	Market Cap Rate	Avg Transaction Price/SF	Avg Transaction Cap Rate	Asset Value	12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	SF Sold	Market Sale Price/SF	Market Cap Rate	Avg Transaction Price/SF	Avg Transaction Cap Rate	Asset Value	12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	SF Sold	Market Sale Price/SF	Market Cap Rate	Avg Transaction Price/SF	Avg Transaction Cap Rate	Asset Value
2021 YTD	\$277B	-38.7%	20,350	\$10.7T	\$57.6B	-53.6%	3,903	49.4 M	\$316	7.1%	\$361	7.3%	\$2.6T	\$46.7B	-31.6%	8,045	55.4 M	\$215	7.0%	\$193	6.6%	\$2.5T	\$66.2B	-28.5%	4,721	133 M	\$110	6.9%	\$108	6.6%	\$1.9T
2020	\$309B	-29.4%	95,694	\$10.5T	\$69.3B	-40.8%	17,534	251 M	\$316	7.1%	\$276	7.3%	\$2.6T	\$51.9B	-23.6%	39,965	278 M	\$214	7.0%	\$187	6.7%	\$2.5T	\$71.5B	-20.0%	21,377	699 M	\$109	6.9%	\$102	7.0%	\$1.9T
2019	\$438B	12.4%	117,789	\$10.2T	\$117B	11.9%	21,415	408 M	\$314	7.1%	\$287	7.3%	\$2.5T	\$67.9B	7.1%	48,430	349 M	\$213	7.1%	\$195	6.9%	\$2.5T	\$89.4B	21.6%	24,639	907 M	\$103	6.8%	\$99	7.0%	\$1.7T
2018	\$390B	10.8%	122,822	\$9.6T	\$105B	2.2%	21,577	406 M	\$305	7.0%	\$257	7.2%	\$2.4T	\$83.4B	7.0%	51,675	336 M	\$207	7.1%	\$188	6.8%	\$2.4T	\$73.5B	30.2%	25,459	800 M	\$97	6.8%	\$92	7.0%	\$1.6T
2017	\$352B	-4.7%	119,183	\$9.1T	\$102B	-8.8%	20,257	411 M	\$297	6.8%	\$249	7.1%	\$2.4T	\$89.2B	-15.9%	49,785	330 M	\$204	7.0%	\$179	6.7%	\$2.3T	\$66.5B	13.4%	24,427	707 M	\$90	6.8%	\$80	7.2%	\$1.5T
2016	\$368B	-1.5%	117,996	\$8.7T	\$112B	-5.6%	20,655	435 M	\$294	6.7%	\$258	7.0%	\$2.3T	\$70.4B	-4.2%	50,688	367 M	\$200	7.0%	\$192	6.7%	\$2.3T	\$49.8B	-7.0%	23,762	644 M	\$84	6.9%	\$77	7.3%	\$1.4T
2015	\$374B	22.4%	116,386	\$8.1T	\$119B	13.8%	19,934	468 M	\$285	6.7%	\$254	7.1%	\$2.2T	\$73.5B	14.4%	49,016	401 M	\$193	7.1%	\$183	6.9%	\$2.2T	\$53.6B	28.9%	25,252	752 M	\$77	7.0%	\$71	7.4%	\$1.2T
2014	\$306B	20.3%	106,595	\$7.4T	\$104B	14.6%	18,720	440 M	\$285	6.8%	\$237	7.3%	\$2.1T	\$64.2B	31.1%	45,975	373 M	\$180	7.3%	\$172	7.3%	\$2.0T	\$41.6B	26.2%	21,924	664 M	\$69	7.3%	\$63	7.7%	\$1.1T
2013	\$254B	22.5%	97,511	\$6.7T	\$91.1B	35.9%	17,342	418 M	\$244	7.0%	\$218	7.5%	\$1.9T	\$49.0B	10.5%	41,901	331 M	\$159	7.7%	\$148	7.5%	\$1.8T	\$32.9B	15.4%	20,296	570 M	\$63	7.6%	\$58	7.9%	\$901B
2012	\$207B	24.6%	88,851	\$6.3T	\$67.0B	9.2%	16,003	326 M	\$225	7.2%	\$206	7.5%	\$1.8T	\$44.3B	31.1%	36,912	281 M	\$153	7.8%	\$158	7.9%	\$1.7T	\$28.5B	24.2%	19,625	523 M	\$59	7.8%	\$55	7.8%	\$929B
2011	\$166B	45.4%	66,889	\$5.9T	\$61.4B	55.0%	12,132	296 M	\$216	7.4%	\$207	7.8%	\$1.7T	\$33.8B	35.3%	28,423	231 M	\$140	8.1%	\$146	8.1%	\$1.6T	\$23.0B	17.4%	14,704	462 M	\$56	8.1%	\$50	8.0%	\$881B
2010	\$114B	86.3%	51,932	\$5.4T	\$39.6B	137%	10,084	210 M	\$192	8.0%	\$189	8.1%	\$1.5T	\$25.0B	51.9%	21,816	185 M	\$132	8.4%	\$135	8.3%	\$1.5T	\$19.6B	71.1%	11,526	375 M	\$53	8.3%	\$52	8.8%	\$843B
2009	\$61.4B	-56.1%	41,492	\$4.7T	\$16.7B	-65.9%	8,073	105 M	\$167	8.9%	\$158	8.0%	\$1.3T	\$16.4B	-47.5%	17,222	120 M	\$128	8.6%	\$136	8.0%	\$1.4T	\$11.4B	-53.4%	8,836	220 M	\$51	8.6%	\$52	8.7%	\$815B
2008	\$140B	-52.2%	54,625	\$5.3T	\$48.9B	-61.7%	11,484	208 M	\$196	8.3%	\$235	7.3%	\$1.5T	\$31.3B	-36.3%	21,244	184 M	\$147	8.0%	\$170	7.3%	\$1.6T	\$24.5B	-38.5%	12,670	369 M	\$57	8.2%	\$67	7.8%	\$900B
2007	\$293B	15.8%	69,191	\$6.3T	\$128B	14.1%	16,113	488 M	\$240	7.1%	\$262	7.0%	\$1.8T	\$49.1B	9.1%	23,888	250 M	\$166	7.4%	\$197	7.1%	\$1.8T	\$39.9B	7.9%	17,349	581 M	\$66	7.4%	\$69	7.3%	\$1.0T
2006	\$253B	53.5%	55,256	\$6.0T	\$112B	39.5%	11,877	512 M	\$220	7.1%	\$218	7.0%	\$1.6T	\$45.0B		17,914	247 M	\$167	7.2%	\$183	6.8%	\$1.7T	\$37.0B	16.2%	14,408	532 M	\$63	7.4%	\$70	7.4%	\$970B
2005	\$165B	29.4%	34,379	\$3.9T	\$80.1B	29.0%	10,242	432 M	\$198	7.4%	\$186	7.5%	\$1.4T					\$157	7.3%			\$1.4T	\$31.8B	25.7%	12,622	503 M	\$59	7.7%	\$63	7.7%	\$890B
2004	\$127B	41.2%	37,107	\$3.4T	\$62.1B	44.3%	10,750	381 M	\$179	8.0%	\$163	8.1%	\$1.3T					\$138	8.0%			\$1.3T	\$25.3B	34.3%	13,154	466 M	\$55	8.0%	\$54	8.3%	\$815B
2003	\$90.1B	16.8%	31,713	\$3.0T	\$43.0B	15.6%	8,916	282 M	\$158	8.8%	\$152	8.8%	\$1.1T					\$121	8.8%			\$1.1T	\$18.8B	19.8%	11,275	375 M	\$50	8.6%	\$50	8.9%	\$729B
2002	\$77.2B	15.7%	29,955	\$2.7T	\$37.2B	11.7%	8,149	247 M	\$143	9.4%	\$150	9.2%	\$1.0T					\$107	9.7%			\$1.0T	\$15.7B	9.7%	10,118	327 M	\$44	9.2%	\$48	9.2%	\$640B
2001	\$66.7B	13.7%	25,008	\$2.4T	\$33.3B	-1.0%	6,830	216 M	\$136	9.9%	\$154	9.9%	\$946B					\$99	10.4%			\$946B	\$14.3B	227%	8,463	289 M	\$41	9.5%	\$50	9.6%	\$568B
2000	\$58.6B		17,031	\$2.3T	\$33.6B		7,260	254 M	\$137	9.9%	\$133	9.6%	\$926B					\$93	10.6%			\$926B					\$38	9.6%			\$542B

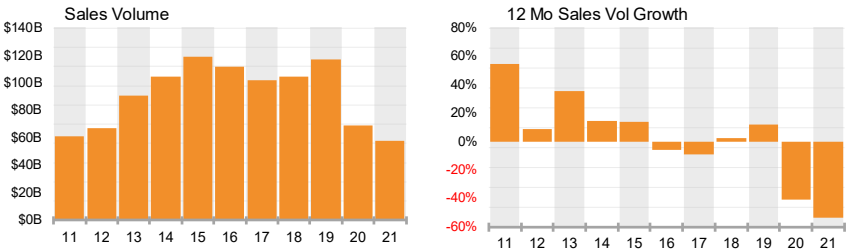
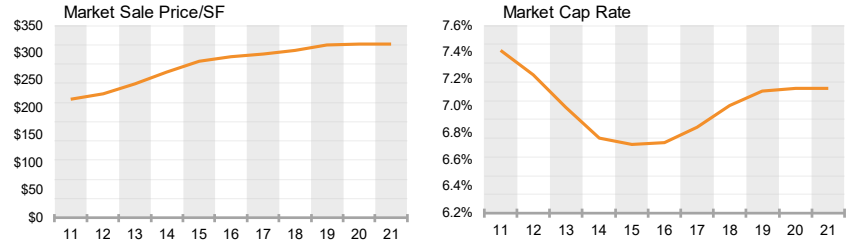


# Capital Markets Data Sheet

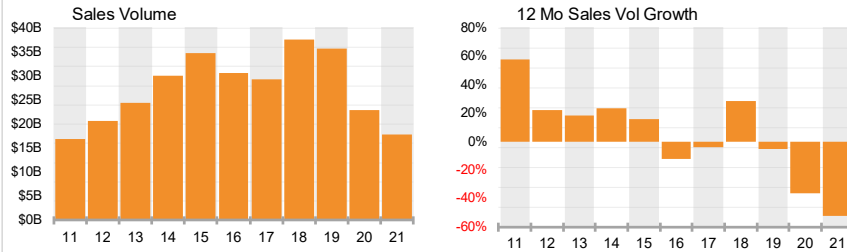
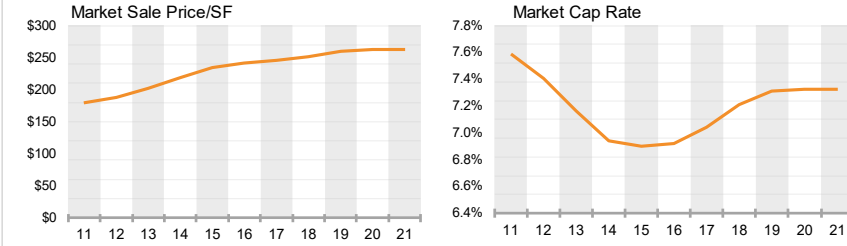
## United States of America

### OFFICE

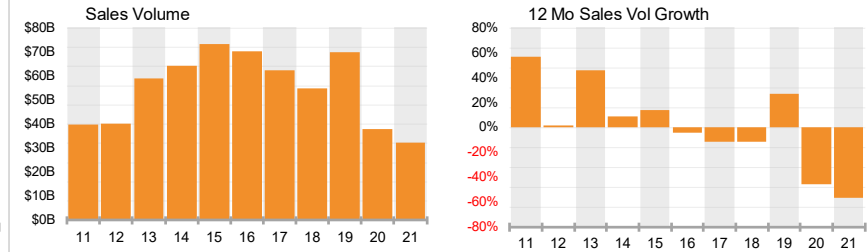
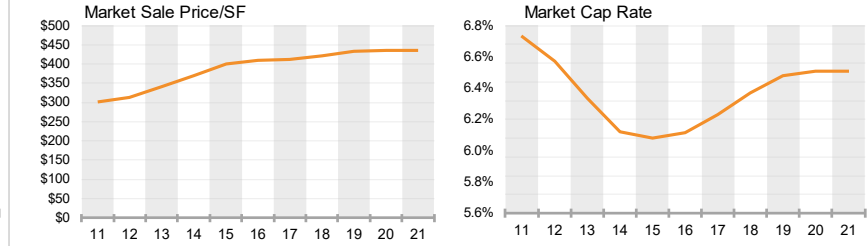
#### Office



#### Office 3 Star



#### Office 4 & 5 Star



#### Office

Year	12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	SF Sold	Market Sale Price/SF	Market Cap Rate	Avg Transaction Price/SF	Avg Transaction Cap Rate	Asset Value
2021 YTD	\$57.6B	-53.6%	3,903	49.4 M	\$316	7.1%	\$361	7.3%	\$2.6T
2020	\$69.3B	-40.8%	17,534	251 M	\$316	7.1%	\$276	7.3%	\$2.6T
2019	\$117B	11.9%	21,415	408 M	\$314	7.1%	\$287	7.3%	\$2.5T
2018	\$105B	2.2%	21,577	406 M	\$305	7.0%	\$257	7.2%	\$2.4T
2017	\$102B	-8.8%	20,257	411 M	\$297	6.8%	\$249	7.1%	\$2.4T
2016	\$112B	-5.6%	20,655	435 M	\$294	6.7%	\$258	7.0%	\$2.3T
2015	\$119B	13.8%	19,934	468 M	\$285	6.7%	\$254	7.1%	\$2.2T
2014	\$104B	14.6%	18,720	440 M	\$265	6.8%	\$237	7.3%	\$2.1T
2013	\$91.1B	35.9%	17,342	418 M	\$244	7.0%	\$218	7.5%	\$1.9T
2012	\$67.0B	9.2%	16,003	326 M	\$225	7.2%	\$206	7.5%	\$1.8T
2011	\$61.4B	55.0%	12,132	296 M	\$216	7.4%	\$207	7.8%	\$1.7T
2010	\$39.6B	-137%	10,084	210 M	\$192	8.0%	\$189	8.1%	\$1.5T
2009	\$16.7B	-85.9%	8,073	105 M	\$167	8.9%	\$158	8.0%	\$1.3T
2008	\$48.9B	-61.7%	11,484	208 M	\$196	8.3%	\$235	7.3%	\$1.5T
2007	\$128B	14.1%	16,113	488 M	\$240	7.1%	\$262	7.0%	\$1.8T
2006	\$112B	39.5%	11,877	512 M	\$220	7.1%	\$218	7.0%	\$1.6T
2005	\$80.1B	29.0%	10,242	432 M	\$198	7.4%	\$186	7.5%	\$1.4T
2004	\$62.1B	44.3%	10,750	381 M	\$179	8.0%	\$163	8.1%	\$1.3T
2003	\$43.0B	15.6%	8,916	282 M	\$158	8.8%	\$152	8.8%	\$1.1T
2002	\$37.2B	11.7%	8,149	247 M	\$143	9.4%	\$150	9.2%	\$1.0T
2001	\$33.3B	-1.0%	6,830	216 M	\$136	9.9%	\$154	9.7%	\$946B
2000	\$33.6B		7,260	254 M	\$137	9.9%	\$133	9.6%	\$926B

#### Office 3 Star

Year	12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	SF Sold	Market Sale Price/SF	Market Cap Rate	Avg Transaction Price/SF	Avg Transaction Cap Rate	Asset Value
2021 YTD	\$17.9B	-52.1%	1,420	18.4 M	\$263	7.3%	\$232	7.4%	\$860B
2020	\$22.9B	-36.1%	6,112	98.1 M	\$263	7.3%	\$233	7.3%	\$859B
2019	\$35.8B	-5.0%	7,608	154 M	\$260	7.3%	\$232	7.3%	\$850B
2018	\$37.7B	28.4%	7,471	157 M	\$251	7.2%	\$239	7.1%	\$818B
2017	\$29.4B	-4.0%	6,921	155 M	\$245	7.0%	\$190	7.1%	\$799B
2016	\$30.6B	-12.3%	7,049	159 M	\$242	6.9%	\$193	7.1%	\$788B
2015	\$34.9B	15.6%	6,866	169 M	\$234	6.9%	\$206	7.1%	\$762B
2014	\$30.2B	23.2%	6,433	160 M	\$219	6.9%	\$188	7.4%	\$712B
2013	\$24.5B	18.6%	5,807	147 M	\$202	7.2%	\$166	7.7%	\$658B
2012	\$20.6B	22.1%	5,654	126 M	\$188	7.4%	\$164	7.6%	\$611B
2011	\$16.9B	57.9%	4,476	102 M	\$180	7.6%	\$166	8.0%	\$585B
2010	\$10.7B	106%	4,204	77.7 M	\$160	8.2%	\$138	8.4%	\$520B
2009	\$5.2B	-66.7%	3,257	38.9 M	\$140	9.1%	\$134	8.6%	\$452B
2008	\$15.6B	-56.3%	5,080	83.8 M	\$164	8.5%	\$187	7.3%	\$527B
2007	\$35.8B	21.3%	7,335	169 M	\$201	7.3%	\$212	7.0%	\$637B
2006	\$29.5B	15.0%	5,109	167 M	\$185	7.2%	\$177	7.1%	\$578B
2005	\$25.6B	27.5%	4,298	164 M	\$168	7.5%	\$156	7.6%	\$514B
2004	\$20.1B	69.3%	3,884	142 M	\$152	8.1%	\$141	8.3%	\$459B
2003	\$11.9B	14.8%	3,081	96.5 M	\$134	9.0%	\$123	9.1%	\$399B
2002	\$10.3B	2.7%	2,494	83.4 M	\$121	9.6%	\$124	9.4%	\$357B
2001	\$10.1B	-18.6%	2,151	80.9 M	\$115	10.1%	\$125	9.9%	\$335B
2000	\$12.4B		2,287	111 M	\$115	10.1%	\$112	9.9%	\$328B

#### Office 4 & 5 Star

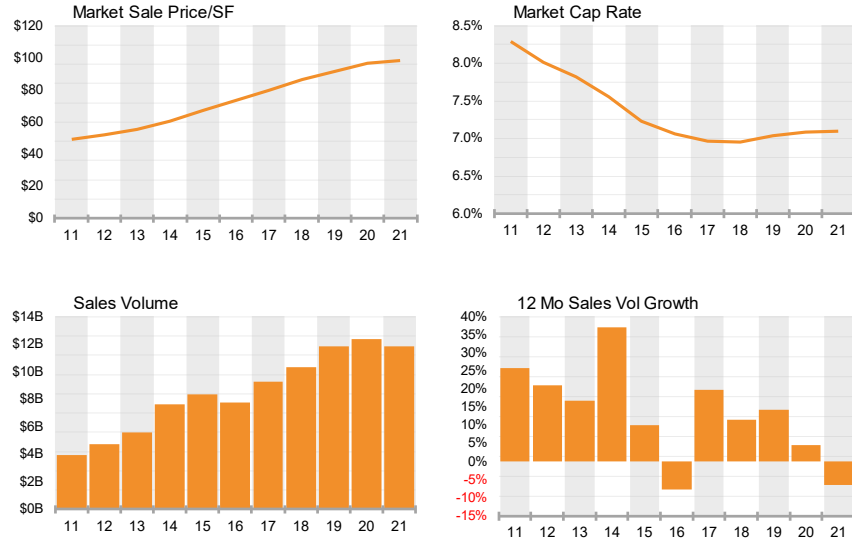
Year	12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	SF Sold	Market Sale Price/SF	Market Cap Rate	Avg Transaction Price/SF	Avg Transaction Cap Rate	Asset Value
2021 YTD	\$32.4B	-56.8%	223	20.0 M	\$435	6.5%	\$580	7.0%	\$1.3T
2020	\$38.1B	-45.4%	976	105 M	\$436	6.5%	\$363	6.9%	\$1.3T
2019	\$69.8B	26.8%	1,371	186 M	\$432	6.5%	\$375	6.5%	\$1.3T
2018	\$55.0B	-11.7%	1,460	178 M	\$422	6.4%	\$309	6.3%	\$1.2T
2017	\$62.3B	-11.3%	1,361	194 M	\$412	6.2%	\$321	6.4%	\$1.2T
2016	\$70.2B	-4.1%	1,484	205 M	\$409	6.1%	\$343	6.2%	\$1.1T
2015	\$73.3B	14.1%	1,500	225 M	\$399	6.1%	\$325	6.3%	\$1.1T
2014	\$64.2B	8.7%	1,286	208 M	\$370	6.1%	\$309	6.3%	\$996B
2013	\$59.1B	46.4%	1,185	208 M	\$340	6.3%	\$285	6.6%	\$902B
2012	\$40.4B	1.6%	882	150 M	\$313	6.6%	\$269	6.5%	\$819B
2011	\$39.7B	56.9%	914	147 M	\$301	6.7%	\$271	6.9%	\$782B
2010	\$25.3B	196%	636	96.8 M	\$265	7.3%	\$261	7.2%	\$685B
2009	\$8.6B	-68.0%	366	41.2 M	\$230	8.1%	\$208	7.2%	\$586B
2008	\$26.7B	-67.0%	715	81.2 M	\$269	7.6%	\$329	6.7%	\$671B
2007	\$81.0B	11.4%	1,707	253 M	\$327	6.5%	\$320	6.3%	\$795B
2006	\$72.7B	59.2%	1,321	281 M	\$297	6.5%	\$259	6.8%	\$706B
2005	\$45.6B	34.7%	979	203 M	\$266	6.8%	\$225	7.0%	\$621B
2004	\$33.9B	33.8%	781	172 M	\$242	7.4%	\$197	7.8%	\$555B
2003	\$25.3B	14.7%	535	130 M	\$213	8.2%	\$195	8.4%	\$483B
2002	\$22.1B	16.3%	422	116 M	\$193	8.7%	\$191	8.8%	\$429B
2001	\$19.0B	16.2%	352	93.3 M	\$185	9.0%	\$203	9.1%	\$398B
2000	\$16.3B		412	91.5 M	\$186	9.0%	\$179	9.3%	\$383B

# Capital Markets Data Sheet

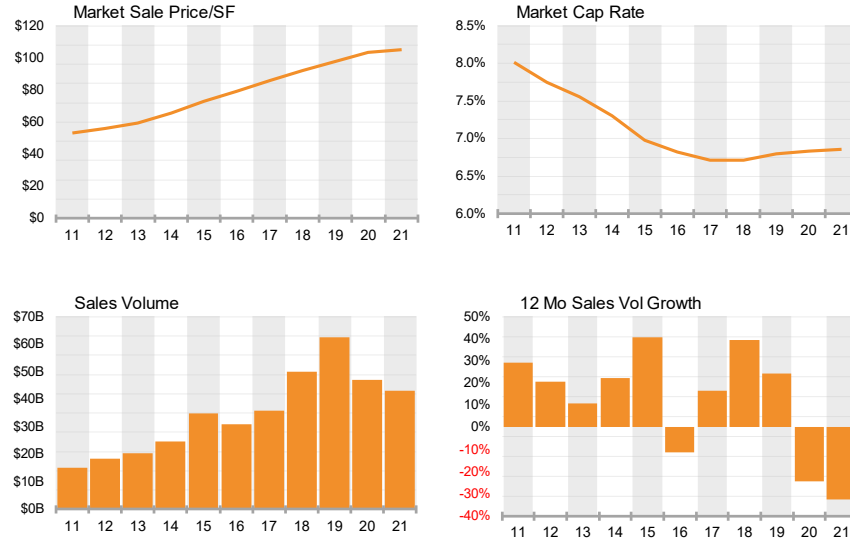
## United States of America

### INDUSTRIAL

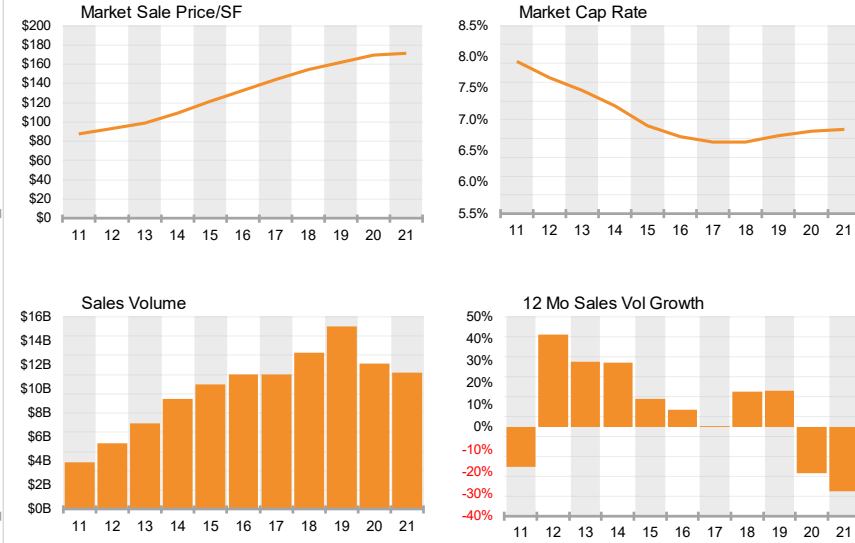
#### Industrial (Specialized)



#### Industrial (Logistics)



#### Industrial (Flex)



#### Industrial (Specialized)

#### Industrial (Logistics)

#### Industrial (Flex)

Year	Industrial (Specialized)										Industrial (Logistics)										Industrial (Flex)									
	12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	SF Sold	Market Sale Price/SF	Market Cap Rate	Avg Transaction Price/SF	Avg Transaction Cap Rate	Asset Value		12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	SF Sold	Market Sale Price/SF	Market Cap Rate	Avg Transaction Price/SF	Avg Transaction Cap Rate	Asset Value		12 Mo Sales Vol	12 Mo Sales Vol Growth	Number of Sales	SF Sold	Market Sale Price/SF	Market Cap Rate	Avg Transaction Price/SF	Avg Transaction Cap Rate	Asset Value	
2021 YTD	\$11.8B	-6.4%	776	29.5 M	\$98	7.1%	\$83	6.4%	\$388B		\$43.0B	-32.7%	3,008	87.9 M	\$105	6.9%	\$105	6.5%	\$1.2T		\$11.4B	-28.8%	937	15.6 M	\$172	6.8%	\$175	7.3%	\$308B	
2020	\$12.4B	4.6%	3,716	138 M	\$96	7.1%	\$89	6.7%	\$381B		\$47.1B	-24.5%	13,896	493 M	\$103	6.8%	\$96	6.9%	\$1.2T		\$12.1B	-20.6%	3,765	68.5 M	\$169	6.8%	\$176	7.5%	\$303B	
2019	\$11.8B	14.2%	3,980	131 M	\$91	7.0%	\$90	7.1%	\$359B		\$62.4B	24.4%	16,391	691 M	\$98	6.8%	\$90	7.0%	\$1.1T		\$15.2B	16.6%	4,267	85.1 M	\$162	6.7%	\$179	7.1%	\$289B	
2018	\$10.4B	11.6%	4,367	124 M	\$86	6.9%	\$83	7.1%	\$339B		\$50.1B	39.4%	16,634	589 M	\$92	6.7%	\$85	6.9%	\$1.0T		\$13.0B	16.0%	4,458	87.1 M	\$154	6.6%	\$150	7.2%	\$274B	
2017	\$9.3B	19.9%	4,482	128 M	\$80	7.0%	\$72	7.3%	\$313B		\$36.0B	16.6%	15,774	496 M	\$86	6.7%	\$73	7.1%	\$919B		\$11.2B	0.0%	4,171	83.0 M	\$144	6.6%	\$135	7.5%	\$255B	
2016	\$7.7B	-7.8%	4,394	119 M	\$74	7.1%	\$65	7.5%	\$288B		\$30.8B	-11.3%	15,068	438 M	\$79	6.8%	\$70	7.1%	\$833B		\$11.2B	8.1%	4,299	87.2 M	\$133	6.7%	\$129	7.8%	\$234B	
2015	\$8.4B	10.0%	4,522	130 M	\$67	7.2%	\$65	7.6%	\$263B		\$34.8B	40.6%	16,070	533 M	\$73	7.0%	\$65	7.3%	\$752B		\$10.4B	12.8%	4,660	89.9 M	\$122	6.9%	\$116	7.5%	\$214B	
2014	\$7.6B	37.0%	4,140	139 M	\$61	7.6%	\$55	7.6%	\$238B		\$24.7B	22.1%	13,914	446 M	\$66	7.3%	\$55	7.6%	\$669B		\$9.2B	29.1%	3,870	79.4 M	\$110	7.2%	\$116	7.8%	\$193B	
2013	\$5.6B	16.7%	3,643	112 M	\$55	7.8%	\$49	7.9%	\$217B		\$20.2B	10.8%	13,123	389 M	\$60	7.6%	\$52	7.9%	\$602B		\$7.1B	29.6%	3,530	68.2 M	\$99	7.5%	\$105	7.9%	\$175B	
2012	\$4.8B	21.1%	3,602	104 M	\$52	8.0%	\$46	7.8%	\$205B		\$18.3B	20.5%	12,607	361 M	\$56	7.8%	\$51	7.8%	\$563B		\$5.5B	41.8%	3,416	58.0 M	\$93	7.7%	\$95	8.1%	\$164B	
2011	\$3.9B	25.9%	2,761	102 M	\$49	8.3%	\$39	7.9%	\$195B		\$15.2B	29.3%	9,426	318 M	\$53	8.0%	\$48	7.9%	\$533B		\$3.9B	-17.9%	2,517	43.0 M	\$88	7.9%	\$90	8.4%	\$155B	
2010	\$3.1B	28.3%	2,182	79.3 M	\$47	8.5%	\$39	9.0%	\$188B		\$11.7B	63.3%	7,434	255 M	\$51	8.3%	\$46	8.6%	\$510B		\$4.7B	-159%	1,910	41.2 M	\$84	8.2%	\$115	9.2%	\$149B	
2009	\$2.4B	-51.2%	1,811	51.5 M	\$45	8.9%	\$47	8.1%	\$182B		\$7.2B	-52.6%	5,618	147 M	\$49	8.6%	\$49	8.7%	\$492B		\$1.8B	-58.5%	1,407	21.3 M	\$81	8.5%	\$86	9.3%	\$143B	
2008	\$5.0B	-35.8%	2,261	83.7 M	\$51	8.4%	\$60	8.1%	\$202B		\$15.1B	-36.7%	7,867	242 M	\$54	8.1%	\$63	7.6%	\$543B		\$4.4B	-46.4%	2,542	43.3 M	\$90	8.0%	\$101	7.8%	\$159B	
2007	\$7.8B	11.3%	3,144	124 M	\$58	7.5%	\$63	6.9%	\$233B		\$23.9B	14.0%	10,515	384 M	\$62	7.3%	\$62	7.3%	\$613B		\$8.2B	-9.0%	3,690	73.7 M	\$103	7.2%	\$111	7.4%	\$180B	
2006	\$7.0B	17.5%	2,675	114 M	\$56	7.6%	\$61	7.2%	\$223B		\$21.0B	17.3%	8,640	338 M	\$60	7.4%	\$62	7.4%	\$579B		\$9.0B	12.8%	3,093	78.9 M	\$99	7.3%	\$114	7.4%	\$171B	
2005	\$5.9B	23.2%	2,427	103 M	\$53	7.8%	\$58	7.3%	\$208B		\$17.9B	15.7%	7,552	321 M	\$56	7.7%	\$56	7.7%	\$528B		\$8.0B	58.7%	2,642	78.3 M	\$93	7.6%	\$102	8.1%	\$157B	
2004	\$4.8B	19.3%	2,539	96.3 M	\$49	8.2%	\$50	8.1%	\$193B		\$15.5B	34.5%	8,308	308 M	\$52	8.0%	\$50	8.2%	\$481B		\$5.0B	52.1%	2,307	61.1 M	\$86	8.0%	\$82	8.5%	\$144B	
2003	\$4.0B	29.6%	2,177	84.5 M	\$44	8.7%	\$48	8.9%	\$174B		\$11.5B	20.8%	7,223	247 M	\$47	8.5%	\$47	8.8%	\$428B		\$3.3B	6.8%	1,875	43.6 M	\$78	8.5%	\$76	9.2%	\$129B	
2002	\$3.1B	27.8%	1,888	75.3 M	\$39	9.3%	\$41	9.0%	\$153B		\$9.5B	10.8%	6,582	212 M	\$41	9.1%	\$45	9.1%	\$374B		\$3.1B	-6.4%	1,648	40.3 M	\$70	9.1%	\$77	9.5%	\$114B	
2001	\$2.4B	222%	1,627	56.5 M	\$36	9.6%	\$43	9.4%	\$142B		\$8.6B	267%	5,345	194 M	\$38	9.5%	\$44	9.6%	\$341B		\$3.3B	159%	1,491	38.3 M	\$65	9.4%	\$86	9.9%	\$105B	
2000					\$34	9.7%			\$133B						\$36	9.6%			\$313B						\$62	9.5%			\$98.1B	





