ACREL News

President's Message

We had an enjoyable time at our mid-year meeting at the Terranea Resort in sunny Palos Verdes, California with nearly 200 of our Fellows and their guests. The southern California oriented activities at this beautiful facility included whale watching (sans whales!), golf, biking, hiking, and a Segway tour. **Julian Rackow**, the Meetings Committee chair, together with **Jill Pace** and **Henri Keller**, did an excellent job in managing the important details of this meeting.

The Programs Committee did a fine job in organizing the educational component of the meeting. Thursday afternoon featured a detailed presentation by the developers of Terranea of the considerable legal, political, and environmental challenges they faced in developing the facility over the course of twelve years. My thanks to **K.C. McDaniel** in organizing this fascinating presentation, entitled "Landing (and Protecting) the Whale." The programs on Friday and Saturday featured presentations on transit oriented development, co-lending and intercreditor agreements, the challenges facing retail real estate, conservation easements, and, in recognition of the economic hurdles facing lawyers and law firms, alternative fee arrangements. **Mike Rubin** brightened the Friday morning program with an entertaining and thoughtful presentation on ethics and professionalism. The Saturday program wrapped up with a series of workshops, ranging from follow-on discussions from a couple of main programs to discussions on recent developments in opinion giving, real property taxes, the National Environmental Policy Act process, how to review a financial statement, and adaptive challenges facing real estate lawyers and practices. Thanks to **Meg Meister**, the Programs Committee chair, and her talented team in organizing this program.

Now it's time to focus our attention on the annual meeting in Toronto and next Spring's meeting in Tucson. Meg will be working closely with **Rob Freedman** and **Nancy Little** in developing an educational program for Toronto that will focus on how best to master and survive the current market turbulence. These programs include how to deal with the FDIC as the lender or seller, issues in dealing with a "dead TIC" (i.e., things to watch out for when handling a workout or buying property from a tenancy in common owner), cutting edge deals in the new reality, restructuring the underwater deal, lender liability and borrower defenses in bad times, and special issues arising in receiverships. This is a program you will not want to miss. Please mark your calendars now for this meeting, which will begin on Thursday, October 7, 2010 at the Four Seasons Hotel in Toronto.

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Please start gearing up your creative juices for the Tucson program in March 2011. It's not that far away. If you have program or speaker ideas, please feel free to reach out to Meg, Rob, and Nancy so that they can factor them into the planning process. Although the site of this program will be in the arid desert, we certainly hope to see some green shoots by then!

2010 Fellows

Through the superb leadership of **Larry McLaughlin**, the Member Selection Committee carefully vetted the nominations and recommended 25 candidates for election to the College. The Board of Governors approved the recommendation of Larry's committee, and acceptance letters have been sent to the candidates. As they accept, their names will be posted on the College's website.

It's not too early to begin thinking of candidates for the next nominations cycle, which will begin in October 2010. We need to identify those promising real estate practitioners who meet the eligibility criteria, especially the "giveback" requirement, so that we can maintain a vibrant and engaging organization. Again, I look to you for your suggestions and assistance.

STAFF BOX

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Orientation and Integration Committee Update

At the Terranea meeting, the co-chairs of the newly formed Orientation and Integration Committee, **Ken Jacobson** and **Kathy Murphy**, met with **Linda Striefsky**, **Jill Pace**, and me to kick of the committee's activities. This committee has the important mission of mentoring and integrating new ACREL Fellows and reaching out to seasoned but inactive Fellows. Ken and Kathy are in the process of working with their committee members to develop appropriate strategies to achieve those goals. If you have ideas that you think could benefit their efforts, please feel free to contact Ken and Kathy.

Regional/Local Meetings

Several ACREL Fellows have organized informal meetings in their cities or regions. These meetings are a great way to stay connected with your colleagues between the annual and mid-year meetings, and afford an opportunity to discuss potential nominees for election to the College and to share ideas about how to improve the College.

I urge you to organize one of these meetings. To do so, please reach out to the newly minted Orientation and Integration Committee discussed above. Ken and Kathy can assist you by offering suggestions and ideas. Also feel free to contact Jill for ideas in planning such a meeting. Jill has assisted in the organization of a number of these meetings, and there's really no need to reinvent the wheel.

Gatekeeper Update

On March 22, 2010, I along with representatives from the American Bar Association ("ABA") and the American College of Trust and Estate Counsel met with representatives from the U.S. Treasury Department to discuss Treasury's position on the draft Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing ("Good Practices Guidance") developed by the ABA Task Force on Gatekeeper Regulation, various ABA sections, and specialty bar associations (including ACREL).

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President's Message

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Treasury's representatives expressed positive views toward the Good Practices Guidance and indicated that it was "outstanding." They asked that legal profession to take ownership of the policy regarding client due diligence in the anti-money laundering and counter-terrorist financing context and to develop a regime so that attorneys can police themselves. Treasury's representatives observed that state bar ethics rules would be an appropriate model.

Treasury's representatives remarked that the world's leading standard-setter for anti-money laundering and counter-terrorist financing policy, the Financial Action Task Force ("FATF"), is highly political and that there are legal challenges and political challenges insofar as its attitude towards attorneys. They observed that the national security aspects of anti-money laundering policy and enforcement are being revealed in current events, such as proliferation risks in Iran and North Korea, counter-terrorism efforts, new global initiatives to fight corruption and support vulnerable countries, and counter-narcotics trafficking efforts in Mexico. This has led to a growing sense of awareness and urgency with respect to terrorism financing and money laundering and the need to "get it right" as quickly as possible.

Treasury's representatives stated there are gaps with other countries in terms of compliance standards and identified three priority areas (in rank order) for anti-money laundering policy: transparency of legal entities, customer due diligence for financial institutions, and Gatekeeper. They indicated that the biggest gap is probably transparency with respect to legal entities and noted that federal legislation (S. 569) has been proposed on the subject. In the area of Gatekeeper, Treasury's representatives suggested that it would help Treasury if the ABA could develop a game plan for implementing the Good Practices Guidance, and suggested that the timeline for the plan be one year. Part of that deadline is to respond to some of the political pressures from the FATF and domestic stakeholders. Treasury's representatives said that Treasury needed to be able to demonstrate follow-up implementation of the FATF recommendations so as to give Treasury more leverage in its interactions with the international community, as well as to prepare for the next mutual evaluation of the United States by FATF in or about 2012. Treasury's representatives set a target for the spring of 2011 for significant progress in implementation of the Good Practices Guidance, and said that Treasury would like to have a credible roadmap leading to that deadline.

Although Treasury's representatives could not easily commit to a public endorsement of the Good Practices Guidance, they nonetheless stated that Treasury would develop supportive language designed to show the Treasury's position with respect to the Good Practices Guidance and underscore that the Good Practices Guidance is a significant step in the right direction.

On a related note, we expect Treasury to offer amendments to S. 569, which deals with the disclosure of beneficial ownership information in the formation of unincorporated entities and the need to provide certain information on these entities to law enforcement officials. It appears, however, that Treasury will not support current language in S. 569 that would extend federal anti-money laundering and counter-terrorist financing obligations to "formation agents," which could include lawyers.

In sum, ABA, ACREL, and other ABA sections and specialty bar associations will continue to work with Treasury in developing a workable approach to anti-money laundering and counter-terrorist financing that does not run afoul of the attorney-client privilege or the duty of client confidentiality.

Endnote

Thanks for your participation and interest in the activities of the College. As we work toward the program in Toronto, please remain engaged and offer your thoughts and suggestions.

Kevin L. Shepherd
President

Real Estate Project Valuation and Underwriting Metrics–A Refresher

by Carl Circo, Professor, University of Arkansas School of Law © 2010

Readers of this newsletter know how important it is for real estate lawyers to be comfortable with principles of real estate investment. But perhaps even those with the financial literacy of ACREL Fellows can use a refresher on this topic, especially in this challenging economic environment that beckons real estate clients back to the fundamentals. What follows here is an overview of some of the most basic financial tools for analyzing real estate projects. This is a highly abbreviated version of materials that I use in workshops for real estate associates, and that I have recently adapted for use in my Real Estate Transactions class. I will be happy to provide a more comprehensive version of these materials to any ACREL Fellow who wishes to conduct a real estate finance workshop for his or her associates. Much of what is presented here draws on an Urban Land Institute text that I sometimes use for my workshops. [1]

I. Net Operating Income, Capitalization Rates, and Cap Rate Valuation

A. Net Operating Income (NOI)—a measure of a project's productivity

In simple terms, NOI is the gross revenue that a project generates from operations for a given period (typically for a calendar year) minus the project's operating expenses for the same period. NOI figures importantly into financial analysis in many different ways, including for year-end statements that report actual results of operations. But real estate lawyers frequently encounter NOI in the context of a pro forma analysis, and this overview looks at NOI primarily in that context. To calculate NOI on a pro forma basis:

Potential Gross Income
<u>-Vacancy and Concession Allowances</u>
Effective Gross Income

Effective Gross Income
<u>-Operating Expenses</u>
Net Operating Income

Note that NOI does not account for financing, capital expenditures, re-leasing expenses, or depreciation.

In a typical pro forma, projected rents account for the major component of Potential Gross Income. Other components of Potential Gross Income may include expense reimbursements, percentage (overage) rents, and miscellaneous income from such incidental operations as parking or other tenant services. Next, Effective Gross Income (EGI) adjusts for vacancies, concessions, collection losses, and other "negative income items," all of which must be accounted for realistically in the pro forma.[2] Finally, to arrive at NOI, the pro forma deducts Operating Expenses, which relate to periodic costs to maintain income from the property, including real estate taxes (normally the largest operating expense for a property), physical maintenance (for a multiple-tenant project, this generally includes common area maintenance or CAM), utilities, insurance, management fees (typically 2-5% of EGI), and appropriate reserves.[3]

Note that "most property owners place replacement allowance for capital expenditures in below-line (that is, below the NOI line) accounts. Most lenders like to see a replacement allowance for capital expenditures included in NOI."[4] This distinction may affect how a lawyer drafts the NOI definition in a loan agreement or a contract.

1 *See* MIKE E. MILES, ET. AL, REAL ESTATE DEVELOPMENT: PRINCIPLES AND PROCESS (4th ed., 2007).
2 *See id.* at 179
3 *Id*. at 179-80.
4 *Id*. at 180.

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B. Using a capitalization rate to relate project NOI to value

Capitalization rate ("cap rate") valuation is a rule-of-thumb method that relates a property's income stream to the investor's demand for competitive returns. A cap rate is "[t]he rate, expressed as a percentage, at which a future flow of income is converted into a present value figure."[5] Put another way, a cap rate represents the annual percentage rate which, when multiplied times a proposed value for the project, yields the project's (actual or projected) annual net operating income. Thus, a cap rate, much like a corporate stock price/earnings ratio, is simply one metric that investors can use to relate the revenue generated by an asset to an asset value.

There is no right cap rate to use, but there are logical ways in which to arrive at a cap rate for valuing a particular project. One method is to look at recent sales and revenue data for other, comparable projects and to note, for each comparable project, what percentage rate multiplied times the sales price realized for that particular project would produce the same NOI that the project generated for the year of the sale. By considering this information for several comparable projects or for the relevant market segment as a whole, an investor can select a percentage to use as the cap rate that is consistent with the rates for the comparable projects or that is within some range of rates that the investor deems reasonable under the circumstances.

The cap rate valuation formula is

$$\text{Value} = \frac{\text{Net Operating Income}}{\text{Capitalization Rate}}$$

To illustrate the relationship that a cap rate represents based on value and NOI, consider an apartment project that is projected to generate $100,000 in annual NOI and that sells for $1,000,000. The purchase price, therefore, reflects a 10% cap rate because the $100,000 projected annual NOI is 10% of the $1,000,000 purchase price. As the chosen cap rate decreases, the project's value increases. An 8% cap rate applied to the same project would establish a selling price of $1,250,000. To repeat an important point: There is no objectively right or wrong cap rate to use for a particular project. Whether to use a 10% cap rate, 8%, or some other rate, is up to the individual investor or financial analyst to decide based on available market data.

II. Real Estate Finance Logic

A. Loan underwriting metrics

Real estate lenders often use two primary ratios to judge a project's financial viability:

Loan-to-Value Ratio focuses on the collateral value of the project, which assures an exit option for the lender (foreclosure) in the face of a loan default:

$$\text{LTV} = \frac{\text{Principal Amount of Loan}}{\text{Project Value}}$$

Debt Service Coverage Ratio focuses on the property's NOI in relation to the required periodic loan payments, thus allowing the lender to judge whether the project can comfortably keep the loan in good standing:

$$\text{DSCR} = \frac{\text{Net Operating Income}}{\text{Annual Debt Service}}$$

B. Returns to equity investors and the effects of leverage

1. General concepts

A cash flow calculation carries on the financial analysis to account for certain additional expenses that the NOI calculation ignores. Adjustments below the line for NOI may concern expenditures for tenant improvements, leasing commissions, and capital expenditures. Cash flow is important to equity investors because positive cash

5 *Id*. at 626.

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flow typically influences the investors' opportunity during a given period for cash distributions.

Cash flow calculation:

Net Operating Income
-Tenant Improvements
-Leasing Commissions
-Capital Expenditures
Cash Flow before Debt Service & Income Tax

"Cash Flow before Debt Service & Income Tax" (or "Cash Flow from Operations) provides important data about the financial results from operations of the project, but additional deductions for debt service (typically, the scheduled mortgage loan payments) and adjustments for the effects of income taxes would need to be made to take into consideration how these additional factors would affect cash flow. While income tax considerations are completely beyond the scope of this overview, a further word about the effect of debt financing is in order at this point. By taking into account additional data to reflect any debt financing the equity investor can further the cash flow analysis.[6]

Cash Flow from Operations
-Financing Costs
Cash Flow after Financing

Cash Flow from Operations and Cash Flow after Financing can then be used to make these additional calculations, which are extremely useful to a financial analysis from the perspective of equity investors:

Return on Assets (ROA)

$$\text{ROA} = \frac{\text{Cash Flow from Operations}}{\text{Purchase Price}}$$

Return on Equity ("cash on cash")

$$\text{ROE} = \frac{\text{Cash Flow after Financing}}{\text{Equity Investment}}$$

For otherwise comparable situations, investment opportunities with relatively higher ROA and ROE generally indicate more favorable results for the equity investor.

2. Leverage—the benefits and risks of using debt financing

ROA and ROE can be used as metrics to analyze the leverage that results from debt financing. If the cost of debt (e.g., the mortgage constant that yields the debt service payments) is less than the overall ROA, positive leverage pushes up ROE. In effect, the borrower is realizing a return on 100% of the project investment even though a substantial part of the present cash investment is provided on a cost-effective basis by the lender rather than the borrower. If the cost of debt is greater than ROA, however, debt financing produces negative leverage. Leverage can have a proportionately greater effect (positive or negative), when the investment terminates with the sale of the project, at which time the owner repays the loan and takes into account any appreciation or depreciation realized through the sale price.

3. Breakeven Occupancy

A breakeven occupancy calculation (or, from a lender's perspective, a default rate calculation) determines the occupancy level at which the property cash inflows will meet all cash outflows:

$$\text{Breakeven Occupancy} = \frac{\text{Total Oper. Exp.} + \text{Cap. Exp.} + \text{Debt Service}}{\text{Potential Gross Income}}$$

III. Reviewing a Pro Forma Cash Flow Analysis

A Pro Forma Cash Flow Analysis uses known data about the project, together with reasonable assumptions about the future, to forecast the project's NOI and cash flow over a proposed investment period. Because the pro forma's usefulness can be no greater than its assumptions are appropriate, anyone using the pro forma must examine the

6 *See id.* at 186-88.

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assumptions carefully and relate those assumptions to the cash flow projections that the pro forma computes. Real estate lawyers, of course, need not toil over every financial step that their clients must evaluate; what is most important for us is simply to recognize that every entry in a pro forma spreadsheet results from detailed calculations and that the reliability of most of those calculations depends on one or more assumptions, as well as on the appropriate use of the known data about the project.

Here are some assumption categories that frequently merit close attention:

Occupancy and absorption. The first step in addressing occupancy is to take into account current vacancies at the beginning of the period being analyzed. While the rent roll will show how much space is currently unoccupied, the pro forma must incorporate assumptions about how long it will take to fill the existing vacancies and how long it will take on the average to re-lease space when current leases expire during the period. Faulty assumptions on these matters will taint not only the estimated base rental projections but also expense reimbursement revenue and leasing expenses.

Vacancy rate. In addition to the occupancy and absorption adjustments just mentioned, a pro forma is also likely to incorporate a general vacancy rate assumption to reflect the probability that average occupancy will be less than 100% over the analysis period. Anyone reviewing a pro forma must critically review the general vacancy assumption. For example, even if current market research supports an average 5% vacancy rate for Class A suburban office space in a given locale, a 5% vacancy assumption for a particular Class A office building may be misleading if the floor space in that specific building is configured in a way that practically predetermines that any vacancy will affect more than 5% of the building at any one time. Also, pro forma adjustments based on a general vacancy assumption should take into account the collateral effects of vacancies, such as lost expense reimbursement, or lost parking or concessions revenue.

Inflation and growth rates. Pro forma rental rates, operating expenses, expense reimbursement revenue, and capital reserve amounts typically reflect assumptions about inflation over the investment period. Thus, a pro forma may assume 3% general inflation annually, which may translate into corresponding 3% per annum increases in the project's operating expenses and capital expenses as well as in the projected rental rates for new leases that come into effect over the investment period. This is a risky process, especially because inflation in the general economy does not guarantee corresponding increases in future rents or in expense reimbursements as leases expire during the period covered by the pro forma.

New Lease Assumptions. Among the most important assumptions are those concerning the projected impact of new leases during the investment period. Several aspects of these assumptions merit close attention. Among the assumptions most likely to be problematic are those concerning: future rental rates; anticipated renewals of leases scheduled to expire during the period; rental abatements, tenant improvement costs, and leasing commissions for new and renewal leases; the time it will take to re-lease space when current tenants do not renew their leases; and expense reimbursements.

IV. Discounted Cash Flow: The Equity Perspective in More Detail

While NOI and cash flow for a single year are useful bases for measuring project performance, investors also need more comprehensive and dynamic tools that take into account cash flow over multiple periods. A discounted cash flow analysis makes use of the data for the entire period covered by the pro forma.

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A. General concepts

An income producing real estate project represents a stream of future cash flows. A cash flow stream cannot justify a current investment equal to the total of the cash flows because investors require a rate of return on the current investment, and they also demand premiums to compensate them for the risk of inflation over time and the risk of default on future payments.[7] By incorporating a discount factor to account for these risks, discounted cash flow analysis values expected cash flows from a property as if they were all to be received today. The risk-weighted rate of return that the investor requires becomes the discount rate used to establish the present value of the projected cash flow stream.

A rate of return should include three distinct components: an inflation premium; a real rate of return; and a risk premium. Data from recent sales of comparable properties are extremely useful for this purpose, but ultimately, the process "is as much an art as it is a science."[8] The next two sections describe—in a highly abbreviated fashion— how discounted cash flow analysis makes the necessary calculations.

B. Discounting a single cash flow

Discounting a single cash flow requires that the future cash flow amount be multiplied by a factor less than 1.0 (discount factor) to convert (reduce) the future cash flow to a present value equivalent.[9] When there is only a single future cash flow, the mathematical operation is relatively simple, although it must, in addition to using a discount factor, also take into account the length of the period until the cash flow will be received. The calculation is:

Present Value = Future Value X Discount Factor.

Discount Factor =

$$\frac{1}{(1+i)^n} \qquad \text{where } i = \text{rate of return; } n = \text{term (compounding)}$$

Thus,
Present Value = Future Value X $1/(1 + i)^n$

For a single cash flow, say the right to receive a $1,000 payment at the end of one year, here is the calculation if the expected rate of return (discount rate) is 6.5%:

PV = $1,000 X $1/(1 + .065)^1$ (Rate = 6.5% *per annum*; term = one annual period)

PV = $1,000 X 1/1.065

PV = $1,000 X 0.93897 = $938.97

What if the single future payment is made *two years* in the future? In this situation, there will still be only a single future payment, but we must apply the discount rate twice to calculate the discount factor.

PV = $1,000 X $1/(1 + .065)^2$ [Rate = 6.5% *per annum*; term = two annual periods.]

PV = $1,000 X $1/1.065^2$ [1.065^2 = 1.13422] 1/1.13422 = 0.88166)

PV = $1,000 X = 0.88166 = $881.66

C. Discounting multiple cash flows

Because real estate investments are long-term and involve periodic cash flows, a real estate investor can arrive at a present value for a property by applying discounted cash flow analysis to a series of projected cash flows.[10] Typically, this means valuing (1) the annual NOI over a multi-year holding period *plus* (2) the residual value the investor expects to receive upon sale of the property at the

7 *Id*. at 203-04.
8 *Id*. at 206.
9 *Id*. at 207.
10 *See id*. at 208.

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end of that period. While the calculation for a series of annual cash flows over a multi-year period is a modestly complex matter, a financial calculator or a spreadsheet program makes the process simple.

D. Internal rate of return

Investors also need a tool to compare the total investment results of one investment opportunity over the life of the investment to alternative investments. An internal rate of return calculation is extremely useful for this purpose. An IRR calculation answers this question: What rate of return on my investment (cash input) results from the multiple cash flows (cash outputs) from this property over the entire term of the investment? The rate of return that the IRR calculation provides equals the discount rate we would need to apply to the property cash flows to arrive at the amount invested. To compute the rate of return that the investment provides over its term, the internal rate of return (IRR) calculation uses (1) the investment amount (such as the property's purchase price) and (2) cash flows the investment produces over its entire term (such as annual NOI and net sale price at the end of the term).[11] Calculating the IRR allows the investor to evaluate the investment in relationship to alternative investments.

Internal rate of return and present value calculations are similar tools that use similar calculation methods, but each uses different information about the investment. "The primary difference between an IRR calculation and a PV calculation is that the present value determines the value of an income stream today given a specified discount rate. An IRR, on the other hand, calculates the rate of return on a property given a purchase price (cash outflow) and a stream of future cash inflows."[12]

11 *Id*. at 210.
12 *Id.*

V. Conclusion

If this refresher serves no other purpose, it should at least encourage an attitude especially useful for those of us for whom financial analysis is not second nature: real estate lawyers should be eager to ask questions about financial reports and projections. Answers to even some of the most basic questions may not be self-evident, and the explanations may help us to understand the project and the transaction more fully. ■

Meetings Calendar

2010 Annual Meeting
October 7-10, 2010
Four Seasons
Toronto, Canada

2011 Mid-Year Meeting
March 17-20, 2011
Loew's Ventana Canyon
Tucson, AZ

2011 Annual Meeting
October 20-23, 2011
The Westin Philadelphia
Philadelphia, PA

2012 Annual Meeting
October 18-21, 2012
Reanaissance Hotel
Chicago, IL

2014 Mid-Year Meeting
March 27-30, 2014
Grand Hyatt
Kauai, HI

Guaranty Does Not Extend to Lease Renewal

by Harris Ominsky

(Harris Ominsky, a retired partner of Blank Rome LLP, and the author of "Real Estate Lore, Modern Techniques and Everyday Tips for the Practitioner" (ABA, 2005).)

A recent case shows how a landlord's reliance on a guaranty can be frustrated when the landlord renews the lease, even with a relatively small increase of rent. In *Lo-Ho LLC v. Batista,* 881 N.Y.S.2d 33 (A.D. 1 Dept. 2009), a landlord and tenant had entered into a commercial lease in April 2000 in which the tenant's obligations were personally guaranteed by the tenant's cousin. The guaranty provided that the guaranty would "remain and continue in full force and effect as to any renewal, change or extension of the Lease." Despite the apparently broad language that the guaranty would cover any renewal, change or extension of the Lease, the lease itself did not provide for any renewal or extension, and stated that any holdover would result in an increase in rent, but would not itself renew the lease.

The lease expired in March 2005 and the tenant apparently held over. The landlord and tenant entered into another lease agreement on April 25, 2005, which was designated as an "Extension of Lease" and was effective as of April 1, 2005. The April lease provided for an increase in rent and real estate tax payments as compared to the April 2000 lease. When the Tenant defaulted under the April 2005 lease, the landlord sought to enforce the guaranty.

"New Lease" Not an "Extension"

The New York Supreme Court held that the guaranty did not apply to the April 2005 lease since the terms of that lease were too different from the April 2000 lease for it to be considered a mere modification or extension. The Supreme Court, Appellate Division affirmed the finding of the lower court and found that the new terms and conditions of the April 2005 lease meant that it was not the type of extension contemplated by the guaranty. The rent at the end of the 2000 lease was about $2700 per month, up from $1950 five years earlier. The rent under the 2005 lease started at $2400 per month, which increased monthly by $200. The old lease required the tenant to pay only some taxes and the new lease required it to pay all taxes.

Despite the language in the guaranty itself, the court found that the new terms and conditions of the April 2005 lease meant that it was not the type of extension contemplated by the guaranty. According to the court, the increased rent would have substantially changed the guarantor's obligations and such changes would have required the consent of the guarantor to bind the guarantor by the extension. Also, the court added that the terms of the 2000 lease did not even include an extension option, and the April 2005 lease itself stated that the 2000 lease had expired in March 2005. Apparently, that analysis of the facts led to the conclusion that the old lease had expired by its own terms and since it did not provide for renewal, the 2005 lease was a completely new lease that was not covered by the terms of the guaranty.

It is noteworthy that even though the original rent went down and then increased only $200 per year, the court stated: "[t] he April 2005 lease contained new terms and conditions, including an incrementally higher rent. The increased rent would have substantially and impermissibly changed the guarantor's obligations under the original agreement."

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This decision may seem to some to be a little rough on the landlord, particularly in light of the somewhat broad language in the guaranty itself. Apparently, there is a subtle distinction about whether a document, which changes the terms of the original lease, will be considered a "renewal" or an "extension."

The court let the guarantor off the hook even though a careful reading of the guaranty requires it to "remain in full force and effect," even as to any "*change*" in the lease.

In the *Batista* case, the landlord's argument was undercut by the fact that the tenant had no options in the original lease to receive a new grant of lease on the same terms as the original lease and that the landlord and tenant simply negotiated what the court labeled a "new" lease when the "old" one expired in 2005.

Landlords' Lessons

It is not clear from the decision if the court would have favored the landlord under slightly different circumstances. Suppose the 2005 document simply was labeled "an amendment and extension of the 2000 lease," and did not mention that the 2000 lease "had expired" a month earlier?

Also, the court does not specifically discuss what would have happened if the form of guaranty expressly covered changes, not only in the terms of the underlying lease, but also in what might be determined to be a "new lease" for the same space. In any event, the case can serve as a lesson to landlords' attorneys that they should carefully draft "lease guarantees" so that they will apply to all changes made to the original lease, whether they are considered renewals, extensions or new leases entered into by the parties, or their successors and affiliates. In addition, it emphasizes how important it is to have the guarantor approve in writing every modification, informal letter agreement, extension or other document that is signed by the tenant, especially when changed terms may increase the liability of the guarantor.

Also, even a landlord's voluntary forbearance of rent payments without a formal agreement between the landlord and tenant could jeopardize the validity of the guaranty. Therefore, it is important that landlords should have the guarantor acknowledge in writing that the guarantor approves these actions taken by the landlord and tenant and that the liability under the guaranty is intended to continue.

A cynic has defined a guarantor as "a fool with a fountain pen." As the *Batista* case suggests, the courts may be willing to give that fool the benefit of the doubt. ■

Negotiating the Major Office Lease

by Andrew L. Herz and Russell G. Wohl, Patterson Belknap Webb & Tyler, LLP

Negotiating a major office lease follows the same basic format as negotiating a typical office lease but, just as flying a jumbo jet is inherently the same as flying a two engine prop plane, in many respects that is where the similarities end. When a large tenant seeks to occupy a substantial portion of a large office building, the leasing exercise by its very nature becomes significantly more complex and time consuming and the consequences impact more people and more dollars. Beyond utilizing a comprehensive checklist of items in evaluating any lease,[1] even otherwise routine issues take on a more significant role since the stakes for both the landlord and the tenant are far greater.

By virtue of the size of the space alone, the financial commitment of the parties is greatly increased. Often, this may result in a major office tenant having more negotiating leverage, but as weather and the length of the runway impact the flight plan for a jumbo jet and small planes in different ways, so to does the financial climate, construction periods, relative vacancy rates and the like, such that the opposite may be true and a landlord may be reluctant or unwilling to entertain any of the tenant rights and options discussed in this article. Because of a major office tenant's size requirements, large contiguous and unencumbered blocks of space may be limited, or, as is often the case in a tight market, all of the space that it needs may not be available either in its entirety or may also require that the major office tenant or landlord negotiate with an existing tenant to surrender or relocate space or that the major office tenant sublease some of the needed space in connection with a contemporaneous direct lease from the landlord. In such a case, creative direct and subletting structures may be necessary to create the block of space that the major tenant requires.[2]

This article will address some of the common (and not so common) rights and options that a major tenant may seek in its negotiations with a landlord and also set forth some of the general concerns that a landlord may have under such circumstances. We do not propose to set forth what either party "is entitled" to receive as that depends entirely upon the particular circumstances and the relative bargaining strength and sophistication of the parties.

In a major office lease transaction, the magnitude of the dollars involved increases the stakes and literally magnifies what otherwise would be relatively minor expenses for a tenant. For example, often a landlord will seek to charge a tenant a supervisory fee if the tenant performs any alterations, including cosmetic changes such as carpeting within the premises based upon the total cost of the alteration. For a small tenant, often such an expense does not seem worth fighting about. After all, the landlord may have to coordinate use of the service elevator, review the contractor's insurance certificate, coordinate the contractor's deliveries, etc. However, for a multi-floor tenant, the expense could be quite substantial. Usually both the landlord and the tenant and their respective counsel will understand these distinctions and landlords will factor this into the rent. Of course, this is often a source of pure profit for the landlord and it may waive such a fee for an initial build-out but resist waiving such a fee for future alterations or decorations.

For the landlord also, the stakes are much greater. A landlord willing to lease a single block of substantial space in its building to a major tenant is making a bet on the financial viability and continued good reputation of such tenant. If the block of space that the tenant is leasing is large, the ability of the landlord to finance its building may be significantly impacted by the credit worthiness of the major tenant and, not infrequently, the lender will want to receive financial information from and about the major ten-

1 *See* SH Spencer Compton and Joshua Stein, *Tenant's Checklist of Silent Lease Issues* and *Landlord's Checklist of Silent Lease Issues*, COMMERCIAL LEASING, New York State Bar Association, Vol. 1, Chapters 3 & 4 (2004)

2 Although beyond the scope of this Article, *see* Andrew L. Herz & Russell G. Wohl, *Subleases: The Same Thing as Leases, Only Different*, 35 REAL PROP. PROB & TR. J., 668 (2000), for a discussion and analysis of matters to consider in reviewing and analyzing a sublease transaction.

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ant. While this might not seem problematic if the tenant is a public corporation, the possibility of an assignment of the lease or a going-private transaction must be considered in a major long-term lease. Often, private companies are reluctant to provide financial statements even when the landlord offers to sign a confidentiality agreement.

Each month, the landlord needs the major tenant to pay its rent or the landlord may suffer severe consequences. Unlike some other types of continuing real estate transactions, such as secured loans, leases generally do not have continuing financial covenants. However, financial covenants are often important conditions to the continuing waiver by the landlord (if the lease so provides) of such customary rights, such as:

- the right to have no or a relatively small lease security deposit or a burn-down in the amount thereof during the term;
- the waiver of a requirement for additional deposits when undertaking major capital improvements or legal contests; and
- limitations on the obligation to carry insurance or permitting self-insurance.

So too, do landlords attempt to condition extraordinary or additional rights, such as rights of first refusal and expansion rights, on the financial strength of the tenant; although, typically, the required condition precedent is limited to the tenant (and its affiliates) actually occupying and paying rent for a substantial block of the space and not being in material default.

Another wrinkle in the flight plan for a major office lease for both landlord and tenant is that the time period to negotiate and consummate the transaction can be significantly longer than the typical smaller office lease. This is true in part because of the logistics involved and the need for advance planning. Unlike the small office lease, many consultants will normally be involved in the move, and hopefully, in the planning process. These consultants often include the whole range of professional services firms including: architects, structural and mechanical engineers, IT and communications consultants, a move consultant, and an insurance consultant. Although the input of these consultants are invaluable, their activities need to be coordinated either through the broker or a project manager. Timing also can be a critical aspect of planning, as the tenant is most likely moving out of one of more locations and no tenant wants to be paying rent for the same employees in more than one location for other than a very short time.

Plans and specifications take a significant amount of time to develop; not just because it takes time to prepare the actual drawings but because the tenant has to develop a sophisticated program for how it is going to use the space. For a major office tenant, the timing of obtaining landlord's consents and the ability to have the landlord approve plans in various stages keeps the process moving smoothly. As may be the case in smaller transactions with sophisticated parties, landlords often will agree to a deemed approval mechanism and/or an expedited arbitration procedure to break any impasses in the approval process.

Inherent in the major office lease is the complexity of the actual construction. Multi-floor occupancies may require internal staircases and other vertical transportation methods and often specialized uses such as cafeterias, fitness centers, laboratories, executive dining rooms and libraries. Often overlooked is how the construction workers are afforded access to the building, the tenant's space and related staging areas. All of these complexities should be addressed at the negotiation stage and be included in the final lease documentation. The input of the various consultants discussed above is critical to address practical concerns and issues. These complexities and practical concerns and issues may require:

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3 *See* Ann Peldo Cargile, Stephen K Cassidy & Arthur E Pape, *Are you Bare or are you Covered? An Examination of Some Key Issues Raised by Self-Insurance*, AMERICAN COLLEGE OF REAL ESTATE LAWYERS ANNUAL MEETING (2002,Los Angeles), 341.

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- the use or construction of a dedicated hoist on the exterior of the building;
- the granting of a "staging area" on the ground and/or lobby to facilitate delivery of materials and storage until loaded onto the floors;
- the right to have a construction shed;
- preferential use of or a dedicated freight elevator;
- provision of temporary power;
- use of space on a floor outside of the premises for tool storage and project management;
- use of elevators for move-in and move-out;
- the right to determine how much of the existing premises needs to be demolished and what should remain;
- provision of security during construction; and
- addressing the impact and responsibility for jurisdictional labor costs.

As a result of the foregoing, it is not uncommon for the "work letter" provisions of a lease for a major tenant to be as long, if not longer than, the entire lease for a typical office lease. Additionally, in granting any of the rights described above, a landlord needs to be sensitive, regardless of the size of the tenant, to the appearance of the building after completion of the construction and the impact upon how customers and clients of other tenants gain access to the building and such tenant's space during construction.

Beyond the actual construction and related work letter considerations, the lease document is a "living document" that must address a relationship that can continue for fifteen or twenty years. Customary provisions in a landlord's form lease are frequently modified for the large office tenant to streamline and avoid turbulence in the long term landlord/tenant relationship. The provisions that a major tenant will often seek to negotiate and modify from the typical form (or first draft) provisions include, but are certainly not limited to:

- **alterations**
  - o no consent for non-structural and decorative alterations;
  - o advance consent for certain structural alterations (including floor reinforcement, installing raised flooring and internal staircases and the like);
  - o deemed approval rights;
  - o tenant's right to select contractors (and limitations on a landlord's right to change approved contractors, especially after contracts are awarded);
  - o no obligation to restore the premises at the end of the lease term or very limited removal obligations (landlords often want so called "specialty alterations" removed, but major tenants will attempt to limit such an obligation if a succeeding tenant uses the same);
  - o the right to use shaft and riser space and cooking ducts and vents; and
  - o the right to have private lavatories, cafeterias and a gym.

- **tax escalations and related tax provisions**
  - o waiver of monthly deposit amounts;
  - o rights to participate in tax certiorari proceedings;
  - o landlord's obligation to cooperate with tenant in seeking benefits under tax and other incentive programs; and
  - o limitations on the landlord's right to change tax escalation due to a reduction in a base year taxes as a result of a successful tax certiorari proceeding.

- **operating expense escalation provisions**
  - o expanded list of items excluded from operating expenses;
  - o protection against additional operating expenses due to changes in insurance companies or coverages and building management; and
  - o expanded audit rights for tenant.

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- **use**
  - o greater flexibility and fewer restrictions to prevent "gotcha" scenarios in sublettings and assignments

- **legal compliance**
  - o waiver of any requirement to post security deposits in connection with contests;
  - o rights to contest applicability of laws;
  - o obligation of landlord to comply with ADA in public areas.

- **services**
  - o right of tenant to have its own contractors or employees perform services;
  - o tenant to have voice or ability to replace cleaning contractor;
  - o the right of use of dedicated exclusive elevators and installation of private elevators between floors;
  - o right to specified levels of actual service performance, such as elevator wait time and speed, HVAC and supplemental systems specifications; and
  - o back-up generator specifications, allocations and priority of usage and shedding.

- **electricity**
  - o the right of tenant to bring additional service into building;
  - o reallocation of power among the leased floors; and
  - o the right of tenant to have usage directly metered.

- **repairs**
  - o self-help rights of tenant; and
  - o obligation of landlord to use overtime labor, including, at the landlord's cost, due to circumstances preventing access to the building.

- **access/landlord changes**
  - o restrictions on when landlord can enter the leased premises and protection of "secured areas"; and
  - o limitations on landlord's ability to reconfigure public spaces or reduce usable area of the leased premises or the ceiling height thereof.

- **insurance**
  - o higher deductibles;
  - o self-insurance rights for tenant; and
  - o requirement that landlord be obligated to maintain casualty and liability insurance.

- **casualty**
  - o greater termination rights for the tenant based on estimates and actual restoration time; and
  - o expanded abatement period after the landlord's restoration is completed

- **assignment and subletting**
  - o limited or no recapture of sublet space;
  - o limited or no termination right if tenant assigns the lease;
  - o no right of the landlord to back-lease space proposed to be sublet;
  - o lock-out periods if landlord will not agree to waive all recapture or backleasing rights;
  - o the right to have permitted desk sharers;
  - o fewer restrictions and conditions to the landlord's approval;
  - o shorter approval periods for landlord;
  - o deemed approvals;
  - o limited or no profit sharing on tenant transfers, expanded items included in permitted expenses for tenant profit sharing calculations, including unamortized cost of the tenant's build-out and deemed expense for down time;

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- o tenant profit sharing with landlord if the landlord recaptures or back-leases;
- o greater rights for affiliates and related parties of tenant to use the leased premises without the landlord's consent;
- o obligation of landlord to recognize eligible subtenants,
- o permitted sub-subtenant rights; and
- o the right of tenant to lease from other tenants in the building where there otherwise is a restriction.

- **default**
  - o better notice and cure rights

- **security**
  - o waiver or letter of credit rights;
  - o reduction of the security deposit during the term; and
  - o permitted non-cash security

- **holdover**
  - o more graduated holdover rental rates;
  - o limits on consequential damages; and
  - o rights to surrender parts of the premises held-over to reduce liability;

- **consents**
  - o all not to be unreasonably withheld or delayed
  - o expedited arbitration in the event of a dispute

- **recourse**
  - o greater limitations on recourse;
  - o release of assignee; and
  - o release of deceased and departing partners

- **miscellaneous**
  - o right to have a recorded memorandum of lease (especially if the building is under construction);
  - o protection against obstruction of views;
  - o expanded abatement rights in the event of an interruption of service
  - o many more, depending on the particular needs of the parties.

Additionally, large office tenants are often given their own bevy of rights which are not generally provided to the ordinary office tenant or, if requested by a smaller tenant, are quickly dismissed by landlords. These include:

- rights to renew the term of the lease for less than all of the leased premises;
- right to cancel the lease after rent arbitration if rent unfavorable;
- rights of first refusal on any available space (including space that a landlord may take by recapture) and/or the entire building;
- fixed expansion rights at agreed upon intervals during the term;
- the right to shed space in certain limited amounts at designated times;
- obligation of landlord to take over existing lease obligations;
- indemnifying tenant against potential holdover costs in existing space;
- the lease of storage space;
- use of dedicated parking areas;
- the right to use roof and garden space or terrace space;
- the right to use other building amenities such as an auditorium;
- the right to install conveyor systems;
- the right to name the building (or restrictions on others having the right to name the building);
- rights to scaffold signage and fees generated in connection therewith
- rights to lobby and exterior signage (including restrictions on signage by competitors and others);
- signage in other parts of the building complex;
- use of flagpoles,
- right to have separate entrances;

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Negotiating the Major Office Lease

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- separate concierge or lobby desk with security in the lobby;
- separate messenger entrance and waiting area;
- rights to have car service parking in front of the building;
- rights for the tenant to install its own generator or UPS (uninterrupted power supply) system and install dedicated fuel lines in connection therewith;
- right of tenant to have its own telecom provider and multiple separate points of entry in the building telecom room;
- restrictions on locations of window cleaning rigs to ensure views;
- limitations on costs incurred by landlord for which it seeks reimbursement to actual third party costs without premium;
- right of tenant to tie-into the building management systems;
- requirements that landlord maintain water and air quality to a specified standards and compliance with other green building requirements; and
- a particular favorite of major tenants in situations where it is difficult to figure out what the treatment of the large office tenant should be is that such tenant be granted "most-favored nation" status to insure that better rights are not granted to smaller or other tenants.

A major office tenant often has the leverage to get many of the rights discussed above. However, like any good flight plan, it is critical to have the right attorney pilot the plane to stay on course and not seek rights that are not significant or are without meaning in the context of the transaction or market realities. ■

ACRELades

Washington, DC Super Lawyers recognized ACREL Fellows **Jay A. Epstien, Michael D. Goodwin, John D. Hagner, Philip M. Horowitz, Frederick L. Klein, David R. Kuney, Barry P. Rosenthal and Stefan F. Tucker** among its top 100 lawyers.

The New Jersey Institute for Continuing Legal Education has published the 3rd edition of *Commercial Real Estate Transactions in New Jersey.* The two-volume resource manual was edited by **Jack Fersko.** Other ACREL Fellows served as contributing authors: **Anne S. Babineau, Russell B. Bershad, Martin F. Dowd, David S. Gordon, Christine F. Li, Michael E. Rothpletz, Jr., Robert C. Schachter and Ann M. Waeger.**

Richard C. Linquanti has published "A Brief Survey of Continuing Issues with the Interstate Land Sales Full Disclosure Act: Will the Fat Lady Never Sing?" in the ABA Section of Real Property Trust and Estate Law's November/December 2009 issue of *Probate and Property* magazine, and "Aspects of the Interstate Land Sales Full Disclosure Act," in *Real Property, Trusts and Estates Law Journal* Fall 2009.

Jeffrey H. Newman recently published *Hear With Your Heart: Mastering the Art and Skill of Listening* with Walnut Road Press. The book equates negotiations to relationships, demonstrating techniques to enhance negotiation skills.

Robert A. Thompson was selected Best Lawyers Real Estate Lawyer of the Year, San Francisco, CA. Bob also received the 2009 Member of the Year award from the Golden Gate Chapter of Lambda Alpha, the international honorary society of real estate professionals.

Ira J. Waldman received the Maine Law Alumni Association Distinguished Service Award in recognition of his contributions to a wide range of professional and community organizations and his support of the University of Maine School of Law. ■

Negotiating Longer Term Limits for Airport Ground Leases

by Jesse Ishikawa, Reinhart Boerner Van Deuren s.c., Madison, Wisconsin

A. The Problem

Airports own lands that are used for aeronautical purposes, such as terminals, hangars, runways and air traffic control towers. Sometimes, they also own lands that are leased to private developers for commercial purposes, such as hotels, rental car services, convenience stations and cargo warehouses.

Some airports have been reluctant to lease lands for more than 30 to 35 years to developers. This can prevent developers from attracting subtenants and mortgage financing.

B. Source of the Problem

Airports depend heavily on airport improvement program grants administered by the Federal Aviation Administration (the "FAA"). Airport improvement grants typically pay 75% of the cost for airfield capital improvements, land acquisitions and safety equipment.[2]

As a condition to receiving these grants, the airport must agree to certain obligations called "Grant Assurances."[3] The Grant Assurances require the airports to operate their facilities safely and efficiently and in accordance with specified conditions. Many of the Grant Assurances are vague and aspirational rather than specific and directive. Perhaps for this reason, the FAA has created an Airport Compliance Manual[4] "interpreting and administering the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of federal property for airport purposes."[5]

Under the Grant Assurances and the Airport Compliance Manual, the airport must:

- maintain a rental structure to make the airport as self-sustaining as possible;[6] and

- consider whether the proposed lease term exceeds the number of years reasonably necessary to amortize the tenant's investment.

Section 12.3(b)(3) of the Airport Compliance Manual states that ground leases of 30 to 35 years in length are sufficient to amortize the investment and that leases exceeding 50 years "may be considered a disposal of the property in that the term of the lease will likely exceed the useful life of the structures erected on the property."[7] Although airport officials may cite Section 12.3(b)(3) as authority to impose a relatively short term limit, Section 12.3(b)(3) by its terms applies only to leases for *aeronautical* uses.[8]

A ground lease term of 30 to 35 years may make sense for an aeronautical use such as a hangar. Hangars typically cost less per square foot than commercial buildings. Also, a hangar presents access, security and control issues that would not apply to a commercial use located outside the airport fence. A ground lease term of 30 to 35 years makes less sense for a non-aeronautical use such

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1 Thanks to ACREL member Thomas M. Whelan of McGuire, Craddock & Strother, P.C. for directing me to some of the source information in this article.

2 See Central Region Airports Division AIP Sponsor Guide, http://www.faa.gov/airports/central/aip/sponsor_guide/media/0100.pdf

3 http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf .

4 http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/

5 Grant Assurance 1.1.

6 Grant Assurance 24.

7 Grant Assurance 12.3(B)(3).

8 Grant Assurance 12.1 ("This chapter discusses procedures for reviewing lease agreements between the sponsor and aeronautical users").

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as a hotel or restaurant. Even if the commercial developer were to find a willing mortgage lender (good luck in today's lending climate!), it will likely not be able to recover its investment over a 30-year term. Owners of hotels, convenience stores and restaurants must spend major sums every few years to refurbish and upgrade their buildings to meet industry, airport and franchisor standards.

C. Some Negotiating Strategies

In negotiating with an airport for a longer ground lease term, the lawyer for the private developer should consider:

(1) Is the property in question even subject to the terms of the Grant Assurances and the Airport Compliance Manual? The lawyer may luck out and find that the United States has declared the property "surplus" and no longer subject to FAA regulation. A title search may reveal whether this is the case. Or, the lawyer may discover that the property was not purchased with airport improvement grants and is not subject to the Grant Assurances and Airport Compliance Manual.

(2) Is the proposed use an aeronautical or non-aeronautical use? If the lease is for a non-aeronautical use, the term limits set forth in the Airport Compliance Manual do not apply.

(3) Can the developer recover its investment over the term of the lease? If not, then even an airport that applies the aeronautical lease standards to non-aeronautical leases should show more flexibility and consider a longer lease term. ■

ACREL Meetings: A Q&A with the Chair of the Meetings Committee and the Executive Director

by Julian P. Rackow and Jill H. Pace

In times of tight budgets and cutbacks in reimbursements for travel and meeting expenses, questions naturally arise about meeting registration fees. After all, regardless of the merits of a conference, you'll probably need to justify the expense. So here are some things you might want to consider.

Q: What are some of the principal factors that go into planning ACREL meetings, and how do those affect meeting costs?

A: Conference expenses are affected by a number of factors. ACREL members have repeatedly confirmed their desire to hold meetings in high quality facilities, typically the top hotels or resorts in a given meeting location. These properties must be booked well in advance for meetings of the size of ACREL's. In addition, our meetings fall during the "high seasons" for meetings – typically September/October and March/April – when space is at a premium. Therefore, to assure that we have a facility large enough to handle our group, we are currently booking meetings three to four years in advance. We try to create a mix of city and resort locations, paying attention to geographic diversity, ease of access to airports, availability of tours and activities of historic, artistic or recreational interest, and other factors that contribute to an appealing learning and social environment, and an opportunity to visit with old friends and make new ones.

Q: Why can I find rates online that are different from the ACREL group rates?

A: When we contract with a hotel, we negotiate the best group rates available at the time we do the booking. Our contracts provide for rates substantially below the standard or "rack" rate, and equal to or lower than the rate for other groups meeting at the same time. Generally, this arrangement pro-

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tects us against inflation. In a recession, on the other hand, hotels, like airlines, may offer deep discounts to limited numbers of individual travelers if the hotels are less than fully booked.

Q: What drives up registration fees?

A: As anyone who has hosted a wedding, bar or bat mitzvah, law firm meeting or other special event knows all too well, the costs of food and beverages (especially alcohol) at major hotels has skyrocketed in recent years. Add to that the typical 30% "++" fees for sales tax and gratuities – and a $5 cup of coffee winds up costing ACREL $6.50. Audio-visual costs are also a major meeting expense. The proliferation of service charges and add-on fees (such as for Internet access) are additional costs. Putting on a successful conference that meets members' needs in a cost-effective manner without cutting too many corners remains a challenge.

Q: Have meeting registration fees gone up?

A: In fact, we have worked hard to keep meeting registration fees and hotel costs in line. The 2009 meeting registration fee of $825 in Washington was $25 less than the 2005 registration fee of $875 in New York, and hotel room rates paid by our members have not changed substantially in over ten years, and in many cases are lower than some rates paid then.

Q: Why shouldn't I book "outside the block"?

A: ACREL members who book rooms at the conference hotel independently of the meeting may sometimes obtain a cheaper rate through such discounting. They may not realize, however, that they are hurting the College in the process. The hotels base their discounted charges to ACREL for meeting rooms and meal functions, and their provision of staffing and related services, on the number of rooms we guarantee for the meeting. Members who do not acknowledge their affiliation with ACREL when booking their rooms make meeting these guarantees more difficult, and potentially raise the overall cost of the meeting. Organizations that consistently fail to meet their room blocks are unable to contract for top quality facilities.

Q: What do I miss if I'm not at the conference hotel?

A: Of course, members are always free to stay at alternate locations, and some do. Most people, however, prefer the collegiality and convenience of staying at the conference hotel. Let's face it: many benefits from conference attendance are hard to quantify. For example, although networking is undoubtedly one of the most important parts of a conference, it is also one of the toughest to measure. But it would be easy to miss out on the networking altogether by staying at another hotel and missing the informal interactions that take place outside the program sessions. Plus, staying at the conference hotel makes it easier to participate in meeting sessions and social activities.

Q: How can I measure the value of ACREL meetings?

A: A typical stand-alone 60-minute ALI-ABA webinar costs **$149**. But at the typical ACREL meeting, you can participate in nine education panels and workshops, for a total of 8 or more hours of CLE credit, a value of more than **$1,192** for the member rate of only **$825,** a fee that also includes 2 breakfasts, 2 coffee breaks, a reception that doubles as dinner, and a dinner/dance. Attendees at ACREL meetings also receive both a hard copy of the materials and a CD. And, you get all that knowledge and face-to-face networking in just three days.

Q: Any final thoughts?

A: The Meetings Committee and Jill spend a lot of time on cost/benefit analysis, looking for ways to keep costs in line while providing a good meeting experience for attendees. We certainly welcome any thoughts or suggestions from Fellows regarding possible venues, and any other suggestions to help keep costs under control. ■