

Expert Interview with Eric Menkes of Duval & Stachenfeld LLP: Commercial Leasing in the COVID-19 and Post-COVID-19 World

A Practical Guidance® Expert Interview by Eric G. Menkes, Duval & Stachenfeld LLP



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The COVID-19 pandemic immediately and profoundly disrupted the commercial leasing market, causing parties to delay pending lease negotiations and restructure or even abandon existing leases. In addition to assisting clients with the immediate repercussions of the pandemic, many leasing attorneys also found themselves rethinking their approach to drafting and negotiating basic lease terms—everything from force majeure clauses to termination rights merited closer scrutiny. But where are we now, more than one year into the pandemic? And more importantly, where are we headed? Even as cities and states relax COVID-19 restrictions, real questions remain about the effect of possible long-term behavioral changes on the future of the office and retail sectors.

For insight, Practical Guidance looked to both its Survey of Commercial Terms (an ongoing survey collecting data from non-publicly filed leases) and several seasoned commercial leasing attorneys. To take the survey, view the most current results, and access a report incorporating survey data with these expert insights, click [here](#).

The questions below are answered by [Eric Menkes](#), a partner at Duval & Stachenfeld LLP, a New York City-based real estate firm. Eric's primary area of expertise is commercial leasing, and he co-chairs the firm's Leasing Practice Group. He is familiar with virtually all aspects of commercial leasing, representing both landlords and tenants, in office, retail,

ground lease, industrial, and triple-net transactions, as well as sublease transactions. Eric has particular expertise in retail leasing, representing shopping center and street retail owners, as well as national and international retailers.

1. What have been the biggest challenges in doing commercial leasing work during the pandemic?

Far and away the biggest challenge presented by the pandemic was dealing with the uncertainty. As with the terrorist attacks in 2001 and the Great Recession in 2008, the pandemic was a catastrophic event that caused extraordinary uncertainty. The result was a chilling—in fact a freezing—of the markets. For a number of months, the commercial leasing market virtually stopped, dead in its tracks.

2. What are you seeing right now in the commercial leasing market? Have things stabilized since the first few months of the pandemic, even if it's just to settle into a new normal?

The market has rebounded significantly. I, and just about everyone I've spoken with, noticed a real sea change in late February / early March, around the time that the vaccines became widely available. It's still too early to use the word "stabilized"—we still don't understand to what extent WFH will become a part of the work culture. But markets have indeed opened up and new deals are being made.

3. Are your clients continuing to restructure/renege existing leases at this point? Are landlords still granting rent deferrals? Are tenants still asking to reduce their space? Have these negotiations generally been cooperative vs. combative?

I am no longer seeing new rent deferral requests. Occasionally, I get asked to extend a rent deferral deal signed up last year.

4. **In your experience, how much bargaining power do tenants have right now? To the extent that you have clients in different regions, are you seeing large regional differences?**

Tenants across the board have much greater leverage, on both business and legal terms. While the markets have returned, rent numbers are generally depressed. The most significant change is in the structure of the deals themselves. Landlords are agreeing to shorter lease terms than before. Retail landlords are agreeing to take much more of their rent in percentage rent, rather than fixed rent. Good retail tenants, willing to sign large long-term leases, are few and far between, and they have an extraordinary amount of leverage.

5. **Are you seeing force majeure clauses written and negotiated differently than in the past? How about rent abatement clauses? Do any other specific clauses come to mind?**

The one significant change is that tenants are regularly asking for rent abatements in the event of future pandemic events. Most retail landlords are willing to agree to some kind of concession (perhaps such as halving, but not eliminating, the rent). Office landlords are less accommodating.

6. **Have you encountered many properties that have been repurposed in response to COVID-19? If so, was it done as a short-term measure to deal with temporary restrictions or as part of a long-term plan to address behavioral changes and preferences that may outlive the pandemic?**

By and large, repurposing is a long-term and expensive commitment, and I suspect it is discussed more in the press than actually happening, at least right now.

7. **How about co-working spaces and desk-sharing arrangements? Are you seeing more use of shared office space and other temporary, flexible arrangements as people who cannot access their old offices may nonetheless occasionally need to work from an office?**

Notwithstanding the spectacular failure of WeWork and other providers, co-working is here to stay and will likely grow. I am seeing more owners dedicate portions of their assets to co-working and creating their own operations. It is a legitimate office use with increasing demand.

8. **We are now more than a year into the pandemic, what are the key things to watch for in the leasing market over the next few months? How about over the next year?**

At least here in New York City, there is a huge amount of excess capacity. Everyone in the market is carefully eyeing the absorption rate.

Eric G. Menkes, Partner, Duval & Stachenfeld LLP

Eric G. Menkes was one of the first partners in the real estate department at Duval & Stachenfeld. His primary area of expertise is commercial leasing and he co-chairs the firm's Leasing Practice Group. Eric is familiar with virtually all aspects of commercial leasing, representing both landlords and tenants, in office, retail, ground lease, industrial, and triple-net transactions, as well as sublease transactions; he has particular expertise in retail leasing, representing shopping center and street retail owners, as well as national and international retailers. Eric regularly lectures at International Council of Shopping Center law conferences; he is a contributor to *The Practical Real Estate Lawyer*; and he has spoken before the Real Property Law Section of the New York State Bar Association.

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