

SEPTEMBER-OCTOBER 2019 EDITION

23rd Annual CCIM Wine Event
October 10th | 4 Queens Hotel & Casino**HIGHLIGHTS FROM INSIDE:****PRESIDENT'S MESSAGE**BY JENNIFER F. OTT, CCIM
2019 SOUTHERN NEVADA
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Thank You to Our Directors
and Past Presidents for a
Great Year

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**2019 Putt Putt
Tournament
Photos**

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LEGAL BRIEFSBY JAMES A. BECKSTROM, ESQ.
MARQUIS AURBACH COFFING

The Short Term
Commercial Rental
Trend that Cannot be
Ignored

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The Short Term Commercial Rental Trend that Cannot be Ignored

The popularity of short term residential rentals is no surprise to anyone in the real estate industry. Websites such as HomeAway, VRBO and Airbnb in recent years have gone from out of the ordinary to mainstream. In the City of Las Vegas, a Short-Term Residential Rental is defined as follows:

[T]he commercial use, or the making available for commercial use, of a residential dwelling unit for dwelling, lodging or sleeping purposes, wherein any individual guest rents or occupies the entire dwelling unit or one or more individual rooms within the unit for a period of less than thirty-one (31) consecutive calendar days. The term does not include a community residence, facility for transitional living for released offenders, or any other facility with dwelling units that is specifically defined in LVMC 6.75.010. Note that other cities in Clark County have different definitions of short-term residential rentals.

Excluded from this definition are short term commercial rentals utilized for commercial use. However, simply

because short term commercial rentals are not yet restricted does not mean landlords should not pay close attention to the increasing trend of short term commercial rentals. As homeowner associations and local municipalities continue to grapple with regulating the influx of short-term rental demand in the residential arena, recent trends indicate that the short-term rental market is soon to make its landing in the commercial real estate arena.

Websites such as venUse are now actively marketing short term workspaces to accommodate businesses looking for quick, no strings attached commercial space. Under such websites, landlords (or tenants) benefit from additional revenue to boost their bottom line, while entrepreneurs or seasonal businesses benefit from a short-term location, without locking into a long-term lease. The co-founder of venUse has characterized short-term commercial real estate as "recycling real estate."¹ Typical short-term rentals include situations, where a business that is open

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¹See Aldo Svaldi, *Denver Post*, August 27, 2019, <https://www.denverpost.com/2019/08/27/denver-airbnb-venuse-commercial-real-estate-shepherd>.

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seasonally or for a “pop-up” sale that leases a space for a period of days or weeks from an existing business. Other situations include coffee shops that may offer space for rent on an hourly basis after closing hours to private functions. While this short-term commercial rental trend has not yet become the norm, those handling commercial leases must pay close attention to this increasing trend. Those well-versed in commercial real estate understand that among the more crucial provisions within any commercial lease agreement are the rights and obligations of a tenant who desires to sublease. Subleasing presents the typical pitfalls, including the legal status of parties to a sublease, personal guarantees and the sublessee's rights under the master lease.

The emergence of short-term rentals has brought another twist into the universe of the commercial lease, as well as restrictions associated with sublease provisions, both of which require close attention. Landlords must now place additional emphasis on the restrictions imposed on subleasing and investigate whether a short-term rental prohibition should be expressly included within provisions governing subleasing, or whether independent provisions are necessary. At minimum, close attention should be paid to the defined use of space within the lease agreement to ensure tenants and their short-term renters are not utilizing the space for purposes outside the scope of the lease.

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Careful attention should also be focused on applicable Covenants, Conditions & Restrictions and relevant insurance and indemnity provisions within the lease agreement. CC&Rs should be reviewed with attention to ensuring short-term rentals are carefully defined and the restrictions are clearly articulated. In many instances, CC&Rs will have to be amended to reflect this emerging trend if landlords desire to prohibit short-term rentals. Additionally, landlords must pay close attention to the often boilerplate indemnity provisions within the lease agreement and should consider including additional insurance riders to cover short term tenants. **CCJM**

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