

Southern Nevada CCIM Chapter

Perspective

What's Inside

Click on a topic below to go directly to the page

Active Measures

Commercial Real Estate Moves Forward

Pg. 3

Economic Watch

2nd Quarter GDP

Pg. 5

Legal Brief

Go Dark/Dim Clauses

Pg. 7

President's Message

Adam Gregory, CCIM

2021 Southern Nevada CCIM Chapter President



I hope everyone is having a safe and productive summer. Unfortunately, with the recent surge in Covid infections, we are back to wearing face masks at our events for the foreseeable future. While the recent surge is concerning, it does not appear to have slowed down transaction volume. This summer, the commercial real estate market returned to pre-pandemic levels fueled by extremely low-interest rates and continued government stimulus. As a mortgage banker, I am asked constantly for my opinion on how long we can expect to see interest rates at this level. While we did see the 10-year treasury market climb past 1.7% at the beginning of the year, it has since retreated and is hovering around 1.2%. This shows that the market believes inflation is transitory. With bond rates at this level, we will continue to see historic low-interest rates that drive acquisitions. The US GDP growth is projected to be the strongest since the early 1980s. However, signs point to slower growth over the coming quarters as this Delta Variant takes hold across the country. The recent extension on eviction moratoriums and lower than expected unemployment should keep the Fed rates at or near zero well into 2023. Basically, take advantage of the market conditions while you can.

Now is also a perfect time to pursue the CCIM Designation. The Southern Nevada Chapter is returning to in-person classes in August. In addition, the Chapter is fortunate to have several scholarships at its disposal to help you achieve your goal of becoming a CCIM. I encourage all that are interested to reach out regarding the upcoming classes and available scholarships.

Continued on page 14 - [Click here to go to page](#)

Pro Tips

“Reputation matters. Treat everyone - whether rookie or veteran - with dignity & respect. Las Vegas is a small, tight industry & you never know from whom the next opportunity will come.”



Andy Crawford, CCIM

“You never know how close you are to achieving what you set out to do. Work harder than the competition, show up early, be present and don't give up. Everything has unexpected inconveniences but misery is optional so choose wisely how you play the cards you are dealt.”



Meaghan Levy, CCIM, CPM

“Go Dark/Dim” Clauses in Conjunction with “Landlord Recapture Rights”

A Potential Solution to Address Tenant Apprehension During the Economic Emergence from the COVID-19 Pandemic

by Hayden Smith

Here in Nevada, the initial COVID-19 shutdown of “non-essential” businesses in March 2020, devastated many retail businesses in Southern Nevada. Numerous businesses were forced to shut their doors for several weeks, and later were only permitted to offer services to a limited capacity of patrons; consequently, commercial tenants have been apprehensive about signing long-term leases during this current uncertain period of economic reemergence. This article briefly outlines how “go dark/dim provisions,” in conjunction with a landlord’s right to recapture, can alleviate tenant concerns, while preventing tenants from breaching their lease and creating a detrimental vacancy.

Tenant “Go Dark/Dim” Provisions:

“Go dark” provisions allow tenants to cease operations at a leased space while the tenant continues to pay rent, and is a cost-saving mechanism in response to adverse economic conditions. Such provisions allow tenants to continue paying monthly rent, prevent a default under the lease, and allows a tenant to either resume operations when the adverse economic event passes or to mitigate its expenses until the landlord terminates the lease.

“Go dim” provisions allow tenants to scale back operations and/or reduce operational hours in response to an adverse economic event. This situation is typically more palatable for landlords than allowing tenants to completely shut down operations, which can negatively detract from the business of other neighboring tenants in a commercial center.

Landlord “Continuous Operation” and “Recapture Right” Provisions:

Traditionally, landlords have included “continuous operation” provisions in commercial leases which require tenants to continuously operate their businesses (even in the event of adverse conditions). In the wake of the

COVID-19 shutdown, however, tenants are increasingly apprehensive about signing long-term leases with such requirement.

One way that landlords can appease apprehensive tenants, is to allow for go dim/dark provisions in conjunction with an explicit landlord option to recapture the space and terminate a tenant’s lease if the tenant goes dark/dim. This provides a workable solution for tenants, by affording them financial flexibility to address adverse economic conditions while incentivizing tenants to keep paying rent. In some cases, tenants are even able to rebound after an unfortunate economic decline, and landlords can choose to continue leasing to the tenant under either the previous lease terms or under a new negotiated set of terms. This saves landlords marketing costs in searching for new tenants, or else, allows landlords to search for a new tenant to fill a dark/dim space, while maintaining cash flow and preventing a complete vacancy.

Lease Terms to Consider:

1. Trigger Events

Landlords must be careful to specifically define events that will trigger a tenant’s ability to go dark/dim. This language should indicate that a tenant can only elect to go dark/dim when the tenant cannot “feasibly continue its business operations,” or is “economically justified” in exercising its right to go dark/dim, and should include clearly defined standards below which a tenant must fall before going dark/dim.

2. Notice

While landlords tend to prefer more advanced notice of a tenant who is invoking their go dark/dim right (to allow landlords as much time as possible to find a new tenant), and tenants tend to prefer shorter notice requirements, most commercial leases

Continued on page 15 - [Click here to go to page](#)

Go Dark/Dim - Continued from page 7

require a 60-day to 90-day notice period, before a tenant can invoke their go dark/dim right. Landlords must also explicitly require a tenant to continue paying through the termination of the lease. Furthermore, landlords should also explicitly include a provision that allows them to solicit new tenants for the dark/dim space (including the landlord's right to display advertising signage on the property). Finally, landlords must explicitly define their notice requirement (typically 30 days) before terminating the lease and recapturing the lease space.

3. Security

Landlords should explicitly require tenants to continue paying their utility bills to keep the lease space lights on (1) so as not to detract from neighboring businesses in a shopping center, and (2) as a security measure. Landlords also should explicitly require tenants to continue to maintain insurance in compliance with the minimum applicable policy limits in the lease, until the tenant vacates the space, to ensure that the tenant's property is properly secured.

Landlords should also consider other factors before a landlord agrees to a go dark/dim provision including: lender restrictions, percentage rent implications, subtenant's rights, and repayment of tenant improvement loans to landlords.

In sum, go dark/dim provisions, in conjunction with landlord recapture provisions, can ease tenants' apprehension of signing long-term leases.



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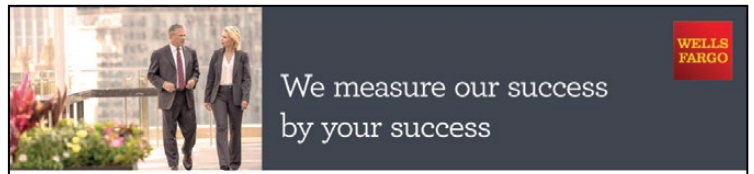
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