

PERSPECTIVE

President's Message



Roy Fritz, CCIM

2024 Southern Nevada
CCIM Chapter President

Dear Members and Friends of the CCIM Community,

As we step into the second half of the year, I am filled with immense pride and gratitude for all we have accomplished together over the first half of the year. From our January lunch with a robot version of Spencer Levy to our tour of John S Park, the Poker Run and Putt Putt events, the successful mini-education workshops, and the \$5K community service committee donation from the Larkin group, the first half of the year has been a major success.

Current Initiatives & Updates: As we move into the second half of 2024, we continue to build on this momentum within the chapter. We will be hosting CCIM classes CI 101 July 22nd – 25th and CI 103 September 24th -27th. We have some great monthly lunch programs lined up, our signature wine soiree, and the Sponsor & Designee event. I look forward to connecting with all of you at these events and having a great time, as always!

Looking Ahead: The future holds tremendous potential for our chapter and the entire Las Vegas Valley. Within the chapter and our individual firms, we are committed to fostering education, innovation, and entrepreneurship with the commercial real estate industry.

A Call to Action: As we embark on the second half of the year, I encourage each of you to stay engaged and involved. Our strength lies in our community, and together, we can achieve extraordinary things. In addition to CCIM, attend city council meetings, participate

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Lease Negotiations: Should an Owner Use an Attorney or Commercial Broker?

Phillip S. Aurbach, Esq., Marquis Aurbach

The answer is both (plus a CPA, but tax advice is beyond the scope of this article).

What an Attorney Brings to a Lease Review.

Some tenants want to save money and don't want to pay an attorney. Let's assume the tenant has his own broker since there is always a conflict-of-interest problem when the Landlord's broker represents the landlord and the tenant—even if the required disclosure is given. The tenant's broker is in an awkward position because the broker should not be giving tax advice nor legal advice. It is a misdemeanor to give legal advice without a license unless this is the broker's third offense—in which case it is a felony. For example, if an exclusive use clause says, "Landlord will not lease space in the Center to anyone for the purpose of a retail tennis store without Tenant's prior written consent," the tenant's broker should say to the potential tenant, "The exclusive use clause may have some enforceability problems because of the wording. You should consult an attorney to give you advice on the wording." The choice of words which affect enforceability is legal advice. In the real world, an experienced broker usually takes the risk of committing a misdemeanor (like running a red light) and will say, "Let's suggest wording that says, "Any retail store that offers tennis rackets, tennis clothes including shoes or tennis accessories such as tennis balls, racket stringing, ball hoppers and similar items." The landlord will balk because what if a Target store wants to go in and sell tennis balls or cheap rackets? Maybe there could be an agreement that the tenant's consent will not be unreasonably withheld.

Attorneys can look at (1) the condemnation clauses to determine if they are reasonable; (2) the partial/total destruction of the buildings clauses to determine if they are reasonable; (3) the default clause to determine if the landlord is trying to change the length of notice to be given, e.g., a 3 day notice to pay rent or quit (5 days is required under NRS 40.2512(1)(a)); (4) ambiguities; and (5) the terms to make certain that they are accurately set forth in the

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Avee Higbee, Phil Aurbach, Terry Moore, Scott Marquis, Jordan Peel
(David Alleman and Lance Earl - not pictured)

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lease. For example, if a property has multiple buildings, the lease may refer to common area expenses relating to the entire shopping center or to common area expenses that the tenants of one building in the center must share. When the lease refers to “CAM” expenses, is the reference to CAM for the entire center or just CAM for the one building?

What a Broker Brings to a Lease Review. In a recent 3,000 sq. ft. negotiation on behalf of a tenant, an attorney I know ran into trouble. The landlord’s attorney drafted the lease and was very reluctant to modify anything. This center was not the Fashion Show Mall or the Forum Shops. It was an old center in an older part of town. The lease had very onerous provisions that the attorneys could not agree upon, but the tenant thought that space was perfect. The tenant did not want to pay hourly for her attorney since she was not making any progress. The tenant was using the landlord’s broker to help close the deal, but the landlord’s broker deferred to the landlord’s attorney who was a brick wall. There was no deal until the tenant decided to hire her own broker. The tenant’s broker spoke to the landlord’s attorney, and obtained permission to speak to the landlord

directly. The landlord had a wealth of experience, and they got closer to a deal. The catalyst that overcame inertia was when the landlord, the tenant and the tenant’s broker all got on a call. Voila! A deal and a signed lease.

An experienced broker can look at (1) percentage rent and know whether it is too high for this center; (2) whether an exclusive use should be granted; (3) whether the landlord’s property management fee is reasonable (4) whether the additional signage expenses are reasonable; (5) whether the amount of liability insurance coverage is reasonable; and (6) whether the CAM charges are reasonable, etc.

Ideally, a tenant and a landlord should think of their real estate broker, their attorney (as well as their CPA) as a team. Each professional has a different role to play in protecting their client.



Phil Aurbach is a founder of the law firm Marquis Aurbach. His practice areas include contract law, commercial litigation, real estate law, partnership, corporate dissolution, as well as mediating and arbitrating business disputes. He can be reached at (702) 382-0711 or by visiting the firm's website at maclaw.com.

The advertisement features a background image of a modern skyscraper with a glass facade. On the left, the text "YOUR DEALS: IN PRINT" is written in large, bold, red and black letters. In the center, the "NEVADA RED REPORT" logo is displayed, with "NEVADA" in small white letters above "RED" in large red letters, and "REPORT" in smaller white letters below "RED". Below the logo, it says "REAL ESTATE & DEVELOPMENT". On the right side, there is a black box containing white text: "RED REPORT, A SPECIAL SECTION WITHIN NEVADA BUSINESS MAGAZINE, FEATURES THE DEALS YOU'RE DOING." Below this, in red text, it says "To get your sales, leases, projects and loans featured email ReDReport@NevadaBusiness.com." At the bottom right, the "Nevada Business" logo is shown, with "THE DECISION MAKER'S MAGAZINE" in small letters below it, and the website "NevadaBusiness.com" underneath.