

PERSPECTIVE

President's Message



Jakke Farley, CCIM

2026 Southern Nevada
CCIM Chapter President

As we look back on another busy quarter for the Southern Nevada CCIM Chapter, I am continually impressed by the level of engagement and enthusiasm from our members. Southern Nevada continues to be a market that attracts attention from across the country, and our chapter is committed to keeping our members informed, connected, and prepared to navigate the opportunities and challenges ahead.

Our luncheon programs this quarter gave us two very different, and equally important, perspectives on the Las Vegas commercial real estate landscape. The Business of Sports in Las Vegas, exploring the tremendous impact professional sports are having on our economy, development patterns, and commercial real estate market. We then turned our attention to Nevada's Data Center Boom, which provided an in-depth look at the rapid growth of the data center industry in our state and the infrastructure, power, and real estate considerations that come with it. Both programs highlighted just how much our region continues to evolve and create new opportunities for commercial real estate professionals.

Education remains a cornerstone of our chapter, and our Education Committee had another strong quarter. We hosted CCIM Commercial Real Estate Negotiations and CCIM CI 103: User Decision Analysis for Commercial Investment Real Estate. These courses provide our members with the tools and knowledge needed to become better professionals and ultimately better serve their clients. I am especially proud of the commitment our members continue to make to professional development and the CCIM designation.

Giving back to our community is another important part of who we are as a chapter. This quarter, our members participated in CCIM Project

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Why Record-Keeping is an Essential: Why Record-Keeping is an Essential Arrow in Your Quiver

Sydney A. Soder, Esq., Marquis Auerbach

Commercial real estate can move fast, especially here in Southern Nevada. Between site tours, due diligence, inspections, client meetings, negotiations, closings, and the near-constant communications, documenting each step can feel like yet another burdensome task on an already full plate. But good record-keeping is a key habit that protects commercial real estate professionals and participants when it matters most.

Part 1 – Leasing Mitigation Efforts

***Walking through preservation
of records in leasing
following the commercial tenant's default.***

When a commercial tenant defaults and walks away, the landlord cannot simply let the space sit dark and wait for damages to accumulate. Sometimes tenants pay their obligations even when they vacate, and sometimes landlords do not initially want to pursue the defaulting tenant but are forced into a position where they must. Nevertheless, those responsible for finding a new tenant should make reasonable efforts to mitigate damages and document those efforts. Under Nevada law, a landlord has an affirmative duty to make reasonable efforts to fairly rent out the premises. This is not simply good practice – it is a legal obligation the commercial landlord must not ignore. In general, the burden of proof is on the vacating tenant to demonstrate that a landlord's damages could have been lessened by reasonable diligence. However, the ability to demonstrate that genuine, market-appropriate steps were in fact taken rests squarely with the

landlord, and keeping diligent records maximizes the landlord's potential recovery of damages (unpaid rent).

Fortunately, reasonableness is the standard – not success. A landlord who makes legitimate re-letting efforts and can demonstrate those steps will not be penalized if they are ultimately unable to install a replacement tenant. Without records

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

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showing what was done and when, a court can draw the inference that the landlord sat on its hands and failed to reasonably abate their own damages, even if that is not what actually happened.

In evaluating a landlord's conduct, courts in Nevada may look to timeliness of marketing efforts, whether those efforts were active and sustained, and whether the landlord's approach was consistent with how a reasonable commercial property owner would market a comparable vacancy in the same market. One federal court applying Nevada law found that the landlord's mitigation efforts were reasonable where the landlord listed the property on LoopNet, posted signage, distributed brochures, communicated with brokers, and considered proposals from prospective tenants – the same steps the landlord used to market its other properties. On the other hand, the tenant offered no evidence to the contrary, such as expert testimony, market comparables, or alternative marketing analysis, and the court therefore held the tenant failed to carry its burden of proving the landlord's mitigation attempts were unreasonable.

So, what does effective mitigation documentation look like in practice? Most importantly, building a file from day one of the vacancy, as follows:

- ▶ Start with the broker engagement letter or listing agreement establishing the earliest date active marketing began.
- ▶ Save confirmation screenshots of every online posting (CoStar, LoopNet, CREXi, etc.) demonstrating the go-live date and listing details.
- ▶ When signage goes up on the property, photograph it with a time-stamped image and note the installation date.
- ▶ Take photos periodically to show the sign remaining in place throughout the vacancy period.
- ▶ Maintain a running log of all tenant inquiries received, including the date, the prospective tenant's name, and the outcome of each interaction.

- ▶ Record every tour conducted and every proposal or letter of intent received.
- ▶ If an offer is declined, document the specific reason(s) in writing at the time.
- ▶ Preserve a record of comparable listings and recent lease transactions demonstrating that the asking rate was reasonable for the respective market.

And finally, an important yet frequently overlooked guiding principle here: document each step at the time it occurs. Piecing together a mitigation timeline in retrospect, risks undermining verifiable mitigation efforts, and with it, the potential recovery of damages caused by a tenant's premature vacancy.

Although the priorities are endless in the world of commercial real estate, sending that quick confirmation email or saving that screenshot to a deal folder are small habits that can mean the difference between recovering or losing your client's prospective damages. While creating a diligent, thorough record may be unglamorous and tedious work, it is also the work that pays off in the end.



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¹ NRS 118.175; and see *Laleka v. Serene Ctr., LLC*, 552 P.3d 707 (Nev. App. 2024) (unpublished).

² See *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 492, 117 P.3d 219, 226 (2005) (stating general rule that breaching party has burden to prove failure to mitigate).

³ See *Laleka*, 552 P.3d 707 (Nevada's Court of Appeals affirming judgment in landlord's favor where landlord produced evidence of its efforts to mitigate, shifting the burden to the tenant to introduce specific facts showing genuine disputes concerning the reasonableness of the steps taken).

⁴ *Prologis NA3 NV II, LLC v. IGT, Inc.*, No. 3:11-CV-00346-HDM, 2014 WL 321126 (D. Nev. Jan. 29, 2014).

⁵ *Id.*