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# Negotiating Commercial Leases 2016

- Changing Lease Forms and Negotiating Tactics in the New Improving Economy
- Unanticipated Limitations in Long-Term Planning and Lease Restructuring
- Fundamentals of Structuring for Buildability and Financing
- Hot Topics for Dealing with Long-Term Lease Structures, Audits and Credit Support
- Challenges in Building Today's Tenant Improvements

*This is an approved New York transitional program*

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One Hour of  
Ethics Credit*

**March 10-11, 2016**

New York City

Cleveland and New Brunswick Groupcast Locations

Live Webcast

# Negotiating Commercial Leases 2016

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## Why You Should Attend

Leases, known as the building blocks of value for all real estate, are a primary business asset, but also contain landmines of liability. If written poorly or administered without expertise, they can be the downfall of an otherwise sound real estate investment. From the tenant's perspective, lack of attention or in-depth knowledge can impair operations, increase costs and limit growth. Attending this course should be a priority for anyone representing users or occupiers of space, or owners as investors in real estate. There's no disputing the importance of intimately knowing the lease as a multidimensional financial tool, hell or high-water financial instrument, and contract of limitations and regulations. This program will help you to feel truly competent to negotiate these lengthy and sophisticated instruments, along with spotting the hidden costs, risk shifting and common law demising. Your client is depending on you to help preserve their investment in today's world. This program will cover "what's hot and what's not," and help you stay on the "cutting edge" of current market negotiations. With the changing market, and rise of cleverly drafted leases, learning how to stay a step ahead and fine-tune your skills, techniques and strategies is certainly a wise investment of your time.

## What You Will Learn

- Long-term development and ground lease trends
- Current negotiation strategies, market tricks, and advice and custom for avoiding common traps with "turnkey" and "build to suit" versus hidden costs for the construction or work allowance
- Examine alternative financial strategies for securing the landlord's performance and security for owner cash flow obligations under large lease work letters and tenant improvement allowances
- Identifying traps increases tenant alterations costs – from the hidden to the obvious
- Default remedies, and complex real estate issues in arbitration versus litigation
- Re-emergence of the "takeover lease" – papering the risk and securing performance and the "good guy guaranty games"

## Who Should Attend

Landlords, developers, real estate investment advisors, lenders and anyone in the commercial real estate leasing field and other allied professionals, including certified public accountants, retail facilities directors, real estate brokers, commercial property managers, property fund managers, government regulators/service providers, lease cost compliance professionals and REIT investors and managers.

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*"Extremely good and informative program – one of the best CLEs that I have taken."*

– Michael Adams, TeleTech Services Corporation

*"Some of the best . . . timely updated advice. Learned a lot."*

– Richard Traub, Freeborn & Peters LLP

*"As usual, all terrific . . ."*

– Michael Wien, Tannenbaum Helpert Syracuse & Hirschtritt LLP

# Program Schedule

**Day One: 9:00 a.m. – 4:30 p.m.**

*Morning Session: 9:00 a.m. – 11:45 a.m.*

9:00

## Changing Lease Forms and Negotiating Tactics in the New Improving Economy

- Lease forms expanding again
- Econometric layering of “theft by lease” – re-bundle operating expense into fixed rent – anticipate inflation of escalations
- In market recovery – landlord’s need to close deals quick – tenants at premium
- Owners need to commence rent more quickly – reduce leasing legal fees
- Lease takeover loan/agreements tools
- Accelerate the many moving lease commencement dates – remove the risk
- Mock negotiation on getting all superior interests to the table

*Michael E. Meyer, Gerald R. Uram, John Busey Wood*

10:00 *Networking Break*

10:15

## Unanticipated Limitations in Long-Term Planning and Lease Restructuring

### A. Assignment and Subletting

- An overview
- Permitted transactions
- Recapture rights and profit-sharing
- Recognition agreements and consents
- Structural impediments to assignment and sublease rights

### B. Lease Restructuring: Pitfalls and Benefits

- How best to deal with tenant request to restructure the lease
- Explore ways in which the landlord can benefit from tenant lease restructuring
- Negotiation tips from both sides of the deal, such as being totally candid and accurate in supplying info
- Avoid common pitfalls such as failing to obtain consent of lender
- What the landlord will insist upon
- What the tenant should never agree to

*Jonathan K. Bright, Nancy Ann Connery, Meyer Last, Soo Yeon Lee, John Busey Wood*

11:45 *Lunch*

*Afternoon Session: 1:00 p.m. – 4:30 p.m.*

1:00

## Fundamentals of Structuring for Buildability and Financing

- Good guy guaranties and ground leases
- Off-balance sheet – springing obligations
- “The gap” period obligations – “backdoor expanded personal liability”
- Bankruptcy impact
- Hot topics – backdoor liability accelerations – “lease takeover triggers!”
- How to secure the payment and performance of the “lease taken over”
- Use of letters of credit
- Work-related provisions
- Practical tips from the broker’s perspective

*Meyer Last, Michael E. Meyer, John Busey Wood*

2:15

## Hot Topics for Dealing with Long-Term Lease Structures, Audits and Credit Support

- Hear how vacancies and historically incorrect gross-up adjustments are serving to
  - Overcharge in-place tenants
  - Understate landlord’s NOI
  - Understate management costs and taxes for base years
- US GAAP Reporting: new accounting for long-term leases – are you ready?
- Letters of credit – don’t get surprised later by the “fine print”!

*Alfred Erdmann, John Busey Wood*

3:15 *Networking Break*

3:30

## Ethical Gaps, Mishaps and Traps in Real Estate Practice

- Engagement letter gap
  - Scope creep
  - Later transactional conflicts
- Conflicts issues arising from outside counsel’s dealings with in-house counsel acting as owner/officer of property management company and independent counsel versus in-house counsel acting as a party to the transaction
- Virtual office, multijurisdictional practice/unauthorized practice concerns/confidentiality problems
- Bottom line for attendees: what is my practical procedural strategic plan to deal with conflicts, keep fee and keep client?
- Practical ethical and civility conduct tips for negotiating transactions

*Robert J. Bergson, Michael E. Meyer*

4:30 *Adjourn*

Please plan to arrive with enough time to register before the conference begins.  
A networking breakfast will be available upon your arrival.

## Day Two: 9:00 a.m. – 4:30 p.m.

### Morning Session: 9:00 a.m. – 1:00 p.m.

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9:00

#### Challenges in Building Today's Tenant Improvements

- Agreements to enter into ground leases and master leases – conversion to condo
- High value property – selling pieces of the property – future condominium declaration
- Hot topic – later creation of multiple superior interests and impact on expansion and option rights
- Timeline of creation of interests – impairment of rights – securing the landlord work/\$
- Negotiations of the SNDRA – “R” is for full Recognition – deal with the lender in beginning – abatements and credits for landlord’s work funded by tenant loan!
- Purchase extensions and options may not work after conversion
- Bring the lender and security interest holders to the table first – secure the landlord’s work funding and related rental credits/abatements – hot topic – loss of abatements and offset protections
- Owner in workout will not fund TI or brokerage commission – tenant the “equity investor”
- Negotiating today’s tenant options

*Nancy Ann Connery, Michael E. Meyer,  
John Busey Wood*

10:45 *Networking Break*

11:00

#### Complex Real Estate Issues: Arbitration vs. Litigation

- Dispute resolution continuum
- The pros and cons of mediation, arbitration and litigation
- The limits of confidentiality
- Strategically drafting dispute resolution clauses: the must-haves
- Tools/resources: appellate rules, clause builder, recent rule amendments
- International considerations

*Michael A. Marra, Luis M. Martinez, Michael E. Meyer,  
Elizabeth J. Champnoi, John Busey Wood*

12:00

#### Dealing with Large Hidden “Big Ticket” Items

- Triggered violations from deferred but enacted laws on filing of plans and demolition
- Costs included in CAM and operating expenses/capital disbursements – landlord build to suit but no cash and “under supervision” – how to protect the “turnkey”
- Negotiating “work/TI” funding/completion rights with the lender for “recognition of landlord’s work abatements and credits” – future “delivery space” TI funding
- Current failure to analyze and assure the “attached sketch” – compliance, use, repair obligations and “the missing terrace! . . . the added building systems!”
- Sprinklers, electric meters and VAV boxes – analyzing landlord’s “base building” inclusions
- Mock negotiation

*Jonathan K. Bright, Michael E. Meyer,  
John Busey Wood*

1:00 *Lunch*

### Afternoon Session: 2:00 p.m. – 4:30 p.m.

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2:00

#### Special Issues in Retail Leasing

- Use clauses and tradenames
- Exclusive use rights
- Opening and operating covenants
- Co-tenancy rights
- Assignment and subletting
- New issues facing landlords and tenants in the current retail environment
- Specific issues relating to luxury retail leases

*Theani C. Louskos, M. Rosie Rees, Mary Tang Rocha*

3:15 *Networking Break*

3:30

#### Issues Surrounding Insurance and Damage and Destruction

- Effect of the financial crisis on insurance
- Who insures the insurer?
- Coverage of catastrophic risks – coordinating the insurers
- What the landlord needs and what the tenant needs
- ACORD forms now truly worthless! Use of binders?

*Christine Chipurnoi, Alan M. Di Sciuolo,  
James A. Fenniman*

4:30 *Adjourn*

# Faculty

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## Co-Chairs:



**John Busey Wood**  
Akerman LLP  
New York City



**Michael E. Meyer**  
DLA Piper  
Los Angeles

**Robert J. Bergson**  
Abrams Garfinkel Margolis  
Bergson, LLP  
New York City

**Jonathan K. Bright**  
Wilk Auslander LLP  
New York City

**Christine Chipurnoi**  
Senior Vice President  
Wells Fargo Insurance  
Services USA, Inc.  
New York City

**Nancy Ann Connery**  
Schoeman Updike Kaufman  
Stern & Ascher LLP  
New York City

**Alan M. Di Sciullo**  
Director of Global Real Estate  
Shearman & Sterling LLP  
New York City

**Alfred Erdmann**  
WithumSmith+Brown, PC  
New York City

**James A. Fenniman**  
Executive Vice President  
Bollinger, Inc.  
New York City

**Meyer Last**  
Fried Frank Harris Shriver &  
Jacobson LLP  
New York City

**Soo Yeon Lee**  
Gordon & Centracchio, L.L.C.  
Chicago

**Theani C. Louskos**  
Bartko, Zankel, Bunzel & Miller  
San Francisco

**Michael A. Marra**  
Vice President  
American Arbitration Association  
Philadelphia

**Luis M. Martinez**  
Vice President  
American Arbitration Association  
International Centre  
for Dispute Resolution  
New York City

**M. Rosie Rees**  
Pircher, Nichols & Meeks  
Chicago

**Mary Tang Rocha**  
Vice President – Legal Counsel  
Christian Dior Couture  
New York City

**Elizabeth J. Shampnoi**  
Attorney/Director, Dispute Advisory  
& Forensic Services  
Stout Risius Ross, Inc.  
New York City

**Gerald R. Uram**  
Davis & Gilbert LLP  
New York City

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**Program Attorney:**  
**Meghan K. Carney**

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**CMBS and the Real Estate Lawyer 2016 – Lender and Borrower Issues in the Capital Market,**  
February 11, 2016 – New York City & Live Webcast

**Commercial Real Estate Financing 2016,** April 4-5, 2016 – Chicago; April 18-19, 2016 – New York City &  
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