REAL ESTATE ISSUES®

Published by THE COUNSELORS OF REAL ESTATE® *Volume 38, Number 1, 2013*

EUROPEAN LEADERSHIP ROUNDTABLE

Real Estate Markets and the Economy: European Insights

Moderator: Mary C. Bujold, CRE and Editor in Chief of Real Estate Issues*;*
Panelists: Hans-Ulrich Berendes, CRE; Marie-Noelle Brisson, CRE;
Tomáš Ctibor, CRE; Leopold Kuehmayer, CRE; Alfons Metzger, CRE; Alexander Neuhuber, CRE;
Michael P. Smithing, FRICS; and Simon Wainwright, FRICS

FEATURE

Comparing Value: U.S. Government Office Leases vs. Credit Tenant Leases

Donald Sonneman, ASA; and David J. Yerke, MAI, SGA

INSIDER'S PERSPECTIVE

Advertising and Promotion of Expert Services

Jack P. Friedman Ph.D., CRE; Barry A. Diskin, Ph.D., CRE; and Nicholas Ordway, Ph.D., J.D.

RESOURCE REVIEW

Miami: Mistress of the Americas

Reviewed by Joe W. Parker, CRE

CRE™
THE COUNSELORS OF REAL ESTATE®
www.cre.org

REAL ESTATE ISSUES®

Published by THE COUNSELORS OF REAL ESTATE®

Third class postage paid in Chicago. *Real Estate Issues*® publishes three times annually. Subscription rates are: $48 for one year (3 issues); $80 for two years; $96 for three years; $42 per year to students and faculty; $54 foreign rate, submit in U.S. currency; single copy $15. Remittance may be made by credit card or personal check, payable to The Counselors of Real Estate. Remittance, change of address notices, undeliverable copies, orders for subscriptions and editorial material should be sent to *Real Estate Issues*. The Counselors of Real Estate, 430 N. Michigan Ave., Chicago, IL 60611. Phone 312.329.8427; Fax: 312.329.8881; Email: *info@cre.org*; website: *www.cre.org*. Library of Congress card number LC 76-55075

REAL ESTATE ISSUES®

Published by THE COUNSELORS OF REAL ESTATE®

CONTENTS

Editor's Note

BY MARY C. BUJOLD, CRE

> *"Coming together is a beginning; keeping together is progress; working together is success."*
>
> —Henry Ford

This is my first issue as Editor in Chief of *Real Estate Issues*®. Need I say that I follow a long line of editors who have molded this journal into what it is today; a sophisticated, thoughtful and intelligent publication that offers some of the best thinking today on important and critical topics in real estate?

My immediate predecessors, **CRE Peter Burley**, and before him, **CRE Maura Cochran**, have, without fail, consistently held to the principles of The Counselors organization, which has been reflected in the articles that have been published here. I can only hope to continue in that same path to ensure that the material in these pages brings to CREs and other professionals alike, interesting and informative work that may shape the manner in which we consider real estate markets.

A year ago, The Counselors developed its Top Ten list of important real estate issues, and this year's External Affairs Committee is continuing the list with the intention of making this a permanent feature of CRE. *Real Estate Issues* is now connected with External Affairs. As a member of both committees, I see a strong opportunity to bring additional depth to the list through the soliciting of specific articles on topics that have been identified as critical to our professions.

The U.S. economy is finally moving in the right direction after several years of economic recession. But, we are not out of the woods yet. Some sectors of the real estate market are driving our return to growth while others remain stagnant. Capital markets are rising again from the ashes, but caution remains.

It is in this vein that the first issue of *REI* looks to our European associates for their assessment of the current economic situation in Europe, and a discussion of how the current situation is affecting commercial real estate markets across that continent. Information and opinions were obtained from a group of seven high-profile professionals from several countries, giving a depth and breadth to the topics presented. I was honored to be able to work with this group's participants to solicit their input. The result is a thoughtful compilation of insights from CREs and FRICs practitioners.

I would like to personally thank the following individuals who assisted me with bringing the European group together:

Brian A. Glanville, **CRE**, **MAI**
Arthur P. Pasquarella, **CRE**
Liliane Van Cauwenbergh, managing director, RICS EMEA (covering Europe, Middle East and Africa)
Professor Alfons Metzger, **CRE**

These individuals were instrumental in contacting people to encourage participation in the Roundtable Discussion and assisting me with the outline for the questions that were put forth.

I am also indebted to the participants of the Roundtable who gave their time and energy to so thoughtfully respond to the questions that were raised and who provided important insights into the current European economic situation, issues within the euro zone and its effects on local real estate markets.

When a united European Union was first contemplated, there were those who said it could not be done; that the strong nationalist states that exist in Europe would not be able to come together and sustain a common economic collaboration. The EU and its member states have succeeded. The euro remains today one of the strongest currencies in the world, and despite financial issues, stronger than the American dollar. Although the global financial crisis has perhaps rattled the EU's foundation, its ability to come together and work through the challenges as mentioned by several of the participants will enable it to rise above its difficulties. I believe that the EU will succeed and will be stronger for it.

Expert Witness Testimony: I am delighted to see that we have an article that outlines how to promote oneself as an expert witness. I know that many of our CREs have active practices in this area. The wealth of knowledge that is held by our membership can be invaluable in many areas of real estate litigation. Authors **Jack Friedman**, **CRE**, **Barry Diskin**, **CRE**, and **Nick Ordway** take this topic and provide a concise primer on how to attract this business, respond to inquiries and ensure that your time and expertise is appropriately considered and compensated.

Authors **Donald Sonneman** and **David Yerke** present a strong article on the evaluation of government leases versus credit tenants. As they state, there is a significant contrast between the current economic information that exists and the apparent status quo of investors who still consider that federal government leases justify the highest credit rating. This article has some significant points to make given the credit rating of our government.

Miami: Mistress of the Americas was distributed to all CREs who attended the CRE Annual Meeting in October 2012. For those of you who missed being in Miami and receiving the book, I encourage you to delve into its covers. Miami, despites its highs and lows, remains one of the most fascinating and culturally diverse cities in the world. Many have come to its shores seeking refuge from oppression and political turmoil in their own countries, and its artistic, entertainment and real estate opportunities continue to abound. Each time I am in Miami, I am reminded of the first time I went to the area in the mid-1980s, before the rebirth of South Beach. Miami seems to continue to dazzle.

REI has been busy already this year, charting a course for upcoming issues. Our goals and objectives include:

- Expanding the distribution and exposure of *REI* to other organizations and institutions;
- Soliciting more articles, and to reach out to potential authors on focus topics;
- Collaborating with the External Affairs Committee and to solicit articles that specifically address issues on the Top Ten issues list;
- Complete at least one focus issue per year.

The third issue of this year will be focused on unusual or unique appraisal and valuation projects. We are currently soliciting case studies for this issue ***now*** and encourage all members who have personally been involved with these types of unique assignments, or know of others who have been involved with these projects, to submit their case studies to *REI* for consideration.

We are looking forward to bringing the membership topics that will be enlightening and informative. ■

Mary C. Bujold

MARY C. BUJOLD, CRE
EDITOR IN CHIEF

CONTRIBUTORS

HANS-ULRICH (ULLI) BERENDES, CRE, owner and CEO, Berendes & Partner Consulting GmbH, Hamburg, Germany (founded in 1995), has been active in real estate for more than 25 years, beginning his career in the real estate leasing division of Deutsche Bank. In 1990 he joined Völkers King & Co. Group Hamburg (later King Sturge Germany and now part of Jones Lang LaSalle) as managing director and shareholder. Berendes is an experienced networker who believes in face-to-face business, and brings all his personality to his client and partner contacts. He holds academic degrees in business administration and master of economics, and is a member of CRE, SIOR and FRICS. His company is affiliated with CORFAC International and has offices in submarkets in Germany, including Hamburg, Berlin, Frankfurt, Munich and Stuttgart. His firm also maintains an office in Poland and is represented around Europe by partners in the Q-Immo Network.

MARY C. BUJOLD, CRE, editor in chief of *Real Estate Issues®*, president, Maxfield Research Inc., Minneapolis, Minnesota, is considered a market expert in the field of residential real estate and in market analysis for financial institutions. As well as providing strategic direction for the firm, Bujold heads project assignments for large-scale land use and redevelopment studies, including downtown revitalization for private developers and municipalities in the Twin Cities and in the Upper Midwest. Her work spans public and private sector clients, including institutional clients. Bujold also regularly testifies as an expert witness for eminent domain, tax appeal and other types of real estate litigation. She holds a bachelor's degree in business administration from Marquette University and a master's degree in business administration from the University of Minnesota.

MARIE-NOELLE BRISSON, CRE, FRICS, MAI, Paris, France, is currently an independent consultant, serving as strategic advisor for a large French REIT (Icade) and counseling various European investors and servicers in real estate investment. Brisson has more than 20 years of experience in commercial real estate and finance in the U.S. and in Europe. She has held various executive positions in real estate underwriting as a rating analyst, servicer, investor, issuer and lender in the U.S. and Europe for global market leaders such as the World Bank, Bank of America, Security Pacific Bank, E&Y, GMAC Commercial Mortgage, and Standard & Poor's. Brisson holds a degree from Sciences-Po Paris, a post-master degree in urban planning from the Institut d' Urbanisme de Paris, and a real estate diploma from New York University where she taught a seminar on market research, due diligence and feasibility analysis. She is a designated member of the Appraisal Institute and The Counselors of Real Estate, and a Fellow of the Royal Institution of Chartered Surveyors.

TOMÁŠ CTIBOR, CRE, FRICS, founder, C.T. Development S.r.o., Prague, Czech Republic, is a real estate developer and consultant specializing in development projects and consultancy in real estate and urban development. Since 2007, Ctibor has been teaching at the Department of Urbanism at Faculty of Architecture of Czech Technical University in Prague. In 1989–1990, following a short political career (member of the advisory board of the Secretary of Education, member of Parliament and advisor to the Deputy Prime Minister), he co-founded a private company, B.I.R.T., which specialized in real estate counseling. Between 1996 and 2000, he served as a chairman of the steering committee of AFI (Association for Foreign Investments). From 1998 to 2000, Ctibor also worked as a member of the steering committee of the Czechinvest investment and business development agency. In 2013, he accepted an offer to become the head of the Strategic Planning Department of Prague's City Development Authority, with the responsibility of leading and coordinating the development of a new strategic plan for the city. Ctibor studied architecture at the Czech Technical University and the Academy of Arts, Architecture and Design in Prague.

BARRY A. DISKIN, PH.D., CRE, is professor and Francis J. Nardozza Scholar in the College of Business at Florida State University. Diskin teaches valuation classes to real estate majors at the undergraduate and graduate levels. His focus and research has been on natural gas pipelines for eminent domain cases, property tax challenges, contamination matters, and contract disputes. Previously, Diskin published in *The Appraisal Journal,* the *Journal of Real Estate Research, Real Estate Economics,* the *Journal of the American Bar Association,* and other real estate journals. He has been interviewed on national television about home buying issues and testified before the Florida legislature about mobile home park legislation. Diskin is principal in the firm Diskin Property Research and has qualified as an expert witness in six states. His doctorate degree is from Georgia State University.

JACK P. FRIEDMAN, PH.D., CRE, FRICS, MAI, ASA, is principle and CEO of Jack P. Friedman & Associates, Richardson, Texas, a real estate appraisal and economics consulting firm. He is a nationally recognized author, appraiser and consultant in real estate economics and related disciplines. Friedman's recent work includes litigation support (principally appraisal review and appraisal) regarding ad valorem tax cases, environmental damages, condemnation, construction defects, and contract disputes. Formerly, he served as senior research economist and head of research of Texas A&M University's Texas Real Estate Research Center, and was the Laguarta Professor in the Department of Finance. Friedman has written more than 20 books and 200 articles, and has been published in *The Appraisal Journal, Real Estate Issues®, Real Estate Review,* and *Real Estate Finance.* He served on the national Real Estate Accounting committees of the AICPA and Texas Society of Certified Public Accountants and was a member of the Appraiser Qualifications Board of the Appraisal Foundation. Friedman earned his doctorate degree from Georgia State University.

LEOPOLD KUEHMAYER, CRE, managing partner, Central and Eastern Europe, TPA Horwath, Vienna, Austria, is a tax advisor with more than 20 years of experience in real estate counseling. Kuehmayer was involved in project management during the expansion of TPA Horwath in CEE. He specializes in advising on VAT issues in national and cross-border business, tax consulting, financial statements, tax planning and compliance.

Much of the focus of his work in real estate lies in operational and external areas and property ownership models as well as the outsourcing of investment portfolios and financing consulting. From a regional perspective, his consultancy focus is on structural advice in investments in Central and South Eastern Europe, as well as in the organization of legal forms. Kuehmayer is a member of the EMEA Tax Committee of Crowe Horwath International.

KR PROF. DR. H. C ALFONS METZGER, CRE, FRICS, founder and CEO of MRG Metzger Realitäten Beratungs- und Bewertungsgesellschaft mbH (Metzger Real Estate Group), Vienna, Austria, has been active in real estate since 1966 as a real estate valuer, trustee and national and international real estate consultant. He is qualified as a Court Certified Real Estate Expert and a Licensed Estate Manager. His firm specializes in national and international real estate consulting and valuation. Metzger has served as president of the FIABCI Congress Committee and World President of FIABCI International. Metzger also serves as an executive member of the Global Housing Foundation, which helps solve housing crises worldwide; delegate of UNECE, a real estate market advisory group; and member of the IVSC (International Valuation Standard Committee). Metzger established the national chapter RICS Austria –The Royal Institute of Chartered Surveyors in 1997, and now serves as acting chairman of the Board of Directors/European CRE Chapter.

ALEXANDER NEUHUBER, CRE, founder and CEO, Magan Holding GmbH, Vienna, Austria, has more than 25 years of experience in real estate, and currently serves as a property investment consultant for wealthy private and institutional clients. Presently, for some clients, his firm also acts as co-investors in Germany, Bulgaria and Rumania. In 2004, his firm expanded to the Berlin market and since 2009, the firm's subsidiary in Berlin has been providing an international clientele with consulting for investments in residential properties in that city. Prior to founding his current firm in 2001, Neuhuber owned DTZ Neuhuber—then considered the number three real estate firm in Austria— which he subsequently sold. Neuhuber began his real estate career in 1988 and shortly thereafter founded his first real estate firm, known as Neuhuber und Partner Immobilien GmbH.

NICHOLAS ORDWAY, PH.D., J.D., is a tenured full professor in the Financial Economics and Institutions Department at the Shidler College of Business, University of Hawaii, where he teaches undergraduate and graduate courses in appraisal theory and real estate investments and finance. Ordway has published numerous books and articles on real estate valuation and other real property topics. His research and consulting is focused on hotels, golf courses and other resort properties. Ordway has been honored with the Wagner Award from the Appraisal Institute and the Ballard Award from The Counselors of Real Estate, and was selected as the National Educator of the Year by the Real Estate Educators Association. Ordway received his doctorate degree in land economics and a master's degree in business administration in real estate from Georgia State University; and a juris doctorate degree from the University of Georgia School of Law.

MICHAEL P. SMITHING, LEED AP, FRICS, director/Green Building Advisory Services, Colliers International, Budapest, Hungary, joined Colliers in 1993 as an office broker specializing in tenant representation. For nine years, Smithing led the Hungarian Colliers team. He specializes in creating and executing innovative solutions to problems, and is committed to promoting green building practices across Central and Eastern Europe, with a focus on using sustainable practices to increase asset values. For the past two years, Smithing has focused on sustainability and achieved certification as a LEED professional. He currently leads the Real Estate Management Services Team in Eastern Europe and is working on a number of LEED accreditations for properties in Hungary. Smithing is a member of the Royal Institute of Chartered Surveyors (RICS) and is chairman of the RICS Hungarian Board.

DONALD SONNEMAN, ASA, El Cajon, California, is president of AblePlus Valuations, an appraisal firm that prepares commercial real estate appraisals, business valuations and partial interest valuations. His practice covers standard property types and specialty properties such as assisted living, skilled nursing and mental health facilities, and properties subject to credit tenant leases or ground leases. In addition to 20 years of appraisal experience, Sonneman has background in income tax preparation and property tax assessment. He has written extensively on appraisal topics, with articles appearing in *The Appraisal Journal, Business Valuation Review, Fair & Equitable* and the *Journal of Property Tax Assessment and Administration.* Sonneman also contributed to two chapters in the Appraisal Institute book Appraising Industrial Properties. He earned a bachelor's degree in mechanical and aerospace engineering from Illinois Institute of Technology, and later obtained a degree in certified financial planning. Other post-graduate study includes emphasis on finance and business valuation.

SIMON WAINWRIGHT, BSC (HONS) FRICS, is managing director and co-founder of J Peiser Wainwright, and has more than 30 years' experience in UK commercial property markets. Wainwright began his career at Dron & Wright, Knight Frank and St. Quintin before starting his own practice in 1993. Over the past 20 years, Wainwright has established a reputation for providing independent professional advice on properties throughout Central London. Wainwright is a graduate of the University of Reading and is a Fellow of the Royal Institution of Chartered Surveyors (RICS). He is a board member of the RICS Commercial Property Markets Professional Group, holds an Expert Witness Certificate from Cardiff University School of Law and is a RICS Registered Valuer. Wainwright is the author of several published papers and lectures on the subject of property investment, valuation and development.

DAVID J. YERKE, MAI, SGA, of D.J. Yerke, Inc., Reno, Nevada, and Naples, Florida, specializes in eminent domain appraisal and the appraisal of special purpose and complex properties. In his 30-year career, he has served as an expert witness in litigation valuation cases involving land and specialized commercial and industrial properties. In that capacity, his appraisals have served federal agencies including GSA, the U.S. Post Office, state departments of transportation and many municipalities. Yerke also is a founding member of the Society of Golf Appraisers and a past chairman of the Appraisal Institute's California State Government Relations Subcommittee. He has co-authored appraisal articles in both *The Appraisal Journal* and *Fair & Equitable*. Yerke also is a co-author and lecturer on *Valuation of Golf Properties,* a publication of the Society of Golf Appraisers. He currently serves on the Appraisal Institute Southwest Regional Professional Standards Panel and Ethics Panel. Yerke is an Admiral Farragut Academy graduate, and received a bachelor of science degree in business administration from Franklin University. He completed post-graduate studies at Ohio State University and the University of San Diego.

REAL ESTATE ISSUES®

Published by THE COUNSELORS OF REAL ESTATE®

Call for Articles

The Counselors of Real Estate® is seeking original manuscripts for publication in *Real Estate Issues*® (*REI*), a peer-reviewed journal published three times annually. The journal reaches a lucrative segment of the real estate industry as well as a representative cross-section of professionals in related industries.

Real Estate Issues subscribers are primarily the owners, chairmen, presidents and vice presidents of real estate companies, financial corporations, property companies, banks, management companies, financial corporations, property companies, banks, management companies, libraries and REALTOR® boards throughout the country. Other subscribers include professors and university personnel, and professionals in insurance companies and law firms.

Real Estate Issues is published three times annually for the benefit of CRE and other real estate professionals, planners, architects, developers, economists, government personnel, lawyers and accountants. It focuses on providing up-to-date information about problems and topics in the field of real estate.

REVIEW PROCESS

Member and nonmember authors should submit manuscripts as Microsoft Word documents, preferably via email, to *cscherf@cre.org* or *info@cre.org*

Real Estate Issues
C/O The Counselors of Real Estate
430 N. Michigan Ave.
Chicago, IL 60611

Currently, *REI* is seeking articles on:

- How the aging of the U.S. population will affect the real estate markets from housing, retail sales, health care, and the myriad of factors that define success for different geographic areas;
- Funding of public employee retirement systems;
- Student debt burdens;
- Infrastructure funding and U.S. competitiveness;
- Changing office, retail and industrial demand;
- Real estate capital markets liquidity;
- Global change and uncertainty and what it means for real estate investment in the U.S. and abroad;
- Integration of sustainability;
- Low cap rates;
- Civil discord and political gridlock as relates to real estate.

See the Editorial Calendar and further submission guidelines at *www.cre.org* under "Publications" for more information.

Real Estate Markets and the Economy: European Insights

Moderator:

Mary C. Bujold, **CRE**
Editor in Chief, Real Estate Issues
President, Maxfield Research, Inc.
Minneapolis, Minnesota

Panelists:

Hans-Ulrich Berendes, **CRE**
Owner and CEO Berendes & Partner Consulting GmbH
Hamburg, Germany

Marie-Noelle Brisson, **CRE**
Advisor, Icade Real Estate Solutions
Paris, France

Tomas Ctibor, **CRE**
C.T. Development S.r.o,
Prague, Czech Republic

Leopold Kuehmayer, **CRE**
Managing Partner Central and Eastern Europe
TPA Horwath
Vienna, Austria

Alfons Metzger, **CRE**
KommR Prof., MRG Metzger Real Estate Group
Vienna, Austria

Alexander Neuhuber, **CRE**
CEO, Magan Holding GmbH
Vienna, Austria

Michael P. Smithing, **LEED AP**, **FRICS**
Director/Green Building Advisory Services
Colliers International
Budapest, Hungary

Simon Wainwright, **FRICS**
Managing Director, J Peiser Wainwright – Real Estate Advisers & Chartered Surveyors
London, England

INTRODUCTION

In 2012, the Editor in Chief of Real Estate Issues® ***Mary C. Bujold, CRE,*** *and other Counselors of Real Estate discussed the idea of contacting our fellow CREs in Europe to participate in a European roundtable discussion for this journal. This discussion would be held to have those closest to the various European Union (EU) economies provide insight and perspective on their respective real estate markets and the current economic situation throughout the EU.*

We reached out to a number of CREs and our fellow Royal Institution of Chartered Surveyors (RICS) members, requesting participation in the roundtable discussion. Because of the significant geographic dispersion of these individuals, the format included questions sent to the participants via email, and then followed up with documents to solicit additional input.

About the Moderator

Mary C. Bujold, CRE, *editor in chief of* Real Estate Issues®, *president, Maxfield Research Inc., Minneapolis, Minnesota, is considered a market expert in the field of residential real estate and in market analysis for financial institutions. As well as providing strategic direction for the firm, Bujold heads project assignments for large-scale land use and redevelopment studies, including downtown revitalization for private developers and municipalities in the Twin Cities and in the Upper Midwest. Her work spans public and private sector clients, including institutional clients. Bujold also regularly testifies as an expert witness for eminent domain, tax appeal and other types of real estate litigation. She holds a bachelor's degree in business administration from Marquette University and a master's degree in business administration from the University of Minnesota.*

Context and European Background from Alfons Metzger, CRE

In order to present serious answers to the questions that are posed for this discussion, it is important for readers to be aware and knowledgeable about the development of Europe, primarily during the past decades.

Europe is comprised of separate national states, each of which has an autonomous national government and legislature that varies from country to country. In addition, each country has its own national language. The United States, China and also India are comprised of federal states with a central government. Even though each federal state has its own government, the general administration is governed in one location, for example, Washington, D.C., in the U.S.

A united Europe has its origins in 1947 when the Paris Peace Treaties were signed, establishing peace throughout Europe following World War II. This was an absolute peace project that has developed over time into an economic project.

Until 1989, Europe was a divided continent. On one side was Western Europe, from the United Kingdom to Austria. On the other side was Eastern Europe, from Czechoslovakia to Slovenia and up to Russia/Ukraine. In 1989, the collapse of Communism in Eastern Europe and the fall of the Iron Curtain paved the way for a formerly divided Europe to become a joint economic power.

Europe has evolved into a pan-European region. The former Communist areas had a dramatic, pent-up demand in political, economic, social and other fields, and needed to catch up to Western European countries.

The Eastern European area has become the place for some of the best investment opportunities in the world. Many investments have occurred, including speculative ones. However, development in the political, economic and social arenas has not been consistently uniform.

Because of the integration of the Eastern European states into the European Union, armed conflicts have been avoided similar to those that occurred between the former Yugoslavia and Albania. Most of the Eastern European countries still are considered "developing" nations and have significant pent-up demand in various fields, especially in their respective real estate economies.

The rest of Europe already has provided those countries with support measures in the past, and will continue to do so in the present and future.

In the course of globalization over the past 20 years, the speculative influence of other countries in Europe has also been present.

The indebtedness of various European countries must be viewed from the perspective of the overall development of Europe. If those aspects are considered and economic data is apportioned among all of Europe, then Europe is in an absolute top position to compete internationally as a continent.

The European Union has 27 member states, and Croatia is planned to join in the near future.

The headquarters and the parliament of the European Union are located in Brussels, but there is still a lack of centralized power to control the individual national activities of member states.

To summarize, the European Union remains in a development phase, with many tasks yet to be fulfilled. However, it shows great promise with many significant developments and strong economic forecasts.

DISCUSSION

BUJOLD: Overall, with respect to the economy, the European Union, the European Central Bank and your government: where is your greatest concern?

KUEHMAYER: Global economic ties have reached a level whereby no matter the geographic location of an economic/financial crisis, the entire world will be affected. There is currently an outspoken goal within the European Union to solve the problems that arose from the recent financial crisis. I would be concerned if the leaders of the EU countries would change that goal because of national priorities. In the Fourth Quarter 2012, the euro zone economies faced a recession of 0.6 percent. This is higher than expected and is largely a result of further crisis among the countries of Southern Europe.

METZGER: I am very concerned that Europe and the Europeans are not fully aware of their values and do not react against views from the outside.

BERENDES: I am most concerned about rising unemployment rates in many EU countries, especially for young people. In Spain, the unemployment rate for people under 25 years of age is 50 percent; in Italy, it is 37 percent; and in other countries, it is also high. I believe this is likely to cause social problems in the near future.

SMITHING: The Hungarian government has a well-deserved reputation for unpredictability, taking an unorthodox approach to the economy, and displaying little respect for international organizations or the governments of other countries. In my opinion, they are a little like the North Korean government without the nuclear weapons.

WAINWRIGHT: I am most concerned about the level of public expenditure, which the various EU governments seem incapable of bringing under control, combined with the continuing programme of Quantitative Easing. The UK is still running a budget deficit and the overall level of public debt continues to rise. There has been a strong and aggressive policy toward raising and collecting taxes, but tax receipts are falling because of the contraction in the economy, and public expenditure is still rising. Something will have to change as the current situation is unsustainable. In the UK, one of the greatest threats is the rising level of expenditure on the National Health Service, which has been awarded "sacred cow" status by the British public. While it does not deliver the best or most efficient health services, there seems little willingness to consider alternative solutions as are used in the rest of Europe. There is also concern about the level of public expenditure on income support and benefits, and concerns that the problem will be exacerbated by a rising tide of immigration from new EU states, such as Bulgaria and Romania.

BRISSON: Consumer and economic confidence remains fragile and volatile as stock exchanges continue to move up and down with various news pieces of the euro zone resolution. We need political courage from our European governments to restore confidence and show the sovereign debt crises can be dealt with in an effective and predictable way, and economic recessions and unemployment tamed.

About the Panelists

Hans-Ulrich (Ulli) Berendes, CRE, *owner and CEO, Berendes & Partner Consulting GmbH, Hamburg, Germany (founded in 1995), has been active in real estate for more than 25 years, beginning his career in the real estate leasing division of Deutsche Bank. In 1990 he joined Völkers King & Co. Group Hamburg (later King Sturge Germany and now part of Jones Lang LaSalle) as managing director and shareholder. Berendes is an experienced networker who believes in face-to-face business, and brings all his personality to his client and partner contacts. He holds academic degrees in business administration and master of economics, and is a member of CRE, SIOR and FRICS. His company is affiliated with CORFAC International and has offices in submarkets in Germany, including Hamburg, Berlin, Frankfurt, Munich and Stuttgart. His firm also maintains an office in Poland and is represented around Europe by partners in the Q-Immo Network.*

Marie-Noelle Brisson, CRE, FRICS, *Paris, is currently an independent consultant, serving as strategic advisor for a large French REIT (Icade) and counseling various European investors and servicers in real estate investment. Brisson has more than 20 years of experience in commercial real estate and finance in the U.S. and in Europe. She has held various executive positions in real estate underwriting as a rating analyst, servicer, investor, issuer and lender in the U.S. and Europe for global market leaders such as the World Bank, Bank of America, Security Pacific Bank, E&Y, GMAC Commercial Mortgage, and Standard & Poor's. Brisson holds a degree from Sciences-Po Paris, a post-master degree in urban planning from the Institut d' Urbanisme de Paris, and a real estate diploma from New York University where she taught a seminar on market research, due diligence and feasibility analysis. She is a designated member of the Appraisal Institute and The Counselors of Real Estate, and a Fellow of the Royal Institution of Chartered Surveyors.*

About the Panelists

Tomáš Ctibor, **CRE**, **FRICS**, *founder, C.T. Development S.r.o., Prague, Czech Republic, is a real estate developer and consultant specializing in development projects and consultancy in real estate and urban development. Since 2007, Ctibor has been teaching at the Department of Urbanism at Faculty of Architecture of Czech Technical University in Prague. In 1989–1990, following a short political career (member of the advisory board of the Secretary of Education, member of Parliament and advisor to the Deputy Prime Minister), he co-founded a private company, B.I.R.T., which specialized in real estate counseling. Between 1996 and 2000, he served as a chairman of the steering committee of AFI (Association for Foreign Investments). From 1998 to 2000, Ctibor also worked as a member of the steering committee of the Czechinvest investment and business development agency. In 2013, he accepted an offer to become the head of the Strategic Planning Department of Prague's City Development Authority, with the responsibility of leading and coordinating the development of a new strategic plan for the city. Ctibor studied architecture at the Czech Technical University and the Academy of Arts, Architecture and Design in Prague.*

Leopold Kuehmayer, **CRE**, *managing partner, Central and Eastern Europe, TPA Horwath, Vienna, Austria, is a tax advisor with more than 20 years of experience in real estate counseling. Kuehmayer was involved in project management during the expansion of TPA Horwath in CEE. He specializes in advising on VAT issues in national and cross-border business, tax consulting, financial statements, tax planning and compliance. Much of the focus of his work in real estate lies in operational and external areas and property ownership models as well as the outsourcing of investment portfolios and financing consulting. From a regional perspective, his consultancy focus is on structural advice in investments in Central and South Eastern Europe, as well as in the organization of legal forms. Kuehmayer is a member of the EMEA Tax Committee of Crowe Horwath International.*

KR Prof. Dr. h. c Alfons Metzger, **CRE**, **FRICS**, *founder and CEO of MRG Metzger Realitäten Beratungs-und Bewertungsgesellschaft mbH (Metzger Real Estate Group), Vienna, Austria, has been active in real estate since 1966 as a real estate valuer, trustee and national and international real estate consultant. He is qualified as a Court Certified Real Estate Expert and a Licensed Estate Manager. His firm specializes in national and international real estate consulting and valuation. Metzger has served as president of the FIABCI Congress Committee and World President of FIABCI International. Metzger also serves as an executive member of the Global Housing Foundation, which helps solve housing crises worldwide; delegate of UNECE, a real estate market advisory group; and member of the IVSC (International Valuation Standard Committee). Metzger established the national chapter RICS Austria –The Royal Institute of Chartered Surveyors in 1997, and now serves as acting chairman of the Board of Directors/European CRE Chapter.*

Alexander Neuhuber, **CRE**, founder and CEO, *Magan Holding GmbH, Vienna, Austria, has more than 25 years of experience in real estate, and currently serves as a property investment consultant for wealthy private and institutional clients. Presently, for some clients, his firm also acts as co-investors in Germany, Bulgaria and Rumania. In 2004, his firm expanded to the Berlin market and since 2009, the firm's subsidiary in Berlin has been providing an international clientele with consulting for investments in residential properties in that city. Prior to founding his current firm in 2001, Neuhuber owned DTZ Neuhuber—then considered the number three real estate firm in Austria— which he subsequently sold. Neuhuber began his real estate career in 1988 and shortly thereafter founded his first real estate firm, known as Neuhuber und Partner Immobilien GmbH.*

NEUHUBER: The economic crisis in Europe has become something of a normal phenomenon. The initial panic after the Lehman disaster and fears of a crash in Greece were followed by a mixture of resignation and calculated optimism. Europe must face the big question that any respectable merchant must face: Are we able to repay the debt burdens accumulated in recent years and reduce the inflated amount of money?

CTIBOR: Europe has undergone many unification processes over the past few years, but still remains a diversified union. Solutions that are being put on the table must respect this fact and avoid overgeneralization, which results in a restriction of the existing diversity. Some economic and fiscal tools that have been discussed recently seem to be unreal or in direct contradiction to realizing an effective impact. The main problem, with respect to the EU structures, is the range of instruments that are used for certain goals. It is always necessary to carefully evaluate whether a generalized provision is reasonable and brings measurable benefits. There are some criteria and some regulations that soon after their adoption have turned out to be not beneficial. Holding to previous agreements that have been unsuccessful makes the entire process less credible.

BUJOLD: Where do you have the greatest confidence?

BERENDES: I have the greatest confidence in the euro. Since it was implemented, it is essentially a success story. We started with a currency value against the dollar of nearly \$1.10 and even in the hardest economic times today, it is quite stable at around \$1.30.

KUEHMAYER: The European Union is an economic union. One of its goals is to integrate most of the European states in order to have the larger Union exert more influence on the member states and solve the problems of these states arising from differences in the economic power (and in that way avoid conflicts between the countries). There are still large differences in the economic power of the individual EU member states. I am confident, however, that the original idea works and the economic hurdles can be solved better in the union than in each state as a single entity. And, there is huge potential for growth in the CEE/SEE (Central East European/ South East European) countries in the long-term. And Germany's forecast for the First Quarter 2013 is already very positive in the short term.

METZGER: I have the greatest confidence in Europe and the European people, as well as their development, since today's Europe has a significant historically grown power to provide the continent with a new form and a positive future leading global competition.

SMITHING: The EU is a stabilizing factor for Hungary. I do not, however, anticipate any significant changes in our economic fundamentals or political situation in the near-or medium-term future.

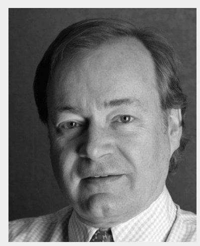
CTIBOR: It is the difference of each participant's point of view that gives the community the ability to perceive details and particular opportunities. This can lead to finding the right solution.

NEUHUBER: This is not the end of the world. No seriously, I trust in the economic strength in Central and Northern Europe and the readiness to provide services. Europe's economic and political stability are strong enough to overcome this crisis as well.

BRISSON: A first step has been taken to secure EU-wide financial security and make progress in resolving the debt crisis. The European Central Bank will supervise the bloc's largest financial institutions and intervene with struggling smaller banks. Through different formats, bank recapitalization is on the mend and the LTROs (program of the European Central Bank similar to US' quantitative easing) certainly have eased the credit crunch but they also have "kicked the can down the road," not structurally solving the liquidity issues. Capital inflows are improved from the last two years and we should see greater cross-border investments in 2013. The funding gap will likely be partly filled with alternative funding coming primarily from insurance companies and other funds.

About the Panelists

Michael P. Smithing, **LEED AP**, **FRICS**, *director/Green Building Advisory Services, Colliers International, Budapest, Hungary, joined Colliers in 1993 as an office broker specializing in tenant representation. For nine years, Smithing led the Hungarian Colliers team. He specializes in creating and executing innovative solutions to problems, and is committed to promoting green building practices across Central and Eastern Europe, with a focus on using sustainable practices to increase asset values. For the past two years, Smithing has focused on sustainability and achieved certification as a LEED professional. He currently leads the Real Estate Management Services Team in Eastern Europe and is working on a number of LEED accreditations for properties in Hungary. Smithing is a member of the Royal Institute of Chartered Surveyors (RICS) and is chairman of the RICS Hungarian Board.*



Simon Wainwright, **BSc (Hons) FRICS**, *is managing director and co-founder of J Peiser Wainwright, and has more than 30 years' experience in UK commercial property markets. Wainwright began his career at Dron & Wright, Knight Frank and St. Quintin before starting his own practice in 1993. Over the past 20 years, Wainwright has established a reputation for providing independent professional advice on properties throughout Central London. Wainwright is a graduate of the University of Reading and is a Fellow of the Royal Institution of Chartered Surveyors (RICS). He is a board member of the RICS Commercial Property Markets Professional Group, holds an Expert Witness Certificate from Cardiff University School of Law and is a RICS Registered Valuer. Wainwright is the author of several published papers and lectures on the subject of property investment, valuation and development.*

WAINWRIGHT: I have the greatest confidence in London, which is a world-class, vibrant and dynamic city in which to live and work. It sits in stark contrast to the rest of the UK and operates as a "state within a state." What is required is to bring this vibrancy to the rest of the UK? Improved communications and less expensive housing are seen as the solutions to open up London to the rest of the UK. The recent fall in the value of sterling against the euro and dollar has caused significant increases in the price at which real estate is being transacted, with foreign buyers accounting for the majority of recent purchases in London.

BUJOLD: What do you see as the greatest challenges and the greatest opportunities?

SMITHING: The greatest challenge, in my opinion, is restoring confidence among international investors. The greatest opportunity is that the lack of foreign investment may lead to the increased importance of Hungarian capital. Unfortunately, this appears unlikely as financing is essentially unavailable. However, Europe came out of the Middle Ages stronger than it went in. Over the course of the next few years, Hungary may be able to fight its way out of its current situation without external assistance.

BRISSON: From a macro-economic viewpoint, bringing public deficits down and curbing unemployment are certainly the greatest challenges. On the real estate side, I see three areas that are both challenges and opportunities: buying debt or restructuring bank assets and asset/loan management; investments in Southern and Eastern Europe; and, thirdly, the greening of buildings. There are enough troubled assets and loans on bank balance sheets but the disposition of those has been sparse. Even in Ireland, Spain and the UK where there have been the most NPL sales, the disposal activity has been less than the need would lead you to think. Still, good asset management skills for either bricks and mortar, or loans, are sought after.

The crisis in Southern Europe represents buying opportunities, with utmost care. If well-located and well-built assets in Spain, Greece and Italy are well-priced, they could be an attractive alternative to Irish assets.

Finally, European countries have established tough environmental standards for building. "Green credentials" are now a requirement and have generated more expensive new construction and investment. Existing buildings not yet to code will have to be refurbished. But those too far gone or poorly located will need to be either demolished or completely restructured. This creates more investment opportunities and should boost building trade activities.

NEUHUBER: The greatest challenge, as I mentioned, will be to pay back the enormous debts run up by the states. Yet, one has to see first how European national economies react to a future rise in the interest rate (the current interest rate at its level of near zero is not a *perpetuum mobile*). For the moment, I don't see great opportunities for the continent as a whole. Asia and the rapidly growing national economies represent too large a challenge.

METZGER: The greatest challenge is to shape the European central government in Brussels and to place the national aspects as a lower priority. Another challenge is to defend against the influence from outside regarding the standards and principles vis-a-vis the powerful central government. Europe's greatest potential is to effectively balance the Eastern and Western European differential, which will open up significant investment opportunities in the former Eastern Bloc countries.

KUEHMAYER: I see the greatest challenge within the EU as the high unemployment rate among young people within many (especially southern) EU countries (23.4 percent in 2012 was the EU average). Along with the budget deficits and the public debts, this is a situation that is challenging for the involved parties.

The European Union has 27 member states and the euro zone consists of 17 European countries. One reaction of the euro zone countries during the crisis was a rising unemployment rate. Non-euro zone member states had the possibility to devalue their local currencies and could largely avoid a significant increase of their respective unemployment rates by doing so.

The labor law in some countries is much in favor of the (long term) employed people, and that is the reason why young people are in a poor position when applying for jobs. There is the opportunity to solve the legal hurdles involved in these situations and, therefore, increase job opportunities for young people.

WAINWRIGHT: One of the greatest challenges is the planning system in the UK, which is stifling development and economic growth. Radical changes are required to make the UK more pro-development. The high price of housing in London and the South East is the direct result of shortages of supply and high levels of demand. Changing patterns of demand for offices and redundancy in the current stock are providing many opportunities to convert offices to residential units. This trend is set to continue with the proposed relaxation of planning use classes.

Demand for offices in London is currently limited to the smaller end of the market, with few major financial institutions seeking new accommodation. A number of recently completed larger developments remain vacant, with owners reluctant to split floors into smaller units.

The retail sector in the UK is probably the most challenging, with the impact of the larger supermarkets, the online shopping revolution and retail warehouse parks combined with high business rates (local property taxes) having a marked impact on the traditional high streets, which are in serious decline. This is apparent from the high number of tenant failures in the retail sector, with a new national multiple retailer filing for administration (Chapter 11) every week. The current focus is on transforming high streets, with local specialty shops, restaurants and coffee bars providing personalized service in a rebellion against the national multiple retailers.

CTIBOR: The European Union should abandon unilateral thinking. Debates on the topics of key problems must be open, without prejudice. It is important to enable more EU organizations and groups to be involved in the discussion, not only the European Commission. Without the ability of unrestrained reflection on our situation, we cannot move forward. Directives that did not bring the desired effects have to be reevaluated. Revoking agreements that were unsuccessful at implementation cannot be viewed as a sign of disintegration, but as an important part of a process of facing multiple challenges. The greatest opportunity may be just in the model of a truly open discussion where each member can take part in an integrated process, not a one-way process that is replete with political and emotional precautions and apprehensions.

BUJOLD: What measures do you think should be taken to resolve the current economic situation (political, monetary, economic)?

BRISSON: Confidence in politicians and in the banking system and markets in general has been so eroded, it is difficult to say. There are, however, signs of new directions and improvement bringing us out of the tunnel.

The European Commission's legislative proposals for bank resolution and recovery are a good beginning. As I mentioned earlier, the European Central Bank has stepped up to the plate and has been an effective shock absorber.

By building the single rule book for EU financial markets and ensuring its consistent application across the EU, the ESMA (European Securities Market Authority) now contributes to the supervision of financial services firms and rating agencies with a pan-European reach and also has begun to put some order in the governance of financial institutions. Sovereign debt, of course, needs to be dealt with, and with pain from both private investors and governments.

METZGER: As I mentioned earlier, a powerful government in Brussels is required in order to ensure an expansion of the euro and support attractive positive development of the EU economy.

BERENDES: The members of the European Union have to find a combined solution between austerity and investing in the future. Bureaucracy has to be cut back and states like Spain, Italy, Greece and Cyprus, which spent money like crazy during the past few years, have to come back to a balanced budget. Furthermore, banks' gambling and greed have to be stopped. To divide banks between the investment and so-called normal activities could be a first step in the right direction. I believe that money at the moment is far too cheap and I am worried that what we experienced between 2004 and 2008 may come back. Perhaps in a slightly different way, but investment banks seem to have already forgotten where the mess came from.

CTIBOR: Rational behavior, discussion about differences and no prejudices in political questions—these are elementary principles, always valid, but even more important today. Tools that we are using or discussing these days, such as fiscal union, common taxes, etc., are just formal principles. We have to fill them with reasonable content. If the implementation of a specific tool results in wide resistance, it is not judicious to push it through by force; we must be able to have rational debates about it. The European Union is a great opportunity for each member, but it is necessary to consider how best to integrate all members. Presently, the EU does not pay enough attention—neither in discussion nor in practical implementation—to some themes that are very important for economic growth (e.g., infrastructure, investments in energetics), while others such as CO_2 reduction policy receive the spotlight. An independent evaluation of the advantages and disadvantages of the tools available is necessary to remain competitive as an EU community.

WAINWRIGHT: A dramatic shift in the way the UK delivers public services is required. This calls for some radical thinking, with privatization being the obvious solution and empowering people by giving them the ability to choose their services directly, thereby removing a layer of bureaucracy. This is a significant challenge as outside of London and the South East, between 50 percent and 80 percent of the UK workforce is directly or indirectly employed by the public sector.

There is a proven need for more housing and better infrastructure. The UK is currently facing an energy crisis caused by years of procrastination about building more power stations. Similar decisions about transport infrastructure have been put off, such as high-speed rail and new runway capacity for London and the South East. These projects and increased homebuilding urgently need to go ahead, which should stimulate the economy. What is required is a re-focusing of public expenditure from the revenue account (health services and benefits) to the capital account (infrastructure) to enable new construction and development by the private sector.

KUEHMAYER: Leaders should find a way out of the unhealthy situation of cutting public spending and, in that manner, creating a climate of non-confidence and a negative investment climate. The way out of this situation is to find a way to stimulate the positive investment climate.

Currently, there is a shortage of loans. Fighting the European banking crisis created a lot of new legal (bureaucratic) rules for banks. The new rules stated that banks had to change their lending/risk policy to a wide range of investments where it was not a problem to receive loan financing until 2009. Currently, there is almost no possibility of being able to obtain a bank loan. There should be a re-thinking of the new regulations in light of the current shortage of bank loans.

SMITHING: Riots, mass insurrection or political assassinations might encourage the Hungarian government to follow the advice of the EU, IMF, international investment community, foreign press and everyone else who have provided detailed, well-reasoned answers to this question.

NEUHUBER: Even Nobel prize winners have a great deal to discuss in terms of mastering the financial and economic crisis ideally. Basically, there is the principle of running up limitless debt (see also the U.S.) as opposed to a stringent monetary policy that has been practiced by the European Central Bank for a long time. For both alternatives, there are "pros" and "cons." The solution will probably be the "happy medium." This may have to do with the classical Austrian attitude toward time; not to run up debts that cannot be repaid (just as in Greece) and at the same time, not to block every kind of economic performance because of austerity measures that are too strict. After imposing a single currency on national economies in different phases of development (Central Europe versus Southern Europe) and with divergent mentalities, it has become clear how difficult it is to implement the idea of a true common economic market and the European peace project. In addition, there are nationalist anxieties (e.g., Great Britain and Hungary), which means that a "shallow" confederation (the idea of federal states) is rather a long-term project. It is, therefore inevitable, even if patriotic feelings are being hurt, to transform the European Council into a European government with a common economic and fiscal policy. The latter is absolutely necessary in order to reduce fiscal competition among EU member states (examples are Greece, where the imposition of taxes is non-existent, and Cyprus, where we mainly bailed out huge foreign assets that had been transferred to Cyprus).

BUJOLD: How do you view the property and investment markets currently and in the future, as a result of the current economic situation? Where do you have confidence?

NEUHUBER: Economically, Europe is a continent that consists of countries whose stages of development and speeds vary. Consequently, the distribution of capital flows differs considerably when it comes to finding a safe "haven" for investments. In many national economies of Southern Europe, such as Spain and Greece, it is difficult to attract investment capital; yet countries that are considered safe as far as property investment is concerned, such as Germany, the largest national economy of the EU, or Austria (to a lesser degree for being smaller) are in great demand.

BRISSON: Prime assets in stable markets such as the UK, Germany and France will feed market flows. London, Berlin, Munich, Hamburg, Frankfurt and Paris were among the most active cities. As they get picked over and overpriced, secondary cities beckon.

Sovereign funds have become very active, and not only from the Middle East; the Norwegian fund, of course, has made a solid commitment to Europe. New ones are emerging such as the Azerbaijan fund buying a trophy asset in Paris. In 2012, France has seen 17 billion euro in commercial real estate investment, half of the 2007 amount, but still better than in the past two years. Insurance companies also have been active and have started to make a small dent in the funding gap where banks have been reluctant.

KUEHMAYER: As a result of the economic crisis, people invested increasingly in real estate in countries with stable property markets (e.g., Germany/Austria/Western Europe). In Central and South Eastern Europe, prices of real estate properties dropped dramatically. Prices in these regions are now attractive again. This and the fact that there is a huge development potential in these markets are the reasons that economic growth will create a high demand for all kinds of properties as soon as investors trust these markets again.

BERENDES: The property and investment market in Europe is, against all odds, quite stable. Germany is seen as a safe haven, but there is not enough product on the market to feed the demand. Especially in the residential market, prices are increasing and we are seeing the first signs of a real estate bubble, especially in the attractive big cities and regions of Germany. The main problem at the moment is that banks are sitting on their loans and properties without doing anything. Because of the fact that they get the money from the Central Bank for 0.75 percent and still most of the properties sold or bought during the years of the investment hype are still performing, banks are making the best profits ever. However, there is a danger here. They have socialized the debts and are now making significant margins. We all have to face the fact that most of the properties will need new credit facilities within the next one to two years. The first big portfolios will be brought to the market, especially by the UK banks, and there are many to follow. This is again a challenge and an opportunity for all being active in the real estate market, but on the other hand, these distressed properties might flood the market.

SMITHING: From my perspective, I am seeing that banks have begun to take a realistic approach to repossessing and off-loading distressed assets. This process will accelerate over the course of the next 18 to 24 months, increasing market liquidity.

WAINWRIGHT: The market for property across London remains strong in all sectors, with the opportunity to add value by creating residential space remaining a strong imperative. In many cases, this results in mixed-use development with planners seeking to maximize the affordable housing component. The Central London office market is not oversupplied, but demand is down as a result of economic uncertainty. There is a view that a pick-up in demand will result in a rise in office rents once the available supply is absorbed, particularly at the smaller end of the market. Outside of London, property markets remain in the "doldrums."

CTIBOR: Because of a decline in the will to invest, investments have been concentrated in ventures that have the lowest possible risk level. This leads to an "overheating" of these sectors in the market, when prices are dictated by significant demand. This makes the whole market more vulnerable. For example, in the Czech Republic, the Class A office yield is relatively low—fluctuating around seven percent—and is being further suppressed by investors' seeking safety rather than by lack of supply. The higher market volatility is, the higher should be the yield because evolution dynamics shorten the life cycle of buildings.

METZGER: The dynamic development since the fall of the Iron Curtain in 1989 has led to a partly uncontrolled investment strategy, especially in the field of real estate in the former Eastern Bloc countries. Of course, there is high, pent-up demand in these areas. Various investments have occurred, which have not been compatible with the location and the still weak spending capacity; and other issues have led, in various cases, to substantial losses. These situations, however, were not the fault of the national group in charge, but the unprofessional behavior of investors. This was so prevalent in these markets that I had, at one point, considered becoming a valuation appraiser to assist these so-called professional investors who have invested according to the gold digger system rather than appropriately evaluating their risk-return ratios.

BUJOLD: About what are you most concerned?

NEUHUBER: I personally find that, at the moment, growth in the housing market, mainly in German conurbation areas, is too fast. The run does not necessarily have to last. Within the past two years, the housing investment market in Berlin has changed dramatically; demand has risen enormously, and pricing has reached a ceiling of what the local population can afford—a situation that has led to civil resistance. Now, even in Germany, they discuss the so-called bubbles in some areas. It is important to pay attention to the demographic development that greatly differs in various parts of Europe. Without population growth, the formation of a bubble is made easier.

SMITHING: Vacancy rates in the office and industrial sectors are exceptionally high. With little hope of a return to dynamic growth for the foreseeable future, the overhang is unlikely to disappear, even with new development reduced to a trickle. In the medium term, assets will need to be converted to other uses.

KUEHMAYER: There are still a lot of bad debts in banks in Central and South Eastern Europe resulting from the consumption/purchase of real estate. There is, on the one hand, a risk for the banks that, I believe, they can handle. But the larger risk is a social one, (i.e., problems that politicians do not want to be exposed by homeless people).

BRISSON: Decision-making is slow everywhere and velocity has slowed as well. There is a lot of talk before anything can be done. Fiscal uncertainty is a concern, particularly in France.

WAINWRIGHT: There is a continuing shortage of property financing. New lenders are emerging for senior debt, but this is avoiding the riskier end of the spectrum and development finance. This shortage of debt finance has resulted in new equity buyers entering the market, but is restricting activity in the UK property markets. Private equity funds are also quite active, but seeking returns of 10 percent plus. Banks are still sitting on a large number of non-performing loans, or loans in default of their original loan covenants, and they are slow in releasing these back to the market. Many loans are due for repayment in the next three years and there is currently not sufficient capacity to refinance these. The result is continued loan extensions, and the arrival of Basel III is likely to impose even greater limitations on the banks.

BUJOLD: What are the greatest challenges and the greatest opportunities?

METZGER: Europe, especially the Eastern Bloc countries, belongs among the most important and largest investment markets of the coming decade. The requirement, therefore, is that the investments occur in a controlled and demand-oriented manner.

BERENDES: Though there may be some disagreement over this, overall, I believe that Europe, especially countries such as France, Germany, Switzerland, Austria and Scandinavia are still strong performing markets with good opportunities for foreign and European investors. The European markets, with the exception of the UK market, were never too speculative to trade property, but rather kept properties for long-term investment as a safe part of their portfolios.

SMITHING: I believe that I outlined the greatest challenge in my previous statement. The greatest opportunity will be the purchase of development land at "distressed" prices—although these prices will likely be comparable to land prices in the 2000 to 2003 time frame. Land has not generally come under pressure from banks yet as there is not income potential, and banks are thus hesitant to repossess.

CTIBOR: The local market—the Czech Republic—is currently obsessed by a strong lack of confidence. This common fear has manifested in a significant amount of money being kept away from the market. An increasing disillusionment will certainly only deepen this negativity. Mortgage interest rates of less than three percent cannot lead to an acceleration of the market, but they bind banks into long-term, low profit contracts.

The only chance to avoid this bias is to re-establish the credibility of markets. In many cases, the development is closely related to public money, or institutional private investments. But their behavior can be easily influenced by irrational trends. I believe that only non-institutional private sector entities can solve the problems and avoid solutions that merely conform to the norm.

BRISSON: London is starting to overheat, and more generally the chase for prime assets has raised prices and is pushing investors to take more risks in exploring alternative markets and transactions in local pockets of opportunities. The CMBS market is opening up again after four consecutive moribund years. With maturity walls in 2013 and over the next few years, refinancing remains an issue that will hopefully be addressed by "shadow bankers." Debt will play a key role in 2013.

WAINWRIGHT: There is currently an over-capacity in the UK real estate industry, with insufficient business for the number of real estate professionals. This has resulted in competitive pricing for real estate services, takeovers, mergers and consolidations in the industry. The challenge is for real estate professionals to find new ways of adding value and provide new services against a background of limited occupational demand, an impending shortage of modern stock and a shortage of finance.

For well-financed occupiers, there are some interesting opportunities for owner occupiers as the occupier is undoubtedly "king" in today's market. One simple fact remains: buildings wear out and leases come to an end; these are the opportunities for tomorrow.

The rising cost of energy will continue to be a phenomenon that we must deal with. The current modern stock of offices is very energy efficient and there seems only limited scope for additional improvements from current design standards. Future savings are likely to come from changes in the patterns of building use and the equipment deployed in those buildings. The energy issue also may affect future patterns of how and where people live and work as long distance commuting becomes unaffordable.

KUEHMAYER: It is necessary to look at the individual member states as the picture is different in every country. While some CEE/SEE countries like Poland and the Czech Republic are in good economic positions, countries such as Slovenia and Croatia as well as Bulgaria and Romania are in distressed economic positions. The political leaders of Hungary increased the negative trend of the economy by a lot of unfriendly regulations towards investors.

Very important is that specific development projects and other companies do not have sufficient access to bank loans. The situation can be described as "credit crunch." To create more confidence in the markets, the availability of bank loans has to be increased.

For real estate advisors, there is also the opportunity to restructure existing real estate portfolios. Restructuring will be one of the segments with increased demand in the short term.

There will be opportunity in increased demand for offices with lower energy footprints ("green buildings"). Tenants look at the total costs of a building. The components, net rental fees and additional building expenses will be major elements to distinguish a building from its competitors.

BUJOLD: How do you view the U.S. and other global markets (China, South America) by comparison?

NEUHUBER: To my knowledge, the U.S. property market has always been much more volatile than the Central European one (except for London). We have curves that rise and drop more gently. For the time being, it will probably stay like that. The markets in Europe and Asia, where demographic development and consumer habits are so different, cannot really be compared to one another.

WAINWRIGHT: I think that the U.S. made a far sharper market correction than the UK in 2008 to 2009 and, as a result, is better placed today to take advantage of any economic recovery. The stronger economies in China and South America also give rise to more vibrant real estate markets than in the UK and Europe. The one significant difference between those markets and the UK are supply constraints imposed on the UK by the restrictive planning system and the resultant time lag introduced into the development cycle.

Overall, I believe that the U.S. and BRIC (Brazil, Russia, India and China) countries will experience substantially higher economic growth than the UK and Europe, which will drive the pace of real estate development in those markets. In contrast, the low growth/high tax in the UK will continue to suffer from a shortage of occupier demand, which will limit the pace of new development in all but the prime CBD areas. The CBD area of Central London is one of those exceptions that will continue to experience strong demand.

BRISSON: The U.S. is certainly a land of opportunities, especially with the favorable currency exchange. But it now tends to be seen as one among many other markets. When investors are not looking for core assets, they are aware that the many U.S. submarkets are subject to different cycles, and are more cautious. In general, European players consider that there are enough safer opportunities in or close to their backyards, especially when the markets are more volatile, due diligence is costly and averages reported in surveys do not mean much in analyzing local micro-opportunities. The Middle East and Asia are being looked at but, for the moment, the inflows are much more significant. South America has been, up to now, a more marginal investment destination.

CTIBOR: Although I am not a specialist in the U.S. or the BRIC markets, I see a crucial point in the difference between deficits and market possibilities. The United States is experiencing a significant problem with its effectiveness. It is necessary to focus on specific, innovative and individual solutions. The knowledge economy cannot just be a phase; it has to reach its full potential by finding smarter ways of doing business and bringing new and better products to the market.

To the contrary, China, India and South America all still have strong inner deficits—lack of services, infrastructure that is not fully developed, etc. In comparison to the previous decades, these countries cannot be viewed anymore as pure exporters. A significant level of domestic demand within each of these economies' growth exists now and I expect this will continue for quite some time.

KUEHMAYER: I am not a real expert in these markets. According to my understanding, the U.S. market is already back from crisis. That is not the case in many CEE/SEE countries. The real estate market in China is linked to its high growth rate. Because of an average GDP growth of more than 10 percent, and now shortly below 10 percent, the demand is still very high. There has been no crisis there since the high growth rates began. In general, because of its strong economic growth, the Asian real estate market is in a better position than Europe.

SMITHING: My direct exposure to these markets is very limited in my current role. From my perspective, it appears that the U.S. economy is generally improving and confidence has returned. Movement is in a positive direction, although they are still walking, not running.

BERENDES: Markets like Asia, especially China and some others as well, are getting closer to being the next bubble. On the other hand, as long as this part of the world will have economic growth at a level similar to what has occurred over the past ten years, then real estate investment there will most likely be a profitable investment, but risky on the other hand. The U.S. market, in my opinion, will recover and one can see the first positive signs in the residential market as well as the commercial market.

METZGER: The U.S. market is generally spread onto the larger cities such as New York, or Washington, D.C., where the investment markets are relatively diverse. On the other hand you have areas such as Florida, where you can make investments in vacation properties or vacation homes. For private investors, it is challenging because of the distance to Europe, and the costs of operation and maintenance have become quite expensive. In comparison to the boom of the 80s and 90s, many have attempted to sell their private investments. Overall, I believe that many foreign investors do not trust the U.S. markets because of the subprime crisis.

The Chinese market remains a closed market these days and hardly viable because of the significant language barrier. In addition, there are further issues such as the environment, urban development issues and infrastructure, but principally, the government's dealings regarding human rights.

Referring to the South American market, I can only mention that we are currently engaging with the Brazilian real estate market for investments. Our current knowledge shows that this market holds positive prospects for investors.

SUMMARY COMMENTS

CTIBOR: More than ever, today's European Union must reflect on the partial mistakes of its policies and make clear, specific steps for the future. Being aware of my personal experience with central planned economies, I believe it is imperative that planning and decision-making must be very closely related to objective issues. Rules should be introduced that take into account the common interests and needs of as many participants as possible, so that everyone can accept and abide by them. In this manner will we be able to optimize our creative potential and link different approaches together to implement new and innovative strategies for moving forward.

BUJOLD: I want to extend my sincere thanks to all of the participants for their insightful comments. After listening to the discussion, I feel as though I have a much greater insight into the political, economic and social structures that support the EU and, at times, create challenges to consensus. These are challenges that most democratic societies face, although the national histories of Europe perhaps make consensus on significant issues more difficult. I applaud the EU for the goals it has achieved in developing a common economic union and a currency that is highly respected and valued throughout the world. I look forward to the ongoing success of the EU. ■

Comparing Value: U.S. Government Office Leases vs. Credit Tenant Leases

BY DONALD SONNEMAN, ASA; AND DAVID J. YERKE, MAI, SGA

The market has been slow to recognize changing conditions. When investors estimate the value of leased fee interest in government offices, they need to understand how market participants may periodically change their perceptions of risk for these investments, based on market conditions that influence these changes.

The major impetus for this article is that there is a surprising contrast between: 1) economic information that clearly reflects increasing risks to government agency tenants in the near future, as well as risks to bond ratings; and, 2) the absence of discernible reactions from investors and lenders dealing with these government leases. For unknown reasons, the economic information is not yet impacting market participants in the federal leasing arena. This article signals that the risks are present; the risks can be illustrated and quantified and should be considered by both market participants. The authors are attempting to play the role of the canaries in the mine.

Single tenant properties are the focus of this article for simplicity of analysis. Many of the same categories of issues apply to federal agency tenants in multi-tenant buildings, but the impacts are somewhat lessened by the presence of other tenants.

WHAT IS A CREDIT TENANT?

There is no single definition of a credit tenant in the *Dictionary of Real Estate Appraisal* or similar sources. However, in reviewing websites of various lenders that specialize in credit tenant loans, we find the characteristics of a credit tenant are reasonably well defined. A credit tenant is typically one whose bond issues fall within the investment grade levels set by one of the three major rating agencies: Moody's, Fitch and Standard & Poor's. These tenants are usually among the strongest national

About the Authors

Donald Sonneman, **ASA**, *El Cajon, California, is president of AblePlus Valuations, an appraisal firm that prepares commercial real estate appraisals, business valuations and partial interest valuations. His practice covers standard property types and specialty properties such as assisted living, skilled nursing and mental health facilities, and properties subject to credit tenant leases or ground leases. In addition to 20 years of appraisal experience, Sonneman has background in income tax preparation and property tax assessment. He has written extensively on appraisal topics, with articles appearing in* The Appraisal Journal, Business Valuation Review, Fair & Equitable *and the* Journal of Property Tax Assessment and Administration. *Sonneman also contributed to two chapters in the Appraisal Institute book* Appraising Industrial Properties. *He earned a bachelor's degree in mechanical and aerospace engineering from Illinois Institute of Technology, and later obtained a degree in certified financial planning. Other post-graduate study includes emphasis on finance and business valuation.*

David J. Yerke, **MAI**, **SGA**, *of D.J. Yerke, Inc., Reno, Nevada, and Naples, Florida, specializes in eminent domain appraisal and the appraisal of special purpose and complex properties. In his 30-year career, he has served as an expert witness in litigation valuation cases involving land and specialized commercial and industrial properties. In that capacity, his appraisals have served federal agencies including GSA, the U.S. Post Office, state departments of transportation and many municipalities. Yerke also is a founding member of the Society of Golf Appraisers and a past chairman of the Appraisal Institute's California State Government Relations Subcommittee. He has co-authored appraisal articles in both* The Appraisal Journal *and* Fair & Equitable. *Yerke also is a co-author and lecturer on* Valuation of Golf Properties, *a publication of the Society of Golf Appraisers. He currently serves on the Appraisal Institute Southwest Regional Professional Standards Panel and Ethics Panel. Yerke is an Admiral Farragut Academy graduate, and received a bachelor of science degree in business administration from Franklin University. He completed post-graduate studies at Ohio State University and the University of San Diego.*

or regional firms in the country. Their creditworthiness is based on review of each company's income statements and balance sheets to evaluate the ability to pay debt and other long-term obligations. Tenants that fall into the investment grade categories have a substantially lower rate of default on their corporate debt obligations than other tenants. In the leasing arena, this logically means minimal risk of non-performance during the lease term. Credit tenant loans rely on the creditworthiness of the tenant and are considered to have some similarities to a bond in terms of reliability of cash flow.

CREDITWORTHINESS IS NOT STATIC

Typically, only very strong public companies are rated by the major rating agencies mentioned above. Periodically, agencies either downgrade or upgrade a company's rating based on current and forecast financial data for the company. A significant revision in ratings can influence whether a company is viewed as a strong credit tenant, a weaker credit tenant or a non-credit tenant. Informed investors monitor these changes in considering what leased fee investments to make and how to price them.

The major credit rating agencies use multiple categories of ratings. As an example, Standard & Poor's has more than 20 rating categories ranging from the highest rating of AAA to the lowest rating at C. The upper half of these ratings are considered investment grade and the lower half are considered speculative investments with a somewhat higher default risk. All rated companies are considered credit tenants. Non-rated companies are generally, but not always, considered non-credit tenants. Some credit tenants are privately held companies with very strong revenues and balance sheets.

CREDITWORTHINESS IS AN IMPORTANT QUESTION WITH FEDERAL AGENCIES, TOO

According to studies carried out from 1920–2009, the average default rate for the Moody's equivalent of corporate AAA bonds (a Moody's AAA bond) is 0.00 percent, or statistically zero. This does not mean such defaults never occur. It simply means that such defaults are so rare that it is statistically zero.

It is typically assumed that the federal government is the ultimate credit tenant, earning the highest credit rating of AAA. The federal government's AAA bond rating has been largely unquestioned since 1941, when the rating was first assigned to the federal government for the world's number one economy. Organizations that specialize in financing federal government leased facilities continue to take the traditional view that the federal government is the ultimate creditworthy tenant. On that basis, for single tenant buildings, these specialty lenders continue to loan 100 percent of market value of the property with a 1.00–1.05 debt coverage ratio as long as the loan is amortized within the lease term.

Over the past two years there have been several factors that point toward a need for careful reconsideration of two issues: 1) whether the federal government is still a credit tenant; and, 2) if the federal government is a credit tenant, whether it deserves the highest credit tenant rating. These factors, listed below, indicate that the credit rating is likely to undergo changes, unless serious debt reduction plans are in place:

- Of ten U.S.-based credit rating agencies, two (Standard & Poor's and Egan-Jones) have downgraded the rating of U.S. debt during June through August of 2011.[1, 2]
- Of three of the most well-known credit rating agencies (Standard & Poor's, Moody's and Fitch), one agency, Standard & Poor's, has downgraded the credit rating of U.S. debt, and the other two agencies have threatened to carry out a downgrade in the future if the U.S. does not begin to take steps to lower its debt ratio.[3]
- One German credit rating agency and one credit rating agency in China have downgraded U.S. debt.[4, 5]

Credit ratings applied to sovereign debt (a country's debt) consider a wide range of economic, financial and political factors. Each of the rating agencies involved gives substantial attention to U.S. debt as a percentage of U.S. gross domestic product. During August of 2011, U.S. debt was roughly equivalent to 100 percent of gross domestic product, and on a continuing upward trend. This high ratio of debt to gross domestic product is considered sustainable for only a brief period of time. Therefore, it is considered essential to bring the debt ratio down to much lower long-term levels. The rating agencies also have expressed concern about the inability of the U.S. Congress to take action to reverse the trend toward increasing debt.[6]

Today an informed investor should possibly consider the following contemporary factors regarding risk of default or early lease termination:

- There has been a consistent discussion in the press about the diminished quality of the U.S. dollar and U.S. Treasury bonds and risk of a broader rating downgrade.

- Some recent Treasury bond issues have not sold as well as anticipated, so there has been heavy participation by the Federal Reserve in buying Treasurys to maintain low required Treasury yields.[7] It is unknown whether that practice, which also increases U.S. debt, will continue. If not, future Treasury issues may require higher interest rates to reflect higher risk perceptions.
- China has been the largest purchaser of U.S. Treasury issues in recent years. Within the past year, China has expressed the intention of slowing its purchases of Treasury issues and plans to continue with diminished purchases of Treasury issues in the future.[8] However, this change has been temporarily delayed by weaknesses in the euro, one alternative investment.
- The underlying problem recognized by economists on a worldwide basis is excessive debt or deficit spending by the U.S. government.

Each of the factors above points to a period of greater-than-normal government uncertainty—and greater-than-normal government risk—for government agency leases over the next two to four years.

FACTUAL HISTORICAL DATA AND RELEVANCE

As of November 2011, the termination rate for U.S. Government Services Administration (GSA) leases was 3.1 percent or significantly more than the typical AAA corporate default rate, which is virtually zero (source: GSA rollover data as of November 2011). The average length of stay per lease was 16.7 years during 2010. That is an average figure which does not give an indication of how short some lease durations may be.

Furthermore, on the website *capitalmarkets.com*, a May 25, 2012 article entitled "GSA's Dwindling Lease Term" reports the GSA average lease term has been dramatically reduced since 2005, and many federal agencies are moving toward shorter leases because of lack of an approved budget and budget uncertainties. In the view of the authors, this is an important further indication of uncertainty regarding federal leases. The article cited addresses the issue as of May 2012 (prior to sequestration being implemented) as follows:

> *The government right now is, well, it's in turmoil. That's voiced as an opinion but it feels like actual, quantifiable fact. The United States is still fighting its way out of a deep and prolonged recession, the government has been operating under a series of continuing resolutions for nearly two years, the budget faces sequestration, Congress is applying strict space utilization limits to approved prospectuses and agencies are expected to freeze their real estate inventory at current levels, with the anticipation that deep discretionary spending cuts are on the horizon.*
>
> *All of this has conspired to create an uncertain environment leading many agencies to abandon long-term real estate planning in favor of kicking the can down the road with short-term lease extensions. Or, perhaps, agencies are engaging in short-term renewals until they can come up with a viable long-term plan. In either case, it's bad news for property investors because lease terms, overall, are getting shorter, and shorter lease terms damage property values and create significant financing dilemmas.*

These are indicators of federal agency past performance only. It is important to realize the limitations of such historical data. The U.S. economy and the government budget are going into a period of unprecedented uncertainty. History was not a good guide in 1929. It is important to be aware of the specific changing market conditions that lay a foundation for the scenarios above. Any income approach with a discounted cash flow analysis requires an evaluation of changing market conditions to structure the assumptions. The present value of any lease is the sum of future anticipated cash flows and risks. That is what is being evaluated here.

Each of the factors discussed above points to a period of greater-than-normal uncertainty and risk for government agency leases over the next two to four years. Based on that premise, there are essentially two scenarios that appear most likely to the authors:

Scenario 1 – Congress acts to make a meaningful reduction in the budget: It is conceivable that Congress could structure a reduced budget between the existing budget level and the 2008 level. Such a cut would generate federal budget reductions ranging from 10–30 percent. Many government agencies could be required to reduce their workforces and terminate lease agreements through potential consolidations. So far, this scenario has not materialized. While these percentages seem large, they reflect the scale of cuts needed even if phased over 10 to 15 years. The budget cuts targeted in the fallback process called sequestration are universally considered inadequate. Sequestration implementation began March 1, 2013. The sequestration process targets virtually all programs other than Medicare and Social Security with 7.5 percent or greater cuts annually.

Scenario 2 – Congress fails to act: If Congress is unsuccessful in taking steps to curb the deficit, major purchasers of U.S. Treasurys are likely to reduce purchases further (unless other economies remain less attractive in the long term). If U.S. debt becomes less attractive, U.S. Treasurys will have to pay higher returns to promote sale. Either way, this scenario will effectively force deficit reduction because of reduced federal government borrowing capacity and higher interest rates. Forced deficit reduction on a significant scale leads to mandatory layoffs and reduced need for facility space.

Either of the scenarios discussed above could trigger some early termination clauses in government leases. This is discussed in the following description of lease structure.

OPTIMUM CHARACTERISTICS OF SINGLE TENANT INVESTMENT GRADE LEASES

When financing a single tenant lease, there are several elements to the lease structure that are optimum to obtaining favorable credit tenant financing. They include the following:

- *Long term* – Normally lenders like to see leases in the 10- to 30-year range to see reliable cash flow for the period of a loan. Where lenders are not involved, this same term is typically found for credit tenant leases.
- *No early termination* – Normally the lease requires performance (payment of rent and expenses) for the full term of the lease regardless of whether the lessee continues to occupy the premises or "goes dark." In fact, these leases also are called "hell or high water leases," which require performance regardless of casualty or condemnation.
- *Triple net or absolute triple net lease* – This structure is designed to minimize the expense and capital cost obligations of the lessor. With an absolute triple net lease, known as a bond lease, the lessor is essentially a coupon clipper with no expenses other than management fees during the lease term for some of these leases. The absolute triple net lease also includes responsibility for capital improvements and a requirement to rebuild and continue to pay rent after a casualty. Additionally, an absolute triple net lease requires payment of rent after condemnation. A triple net lease requires payment of repairs and maintenance, property insurance and property tax and may include additional fees for management. A triple net lease does not typically include structural or capital improvement responsibilities.
- *Periodic rent increases* – Rents are adjusted to address inflation.
- *Multiple renewal periods* – This reduces the likelihood of a vacancy period following the lease expiration.

SPECIALIZED GOVERNMENT LEASE CLAUSES THAT INCREASE THE UNCERTAINTY OF FUTURE CASH FLOW

There are two major lease clauses in typical government-required leases that tend to decrease the certainty and duration of the cash flow when compared to the optimum lease characteristics discussed above. They are as follows:

- *Risk of vacancy before lease termination* – Many federal government leases have a clause for early termination for government convenience. These types of clauses allow the lessee to terminate the lease at any time for the government's convenience with little notice. The practical impact of this clause is basically similar to the impact of a non-appropriation clause for municipal leases, but is a much broader right to terminate. (A non-appropriation clause allows a municipal government to terminate a lease if its appropriating body does not appropriate funds for the lease payments.) For the lessor, the impact of a clause for early termination is the potential for a vacancy during the lease term (unlike in a "hell or high water lease"). This can be particularly damaging for buildings used as government offices that have many special purpose and customized features not present in typical commercial offices. The resultant vacant building is often filled with features substantially beyond what the market will pay in rent and in increased monthly operating costs.
- *Uncertainty about operating expenses covered* – As previously mentioned, in a private corporation's absolute triple net lease (a bond lease), the lessee covers all operating expenses and capital repairs with the exception of a management fee. In contrast, a GSA federal government lease includes an estimated allowance for operating expenses, established at the front end of the lease, which is periodically adjusted for inflation. So the burden of estimating future operating expenses accurately falls on the lessor. If this allowance falls short of actual expenses during any year, the lessor is responsible for the difference. Estimating these expenses accurately can be particularly challenging in an office building with many special purpose features and systems typically

not found in commercial buildings. These unfamiliar features and systems require additional maintenance burdens that can be difficult to forecast.

SPECIALIZED GOVERNMENT LEASE CLAUSES THAT AFFECT PAYMENT TIMING AND DISPUTE RESOLUTION

Federal government leases are paid in arrears rather than in advance, which changes the timing of the cash flows to reduce present value in a significant way. If pricing were based only on discounted cash flow analysis, this difference would be addressed and fully understood. However, these investments often are analyzed by dividing the annual net operating income by an overall cap rate. The same overall cap rate is applied to the income stream for both corporate credit and federal agency tenants. So the difference in timing is not explicitly addressed in pricing of these two different investments or in the overall capitalization rate. This is a flaw in the analytical process by market participants, which slightly overstates value.

Other clauses also provide different and more complex rules for federal government agency leases. These include clauses that govern holdovers after lease expiration and dispute resolution. In many cases, dispute resolution may require expensive and lengthy legal action to enforce—a scenario less common with typical commercial leases.

QUANTIFYING THE ECONOMIC IMPACTS OF DIFFERENCES IN GOVERNMENT LEASES

The potential economic impact of each of these clauses is unique to the property and the lease specifics. An example is provided to illustrate the order of magnitude of the impacts, in a sample cash flow or present value analysis.

Payment in Arrears – Economic Impact Illustration

This impact can be analyzed either on a simplified basis or by looking at differences in present value in a 240-month (20-year) cash flow. The results are virtually identical. Using the simplified approach, let us assume cash flows are discounted at an eight percent rate. The difference in cash flows is as follows:

1- (1+.08)1/12 = 1- 0.9936 = 0.0064% or 0.6% after rounding

If pricing were based only on discounted cash flow analysis, this difference would be addressed and fully understood by the market. However, these investments often are analyzed by dividing the annual net operating income by an overall cap rate. The same overall cap rate is applied to the income stream for both corporate credit tenants (paid in advance) and for federal agency tenants (paid in arrears). So, the difference in timing is not explicitly addressed in pricing of these two different investments. The equation above addresses cash flows only during the period of the lease, without inclusion of reversion cash flows.

Early Termination Clause – Economic Impact Illustration

According to studies carried out from 1920–2009, the average default rate for the Moody's equivalent of corporate AAA bonds (a Moody's AAA bond) is 0.00 percent or statistically zero. Since 1941, U.S. government bonds have been rated AAA as well. This section is intended to illustrate the economic impact of a three to five percent early termination rate for federal government leases. Some may ask whether a three to five percent early termination rate is appropriate, even as a "what if" scenario for illustration only. The selection of that range is reasonable based on the following factors:

- During 2012, federal government revenues were 35 percent below federal government spending. Even with spreading cuts over multiple years, when cuts occur they ultimately could be substantial enough to support the early termination scenarios considered in this article.
- There is deep resistance on the part of many taxpayers against making significant cuts to Social Security, Medicare, Medicaid and other entitlements that make up the majority of the federal budget.
- There also is deep resistance on the part of many taxpayers against significant tax increases to increase revenue.
- Therefore, elements of the federal budget other than those listed above are more likely to take somewhat deeper cuts.
- We already have seen the federal government closing large numbers of owned facilities in agencies, including the U.S. Postal Service and the Defense Department working toward cutbacks. So, it is not difficult to imagine the federal government taking similar actions by terminating leases.
- There is evidence, previously discussed, that GSA leases during 2011 experienced a three percent early termination rate, before significant cuts have occurred.
- Even though sequestration was implemented March 1, 2013, it will still leave most of the spending gap unaddressed, with more substantial cuts needed.

Before presenting the cash flow illustrations, it is important to discuss the types of risks to the lessor if an early termination occurs. The potential risks and damages from early termination are described below:

- *Some partial protection for termination during the first five years* – With a typical federal agency lease, the lessor has some level of protection only if the lease is terminated "at the convenience of the government" during the first five years of the lease. This specific termination requires government payments under a complex set of regulations. The lessor has the right to go beyond a settlement process to litigation in the courts only if the government permits. Whether the amount recovered makes the lessor whole for the equivalent of the remaining term for both rent and operating expenses is an unknown that varies based on specific circumstances. The bottom line is that if termination occurs in the first few years, the lessor still is faced with some risk/uncertainty about the amount of lost revenue and reimbursements that are recoverable.
- *Typically no protection for termination after the fifth year* – If the lease is terminated "at the convenience of the government," typically after the fifth year, the lessor has no recourse and is left with a vacant single tenant building. Some may argue that not all buildings leased to federal agencies are difficult to lease to another tenant. Buildings that are built to meet government specifications can have the appearance of a standard structure and yet contain many components built to a much higher standard. These components include electrical, air handling, security and structural components. The end result can be an average building that costs substantially more to operate and requires a higher investment in order to recover costs. It is not uncommon to see office buildings built to government specifications that exceed standard building costs by 50 percent or more. The average corporate user filling a vacancy may not be willing to pay the higher cost for better design that it does not need. Or, in some cases, the lessor is left with an obvious specialty building that has fewer potential users. The result is extended vacancy, particularly during a recessionary period. These risks are most likely to occur with government facilities that are either special use or built to special specifications. Proper improvement analysis should reveal this issue and should be addressed in an upward adjustment to the risk rate/discount rate to reflect superadequacies.

As discussed previously, defaults of AAA corporate bonds historically are so infrequent that, statistically, they averaged 0.00 percent over the period 1929–2009. Figures 1, 2 and 3 compare a AAA rated corporate lease which has essentially zero early termination risk with the following:

- A government agency lease with a three percent early termination risk for years six through 20 of a 20-year lease (Figure 2). During the first five years, government compensation for lease termination is assumed to be available. The present value is 6.31 percent less than the zero early termination risk scenario.
- A government agency lease with a five percent early termination risk for years six through 20 of a 20-year lease (Figure 3). During the first five years, government compensation for lease termination is assumed to be available. The present value is 9.18 percent less than the zero early termination risk scenario.

It should be noted that annual rent payments were used because of greater simplicity of illustration. In fact, for a monthly payment analysis over the same 20-year period, the results are 6.54 percent present value loss for the three percent early termination risk scenario, and 9.54 percent for the five percent early termination risk scenario. These are reasonably similar results.

The differentials or increments in the discount rate of 1.0 percent and 1.5 percent above the rate for the AAA rated tenants are drawn from the current market. This is the typical differential found in cap rates in both the office and retail markets when comparing the highest grade tenants to those in the upper- to mid-tier B-rated tenants.

The principle behind the higher discount rates is as follows: both long-term bonds and credit tenant leases are long-term, fixed-rate obligations of much higher reliability than a lease with a non-credit tenant. With a bond, the greater the default risk, the higher the cap rate and discount rate to reflect higher risk. With a credit tenant lease, the greater the lease termination risk, the higher the cap rate and discount rate to reflect higher risk. The bond default risk is simply used as a reasonable proxy for lease termination risk, which is not as easily measured. Bond default rates are regularly tracked by multiple rating agencies.

Because of current and possible future conditions in the federal government sector, a three to five percent risk of early termination is assumed as an illustration. If these percentages become a reality, it is easy to see the basis for a decrease in present value of the six to nine percent range compared to AAA rated corporate leases, based on figures 1, 2, 3 and 4 that follow.

The cash flows illustrated in figures 1, 2 and 3 address the period of the lease only. Figure 4 is presented simply to indicate the rough scale of the reversion in comparison to the leased fee interest presented in Figure 1. In that way, the loss in present value from the lease cash flow in figures 2 and 3 can be adjusted downward to reflect their proportion to the total leased fee value. At reversion, the rent converts to market value which, for purposes of the illustration, is assumed to be 10 percent lower than contract rent at the inception of the original lease. In this case, the present value of lease cash flow represents 74 percent of leased fee value, while the reversion represents approximately 26 percent of leased fee value.

Lost present value to the lease cash flow was 6.31 percent for a three percent rate of early termination, and 9.18 percent for a five percent rate of early termination.

When compared to the total leased fee value (lease cash flow plus reversion), after rounding, the results are in the range of: 1) a present value loss of 4.6 percent for a three percent rate of early termination; and, 2) a present value loss of 6.7 percent for a five percent rate of early termination.

Note: The reversion component was provided for illustration and ease of calculation. It was assumed to be the same for each scenario. However, modeling the impact of early termination on reversion can be complex. It is possible that early termination also has an adverse impact on the value of the reversion for the following reasons:

- Contract rent may substantially exceed market rent for a non-government tenant in a somewhat customized building. This differential in rent can be well in excess of 10 percent, in the authors' experience.
- Other costs and impacts could be incurred during the reversion that could lower the value of the reversion. The reversion analysis also does not address other costs of renting to a new tenant: 1) possible above-average tenant improvement costs (modifications to address standard users); and, 2) possible lengthy loss of market rent during a vacancy period necessary to

Figure 1
AAA Rated Corporate Lessee with Zero Early Termination Risk

Year	Rent $/Sq. Ff.	Vacancy Allowance	Effective Gross Income	Mgmt Fee	Cash Flow	Present Value Factor	Present Value
1	$30.00	$0.00	$30.00	$0.60	$29.40	1.0000	$29.40
2	$30.00	$0.00	$30.00	$0.60	$29.40	0.9259	$27.22
3	$30.00	$0.00	$30.00	$0.60	$29.40	0.8573	$25.20
4	$30.00	$0.00	$30.00	$0.60	$29.40	0.7938	$23.34
5	$30.00	$0.00	$30.00	$0.60	$29.40	0.7350	$21.61
6	$34.78	$0.00	$34.78	$0.70	$34.08	0.6806	$23.19
7	$34.78	$0.00	$34.78	$0.70	$34.08	0.6302	$21.48
8	$34.78	$0.00	$34.78	$0.70	$34.08	0.5835	$19.89
9	$34.78	$0.00	$34.78	$0.70	$34.08	0.5403	$18.41
10	$34.78	$0.00	$34.78	$0.70	$34.08	0.5002	$17.05
11	$40.32	$0.00	$40.32	$0.81	$39.51	0.4632	$18.30
12	$40.32	$0.00	$40.32	$0.81	$39.51	0.4289	$16.95
13	$40.32	$0.00	$40.32	$0.81	$39.51	0.3971	$15.69
14	$40.32	$0.00	$40.32	$0.81	$39.51	0.3677	$14.53
15	$40.32	$0.00	$40.32	$0.81	$39.51	0.3405	$13.45
16	$46.74	$0.00	$46.74	$0.93	$45.81	0.3152	$14.44
17	$46.74	$0.00	$46.74	$0.93	$45.81	0.2919	$13.37
18	$46.74	$0.00	$46.74	$0.93	$45.81	0.2703	$12.38
19	$46.74	$0.00	$46.74	$0.93	$45.81	0.2502	$11.46
20	$46.74	$0.00	$46.74	$0.93	$45.81	0.2317	$10.61
			Present Value of Lease Cash Flow Per Sq. Ft.				$367.97

Assumptions:	
Rent Per Sq. Ft./Yr.	$30.00
Discount Rate	8%
5 Yr. Rent Increase Yrs. 6, 11, 16	15.93%
Annualized Rent Increase	3.0%
Management Fee	2.0%
Default Rate During Yrs. 1–10	0.0%

Source: Sonneman and Yerke, 2013

Figure 2
Federal Agency with 3% Early Termination Rate During Years 1–10

Year	Rent $/Sq. Ff.	Vacancy Allowance	Effective Gross Income	Mgmt Fee	Cash Flow	Present Value Factor	Present Value
1	$30.00	$0.00	$30.00	$0.60	$29.40	1.0000	$29.40
2	$30.00	$0.00	$30.00	$0.60	$29.40	0.9259	$27.22
3	$30.00	$0.00	$30.00	$0.60	$29.40	0.8573	$25.20
4	$30.00	$0.00	$30.00	$0.60	$29.40	0.7938	$23.34
5	$30.00	$0.00	$30.00	$0.60	$29.40	0.7350	$21.61
6	$34.78	$0.00	$34.78	$0.70	$34.08	0.6499	$22.15
7	$34.78	$0.00	$34.78	$0.70	$34.08	0.5963	$20.32
8	$34.78	$0.00	$34.78	$0.70	$34.08	0.5470	$18.64
9	$34.78	$0.00	$34.78	$0.70	$34.08	0.5019	$17.10
10	$34.78	$0.00	$34.78	$0.70	$34.08	0.4604	$15.69
11	$40.32	$0.00	$40.32	$0.81	$39.51	0.4224	$16.69
12	$40.32	$0.00	$40.32	$0.81	$39.51	0.3875	$15.31
13	$40.32	$0.00	$40.32	$0.81	$39.51	0.3555	$14.05
14	$40.32	$0.00	$40.32	$0.81	$39.51	0.3262	$12.89
15	$40.32	$0.00	$40.32	$0.81	$39.51	0.2992	$11.82
16	$46.74	$0.00	$46.74	$0.93	$45.81	0.2745	$12.57
17	$46.74	$0.00	$46.74	$0.93	$45.81	0.2519	$11.54
18	$46.74	$0.00	$46.74	$0.93	$45.81	0.2311	$10.59
19	$46.74	$0.00	$46.74	$0.93	$45.81	0.2120	$9.71
20	$46.74	$0.00	$46.74	$0.93	$45.81	0.1945	$8.91
			Present Value of Lease Cash Flow Per Sq. Ft.				**$344.75**
			Early Termination Risk % Lower Present Value				**-6.31%**

Assumptions:

Rent Per Sq. Ft./Yr.	$30.00
Discount Rate Yrs. 1–5	8% Minimal Risk Govt. Payment Govt. Pmt. For Remaining Lease
Discount Rate	9.0% (1.0% Higher For Risk)
5 Yr. Rent Increase Yrs. 6, 11, 16	15.93%
Annualized Rent Increase	3.0%
Management Fee	2.0%
Early Termination Rate During Yrs. 1–10	3.0%

Source: Sonneman and Yerke, 2013

Figure 3
Federal Agency with 5% Early Termination Rate

Year	Rent $/Sq. Ff.	Vacancy Allowance	Effective Gross Income	Mgmt Fee	Cash Flow	Present Value Factor	Present Value
1	$30.00	$0.00	$30.00	$0.60	$29.40	1.0000	$29.40
2	$30.00	$0.00	$30.00	$0.60	$29.40	0.9259	$27.22
3	$30.00	$0.00	$30.00	$0.60	$29.40	0.8573	$25.20
4	$30.00	$0.00	$30.00	$0.60	$29.40	0.7938	$23.34
5	$30.00	$0.00	$30.00	$0.60	$29.40	0.7350	$21.61
6	$34.78	$0.00	$34.78	$0.70	$34.08	0.6352	$21.65
7	$34.78	$0.00	$34.78	$0.70	$34.08	0.5801	$19.77
8	$34.78	$0.00	$34.78	$0.70	$34.08	0.5298	$18.06
9	$34.78	$0.00	$34.78	$0.70	$34.08	0.4838	$16.49
10	$34.78	$0.00	$34.78	$0.70	$34.08	0.4418	$15.06
11	$40.32	$0.00	$40.32	$0.81	$39.51	0.4035	$15.94
12	$40.32	$0.00	$40.32	$0.81	$39.51	0.3685	$14.56
13	$40.32	$0.00	$40.32	$0.81	$39.51	0.3365	$13.30
14	$40.32	$0.00	$40.32	$0.81	$39.51	0.3073	$12.14
15	$40.32	$0.00	$40.32	$0.81	$39.51	0.2807	$11.09
16	$46.74	$0.00	$46.74	$0.93	$45.81	0.2563	$11.74
17	$46.74	$0.00	$46.74	$0.93	$45.81	0.2341	$10.72
18	$46.74	$0.00	$46.74	$0.93	$45.81	0.2138	$9.79
19	$46.74	$0.00	$46.74	$0.93	$45.81	0.1952	$8.94
20	$46.74	$0.00	$46.74	$0.93	$45.81	0.1783	$8.17
			Present Value of Lease Cash Flow Per Sq. Ft.				**$334.19**
			Early Termination Risk % Lower Present Value				**-9.18%**

Assumptions:

Rent Per Sq. Ft./Yr.	$30.00
Discount Rate Yrs. 1–5	8.0% Discount Rate Years 1–5
Discount Rate Yrs. 6–20	9.5% (1.5% Higher For Risk)
5 Yr. Rent Increase (Yrs. 6, 11, 16)	15.93%
Annualized Rent Increase	3.0%
Management Fee	2.0%
Early Termination Rate During Yrs. 1–10	5.0%

Source: Sonneman and Yerke, 2013

Figure 4: Leased Fee Value (Same as Figure 1 with Reversion Analysis Added)
AAA Rated Corporation Lessee with Zero Early Termination Risk

Year	Market Rent $/Sq. Ft.	Contract Rent $/Sq. Ft.	Vacancy Allowance	Effective Gross Income	Mgmt Fee	Cash Flow	Present Value Factor	Present Value
1	$27.00	$30.00	$0.00	$30.00	$0.60	$29.40	1.0000	$29.40
2	$27.81	$30.00	$0.00	$30.00	$0.60	$29.40	0.9259	$27.22
3	$28.64	$30.00	$0.00	$30.00	$0.60	$29.40	0.8573	$25.20
4	$29.50	$30.00	$0.00	$30.00	$0.60	$29.40	0.7938	$23.34
5	$30.39	$30.00	$0.00	$30.00	$0.60	$29.40	0.7350	$21.61
6	$31.30	$34.78	$0.00	$34.78	$0.70	$34.08	0.6806	$23.19
7	$32.24	$34.78	$0.00	$34.78	$0.70	$34.08	0.6302	$21.48
8	$33.21	$34.78	$0.00	$34.78	$0.70	$34.08	0.5835	$19.89
9	$34.20	$34.78	$0.00	$34.78	$0.70	$34.08	0.5403	$18.41
10	$35.23	$34.78	$0.00	$34.78	$0.70	$34.08	0.5002	$17.05
11	$36.29	$40.32	$0.00	$40.32	$0.81	$39.51	0.4632	$18.30
12	$37.37	$40.32	$0.00	$40.32	$0.81	$39.51	0.4289	$16.95
13	$38.50	$40.32	$0.00	$40.32	$0.81	$39.51	0.3971	$15.69
14	$39.65	$40.32	$0.00	$40.32	$0.81	$39.51	0.3677	$14.53
15	$40.84	$40.32	$0.00	$40.32	$0.81	$39.51	0.3405	$13.45
16	$42.07	$46.74	$0.00	$46.74	$0.93	$45.81	0.3152	$14.44
17	$43.33	$46.74	$0.00	$46.74	$0.93	$45.81	0.2919	$13.37
18	$44.63	$46.74	$0.00	$46.74	$0.93	$45.81	0.2703	$12.38
19	$45.97	$46.74	$0.00	$46.74	$0.93	$45.81	0.2502	$11.46
20	$47.34	$46.74	$0.00	$46.74	$0.93	$45.81	0.2317	$10.61
Terminal Year	$48.77	$48.77	$2.44	$46.33	$0.98	$45.40		

Present Value of Lease Cash Flow Per Sq. Ft.		**$367.97**
Terminal Year Net Operating Income	$45.40	
Terminal Cap Rate	7.5%	
Terminal Year Sale Price	605.33	
Les Closing Cost @ 6%	36.32	
Terminal Year Sale Proceeds	569.01	
Present Value Factor	0.2317	
Reversion Per Sq. Ft.		**$131.84**
Leased Fee Value Per Sq. Ft.		**$499.81**
Lease Cash Flow: % of Leased Fee Value		**73.6%**
Reversion: % of Leased Fee Value		**26.4%**

Assumptions:	
Market Rent Per Sq. Ft./Yr.	$27.00 10% Below Contract Rent
Contract Rent Per Sq. Ft./ Yr.	$30.00
Stabilized Vacancy at Market Rent (For Reversion)	5.0%
Discount Rate	8.0%
Going in Cap Rate	6.5%
Terminal Cap Rate	7.5%
5 Yr. Rent Increase Yrs. 6, 11, 16	15.93%
Annualized Rent Increase	3.0%
Annual Rent Inflation	3.0%
Management Fee	2.0%
Default Rate	0.0%

Source: Sonneman and Yerke, 2013

find a replacement tenant. These same problems can occur with corporate leases of highly specialized buildings, when vacant and available, for a new tenant.

Operating Expense Estimate Risk: Economic Impact Illustration

With a normal bond lease, there is no risk of the lessor absorbing any operating expenses; however, in

a federal government lease, the lessor risks incurring operating expenses when if the future annual expense is underestimated. That risk is higher than the risk of overestimating the operating expenses—because few lessors are intimately familiar with the operating expenses of systems in federal buildings. Therefore, let us make the following assumptions to quantify the impact: 1) operating expense allowance is estimated at 30 percent of effective gross income; 2) there is a 70 percent chance that the operating expense allowance is underestimated, which requires that the lessor absorb that difference; and 3) if there is an underestimate, it is a modest underestimate in the five to 10 percent range.

Five Percent Operating Expense Underestimate — On the average for each year of the cash flow, the underestimate as a percent of cash flow is as follows for a five percent underestimate:

> 70% of EGI x 5% underestimate x
> (100% - 2% mgmt. fee) x 50% probability =
> 0.735% or 0.7% of annual cash flow after rounding

However when offset by the 30 percent chance of an overestimate, this impact is reduced by approximately 0.2 percent to a net of 0.5 percent of annual cash flow.

10 Percent Operating Expense Underestimate – On the average for each year of the cash flow, the underestimate as a percent of cash flow is as follows for a 10 percent underestimate of operating expenses:

> 30% of EGI x 10% underestimate x (100% - 2% mgmt. fee) x 50% probability = 1.47% or 1.5% of annual cash flow after rounding

However when offset by the 30 percent chance of an overestimate, this impact is reduced by approximately 0.45 percent to a net of roughly one percent of annual cash flow.

The preceding discussion indicates a potential for a roughly 0.5–1.0 percent loss in present value of the lease cash flows from underestimating operating expense risks. If the reversion is included in a AAA tenant annual cash flow structured as in Figure 1, then the reversion represents 26.4 percent of total present value and the cash flow is 73.6 percent of total present value. So when looking at the total leased fee value, including reversion, the present value loss is in the range of 0.4 percent to 0.7 percent after rounding.

CONCLUSION: MAGNITUDE OF ECONOMIC IMPACT FROM DIFFERENCES IN LEASE CLAUSES

On page two, the multiple categories for rating corporate bonds were discussed. For bonds that have less than investment grade ratings, the default ratings are significant. In the private sector, default rates for speculative (non-investment grade) bonds are an average of 1.08 percent for Moody's Ba rated bonds, 3.44 percent for B rated bonds and 13.84 percent for Caa-C rated bonds. These default rates are based on the period from 1920 through 2009. If the federal government experiences the three to five percent early termination rates estimated in our illustrations during the coming federal debt reduction period, these early terminations are more equivalent to speculative (non-investment grade) bonds.

Depending on the property and the lease, it appears that federal government leases contribute to a loss of present value as compared to AAA rated corporation leases. That loss of present value is summarized as follows:

Present Value Loss Components:

Payment in arrears	0.6%
Early termination/default risk	4.6% to 6.7%
Operating expense underestimate risk	0.4% to 0.7%
Preliminary range of present value loss from federal government lease	**5.6% to 8.0%**

The present value loss from a federal agency lease, in the analysis presented by the authors, is on the rough order of five to eight percent. This is a substantial difference in present value between federal agency leases and corporate AAA leases. Based on the magnitude of the difference, it appears that the federal government agency lease under changing market conditions would not be a reasonable equivalent of a AAA credit tenant lease.

Over the next five to 10 years, the economic impact of these differences can reasonably be expected to increase as a result of greater risk of early termination of leases. That early termination risk appears to be increasingly present, regardless of what political policies are in place and which approach to the federal debt is taken.

In the authors' view, going forward, single tenant federal agency lease status as a credit tenant should be revaluated year by year, based on actual early termination experience.

AREAS BEYOND THE SCOPE OF THIS ARTICLE

Each investment has a market rate return which is essentially the risk-free rate plus an additional risk increment or spread to account for risk. Traditionally, the long-term Treasury rate has been considered the risk-free rate. However, if U.S. Treasurys are being downgraded (as indicated in this article) where do investors go to find a new proxy for the risk-free rate? Do we use the rates applied to other countries' AAA bonds such as Canada, Germany and Switzerland—countries with strongest ratings? Or do we consider the strongest AAA corporations like Johnson & Johnson or Microsoft as an alternate risk-free rate benchmark? This question has already been introduced in contemporary business valuation literature. Like it or not, each investor eventually must wrestle with the issue. This article leaves such questions to the market and the fundamental research of analysts to decide. ■

ENDNOTES

1. Swann, Nikola, John Chambers and David T Beers, "United States of America Long-Term Rating Lowered To 'AA+' On Political Risks And Rising Debt Burden: Outlook Negative," Standard & Poor's Research Update, Aug. 5, 2011, pp. 1–8.

2. Detrixhe, John, "Egan-Jones Cuts U.S. Rating to AA+ on Spending-Cut Concern," *Bloomberg*, *http://www.bloomberg.com/news/2011-07-18/egan-jones-cuts-u-s-rating-to-aa-on-spending-cut-concern-1-.html*, July 18, 2011.

3. Swann et al., op. cit.

4. Borthwick, Douglas, "Ratings Agencies Circling the U.S.," Seeking Alpha, *http://seekingalpha.com/article/274402-ratings-agencies-circling-the-u-s*, June 10, 2011, pp. 1–2.

5. Cowie, Ian, "Leading Chinese credit rating agency downgrades USA government bonds," *The Telegraph*, *http://blogs.telegraph.co.uk/finance/ianmcowie/100008566*, Nov. 10, 2011, pp. 1–2.

6. *The Wall Street Journal*, *Washington Wire*, "Rating Agencies Inch Closer to Historic Downgrade of U.S. Debt," *http://blogs.wsj.com/washwire/2011/07/14/rating-agencies-inch-closer-to-historic-downgrade-of-u.s.-debt*, July 14, 2011, pp. 1–2.

7. Bowley, Graham, "The Fed's QE2 Traders, Buying Bonds by the Billions," *The New York Times*, *http://www.nytimes.com/2011/01/11/business/economy/11fed.html*, Jan. 10, 2011, pp. 1–4.

8. Evans-Pritchard, Ambrose, "China to 'liquidate' US Treasuries, not dollars," *The Telegraph, http://blogs.telegraph.co.uk/finance/ambroseevans-pritchard/100011987/china-to-liquidate-treasuries-not-dollars*, Sept. 15, 2011, pp. 1–2.

Advertising and Promotion of Expert Services

BY JACK P. FRIEDMAN, PH.D., BARRY A. DISKIN, PH.D., AND NICK ORDWAY, PH.D., J.D.

The suggestions offered in this article on how to advertise and promote oneself as an expert witness are based on anecdotal experience gained by the authors and not by any scientific method.

THE INITIAL CALL

The initial call for expert services is typically from an attorney or paralegal, in which the caller states something such as: "I am a lawyer with the firm of Sue & Sue in [location]. I am looking for someone who can assist me as an expert witness in [this matter]. I got your name from the Internet [or from another lawyer or some other reference]. Do you do expert witness work in this type of matter?"

If you answer "yes" or "I'd like to know more," plan on spending at least another 30 minutes talking with the attorney. If a paralegal calls, he or she will probably ask you to email a résumé and rate sheet for the attorney to review but will not discuss the case, so the paralegal's call may be short.

Timely Response

A reasonable person won't expect you to answer your phone on his/her initial call. When he leaves a message or voicemail, however, he does expect his call to be returned soon—that is, within 24 hours. Unless you return the call promptly, he may think of you as not adequately responsive to his needs and will go on to the next potential expert on his list.

Your Expectations

In the initial conversation, you can usually expect the attorney to provide the following:

- A brief description of the case (to determine your expertise and interest);
- Names of the parties to the lawsuit and their legal representatives (to ensure against conflicts);
- The type of report needed (appraised value, opinion of damages, rebuttal of opposing witness);
- Deadlines (to name experts, provide opinions, reports, or testimony).

Attorney's Requirements

At this point, the attorney will probably not want anything in writing because it might be discoverable, but the attorney will likely ask about:

- Your experience as an expert witness (if any);
- The number of times you have testified in a deposition and in court;
- Whether you have testified in similar matters or the same location (for experience and opinions in similar matters);
- Prior work with the same firm or agency, or with opponents.

Your Requirements

As a potential expert, be sure to get the attorney's contact information. Getting his name is useful when you want to check his bar status, and the firm's name is important so that you can visit its website to determine its size and prestige, its areas of legal specialization, geographic coverage or prominence, and possibly its reputation.

Qualifying the Attorney

Before you agree to work on an assignment, it is generally a good idea to determine whether you really want to work with a particular attorney. Not all attorneys are competent or honest. That is not a slur; it is the opinion of the late Chief Justice of the U.S. Supreme Court, Warren Burger.

Working with an unqualified attorney can harm your professional reputation and increase the probability that you might not be fully paid. A first step in checking the credentials of an attorney is to see what information exists on the Internet, including social media.

A more targeted approach is to consult the highly trusted attorney referral source, Martindale-Hubbell. Its website at *Martindale.com* has a "Peer Review Rating™" based on a five-point scale, giving a point for each of the following: legal knowledge, analytical capabilities, judgment, communication ability and experience. The rating is compiled by surveying attorneys in each jurisdiction. The best ratings are "AV" and "BV." Rated on a scale of 1 (lowest) to 5 (highest), a rating of "AV preeminent" requires a score of 4.5–5.0, while "BV distinguished" requires a score of 3.0–4.4. The company states that rated attorneys are also considered to have met "high criteria of general ethical standing." Attorneys are sorted by general practice area and location (state or country). Many of the individual attorney listings are also linked to law firm websites.

Not all attorneys appear on the Martindale site, and not all attorneys are rated. An attorney who has not yet achieved a rating may be excellent. Also, even if a person receives a high rating, this is no substitute for your personal due diligence in determining whether you wish to work for a particular attorney.

Approaching Deadlines

In the initial call, the attorney may tell you that he or she must name an expert by Friday. You may learn that the attorney has known about the case for almost a year. Why the delay in engaging an expert? The usual answers are either that the attorney has been focused on other, more pressing matters, or that the firm has been trying to settle the case, not wanting to spend time or money on an expert until settlement efforts have clearly reached an impasse.

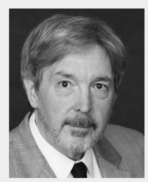
At this juncture, you may want to rethink involvement, considering these questions:

- Do I want to work with this attorney who responds only to deadlines and has not demonstrated case management skills to my satisfaction?
- Am I willing to allow my personal and business life to be thrown into anxiety mode as a result of this attorney's procrastination?

When you suspect that your services are being treated as a commodity; that is, that the attorney is looking for the fastest and cheapest, think twice about whether you will be adequately respected or rewarded for your efforts. Graphic artists and software developers often tell their clients: "Fast. Cheap. Good. Choose two." Unfortunately, you can't make this offer to an attorney; many attorneys expect all three.

About the Authors

Jack P. Friedman, Ph.D., CRE, FRICS, MAI, ASA, *is principal and CEO of Jack P. Friedman & Associates, Dallas, Texas, a real estate appraisal and economics consulting firm. He is a nationally recognized author, appraiser and consultant in real estate economics and related disciplines. Friedman's recent work includes litigation support (principally appraisal review and appraisal) regarding ad valorem tax cases, environmental damages, condemnation, construction defects, and contract disputes. Formerly, he served as senior research economist and head of research of Texas A&M University's Texas Real Estate Research Center, and was the Laguarta Professor in the Department of Finance. Friedman has written more than 20 books and 200 articles, and has been published in* The Appraisal Journal, Real Estate Issues®, Real Estate Review, and Real Estate Finance. *He served on the national Real Estate Accounting committees of the AICPA and Texas Society of Certified Public Accountants and was a member of the Appraiser Qualifications Board of the Appraisal Foundation. Friedman earned his doctorate degree from Georgia State University.*



Barry A. Diskin, Ph.D., CRE, *is professor and Francis J. Nardozza Scholar in the College of Business at Florida State University. Diskin teaches valuation classes to real estate majors at the undergraduate and graduate levels. His focus and research has been on natural gas pipelines for eminent domain cases, property tax challenges, contamination matters, and contract disputes. Previously, Diskin published in* The Appraisal Journal, the Journal of Real Estate Research, Real Estate Economics, the Journal of the American Bar Association, *and other real estate journals. He has been interviewed on national television about home buying issues and testified before the Florida Legislature about mobile home park legislation. Diskin is principal in the firm Diskin Property Research and has qualified as an expert witness in six states. His doctorate degree is from Georgia State University.*

Nicholas Ordway, Ph.D., J.D., *is a tenured full professor in the Financial Economics and Institutions Department at the Shidler College of Business, University of Hawaii, where he teaches undergraduate and graduate courses in appraisal theory, real estate investments and finance. Ordway has published numerous books and articles on real estate valuation and other real property topics. His research and consulting is focused on hotels, golf courses and other resort properties. Ordway has been honored with the Wagner Award from the Appraisal Institute and the Ballard Award from The Counselors of Real Estate®, and was selected as the National Educator of the Year by the Real Estate Educators Association. Ordway received his doctorate degree in Land Economics and a master's degree in business administration in real estate from Georgia State University; and a juris doctorate degree from the University of Georgia School of Law.*

Establishing Your Terms

Discuss with the attorney your customary terms. Having a list of terms and conditions is very helpful.

Availability

You must establish your availability for this assignment. If you have upcoming work commitments or vacation plans, tell the attorney. Another example is that of a professor who has classes on Mondays, Wednesdays and Fridays. He/she must let the attorney know in advance that travel or a meeting cannot be conducted on those days.

Fees

Fees should be discussed, including hourly fees for research and testimony. Some experts differentiate: deposition and trial testimony is far more stressful and demanding than research or writing from the comfort of your office, without travel. However, the opposing attorney is sure to ask at deposition, "Why do you charge so much more just to meet with me and tell me the truth?" insinuating that you're getting paid for something else.

Many clients don't want to pay for travel. However, always remember that you could have been working for another client, and you ought to get paid for your time even if you are not working while traveling. There are at least three fee possibilities when travel is extensive:

- Ask for 50 percent of your normal billing rate while traveling;
- Work while traveling; and
- Insist on payment for at least half a day when traveling.

Qualifications and Disqualifications

In the initial conversation, the attorney will ask about qualifications. Discuss your education and your professional licensing and designations, but the attorney will particularly be interested in your experience. Discuss similar cases in which you've worked on or testified, and why or why not they are relevant. If you've taken positions contrary to the one you will be expected to support in this matter, bring them up and either disqualify yourself or distinguish them from this matter. Many experts have been disqualified from testimony, often not through any fault or failing of their own. Often the proposed client is willing to engage you and to work around any negative factors, but he or she should not be blind sided by something unexpected. Disclose negatives.

References

The potential client is likely to ask for references. Keep a list of clients in a file on your desktop with names, phone numbers and issues. You can ask the caller to let you return the call in a day or two with the names of references after you have gained their permission. This will give you an opportunity to reconnect with the employing attorney to offer references and to add or ask anything that did not come to mind during the initial call. It also gives you a chance to reconnect with the reference, keeping your name in front of them for a possible future engagement.

Marketing and Promotion Feedback

At some point when discussing matters about the case has ended, you can ask the attorney for information that can provide feedback to your marketing and promotion efforts. You might ask, for example: "Whom may I thank for this referral?" or "How did you find me?"

Often, the attorney will say, "We got your name from the Internet." In this case, ask him to be more specific: was it your individual efforts that brought Internet prominence or possibly a listing of experts that you pay for?

If the prospect seems helpful or doesn't seem to be in a hurry to end the call, you can probe further: what keywords did he use for the Internet search? The answers can be very helpful, especially when the skill set he is seeking is one you want to expand, such as "appraisal review" or "condemnation appraisal" or "commercial real estate consultant."

Advance Preparation

In the initial call, the attorney will likely ask you to mail or email specific materials. It is wise to have these prepared in advance; this is not the time to hastily put a mailing together. The attorney will request several or all of the following:

- Résumé
- List of prior testimony
- Rate sheet
- Proposed engagement letter
- Client reference list

Your Résumé

The typical résumé or curriculum vitae (CV) includes most or all of the following information:

- Name
- Contact information
- Degrees
- Professional designations and certifications
- Work history
- Types of engagements
- Speeches
- Awards
- Client types (government agencies, law firms, corporations, individuals)
- Client names (optional)
- Case outcomes (optional)
- Publications (last 10 years as required by Rule 26 of the Federal Rules of Civil Procedure and Evidence)
- Personal information (optional: date of birth, family members, interests and hobbies)

The résumé should be complete and up to date with all changes for the past year. A major change, such as in employment or address, should be updated as soon as possible.

Including client names and/or case outcomes is optional. However, this résumé is likely to be shared with the opposing attorney in discovery, so you don't want to provide a road map for your opposition. Often, seemingly harmless or flattering comments about you or your own qualifications can be twisted and thrown back in your face at a trial.

Expect opposing counsel to dig through your background and even hire a private investigator to find out about the check you bounced twenty years ago or a minor traffic infraction. Offering the names of opposing attorneys you faced in the past will make it easy to uncover weaknesses noted in prior testimony. Even though a minor infraction may have absolutely nothing to do with the matter of this trial, opposing attorneys will use anything in an effort to besmirch the character and impugn the integrity of an expert witness.

Even though opposing counsel comments may be false and malicious, they often get the last word in a hearing or trial. Expect an opposing attorney to save the most punishing shot for last, in an effort to deprive you of the opportunity to respond on your own behalf and leave that as the last impression for the jury.

Prepare your résumé carefully and completely. A typographical error or an omission will likely be exploited by the opposition as its way of demonstrating that you are not to be trusted. That is, the attorney will insinuate that, if you omitted one thing (possibly a publication that is quite prestigious is missing from your résumé), you will be willing to omit anything in testimony to benefit your client.

List of Prior Testimony

Rule 26 of the Federal Rules of Civil Procedure and Evidence requires the expert to provide a list of prior testimony by deposition and at trial for the four previous years. Keep such a list on file.

The list should include the style of each case, the form of your testimony (deposition or trial), and the date(s) of your testimony, but you may also include additional information, such as which side retained you and the outcome of the trial. However, as noted previously, this list is subject to discovery. The opposing counsel will likely try to use the information against you, so providing a road map facilitates efforts to contact others and exploit any weaknesses they observed. Let opposing attorneys do their own work; don't do it for them.

Rate Sheet

The attorney who is considering hiring you will likely ask for a rate sheet. This is a list of hourly rates you will charge for fees and expenses. If others work for you, list them either by name or by job title and provide their hourly rates or ranges of rate by title.

If you charge a different rate for testimony than for research or writing, list your various rates. Travel can be important. Most experts bill the actual costs of travel: airfare, taxis, parking, hotels, car rentals and meals. Sometimes the client will arrange for the larger expense items (airfare, hotel, car rental), but you will still bill the client for incidentals.

As mentioned previously, travel time can be an issue. Many clients, including government agencies, don't pay for travel time but will pay for work efforts during travel. It's a good policy in any case to bring your briefcase or laptop onboard the plane so as not to risk its loss as checked baggage. Doing so also enables you to review your report and essential work papers or supporting documents during the flight. This will enable you to bill for time when traveling. On the return flight, jot down important ideas or notes from meetings or depositions while they are fresh in your mind. Many clients understand that you are traveling as part of their assignment and will pay your normal rates (or at least 50 percent) as long as the charge and its computation are known in advance.

We encourage receipt of a retainer before beginning work, especially for new clients. Your rate sheet should state the amount and whether it applies to only the first invoice or remains unchanged throughout the term of the assignment. Some complex cases continue over a period of years.

Your rate sheet can state charges for copying, express mail and other out-of-pocket expenses. It may state fees for reserving dates or for cancellation of meetings on short notice. It may include penalties for late payment. Most experts insist on payment in full before testimony.

Your engagement letter (discussed below) may describe some of these issues. Experts often attach a list of terms and conditions to the engagement letter. Be sure that your rate sheet is consistent with the fees and expenses as stated in other agreements, especially the engagement letter, because all are subject to discovery, and opposing counsel will be sure to make hay of any discrepancy.

Proposed Engagement Letter

The attorney may ask for, or you may offer to send, a proposed engagement letter. It is a good practice to have a template available in which you can fill in the required blanks. Some professional organizations offer suggested generic templates. Some expert witness professional associations do the same, or will sell a template with terms and conditions that you may select.

An expert witness's engagement letter is discoverable, so choose words that you are comfortable with and terms that won't be embarrassing when brought to light, such as "we serve as advocates for our clients," or "we want you to win." The engagement letter should provide at least these elements:

- Names of the parties;
- Description (possibly vague) of the assignment;
- Professional standards to be applied;
- Staffing;
- Business arrangements (or reference to rate sheet);
  - Rates
  - Payment terms
  - Travel time, expenses
  - Retainer
- Terms and conditions (may be in a PDF attachment);
- Dated signatures of the parties.

Many experts find it preferable to describe the engagement or work to be performed in general terms. At the start of the assignment, you will not know the exact scope of work. If you are too specific, the opposing side likely will make an issue of why you did research that was not requested, or why you failed to do research that was promised in your engagement letter.

These days, electronic signatures may be acceptable, but try to get your engagement letter returned with a signature and a retainer before starting work. If you expect a retainer remember to enclose an Internal Revenue Service Form W-9 *Request for Taxpayer Identification Number and Certification*, providing your Social Security number or your firm's tax ID number.

Many clients will want you to start working immediately because of some urgency. It is astonishing that some new clients will expect you to work 24/7 for day after day while they won't make the effort to sign your engagement letter or mail a check for the retainer. The start of an engagement should be a honeymoon period. If you can't get business arrangements completed then, quite possibly they will never get done.

Sending an engagement letter as a Word file may be expedient, but be aware that it could be altered without your realization. It is sensible to use Word's *Compare Documents* feature to compare the returned document with the one you sent. A PDF offers some protection against unauthorized changes, although recent versions of Adobe® Acrobat® promise increasing ability to edit PDF documents. If your proposed client returns your engagement letter with an unauthorized change (and without comment), think twice about whether you want to do business with him or her. The attorney who hires you represents his client, not you.

REDUCING YOUR LIABILITY EXPOSURE

One of the best ways to reduce your liability exposure is to adhere to the rules in your professional code of ethics. The basis of many lawsuits and disciplinary actions by licensing boards is negligence, which is failure to meet the duty of care required of professionals. Often this failure results from accepting an assignment that does not allow enough time for one to ensure accuracy and completeness of services. Such assignments should be avoided. Clients and their attorneys often want immediate answers to questions that require more time to collect and analyze relevant data properly, but you must not allow yourself to be pressured to offer an opinion without due care. State courts often view provisions in a professional code of ethics as the benchmark for reasonable care in that profession.

A first line of defense to limit liability exposure is the engagement letter. The underlying reason for most disputes that lead to lawsuits and bad feelings is miscommunication. The carefully drafted engagement letter reduces the possibility of misunderstanding. As outlined above and with some expansion on that list, the letter may include a description of the scope of services, disclaimers and limitations, timing and deadlines, agreement of the client to cooperate, how modifications to the services can be made, confidentiality, ownership issues and compensation. You may have standard language that has been reviewed previously by your personal attorney. The letter also usually will include custom language to fit the assignment. Unusual language should be reviewed by your counsel. This is particularly important if the engagement letter has been drafted by the other party.

In assignments involving lawsuits and arbitrations, the possibility of "litigation privilege" exists. This privilege provides broad protection for an attorney and his or her agents, such as appraisal experts. It provides immunity from defamation claims and possibly other claims involving expert opinions and reports made pursuant to judicial and quasi-judicial administrative proceedings. In most states the privilege is absolute; however, a growing number of states have carved out exceptions qualifying the privilege. According to case law, the privilege applies to communications:

- made in judicial or quasi-judicial proceedings;
- by litigants or other participants;
- to achieve the objects of the litigation; and
- that has some connection or logical relation to the proceeding or possible proceeding.

The privilege varies by state. In some states, courts have refused to allow the privilege when a participant has violated rules of professional conduct.

The privilege generally does not apply to post-trial statements made to media. You should therefore avoid the temptation to try to gain free publicity by agreeing to interviews with news reporters or by speaking on television panels on matters involving client assignments. You should consult with your attorney to determine whether litigation privilege applies to you in the matter and how it applies.

You need to control your publicity and advertising. Effective means of publicity include serving on public boards, working on committees of your professional organizations, and contributing to professional journals. Until modern times, professionals such as attorneys did not advertise. Today everyone does. Still, your advertising should be carefully targeted. Professionals commonly include statements of their services and availability in professional directories (including those on the Internet), in telephone Yellow Pages and in advertisements in legal publications. Advertising should be in good taste and avoid exaggeration. You need to be aware of any limitations or requirements concerning advertising imposed by your state licensing authorities. Proper legal name, certification numbers and other information may be required by your jurisdiction's licensing law and administrative rules.

Because of the Internet, your professional and personal record have become exposed. Many people who wish to learn about you will "Google" your name. Try it yourself. You may be amazed. It is important to manage insofar as possible what is available on the Internet. Do not put compromising information on your Facebook page or other social media. Information you may think is private and personal and restricted to just your friends can be accessed by an opposing attorney.

How confidential are the data and written reports you prepare for your client? If you are designated as an expert witness, your records are subject to discovery. On the other hand, if you are a litigation consultant, this information is generally protected. However, you must be careful not to compromise the confidentiality of this information by acting inconsistently with your status.

To further limit liability exposure, you may wish to explore the availability of professional liability insurance products. Many of these policies are obtainable through some professional organizations. Also, seek legal advice on the proper structuring of your business. Some choices are: sole proprietorship, corporation, S corporation, limited liability partnership (LLP) and limited liability corporation (LLC). As with taxes, liability is especially important to address when considering these structure options.

Additional Promotional Material

To enhance your visibility, additional material you may want to prepare in advance includes:

- Business cards
- Brochure
- Publication(s)
- Website (home page, nature of business, contact information)
- Citations, case numbers, courts, outcomes
- Sample professional report (names redacted)
- Mailing lists, bar association section membership

Business Cards

Even in today's electronic information age, there is no substitute for face-to-face contact. This includes the traditional exchange of business cards. Some people have software to record and catalog them. For clients from other countries, particularly Asia, it is desirable for business cards to include a foreign language translation on the back.

Brochure

A brochure or flyer is a powerful follow-up to a personal meeting. One can be mailed out (or emailed) annually or more frequently to keep your name in front of potential clients. If mailed quarterly, update a section on recent developments in your field. As with business cards, depending on the targeted clients, it may be helpful to include some foreign translation.

Website

Nearly every business these days has a website to gain visibility on the Internet. There are three types of services required for a website, though some providers may offer more than one service. You must first find a domain name registrar to whom you will pay an annual fee to reserve and register the name you have chosen for your site. You will also need Web hosting—the provider on whose servers your site actually resides. Finally, you will need a site designer or developer to create the HTML pages of your site. Fees for all these services vary widely, and research is in order to find the package that best suits you. Some providers can determine whether the domain name you want is available, register it for you, host your site, and provide a basic template for a small site (four or five pages). This may be a good start if you don't mind a "cookie cutter" look to your site.

The content of your site will likely include the following elements:

- Home page
- Staff, qualifications
- Reference sources (links)
- Contact information (can be an email link or a Web form to send message from the site)
- Publications

Your home page may include contact information and a description of your business service offerings that will help visitors determine whether there is a fit with their needs. Suggested contact information for the home page of an expert witness in real estate litigation may include the following:

- Name, occupation, designations
- Types of services
  - Appraisal
  - Appraisal review
  - Damages
- Applications of services
  - Condemnation
  - Construction defects
  - Divorces
  - Environmental damages
  - Partnership disputes
  - Wrongful foreclosures

Visiting the websites of competitors, especially the ones you respect or admire, may be helpful in determining what to include on your site. When a certain competitor appears to be getting business for which you are well qualified, check his or her website to determine whether you might be able to improve your site to be more competitive.

Paid Advertising and Other Services

In the past, professionals didn't buy advertising. Advertising was thought to be unprofessional, and some professions prohibited advertising altogether. Until the 1970s, a Big-8 CPA firm could not even buy a boldface listing in a telephone directory. Those prohibitions have ended, and businesses realize they must advertise in order to generate sufficient new business. As an example, television advertising for personal injury lawyers is now rampant.

Annual gross income in excess of $200,000 is not uncommon for experts, and spending five to six percent of that for advertising is quite an acceptable rate. If one successful engagement from a $400 paid ad generates a $10,000 fee, the cost of that ad is recovered many times over.

The target audience for advertising expert services is easy to identify: it is attorneys, or specifically litigators, but you may need to cast a wide net—using several types of advertising media—in order to catch the attention of attorneys who may need your services.

Advertising may take these broad forms:

- Bar association directories
- Expert witness advertising services
- Expert witness services linking with clients
- Direct Internet visibility
- Business development officer
- Media publicist

Bar Association Directories

Bar associations in many states publish an annual directory of members that includes paid advertising.

The bar association will employ salespeople who comb various other directories to identify potential advertisers. They will sell full-, half-, quarter-page or smaller ads.

Before you spend $1,000 for a full page, get a copy of last year's directory. Review it to see how a lawyer looking for your specialty might find you, especially since most of those searches have moved to the Internet.

Expert Witness Listings

There are a number of firms/organizations that will include you in their directory, either hard copy, electronic or both, for $200–$2,000 per year. These include but are not limited to the following:

- ALM Experts *(www.almexperts.com)*
- Expert Pages *(www.expertpages.com)*
- Expert Witness Guide (Some bar associations publish state-specific guide books.)
- Experts.com
- HG Experts (expert witness and forensic services directory)
- JurisPro (expert witness directory)
- JVRA (Zarin's Jury Verdict Review & Analysis)
- LawFirmResources.org
- Lexis/Nexis *(http://law.lexisnexis.com/infopro/zimmermans)*
- National Directory of Expert Witnesses
- Texas Trial Lawyers Association (TTLA)

Most offer electronic listings to include your biography or résumé, photo and a link to your website. Before committing to a directory, you could try to determine its effectiveness. Enter into a search engine (Google, Bing) the keywords that you think an attorney or paralegal would use. See whether the directory appears and, if so, whether the link is on the first page of search results. Then go to experts who are listed in your field. If you are listed yourself, before renewing the ad, try to find yourself. Are you just one of many experts, or would you be readily and prominently identified?

Linking Services: Expert Witnesses and Clients

There are a number of expert witness "matchmaking" services that accept orders from attorneys to link with experts, much like an employment bureau or staffing service. Basically, the expert lists his or her credentials with the service. When an attorney places an order, the service identifies and screens qualified experts. The service adds its fees to the expert's bills and makes all business arrangements. Service fees may range from a flat amount to 25–50 percent above the expert's invoice.

Firms in this type of business include:

- ExpertConnect
- Forensis
- IMS Experts
- RTG (Round Table Group—a subsidiary of Thomson Reuters)
- TASA (Technical Advisory Services for Attorneys)

Typically, the law firm pays no initial search fee. The listing firm asks the expert to take time to explain how his qualifications and experience match up with the search order. If the match is successful and the work is performed, the expert must wait for the service to collect the fee. The parties may argue over the reasonableness of fees, with the expert's right to collect being compromised.

Direct Internet Visibility

Yahoo! and Google AdWords provide subscribing businesses the opportunity to identify keywords to find their work and to bid for the highest placement in search results. An advertiser can then identify several words or phrases and state how much he or she will pay each time a user clicks on that phrase in a search.

For example, an advertiser could identify "economic damages expert" for $1.50. Every time a user inputs that phrase, links to paid advertisers appear at the top of the search results, generally based on bids for keywords, from highest to lowest. When a user clicks on the link, the advertiser is charged. The advertiser can limit costs per day. If the advertiser limits daily costs to $10, then once that amount is reached, the advertiser will no longer be featured in the advertising search results, but that will limit the potential expense to $300 each month.

An expert who advertises that way must be selective as to keywords or phrases and the amount to pay per click. Google AdWords will offer statistics on usage, hints of prices per phrase to gain first-page status, and suggested keywords.

Advertisers can input keywords to see whether links to their websites are shown and in what position they are shown. By doing this, an advertiser may see where competitors are and try to gain greater visibility, where desired, by increasing the cost per click.

Business Development Officer

Those experts with a large staff to maintain may choose to hire a full-time salesperson. Often these individuals have a network of contacts, and spend all their time trying to generate business.

Media Publicist

There are publicists who will try to get your name into magazines or newspapers, or directly in front of attorneys. Payment arrangements are usually based on the volume of readership.

FREE PUBLICITY

Sources of free publicity include publications, speaking engagements, professional associations, personal relationships and press releases. These are free in the sense that no monetary payment is required, although the personal effort required can be tantamount to a large expense.

Publications

Getting into print media, such as a book or article, can require extensive effort, as described below. And even when you have succeeded in, for instance, authoring a published article, it is unlikely that a potential client will see the publication and call you. Instead, it is more likely that the potential client will hear of you from a different source, and you will then mail a copy of the publication. The publication itself demonstrates your expertise in the subject. Don't, however, mail or email anything to your potential attorney client without asking permission first, as what you send may be discoverable.

Books

Writing a book can consume your otherwise "free" time for more than a year. You may face numerous rejections before finding a suitable publisher, if you find one at all. There are various types of book publishers to consider. Academic non-profit "university presses" publish books they find interesting or fitting their theme. Textbooks are generally published by professional publishers. They will spend more than $100,000 on a book and take it seriously. Professional associations may seek out specialized books. Trade books—that is, ones that are primarily sold through retail bookstores—may gain wide circulation, though with less intellectual prestige than academic or professional books.

It helps your credibility when your book is accepted as "authoritative" in your field.

You may need to publish your book yourself or pay a "vanity press" to publish it. It may not be worth the required time and extensive effort.

Articles

Writing a manuscript for a top-level refereed academic publication is a formidable challenge. Trade journal articles are less demanding but are still not easy to accomplish. Writing an article for popular media is less demanding but offers little prestige. Blogging or tweeting doesn't pass any test of screening for professional acceptance.

Speaking

Speaking, lecturing or presenting are excellent ways of becoming known. It is a good policy to hand out something with the presentation—not just a printout of your slides (if you gave a PowerPoint presentation) but perhaps an article or brochure with your business card stapled to it.

An audience of attorneys is greatly preferred. This is not to imply that civic groups or colleagues are unimportant. An audience of the bar association's subgroup interested in your field or a brown bag lunch at a large law firm's offices can be effective. Try to arrange for continuing education units to be awarded to increase attendance and attendee efficiency.

Other prestigious speaking assignments include teaching a seminar or course, or being a guest speaker in a university course. Teaching a university course is a heavy burden, especially the first time. But even when you've taught the course several times and virtually memorized your lectures, you still have the obligation of classes two or three times a week, possibly keeping office hours and conducting email correspondence with students and grading papers. As a guest speaker, you have no recurring burden, yet either obligation provides only a single line on a résumé. One distinction: If you have course responsibility, ask the university for a title such as lecturer, visiting professor or adjunct professor.

Professional Associations

Professional associations may award prestigious designations that you can earn. In addition, membership in professional associations gives you an opportunity to meet others in your field. You can offer to help fellow members, taking assignments if they are too conflicted or too busy. Becoming an officer or director confers prestige, secures visibility among peers and can be added to your résumé.

Expert Witness Associations

Consider joining an expert witness organization. Two prominent ones are SEAK (Skills, Education, Achievement, Knowledge), Inc., and FEWA (Forensic Expert Witness Association).[1] Both offer training seminars, annual update seminars and directories. These are excellent organizations for both beginning and experienced experts.

Personal Relationships

It is important to maintain close personal relationships with colleagues, who may also be or become friends. They refer business when conflicted or too busy, or when your specialization is in the client's best interest.

Continuing relationships with clients, or even past opponents, is important. Stir the pot quarterly, or whenever you get a chance, by calling, emailing news, or a periodic mailing such as a brochure.

For outgoing personalities, an office visit or a lunch with prospective clients may be effective, whereas introverts may find writing an article to be a better and more comfortable use of their time.

Social Networks

Business applications for social media such as Facebook, LinkedIn and Plaxo have been growing, but they have not yet replaced traditional methods. You can begin or join conversations to try to get your name and ideas better recognized and accepted.

Press Releases

Press releases to announce a change (award, honor, designation, speaking engagement) are a way of maintaining visibility. You can also engage a publicist and pay according to the exposure received.

Some publications will gladly reprint articles published elsewhere, and the original publisher often seeks only an acknowledgment line.

Keep a list of publications to which you can mail announcements so you don't have to create a list for each event.

Conclusion: Keeping Score

Keep score of contacts by number and source. Enter contacts and gross income by source of contact into a spreadsheet so it is easily updated. Keep referrals in the same database, with separate lists for referrals from colleagues and assignments that generated new business.

The score will be different for different fields and specialties, and will differ depending on the personality of the expert. Remember to reciprocate as much as possible with those who helped you and to concentrate on the most effective type of advertising and promotion.

Many other occupations provide an annually recurring client engagement (audits, tax returns, medical physical exams) but not expert witnesses. Recurring assignments are often from the same attorney. Stay in touch with colleagues and clients to enhance the likelihood that they will think of you when another opportunity arises. ■

RESOURCES

Hamilton, Rosalie R., *The Expert Witness Marketing Book,* Expert Communications, Clearwater, Florida, 2003.

Shlaes, Jared, *Real Estate Counseling in a Plain Brown Wrapper,* The Counselors of Real Estate, Chicago, Illinois, 1992.

ENDNOTE

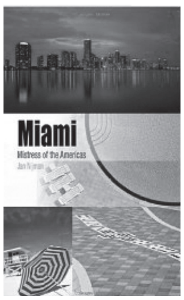
1. SEAK is a for-profit firm that matches experts with potential clients.

RECOMMENDED READING

Miami: Mistress of the Americas

by Jan Nijman, (©2011, University of Pennsylvania Press, 272 pages)

REVIEWED BY JOE W. PARKER, CRE



MIAMI: MISTRESS OF THE AMERICAS is an authoritative look at the emergence of Miami as a "World City." The author relies on and cites considerable bibliographical data in presenting Miami's progression from a territory relinquished by Spain in return for a United States promise to give up its claims to Texas to its current status as a recognized International City.

The author's presentation of the city's early years is sufficiently concise to enable a more in-depth discussion of the interaction of the various geographical, economic, environmental, social and political factors, and events that shaped the city through the 1900s into the early 21st century, as well as an insightful look at the people who played key roles in that development, including some early pioneers. He takes us back as far as the travels of Ponce de Leon, who set foot on the shores of Biscayne Bay in 1513, reportedly looking for the mythical Fountain of Youth.

Nijman includes an excellent discussion of how Miami and the surrounding areas dealt with mammoth environmental issues, including a 3,000-square-mile aquifer and the Everglades, and how one of the world's greatest wetlands impacted growth and development. He writes about Napoleon Bonaparte Broward's project to drain the Everglades when he was governor of Florida in the early 1900s. That project, coupled with the development of Miami Beach, led to a fast-moving, speculative real estate market in South Florida. Many of those early real estate promoters were reportedly unscrupulous, selling land that was underwater to unsuspecting out-of-state investors. Nijman says that land was essentially sold "by the gallon."

The book includes excellent discussions of the booms and busts the Miami real estate market has experienced, as well as background of the development of both the affluent and non-affluent communities within the city and the people who inhabit those areas. He explains how those ethnic groups, many of them exiles, migrated from one area to another, along with descriptions of the evolutions within those areas.

Nijman makes some very interesting points. For instance, in the 1920s when much of the U.S. was developing industrially, Miami lagged behind because the city was remote and comparatively inaccessible. The author notes that in 1880, while the New York region had a population of two million, Philadelphia had a population of nearly one million, and Chicago claimed a population of a half-million, the entire Dade County area had an official count of 257. Early pioneer Julia Tuttle convinced her friend

About the Reviewer

Joe W. Parker, CRE, MAI, FRICS *is president of Appraisal Research Company and senior vice president of Equity Solutions USA. He first entered the real estate profession in 1974 and established Appraisal Research Company in 1978. In 2003, he co-founded Equity Solutions USA, an appraisal management company that provides appraisal services to regional and national banks.*

Parker has appraised commercial real estate throughout the South and Lower Midwest with appraisal experience in environmentally-contaminated properties, fiber optic corridors, cemeteries, golf courses and country clubs, colleges and schools, hospitals, wetlands, conservation easements and historic properties. As well as regularly advising clients on a variety of real estate matters, Parker also oversees all appraiser credentialing and reviewing processes at Equity Solutions USA.

Parker also serves as an expert witness on such issues as construction defects, mortgage fraud, title defects, environmental contamination and stigma. He was trained as a Mediator at the University of Houston's Bauer College of Business and at Harvard Law School.

Henry Flagler, a business partner of John D. Rockefeller, to build the first railway south to Miami in the late 1800s, which Nijman says was indispensable in shaping Miami's future.

The subtropical climate further limited potential industrial development in Miami. However, the invention of air conditioning, a seemingly simple thing, played a highly significant part in Miami becoming a major tourist mecca, catering particularly to the upper class. That one invention may have been the single most important event for the city. Full-scale development of the beaches followed.

The author points out that Miami is a city of transience, and that its residents come and go, often even in death. Home is always somewhere else. Miami is only an interim stop on their trip through life. Indeed, some twenty percent of those who die while living in Miami are flown elsewhere for their final resting place, never truly calling Miami home. Nijman notes that even the wealthy industrialist James Deering, who built the famed 70-room Villa Vizcaya mansion on Biscayne Bay and then spent the next ten years traveling the world to select and purchase its elaborate and ornate furnishings, was taken back home to Chicago for burial in the family plot when he died.

Nijman includes an interesting detail of the growth years—how Miami evolved from a city known for its beaches and winter homes into an international business center, and how the Spanish-speaking skills of the various exiles (Cubans, Haitians, Nicaraguans and others), and the professional expertise and entrepreneurial spirit they brought with them when they came to the U.S., played such an important part in influencing that evolution. He cites the more than 500,000 registered refugees, many of whom were small business owners and middle-class professionals, and he discusses the impacts, both positive and negative, those refugees had on the Miami economy and on the growth of the city.

He also notes that each ethnic group has a strong sense of community, but that each group tends to live within neighborhoods comprised of the same ethnicity. In other words, each group has a local identity. Nijman discusses at length the various communities within Miami, how they originated and evolved, and how Miami was ultimately shaped by each of them.

The influence of organized crime is also discussed. The crime figures Nijman describes include the well-known Al Capone and Meyer Lansky, as well as some stylish characters like "Loudmouth" Levin and Jack "Greasy Thumb" Guzik. Even the illicit drug trade and its impact on the city are brought into the conversation. Nijman notes that Miami became a major port of entry for alcohol smuggling (rum running) and later for cocaine from Latin America, along with its co-partner, money laundering.

Nijman details how Miami served as the base for various groups, including Cubans, Dominicans and Haitians, plotting revolution in the Caribbean and Latin America in the 1950s "with gun running as a major industry." Notable among those was the Cuban exile community who opposed Batista, and who later opposed Castro after he overthrew Batista. Oddly enough, Batista himself turned out to be an exile in South Florida, fleeing to and living in Coral Gables after losing Cuba to Castro.

Nijman points to advances in telecommunications and transportation as having the greatest effect on Miami's economic transformation into a global city and becoming an important link in worldwide financial and economic networks. He explains the characteristics of a global city, particularly as they relate to Miami, how the circulation of capital feeds them, and how some of it remains in Miami in the form of real estate investment and the nature of those investments.

Miami is unique as a world city, notes Nijman, because it became one without first being domestically important. How it did so is well documented by the author. Today Miami is more diversified and more trade oriented than ever. It is home to multinational companies, and it enjoys a role of dominance in trade with Latin America.

Miami: Mistress of the Americas is a unique read. From a real estate practitioner's viewpoint, it provides an interesting narrative of how the physical, social, economic and political forces intertwined to shape Miami, a city with an extremely diverse group of residents. I was left with a better understanding of how many different factors really do affect a real estate community, how they are intertwined, and how unlikely it is that they can be fully separated.

This book should probably be required reading for every resident of South Florida. I also recommend it to those who have ever lived in the region or who have ties to South Florida and to those real estate practitioners who are interested in another perspective of what really goes on behind the scenes in making and shaping a real estate market. ■

REAL ESTATE ISSUES®

Published by THE COUNSELORS OF REAL ESTATE®

CONTRIBUTOR INFORMATION

The Counselors of Real Estate® is seeking original manuscripts for publication in *Real Estate Issues®*, a peer-reviewed journal published three times annually. The journal reaches a lucrative segment of the real estate industry as well as a representative cross-section of professionals in related industries.

Real Estate Issues subscribers are primarily the owners, chairpersons, presidents and vice presidents of real estate companies, financial corporations, property companies, banks, management companies, financial corporations, property companies, banks, management companies, libraries and REALTOR® boards throughout the country. Other subscribers include professors and university personnel, and professionals in S&Ls, insurance companies and law firms.

Real Estate Issues is published for the benefit of CRE and other real estate professionals, planners, architects, developers, economists, government personnel, lawyers and accountants. It focuses on providing up-to-date information about problems and topics in the field of real estate.

REVIEW PROCESS

Member and nonmember authors should submit manuscripts as Microsoft Word documents, preferably via email, to ***cscherf@cre.org*** or ***info@cre.org*** at:

Real Estate Issues
C/O The Counselors of Real Estate
430 N. Michigan Ave.
Chicago, IL 60611

Manuscripts deemed appropriate for publication in *Real Estate Issues* are reviewed by three members of the REI Editorial Board: two board members with expertise in the particular subject matter area and the editor in chief. All reviews are conducted anonymously; that is, without identifying the author(s) to the reviewers or vice versa.

The editorial board may reject articles, accept articles outright or accept articles on condition that the author makes specific revisions. Editors make every effort to notify the author of the acceptance or rejection of a manuscript at the earliest possible date.

Real Estate Issues does not accept manuscripts that directly and blatantly advertise, publicize or promote the author or author's firm or products. This policy is not intended to exclude any mention of the author, his/her firm or the activities or either; any such inclusions, however, should be as general as possible, modest in tone and interesting to a large scope of readers. If a product, service or company is featured, it should be informational rather than promotional in nature. Prospective authors also should avoid potential conflicts of interest between the publication of an article and its advertising value.

RIGHTS

Upon publication, The Counselors of Real Estate holds copyright on all original works, which enables the organization to post articles on its website and authorize use for classrooms and other reprint requests. The CRE will not refuse any reasonable request from the author for permission to reproduce his/her contributions to the journal.

WEBSITE

The CRE will post a PDF file of each article on its website after the issue mails, which enables Counselors and site visitors to access and circulate articles.

DEADLINES

See Editorial Calendar at ***www.cre.org*** under "Publications."

MANUSCRIPT/GRAPHICS PREPARATION

1. Manuscripts must be submitted as a Microsoft Word document via email. All submitted material—including abstract, text and notes—should be double-spaced. Manuscripts should not exceed 25 single-sided pages in length, approximately 7,000 words. Submit a 50- to 100-word abstract, which will appear on the table of contents page if manuscript is accepted, and a brief biographical statement including author(s) email address(es). Contributors should submit computer-created charts and tables as separate files—not embedded in the document containing the text of the article.
2. Graphics—including tables, charts, illustrations and other images—are considered "Figures," and should be numbered consecutively and submitted in a form suitable for reproduction. All graphics should have titles.
3. All notes, citations and explanatory, should be numbered consecutively in the text and places at the end of the manuscript.
4. If appropriate, include high-resolution photographs (printed images or at least 300 dpi if submitted electronically) to clarify and enhance the content of the article.
5. Article title should contain no more than eight to 10 words, including an active verb.
6. For uniformity and accuracy consistent with The Counselors of Real Estate editorial policy, refer to The Associated Press Stylebook.

WILLIAM S. BALLARD AWARD

The William S. Ballard Award is presented annually to the author or authors whose work best exemplifies the high standards of William S. Ballard, CRE, and the high standards of content maintained in *Real Estate Issues*. The award-winning manuscript, selected by a three-person committee, is chosen from the published articles that appear in an annual volume of the journal. CREs and nonmember authors are eligible. The award, which is funded by the William S. Ballard Scholarship Fund, includes a $500 honorarium and is presented at a national meeting of The Counselors.

The award is named in honor of William S. Ballard, who was a leading real estate counselor in Boston in the 1950s and 1960s. He was best known for the creation of the "industrial park" concept and developing the HUD format for feasibility studies. He was an educator who broke new ground during his time in the real estate business, and whose life ended prematurely in 1971 at the age of 53.

THE COUNSELORS
OF REAL ESTATE®

CRE CORE PURPOSE

To be a community of expertise, talent, collegiality and camaraderie among practitioners recognized as leaders in real estate counseling.

CRE MISSION

The mission of The Counselors of Real Estate® is to serve as:

- A leading source of real estate advisory expertise and integrity with members serving as an indispensable resource to each other, our clients, our industry and our communities; and
- A platform for professional relationships, insight and access to diverse experience.

CRE CORE VALUES

Integrity: Honesty, reliability, and ethical practices demonstrated by individual members in their relations with fellow members and in their practices conveying unbiased advice to clients devoid of conflicts of interest;

Competence: Leadership, wisdom, professionalism, and judgment in the application of knowledge demonstrated by mastery of real estate principles, independence and advice based on appropriate methodologies, adding value to clients and helping them make better decisions;

Community: Common principles, shared information, candor and appreciation of multiple points of view demonstrated by a culture of camaraderie, friendly, respectful discussion and debate, and a willingness to help one another;

Trust: Confidence in the character of colleagues demonstrated by an open sharing of knowledge and views while respecting confidentiality;

Responsibility: A commitment to elevate and improve the real property industry demonstrated by individuals sharing knowledge and abilities, volunteering time and energy, and taking an active role regarding issues that impact the public and industry.

430 N. Michigan Ave., Chicago, IL 60611-4089
Telephone: 312.329.8427 • Email: *info@cre.org* • website: *www.cre.org*

THE COUNSELORS
OF REAL ESTATE®

www.cre.org

430 N. Michigan Ave.
Chicago, IL 60611-4089
Telephone: 312.329.8427
E-mail: info@cre.org
Website: www.cre.org