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(left to right): Michael Zambricki, Vice President and General Counsel; Irene Sadikoff, Paralegal; Jennifer Lunsford, Lease Administration Assistant; and Amy Newberg, Corporate Counsel
36 years! Time sure has a way of flying by! It’s hard to believe that I got my start in this industry in 1978. It’s even harder to believe that half of my career included my involvement with the NRTA, starting before our first conference in Boston in 1996. As many of you have read on our website, I recently retired as Vice President of Lease Administration for Dollar General Corporation. And, in accordance with NRTA’s by-laws, I also concurrently resigned as President of our association. As I pondered what should be the topic of a final “President’s Message”, it came to me that perhaps one of “life’s lessons” might be appropriate.

I have always shared a guiding principle “Do the Right Thing” with the hundreds of professionals I’ve had the pleasure of leading over the years. In our industry, we can sometimes become so obsessed with winning that we insist on a “take no prisoners” approach. We know that the lease backs us up, we are absolutely correct, and that no court nor jury would ever side with a landlord who may have violated a repair obligation, overcharged for a CAM item, or allowed another tenant to encroach on our exclusive. I may surprise many of you by stating that many, if not most, of our disputes are never black or white but are usually in varying shades of gray.

Over the years, I’ve actually voluntarily given a landlord a CAM increase, replaced a broken HVAC system (landlord’s responsibility under the lease), chided my operators for failing to maintain exteriors, generated additional percentage rent payments for prior years, and repaired roofs among a myriad of items which should have been a landlord obligation. Why, you ask? Well, because it was the right thing to do.

When a landlord has been responsive, granted rent concessions, wants to make the tenant happy but may not have the financial resources to handle the current situation, then the right thing to do is to create a win-win situation, even if that means that fairness has to trump the lease terms. At the end of the day, a bankrupt landlord or a condemned property will not be beneficial to the tenant. I’ve been the last tenant of a dying shopping center, or the co-tenant of a noxious neighbor put in place by a desperate landlord. Believe me, those situations are not fun for me, my team and especially for the operators whom I’ve been charged with serving. It’s always best to anticipate potential outcomes and avoid those situations up front.

My team has always known that if they just do the right thing, I’ll support them and have their backs. It’s certainly a principle I’ve been so fortunate to enjoy and propagate.

As I turn over the NRTA Presidency to Lisa Krizek, I know that our association will be in good hands with a strong Board of Governors, outstanding Officer group, and an incredibly talented and dedicated professional team in Paul and Carole.

“Doing the Right Thing” is certainly no strange tenet to this group, as evidenced by the notable 18-year history of the organization. Here’s to many, many more! It has been an honor and privilege to serve you as your President. See you all in Reno.
NRTA Welcomes New President

It is a special honor and a privilege to begin my term as president of the National Retail Tenants Association (“NRTA”).

Our outgoing president, Moe Laliberte, deserves an enormous thank you from all of us—for guiding the NRTA so ably, and for making us feel that we really are a part of the NRTA by writing such engaging, thought provoking and humorous messages. He has been a terrific role model and his shoes will be difficult to fill. He has made many contributions to the NRTA, with long hours of dedicated work for this association—a beautiful example of unselfish love. I am proud of him. Luckily for all of us, Moe will continue to serve as a member of the Board of Governors for an additional year, in the role of past-president. I am especially grateful that I will have the benefit of his wise counsel during my term.

I hold a special place for NRTA in my heart. I had the privilege of starting my life as a lease administrator while still an undergraduate student, first during summer stints with Arthur Young. After graduating, I joined the Melville Corporation and worked at the side of Don Yost. I worked on the Chess King, Marshalls, Thom McAn, Wilsons and CVS portfolios. My NRTA involvement began in 1996 as an author for an article in Tenants In-Common (“TIC”). At the time, several of my Melville brand counterparts were NRTA members and they asked me to write an article on reconciling real estate taxes. I remember asking Joe O’Shaughnessy (our former Executive Director) to proofread the article for me on a day when Don wasn’t around. Teasing me, he took out a giant red felt tip pen as if to re-write my work—I almost died. This was, of course, at a time when articles were written by hand—computers were not yet tools at every desk.

Publishing that first article in TIC and receiving those newsletters with my name in print for the first time made me feel like an NRTA member for life. Being elected president is thus a special honor for me, and I will do my best to serve you, our members, during my term.

In preparation for my presidency. The past year has included my participation in many of our association’s committee meetings. This has provided me with a chance to learn first-hand about many of the important activities in which NRTA is currently involved. Thanks to the work of all of our committees, under the guidance of the officers’ leadership and outstanding board, and our full time support staff of Executive Director Paul Kinney and Member Services Manager Carole Fiola, NRTA is in very good shape.

Working Behind the Scenes. Under the watchful eyes of David Prior and Debbie Ravel, our finance committee has done a wonderful job of shepherding the association’s funds that have now recovered to pre-economic downturn levels. These funds support all of our activities, including staffing, production of our newsletters, webinars and communications, supporting our website, as well as enabling the board to offer scholarships for college-bound students.

Ted Pajda, editor of TIC, is doing a wonderful job of overseeing our publications. Indeed, all of our many authors deserve our thanks for their dedicated service to the association and the real estate community overall. The legal corner of TIC, under Andrew Jacobson, Esq., has provided guidance to the NRTA and has helped identify industry issues that arise from time to time. Thanks also to Westwood Advertising for keeping our production costs in-line. This, together with the excellent quality of the editorial review process, should encourage our members to continue to support our publications. NRTA publishes these newsletters to serve you, our members.

The 2013 Curriculum Committee (chaired by Betsy Long, Esq., Ted Pajda, and myself) and the Conference Committee (chaired by George Elefther) deserve hearty congratulations for assembling an incredibly successful annual meeting in Orlando. And, finally, the 2013 Nominations Committee assembled an excellent slate of candidates to lead the association moving forward.

Looking ahead. Just because the NRTA is doing well doesn’t mean that we can’t do even better. One of my top goals for the next two years is to address the needs of our youngest members. My efforts are aimed at advancing and elevating our profession; promoting procedures and best practices that all can use daily. Our conferences offer an opportunity for seasoned veterans to share their knowledge in the form of short talks and panel discussions. We need to raise the bar and be thinking about whether our current curricula adequately trains members to work on enterprise-wide and/or systems-wide

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Preparing demand letters is a vital part of landlord/tenant relations. The demand letter is often the “official” start of the dispute and is one of the most important pieces of evidence used during litigation. If done well, a demand letter will lay the groundwork for resolving the dispute. Done poorly, it will hurt your chances of resolution (and in any resulting litigation) and lower both you and your company’s credibility with the landlord if future disputes arise. This article will provide some tips on how to prepare a demand letter to effectively communicate your company’s position.

Cool off and prepare before writing

A good demand letter is organized, well-reasoned and persuasive. None of these goals are achieved by writing the letter in the heat of the moment. Take some time away from the dispute to gather perspective. With a clear head, begin organizing the relevant documents and facts. Before writing the letter, organize your main points and prepare an outline your position. It may be helpful to consult with your supervisor or a coworker to get a more objective viewpoint before writing the demand letter. You should also consider discussing the issue with legal counsel.

Organize the facts

Organization is the key to good drafting. It is important before you start writing to gather and confirm all the key facts and make sure that you understand all of the issues. As you are organizing, determine what your overall message will be and then marshal all of the facts that support your message.

Also, take some time to determine the landlord’s likely response and try to address it ahead of time. The best demand letters generally answer all of the reader’s questions/arguments ahead of time. It is similarly important to figure out what documents and information will hurt your message and determine how to mitigate these issues. Do not ignore bad facts. Your credibility is the most important asset you have to resolve the dispute. Do not waste it by ignoring obvious issues with your position.

Structure the demand letter

Logistically, your demand letter should have an introduction, body and conclusion. The introduction should briefly summarize your overall message. It should only preview the issues that will be discussed. The body of the letter is where you discuss each point in detail. Organize each of your points by paragraph and use headings to delineate between each point.

The conclusion is where you make the demand and indicate what the next step will be if the landlord does not respond. Avoid making idle threats—this will only lower your credibility with the other side. Rather make a promise that you intend to follow through on. That way you have a way to act if the landlord fails to favorably respond to the demand.

Just the facts

In writing a demand letter, it is important to only rely on the facts to support your message. A strong factual foundation will make effective arguments. Avoid arguments based on emotion—they are not generally persuasive to the other side. For each fact, provide a reference to where you obtained your information (i.e. lease, tax assessors website, plot plans, etc.). Include or attach excerpts of the supporting documents if it is not too voluminous. Remember that the lease language generally controls who wins the dispute—you should stick to its provisions whenever possible.

A simple message is the best message

In preparing the letter, it is the best practice to simplify the message. Use terms that are common to the average reader or define the terms in the letter. Do not just start using acronyms and short hand to describe the key terms. Remember that your letter will likely be read by people who are not intimate with the ins and outs of the lease or even leases in general (i.e. supervisors, attorneys, judges, juries, etc.). Accordingly, write the letter so a person who has no experience with a retail lease can read it and comprehend the issues. If you are having trouble deciding if you are being too technical, have a third party read it for clarity.

Focus only on your message

Be sure to stick to the point in the demand letter. Collateral issues will only
If you manage commercial real estate leases you need to attend!

Smart retail and office tenants know, effective lease and property management uncovers discrepancies and drives dollars to the bottom line.

Master “How To” Lease Administration Skills
Get expert advice and learn best practices from highly respected veterans in the real estate management profession. Share challenges and proven solutions face-to-face with your peers. Benchmark your lease administration and real estate management methods with the best in the industry.

51 Classroom Presentations +15 Small Group Discussions
We cover every aspect of this highly specialized field. Occupancy cost, legal, real estate, lease administration, office trends and professional development. Interact with the best in the industry.

Networking
Share best practices. Discuss common problems and solutions. Build invaluable professional relationships.

Keynote Speaker
Companies work smarter when their employees work as a team. Those who know the strengths of each generation and how they relate to each other are more efficient in today’s competitive marketplace. Joe Marlotti of TimesFour will engage us in a fun and interactive experience that inspires everyone to bridge generation gaps at work.

Private Networking Event
Take your networking to the Edge! Tuesday night.

The Technology Expo
Several best-in-class vendors and resource companies will participate in NRTA’s technology expo. Review software and support services available to the real estate management industry.

Notice of NRTA’s Annual Business Meeting
Where: Peppermill Resort Reno
When: Tuesday, 9/9/14 at Noon

Register early & save!
www.retailtenants.org

Register online • www.retailtenants.org
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Watch your word choice

Avoid over-the-top statements or inflammatory language. Remember, this letter will likely not just be viewed by your counterpart, it will be read by their supervisor, legal counsel, and perhaps even a judge or jury. Be sure to avoid language that will embarrass you and your company. Exclamation points rarely have a place in business correspondence; use only in the most egregious circumstances.

Quoting to boost the credibility of your message

When quoting lease language, be sure to quote the relevant lease provision exactly; do not paraphrase key sections. Similarly, only quote the parts that you need to make your point. Leave out any “fluff” because it waters down your point. As discussed above, however, do not omit or gloss over language that obviously hurts your position. If it cannot be dealt with in the letter, then you should revisit your intended message or whether you should pursue the dispute in the first instance.

If you are referring to or quoting something, be sure to cite the exact page, section and/or paragraph number so that the reader can easily find your support. Again, the reader of the letter may not be familiar with the lease at issue or even leases at all. In any event, making it easy for the reader to check your facts makes your message more convincing because it illustrates that you have nothing to hide.

Watch your word choice

It is not what you say; it is how you say it that matters. Above all, be professional in your messaging. Attacking the other side adds nothing to your point and will likely escalate the dispute rather than resolving it. Remember your goal in a demand letter is to resolve the problem, not to pick a fight.

Similarly, avoid over the top statements or inflammatory language. Remember, this letter will likely not just be viewed by your counterpart, it will be read by their supervisor, legal counsel, and perhaps even a judge or jury. Be sure to avoid language that will embarrass you and your company. Exclamation points rarely have a place in business correspondence; use only in the most egregious circumstances.

Provide a personal touch

Personalize the letter by directing it to a specific person. From strictly a practical standpoint, failing to address the letter to a specific person at the landlord will at best delay the landlord’s response. At worst, it gives your counterpart the opportunity to deny ever receiving the letter or to deflect your point to someone else. It is hard enough to get a response from a landlord, do not inhibit your efforts by not addressing the letter appropriately.

Reread and revise the letter

Once you have drafted the letter, it is important to read and revise the letter multiple times. Check to make sure the letter is clear, concise and correct. Check all the spelling and grammar. Make sure all of the quotes and citations are accurate. Check the lease to verify that the letter is being sent in accordance with the lease requirements and the appropriate persons receive copies. If possible, set the letter down and read it again a few days later. Often great ideas arise through a fresh perspective. If possible, it is also a good practice to have another person read the letter before it is sent.

File and follow up

Your job is not finished once the letter is out the door. First, keep a dispute file with the demand letter and supporting documents and notes. That way, when the landlord calls months later, you will get up to speed in short order. Also, set reminders in your calendar to follow up. Otherwise, the dispute may drop off your radar. Lastly, be prepared to take the next step if deadlines are missed.

If you have any questions or concerns regarding demand letter writing, or lease or other disputes with landlords, please contact the writer at dwr@riw.com. This material is intended for informational purposes only. It is not meant to be construed as legal advice nor create an attorney client relationship. For a comprehensive understanding of the issues raised in this material please consult with a qualified attorney of your choice.
Art Van Furniture operates over 40 stores throughout Michigan, five stores in Chicagoland, one store in Fort Wayne, Indiana and one in Toledo, Ohio. In addition to Art Van PureSleep mattress locations within its furniture stores, Art Van also operates 50 free standing Art Van PureSleep mattress locations in Michigan, Ohio and Indiana with more opening soon. The family-owned organization also operates three Scott Shuptrine interior design studios. As of April of 2014 Art Van World of Floors is a wholly owned brand of the company. Headquartered in Warren, Michigan, Art Van Furniture has more than 3,000 associates, and is ranked in the top 20 of the leading U.S. furniture stores.

Founder and chairman of Art Van Furniture, Art Van Elslander opened his first store, a 4,000-square foot unit, in 1959. Currently celebrating its 54th anniversary, Van Elslander is the owner of Art Van Furniture.

Irene Sadikoff
Legal Specialist,
Art Van Furniture

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Legal Corner

By Andrew N. Jacobson, Esq.; Maslon Edelman Borman & Brand, LLP andy.jacobson@maslon.com and Rebekah Fisher, Esq.; Fisher Matthews, PLLC rfisher@fmlawtn.com

Editor’s Note: Legal Corner contains case summaries and analysis of recent court decisions that impact retail leasing and lease administration. These summaries focus on the leasing issues covered in each case and do not include detailed discussions or analysis of the procedural and peripheral issues in the cases.

Beware of Inconsistent Cleanup Standards
Montfort Shopping Ctr., Ltd. v. Goodyear Tire & Rubber Co., 2012 U.S. Dist. LEXIS 126750

Landlord sued Tenant for breach of lease on the grounds that Tenant had left contamination on the premises after the lease had terminated. The lease provided that upon vacating the premises or terminating the lease, Tenant “shall... leave no contamination for its use and occupancy of the Demised Premises,” a very tough and expensive standard to satisfy. In another provision of the lease, Tenant was required during the lease term to clean up any spill or release of hazardous substances as necessary to meet “applicable standards of relevant governmental authorities or under applicable environmental laws.” Tenant argued that the applicable standard for “no contamination” in the event of termination of the lease, as well as in the event of a spill or release of hazardous materials during the lease term, should mean no contamination above applicable regulatory standards. The court found in favor of Landlord and denied Tenant’s motion for reconsideration, as such motions are only granted for the correction of manifest errors of law or fact or to present newly discovered evidence. In this instance, the court considered Tenant’s argument that the interpretation of the contract as requiring leaving absolutely no contamination was both unreasonable and oppressive. Tenant had cited cases standing for the principle that, when possible, courts should avoid contract interpretations that are “unreasonable, inequitable, and oppressive” and the corollary principle that when “possible and proper” or when a contract is susceptible to two interpretations, only one of which is reasonable, the court should opt of the reasonable interpretation. The court observed that Tenant’s cited principles of contract interpretation would only apply if the contract provision in question was susceptible to two interpretations. In this instance, the court determined that the two lease provisions established two distinct standards and that those provisions were neither ambiguous nor susceptible to more than one interpretation.

Impracticality is a Tough Defense to Prove

Tenant entered into a lease for property in New Jersey. The lease provided that the property was to be used for “a new automobile showroom and office incidental to that purpose and for no other use or purpose.” Tenant sold cars through a dealership agreement with Chrysler. Under the lease, Tenant was required to pay minimum rent along with pass through charges that were collectively considered to be the “Rent.” The force majeure provision in the lease provided the parties relief from performance of any lease obligations as the result of a force majeure event, but stated, “[n]othing herein shall be deemed to relieve Tenant of its obligation to pay the Rent when due.” In June of 2009, Tenant’s dealership was among the many dealerships whose agreements with Chrysler were terminated in connection with the Chrysler bankruptcy. Tenant notified Landlord it was terminating the lease because of the loss of its dealership agreement with Chrysler and vacated the property. Landlord demanded the rent due and, when Tenant failed to pay, Landlord filed suit to enforce the lease. In defense, Tenant alleged that it was relieved of its obligations under the lease because: (i) principles of impracticability of performance and frustration of purpose, and (ii) the force majeure clause. The court noted that under common law a party’s obligations continued on page 12
Leasing Trends: While leasing trends vary from city to city and state to state, retailers have become more demanding in their requirements for stronger co-tenancy language, early termination rights, and more restrictive exclusives to protect their core business. Retailers are also asking for more tenant improvement allowance from landlords instead of using their own capital. There has been a reduction in second generation, large box space. As a result of bankruptcies over the past few years, there was also significant amount of medium size retail boxes that needed to be leased. Most of these boxes are now occupied and vacancies have declined. There also is a tremendous amount of activity in the quick-casual serve business primarily with franchised restaurants. During the recession, many entrepreneurs and business executives decided to go into business for themselves and/or purchase franchises. This has brought a tremendous upsurge in new franchise concepts and the need for new retail locations.

Hot “Use” Categories

Health Clubs: A very active retail category is the health fitness club. There is strong activity in fitness clubs offering spa-type amenities along with typical fitness club services. Some clubs give their customer a country club-type atmosphere with restaurants, spas, personal services, etc. There is also strong activity in budget-oriented health clubs offering 15,000+ sq. ft. “no frills” environment, with a clean and well equipped fitness center. Thus fitness clubs are catering to health conscience customers across the spectrum and unlike the past, generally without a contract.

Medical and Dental Walk-in Clinics:

Another hot category is walk-in medical and dental clinics. These clinics for minor illnesses and non-life-threatening injuries are growing along with rising demand in medical field. Clinics offer a no-appointment alternative to the emergency room or doctor’s office. Health care providers are looking from a retail approach and the combination of medical/retail use these days is prominent. Demand for urgent-care centers is increasing in most markets. Experts in the urgent-care industry believe that the Affordable Care Act should lead to increased demand for clinics.

Landlords are replacing multiple tenants in centers to open larger clinics which pay higher rent, are credit tenants and increase customer traffic due to a larger trade area for the center. With the era of retail medicine fast approaching, health care providers and medical specialists are increasingly opening facilities in shopping centers, which offer an attractive combination of affordable space, good patient access and ample parking.

Construction of Medical Office Buildings (MOBs) can cost more than $200 a square foot to develop. Renovating existing space at a retail center is substantially less, so there’s a big incentive to take retail space rather than build to suit. Vacancies from big-box retailers and struggling strip centers are turning out to be reasonably priced options for many health care facilities, which are increasingly moving away from the centralized service delivery model centered on traditional hospital campus and trending toward mixed-use properties where medical office buildings, retail stores and restaurants co-exist.

Shopping centers are increasingly being repurposed for medical uses as service providers look to move closer to patients and reduce costs by providing outpatient services. High retail vacancy, particularly in the suburbs, due to overbuilding prior to the recession and housing crisis, and increasing online retail sales have created opportunities for health care tenants. Well-located big box centers in the 20,000–50,000 sq. ft. range with ample parking, such as those occupied by bankrupt retailers, have been a popular draw for many medical tenants.

Retail clinics will remain an important delivery mechanism as health care providers seek to cut costs and handle the surge in newly insured patients with the implementation of the Affordable Care Act. While retailers and health care tenants share many common needs, there are also significant differences between these uses. Shopping center leases typically prohibit the use of office or other non-retail uses. Medical spaces can include cafes or gift shops that may run against another tenant’s exclusive use provisions. Also, national drug chains, discount stores and supermarkets are increasingly offering their own in-store retail clinics, but with limited medical services.

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Downsizing: The trend of downsizing is continuing as retailers seek to reduce occupancy costs. Many retailers have been affected by the continued increase in e-commerce sales. Office supply stores had been operating in 20,000–25,000 sq. ft. and are now downsizing to 10,000–13,000 sq. ft. and consumer electronics stores operating in 40,000–55,000 sq. ft. are now reduced to 25,000–30,000 sq. ft.

Healthy is Trendy: Health and wellness is quickly emerging as the focus in the food industry. The average American now places more emphasis on healthy food decisions than ever before and wants more healthy eating places than they were a few years ago. As consumer preferences have evolved, restaurant and food service operators are facing challenges and opportunities that come from the convergence of health and wellness priorities. The total food experience includes: sustainability, atmosphere, authenticity, flavor and taste. Portion sizes are getting smaller meaning more affordable plates and healthier options. Health-conscious and thrifty diners have been driving operators to re-evaluate how they portion and price food. Consumers are reconsidering their menu choices based on overall caloric intake and the impact it has on weight. Trend of half portions is becoming more common across restaurant menus.

Wireless to Wi-Fi: Retailers and restaurateurs are bringing plug-and-play Wi-Fi to their stores. Most shoppers and customers carry smartphones or tablets, and this upgrade makes their time in store easier and more enjoyable. This upgrade also provides the customer a mobile application that will be used for coupons and special offers.

Letter of Intent: A Discussion Group session at NRTA’s annual convention in Reno this September will be focusing on the Letter of Intent (LOI). Upon finalizing business terms with the retailer, some landlord LOIs have become more like a lease document and takes weeks or months to consummate. When eventually the LOI is finalized, it typically goes to a real estate committee, which could make further changes prior to a lease being drafted. Additionally, many legal departments of retailers or their attorneys are inundated with work. The legal department ends up reviewing documents on a priority basis, so if you are not making a deal with a tenant that will open soon, legal documents will be further delayed.

Tenant or Landlord market? During the recession, it was definitely a tenant’s market due to the lack of expansion by many retailers. However, there has been a shift in certain markets and there is now a shortage of quality retail centers due to lack of new projects being developed in the last few years. Many in the industry believe that after many years of Tenant’s calling the shots, the shift is now towards a Landlord’s marketplace.
The focus of this year’s legal track will be current legal trends and issues facing commercial tenants, and many of the offerings will include practical, real world solutions. While we pride ourselves on providing the best available leasing education for attorneys and paralegals, you do not have to be a legal professional to benefit from attending the courses. Lease administrators, auditors, dealmakers and property management professionals will all gain valuable insights and tools on a wide variety of lease-related topics from our outstanding faculty of in-house and outside real estate transactional attorneys, litigators and other experts.

This year’s legal track courses will discuss key issues and best practices in negotiating and implementing lease provisions and addressing disputes in commercial leases, using a case study approach as much as possible. Our courses run the gamut from basic courses for those relatively new to the profession, such as Basic Lease Provisions and Intro to Legal Issues/Operating Costs, to advanced workshops for the more seasoned professional like Dealing With Landlord’s Defenses and Preparing for Depositions. As always, our panel of experienced lawyers will help you keep up-to-date with a review of recent court decisions impacting leasing and lease administration in the Developments in Real Estate Law course.

Some of our courses will pair our legal specialists with technical experts in other fields. In Environmental Due Diligence, an environmental attorney and an environmental consultant will explain the essentials of environmental due diligence, including the new Phase I standards, and will present case studies and real world examples of environmental issues and how tenants have addressed them. In another course, Catastrophic Events: Allocating Risk in the Lease; Insurance, we are fortunate to have an experienced insurance expert team up with a veteran real property attorney to demystify these important yet often misunderstood topics.

Over the past several years we have featured two or three courses with in-depth discussions of select provisions and issues in leases as part of our Intermediate Leasing Issues series. These courses are designed to help attorneys, paralegals, dealmakers, lease administrators, property managers and others involved in negotiating and implementing key lease provisions. This year’s offerings include Assignment and Subletting and Permitted Uses, Exclusive Uses, Use and Radius Restrictions. Both will be presented by a team of experienced leasing attorneys.

We are particularly excited about some of our new courses, and those taking a “reimagined” approach to familiar topics. For example, Ten Ways to Win a Case will be taught by two seasoned litigators and will help you understand rights and responsibilities related to commencement of an audit or dispute process, as well as tips on reaching a positive result. CAM Wars will pit a seasoned retail tenant attorney against a veteran in-house landlord attorney in a lively discussion that is sure to feature galactic fireworks as well as valuable insights.

In short, legal considerations touch every aspect of lease negotiation, implementation, administration and dispute resolution. Whether you are a lease administrator, auditor, dealmaker, paralegal or lawyer, our expert presenters will help you better understand and address important legal issues facing commercial retail tenants.
tion to perform under a contract may be discharged when that party’s performance or principal purpose for the contract is made impracticable or substantially frustrated, without fault by that party, by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made, unless the language of the contract or the specific circumstances of the event indicate the contrary. In this instance, Landlord prevailed in its claim because Tenant failed to provide any evidence that its agreement with Chrysler was terminated without Tenant’s fault. Furthermore, under the force majeure clause in the lease, Tenant had agreed to pay rent, regardless of circumstances beyond its control. As a result, the court found that Tenant had assumed the risk of unforeseen events.

levels—we should be teaching our members to handle more responsibility with less resources. Are we helping them learn to identify the most important questions rather than just how to carry out the next task? And, are we providing them with leadership skills that will carry over into the jobs they likely are to assume? NRTA will try to facilitate discussion of these critical issues and ways to address them in the months to come.

So, why should you be an NRTA member and support this association? NRTA is devoted to promoting the disciplines of occupancy cost management, lease administration, lease accounting, lease audit, legal and portfolio management. This means using all of our resources to expand and improve training and mentorship at all levels, to provide venues for our members to share information—whether in person, print or online—and to establish important contacts to facilitate exchange and collaboration. NRTA can help bring us together to make our profession better and to keep it collegial in the true Merriam-Webster sense of that word, “…marked by camaraderie among colleagues.” So, thank you for your continued support, and please don’t hesitate to let me know what you think will make us even better.
Art Van Furniture

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Dreams LLC, the licensee of the HGTV HOME™ Sleep Collection. Art Van Furniture is well known for its innovation in furniture retail, and is always aiming to create new ways to provide unmatched customer service. Together during the lease negotiation process and we continue to maintain cross-departmental functions to handle daily lease responsibilities. Through its webinars and the forum, the NRTA continually provides us with the expertise to establish and streamline our processes, to update and grow our skills. We are very excited to attend this year’s conference to exchange experiences and ideas with other retailers.

**NRTA:** Many companies tell us that they use the NRTA to help them develop their professional lease administrative staff. Is that the case with your team?

**IS:** Absolutely. As I mentioned earlier, the lease administration function is very new to our company. It was formed about a year ago and is constantly being improved. The webinars are extremely helpful and often serve as the first step towards new developments and processes. The latest webinar helped us improve our lease provisions and provided with valuable information in selecting a CAM audit company. We are looking forward to this year’s conference to make new connections that will help us grow.

**NRTA:** What are some of the key lease administration challenges your team faces?

**IS:** Our initial challenge was to set up the department and to educate our team about the new leasing process. We are continuously striving to improve: the recent selection of a real estate software provider proved invaluable to our small department. The company is growing and we are trying to streamline our processes to reduce redundancies and to eliminate errors. The key function of our department is to serve as a liaison to the rest of the company and to assist in smooth operation and growth.

**NRTA:** How many staff people do you have as NRTA members?

**IS:** We just have the lease administration group as members of the NRTA. We plan to increase our membership before the conference.

**NRTA:** Do you and your staff attend the conference? If so, what are the benefits of the experience?

**IS:** This year will be our first attendance. We have heard a lot of positive feedback from other NRTA members and based on their reviews we are trying to have as many people attend in order to cover all topics offered and cross-educate each other upon our return.

**Art Van Furniture now has locations in four states: Michigan, Indiana, Ohio, and Illinois.**

Art Van’s massive in-store inventory and delivery capabilities ensure that customers not only receive great value, but can also enjoy their furniture immediately. The Clearance Centers, which opened in 1984, continue to offer both brand-new and overstocked merchandise at remarkable savings. Art Van Furniture warehouse boasts 1 million square feet. A one-of-a-kind addition was constructed in 2001. This 183,000 square-foot storage and retrieval system is completely automated.

The company is deeply involved in philanthropic endeavors, and has raised $17 million for charities in local communities over the last five years, with a special focus on assisting families, children and the hungry.

Tenants In-Common was fortunate to catch up with Irene Sadikoff, Legal Specialist and member of the company’s real estate management team. We discussed the company’s real estate management challenges and their involvement with NRTA.

**NRTA:** When did you first learn of the NRTA?

**IS:** I first learned about the NRTA several years ago when I worked for a company representing Landlord’s interest. My counterparts representing major retailers mentioned the NRTA on separate occasions. When I joined the Art Van team, I was fortunate enough to become a member of the NRTA myself.

**NRTA:** What education resources do you look to the NRTA for?

**IS:** Although our company has been in the furniture business for over half of a century, we are fairly new to leasing. Members of different departments work together during the lease negotiation process and we continue to maintain cross-departmental functions to handle daily lease responsibilities. Through its webinars and the forum, the NRTA continually provides us with the expertise to establish and streamline our processes, to update and grow our skills. We are very excited to attend this year’s conference to exchange experiences and ideas with other retailers.

**NRTA:** How is your real estate lease administration function organized?

**IS:** I am the Legal Specialist overseeing the general lease administration activities. Reporting to the General Counsel, our function is broken into four interlocking areas: Lease Compliance, Leasing, Accounting, and Maintenance. Lease Compliance handles all lease-related negotiations, abstraction and database administration. Leasing is responsible for securing new and existing locations and negotiating business terms. Accounting is dedicated to all lease-related payments, reconciliations and desktop audits, while Maintenance is in touch with the landlords regarding building maintenance, utilities setup and other day-to-day issues. We feel that this approach allows us to maximize our knowledge of the lease documents and properties and establish great working relationships with our landlords.