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**Urban Land Institute**  
Sacramento

Land Link

## District Chair’s Message: A Look Back with an Eye on the Future

**A**warm, and sometimes hot welcome to all the members of the Sacramento District Council of ULI. We are nearing the end of vacation season and hope you have had an enjoyable summer. In many ways, this was a year of great perseverance for all of us in the land and community building business and it did indeed take resilience to keep your business or city or university afloat. I admire the tenacity of our members and ways they have found to survive, and in some cases, reinvent themselves.

It was also a year of great accomplishment for the local Council. We started the year with a deficit and through some very smart planning of how our programs and events were conducted, we erased that deficit to bring our expenditures more in line with our revenues. We owe a great thanks to staff members Mary Sater and Debbie Uhrenholt

for being creative in finding venues and holding the line on excess food and beverage charges. If you happened to attend the ULI Game Night that celebrates our UrbanPlan program, you would have witnessed how



we put on a fantastic event within a minimal budget. The same can be said for the many folks who put on programs through the Sustainability and TOD sub-Councils. In most instances, our program offerings were conducted with no net loss and many were successful in generating positive cash flow to the Council. And, many thanks to the folks who reached out to find Sponsors and to those organizations who were either Annual Sponsors or Program Sponsors. We could not have provided great events and programming without you!

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## Real Property Law: Lease Renegotiations with Troubled Commercial Tenants (Part 2)

**F**inancially troubled commercial tenants are looking for ways to get through the tough economic times by scaling back their workforces and cutting back on expenses. Some of these tenants are also trying to renegotiate the terms of their leases. Landlords may be willing to renegotiate with certain tenants for various reasons, including a good tenant history and strong past relationships, the desire to avoid any “dark” spaces or to maintain a certain tenant mix in retail centers, and the difficulty of finding a new tenant for the space in this market.

This article is the second of two parts regarding a landlord’s renegotiation of commercial leases with troubled tenants. Part 1 addressed common lease workout terms. Part 2 will discuss the landlord’s due diligence and third party approval considerations that should be made prior to committing to any workout terms.

**Financial Condition of Tenant.** The landlord should review the tenant’s financial statements and tax returns, sales reports for retail tenants, financial information from any lease guarantors, and the tenant entity’s status on the secretary of state’s website in case it has been suspended. This will assist the landlord determine if the tenant is genuinely in financial distress and in need of relief, or merely trying to take advantage of the current market to get a better deal. The landlord’s review of the tenant’s financial information will also help determine whether, after the proposed workout terms become effective, the tenant will be able to run its business and perform its obligations under the lease, or if the tenant is in such financial distress that it will eventually default under the lease notwithstanding the renegotiated terms.

**Financial Condition of Landlord.** The proposed workout must also make financial sense from the landlord’s perspective. The landlord should confirm that, after the workout is implemented, it will have sufficient funds to make its loan payments and otherwise operate the project. The landlord should also understand any resulting tax implications and how they will impact its bottom line.

**Review of Lease.** Early on, the landlord should review all the material terms of the lease, not just those related to the potentially modified terms. Provisions to consider include the events of default and remedies, notice requirements, cure rights, space reduction, expansion or relocation, “go dark” provisions, recapture rights, assignment and subletting, termination rights, operating covenants, co-tenancy rights, use of security deposits, rights of first refusal, and any material non-standard terms.

**Loan Documents.** Before agreeing to modify any lease terms, the landlord should confirm that doing so will not put the landlord in default under any of its loans. The loan documents may limit the landlord’s ability to renegotiate the lease or prohibit any forbearance under the lease without the lender’s prior written consent, particularly if it is a larger lease in terms of rental income or square footage. The parties should also examine the terms of any subordination, non-disturbance and attornment agreement (SNDA) that may have been entered into by the lender and the tenant, as it may impose additional consent requirements or further restrict the parties’ ability to change any lease terms. If the lender’s prior written consent is required under any of these documents, the landlord should evaluate the steps required to obtain such consent. The lender may be difficult to get ahold of, especially if the loan has been sold a few times since it was made. The workout request may draw the lender’s attention to the troubled project and put it under undesired scrutiny, and the lender’s



Catherine M. Oh

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# PROGRAM CALENDAR

## ULI Sacramento Upcoming Events

### ► MY ULI Night Mixer

Thursday, September 2  
5:30 - 7:30 p.m.  
Lounge on 20

### ► Think Tank Series for Members

Thursday, September 16  
12:00 noon - 1:30 p.m.  
SACOG Board Room

Topic: Transit Oriented Developments (TOD)

### ► California High-Speed Rail TOD MarketPlace

Thursday, September 23  
Anaheim Convention Center



Join us ULI’s first California-wide TOD gathering September 23 in Anaheim, convening hundreds of public and private land use experts to discuss transit-oriented development opportunities along the planned 800-mile high-speed rail line.

Full agenda and registration info here: [www.hsrtodmarketplace.org](http://www.hsrtodmarketplace.org)

### ► ULI/APA Sustainable Region Series *a program presented by the ULI Sustainability Council & USGBC*

“People, Policy and Planning – Links and Gaps between What We Want, What We Need and What We Have”

Friday, September 24  
8:30 - 10:30 a.m.

Sacramento City Council Chambers

For more information on these programs, please visit [www.sacramento.uli.org](http://www.sacramento.uli.org) or contact Mary Sater, District Council Coordinator at [mary.sater@uli.org](mailto:mary.sater@uli.org).

approval of the lease workout may come with strings attached. The landlord may also be required to pay for all of the lender's legal fees.

**Other Third Party Approvals; Restrictions.** In addition to its lender, the landlord should confirm if the proposed workout will require the approval of any investment partners. If there is a lease guaranty, all guarantors should be required to consent to the workout terms and reaffirm their guaranties in writing. The modified lease terms should not conflict with any declaration of covenants, conditions and restrictions (CC&Rs) or other use restrictions that may be recorded against the property, and the rights of other tenants within the project should also be reviewed. For example, a change in the troubled tenant's permitted use could conflict with another tenant's exclusive use rights, or if the parties are unable to reach a workout solution and the troubled tenant has to shut down, will that trigger the rights of other tenants at the project to abate rent or terminate their leases under any cotenancy provisions?

**Negotiation Agreement.** The landlord may desire to enter into a workout negotiation agreement with the troubled tenant before the parties move forward with formal negotiations. This agreement will provide that the landlord is not waiving any rights that it may have with respect to prior defaults by the tenant, and that the parties are merely negotiating the terms of a possible resolution, which would not become effective until a final binding agreement is signed by both parties. The agreement typically includes a confidentiality provision, which prohibits the parties from disclosing the terms of the restructure, any information provided over the course of their negotiations, or the fact that they are even renegotiating the lease.

*Note: This article is for general informational purposes only and is not intended to be legal advice.*

*- contributed by Catherine M. Oh, Murphy Austin Adams Schoenfeld LLP*

## TOD Development to Revitalize Sacramento 12<sup>th</sup> Street Corridor

**D**espite the downturn in the development market, the La Valentina light rail station development project is forging ahead with plans for transit-oriented higher density housing in downtown Sacramento that is visually appealing yet functional.

The Sacramento Housing and Redevelopment Agency selected Domus Development of San Francisco to develop this site. Eight small parcels along 12<sup>th</sup> Street, including former Brownfield sites, have to be aggregated by the redevelopment agency to help further revitalize the Alkali Flat community. The total project would create 81 new housing units with 90 parking spaces.

This project has two developments within it. One has traditional townhouses on the north side of D Street with plans for 18 units of three-bedroom homes and 22 secured parking spaces. On the south side of D Street includes a mixed-use building with 63 units of housing all with balconies on three floors, ground floor retail and flex space, 68 secured parking spaces, and the station area. The south side has an alleyway dividing this structure into two; a 17-foot high bridge will contact both sides. All housing units will be affordable.

The project is undertaking ambitious green building efforts. The site will include the use photovoltaics, a green roof and have a public plaza where the alley access is. SMUD's "Savings by Design" Program will help reduce energy needs; the utility is paying for some of the cost increases. The project will also serve as a "Townhouses of the Future" for net-zero energy pilot program. The net-zero will require increases in insulation.

This project would reduce some of the 50,000 daily vehicle trips along the 12<sup>th</sup> Street corridor while creating a lively, vibrant community.

*- contributed by Gladys Cornell, AIM Consulting*



North site (above) and Northwest perspective of La Valentina development project by Domus Development, LLC.

