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### **Negotiating and Managing Retailers' Exclusive Use Rights**

By: STEVEN P. HELLER



In this unpredictable retail climate, anxious landlords feel that they must accommodate the sometimes expansive leasing requirements demanded by chain retailers and other desired tenants before deals slip away. Meanwhile, retailers, uncertain about proposed store sites, feel that they must secure the strongest sales environment possible — so an exclusive use provision may be critical.

This tension, in the context of exclusive use rights, forces shopping center owners and managers to keep keenly focused on effectively leasing and managing their centers into the future, without becoming entangled in the various competing exclusives.

*This is an excerpt from an article originally published in the California Real Estate Journal, September 8, 2008. All rights reserved. To continue reading the article, please visit [GilchristRutter.com](http://GilchristRutter.com) - News - Articles.*

### **Gilchrist & Rutter Partners Profiled in the *Los Angeles Business Journal's* "Who's Who in L.A. Law"**



Martin Burton and Donald Nanney were recognized in the 2008 *Los Angeles Business Journal's* special report "Who's Who in L.A. Law," profiling leading environmental attorneys in Los Angeles. Mr. Burton was acknowledged for his land-use work, including expediting the modernization and rebuilding of

a 400,000 sq. ft. retail shopping center in Orange County. Mr. Nanney was included based on his environmental work relating to prominent real estate projects, such as providing environmental compliance counseling in connection with emergency response to the recent Universal Studios back lot fire and clean-up.

### **Susan Fowler McNally and Diane Hvolka Honored as "Women of Influence" by *Real Estate Southern California***



Susan Fowler McNally and Diane Hvolka were profiled as "Women of Influence," in the October 2008 issue of *Real Estate Southern California*. The feature recognizes the outstanding women responsible for spearheading some of the largest commercial real estate deals in Southern California.

This is Ms. McNally's seventh year as a recipient and Ms. Hvolka's first recognition.

Ms. McNally was included based on her work on deals such as a 1.47 million sq. ft. mixed use development above the Universal Metro Red Line. Ms. Hvolka was recognized for her commercial leasing work including more than 250,000 sq. ft. in downtown Los Angeles' central business district.

### **Securing Lease Obligations - Lease Guaranties, Letters of Credit and Other Credit Enhancements**

By: SUSAN FOWLER MCNALLY

One of the first issues a landlord's attorney should consider when drafting a lease is the creditworthiness of the proposed tenant. Although the issue is typically discussed at the business level and addressed in the letter of intent, if it is not so addressed, it is essential that the issue be raised with the client. An "empty shell" tenant that walks away from a lease does more damage than simply depriving the landlord of rent flow; the vacated space may require extensive cleaning and repairs, the building may be burdened with mechanics liens, and the client may be left with nothing but a worthless indemnity to fall back on. If the proposed tenant does not have sufficient credit, a landlord may look to credit enhancement mechanisms to provide a source of funding for lease obligations that a proposed tenant does not perform. To

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the extent that the tenant has sufficient credit, no credit enhancement mechanisms will be required unless a landlord desires to protect itself with credit enhancement mechanisms during the limited period of time that a tenant is performing its build-out. This article will examine the three most common credit enhancements for lease obligations to be performed by a tenant: (i) cash, usually in the form of security deposits or prepaid rent, (ii) lease guaranties, and (iii) letters of credit, with an emphasis on non-bankruptcy issues.

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### **Susan Fowler McNally to Address CREW-LA on "Anatomy of a Mega Deal"**

Susan Fowler McNally will discuss "Anatomy of a Mega Deal," a preview of the transportation and television production center being developed at the Universal City Metro Station, to Commercial Real Estate Women – Los Angeles (CREW-LA). The presentation, to be given with Dennis Watsabaugh, SVP Development Services at Thomas Property Group, and Bob Morgan, SVP Accounting & Administration at Thomas Properties Group, will take place on February 10, 2009.

### **Save the Date**

The 38th Annual Benjamin S. Crocker Symposium on Real Estate Law and Business will be held at the Los Angeles Convention Center on May 5, 2009. Presented by the Real Property Section of the Los Angeles County Bar Association and the Richard S. Ziman Center for Real Estate at UCLA, the Symposium will provide important information on developments in real estate law and business, and forward-thinking views on survival and opportunities in troubled times.

Gilchrist & Rutter partner, Don Nanney, chairs the Real Property Section and is a member of the 2009 Planning committee.

*For additional information, please visit [www.crockersymposium.com](http://www.crockersymposium.com).*

### **Disposing of Personal Property — New Rules**

Effective January 1, 2009, Assembly Bill 2025 increases the threshold for personal property left in leased or rented commercial property from \$300 to the lesser of \$750 or \$1 per sq. ft.

Previously, the law stated that if, at a tenancy's termination, personal property remained on the premises, and the landlord reasonably believed that the property's total resale value was less than \$300, the landlord could retain the property for his or her own use, or dispose of it in any manner. For property worth more than \$300, if the tenant did not claim it within 18 days, the landlord could sell the goods after running a sale notice in a general circulation newspaper in the county where the sale would be held. The former tenant or owner of the personal property would receive the proceeds, less allowable storage, advertising and sale costs. The landlord would be required to turn over any proceeds not claimed within 30 days to the county treasurer.

As of January 1, 2009, Sections 1980.5 and 1993-1993.02 will be added to the California Civil Code allowing landlords to retain personal property left on their premises which they reasonably believe has a total resale value of the lesser of \$750 or \$1 per sq. ft. The rest of the law remains the same.

This change applies only to commercial premises and does not apply to residential hotels, self-storage units, certain utility properties, manufactured homes, mobile homes, commercial coaches, residential properties, or animals that are left behind when a tenant vacates.

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