



Real Estate

Real estate industry players face a mixed bag of trends in 2004. Historically low interest rates continue to feed first-time home buying and home starts, with housing prices up threefold in some parts of the United States. Yet office vacancy rates are on the rise, fueled by the still-sluggish economy and high unemployment. Wall Street's participation in the industry—through structured financing vehicles and real estate investment trusts—continues to provide capital for growth.

Seeking opportunities, astute industry participants will look to real property investments and creative sources for financing. They also will keep close watch on the courts, where recent decisions have clarified some murky issues, paving the way for additional growth. In the following, five firms share their perspectives on critical issues to watch this year.

TENANT ESTOPPELS

Prospective buyers or lenders routinely ask commercial tenants to sign estoppel certificates. The tenant, viewing the certificate as merely an affirmation of the fundamental lease provisions (premises, term, rent), might skim the letter, sign it and send it.

Treating tenant estoppel certificates casually is risky. The tenant in the recent case, *Miner v. Tustin Avenue Investors* (2004 Cal.App. LEXIS 236), had an extension option in his lease, but sent the prospective purchaser a signed certificate which stated that the tenant had no options “except: _____.” After the sale, the new owner refused to honor the option, pointing to the certificate. The court of appeal treated the certificate as part of the lease contract, and remanded for a resolution of the “ambiguity” between the option provision and the representation in the estoppel.

While the opinion can be criticized—and it may not stand as law—it underscores the importance of accurately completing any tenant estoppel certificate. The tenant should check its lease and:

- Meet the response deadline. The tenant may have only a few days to respond, with the landlord authorized to act for the tenant after the deadline.
- Negotiate to limit the estoppel's statements to those required by the lease.
- Complete ALL blanks, including “except: _____.” Insert a description or attach (and refer to) a complete copy of the lease.

The tenant in *Miner* may yet prevail, but only after more litigation. To avoid that fate, take care with every estoppel certificate.

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Tenant Estoppels

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