



COPPOLA·CHENEY

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# COMMERCIAL REAL ESTATE TERMS EVERYONE SHOULD KNOW

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# A

## Abut



1. Two properties adjoining.
2. One client who dislikes everyone and everything.

## After Hours Service Charges

Additional charges tenants may incur if operating outside of standard building hours.

## ALTA Survey

A survey prepared by a licensed surveyor in accordance with detailed standards, adopted by the American Land Title Association (ALTA) and the American Congress of Surveying and Mapping (ACSM). An ALTA Survey maps the property's boundaries, the location of the improvements on the property, including buildings and other structures, fences, utility lines and installations, trails, paths and roads, etc., and the location of all access, utility and other easements recorded against the property.



## Appraiser

Someone who drives by your house, flips a coin, and heads back to the office.

## Appraisal

An opinion that the seller thinks is too low and the buyer thinks is too high.

## Balloon Payment



The final payment on a loan.

*(That actually looked reasonable when you took out the loan.)*

## Arbitration Clause

A contract clause that requires the parties to resolve their disputes through an arbitration process.

## Assessment

Occurs when an asset's value must be determined for the purpose of taxation.

## Assignee

Individual to whom a contract is assigned.

## Assignment

The manner by which a contract is transferred from one individual to another individual.

## Assignor

An individual who transfers a contract to another individual.

## Audit Rights

Rights to access and analyze books and accounts of the other party to an agreement. In the case of commercial real estate, a tenant is reviewing the landlord's accounting, typically to assess pass through charges.

# B

## Base Building Condition

The existing shell condition of a building prior to the installation of tenant improvements. This condition varies from building to building, landlord to landlord, and generally involves the level of finish above the ceiling grid.

## Base Rental Rate

An amount that is used as a minimum rent, providing for rent increases over the term of the lease agreement.

## Base Year

The "base year" is typically the calendar year that a particular tenant first occupies the premises (that's the general rule, anyway). The tenant under the lease only reimburses the landlord its share of the property expenses to the extent that they exceed the amount of those same expenses for the base year.



## Board of Realtors

A bunch of old people who still think they know what is going on in the industry.

## Broker's Opinion of Value (BOV)

An educated "best guess" as to a commercial property's current market value based upon a careful assessment of market and property conditions that affect the value of a commercial property.

## Build Out

The construction or improvements of the interior of a space, including flooring, walls, finished plumbing, electrical work, etc.

## Build to Suit

A landowner pays for the construction of a building to the specifications of the tenant, and the tenant then leases the land and/or building from the landowner, who retains ownership.

## Building Hours

Range of operating hours, described in the lease and chosen by the owner of the building. Ex: Building hours Mon-Fri are 6am to 7pm, Sat-Sun are 8am to 2pm. In a gross lease, tenants may be required to pay excess charges for afterhours use.

## Building Permit

Written government permission to develop, renovate, or repair a building. When construction requires a permit, consider adding up to six weeks to the construction timeline.

# C

## Cancellation Clause

A provision in a contract (e.g., lease) that allows a buyer/tenant or a seller/landlord to terminate the party's obligations. The grounds and ability to cancel are usually specified in the contract

## Capital Improvement

Any major physical development or redevelopment to a property that extends the life of the property. Examples include upgrading the elevators, replacement of the roof, and renovations of the lobby.

## Capitalization Rate (Cap Rate)

The value given to the property when the Net Operating Income (NOI) is divided by the current market value or sales price. A cap rate can be used as a rough indicator of how quickly an investment will pay for itself. The higher the cap rate, the better. Example: A property has an NOI of \$100,000, and the price is \$1,000,000. The cap rate would be 10% ( $\$100,000/\$1,000,000 = 10\%$ ). Based on this calculation, you would see a return in 10 years.

## Certified Commercial Investment Member (CCIM)

A recognized expert in the commercial and investment real estate industry. The designation process ensures that CCIMs are proficient not only in theory, but also in practice. C2 is the only team in Arizona where every broker has or is working towards this designation.

## Central Business District (CBD)

The commercial and business center of a city. In larger cities, it is often synonymous with the city's "financial district". Downtown is the CBD of Phoenix.

## Certificate of Occupancy (CO)

The government issues this official form, which states that the building is legally ready to be occupied.

## Closing Costs

Closing costs are fees paid at the closing of a real estate transaction.

## Common Area Maintenance (CAM)

This is the amount of additional expenses charged to the tenant, in addition to the base rent, to maintain the common areas of the property shared by the tenants and from which all tenants benefit. Examples include: snow removal, outdoor lighting, parking lot sweeping, escalators, sidewalks, skyways, parking areas, insurance, property taxes, etc. Most often, this does not include any capital improvements that are made to the property.

## Commissions Split

An agreed upon division of commissions earned between a sales agent and sponsoring broker, or between the selling broker and listing broker. Typically the landlord and/or seller will pay all commissions.

## Contiguous

Touching at some point or along a boundary.

### Contingency

A requirement in a contract that must occur before that contract can be finalized.

### Covenants

Wording found in deeds that limits/restricts the use to which a property may be put (e.g., no bars).



### Covered Parking

A must for Phoenix summers.

### Counselors of Real Estate (CRE) - *Industry Designation*

Membership in The Counselors of Real Estate (CRE) is extended on an invitation-only basis. To be invited, prospective members must be recognized by their peers, clients and employers, for their outstanding professional achievement, impeccable judgment, and commitment to integrity in the field of real estate counseling. Craig Coppola is one of 17 brokers in the world with CCIM, SIOR, & CRE designations.

### Cumulative Cap

The “cumulative” nature of this cap allows the landlord to recover any unused increases from prior years. For example, let’s say that the landlord and tenant agree to a 5% cumulative cap. If CAM expenses increase by 2% in year 1, then the tenant would pay the 2% increase. If CAM expenses increase by 10% in year 2, then the tenant would pay an 8% increase. This is because, in addition to the 5% cap, the landlord can recover the 3% increase that went unused in year 1.

# D

### Deed

A signed, written instrument that conveys title to real property.

### Deed Restriction

An imposed restriction in a deed that limits the use of the property. For example, a restriction could prohibit the sale of alcoholic beverages.

### Default

Failure to fulfill a promise, discharge an obligation, or perform certain acts. Most often occurs when a tenant is late or renter does not pay.



### Defendant

Any real estate agent who stands on a desert lot and says “The golf course and community center will be right over there.”

# E

## Effective Rate

True rent, after taking into account rent concessions over the lease period; usually expressed as a dollar amount per square foot.

## Escrow

A written agreement among parties, requiring that certain property/funds be placed with a third party. The object in escrow is released to a designated entity upon completion of some specific occurrence.

## Estoppel Certificate

A legal instrument executed by the one taking out the mortgage (i.e., mortgagor). The owner of a property may require an individual leasing a property to sign an estoppel certificate, which verifies the major points (e.g., base rent, lease commencement and expiration) of the existing lease between the landlord and tenant.

## Escalation Clause

A clause in a lease which allows the landlord to increase the rent in the future to reflect changes in expenses paid by the landlord, such as real estate taxes, operating costs, etc. This can take three forms: 1) fixed periodic increases, 2) adjustments based on the Consumer Price Index (cost-of-living increases), and/or 3) an increase tied to the increased costs of operating the property.

## Eviction (Actual)

Physical removal of a tenant either by law or force.

## Eviction (Constructive)

The landlord or his agents disturb the tenant, rendering the leased space unfit for the tenant's previous use.

## Eviction (Proceeding)

A legal proceeding by the landlord to remove a tenant.

## Exclusive Agency

An agreement in which one broker has exclusive rights to represent the owner or tenant. If another broker is used, both the original and actual broker are entitled to leasing commissions.

## Exclusivity

A clause negotiated in a lease where certain users are excluded. For example, a title company with excellent credit takes a floor in a building. They require as part of their lease that no other title companies be allowed in the building.

## Extension Option

An agreed-upon continuation of occupancy under the same conditions, as opposed to a renewal, which implies new terms or conditions. In a lease, it is a right granted by the landlord to the tenant whereby the tenant has the option to extend the lease for an additional period.

# F

## Feasibility Period

Many real estate purchase contracts provide for an analysis period after the contract is signed called a due diligence period, study period, or feasibility period.

## Fiduciary

A person who represents another on financial/property matters.

## Fixtures

Personal property so attached the land or building (e.g., improvements) it is considered part of the real property. (Millwork, ex: cabinets fixed to the walls)



## Free Rent

Nothing is free.

## Full Service Lease

See Gross Lease.

# G

## Grace Period

Additional time allowed to complete an action (e.g., make a payment) before a default or violation occurs.

## Gross Lease

A lease of property whereby the landlord (i.e., lessor) pays for all property charges usually included in ownership. These charges can include utilities, real estate taxes, maintenance, janitorial, among others.

# H



## Historic Structure

Any old shack.

## Holdover Clause

The agreed upon deal between landlord and tenants regarding the terms of rent during a holdover period (period of time in which a tenant stays past the end of his lease). In the Phoenix market it is common to see a landlord charge 150% of base rent for hold over rent.

## Holdover Tenant

A tenant who remains in possession of leased property after the lease term expiration.

## Homeowners Association (HOA)

An organization in a subdivision, planned community or condominium that makes and enforces rules for the properties in its jurisdiction. A mini kingdom handing down arbitrary rules & regulations for the amusement of property management.

# I

## Inspection Period (see Feasibility Period)

The inspection period is a negotiated time frame in which buyers have the opportunity to conduct their due-diligence on the property. The purpose is to give the buyers a "free look," so to speak. If the buyers don't like what they see, they can re-negotiate the terms of the contract, or cancel the contract altogether and have their earnest money returned without penalty.

# L

## Landlord

One who rents property to a tenant.

## Latent defect

A fault in the property that could not have been revealed through reasonable inspection before the agreement.

### Leadership in Energy and Environmental Design (LEED Certification)

One of the most popular green building certification programs used worldwide. Developed by the non-profit U.S. Green Building Council (USGBC), it includes a set of rating systems for the design, construction, operation, and maintenance of green buildings, homes, and neighborhoods that aims to help building owners and operators be environmentally responsible and use resources efficiently.

### Lease

A contract whereby the landlord grants the tenant the right to occupy defined space for a set period at a specific price (i.e., rent).

### Lease Commencement

The date upon which the landlord and the tenant's rights and obligations under the lease begin.

### Leasehold

The estate or interest a tenant has as stated in the tenant's lease.

### Leasehold Improvement

A leasehold improvement is an improvement made to a leased building by a department that has the right to use this leasehold improvement over the term of the lease. This improvement will revert to the lessor at the expiration of the lease.

### Lessee

An individual (i.e., tenant) to whom property is rented under a lease.

### Lessor

An individual (i.e. landlord) who rents property to a tenant via a lease.

### Letter of Credit

A document from a bank guaranteeing that a seller will receive payment in full as long as certain delivery conditions have been met. In the event that the buyer is unable to make payment on the purchase, the bank will cover the outstanding amount.

### Letter of Intent

An informal, usually non-binding, agreement among parties indicating their serious desire to move forward with negotiations.

### Listing

An employment contract between principal and agent that authorizes the agent (such as a broker) to perform services for the principal and his property.

### Load Factor

What percentage of the gross area of a space is lost due to lobbies, common areas, walls, elevator, etc. Rule of thumb in Phoenix is approximately 10-14%.

# M

## Market Value

The expected price that a property should bring if exposed for lease in the open market for a reasonable period of time and with market savvy landlords and tenants.

# N



## Negative Cash Flow

A common by product of too much confidence or bad luck.

## Net Lease

Also called triple net lease. The lessee pays not only a fixed rental charge but also expenses on the rented property, including maintenance. Typically more common in retail & industrial product in Phoenix, Arizona.

## Net Absorption

The net change in occupied space in a given market between the current measurement period and the last measurement period. Net absorption can be either positive or negative and must include decreases as well as increases in inventory levels.

## Non-Compete Clause

This clause prevents the landlord from leasing any other premises on the development to a direct competitor of yours or another tenant operating the same type of business. It might be worth considering such a clause to protect your investment for the long term – especially if you are in the service industry and expect a lot of walk-in traffic.

## Non-Cumulative Cap

A non-cumulative cap sets a ceiling on annual increases in CAM expenses and does not allow the landlord to recover any unused increases from prior years.

## Non-Disturbance Agreement

The tenant signs this to prevent himself from being evicted if the property owner does not pay its mortgage to the bank.

# O

## Operating Expense

Expenditure that a business incurs as a result of performing its normal business operations.

# P

## Parking Charges

Monthly payment a tenant makes to have designated parking spaces.

## Parking Ratio

Amount of parking given to tenant. Usually corresponds with square footage of office space. The standard in Phoenix currently for generic office space is about 1 parking spot per 250 square feet.

## Personal Property

Examples include furniture, clothing, and artwork.

## Power of Attorney

A written instrument duly signed and executed by an individual which authorizes an agent to act on his behalf to the extent indicated in the document.

## Premises

A building, together with its land and outbuildings, occupied by a business or considered in an official context.



## Prospecting

What the majority of agents say they are doing when they are really drinking coffee and watching ESPN at the office.

# Q

## Quiet Enjoyment

The right of a landlord or tenant to use the property without disturbances.

# R

## Real Estate Investment Trust

A REIT is a type of security that invests in only real estate through property or mortgages and often trades on major exchanges, like a stock. REITs enjoy substantial tax benefits that other publically traded companies cannot relieve.

## Real Property

Land and any capital improvements (e.g., buildings) erected on the property.

## Renewal

A clause in a lease that outlines the terms for renewing or extending an original lease agreement. The renewal option appears as a covenant in the original lease and provides specifications under which the leaseholder can renew or extend the original lease term for an additional, specified time and rate (rent).

## Rentable Square Footage

Your usable square footage PLUS a portion of the building's shared space. As mentioned above, shared space can be anything that is outside of your occupied space and is of benefit to you (lobbies, restrooms, hallways, etc). As a tenant in a commercial space, you pay for a portion of the shared space and thus your monthly rent is always calculated on RSF.

## Rent Commencement Date

The date on which a tenant is to begin paying rent, which may be different than the lease commencement date.

## Restriction

A restriction, often specified in the deed, on the use of property.

## Right of First Offer

The Right of First Offer gives the tenant the right to make an offer on the property in question before any other parties. First Offer gives the landlord the right to accept or reject the offer and entertain other offers later.

## Right of First Refusal

The Right of First Refusal allows the tenant to wait until all offers are in and then match the highest offer. First Refusal gives the tenant the upper hand by letting them see all offers before making their own and potentially discouraging other bidders in the first place.

# S

## Security Deposit

A monetary deposit given to a landlord as proof of intent. Security deposits can be either refundable or nonrefundable, depending on the terms of the transaction. As the name implies, the deposit is intended as a measure of security for the recipient. Landlords generally apply security deposits as rent from tenants who cannot otherwise pay or use them to repair damage caused by tenants.

## Society of Industrial and Commercial Realtors (SIOR Designation)

A professional symbol of the highest level of knowledge, production, and ethics in the real estate industry. Real estate professionals who have earned the SIOR designation are recognized by corporate real estate executives, commercial real estate brokers, agents, lenders, and other real estate professionals as the most capable and experienced brokerage practitioners in any market. Craig and Andrew have their SIOR designations.

## Space Planning

A term used to refer to the analysis and design of spatial and occupancy requirements, including, but not limited to, space layouts and final planning.

## Spec Suite

These speculative spaces, which can range from 1,000 to 10,000 square feet, are new, move-in ready spaces. Typically these have a premium on them.

## Specific Performance

When a court requires a defendant to carry out the terms of an agreement or contract.

## Square Footage

The type of measurement used to specify the size of a building or suite.

## Statute of Frauds

State law (founded on ancient English law) which requires that certain contracts, including leases, must be reduced to written form if they are to be enforced by law.



## Statute of Limitations

A countdown from when something happens to when a person can file a lawsuit (or something a bad realtor counts on after each property is sold).

## Subagent

An agent of an individual already acting as an agent of a principal.

## Sublease

A lease agreement between the original tenant and the new tenant that he is subletting to.

## Subletting

The leasing of space from one tenant to another tenant.

## Surrender

The cancellation of a lease by mutual consent of the tenant and the landlord.

# T

## Tenant Improvements

Work done on the interior of a space, can be paid for by landlord, tenant, or some combination of both, depending on the terms of the lease.

## Tenants at Sufferance

An individual who comes to possess land via lawful title and keeps it in perpetuity without any title.

## Termination Option

The termination option is a clause that allows prospective tenants to back out of a lease contract during a fixed period of time that precedes its official closing date. Designed to increase flexibility for tenants and landlords, the termination option allows both parties to court other suitors. It's also useful for prospective tenants who wish to take a closer look at the terms of the lease and the state of the suite/building that they wish to lease/purchase

## Term

The length of time a lease is agreed to between the tenant and landlord.

## Triple Net Lease

A lease requiring tenants to pay all utilities, insurance, taxes, and maintenance costs.

# U

## Usable Square Footage

The actual space you occupy from wall to wall. Usable square footage does not include common areas of a building such as lobbies, restrooms, stairwells, storage rooms, and shared hallways.

# V

## Variance

Government authorization to use or develop a property in a manner which is not permitted by the applicable zoning regulations.

# W

## Work Letter

An amount of money that a landlord agrees to spend on the construction of the interior of a space per the lease, usually negotiated.

# Z

## Zoning Ordinance

A law by a local governmental authority (e.g., city or county) that sets the parameters for which the property may be put to use.