

Law & Accounting

A conversation about 2022's commercial real estate trends

After almost two years of triaging pandemic-related business issues, commercial real estate saw a flurry of deals close out 2021. We discuss what's behind this activity and what else is on the horizon as a battle-fatigued industry looks to the new year.

■ **Pray:** Nicole, as we look ahead to 2022, what real estate product type still hasn't recovered or is still being impacted by the effects of the COVID-19 pandemic?

■ **Ament:** There's two products that we're still seeing impacted by the pandemic: office and hotels. For obvious reasons, these two were the hardest hit during the pandemic and have the most uncertainty still as we continue to navigate hybrid offices and general limitations on embracing business travel. While there were signs of hope as vaccine rates went up, we won't see a stabilization in the office market and hotel industry until pandemic concerns are well behind us and the new normal for work life is established.

■ **Pray:** What product types have benefited the most?

■ **Ament:** Here in Colorado and across the country we've seen activity in the second-



Nicole Ament
Shareholder, Real Estate department chair, Brownstein Hyatt Farber Schreck

home market increase sharply the last two years. For obvious reasons, second homes were attractive during the pandemic and we saw real estate investors following this trend. One recent example, where we served as lead counsel, was Denver-based Brue Baukol Capital Partners' purchase of Kukui'ula, a 1,000-acre second home development on Kauai. All signs indicate that the second-home market will stay strong as the "guilt" factor about purchasing a second home has faded.

We also saw resilience from the industrial market and it continues to perform well. Much of this can be attributed to the rise in e-commerce and a huge need for distribution centers. As supply chain issues continue to cause problems for consumer product companies, I think we'll continue to see an increase in this demand to help companies get more products



Jonathan Pray
Shareholder, litigation, Brownstein Hyatt Farber Schreck

to consumers in less time.

■ **Pray:** Something that we were really focused on before the pandemic was opportunity zones. As developers come up for air after 2020 and 2021, what should they know about the status of opportunity zones and where we're at in the timeline?

■ **Ament:** While some of the tax deferral upside has passed, the primary tax benefit of investing in an opportunity zone remains, as well as plenty of development project opportunities. Because many of the opportunity zone locations were determined to be economically challenged areas based on 2010 Census data and the Tax Cuts and Jobs Act was passed in 2017, many of the properties are now located in up-and-coming areas across the country and are ripe for development.

■ **Ament:** Jonathan, as a construction attorney who closely

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follows construction defect lawsuits, what are you seeing in the Colorado condo market?

■ **Pray:** While there haven't been any significant changes in the law over the past few years, we are seeing more interest from developers in pursuing the construction of condos in the Denver area. This probably has to do with Colorado's continued population growth and developers becoming aware of measures they can take to control the risk of defect claims in condo development.

■ **Ament:** What else are you keeping an eye on as we go into the new year?

■ **Pray:** We're continuing to watch the implementation of legislation that went into effect last fall capping the amount of retainage that developers can withhold from general contractors on private construction projects at 5%. We're also

seeing an increase in litigation over property tax assessments by county taxing authorities, particularly on hotel and resort properties.

■ **Ament:** To what extent is the pandemic continuing to affect litigation and the court system?

■ **Pray:** On one hand, our courts have gotten very comfortable with parties participating in depositions, hearings and even trials via videoconference. That's a positive development in my view, and I hope it survives the pandemic. At the same time, however, many court calendars remain backlogged due to the pandemic, and we're seeing a renewed interest in private arbitration as an alternative to litigation of both real estate and construction disputes.▲

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