

# RCA Report

REALTORS® Commercial Alliance



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## Storm warning

# Navigating the insurance crisis

"In the insurance industry, we call 2001 'The Perfect Storm,' a once-in-a-century alignment of everything that could go wrong doing so at the same time," says David Farmer, senior vice president of the Alliance of American Insurers, referring to the best-selling shipwreck saga by Sebastian Junger.

And for real estate owners and managers facing their third straight year of rising casualty, liability, and worker's comp premiums, it's getting harder and harder to stay afloat.

An Institute of Real Estate Management survey conducted in November 2002 found that mean costs for property/casualty insurance for a sample property in its members' portfolios had risen from \$29,214 in 2001 to \$58,803 in 2003. According to a survey by the Council of Insurance Agents and Brokers, 23 percent of owners renewing commercial property insurance in the third quarter of 2002 saw premiums increase between 20 and 30 percent, while 21 percent saw increases from 30 to 50 percent.

"Insurance companies realized in 2000 and 2001 that policies didn't reflect true underwriting costs, and like any prudent business, they began



Scott Adams



W. Alan Huffman



Ronald L. Myles

to raise prices," says Scott Adams, director of corporate insurance risk management for Insignia/ESG, Inc.

"In 1999, we paid approximately \$8,900 a year for casualty and liability coverage on a 60-unit apartment building in a town of 20,000. In 2002, our premium—with no major losses—was \$24,000. We used to pay out about 10 percent of revenues to the partners as profits, but the increased cost of insurance has almost wiped that profit out," notes Alan Huffman, CPM®, president of Key Management in Wichita, Kan..

High costs are exacerbated because few real estate owners are in a market position to pass through costs to tenants. "It's a double-edged sword. A slowdown in the market is already

lowering our rental rates, but we don't want to raise tenants' costs and put their enterprises in jeopardy," says Ron Myles, CCIM, whose Denver-based Myles Enterprises, Inc., owns and manages retail and warehouse/distribution properties.

Nor are high costs the only hurdle to obtaining adequate insurance coverage. "In this market, there is not much mood to negotiate or to tailor coverage to fit your needs," says Adams. "Underwriters are still trying to get their arms around the problem of going from a cash-driven financial services model to one that focuses on insurance and risk management. Until they do, they are going to be much more inflexible."

See **Insurance** on back page



## LEGISLATIVE Update

BANKS IN R.E.  
TOXIC MOLD  
HOMELAND  
SECURITY

- Real estate's prospects for favorable legislation are good in the 108<sup>th</sup> Congress.
- Scoreboard recaps progress on key legislative issues.

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COMMERCIAL  
Real Estate



NATIONAL ASSOCIATION OF REALTORS®

The Voice for Real Estate®

## SVP Report



Bonnie Gottlieb,  
NAR Senior Vice President,  
Commercial Real Estate

### A year of expansion and new services

The Commercial Division of the National Association of REALTORS® (NAR) will be quite active in 2003 as it launches or expands many initiatives to benefit RCA members. The Division plans to focus most of its attention on the areas of greatest importance to commercial members: encouraging and assisting with the creation of Commercial Information Exchanges (CIEs), assisting in the development and strengthening of Commercial Overlay Boards (COBs) and Commercial Structures (CSs), expanding communications with RCA members, working with members of the new Commercial Research Subcommittee, and continuing the work of the RCA Advisory Board.

At the close of 2002, there were 29 NAR-owned or licensed CIEs in operation, and another 6 in the development stages. The Commercial Division is monitoring this growth with great excitement and reviewing options for further NAR involvement in local and national Internet-based commercial real property listing services. CIEs and their ramifications will be a principal topic of discussion at the RCA Advisory Board meetings in 2003.

CIEs will also be on the agenda at the RCA-sponsored Commercial Board Summit, which will be held during the 2003 Realcomm conference in Chicago (June 4 and 5). This session will provide a forum where the Commercial Division can share information about CIE development with COBs, CSs, and commercial practitioners as well as facilitate meetings with CIE and business system vendors. RCA will once again act as a Platinum Sponsor for Realcomm.

In 2002, there were two new COBs formed, and groups in several states are exploring the creation of new COBs. In addition, many COBs are expanding their roles within their state associations and increasing benefits and services for their members. To aid this process, the Association Executive Institute and Leadership Summit have added second commercial tracks to the ones offered at last year's meetings so that AEs and elected leaders can participate in separate sessions tailored to their unique needs.

NAR's recent approval of a new Commercial Research Subcommittee has given members the chance to identify research topics that will improve their bottom lines and to tap both NAR's extensive research capabilities and outside industry experts to expand their knowledge of vital industry issues.

To help keep members informed about RCA activities and new member benefits, the Division has launched a brand-new Commercial Internal News Service with the latest news on industry trends and products and services for commercial members. The Commercial INS will also include information from NAR Commercial Affiliates and legal and legislative developments that impact members. The Division is also adding a commercial version of AE Talk on our [www.REALTOR.org/RCA](http://www.REALTOR.org/RCA) Web site so that AEs and members can share successes, ask questions, and raise issues of interest.

Whether it's new communication, new services, or the expansion of such successful initiatives as CIEs, 2003 promises to be a year of exciting creative ideas and even greater growth for the RCA.

#### NEW monthly commercial e-newsletter

The all-new Commercial Internal News Service electronic newsletter brings you the latest commercial news, events, programs, and products, plus all the NAR activities of interest and value to commercial members. Look for this valuable resource in your e-mail box the second Monday of every month. For a free subscription, call 888-648-8321 or e-mail, [commercialrealestate@realtors.org](mailto:commercialrealestate@realtors.org).



To contact NAR Commercial Real Estate staff: 888-648-8321. To find an online version of this newsletter go to [REALTOR.org/rca](http://REALTOR.org/rca). For a complete listing of NAR legislative and regulatory initiatives, go to [REALTOR.org](http://REALTOR.org).

If you are interested in advertising in the RCA Report contact Michael Mini at 312/329-8455.

#### Commercial Affiliates of the NATIONAL ASSOCIATION OF REALTORS®

CCIM Institute (CCIM)  
312/321-4460; [www.ccim.com](http://www.ccim.com)  
Counselors of Real Estate (CRE)  
312/329-8427; [www.cre.org](http://www.cre.org)  
Institute of Real Estate Management (CPM)  
312/329-6000; [www.irem.org](http://www.irem.org)  
REALTORS® Land Institute (ALC)  
312/329-8440; [www.riland.com](http://www.riland.com)  
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##### Special Guests: Janet Branton, REALTORS® Land

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REALTORS®

# RCA BOARD Update

The REALTORS® Commercial Alliance Advisory Board, composed of major national, regional, and local market leaders, meets two or three times annually and serves in a non-policy-making advisory capacity for NAR's commercial initiatives. Advisory Board members are listed on page 2.

## MEETING HIGHLIGHTS

### Recovery slow, but certain

Despite high office and retail vacancy rates in San Francisco, Dallas, and Atlanta, members of the RCA Advisory Board meeting in Chicago last fall believe that economic recovery is underway for the U.S. The recovery is more evident in the Chicago; New York City; and Washington, D.C. office markets, driven by demand from law firms and federal government agencies, agreed Board members. Dr. Peter Linneman, Albert Sussman Professor of Real Estate, Finance, and Public Policy at the Wharton School of Business, University of Pennsylvania, moderated the lively discussion on "the business of the business."

Although most commercial markets are improving, Advisory Board Members noted that several metropolitan statistical areas (MSAs) remain saddled with high office and retail vacancy rates and little

prospect for swift improvement. According to Linneman, the San Francisco and Silicon Valley markets are recovering slowly due to a concentration of dot.com businesses, coupled with excessive government regulation. And in Houston and Dallas, a glut of sublease space is taking its toll on the office market where rental rate discounts of 20 to 25 percent are common. This recession, though, is different from the one that occurred in 1991, as the major players in commercial real estate are not going out of business like they did then, Linneman noted. He likened recovery from this recession to the healing of a broken bone—a slow, methodical recovery with some setbacks expected.

With the hope of improved industry conditions on the horizon, Advisory Board Members say that their biggest challenges in the next

24 months include succession planning, retaining quality personnel, cross selling, and branding.

"The State of the Commercial Real Estate Market from a Developer's Perspective" was the topic of a presentation to the Advisory Board by Carl Panattoni, CEO of Panattoni Development Company, Sacramento, Calif. He remains optimistic about certain niche investment opportunities in down markets. The time may be right for smaller commercial tenants to purchase buildings and for larger owners to take advantage of low interest rates and refinance.

Panattoni also noted that this recession differs from previous ones in several significant ways—real estate was not the first industry to take a hit this time, interest rates have remained low, cap rates are the lowest in decades, and real estate businesses continue to consolidate.

However, he observed that banks are beginning to experience trouble and predicted a credit crunch within the next six months.

The Advisory Board received reports from RCA task forces on broker lien laws, continuing education credits, license reciprocity, and standardized commercial real estate terminology (see below). Beginning in 2003, the RCA Committee will take the lead in implementing these task force initiatives, although jurisdiction for the Terminology Task Force will remain with the Advisory Board.

Under the direction of Chairman Steven D. Leader, CRE, the RCA Advisory Board will shift its focus to commercial information exchanges (CIEs) in 2003. The Board will examine the practical applications of CIEs and promote CIE development throughout the United States. The next RCA Advisory Board meeting will be held March 25-26, 2003, in Chicago.

## TASK FORCE BRIEFING

Updates on progress toward achieving four key initiatives set by the REALTORS® Commercial Alliance Advisory Board.

**Broker lien laws:** To date, 21 states have broker lien statutes. Kentucky and New Hampshire have recently passed broker lien laws with the help of their respective state associations of REALTORS®. In addition, the REALTOR® associations in Oregon and Colorado have begun drafting new laws to be introduced in the 2003 legislative sessions. The Florida Association of REALTORS® is also seeking to introduce revisions to its existing lien law that would

strengthen the rights of commercial brokers.

**Continuing education credits:** A "one-stop" approval process that would have allowed multiple courses on a similar topic to be approved by ARELLO under one application was rejected by the ARELLO Education Subcommittee at a recent meeting. The Task Force had supported this proposal. However, ARELLO's current and future presidents, as well as several members of the Education Subcommittee, were sympathetic to NAR's concerns about CE credit approval and want to take some action to

ease the problems. The Task Force will review its options for achieving success on this issue and consider its next steps.

**Industry terminology:** This Task Force is developing a "terminology matrix" comparing commercial real estate terms used within major U.S. markets. The pilot questionnaire, which addressed terminology relating to building inventory issues; net absorption; vacancy rates; lease rates; square footage measurement standards; and attributes of Class A, B, and C office buildings, was placed with Jones Lang LaSalle, COREFAC, and CB Richard

Ellis in ten test markets. The Task Force will analyze the results of this pilot survey during its May 2003 meeting and determine whether to conduct a full-scale survey of all commercial member firms.

**License reciprocity:** North Carolina and Maryland are moving forward with legislation that would permit some degree of license reciprocity, while Florida, New Mexico, and Wisconsin have all put current legislative efforts on hold for a variety of political reasons. The Task Force also reported that the California Real Estate Commission has begun to explore this issue.

# LEGISLATIVE Update



BANKS IN R.E.  
TOXIC MOLD  
HOMELAND SECURITY  
SCORECARD

## 2003 OUTLOOK

### Prospects bright for NAR-backed legislation

With substantial groundwork laid in 2002, the National Association of REALTORS® is optimistic about achieving real progress on several key issues affecting real estate during 2003. Several bills that were first introduced in 2002 but failed to become law are already moving forward in the new 108th Congress.

**Banks in real estate:** On January 7, 2003, legislation that prohibits big banking conglomerates from entering the real estate business was reintroduced in both houses of Congress. Known as the Community Choice in Real Estate Act, the bills (H.R. 111 and S. 98) are identical to legislation that was introduced in the 107th Congress. Over a dozen U.S. Senators and more than 245 members of the U.S. House of Representatives signed onto that bill last session, and the new bill already has 151 House and eight Senate cosponsors.

Banking conglomerates are seek-

ing permission to sell and manage real estate via a proposed rule before the Federal Reserve Board and the Treasury Department. This bill clarifies congressional intent in the Gramm-Leach-Bliley Act to prohibit banks from operating non-financial commercial firms such as real estate and amends the Bank Holding Company Act to preclude any such action by the Federal Reserve or Treasury Department.

Congressional support for keeping big banks out of real estate is expected to grow even stronger this year in light of the recent accounting scandals and allegations that firewalls between different but separate bank activities have been violated. In addition, Senator Richard Shelby (R-Ala.), head of the influential Senate Banking Committee, was one of the co-sponsors of the bill.

"Congress should be able to make this decision early in the session," says Jerry Giovaniello, NAR Senior Vice President and Chief Lobbyist.

"NAR believes that this decision should be made by Congress, since it affects such a significant portion of the economy."

**Taxes and real estate:** President Bush's \$674 billion tax package is designed to stimulate the sluggish economy by putting more money in the hands of individuals rather than providing tax relief to businesses. There are no package provisions that deal directly with real estate. The centerpiece of the plan—constituting more than half of the revenues in the package—is the elimination of a tax on dividends. However, dividends paid by real estate investment trusts are not eligible for this exemption, since REITs pay no tax at the corporate level.

The proposal also includes the acceleration of income-tax rate cuts that were scheduled to take effect next year. Under the new proposal, tax bracket ranges would be 10 percent to 35 percent, retroactive to

January 2003. The amount of income eligible for the 10 percent tax bracket would also be greatly increased, benefiting lower- and middle-income individuals. The package also proposes to accelerate the increase in the standard deduction for married couples, making it double that of a single taxpayer, and to increase the current \$600 tax credit for each dependent child to \$1,000.

The proposal also increases the deduction small businesses can take for investments in equipment and other personal property from \$25,000 to \$75,000 a year, which might benefit real estate practitioners who want to upgrade equipment.

A proposal to increase the 30 percent bonus for leasehold improvements to 50 percent for 2003 is contained in the Democratic alternative to the Bush proposal. However, the Democratic proposal would reduce the amount of the bonus to 10 percent in 2004.

"The House will probably try to fast track this bill, but there will almost certainly be changes in the Senate," predicts Giovaniello. "It's really too soon to tell what the final bill will look like." However, he says, NAR convinced the White House to include a tax incentive for developing

and rehabbing low-income housing in the final bill. This tax break had been supported earlier by President George W. Bush but was not included in the initial draft of the bill.

Hopefully whatever package is eventually passed will stimulate sufficient economic growth to avoid budget deficits and higher interest rates that might harm real estate sales activity, adds NAR Chief Economist Dr. David Lereah.

**Homeland security and real estate:** NAR has met with the National Infrastructure Protection Center (NIPC), a department of the FBI charged with gathering information on threats to critical infrastructures, to begin to explore how the country's heightened security measures should be dealt with by commercial real estate owners and managers. One possibility for sharing information among real estate practi-

tioners would be to work with NIPC in the development of an Information Sharing and Analysis Center. To date, ISACs have been set up for several important industries including telecommunications, chemicals, utilities, and banking and financial services. "It's critical that commercial REALTORS® understand how homeland security measures will affect the way they operate and sell properties," says Giovaniello.

**Energy reform:** National energy reform stalled in conference committee in fall 2002, in large part because of controversy over provisions allowing energy exploration in sensitive environmental areas of Alaska. But Republicans will undoubtedly reintroduce energy reform legislation. Several tax incentives favorable to real estate were included in the failed bill, including tax credits for the installation of sub-

mers in multitenant buildings and for the installation of energy-efficient building technologies. However, prospects for passage of energy reform are dimming.

"The real estate provisions in the bill were not controversial and will probably be included if and when the bill is passed, but the Alaska drilling remains very controversial. Factors such as a possible conflict with Iraq and the price of oil could make a big difference to whether the bill is passed this year," predicts Giovaniello.

**Toxic mold:** During the 107th Congressional Session, Rep. John Conyers, (D-Michigan), introduced H.R. 5040, the United States Toxic Mold Safety and Protection Act of 2002, a far-reaching bill prescribing research, inspection, and remediation standards to address the myriad of issues stemming from toxic mold.

The bill, in effect, would have created a national toxic mold hazard insurance program much like the federal flood insurance program in order to address the burgeoning number of claims against policies for costs related to mold clean-up and health hazards. Although NAR did have concerns about some provisions of the bill, H.R. 5040 did include tax credits for toxic mold inspection and remediation. NAR will lobby to have this component included if legislation is reintroduced by Rep. Conyers in 2003. H.R. 5040 represented Congress' first attempt to address the mold issue. In 2003, Congress is not likely to pass mold legislation. Several agencies within the government are conducting research into the issue of mold, and it's unlikely that any legislation or regulation will be passed until those studies are concluded.

# S C O R E C A R D

Legislation: Summary of content	Last Action	Status
<p><b>Forced telecommunications access.</b> Permits telecom providers to wire apartments and office buildings without owners' permission.</p> <p><b>NAR position:</b> Opposes government-mandated building access.</p>	<p>In a big win for the real estate industry, the FCC recently released an inside wiring order that declined to regulate privately negotiated video wiring contracts and chose not to ban perpetual contracts. The FCC also stated "We continue to believe that mandatory access laws may impede competition in the MDU market..."</p>	<p>NAR maintains that regulating building access is unnecessary since building owners want multiple carriers to serve tenants. NAR, in conjunction with the Real Access Alliance, will continue to monitor this issue on the state and federal levels.</p>
<p><b>Bankruptcy reform proposals.</b> Reduces automatic stay from creditors to 90 days for properties valued at over \$4 million; allows eviction of residential tenant who files bankruptcy if rent is not current; limits time that retail tenants may decide to assume or reject leases to 60 days.</p> <p><b>NAR position:</b> Supports bankruptcy reforms for commercial real estate.</p>	<p>H.R. 333, the Bankruptcy Reform Act, contained pro-commercial real estate provisions. The bill passed the House and Senate last Congress, but failed to clear a conference committee due to unrelated controversial provisions.</p>	<p>House and Senate Judiciary Chairmen remain committed to passage of bankruptcy legislation and will introduce new legislative packages early this session.</p>
<p><b>Terrorism risk protection.</b> Provides a federal backstop to commercial insurers when losses from terrorist attacks exceed a certain amount.</p> <p><b>NAR position:</b> Supports legislation providing a federal backstop for the issuance of terrorism insurance.</p>	<p>H.R. 3210 was signed into law in November 2002 and will be in force until Dec. 31, 2005. It mandates that property and casualty insurance policies in all states must offer terrorism coverage and establishes a federal backstop for insurers.</p>	<p>The law became effective on November 26th, 2002, and is succeeding in making coverage more affordable and available. NAR continues to monitor Treasury's final regulations and implementation of the bill.</p>

# INDUSTRY Update



## INVESTMENT

# Main Street, Wall Street, & real estate

By Kenneth Riggs

Faced with news of accounting fraud, questionable practices by Wall Street firms, CEO misconduct, and corporate malfeasance, it isn't surprising that Main Street investors were pulling out of the stock market during 2002. Now, \$8 trillion in stock market losses later and little relief from bad news in sight, Main Street remains wary.

Fortunately for commercial real estate practitioners, real estate has a level of credibility with Main Street investors that public stock investments have lost. Real estate may not have the glamour of the stock market, but it is something that investors can see and embrace while receiving higher returns than those generally available through bonds and cash.

Real estate's total returns, stable income, and the option of diversification away from traditional stocks make it hard to refuse in today's financial market. Investors can appreciate the solid income return of 6 to 8 percent, topped with capital appreciation that pushes total returns into the 10- to 12-percent range, as projected by Real Estate

Research Company.

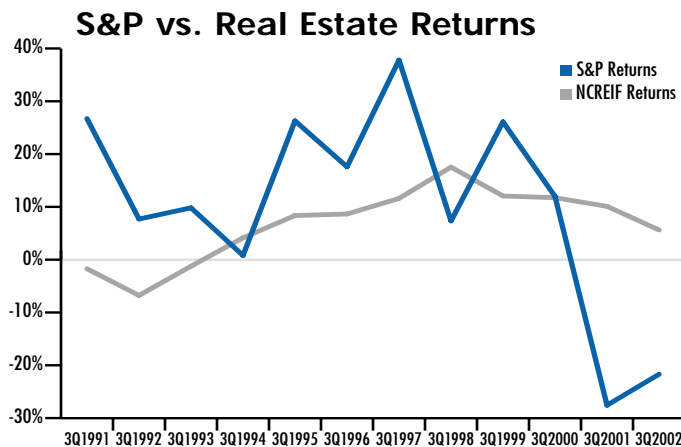
Main Street's initial interest in real estate investing centered on real estate investment trusts and mutual funds that invested in them. Investors were attracted by the safety, income, and diversification they believe REITs offer. In December 2002, the National Association of Real Estate Investment Trusts posted 2002 total returns of 5.22 percent on average for public REITs. Dividend yields, currently averaging 7.36 percent, accounted for all the gains. As expected, mortgage REITs packed in the highest returns with dividend yields of 12.34

percent and total returns of 31.08 percent on average. Retail REITs came in next with dividend yields of only 6.62 percent, but a total return for the year of 21.07 percent. By contrast, the S&P 500 was down 23.4 percent for the year, the Russell 2000 was down 21.6 percent, and the Nasdaq was down 31.5 percent.

Main Street isn't the only investor group looking for ways to reallocate its dollars. Institutional investors, particularly pension funds, which together with mutual funds own 46 percent of the stock in U.S. corporations, are grappling with lower mar-

ket returns, losses in the value of pension assets, and increased outflows to aging beneficiaries. Fund managers are searching for investments that are income-oriented, and commercial real estate fits the bill. As a result, many pension plans, as well as more 401(k) plans and self-directed individual retirement accounts, are now allocating money to commercial real estate. In 2002, \$3.4 billion flowed into the REIT sector and the sector stood at \$15.3 billion, according to analysts at Salomon Smith Barney.

Investor fascination with real estate is also fueling a renewed interest in real estate limited partnerships (RELPs) and private REITs. In fact, there hasn't been this much investor interest in these options since before the Tax Reform Act of 1986, which eliminated favorable tax advantages to real estate and killed the interest of many investors in the asset class. In 2001, new investments in RELPs and private REITs increased by about 60 percent, to \$1.6 billion. By mid-2002, new money invested in RELPs and private REITs was up to \$1.8 billion, according to *BusinessWeek*.



## INVESTMENT continued

Despite this increased interest in real estate investment, however, money flows to private REITs and RELPs will not overwhelm the commercial real estate market and lift prices like they did in the 1980s. Money to private REITs and RELPs is expected to remain disciplined, amounting to just several billion dollars per year in a trillion-dollar equity market for commercial real estate. In fact, there are currently only a handful of companies that deal with RELPs, including Wells Real Estate Funds, CNL Real Estate Advisors, W.P. Carey, and Inland Real Estate.

Whether commercial practitioners are working with institutional or private investors, it's important to keep in mind that both of these vehicles have the benefits of public REITs, including paying dividends and owning a variety of real estate properties. But unlike public REITs, which can fluctuate with the stock market,

shares in RELPs and private REITs change in value only when property in the portfolio is appraised, with the appraisal value serving as the share price. Designed primarily to deliver income and capital appreciation, RELPs and private REITs also shelter some of their income from taxes.

While real estate is benefiting from new investor interest because of its stability, it is not exempt from the effects of a slow economy. Office REITs are down, due to declining rents and high vacancies. Even so, all classes of REITs are expected to perform better than the S&P 500 Index over the next year.

RELPs also possess risks, including the potential of exacerbated losses due to their leverage capabilities. But for investors with a long-term (10 years or more) time horizon, RELPs may offer higher yields because investors may receive income or take a depreciation write-off.

Real Estate Research Corporation expects that real estate will continue to remain more attractive to investors than bonds in 2003, due to its strong return potential relative to risk and its consistent cash flow and leveragability. Apartments and industrial warehouse properties offer the strongest fundamentals and eventually the most solid returns for investors. As reported in the fall 2002 *RERC Real Estate Report*, expected average return for apartments in 2003 on a national level is 10.7 percent with a going-in capitalization rate of 8.2 percent. Expected average return for industrial warehouse properties is 10.9 percent with a going-in capitalization rate of 9.0 percent.

Although there is likely to be an increase in real estate brokerage activity due to an increased volume of real estate investment, commercial practitioners will see little change in their day-to-day work due to owner-

ship shifts. Builders will continue to build, and managers will continue to manage, whether it's Wall Street or Main Street that owns the property. In the long-term, the industry remains healthy.

Kenneth P. Riggs, Jr., is chief executive officer and managing principal of the Chicago-based Real Estate Research Corporation. RERC provides research, valuation, portfolio services, litigation support, corporate advisory services, and general consulting to clients throughout the U.S. RERC is most recognized for the quarterly *RERC Real Estate Report* and the online RERC DataCenter, which provide independent national, regional, and metropolitan-level investment criteria, and the annual *RERC Industry Outlook*. For more information, contact RERC at 319/352-1500 or at [recc@recc.com](mailto:recc@recc.com).

## AFFILIATESPOTLIGHT

## Counselors offer dispute resolution program

Settling disputes between real estate professionals and clients just got much easier, thanks to the launch of a new CRE Alternative Dispute Resolution Program, designed especially for the real estate industry by the Counselors of Real Estate. The program is intended to fill a void and provide assistance for commercial real estate practitioners who want to settle real estate-related disputes without litigation. The program uses association members holding the Counselor of Real Estate designation as mediators and arbitrators and taps their real estate expertise and negotiating skills to resolve grievances in an atmosphere of civility and respect.

"The ADR program is a faster, less expensive alternative to court. It is a process where decisions are made

by people who know the business, as opposed to lay judges who might not know the real estate industry," says Philip Cottone, CRE, and president of Devon, PA-based Property Trust Advisory Corporation, who was involved in the creation of the program.

The goal of the program is not to provide an immutable set of rules for resolving every real estate dispute, but rather to present an array of methods for resolving disputes. Specific choices generally depend on the mutual agreement of the parties in a particular case and can be customized. Either party may request CRE dispute resolution services. Parties are then provided with a list of potential dispute resolution panelists, together with their qualifications.

Once the claimants have committed to the use of the ADR's Protocol, neutral CRE arbitrators or mediators weigh the positions of each claimant and make a decision based on presented facts. If there is disagreement about a specific administrative or procedural process, the appointed CRE neutral may decide the issue.

Before the creation of the CRE program, commercial real estate practitioners had to turn to groups such as the American Arbitration Association for assistance in resolving disputes outside of court. And while the AAA

is very good, says Cottone, its arbitrators and mediators seldom have the real estate background and expertise of a CRE.

The Counselors of Real Estate is an international group of high-profile professionals, including members of prominent real estate, financial, legal, and accounting firms, as well as leaders of government and academia, who provide expert, objective advice on complex real property situations and land-related matters. For more information on the Counselors' Alternative Dispute Resolution program, go to [www.cre.org](http://www.cre.org), email [info@cre.org](mailto:info@cre.org), or phone 312/329-8427.

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## Insurance

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"We often don't receive renewal bids or even notice if the insurance will be renewed until a few days before the coverage expires," says Myles, voicing another widespread concern. And renewal offers are much more likely to make additional exclusions, including water damage and mold.

### Faint Breaks in the Clouds

But if things are far from good, insurance availability is beginning to improve for some owners, believes Adams. "It's not as extreme as last year; we are getting quotes several weeks in advance, and underwriters are not as reactionary on price."

"Insurance 'hard' markets traditionally last three or four years, and 2003 is the third year of rising premiums," says Farmer. However, he notes, because the low-premium environment of the 1990s lasted much longer than usual, pricing increases could also last longer.

"We are seeing revenue growth now, but we'll need to see bottom-line growth before prices will truly stabilize," he says. Still, notes Farmer, insurers are in the business to sell insurance, so at some point, competitive forces will take hold, and one company will cut prices.

By 2003, commercial property coverage should begin to see some moderation, with increases of between 10 and 20 percent for average proper-

ties, agrees Dr. Robert Hartwig, senior vice president and chief economist of the Insurance Information Institute. "Of course it varies by property, but in general, commercial property insurance premiums are approaching adequate levels and should begin to plateau."

More severe increases are likely to occur in both general liability and worker's comp premiums, which Hartwig estimates could increase between 20 and 25 percent in 2003. "The jury awards for slip and fall incidents have nearly tripled in the last few years. There's very little insurers can do directly to reduce that cost," he notes.

### Turning About

One tack that property owners and managers hope will help them stay on course is focusing on risk management. But this strategy can often have mixed results. "We've tried to add more fire suppression and other safety measures in some of our distribution facilities, but such expensive equipment is not always a good cost/benefit proposition, especially in older buildings," says Myles. His company has also worked to keep insurance costs under control by not renewing leases of high-risk tenants such as an auto refurbishing business.

It's also important to be sure that even your low-risk tenants carry adequate insurance so your company doesn't have to pick up the slack.

Adams notes that some commercial tenants who can't afford insurance often get a policy or provide an insurance certificate to satisfy their lease requirements, then cancel the policy after one payment. "It used to be that managers just got the certificate and put it in the drawer, but now you need to pay attention," he says. In response, he says, some owners may begin enforcing lease clauses that give them the right to buy insurance on the tenants' behalf if they don't receive a valid certificate.

In the multifamily sector, more companies are considering requiring residents to carry renters' insurance as a way to share the claims burden, says Jay Harris, vice president, property management for the National Multi Housing Council. "A lot of small losses are attributable to the residents, and with renters' insurance, they'll have to share the loss." Today, he says, only about 20 percent of renters carry such insurance.

Recognizing that higher deductibles are a simple way to lower costs, many property owners are going that route. "We've had groups of investors creating a deductible pool to lower costs," says Huffman. Each of, say, 25 owners contributes \$1,000 to a reserve pool that could be used to cover losses on any of their properties. Then each owner can raise his or her deductible from \$5,000 to \$25,000. The savings they'll realize on the premium are normally higher than their \$1,000 contribution, he explains.

For larger companies, self-insurance, captives, or master insurance programs like the one pioneered by Insignia/ESG offer cost-saving options. "Master insurance plans give property owners bulk buying power. By offering insurers one very large placement, we have been able to bring costs down by as much as 35 to 65 percent for some properties as well as provided coverage terms not always available in the market for a standalone placement," says Adams.

Making sure that insurance companies understand your property's risk profile and the steps you're taking to lower risks are also critical in the face of rising costs, suggests Farmer. Insurers can also be a good source of tips on ways to mitigate risks, suggests Myles.

But if industry experts predict that smooth sailing is just around the corner, it's of little comfort to commercial owners and managers trying to keep upright in the rough seas of a soft market. "If the market improves, you'll eventually be able to get your costs back, but the higher cost of insurance certainly has a timing effect on recovery," says Myles.

And until things do improve, says Myles, initiatives such as the National Association of REALTORS® Insurance Task Force will help commercial members of NAR educate themselves on the issue and work with the insurance industry to find economical solutions that will keep them from going to the bottom.

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