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**COMMENTARY**

*From Foreclosures to Financing: The Legal Maze of 2024  
Commercial Real Estate*

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In 2024, Americans faced immense challenges within the Commercial Real Estate (“CRE”) marketplace due to lingering issues developed in 2022 and 2023, such as high interest rates and the central government’s attempt to limit inflation.<sup>1</sup> The federal government continued to raise interest rates, thus creating stricter borrowing conditions that greatly influenced the property value of CRE across multiple sectors.<sup>2</sup> With the recent shifts in interest rates, there are tremendous opportunities as well as serious risks for CRE stakeholders, leading to a unique and new legal landscape.<sup>3</sup> As businesses prepare for the 2025 marketplace, they must be ready to adapt to the emerging challenges developed by macroeconomic and legal trends.

Throughout 2024, the value of CRE declined due to the extremely high interest rates and the reduced consumer demand for different types of property, such as office or retail spaces. The lower value of CRE properties placed financial pressure on property owners, causing a surge in foreclosures and bankruptcies. In states with differing foreclosure laws,

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<sup>1</sup> Ira Kalish & Robyn Gibbard, *United States Economic Forecast: Insights and Analysis*, DELOITTE INSIGHTS (Sept. 20, 2024), <https://www2.deloitte.com/us/en/insights/economy/us-economic-forecast/united-states-outlook-analysis.html>.

<sup>2</sup> *Id.*

<sup>3</sup> J.P. Morgan, *How Interest Rate Cuts Impact Multifamily Real Estate*, J.P. MORGAN INSIGHTS (Sept. 20, 2024), <https://www.jpmorgan.com/insights/real-estate/commercial-term-lending/interest-rate-cuts-impact-on-multifamily-real-estate>.

there has been an increase in legal battles over these distressed assets.<sup>4</sup> The main and frequent source of litigation stems from foreclosure processes, creditor rights, and landlord obligations.<sup>5</sup> As 2025 approaches, it is likely that property values will slightly stabilize. However, some sectors, like office spaces, may still see a reduced property valuation. With values fluctuating, legal disputes between creditors and tenants will likely linger, and foreclosure regulations will likely be subject to review to address the rise in property defaults.<sup>6</sup>

2024 demonstrated how the rising cost of borrowing creates serious difficulties for commercial real estate financing. Lenders instituted more stringent criteria by requiring higher credit scores, larger down payments, and a deeper financial history from borrowers. Due to these new criteria, many businesses and investors faced the challenge of securing loans or refinancing existing debt.<sup>7</sup> With more being required of borrowers, there were more disputes over loan denials, particularly between lenders and small businesses who claimed there was discrimination or a subjective standard applied by lenders.<sup>8</sup> Now, taking a look at 2025, interest rates are stabilizing, indicating that borrowing conditions may slightly ease. However, the effects of the high rates will persist. Businesses will continue to face ongoing legal battles as they attempt to negotiate new loans, restructure existing debt, and seek recourse under loan agreements.<sup>9</sup> Overall, it is likely that the legal landscape surrounding financing will remain difficult to navigate, particularly for distressed borrowers.

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<sup>4</sup> Moody's, *Q2 2024 Preliminary Trend Announcement*, MOODY'S CRE INSIGHTS (July 2, 2024), <https://www.moodycre.com/insights/cre-trends/q2-2024-preliminary-trend-announcement/>.

<sup>5</sup> See Janet Portman, *Renters in Foreclosure: What Are Their Rights?*, NOLO (2024), <https://www.nolo.com/legal-encyclopedia/renters-foreclosure-what-are-their-30064.html>.

<sup>6</sup> See Jim Tyson, *Office Real Estate Values Could Plunge 26% by 2025, Moody's Says*, CFO DIVE (Mar. 22, 2024), <https://www.cfodive.com/news/office-real-estate-value-plunge-26-percent-2025-moodys/711161/>.

<sup>7</sup> Richard McGahey, *Why More Troubled Commercial Real Estate Loans Will Come Due in 2024*, FORBES (Mar. 25, 2024), <https://www.forbes.com/sites/richardmccahey/2024/03/25/why-more-troubled-commercial-real-estate-loans-will-come-due-in-2024/>.

<sup>8</sup> *Fair Lending Laws and Regulations*, FED. DEPOSIT INS. CORP. (June 2024), <https://www.fdic.gov/system/files/2024-06/iv-1-1.pdf>.

<sup>9</sup> *Data Spotlight: The Impact of Changing Mortgage Interest Rates*, CONSUMER FIN. PROT. BUREAU (Sept. 17, 2024), <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-the-impact-of-changing-mortgage-interest-rates/>.

Even with these challenges, clever investors were able to apply successful strategies in 2024 by focusing on sectors of CRE, like industrial properties and multifamily housing, which was more resilient to economic downturns.<sup>10</sup> Investors had to navigate multifaceted regulatory environments, mainly those relating to zoning laws, environmental regulations, and tax compliance.<sup>11</sup> In preparation for 2025, regulatory bodies seek to implement new laws geared toward stabilizing important CRE markets and encouraging investment in sustainable real estate. Compliance with new environmental standards like energy-efficient building requirements will be a crucial legal hurdle for investors to overcome.<sup>12</sup> Due to these shifts, there will be many opportunities for those who adapt, and those who do not adapt could face legal penalties or higher operational costs.

During 2024, commercial lease structures significantly changed, especially with landlords and tenants renegotiating terms to reflect the economic reality of higher vacancy rates and weaker tenant demand.<sup>13</sup> These renegotiations often centered around rent reductions, flexible lease terms, and termination clauses. Protecting tenants became a critical requirement of the law, which led to many jurisdictions passing temporary measures preventing evictions or enforcing more tenant-oriented rights.<sup>14</sup> As we approach 2025, there will likely be new legislation that further develops and molds the landlord-tenant relationship. This legislation will primarily focus on furthering tenant rights while still protecting landlords.<sup>15</sup> With an evolving legal framework, new leases will be structured and enforced very differently, either for better or for worse.

The option of refinancing in 2024 was perceived as difficult due to the high interest rates, which inevitably forced many businesses to restructure their debt or pursue alternative financing options.<sup>16</sup> Legal battles concerning mortgage terms, loan defaults, and debt restructuring skyrocketed, especially as distressed businesses sought relief through

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<sup>10</sup> Asaf Raz, *CRE Trends: 2024 Outlook*, AGORA REAL (Sept. 25, 2024), <https://agorareal.com/blog/cre-trends/>.

<sup>11</sup> *Id.*

<sup>12</sup> Deisy Verdinez, *Sustainable Building Groups Release Policy Recommendations for New Administration to Address*, U.S. GREEN BLDG. COUNCIL (Sept. 24, 2024), <https://www.usgbc.org/articles/sustainable-building-groups-release-policy-recommendations-new-administration-address>.

<sup>13</sup> *Supra* note 4

<sup>14</sup> *States Introduce Multiple Tenant Protections Bills This Legislative Session, Securing Several Important Wins*, NAT'L LOW INCOME HOUS. COAL. (June 24, 2024), <https://nlihc.org/resource/states-introduce-multiple-tenant-protections-bills-legislative-session-securing-several>.

<sup>15</sup> *Id.*

<sup>16</sup> See *504 Debt Refinancing*, 89 FED. REG. 74,329 (Oct. 1, 2024), <https://www.federalregister.gov/documents/2024/10/01/2024-22040/504-debt-refinancing>.

avenues such as litigation or bankruptcy protections.<sup>17</sup> Looking toward 2025, businesses with commercial mortgages will now face more litigation as they attempt to navigate these high-cost debt environments.<sup>18</sup> Thus, businesses must implement strategies to manage refinancing and distressed debt to stay ahead, especially as bankruptcy laws evolve to combat the increase in default cases.

Overall, the commercial real estate landscape of 2024, shaped by rising interest rates and evolving legal frameworks, has set the stage for significant shifts in 2025. Businesses must remain adaptable to new financial realities and legal challenges, particularly as sectors like office and retail undergo transformative changes. Staying legally vigilant and prepared for regulatory shifts will be key to navigating the complex and evolving CRE market in the years ahead. By understanding the interplay between economic trends and legal considerations, stakeholders can make informed decisions and capitalize on opportunities in 2025.

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<sup>17</sup> See Alex Wolf, *Distressed Company Lenders Look to Cooperate to Avoid 'Violence'*, BLOOMBERG L. (Oct. 11, 2024), <https://news.bloomberglaw.com/bankruptcy-law/distressed-company-lenders-look-to-cooperate-to-avoid-violence>.

<sup>18</sup> See Aastha Sharma, *Corporate Insights: Ten Reasons to Expect an Increase in Financial Restructurings in 2025*, BOWDITCH & DEWEY (July 1, 2024), <https://www.bowditch.com/2024/07/01/corporate-insights-ten-reasons-to-expect-an-increase-in-financial-restructurings-in-2025/>.