

2021 IN REVIEW

Covid-19 and the Evolving Commercial Leasing Market

This report draws on recent interviews with seasoned commercial leasing attorneys and data from Practical Guidance's Private Market Data: Commercial Leasing data bank to provide a look back at the 2021 commercial leasing market, assess the continuing impact of COVID-19, and highlight other hot topics in commercial leasing.



The data contained in this report is based on [Private Market Data: Commercial Leasing](#), a unique data bank that includes thousands of recently negotiated commercial lease terms from non-public commercial leases and provides up-to-date intelligence about the commercial leasing market.

This report analyzes the data from [Private Market Data: Commercial Leasing](#) to spotlight key trends and insights. In addition, this report contains excerpts from interviews with seasoned commercial leasing attorneys addressing the impact COVID-19 had in 2021 on the commercial leasing market and the impact it continues to have as parties move forward.

Attorneys can gain access to the most recent data bank, which contains 40+ customizable filters covering highly negotiated provisions, to discover insights on new trends in addition to those discussed in this report and ensure clients receive the most favorable lease terms. To gain access to the most up-to-date data bank, fill out a questionnaire on a recently negotiated commercial lease agreement via [Private Market Data: Commercial Leasing](#).

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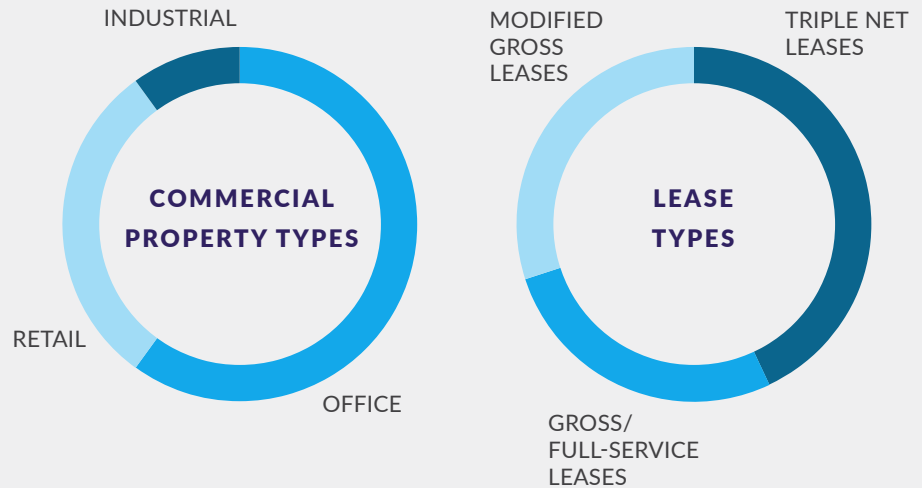
* Complete results in the latest version of [Private Market Data: Commercial Leasing](#) may differ from the data contained in this report due to continuous, ongoing updates to the data.



Data Overview

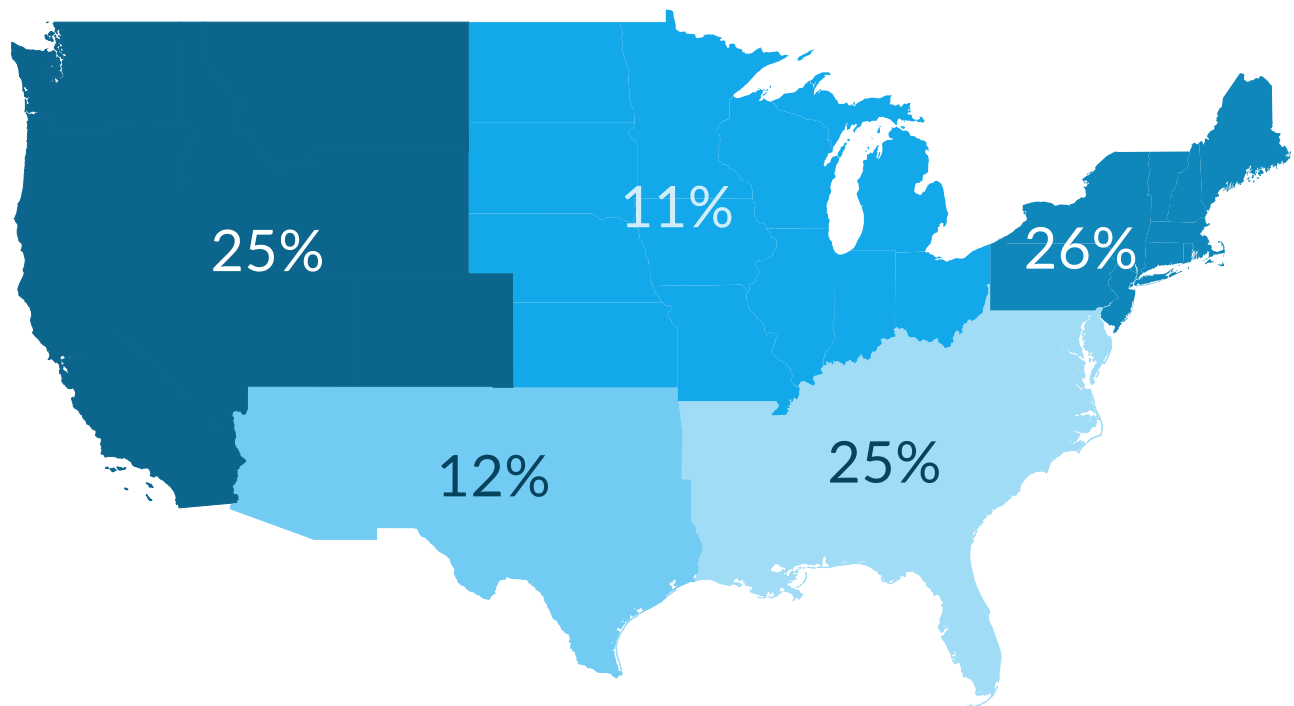
PROPERTY AND LEASE TYPE

A variety of commercial property types are represented in this data. The majority are office leases (60%), followed by retail (30%) and industrial (10%). Lease types are split among triple net leases (43%), modified gross leases (27%), and gross or full-service leases (30%).



LOCATION

The leased properties in the data bank from [Private Market Data: Commercial Leasing](#) are spread across the country. Twenty-six percent of leased properties are located in the northeast, 25% in the west, 25% in the southeast, 12% in the southwest, and 11% in the midwest.



✚ The most-represented states in the data are CA, NY, TX, and FL

Covid-19 and the Landlord-Tenant Relationship

When we spoke with leasing experts in the spring of 2021, many mentioned that landlords and tenants were largely working together to navigate COVID-19 disruptions and uncertainties. When we asked our experts what they were seeing at the end of 2021, a shift emerged. While COVID-19 is still top of mind for most, it may not be shaping landlord-tenant interactions in the same ways as earlier in the pandemic. For the full text of these interviews, [click here](#).

As for exactly how it is shaping the leasing market now, there is no simple answer. This is perhaps not a surprise given that different regions and leasing sectors have been impacted by and dealt with COVID-19 in disparate ways. So although one expert reports that COVID-19 discussions have largely receded in her leasing practice, others are still seeing ongoing adjustments, especially in the face of the Omicron variant. There is a general sense, however, that some landlords have become decidedly less willing to accommodate tenants who are facing COVID-19-triggered disruptions to their business. This is not to say that accommodations are no longer being made, but they may be less generous in certain markets and sectors.

EXPERT INSIGHTS



I have honestly not heard much at all about COVID when reviewing leases on either the landlord or tenant side. And frankly, I am not seeing a lot of changes to lease agreements reflecting COVID-related provisions. Other than some shorter terms and easier exits, the last dozen leases I have reviewed have not really had many COVID-specific terms in them.

ELIZABETH G. SCHULTZ-HORBUS
BROUSE MCDOWELL, AKRON, OHIO



Two months ago, everyone was hoping that we would be sweeping COVID issues under the rug. Clearly things have changed dramatically since then, and it's clear this is something that both landlords and tenants will need to contend with, probably for some time to come.

ERIC MENKES
DUVAL AND STACHENFELD, NEW YORK, NEW YORK



Back through the initial several months of dealing with COVID, we saw landlords and tenants working together as much as possible to salvage the deal in the hopes of better days ahead. Almost two years into the pandemic has changed that perspective. There is no longer an acute sense of financial uncertainty arising out of the pandemic, and more of a sense that this will be an endemic situation that all tenants will need to adjust to, if they haven't already. Thus, we have seen that landlords are less open to COVID-specific concessions, and that the landlord-tenant workout conversation plays out much more like it would have pre-COVID.

DAN SUCKERMAN
LOWENSTEIN SANDLER, NEW YORK AND NEW JERSEY



COVID-19 and The Physical Space: A Lasting Impact?

While lease negotiations may be returning to pre-pandemic norms in some markets, in many cases, the physical landscape of leased space continues to be altered by COVID-19.

There is much talk of remaking the office to meet the needs of an evolving workplace. Suckerman and Schultz-Horbus have seen some landlords make significant alterations to physical space to entice tenants. These alterations include:



Office sharing/hotel style office set up. People don't have an assigned office per se. Rather, they check out an office to use for the day. Other days they work from home. This allows for a smaller tenant footprint.

ELIZABETH G. SCHULTZ-HORBUS
BROUSE MCDOWELL, AKRON, OHIO



Nationwide, we have seen clients investing in new leases, at a time when pricing is still favorable to strong tenants, taking on space for growth and understanding that even though they expect their employees to not be in the office 5 days a week, the office needs to be (and have the space to be) a destination – so there needs to be an investment in communal and amenities spaces, like cafes and wellness areas, plus the pre-COVID “bullpen” densities are less desirable.

DAN SUCKERMAN
LOWENSTEIN SANDLER, NEW YORK AND NEW JERSEY



While hoteling can result in a smaller footprint for tenants, staggered employee schedules and physical distancing requirements can actually leave tenants needing more space rather than less. Blattner was “surprised when this started to happen,” but said “it is happening more often now.” Menkes has not seen this in practice, but thinks it raises a fascinating question:



If more people work from home, but the people that do work in the office require social distancing, will the net result be that tenants lease more space, less space, or the same amount of space? I think the jury is very much out on this question.

ERIC MENKES
DUVAL AND STACHENFELD, NEW YORK, NEW YORK



FOCUS ON ESG

Environmental, Social, and Governance (ESG) issues are increasingly in the spotlight as the market focuses more on the effect of real estate investments on surrounding communities and the environment. In particular, steps to address climate change are impacting real estate transactions as localities pass regulations governing the construction and use of commercial space.

We asked our experts if climate change issues and general ESG discussions are coming up in their leasing transactions. Although only one cited these considerations as a driving factor now, this seems likely to change in 2022 as more localities pass regulations addressing climate change and public demand for sustainable practices continues to grow. Heading into 2022, ESG performance is driving financial performance more than ever, making it hard to ignore.

When asked whether addressing climate change is affecting lease negotiations:



New York City Local Law 97 is now a factor in virtually every New York City lease I negotiate. I think many property owners ignored its impact during the early part of COVID, but since the summer of 2021 it seems to have jumped onto almost everyone's radar. The law becomes effective in 2024 so the clock is very much ticking.

ERIC MENKES
DUVAL AND STACHENFELD,
NEW YORK, NEW YORK



It is in design of new construction but it is not coming up in leasing. It should be.

DAVID BLATTNER
BECKER & POLIAKOFF, FORT LAUDERDALE, FLORIDA



When asked if ESG considerations are driving client behavior generally:



Very much so. ESG is driving their internal policies and commitment to their employees, but I am not seeing it directly as it relates to leasing. The biggest impact has been the social side and not nearly as much the environmental. I think a lot of business have already trended towards being environmentally conscious. Most clients I talk to are implementing ESG in recruiting, promoting, corporate handbook issues, culture, etc. ESG is top of mind for a lot of them.

ELIZABETH G. SCHULTZ-HORBUS
BROUSE MCDOWELL, AKRON, OHIO



For guidance on addressing ESG issues in your practice, see [Environmental, Social, and Governance \(ESG\) Resource Kit](#). Adopting green leasing practices can have a significant impact on the environment and a company's bottom line. Learn about these practices in [Green Leasing](#) and [Green Lease Drafting Checklist](#). To learn about common environmental issues that arise in real estate transactions, see [Environmental Considerations in Real Estate Transactions Resource Kit](#).

To learn about climate change regulations in New York City see [Understanding the Requirements of the Climate Mobilization Act](#), [Green Is the Color of Money: The NYC Climate Mobilization Act](#), and [COVID-19's Effect on Local Law 97 – or lack thereof](#).

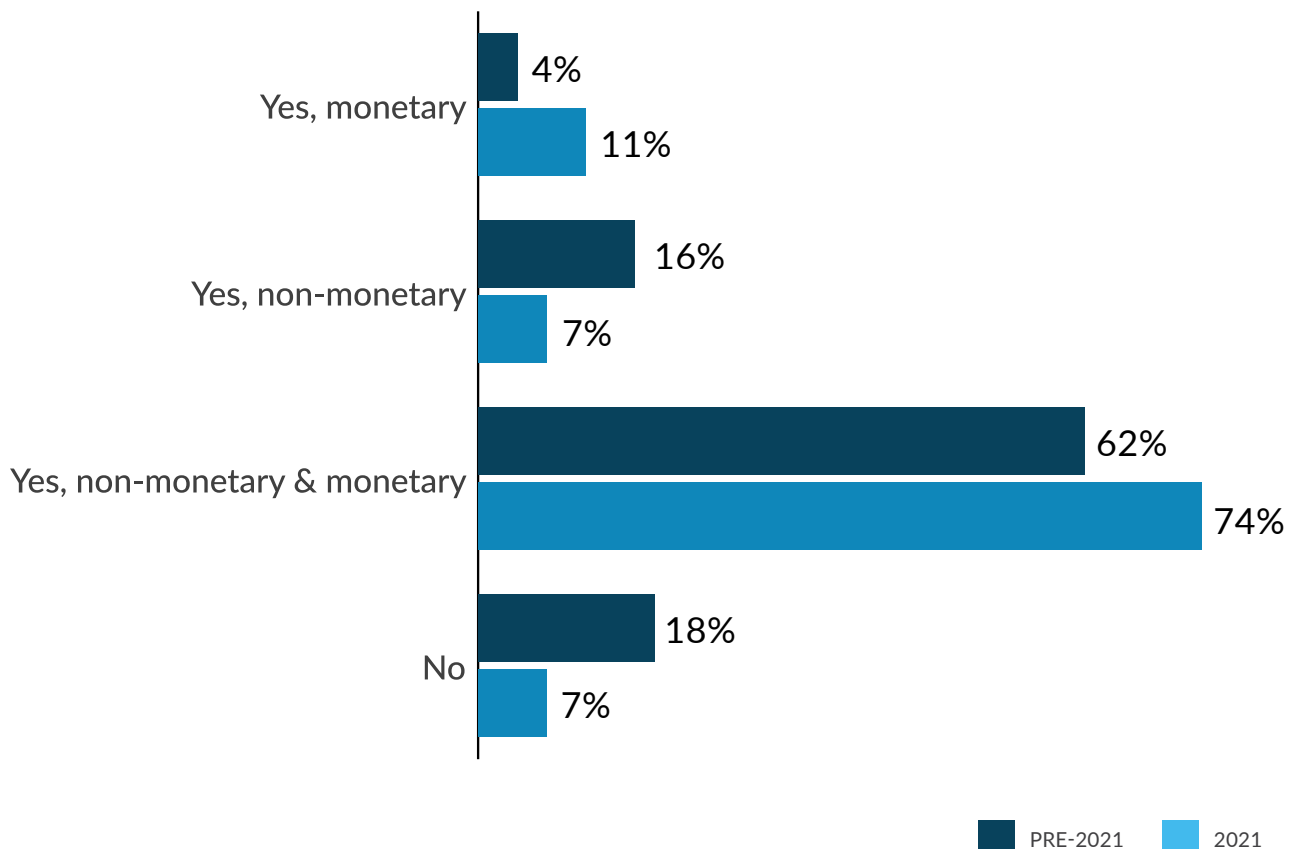
A Deeper Dive into the Data

The following discussion analyzes additional provisions commonly found in commercial leases that may have been impacted by COVID-19 in 2021. As the expert insights make clear, it may not always be easy to pinpoint COVID-19's impact given where we stand – past the initial upheaval but still contending with disruptions and uncertainty. Nevertheless, against an evolving backdrop, parties continue to move forward.

NOTICE AND CURE RIGHTS

Before 2021, 78% of leases granted notice and cure rights for nonmonetary defaults and 66% granted notice and cure rights for monetary defaults. In 2021, the percentage of leases with notice and cure rights for nonmonetary defaults held relatively steady (81%), but the percentage with notice and cure rights for monetary defaults increased by almost 20 points to 85%.

NOTICE AND CURE RIGHTS



Expert Biographies

BETH BERNSTEIN CONNORS is a partner in Blank Rome's New York office. Beth concentrates her practice on commercial real estate matters, focusing on leasing, acquisitions, dispositions, financing, and joint ventures. She represents a broad array of national clients, including owners of retail, office, industrial, and multifamily properties; large and small retail and office tenants; and borrowers of portfolio and single-asset mortgage loans.

Beth has been named a "Best LGBTQ+ Lawyer Under 40," by the National LGBT Bar Association and also a New York Metro "Rising Star" in Real Estate Law, by Super Lawyers.

DAN SUCKERMAN is a partner with Lowenstein Sandler and is based in New York/New Jersey. Dan represents a broad range of clients in diverse commercial real estate transactions, including acquisitions, leasing, financing, joint venture agreements, and matters relating to asset management. His practice is national in scope and crosses all asset classes, which keeps him on top of commercial real estate trends.

Much of Dan's practice focuses on commercial leasing, covering both landlord and tenant clients, and office (with a particular focus on New York City), retail, and industrial. Dan also devotes considerable time to acquisitions and dispositions, with significant experience in multifamily, industrial, self-storage, and retail.

DAVID BLATTNER is a shareholder in the Ft. Lauderdale, Florida office of Becker & Poliakoff. David has over 25 years of experience in complex real estate transactions and concentrates on acquisitions as well as the financing and development of large-scale shopping centers, office buildings and executive parks, marinas, warehouses, flex projects, hotels, single-family and multifamily residential developments, and condominiums. David represents a wide range of clients throughout Florida, the U.S., Canada, South America, and Asia. His clients include developers, multinational corporations, domestic corporations, banks and other financial institutions, condominium and homeowner's associations, property management companies, and both landlords and tenants.

ELIZABETH G. SCHULTZ-HORBUS (formerly Elizabeth G. Schultz Yeargin) is a partner in the Akron, Ohio office of Brouse McDowell. Libby is co-chair of Brouse's Business Transactions & Corporate Counseling Practice Group and also a member of the firm's Business Restructuring, Bankruptcy, and Commercial Law and Real Estate practice groups. Her practice focuses on transactional work and she most enjoys serving as outside general counsel and trusted advisor to businesses of varying size, scope, and industry. Libby has professional and personal experience in real estate and enjoys working with clients in real estate sales and acquisitions, both residential and commercial. She also assists clients with residential and commercial leasing, property management arrangements, easements, and other title-related issues.

ERIC MENKES is the co-chair of the leasing department at Duval & Stachenfeld in New York City. He is familiar with virtually all aspects of commercial leasing, representing both landlords and tenants in office, retail, ground lease, industrial, triple-net, and sublease transactions. Eric has particular expertise in retail leasing, representing shopping center and street retail owners, as well as national and international retailers.

Eric regularly lectures at International Council of Shopping Center law conferences and has spoken before the Real Property Law Section of the New York State Bar Association. He is former counsel and Chairman of the Board and Counsel for Miracle House of New York, a not-for-profit housing agency.

MICHAEL KENT is a partner in Kent, Beatty & Gordon and is based in New York City. Michael heads the firm's real estate practice, handling commercial and residential real estate matters, including conveyances, leasing, zoning and land use, financing and construction. He is a frequent lecturer and writer on real estate law.

Michael's practice also includes commercial litigation and arbitration, business counseling and advice, and entertainment law. He serves on the Advisory Board of Directors of Customers Bancorp whose subsidiary, Customer Bank, is an \$11 billion state-chartered full service bank with branches and offices throughout the northeast. Michael also served as the Village Justice of Thomaston in Great Neck, New York for more than a decade, and as an adjunct professor of litigation studies at Long Island University and Mercy College.

RITA FEIKEMA is of counsel with Honigman LLP and is based in Chicago. Rita has represented landlords and tenants, buyers and sellers, lenders and borrowers, and joint venturers in a range of transactional real estate matters, including office, ground, retail and industrial leases, other types of occupancy agreements and construction contracts.

Rita also has prior cross-disciplinary experience in mergers and acquisitions, private equity, debt finance, statutory risk and compliance, and cross-border transactions.

SAMUEL WALKER is a co-chair of Blank Rome's Real Estate Practice Group and is based in New York City. Sam maintains a national practice in the area of real estate and has extensive experience in advising tenants in national and regional leasing roll-out programs. He has successfully completed over 200 leases in the past four years.

Sam's clients include private equity funds, public companies, real estate investment funds, financial institutions, developers, and landlords and tenants. Sam counsels clients in the following areas: commercial leasing; sales, acquisitions, and development; financing; equity investments and joint ventures; and workouts and restructuring.