The DLA Piper 2023 Year-End Real Estate Trends Report

US Real Estate

DLA PIPER

Welcome to a new year and to the latest edition of our year-end US Real Estate Trends Report.

Following the global financial crisis, a combination of strong rent growth and historically low interest rates provided the fuel for declining cap rates and robust debt and equity investment activity. The quick drop in interest rates, as well as other governmental action in response to the COVID-19 pandemic, helped extend that robust real estate investment activity from late 2020 through early 2022.

However, when inflation reared its head, the Fed adopted an aggressive policy of interest rate increases, hoping to cool the economy enough to control inflation while avoiding a recession. With such a high level of uncertainty and change within the market, we believe that the insights we gain from analyzing the large volume of transactions we handle are especially valuable to our clients.

After several very busy post-pandemic years, our group's transaction volume in 2023 continued its trend toward pre-pandemic levels – a not-unexpected reversion to the mean. We saw the most activity in acquisitions, dispositions, and leasing, and, after seeing an increase in joint ventures and development work in 2022 and the first half of 2023, we handled an increasing number of construction and real estate finance matters as 2023 progressed.

Our clients are building, selling, and financing properties, and many of these projects are in the suburbs and secondary markets. While we continued to experience brisk deal volume in downtown Chicago and Miami, we also saw significant investment activity in the greater metro areas surrounding those cities. Similarly, more of the transactions we handled in the Boston and Washington, DC areas involved assets in the suburbs. In California, most of the matters we handled took place in the southern part of the state. In Texas, we saw investment activity in cities and in suburbs statewide.

As we dug into our year-end numbers and data with the help of our knowledge management (KM) team, an interesting trend emerged: Much of the work we did in 2023 was about community – namely, where people live and the goods and services they want close to home.

US Real Estate Leadership

John Sullivan
Chair, US Real Estate
Co-Chair, Global Real Estate Practice
Co-Chair, US Real Estate Sector
Boston
T +1 617 406 6019
john.sullivan@us.dlapiper.com

Richard Klawiter
Co-Vice Chair, US Real Estate Practice
Chicago
T +1 312 368 7243
richard.klawiter@us.dlapiper.com

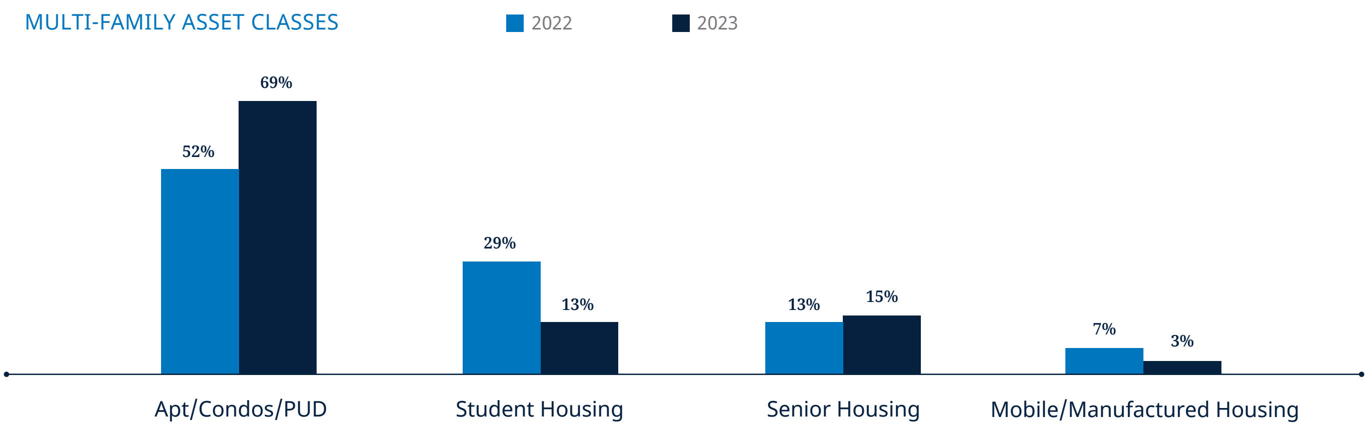
Barbara Trachtenberg
Co-Vice Chair, US Real Estate Practice
Boston
T +1 617 406 6011
barbara.trachtenberg@us.dlapiper.com

Acquisition and disposition trends

Asset classes

Multi-family remained the most active asset class with respect to our purchase and sale work. Within that sector, more than half our work involved apartment communities, condominiums, and planned unit developments. Senior housing deals continued their steady upward climb, while student housing and manufactured home deals dipped slightly from 2022.

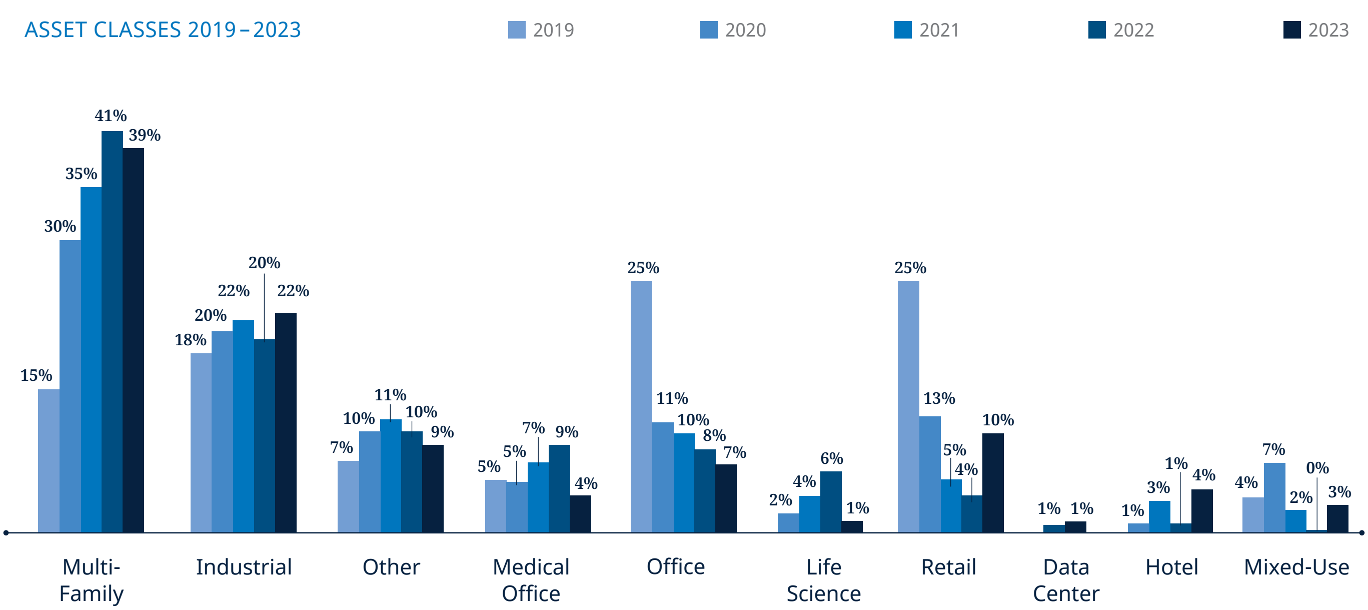
MULTI-FAMILY ASSET CLASSES



Interestingly, our 2023 data showed that buyers are investing in neighborhood and grocery-anchored retail, which is likely due in part to the continuation of hybrid work environments. Mixed-use developments were popular, and, after several years of decline, retail transactions bounced back significantly. Certain hospitality and leisure assets also saw growth in investment activity, including hotels, marinas, golf, and sports facilities.

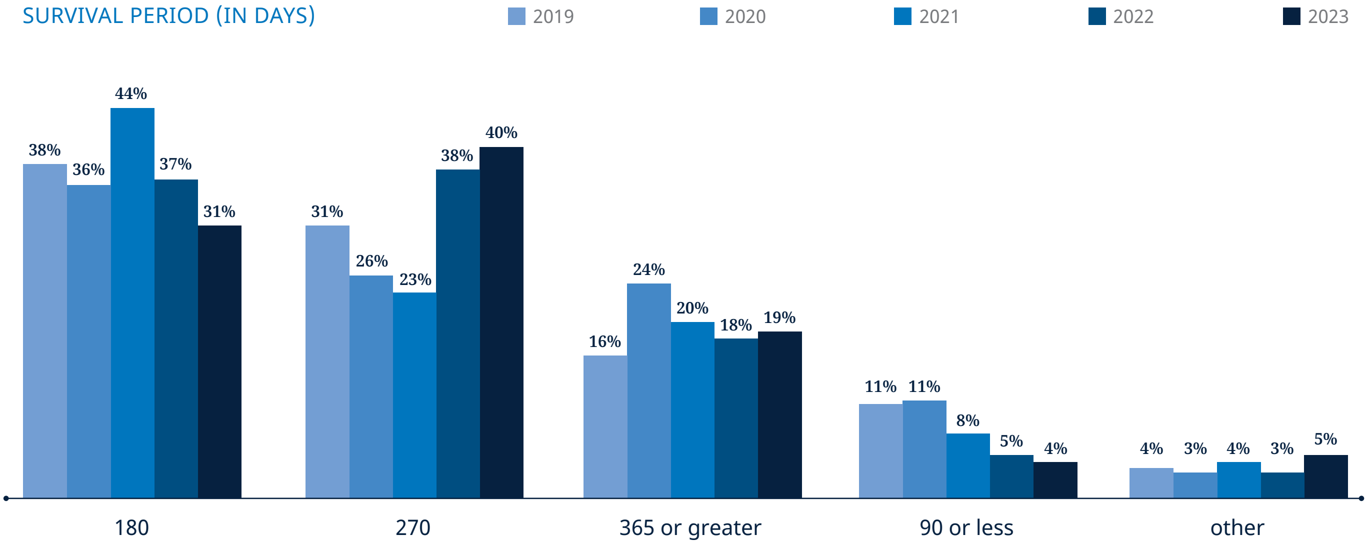
Among the other asset classes that we track, industrial and data center properties held steady in 2023, the office sector continued to face challenges, and life science properties, consistent with the overall downturn in that sector, experienced a noticeable decrease in investment activity.

ASSET CLASSES 2019 – 2023

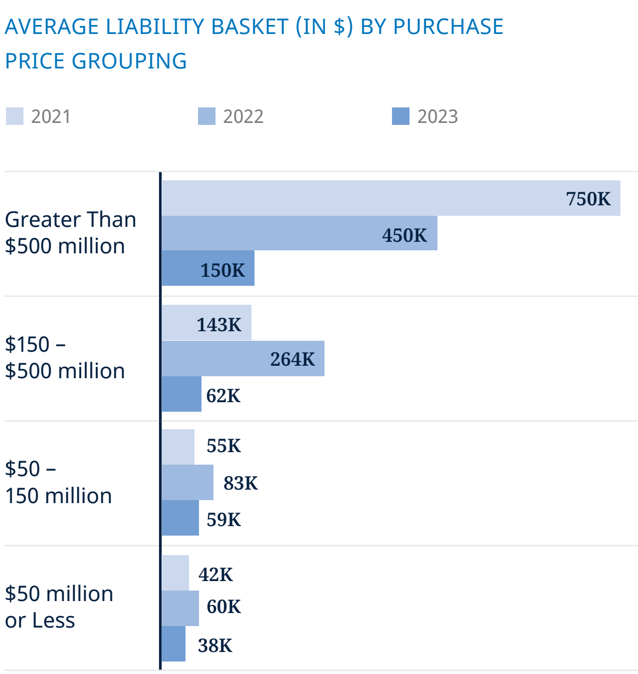


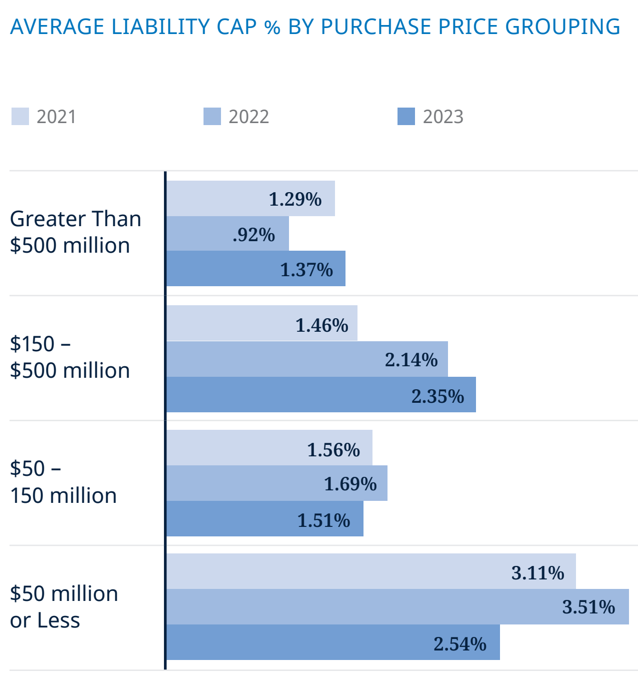
Survival periods and liability caps and baskets

We saw little change from mid-year to year-end in survival periods for sellers' representations and warranties, with 270 days continuing to be the most common survival period.



Similarly, there were no significant changes between our mid-year and year-end statistics in the average liability caps and baskets for a breach of sellers' representations and warranties. Observing these trends year over year, it is perhaps unsurprising that now, in a less bullish market, we see a lower basket figure for most transactions, benefiting the purchaser, and a higher liability cap for higher priced assets and potentially riskier transactions.

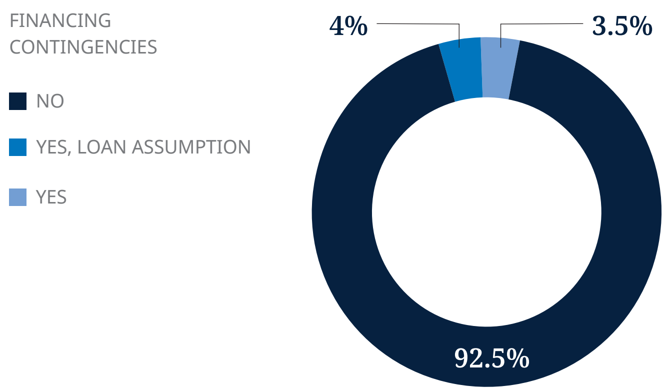




Financing contingencies

Financing contingencies in purchase and sale transactions remain the exception; however, the frequency of that exception is growing. From mid-year, we saw an almost 2 percentage point increase in the frequency of financing contingencies, most of which were in the form of loan assumption conditions. Anecdotally, we are seeing purchase and sale agreements being signed close to closing, which may be masking other situations in which purchasers are not "going hard" until their financing is in place. As more loans mature, particularly in the office sector, we will closely monitor whether financing contingencies continue to increase.

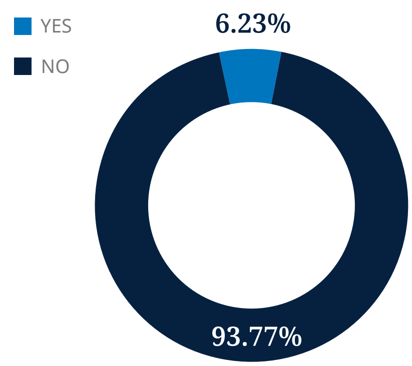
FREQUENCY OF FINANCING CONTINGENCIES IN 2023



Property management trends

In addition to the nearly 750 purchase and sale agreements we have reviewed for our trends report, we have now analyzed close to 300 property management agreements. From mid-year to year-end, we did not see significant change in the property management fee as a percentage of the property's revenue. However, the frequency of a property management liability cap did decrease from 9.18 percent at mid-year to 6.23 percent at year-end, providing further evidence that these caps are not the norm, at least in the asset classes in which our group is doing the most work.

PROPERTY MANAGEMENT LIABILITY CAP

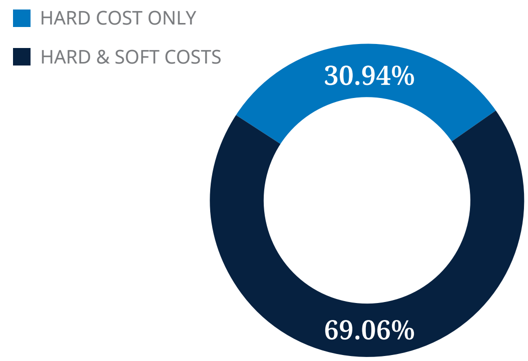


PROPERTY MANAGEMENT FEE %

ASSET CLASS	Less than 1%	1% – 1.99%	2% – 2.99%	3% – 3.99%	4% – 4.99%	5% or More	Fixed $	TOTAL
Data Center	0%	0%	66.67%	33.33%	0%	0%	0%	100%
Industrial	1.69%	13.56%	18.64%	25.42%	5.08%	25.42%	10.17%	100%
Life Sciences	3.70%	7.41%	14.81%	18.52%	33.33%	18.52%	3.70%	100%
Medical Office Building	2.94%	11.76%	2.94%	14.71%	32.35%	0%	35.29%	100%
Mixed-Use	0%	0%	50%	37.50%	12.50%	0%	0%	100%
Multi-Family (Apt)	0%	0%	20%	72.63%	5.26%	2.11%	0%	100%
Multi-Family (MfH)	0%	0%	0%	75%	16.67%	0%	8.33%	100%
Multi-Family (StH)	0%	0%	10%	50%	40.00%	0%	0%	100%
Office	5%	25%	25%	30%	5.00%	5.00%	5.00%	100%
Senior Housing	0%	0%	0%	9.09%	27.27%	63.64%	0%	100%

Similarly, construction management fees as a percentage of the cost of the work did not move significantly over the course of the year, but what is included in those costs did change – almost 4 percentage points more of the construction management fees we negotiated limited the fee to hard costs only.

CONSTRUCTION MANAGEMENT FEE BASIS



CONSTRUCTION MANAGEMENT FEE %

ASSET CLASS	1% – 1.99%	2% – 2.99%	3% – 3.99%	4% – 4.99%	5% or more	TOTAL
Data Center	0%	0%	66.67%	0%	33.33%	100%
Industrial	0%	48.48%	18.18%	12.12%	21.21%	100%
Life Sciences	4.35%	8.70%	30.43%	34.78%	21.74%	100%
Medical Office Building	0%	25%	40.00%	30.00%	5.00%	100%
Mixed-Use	0%	33.33%	0%	0%	66.67%	100%
Multi-Family (Apt)	1.67%	0%	6.67%	0%	91.67%	100%
Multi-Family (MfH)	0%	0%	0%	0%	100%	100%
Multi-Family (StH)	0%	20.00%	0%	0%	80.00%	100%
Office	5.26%	31.58%	31.58%	15.79%	15.79%	100%
Senior Housing	0%	100%	0%	0%	0%	100%

DLA Piper Real Estate recognitions

We are pleased to continue to be recognized as one of the leading Real Estate law firms in the US.

Client quotes

"The DLA Piper real estate practice is top tier. It's hard to find a firm that has the same combination of technical talent, commercial savvy, and efficiency, while at the same time being pleasant people and fun to work with. There's a reason they're the first call we make when we're looking at a new transaction."

"Remarkable at handling complex and challenging domestic and international real estate matters."

"The DLA team is extremely responsive, knowledgeable, and professional, providing tremendous client service throughout. They have a strong ability to handle complex matters or unusual deal structures."

"DLA Piper knows what's going on in the market and what are acceptable market terms. They are able to act quickly in times of need. The team is diligent, on top of their work, and able to meet deadlines."

"The collective transactions experience and breadth of knowledge of this team always gives me and my team such confidence when we are in the middle of any transaction. No problem is left unsolved."

"Unparalleled in-market experience, expertise and knowledge of key decision makers."

Top ranked in Land Use & Zoning
(13 consecutive years)
Legal 500 USA 2023

Ranked Tier 1 nationally for Best Law Firms in Real Estate Law, Land Use & Zoning Law, and Construction
U.S. News & World Report and *Best Lawyers* 2023

Nationally ranked in Construction
(7 consecutive years)
Legal 500 USA 2023

14 group rankings and 38 ranked attorneys
Chambers USA 2023

Top ranked in Real Estate
(7 consecutive years)
Legal 500 USA 2023

Leading Firm in Nationwide Real Estate
Chambers USA 2023

New partners and team members

As noted in our mid-year report, in 2023, our US Real Estate group welcomed new Partners **Stacie Trott** and **Mike Rechtin**, promoted **Skyler Anderson** and **Brian Winterhalter** to Partner, and promoted **Andrew Brady** and **Eric Skeffington** to Of Counsel.

We additionally welcomed **Allana Beddoe**, **Crisdo Fan**, **Bobby Ferullo**, and **Peter NeCastro** as Associates, **Jack Morgan** as Attorney, and **Aaron Bethencourt** as Land Use Planner.

Representative recent matters

- Represented an alternative investment management company on a multibillion-dollar joint venture with a real estate investment trust company to develop several hyperscale data center campuses in Germany, France, and Northern Virginia. Our team led the real estate due diligence process, including title/survey, environmental review, customer contracts, zoning, development agreements, construction contracts, and condominium work, for a four-building data center development in Prince William County, Virginia and a 13-building data center campus in Loudoun County, Virginia. Our teams in London, Germany, and France handled the real estate due diligence and development related matters for the data center development at a five-building campus in Germany and a two-building site in France. We also provided Dutch and Luxembourg structuring advice.
- Represented Oxford Properties in the $258 million acquisition from Ionis Pharmaceuticals of Ionis's life science campus and corporate headquarters property in Carlsbad, California; its lease of the property back to Ionis; and a $158 million first mortgage acquisition financing.
- Represented Soloviev Group in connection with the $400 million+ sale of a residential tower and the Solow Townhouses on the Upper East Side of Manhattan. This complex transaction involved the sale and transfer of the properties, with the seller acquiring a significant preferred equity interest in the new buyer, the formation of two joint ventures with the buyer group to hold tenant in common interests at the property in order to effect a 1031 exchange, shareholder financing, the assumption of a significant Freddie Mac financing, and arrangements for the lease of retail space.
- Represented Beth Israel Lahey Health System (BIDMC) with respect to its comprehensive agreement with the Dana Farber Cancer Institute to collaborate on all aspects of adult cancer care in Boston's Longwood Medical Area. Under this agreement, Dana Farber will lease an air rights parcel on the BIDMC campus, above a podium to be constructed and owned by BIDMC.
- Represented Related Midwest on the $543 million debt and equity financing for a two-phase multi-family project at 400 North Lake Shore Drive in Chicago. The 73-story, 875-foot Phase 1 tower will consist of 635 apartments, 20 percent of which will be affordable.
- Represented Urban Edge Acquisitions in the $309 million acquisition of two lifestyle shopping centers: Shopper's World in Framingham, Massachusetts and Gateway Center in Everett, Massachusetts.
- Represented Bardas Investment Group in obtaining unanimous approval by the City Planning Commission of the City of Los Angeles for an approximately 600,000-square-foot dynamic production studio creative office campus in Hollywood. Four soundstage production facilities and one flex stage are fused with creative office spaces to create a fully integrated studio lot.
- Represented The Ratkovich Company and Jerico Development in connection with construction financing for West Harbor, a 42-acre retail, dining, and entertainment revitalization project along the Los Angeles Waterfront in San Pedro. Located on a ground-leased site from the City of Los Angeles, the redevelopment is expected to cost approximately $160 million and will include more than 150,000 square feet of shops and restaurants, with four acres of outdoor park and recreation space.

Our data center work

High-performance computing and modern technology continue to drive an increased demand for digital infrastructure. As limited supply, power availability, supply chain constraints, the impact of AI, and increasing costs present both challenges and opportunities for data center users, owners, operators, and investors, our team offers forward-looking solutions across the data center ecosystem.

With deeply knowledgeable Real Estate and Technology groups, over 25 years of extensive experience with data center transactions, and a presence in most major markets around the US and the globe, we are exceptionally well positioned to assist investors, developers, operators, suppliers, and users of data centers with any aspect of acquisition/disposition, investment, financing, joint ventures, leasing, and development of data centers. Data center matters that we have handled recently include:

- Represented QTS Data Centers in securing approval of two concurrent rezoning applications for 876 out of the 2,133 acres known as Prince William Digital Gateway. The application rezoned the agriculturally designated land to a planned development district near a portion of the Manassas National Battlefield Park in Virginia to make way for 16 to 18 data center buildings on six land bays or campuses.
- Represented GI Partners in its acquisition of a 65-percent interest in two hyperscale data center properties in Elk Grove, Illinois. The transaction included a joint venture with Digital Realty Trust and related financing.

Looking ahead

The opportunity to represent many of the world's leading real estate investors, investment advisers, fund sponsors, lenders, developers, operators, and owners is a privilege and responsibility we do not take lightly. Thank you for continuing to put that trust in us and allowing us the opportunity to assist you in achieving your investment and business objectives.

As we continue into 2024, we will keep close watch on the trends and developments that are important to our clients, and we will continue to share our knowledge with you. If you have any questions or any particular trends or developments that you would like us to monitor, please do not hesitate to reach out to your DLA Piper Real Estate contacts.