The DLA Piper 2023 Mid-Year Real Estate Trends Report

US Real Estate

DLA PIPER

Following the release of our State of the Market Survey last month, we bring you our mid-year trends report. This report validates many of the predictions made by industry experts in the State of the Market Survey. Lingering inflation, rising interest rates, and maturing loans have made commercial real estate investors and lenders cautious.

Not surprisingly, these concerns have translated into a significant reduction in transaction volume and a reduction in value for many asset classes – a recent Green Street report notes that, compared to last year, there has been a 70 percent drop in commercial real estate sales of $5 million or more.

That said, the experts polled for our State of the Market Survey predicted opportunities in certain asset classes, and at DLA Piper we are already seeing this play out in our workflow. In the first half of this year, we have seen the most activity in the purchase and sale of multi-family housing, the senior housing component of which is on the rise, as well as in industrial properties. In addition to acquisitions and dispositions, we continue to see steady activity in leasing, land use and permitting, and joint ventures. Contrary to what you may hear, there are even loans closing, including some for office properties. Active markets for our clients this year so far include Florida, Washington, DC, and Boston.

We continue to work with our knowledge management (KM) team to track real estate trends of interest to our clients. We use this information to stay on top of the market and to advocate for our clients in negotiations. At present, we have surveyed more than 675 purchase and sale agreements, and we recently added more than 200 property management agreements to our analysis.

US Real Estate Leadership

John Sullivan
Chair, US Real Estate
Co-Chair, Global Real Estate Sector
Co-Chair, US Real Estate Sector
Boston
T +1 617 406 6029
john.sullivan@us.dlapiper.com

Kerry E. Johnson
Co-Chair, US Real Estate Sector
Chicago
T +1 312 368 2168
kerry.johnson@us.dlapiper.com

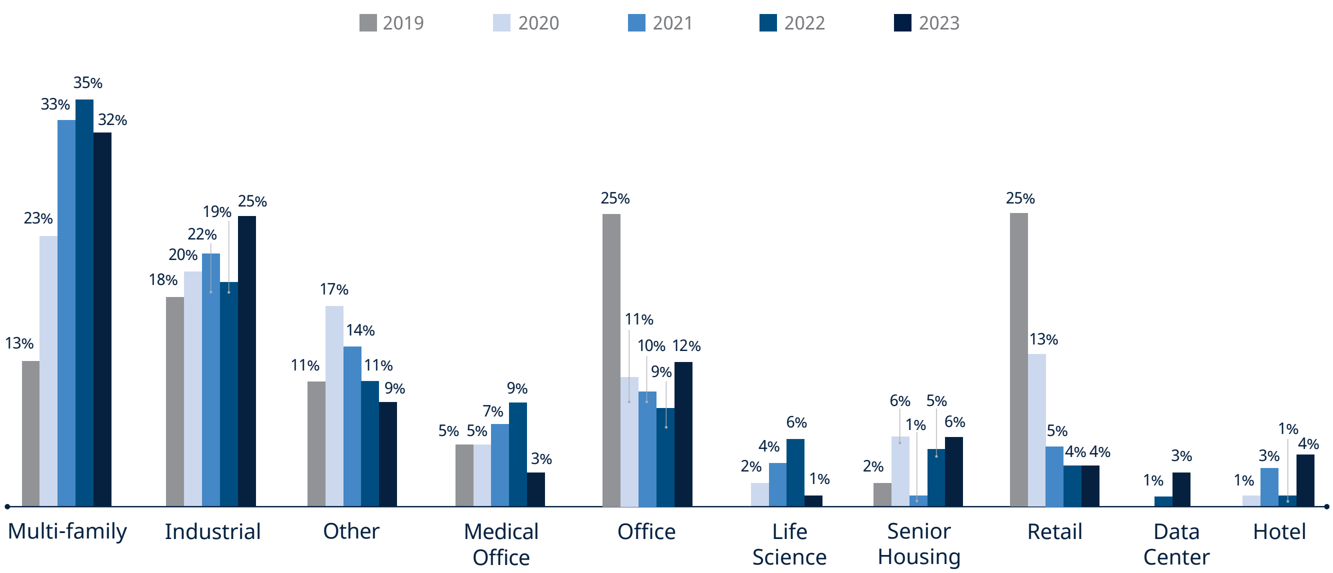
Richard Klawiter
Co-Vice Chair, US Real Estate Practice
Chicago
T +1 312 368 7243
richard.klawiter@us.dlapiper.com

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

Acquisition and disposition trends

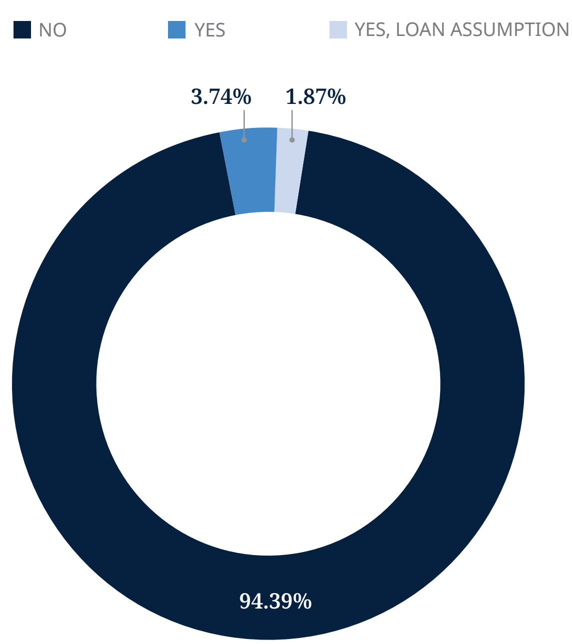
Asset classes

Midway through 2023, multi-family properties, including apartment complexes, student housing, and mobile home communities, continue to drive a sizable portion of our acquisition and disposition work. We are also handling an increased number of senior housing transactions. As the experts in our State of the Market Survey predicted, industrial properties, including logistics hubs, warehouses, and cold storage facilities, are attractive investments in the current market. Our group also saw an increase in retail, hotel, and data center deals in the first half of 2023. Life sciences deals slowed, consistent with the venture capital crunch in the sector, while many office assets continue to struggle.



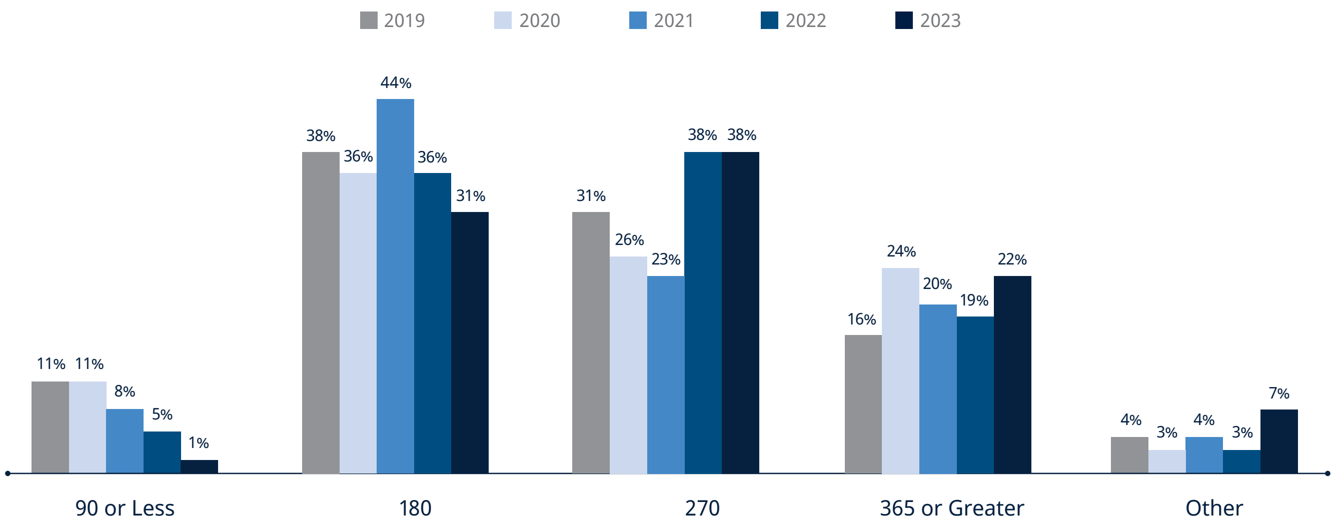
Financing contingencies

Given the reduced availability of capital in 2023, we added financing contingencies to our list of tracked metrics. We wanted to find out what percentage of acquisitions in the current market are contingent on either the buyer obtaining new financing or assuming the existing financing on a property. What we learned was that, despite reduced funding options, financing contingencies remain rare in the acquisitions and sales that we are handling, with over 94 percent of transactions proceeding without such a contingency.



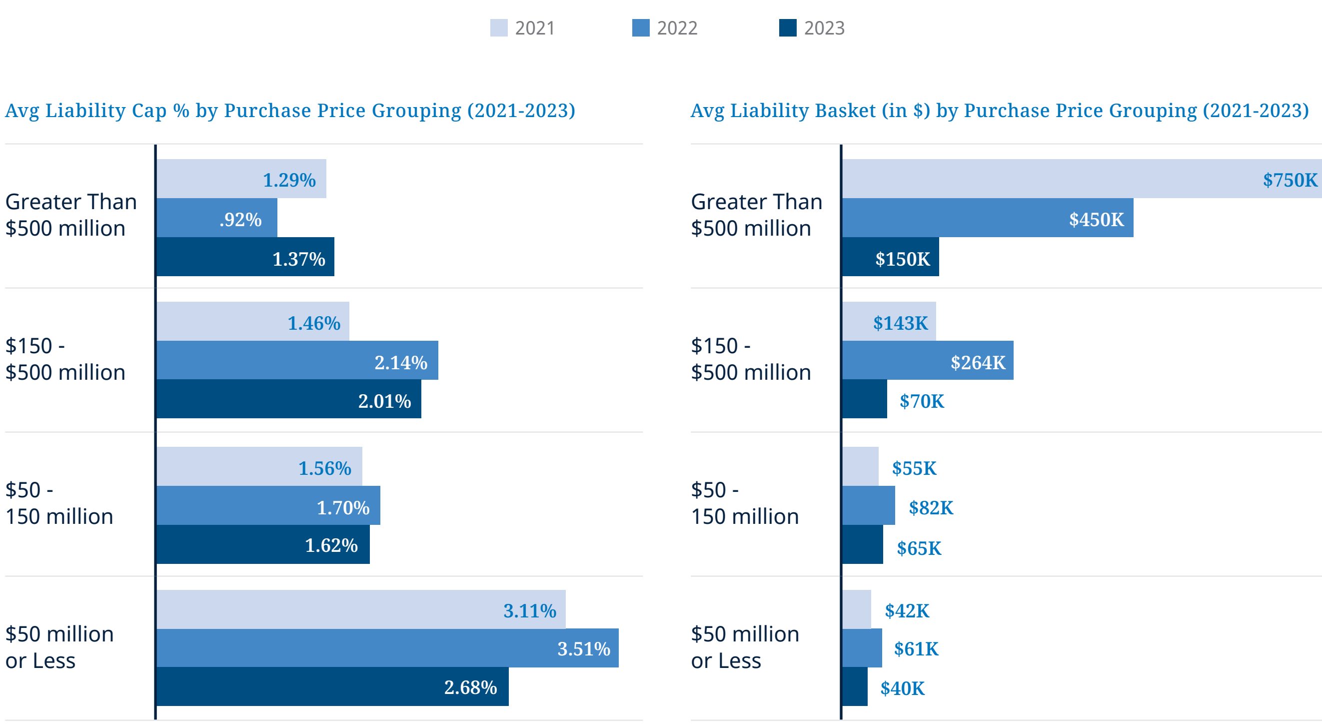
Representation and warranty survival periods

We noticed a trend toward 270-day rep/warranty survival periods in 2022, and that trend seems to have firmly taken hold in the first half of 2023. Nine-months was the most frequent rep/warranty survival period in the purchase and sale agreements we negotiated during the first half of this year. Generally, deals in 2023 so far have longer survival periods than in 2022, with only one-third of deals having a six month survival period.



LIABILITY CAPS AND BASKETS

In the first half of 2023, we did not observe significant changes in the average cap or basket on a seller's liability for a breach of representations or warranties. Generally, the cap and basket for each purchase price group decreased from where it was in 2022, consistent with an overall decrease in purchase prices. We observed a similar trend with respect to the average reimbursable expenses cap so far in 2023.



Property Management Trends

Based on our review of over two hundred property management agreements that we handled from 2021-2023, these are the trends we are seeing in property management agreement fees and caps.

Property Management Fees

Property management fee percentages vary depending on asset class. While all asset classes had property management fee percentages in the 3-4.99 percent range, industrial, life science, mixed use, and office had a substantial percentage of fees below that range. More than three-quarters of the multi-family property management fees fell in the 3-4.99 percent range, while senior housing only saw a third of its property management fees in this range. Two-thirds of senior housing property management fees fell instead in the 5 percent or more range. In contrast, the property management fees for industrial and life sciences properties were distributed more evenly across percentage ranges and included some fixed fee arrangements.

PROPERTY MANAGEMENT FEE %

ASSET CLASS	Less than 1%	1% – 1.99%	2% – 2.99%	3% – 3.99%	4% – 4.99%	5% or more	Fixed
Industrial	0%	25%	18.75%	25%	6.25%	12.5%	12.5%
Life Sciences	4.55%	9.09%	13.64%	13.64%	31.82%	22.73%	4.55%
Medical Office Building	0%	0%	0%	12.50%	41.67%	0%	45.83%
Mixed-Use	0%	0%	40%	40%	20%	0%	0%
Multi-Family	1.18%	0%	11.76%	75.29%	9.41%	1.18%	1.18%
Office	0%	0%	25%	31.25%	6.25%	0%	6.25%
Senior Housing	0%	31.25%	0%	16.67%	16.67%	66.67%	0%

Construction management fees

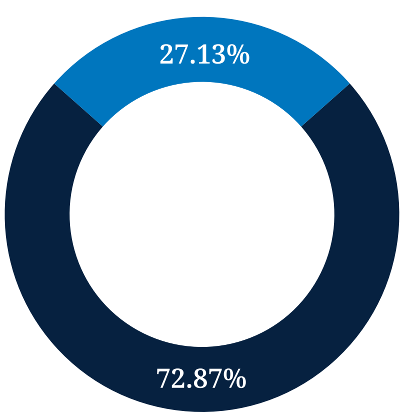
Like property management fee percentages, the construction management fee percentage tended to vary by asset class, though two trends clearly emerged: the 2-2.99 percent range and the 5 percent or more range. All of the senior housing property management agreements that we reviewed fell into the 2-2.99 percent range and most other multi-family property management agreements were in the 5 percent or more range. While the construction management fee percentage varied across asset classes, there was less variation concerning the basis of that fee. Approximately 73 percent of construction management fees were based on hard and soft costs, while 27 percent based the calculation on hard costs only.

CONSTRUCTION MANAGEMENT FEE %

ASSET CLASS	1% – 1.99%	2% – 2.99%	3% – 3.99%	4% – 4.99%	5% or more
Industrial	0%	62.50%	16.67%	8.33%	12.5%
Life Sciences	5.56%	11.11%	22.22%	38.89%	22.22%
Medical Office Building	0%	38.46%	53.85%	0%	7.69%
Mixed-Use	0%	33.33%	0%	0%	66.67%
Multi-Family	0%	1.92%	3.85%	0%	94.23%
Office	6.67%	26.67%	40%	20%	6.67%
Senior Housing	0%	100%	0%	0%	0%

CONSTRUCTION MANAGEMENT FEE BASIS

HARD COST ONLY HARD AND SOFT COST

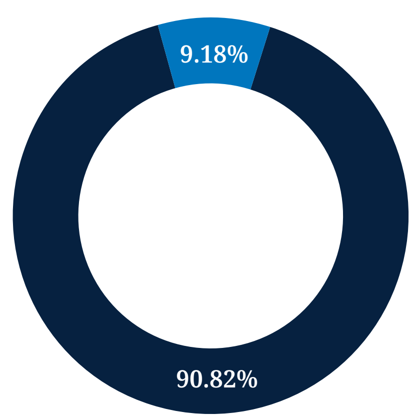


Property manager liability cap

Is there typically a cap on the property manager's liability? That is a question we face regularly and, in the 200-plus property management agreements we surveyed, the property manager obtained a cap on its liability less than 10 percent of the time. No cap remains the norm.

PROPERTY MANAGEMENT LIABILITY CAP

YES NO



Conclusion

Given the present market volatility, we are as interested as you are to see if these first-half trends hold true for the remainder of 2023. We will continue to monitor these metrics and bring you an updated report after year end. If there are any specific deal metrics you would like to see tracked, please ask one of your DLA Piper relationship partners or contact our knowledge management counsel for real estate, Seagrumn (Sea) Gilbert, at seagrumn.gilbert@us.dlapiper.com.

Notable 2023 Matters

- **Hyundai Engineering** in connection with the construction of a US$5.5 billion state-of-the-art electric vehicle and battery manufacturing facility for Hyundai Motor Group at a 2,923-acre megasite located in Bryan County, Georgia. Our team advised on the non-contentious aspects of the initial stages of the project, including the drafting and negotiation of key subcontractor agreements, the construction of on-site facilities, etc. We have also consulted on claims and other issues that have arisen during construction.

- Developer **1HWY1** in a unanimous 7-0 vote by the San Diego Port commissioners to move forward with an environmental review of a US$3.6 billion plan to remake Seaport Village and the surrounding waterfront, culminating six years of planning on one of the single biggest projects in port history.

- **Soloviev Realty Group** in connection with the US$1.6 billion disposition of a five property NYC multi-family portfolio on the Upper East Side of Manhattan.

- **Harrison Street Real Estate** in connection with an acquisition/joint venture (US$1.2 billion enterprise valuation) with American Campus Communities of a portfolio of public-private-partnership (P3) student housing facilities located on Arizona State University's campus.

- **LEGO** in a program to invest over US$1 billion to build its first US toy manufacturing facility near Richmond, Virginia. Our work included representing LEGO in the site selection process for the 1.7 million-square-foot, carbon neutral factory, negotiating incentives agreements with state and local governments valued at more than US$200 million, and negotiating purchase and sale and lease agreements, development agreements, agreements with local energy providers, and construction and design documents.

- **Real estate investment management company** in connection with the financing and purchase of a US$267 million 10 floor office building located in Minami-Aoyama, Minato-ku, Tokyo, Japan.

- **A global investment manager** focused on forestland in connection with the US$214 million sale of over 94,000 acres of timberlands located in 5 counties in Arkansas to a German asset management company and the negotiation of the investment management agreements for said timberlands. Our client currently manages the assets, coordinated the sale and will continue to manage the assets for the real estate fund via the new management agreements.

- **The Tennessee Titans** in the development of its new NFL Stadium in Nashville, TN. Work includes negotiating the Design and Construction Contracts, as well as various definitive agreements between the Titans and governmental stakeholders, including a Lease Agreement, Development Agreement, Non-relocation Agreement, Construction Funds Trust Agreement and Site Coordination Agreement. The Titans, with our assistance, are coordinating with the governmental authority on the development of an entertainment venue adjacent to the stadium and a mixed-use development that will be developed by a third-party developer on the surrounding 90-acre site that encompasses the stadium.

- **Timberline Real Estate Partners** and **Origami Capital Partners** in a unanimous 9–0 Loudoun County Board of Supervisors approval of the Rivana rezoning application. Rivana at Innovation Station is an ambitious, 6.4 million square-foot master-planned development 15 years in the making. Loudoun approved 2,700 apartments, 2.4 million ft.^{2} of office, 495,000 ft.^{2} of hotel and 350,000 ft.^{2} of retail.

Real Estate Accolades

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

Top Ranked
Land Use & Zoning (over 13 consecutive years)
Legal 500 USA 2023

Two-time Winner
Real Estate Award for Excellence
Chambers USA

2023 Real Estate News

DLA Piper is pleased to welcome New York-based partner **Stacie Trott** to the firm's Real Estate group. Stacie will act as the Co-Chair of the firm's New York Real Estate Practice and as the Co-Chair of the firm's Global Real Estate Practice. Stacie focuses her practice on highly structured corporate and commercial real estate transactions, with an emphasis on European and Asian cross-border matters. She advises institutional private equity firms, global investment managers and real estate investment funds in complex joint ventures, acquisitions, dispositions and financings of office, hotel, multi-family, logistics, industrial, storage and retail assets.

The Real Estate group also welcomes **Mike Rechtin** as partner in our Chicago office. With more than thirty years of practicing real estate law, Michael works at the intersection of real estate and technology. Mike has more than thirty years of sophisticated and broad-based real estate experience representing clients in buying, selling, developing, leasing and financing real estate assets in all asset classes. Since 2010, he has been at the forefront of the expanding, multi-disciplinary data center, digital infrastructure and IT commercial contracting fields that straddle real estate and technology.

In 2023, we promoted **Skyler Anderson** to Partner in our San Diego office, **Brian Winterhalter** to Partner in our Reston Office, **Andrew Brady** to Of Counsel in our Los Angeles office and **Eric Skeffington** to Of Counsel in our Boston office.

Stats

500+
Real Estate Global Timekeepers

160+
US Real Estate Timekeepers

38
Ranked Attorneys
Chambers USA 2023

14
Group Rankings
Chambers USA 2023

17
Real Estate Office Locations in the US

"DLA Piper stands out among the crowd when it comes to complex transactions"

— *Chambers USA* 2023