The DLA Piper 2024 Mid-Year Real Estate Trends Report

US Real Estate

DLA PIPER

With one of the largest real estate practices in the US, DLA Piper handles hundreds of transactions each year involving virtually every asset class. This gives us a window into what is happening in the US commercial real estate market on a real-time basis. Working with our knowledge management team, we capture this information in a way that has proven to be helpful to investors and others throughout the real estate community. For this latest report, we surveyed over 850 acquisition and disposition agreements and over 400 property management agreements that we have handled. We report on those findings and more below.

Midway through 2024, the commercial real estate market finds itself in an interesting place. As suggested by our recent State of the Market Survey, with an expectation of falling interest rates, industry experts are becoming cautiously optimistic. Some of the largest real estate investors have publicly called the bottom (or at least the "near-bottom"). Consistent with the findings in our State of the Market Survey, in the Real Estate Roundtable's Q2 survey, 66 percent of respondents said that they expect general market conditions to show improvement within the next year. In a recent survey by the Altus Group, 91 percent of firms with more than $5 billion in assets under management signaled an intent to transact (buy, sell, or both) in the near term, up 83 percent from Q1 of this year. We are starting to see these upward trends in the transactions we handled in the first six months of this year.

In our State of the Market Survey and at our Global Real Estate Summit, data centers were identified as an area of growth; we are clearly seeing this play out in our practice, with our data center team handling a significant (and steadily increasing) amount of data center acquisitions, financings, and leasing. Our clients are also buying and selling vacant land for future development, and, for the first time since the pandemic, office property transactions are up. As for active markets, Texas, Florida, and Southern California continue to present attractive opportunities for our clients, and we are seeing brisk activity in Virginia and Maryland. Interestingly though, only one of those Virginia transactions is a data center – our data center work in the first half of 2024 was mostly in Rust Belt and Western states.

US Real Estate Leadership

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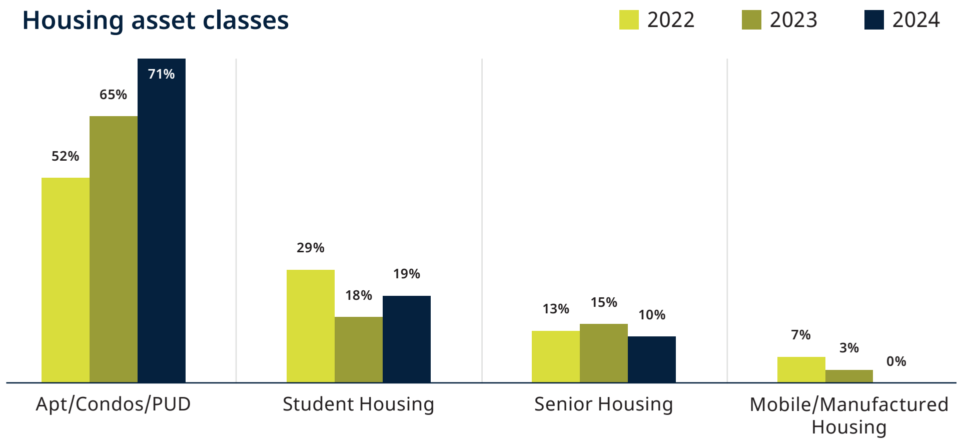
Acquisition and disposition trends

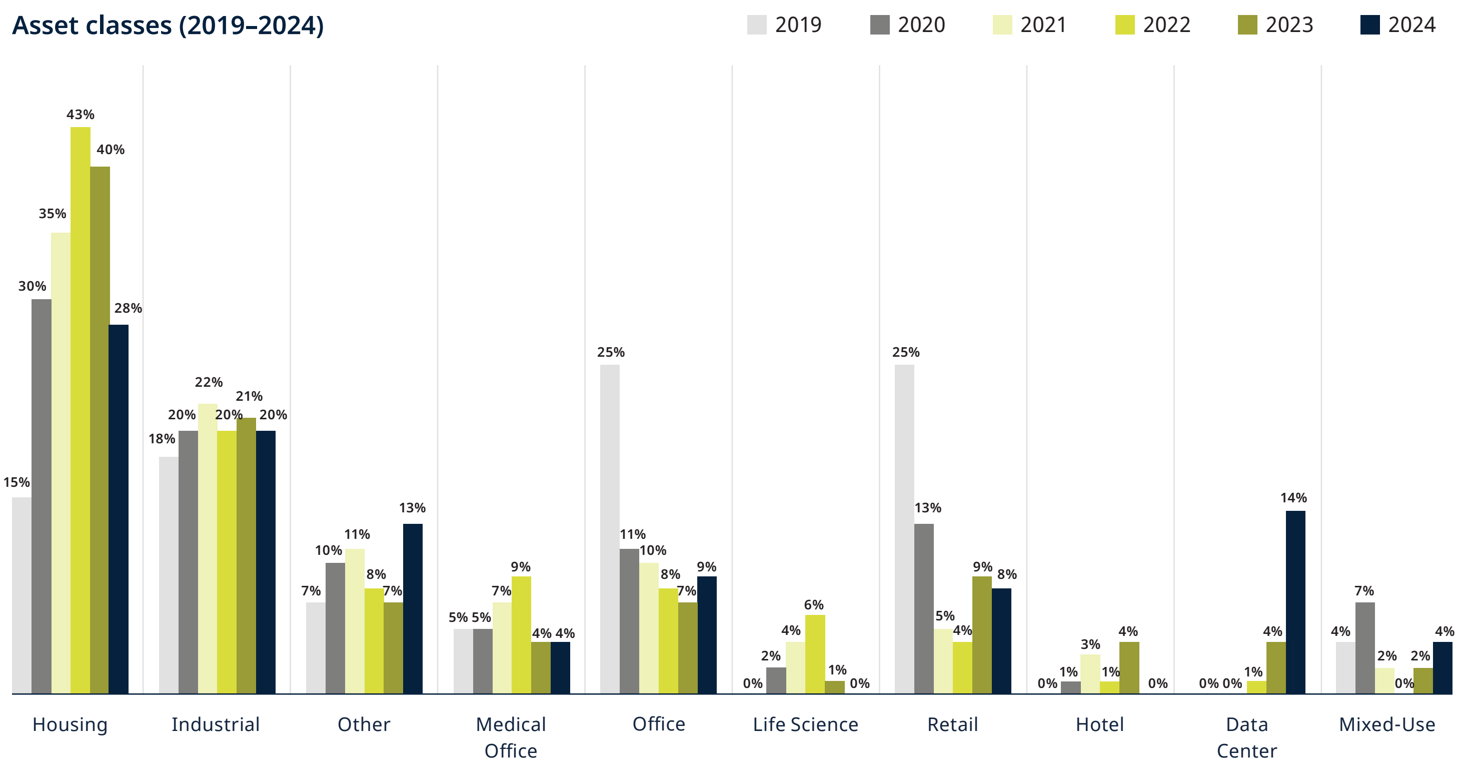
Asset classes

Housing assets, including multifamily, student accommodations, and senior living, continued to be our most active class in purchase and sale work. While senior and manufactured/mobile housing transactions dipped in the first half of 2024, apartment deals saw a 6-percentage-point increase, and student housing transactions inched up a percentage point.

Housing asset classes



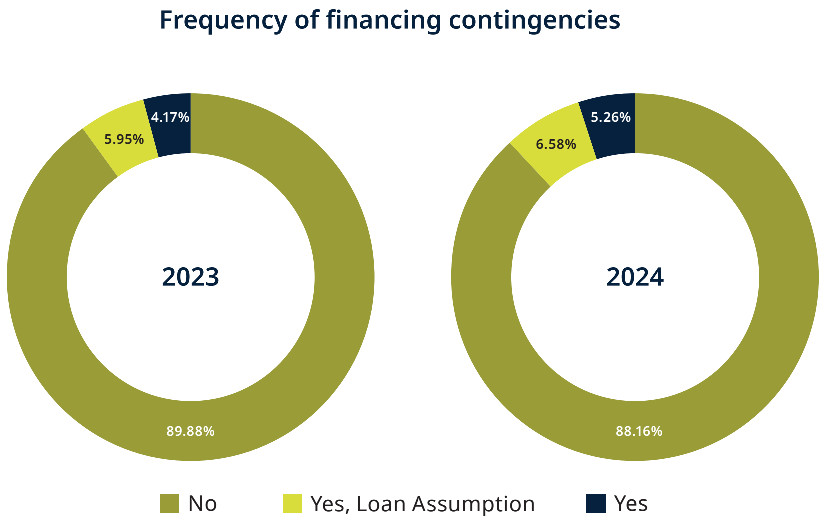
Asset classes (2019–2024)



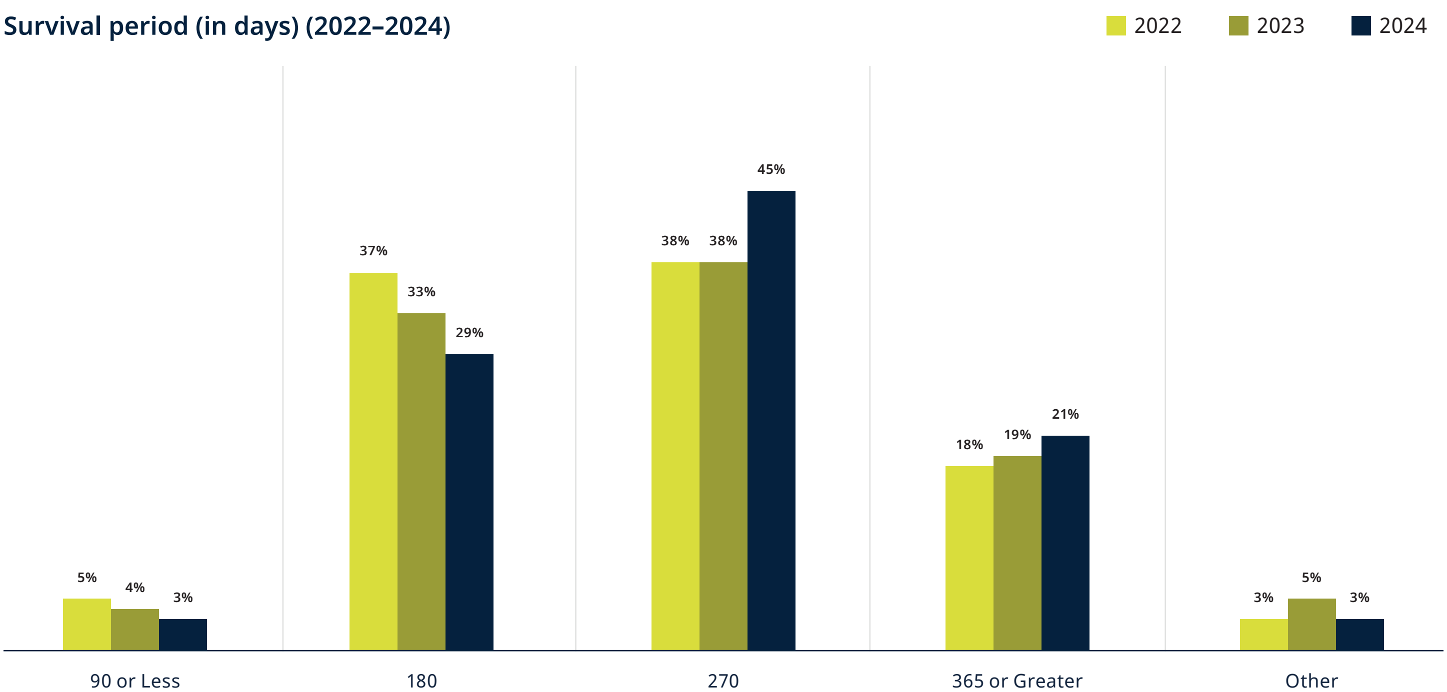
As previously mentioned, data centers were a favored asset class in the first half of 2024. With a 10-percentage-point increase from 2023, data center transactions represented the asset class in which we saw the greatest increase in our work. Mixed-use assets likewise saw an uptick in activity, as did office deals and vacant land transactions (80 percent of the Other category in the above chart). Marinas also made an appearance (in Other), and retail, industrial, and medical office building assets stayed relatively static. Life science assets continued to feel the pinch, and hotel assets have been slow to get moving in 2024.

Financing contingencies

The presence of financing contingencies in purchase and sale transactions increased from year-end 2023, up from 10.12 percent to 11.84 percent. Additionally, in the first half of 2024, we continued to see more financing contingencies that were loan assumptions versus new financing.



Seller's representations and warranties

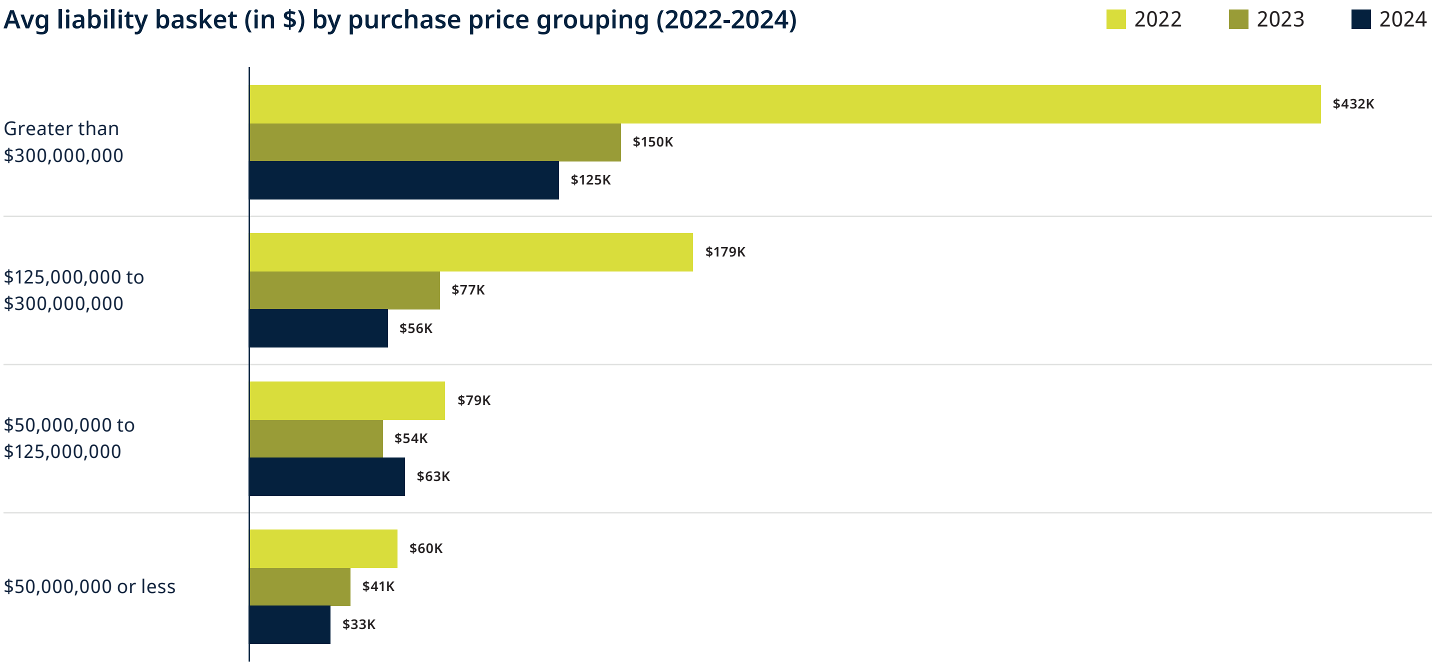


Longer representation and warranty survival periods continued to be something of a trend, with a 270-day survival period appearing in 45 percent of transactions and a 365-day or longer survival period appearing in 21 percent. Survival periods of 180 days continued to decline, down in frequency from 33 percent to 29 percent.

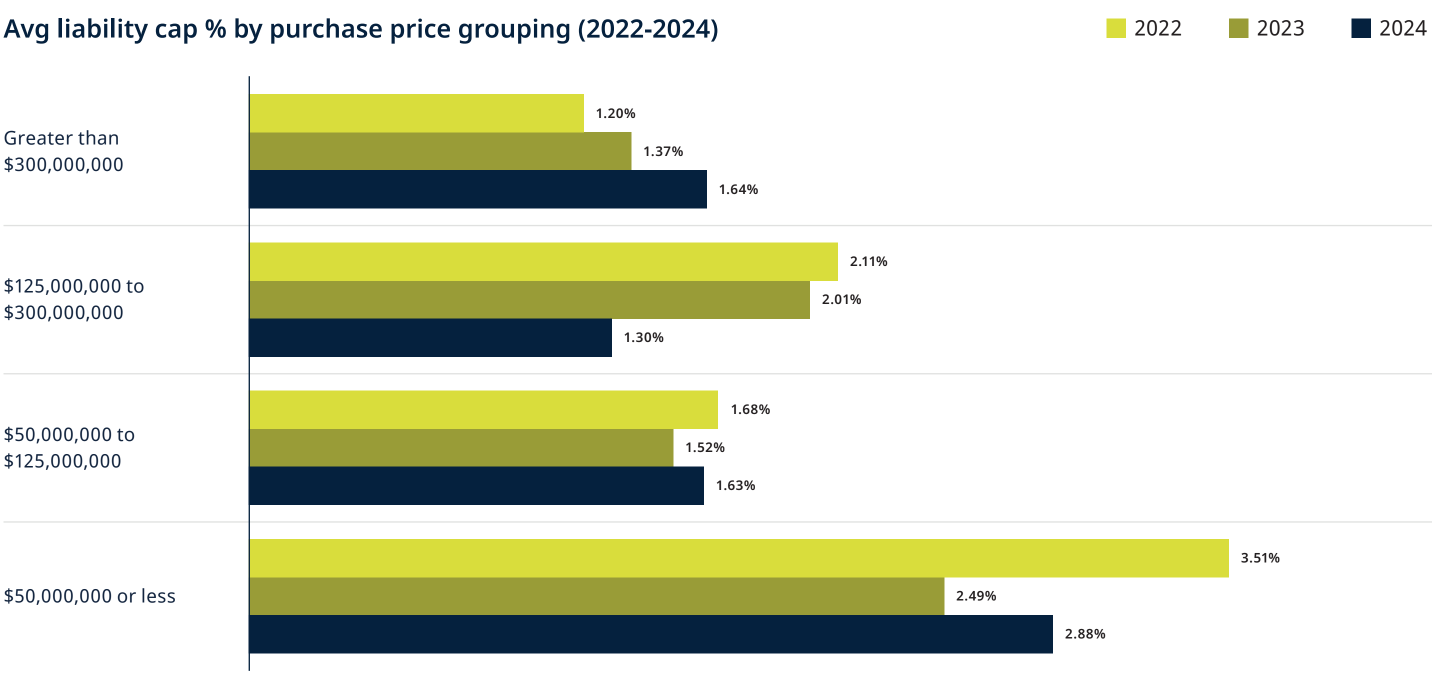
Penalties for breach

Liability baskets and caps saw scattered shifts from the end of last year, most in favor of buyers. The average basket amount (*ie*, the minimum amount of damages that must be alleged before any claim can be made) decreased in all price groups except for transactions in the $50–$125 million range, which saw a slight increase from $54,000 to $63,000. On the opposite end, average liability cap percentages increased in all but one purchase price group: transactions in the $125–300 million range, which saw a decrease in average cap percentage (of the purchase price) from 2.01 percent to 1.30 percent. Finally, with respect to the average reimbursable expense cap, buyers in the $125-million-or-less price groups saw an increase in the average cap, while the average cap in $125–300 million transactions decreased.

Avg liability basket (in $) by purchase price grouping (2022-2024)



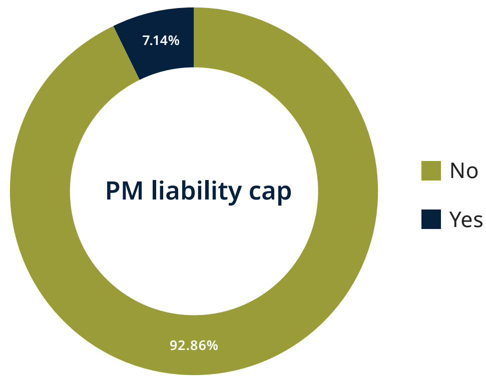
Avg liability cap % by purchase price grouping (2022-2024)



Property management trends

Property manager liability cap

Perhaps the most interesting trend in the over 400 property management agreements we have surveyed was the increase in the frequency of property manager liability caps in the first six months of this year. During this period, the frequency of such caps was up from 6.23 percent to 7.14 percent, indicating more aggressive (and successful) negotiation by property managers.



Property management fees and caps

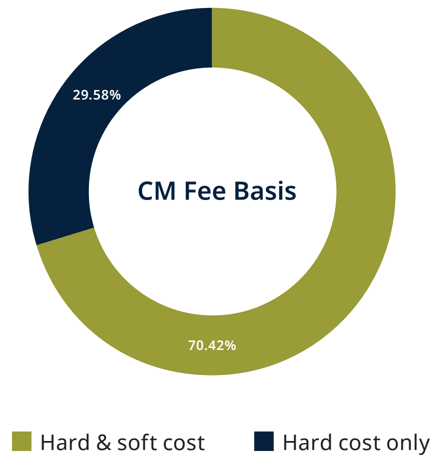
Property management fees continued to congregate mostly around the middle of a 2-percent to 4.99-percent range, with a few outliers. Medical office buildings trended toward a higher percentage incidence of fixed fee arrangements; office properties were more squarely in the 1 percent to 3.99-percent-fee range; and, in 79 percent of the senior living transactions, the fee was 5 percent or more.

Property Management Fee %

Asset Class	Less than 1%	1%–1.99%	2%–2.99%	3%–3.99%	4%–4.99%	5% or more	Fixed $
Data center			60.00%	40.00%			
Housing (Apt)			23.58%	71.70%	3.77%	0.94%	
Housing (MfH)				76.92%	15.38%		7.69%
Housing (Senior)				5.26%	15.79%	78.95%	
Housing (StH)			7.69%	61.54%	30.77%		
Industrial	1.20%	15.66%	18.07%	26.51%	3.61%	27.71%	7.23%
Life sciences	3.57%	7.14%	14.29%	21.43%	32.14%	17.86%	3.57%
Medical office building	2.86%	11.43%	5.71%	14.29%	31.43%		34.29%
Mixed-use			69.23%	23.08%	7.69%		
Office	3.70%	33.33%	25.93%	25.93%	3.70%	3.70%	3.70%
Parking facility			100.00%				

Construction management fees and caps

While construction management fees for housing assets remained relatively stable, we observed an increase in the percentage of data center and industrial properties in which the fee was 5 percent or more. By contrast, office and mixed-use assets had more transactions with lower construction management fees. As far as what is included in the construction management fee, including both hard and soft costs remained the most common approach, increasing from 69.06 percent frequency at year-end 2023 to 70.42 percent frequency by the end of June 2024.



Construction Management Fee %

Asset Class	1%–1.99%	2%–2.99%	3%–3.99%	4%–4.99%	5% or more
Data center			40.00%		60.00%
Housing (Apt)	1.64%		6.56%		91.80%
Housing (MfH)					100.00%
Housing (Senior)		100.00%			
Housing (StH)		16.67%			83.33%
Industrial		34.78%	15.22%	8.70%	41.30%
Life sciences	4.17%	12.5%	29.17%	33.33%	20.83%
Medical office building		23.81%	38.1%	28.57%	9.52%
Mixed-use		75.00%			25.00%
Office	8.70%	30.43%	26.09%	21.74%	13.04%

Conclusion

Will these acquisition and disposition and property management trends continue until year-end 2024?

Will we see even more of the experts' predictions in the State of the Market Survey come to pass? Will the willingness of sellers to agree to financing contingencies continue to increase? Stay tuned as we continue to monitor and report on the latest commercial real estate trends. If there are any additional trends you would like to see monitored and reported, please reach out to your DLA Piper relationship partners so that we can coordinate with our knowledge management team to bring you the most up-to-date and useful information.

Two-time Winner of the Award for Excellence in Real Estate

With the Award for Excellence, Chambers & Partners, a prominent international legal research firm, recognized DLA Piper's Real Estate practice group as the leading real estate practice in the United States.

—Chambers USA

What our real estate clients are saying...

"I can confidently say that DLA is the best law firm I have worked with during my 20 years in the real estate industry. They consistently excel at quality of work, attention to detail, efficiency, and responsiveness. They are a great partner and my first choice when it comes to real estate law."
—The Legal 500 USA 2024

"Highly enjoyable people that are a pleasure to work with...extremely bright, efficient, and up on everything real estate related."
—The Legal 500 USA 2024

"Consistently seek solutions to problems versus putting up roadblocks. Their deep history with us allows them to act as an extension of our firm and enables efficiencies on all sides."
—The Legal 500 USA 2024

"The group's service levels and responsiveness are always very strong."
—Chambers USA 2024

"I appreciate their ability to navigate complex matters through not only a legal but also a business lens."
—Chambers USA 2024

"The DLA team has tremendous depth of knowledge. They are creative problem solvers in nuanced situations."
—Chambers USA 2024

"DLA asks the right questions to frame complicated matters and offers practical solutions."
—Chambers USA 2024

Recognitions

Band 1 in Global Real Estate: Multi-Jurisdictional
—Chambers Global 2024

Tier 1 in Real Estate for 8 Consecutive Years
—The Legal 500 USA 2024

Tier 1 in Land Use & Zoning for 14 Consecutive Years
—The Legal 500 USA 2024

Leading Firm Nationwide: Real Estate
—Chambers USA 2024

Real Estate Firm of the Year
—New England Legal Awards 2024

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