

POSTscript



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AUSPL 2018-2019 UPDATE

Presenter: Gary Phillips



In an update on AUSPL operations, outgoing President Gary Phillips spoke to Conference attendees about AUSPL's continued commitment to education, communication, and legislation.

The wide variety of educational opportunities provided by AUSPL include: (1) Well-received Regional Meetings that allow attendees to learn about post office facility management and interact individually with board members; (2) New, enhanced tools on the AUSPL website that assist members in determining fair market values; and (3) The fledgling Inspection Program which helps members learn the condition of their buildings. Also, AUSPL continues to educate the members of Congress about the postal leasing program.

Communication with management of the Facilities Department of the USPS is fundamental to good understanding and ultimately to good agreements. Mr. Tom Samra, V.P. Facilities, has been flexible with both his time, and the time of his staff. Continuing discussions on alternatives to commissions, potential lease amendments, and what's going on with EMCOR allow each side to gain insight into the other's perspective.

Interaction continues with Congress regarding Postal Reform Legislation. The USPS needs support, and we at AUSPL do our best to push postal reform forward.

Mr. Phillips believes it is important to accentuate the positive aspects of being post office lessors. The USPS views lessors as partners. The Postmaster General has observed that, without lessors, the USPS would be unable to fulfill its mission. As a tenant, the USPS pays its rent on time, every time, and it usually renews its lease. The most recent information indicates that 95% of leases are renewed.

Gary introduced new Board of Director officers, Lana Ruch, Secretary, Keith LaShier, Vice President, and Mark Dattel, President. Keith LaShier whose background is as a career Post Office executive, is usually available to meet lessors at most Regional Meetings. Mark Dattel, whose father was one of the founding members of AUSPL, grew up in the post office development business.



Keith LaShier, Lana Ruch, Mark Dattel



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President's Message



After nearly 25 years of involvement with the AUSPL, I am honored and excited to serve as the next president of our Association. It is remarkable to reflect on the growing influence and significance of our group. The AUSPL has grown as the challenges that face the lessor community have increased, causing us to expand our role with the USPS and with the individual lessors. The challenges remain, and looking forward, the Association will continue to represent all lessors as we work with the USPS. My hope is that AUSPL and the USPS can work together to bridge the differences and create a better relationship and more stable investments for postal lessors.

One area that I think shows the growing significance of the AUSPL is through our legislative efforts. While Congress is still debating postal reform, it is becoming increasingly clear that we have made the issues of the lessor community known to lawmakers and to the postal service in an ongoing effort to assure fairness in the leasing program. For the last several years, we have sent members to Washington, D.C. for our annual Hill Day event. This gives members a chance to visit with their Congressional representatives to explain the benefits of the postal network and the importance of protecting it. Many members of Congress don't even know about the post office leasing program until we educate them about it. Even if you are unable to attend Hill Day, the Association can still help members contact their Senators and Representatives to express their views on the postal reform legislation and its potential effects on rural communities. We also continue to operate the AUSPL political action committee, and donating to it is another great way to help protect post offices.

Our most recent conference in San Diego, California was a resounding success. The conference is a great opportunity to meet other lessors, learn about changes in postal leasing, and meet vendors who specialize in various issues effecting post offices. Members often find that many of their concerns or questions are common to other lessors. I encourage any of who have not attended an AUSPL conference to consider coming to our next one in Orlando on April 30 and May 1, 2020. The Association also conducts regional conferences throughout the year, in which members can get many of the same benefits in a smaller 1 day event. You can go on the website and get more information or register.

And, finally, I would like to recognize Gary Phillips for all of his dedication and hard work. Gary has worked tirelessly on behalf of lessors by implementing our new inspection program. He also has spent countless hours meeting with post office officials, insurance companies, and others to promote and improve the Association. I sincerely hope to build upon the improvements that Gary has put in place and work to make the AUSPL even better.

Mark Dattel

Insights and Advice on Working With The USPS

Presenter: Hal Hughes, Former General Counsel to USPS

Before 1970 the Post Office Department had significant political clout. The Postmaster General was often the President's chief campaign advisor, and all 30,000 postmasters were presidential appointees. Postal rates were low, the Post Office Department was funded by Congressional appropriations and management was therefore not overly concerned about performance or budgets.

The Postal Reorganization Act of 1970 changed all that. The newly created "United States Postal Service" had almost no political clout, was expected to fund itself, and became an organization focused on performance and budgets.

In Mr. Hughes' view, the USPS's loss of political relevance due to the passage of the 1970 Postal Reorganization Act was the most significant impact of the Act. The USPS was transformed from an organization built on patronage to one with no political pull. Now, the USPS's competitors have much more influence than the USPS itself. UPS and FedEx donate to legislators and have good lobbyists. Unions have money, lobbyists and voters. Mass mailers have clout, as do the Postal Regulatory Commission and the Office of the Inspector General. All of those groups have more influence than the USPS on postal legislation.

Mr. Hughes then discussed postal reform legislation currently being considered in the Congress.

Three things that are influencing the stakeholders' views of postal reform legislation are the Report from the President's Task Force on the USPS, Senate hearings on that Report, and the 2016 ten-year review by the Postal Regulatory Commission regarding postal rate setting.

Regarding USPS finances, Mr. Hughes said there is a special fund at the U.S. Treasury which holds USPS money that is not available for use by other governmental agencies. During the many years when the USPS was profitable, the USPS was included in the federal budget because it helped make the annual deficit appear smaller.



Mr. Hughes mentioned that, in 2006, Congress decided that USPS surpluses should be used over a period of ten years to create a fund that could be used to pay retiree benefits expected to be incurred over a period of 75 years. The magnitude of that obligation has been an instrumental cause of the USPS's current financial difficulties.

It is not feasible for the USPS to honor the pre-funding obligation and reform is once again necessary. Despite that necessity, the most commonly enacted legislation relating to the USPS is the annual renaming of 20 – 50 post offices.

Mr. Hughes discussed The Freedom of Information Act (FOIA), which applies to all government agencies. The law includes nine exemptions that permit federal agencies to withhold information, and additional exemptions have been added for the USPS. One such special USPS exemption allows the USPS to withhold commercial information that wouldn't be released by private companies under "good business practices." This is the justification the USPS is using for withholding lease information that has previously been available. Lacking the FOIA lease information for nearby post offices, Lessors have difficulty negotiating lease renewals.

Mr. Hughes mentioned one additional thing about FOIA requests for USPS information. That is, the legal process can get other officials involved who are outside the USPS Facilities Department. An initial FOIA request will go to the Facilities Department (which deleted the information in the first place) and will likely be denied. However, appeals go the law department, and the law department might not agree with the Facilities Department.

Mr. Hughes had an additional tip for Lessors whose dealings with the Postal Service are breaking down: get your legislators involved. Alternatively, get the Mayor or the Chamber of Commerce of the town where the post office is located to contact the legislators. Mr. Hughes believes Lessors should write to their representatives in Congress to tell them about the lack of responses from the Facilities Department. For example, if a Congressional representative is looking into the unavailability of lease information, the request will go to the Postmaster General's Correspondence unit rather than to the Facilities Department. The Correspondence Unit will work with Gov-



ernment Relations to ask the Facilities Department why the information must be withheld. The Correspondence Unit will have to decide if they want to tell the Congressperson that the information is so secret it can't be disclosed.

Mr. Hughes also suggested directing inquiries to the Postal Board of Governors. Currently, there are two Governors—Chairman Robert Duncan and Vice Chairman David Williams. Mr. Williams is a former USPS Inspector General who is familiar with the issues surrounding FOIA and the withholding of lease information.

Regarding disputes with the USPS, Mr. Hughes said that the USPS used to fight every claim of every type, whether tort, real estate or postal insurance. Now the USPS has delegated to paralegals the settlement of tort claims up to \$10,000, and to local post offices up to \$5,000. He counselled Lessors to submit smaller claims which are more likely to be reviewed at a lower level by someone who has a lot to do and is more inclined to decided in the Lessor's favor.

As was apparent from his address, Mr. Hughes' vast experience with the USPS gives him unique insight into many topics of concern to lessors. He provided many valuable tips about dealing with the USPS.

Legislative Update

Presenters: Harry Glenn, Van Scoyoc Associates & Joyce McCutcheon, AUSPL Board Member

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Harry Glenn (who represents AUSPL's interests in Washington) and Joyce McCutcheon reported to the Conference on AUSPL's legislative agenda and activities. Ms. McCutcheon said, "Change for the Postal Service can only come through legislation." She asked Lessors to contact their Senators and Representatives about supporting bipartisan postal reform legislation and ask Representatives to support House Resolutions 78 and 33. H.R. 78 supports the value of the network of leased postal facilities, and H.R. 33 is an anti-privatization resolution.

Joyce and Harry urged Lessors to also call, email or visit their Senators and Representatives at their home offices, and to contribute to the AUSPL Political Action Committee (PAC). Since the PAC was established, AUSPL has contributed \$68,000 to 18 members of Congress. "Congress doesn't know what we want unless we tell them," she said.

Harry Glenn praised the Board of Directors and outgoing President Gary Phillips for frequent visits to Congress supporting postal reform and the leasing program. Other postal stakeholders such as mass mailers, newspapers, and unions are engaged with Congress in the conversation on postal reform, and lessors need representation as well.

Like Ms. McCutcheon, Mr. Glenn stressed the importance of PAC contributions, which give lessors the ability to speak as a group. They allow AUSPL to get in front of Representatives and Senators themselves. Harry recounted a conversation in which Rep. Elijah Cummings, Chairman of the House Oversight Committee, asked Gary Phillips directly about AUSPL's goals for postal reform legislation, and asked how he could help.

The Association had an active year on the legislative front. In June, AUSPL representatives met with members of the President's Task Force on

the United States Postal System (The Task Force) to educate them about the postal leasing program. Many Task Force members had not been aware of the leasing program. Harry believes that the effectiveness of the AUSPL Board is evidenced in the fact that the Task Force's final report did not include recommendations on either privatization or elimination of the universal service mandate.

Additional current legislative actions include a provision in the final appropriations bill prohibiting closure of any small or rural post offices for the remainder of the year. Discussions continue about bipartisan postal reform to help fix the Postal Service's financial problems through new and innovative services. One provision under discussion is addition of a USPS Chief Innovation Officer. AUSPL continues to work with the USPS in finding new and creative uses for excess space in postal buildings.

Harry emphasized that communication with Congress is critical. As a former Chief of Staff to a member of Congress Harry underscored that these interactions make an impression and educate, as well.



Joyce McCutcheon



Harry Glenn

Why Isn't Congress Passing Postal Reform Legislation?

Presenter: Senator Heidi Heitkamp, Former Senator from North Dakota

Former U.S. Senator Heidi Heitkamp addressed the General Session of AUSPL's annual Conference. Senator Heitkamp has been a great friend to AUSPL and is a strong supporter of small and rural post offices. During her time in the U.S. Senate, she co-sponsored The Postal Service Reform Act of 2018 which had support from most stakeholders. Unfortunately, the bill was never passed.



Sen. Heitkamp underscored her concerns about the USPS by reading from a General Accounting Office (GAO) bi-annual High Risk Update (Update). The Postal Service has been on this list since 2009. From the 2019 Update she read, "USPS financial viability continues to be high-risk because USPS cannot fund its current level of services and financial obligations from its revenues," and that "Congress should consider a comprehensive package of legislative actions to improve USPS's financial viability." The GAO concluded in the Update that the "United States Postal Service management, unions, the public, the community leaders and members of Congress must take a hard look at what level of postal services residents and businesses need and can afford because the status quo is not sustainable."

Senator Heitkamp said there has simply been a lack of political will in the Congress to get postal reform legislation passed. She attributes that lack of political will to three predominant attitudes:

- 1) It's a problem, but it's not my problem - It's not my Committee, no one is complaining to me,
- 2) It's a problem, but I don't want to make anyone mad so I'm going to ignore it, and
- 3) Some people want to put the USPS in bankruptcy to force changes in labor contracts or privatization.

The level of urgency about fixing the problem needs to change. Senator Heitkamp advised lessors to get to know their representatives in Congress representatives and demand they put the USPS back on a path to solvency. Stay engaged. Be involved. Understand that lessors have a unique perspective. Know that there are people in Washington DC who are just waiting for the USPS to go into bankruptcy, and real solutions are required to prevent that result.

Sen. Heitkamp believes there is "a lack of political will in Congress to get postal reform done."



REPORTS ON POSTAL FACILITIES FROM THE OFFICE OF THE OIG

*Presenter: Charles Turley, Office of the Inspector General (OIG)
Deputy Assistant Inspector General for Supply Management & Human Resources*

Mr. Turley began by stressing the value of the AUSPL and OIG relationship. He said that the condition of retail facilities is critical to a positive postal experience. Many of the OIG's audit reports focus on the condition of postal facilities.

During fiscal years 2016-2017, a total of 149 Facility Condition Reviews (FCRs) were conducted in the USPS's seven geographic areas. Those reports were discussed in the presentation given by Mark Duda of the OIG's office at AUSPL's 2018 conference. A 2018 supplemental report, the Facility Condition Review – Capping Report followed up on the results of OIG recommendations in the regional FCRs. Based on this work, the OIG's office also began audits on processing plants. Audits on all postal facilities are planned for the future.



The Postal Service's roofing preventive maintenance program was the subject of a 2018 report. The program's objective was to support the process of extending roof lives, protecting roof warranties and reducing emergency repair costs. The roofing audits have been followed by audits on HVAC preventive maintenance programs. These audits are nearing completion.

In 2018, the OIG audited Emergency Suspensions. The Eastern Area was selected for audit because of the frequency of emergency suspensions there. The USPS has the right to suspend operations for a variety of reasons, including termination of a lease. Following suspension, the USPS must follow specified procedures to relocate, reopen or permanently close the facility. Despite these procedures, OIG auditors found that 39 of the 63 facilities reviewed have been in "suspended" status from 1 to 17 years. The report states that "current suspension policies lack procedures for ensuring that suspensions are adequately monitored and managed."

The Federal Property Management Reform Act of 2016 requires the USPS to identify and submit to Congress a list of properties with space available for use by federal agencies. The law also requires the OIG to audit the USPS list and submit to Congress a survey of USPS excess property and the OIG's recommendations for repurposing it. The OIG's office recent recommendations to Congress include increasing collaboration with the General Services Administration in identifying opportunities to co-locate other federal agencies and identifying viable business opportunities to reduce excess space.

Mr. Turley closed by encouraging lessors to stay current regarding OIG audit reports that affect postal facilities.

The USPS OIG is an independent agency with oversight responsibility for the Postal Service. It reports to both Congress and to the Postal Board of Governors. The Audit Department prepares white papers on the outcomes of its reviews. These documents are available on the OIG's website, or on the AUSPL website's link to the OIG website.

The State of the USPS

Presenter: Tom Samra, V.P. Facilities, USPS

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As VP of Facilities for the US Postal Service, Tom Samra has responsibility for all postal properties, including those owned by AUSPL members. He talked to lessors about challenges at the USPS, technology updates, what the USPS is doing to solve problems, and other news from the USPS Facilities Department.

Mr. Samra discussed the President's Task Force on the United States Postal System (the Task Force), which was created to study the USPS in 2018. According to Mr. Samra, the Task Force concluded that solutions to the USPS's financial difficulties need to originate in Congress in the form of postal reform legislation. In addition, though the Task Force determined that the current USPS business model is not sustainable, Mr. Samra noted that it did not recommend privatization of the USPS.

Mr. Samra said the USPS continues to lose money, due in part to decreasing first class mail volume. He recalled his address six years ago at the AUSPL Conference, in which he reported that increases in package volume were not sufficient to make up for the lost volume in first class mail. However, he said the times have changed somewhat, and package mail is now catching up. But increases in package mail volume are offset somewhat by lower prices due to competition in the package delivery market. Still, the USPS remains well-positioned as a provider of "last mile" package delivery services.

While package mail volumes are increasing, package mail requires more processing time than first class mail, which causes processing costs to remain constant. The USPS is working to reduce man hours through new technology. A new machine called ETBS can sort 25,000 pieces of mail per hour. More importantly, it can sort down to 100 carrier cells, so that when a carrier receives the mail from the processing plant, the mail is already sorted. The enhanced sorting helps to reduce carrier hours. Also, driverless forklifts are being introduced to move increased volumes of packages more economically. Finally, the USPS has also begun using 21 new automated package sorting machines and plans to bring another 60 into use over the next three years.

According to Mr. Samra, lessors were responsible for performing necessary maintenance in 25,000 of the 65,000 maintenance calls received by the Facilities Department in 2018. Of the 25,000 cases where lessors were required to perform maintenance, 85% were completed by lessors, and 15% were sent to enforcement. Mr. Samra reminded the lessors that they should notify Contracting Officers when they identify repairs and other maintenance for which the USPS is responsible.

Mr. Samra mentioned the long partnership between lessors and the USPS and thanked lessors for doing their part in to maintain their facilities and to get leases renewed on a timely basis.



Conference Exhibitors

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David Fleming, Benjamin Franklin, Alex Kelley, Tessa Shakon

American Postal Infrastructure
Post Office Acquisition/Development



Leigh Thomas, Rick Austin

AUSPL Insurance Program
Specialized Post Office Insurance



Kristen Savage and David Bader

Marcus & Millichap
Commercial Real Estate Services



Patty Lancaster and Donna Elder-Sutley

AUSPL PAC
Political Action Committee



Scott Peterson, Rich Cummings and Mike Rostescu

ASHI
Provider of AUSPL Inspection Program



*J.T. Middlebrooks, Tom Domingue, David Disharoon,
Ken Rutan and Jeff Camire*

Atlanta Postal Credit Union
The Nation's Largest Postal Credit Union

Conference Exhibitors

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Jamie Harrison
Touchstone Commercial Partners
 Commercial Real Estate Services



Winni Tappan(R)
**Author of Silent Voices and
 A Pilot's View of WWII**



Dotty Collins and Bruce Collins (not pictured)
Post Office Realty
 Commercial Real Estate Services



Renee Poelstra-Farman
Poelstra Properties
 Postal Real Estate Consulting



John Doherty
Eagle Consulting Services
 Postal Real Estate Consulting



Tom Coe and Keith LaShier
**Real Estate Asset
 Counseling**
 Postal Real Estate Consulting



Dana Sawyer and Eric Dahlberg
First American Title
 Title Insurance & Escrow Service

USS MIDWAY

The USS Midway was the setting for the AUSPL 2019 Conference networking dinner. Tours of the former US Navy aircraft carrier included the infirmary and the small on-board post office.

Named after the June 1942 Battle of Midway, the Midway was commissioned on September 10, 1945, one week after the end of World War II. When it was decommissioned on April 11, 1992, Midway was the longest serving carrier in the 20th century. Midway's first combat deployment was against North Vietnam in 1965. It also played a key role in Desert Storm.

Until 1955 the Midway was the longest ship in the world and was also the first aircraft carrier too long to transit the Panama Canal. The Midway opened as the USS Midway Museum, in San Diego, California in June 2004.



PAC APPRECIATION BREAKFAST

AUSPL Board Member Joyce McCutcheon, and Harry Glenn of Van Scoyoc Associates hosted a champagne breakfast for 130 AUSPL PAC contributors on the luxury yacht High Spirits. Guests were treated to spectacular views of San Diego during a 2 hour cruise.

The 112' High Spirits is a sister ship to the Presidential Yacht Sequoia. It is considered to be one of the finest classic yachts available for charter on the west coast.



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APCU
First Oklahoma Bank
Real Estate Asset Counseling

Eagle Consulting Services
AUSPL Insurance Program
Nationwide Postal Management

AUSPL Post Office Inspection Program

Presenters: Scott Patterson, National President of American Society of Home Inspectors, Mike Rostescu, Assistant Executive Director and Director of Information Technology for American Society of Home inspectors, and Richard Cummings, Inspector, American Society of Home Inspectors

In partnership with the American Society of Home Inspectors (ASHI), AUSPL has developed and had the initial launch of Post Office Inspection Program for postal lessors. The program is designed to be post office specific and affordable. The digital inspection report produced after an inspection is easily searchable and is also available in hard copy.

Founded in 1976, ASHI is the original professional home inspection association and boasts the only third-party certification program in the business. Its approximately 8,500 members work in the US, Canada and Australia. ASHI members are mainly residential property inspectors. However, because most postal facilities under 8,000 sq. ft. were built using residential design standards, the transition to postal inspections is relatively seamless. Working together AUSPL and ASHI have created a 3-hour, online postal training module to inform inspectors on features specific to post offices. The module contains a test which must be passed prior to performing a postal inspection. As of the time of AUSPL's annual Conference, 125 inspectors had passed the module's test.

During the inspection process, inspectors look for conditions that could lead to costly repairs for lessors or the USPS, or that create safety issues. Inspectors conducting inspections also talk with postal employees, evaluate maintenance efforts and take photos. In addition, some inspectors can make referrals to contractors for necessary repairs.

Inspections are not intended to be in-depth reports about all conditions at postal properties, or include the detail found in reports such as asbestos surveys, full roof condition reports, or well inspections. However, inspectors will let Lessors know if they believe there are problems requiring further inspections by specialists. Nor are the standard postal inspections typically used for large buildings. Large commercial properties can be inspected by ASHI, but those require a different report called a Property Condition Analysis.

Rich Cummings walked conference attendees through a sample inspection report using the AUSPL inspection report template. Completed reports



AUSPL Inspection Program



Professional Providers of Inspection Services

will normally be about 50 pages long. The report template includes a Summary section that is followed by sections about the Site, Utilities, the Roof, the Exterior, the Platform, the Structure, HVAC, Plumbing, Electrical, the Interior, Miscellaneous items, Photos and an Appendix. An Action Item section is expected to be added wherein recommendations for follow-up will be consolidated.

Completed reports are sent to AUSPL for review and for use by AUSPL staff in discussing repair items with lessors. Following review, the reports are sent to members. Reports are confidential and will not be shared with anyone outside of AUSPL without lessor permission.

The Inspection Program is new and evolving. Suggestions from members are welcomed as it develops.



*Rich Cummings, Mike Rostescu,
Gary Phillips, Scott Patterson*

AUSPL Insurance Program

Presenters: Bill Eck and Rick Austin of Memphis Insurance Group (MIG)

Bill Eck and Rick Austin of Memphis Insurance Group, which manages the AUSPL Insurance Program, addressed Conference attendees to discuss the program. In particular, they want lessors to know about the requirement in new USPS lease forms that lessors must carry casualty and liability insurance. Prior postal lease forms had been silent about insurance, but the 2017 lease forms require lessors to carry insurance and have specific requirements for insurance coverage. Insurance policies purchased through the AUSPL satisfy the applicable requirements in the new lease forms.



Under the lease forms, insurance coverage against damage from earthquakes, hurricanes and floods is required if other owners of property in the immediate area commonly insure against those perils. When such coverage is required, AUSPL Insurance has add-on insurance options that provide the necessary coverage. According to Rick Austin, policies for buildings in areas where these special perils are common will have higher rates and deductibles. Mr. Austin said lessors should have funds reserved to cover insurance deductibles in the event of a loss.

Another impact of the 2017 lease forms is that deadlines for completing repairs after a loss are very specific. The deadline for repairs when a building remains tenantable is 90 days. For a building that is not tenantable, the deadline is 270 days. Mr. Austin warned lessors against letting insurance claim problems cause missed deadlines. AUSPL Insurance helps policy holders facilitate claims and meet USPS deadlines for repairs. Lessors should remember that, if they miss deadlines, the USPS will have the right to make repairs and deduct the cost from rent.

Bill Eck and Rick Austin can be contacted about the AUSPL Insurance program at 877-642-8775.

POStPlan Update

Presenter: Daniel Heins, National President of United Postmaster and Managers of America (UPMA)



Mr. Heins attended his first AUSPL conference as the newly appointed president of UPMA. He said he had gained a new enthusiasm for what Lessors do. He believes that cooperation between AUSPL and UPMA will make the postal service stronger and help make buildings more valuable.

Mr. Heins commented on the fact that postal reform legislation is a consistent theme at AUSPL's Conference and at other gatherings of postal-connected organizations. He agreed that passage of meaningful postal reform legislation has become critical.

According to Mr. Hein, POStPlan was devastating for Postmasters. Before POStPlan, Postmasters were in every community. They took pride in post office buildings and tried to ensure they were as nice as possible for customers. Without resident Postmasters, lessors will not see that same level of commitment to their from buildings. Now, some buildings are called Remotely Managed Post Offices (RMPOs), and each such building is managed by a Postmaster working in a nearby main post office. Growing demands on Postmasters reduce the time available to visit RMPO's. Even so, lessors who have maintenance concerns about RMPOs can ask the nearby Postmaster to visit the facility. UPMA wants to work to make the maintenance process more efficient and manageable for everyone.

Mr. Heins says he is looking forward to learning more about AUSPL and the role it plays in the postal network. "Together we will build a strong postal service now and into the future," he said. Mr. Heins stressed the importance of the USPS to the country's economy and future. He expressed his appreciation for AUSPL's role in building a strong Postal Service.

Panel of Experts on the USPS Facilities Lease

A popular feature of the AUSPL Annual Conference is a panel discussion conducted by a group of experts in postal leasing where a variety of leasing topics are addressed. In San Diego, the panel included:

Mark Karolczyk, Attorney AUSPL Director of Operations

Hal Hughes, Former General Counsel for USPS

Larry Magdovitz, Postal Lessor, Attorney and AUSPL Board Member

Tom Domingue, Atlanta Postal Credit Union

Keith LaShier, Real Estate Asset Counseling, and AUSPL Board Member

Steve Hurlbut, Akerman, LLP



Among the interesting and important topics the panel addressed were lease holdovers, the concept of contracts of adhesion, and conflicts within the 2017 lease forms.

Because the 2017 lease forms are more onerous for landlords than prior forms, some landlords have been refusing to sign the lease forms, have allowed their leases to expire and have seen their leases go into “hold-over” (in legal terms, a “tenancy at sufferance”). For example, Larry Magdovitz, an AUSPL Board member and owner of several hundred facilities, said approximately 80 of his post offices are currently in holdover. In a holdover, the lessor receives “fair market value” rent and the lease is otherwise governed by the terms of the expired lease contract. Larry advised lessors whose facilities are going into holdover to send a certified letter to the Contracting Officer saying the lease is about to expire and detailing the “fair market value” rent they expect to receive following lease expiration. Acceptance of the prior rent might be viewed as the lessor’s assent to receipt of the prior rent as “fair market value” rent.

However, there is a significant downside to holdovers for post office on properties with mortgages. According to Tom Domingue, allowing a lease to go into holdover status will likely trigger a call for full payment of the loan. Loan maturities normally align with lease expiration dates, and the loan renews when the lease renews. Absent a renewal, the loan balance will be due.

Hal Hughes pointed out that the way the USPS is treating the 2017 lease forms makes them contracts of adhesion. That is the USPS is refusing to negotiate and making the forms “take it or leave it” propositions. Longstanding legal doctrines requires that, if interpretation of a contract of adhesion is required, it will be construed against the drafter. The USPS attempted to address that possibility by including a provision in the General Conditions saying the lessor is familiar with the terms of the lease, and that they have been fully ne-

gotiated. Since JLL has been unwilling to actually negotiate any part of the 2017 lease forms, JLL is asking lessors to sign a false representation. Technically, such a false representation could violate criminal statutes that prohibit making false statements to Federal officials. Lessors might refuse to sign the lease forms on the basis that they could require lessors to commit a crime.

The panel also addressed a potential conflict between the USPS Partial Maintenance Rider (“USPS Partial” rider) and the Utilities, Service and Equipment Rider (“USE Rider”). That is, the USPS Partial rider requires the lessor to maintain light fixtures, and certain selection in the USE Rider relating to light fixtures require the USPS to maintain them. Although the lease provides that the terms of a lease rider control in the case of conflicts between the General Conditions and a rider, it does not address the case of a conflict between two lease riders. Keith LaShier stated that discussions with USPS Real Estate Specialists reveal that are also unsure how to resolve this conflict.

While Steve Hurlbut agreed with the general principle mentioned by Hal Hughes regarding contracts of adhesion being construed against the drafter, he pointed out another legal doctrine that requires glaring ambiguities to be pointed out during negotiations. That doctrine might doctrine could apply in the case of the clear conflict between the USPS Partial rider and the USE Rider.

A lessor who did not mention the conflict prior to signing might later be prevented from relying upon the “contract of adhesion” principle of contract construction. Therefore, Mr. Hurlbut said a lessor should try to have that conflict specifically resolved before signing, with the negotiations on the point between the lessor and JLL having been documented in writing.

“It’s a time for all of us to make our voices heard. If we don’t do it now, we won’t get another opportunity.”
Larry Magdovitz

Following comments by an AUSPL member on the ominous nature of the discussion about the 2017 lease forms, Larry Magdovitz encouraged the group, saying, “It’s not a time to be scared. It’s a time for all of us to work together and make sure that we present them with reasonable terms and make our voices heard. If we don’t do it now, we won’t get another opportunity. What the AUSPL is doing really well is pushing our interests.”



I’m excited to announce the launch of the first publicly listed REIT focusing exclusively on properties leased to the United States Postal Service.

Through our recent IPO, we are well positioned to acquire additional properties.

I’d appreciate the opportunity to visit with you to discuss how we can work together.

Andrew Spodek, CEO



Announcing The First Publicly Listed Post Office REIT

To find out more, contact us at: 800-696-PSTL (7785) / info@postalrealty.com
or visit us at: www.postalrealty.com



Avoiding and Resolving Lease Disputes with the USPS

Presenter: Steve Hurlbut, Akerman, LLP



Knowing the Contracting Officer and knowing the terms of the lease will help Lessors avoid many problems that create disputes with the USPS.

Know who the Contracting Officer is. Make sure the Postal Service employee who is directing maintenance expenditures or finalizing a lease renewal is an authorized Contracting Officer. Also, knowing the identity of the Contracting Officer is important because the Contracting Officer is the person authorized under a lease to receive notices from the lessor.

Mr. Hurlbut gave an example of contractors taking requests for building improvements from Postmasters during the postal facility construction. When the contractors billed for work under change orders, the USPS would not pay for the work because the Postmasters who signed the change orders are not authorized Contracting Officers. Lessors need to be sure before spending money that the request comes from a Contracting Officer with a letter of authority. It is acceptable to ask to see the letter to ascertain the level of the Contracting Officer's authority.

Know the lease. Read the entire lease, and understand it, Mr. Hurlbut advises. The lease specifies the performances required from both parties. In addition to what is written in the lease, there are implied obligations in all contracts, such as the obligation of good faith and fair dealing. Also, laws and regulations affect the interpretation of a lease.

Mr. Hurlbut discussed some specific provisions of postal leases. For example, a clause in postal lease mainte-

Read the entire lease, and understand it...

nance riders allows the USPS to make repairs and deduct the cost from future rents. Tenants in private sector leases do not normally have the benefit of such a clause. Even if such a clause is in a private sector lease, it normally permits such work by a tenant only in the event of an emergency or health and safety situation.

Lessors are familiar with lease renewal and purchase options. Mr. Hurlbut pointed out that options favor only the holder of the option (i.e., the USPS). Options in postal leases must be exercised in strict accordance with the terms of the option. In other words, exercises of renewal options and purchase options must be unconditional and unequivocal, and must be delivered in a timely manner in accordance with the lease terms.

Mr. Hurlbut also discussed holdover tenancies under postal leases. Although prior lease forms did not address holdover tenancies, the 2017 lease forms originally included a holdover provision unfavorable to lessors. However, since the AUSPL Conference, the USPS agreed to delete the new holdover provision. (See the AUSPL web site for information about a new addendum that will be used to make that and other changes to lease forms). Even absent the provision, lessors need to be aware of the significance of a USPS holdover when no lease renewal is agreed upon. In such a case, a lessor will face difficulty evicting the USPS, but will have the right to collect “fair market” rent during the holdover. The lessor should still send a notice that the USPS will be in holdover if a renewal is not agreed upon, and that the USPS will have a tenancy at sufferance during the holdover. In addition, a new case (discussed on AUSPL’s web site) holds that “fair market” rent during a holdover will carry with it a risk premium.

Restoration Clauses in older forms of leases require the USPS to return the building to the lessor in the same condition it was in when originally rented, less normal wear and tear. Lessors with leases containing such restoration clauses can make the USPS perform such restoration work. The 2017 forms of USPS leases reduce the USPS’s obligation to restore a building at the end of the lease. The best recourse for a lessor under the new lease forms is to inspect the building before the lease ends and enforce the USPS’s maintenance obligation as to maintenance required of the USPS that has not been done.

Despite their best efforts, Lessors may find themselves handling disputes with the USPS. For leases written after 1979, disputes are resolved in either the US Court of Federal Claims or by the Postal Service Board of Contract Appeals (PSBCA). The PSBCA is less formal and less costly, and is therefore used more often than the Court of Federal Claims, especially for cases involving smaller amounts of money.

The process is started by asking the Contracting Officer for a “final decision” as to the disputed matter. Within 90 days after receiving the final decision, a lessor can file his or her notice of appeal with the PSBCA. Claims are submitted electronically at <http://uspsjoe.justware.com/justiceweb>. A copy of the final decision, identification of the lease in question, and a signature are required for the notice of appeal. The PSBCA will then issue a Docketing Notice which explains deadlines and required action. These must be followed closely. Lessors have a choice of using the normal appeals process, the Expedited Procedures, or using Alternative Dispute Resolution.

AUSPL members who elect to pursue the PSBCA appeal process can call AUSPL for additional information.



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Maintenance Workshop

Presenter: Gary Phillips

How can Lessors profitably manage maintenance expenses? Answering this question was the focus of the workshop led by AUSPL Board Member Gary Phillips. By understanding (i) new maintenance responsibilities of lessors in the August 2017 lease form, (ii) the cost of the newly required maintenance and other high dollar items, and (iii) the expected useful life of building systems and structures, lessors can be prepared for the costs they will incur maintaining their post office buildings.



Lessors have long been responsible for roof and structure maintenance, latent defects, septic systems and wells, wind and hail damage, and damage caused by customer vehicles. Other high dollar repair items include parking lots, HVAC, asbestos remediation, and potential structural failure (usually caused by standing water).

When lessors with a USPS Partial Maintenance Rider, sign the new 2017 lease form, they accept additional responsibilities, including maintenance of the following items formerly maintained by the USPS: 1) damage caused by wood eating insects, 2) snow removal from the roof, 3) all building systems, including plumbing and electrical inside the walls, 4) water and sewer lines, 5) site drainage and ponding water, 6) and fences. Determining an annual, per square foot charge for each of these additional responsibilities plus a percentage for profit quantifies the rent necessary to cover these new items.

Mr. Phillips advised lessors to establish and maintain a regular reserve account to fund inevitable, upcoming maintenance expenses. Knowing the age and useful life of items lessors are required to



maintain gives an idea of the times at which expensive maintenance work will be necessary. Determining the amount necessary for reserves requires amortizing an inflation adjusted replacement cost over the expected remaining useful life of a particular item. Determining a dollar amount to increase the rent to cover the necessary reserves is a little more complex than that. For this calculation, the amortization term is the total useful life (rather than merely the remaining useful life-). Therefore, to arrive at an annual per square foot lease rate adjustment, the total estimated repair or replacement cost should be divided by the number of years in the useful life, then divided by the number of square feet of interior space, and then multiplied by a profit factor (1.06 for a 6% profit).

For example, assume a roof has an estimated life span of 20 years. Assume also a replacement cost of \$27,000 on a 5,000 sq. ft. building (average cost of \$4.50 per sq. ft x 6,000 sq. ft – add 20% to the interior sq. ft. size as roofs are larger than the interior space). \$27,000 divided by 20 is \$1,350 (the annual reserve needed). \$1,350 divided by 5,000 sq. ft. is \$.27 per sq. ft. Adding a 6% profit, $$.27 \times 1.06 = $.29$ per sq. ft to add to the annual rent amount. Gary suggests working toward amortizing over a somewhat shorter period such as 12 or 14 years but advises lessors to be aware that the USPS will not accept an amortization term that seeks to amortize the entire replacement cost over the five year lease term.

A form for aiding Lessors in determining equipment and system life spans and replacement costs is available on the AUSPL website, or from the AUSPL office. The form shows average costs across the country. Costs for specific locations should be verified with a local contractor.

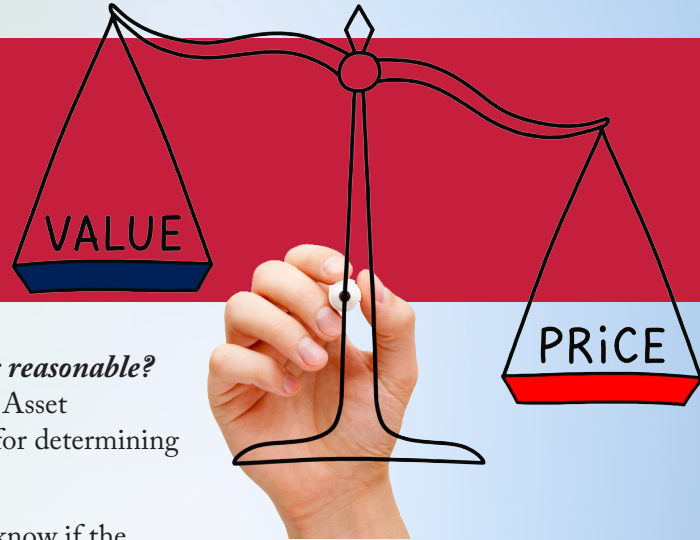
Gary stressed that USPS personnel understand that rent that is inadequate for proper building maintenance isn't good for anyone. However, the USPS will require lessors to justify requested additional rent.

Lessors need to keep funds in a reserve account in preparation for inevitable, upcoming maintenance expenses.



Tips for Determining Fair Market Value

Presenters: Howard Layton, Appraiser and Tom Coe, Real Estate Asset Counseling



How does a Lessor know if the offer from the USPS is reasonable?

Appraiser Howard Layton, and Tom Coe of Real Estate Asset Counseling walked Lessors through the necessary steps for determining the answer to that question.

KNOW THE COMMUNITY. * How does a Lessor know if the offer from the USPS is reasonable? In their workshop at the 2019 AUSPL Conference in San Diego, appraiser Howard Layton, and Tom Coe of Real Estate Asset Counseling walked lessors through the steps for determining fair rental values.

KNOW THE BUILDING. * Interior and site size, hours of operation, building age and construction type, postal service specific features (such as a loading dock) enable comparisons with other commercial buildings including postal facilities.

KNOW THE COMPARABLES. Banks, single tenant office buildings, buildings leased to government agencies, and other free-standing institutional grade structures are good comps. Comps from retail stores do not compare favorably because of lower standards for interior build-out and building quality. Mr. Layton suggests contacting a local realtor or appraiser for applicable comps, or reviewing a national data source of commercial property, such as Co-Star.

The best comps are other post offices. Postal facility information needed to do comps was available on the USPS website prior to 2017 but has since been deleted. AUSPL has the pre-2017 information on www.auspl.com in the Property Search tool. Additionally, this tool includes an inflation factor for making an educated guess at updated lease amounts. With this information Lessors can determine which facilities have the highest and lowest values, and where on that spectrum the Lessor's facility fits. That number adjusted by factors such as newly added maintenance responsibilities determines a lease rate at which a Lessor can maintain and make a profit on a facility.



Mr. Tom Coe of REAC gave suggestions to facilitate working with JLL. Should a Lessor decide to pay the commission JLL requests, Mr. Coe advises getting an additional \$226 per year in rent for every \$1,000 of commission expense. He also cautioned that the USPS is exercising Purchase Options more often. In those circumstances the appraised value given to a building is at the low end of the FMV range and assumes the building has no tenant. This is called a "dark value" appraisal. Mr. Coe recommends a "Use" value appraisal wherein the value is largely determined by the cost of an equally desirable substitute building. Generally, replacement buildings are difficult to find, and Mr. Coe says that he has seen costs as high as \$80 - \$125 per sq. ft. to turn a plain box building into a post office.



Mr. Coe advised Lessors to take their time when negotiating, and to do their research using resources from AUSPL as well as outside sources.

** Worksheets to aid Lessors in quantifying knowledge of the community and building are available on www.auspl.com and from the AUSPL office at 800-572-9384.*



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CHICAGO, IL

Friday, September 13, 2019

8:00 am to 4:30 pm (Lunch included)

Held at Hilton Chicago Magnificent Mile Suites

198 E. Delaware Place, Chicago, IL 60611

Phone: 312-664-1100

\$239.00 per night plus taxes. Hotel rates good until 8/13/19



**Registration Deadline:
Monday, September 9, 2019**



**Registration Deadline:
Monday, September 30, 2019**

BOSTON, MA

Friday, October 4, 2019

8:00 am to 4:30 pm (Lunch included)

Held at Courtyard Marriott Boston Cambridge

777 Memorial Drive, Cambridge, MA 02139

Phone: (617) 492-7777

\$260.00 per night plus taxes. Hotel rates good until 9/3/19

LAS VEGAS, NV

Friday, October 18, 2019

8:00 am to 4:30 pm (Lunch included)

Held at Bellagio Hotel and Casino

3600 Las Vegas Blvd. South, Las Vegas, NV 89109

Phone: 888-987-6667

Rate is \$139.00 per night for Thursday, October 17, and \$239 for Friday, October 18 + resort fee of \$39.00 per night plus tax.

Hotel rates good until 9/17/19



**Registration Deadline:
Monday, October 14, 2019**

*AUSPL Members. Non Members \$195.00 (inc. one year membership)

SAVE THE DATE FOR AUSPL CONFERENCE 2020

Thursday, April 30th & Friday May 1st, 2020.

Held at The Renaissance Orlando at SeaWorld in Florida.



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SAVE THE DATE CONFERENCE 2020 ORLANDO, FL

**Thursday, April 30th &
Friday May 1st, 2020**
**Renaissance Orlando at
SeaWorld in Florida.**

More details on our website.