

## Some national chains want leases to exclude Internet sales

● Karl Thompson sees a lot of retail leases. He is head of the transactions group at St. Petersburg, Fla.-based CREModels, and as such, he and his team of analysts pore through thousands of pages of legalese each year to conduct due diligence and run common-area-maintenance reconciliations for developers and investors. This gives him a big-picture view of the effects of e-commerce on retail leases. "We do see instances where Internet sales are specifically addressed," he said. "Most of the time, this is from national tenants with a lot of clout. They'll present a standard lease form to

the landlord, and then the landlord will have to negotiate with them over it."

Over the past year, some national chains have been pushing landlords to exclude Internet sales from definitions of gross sales in their leases, Thompson says. "If the landlord is to get a percentage of gross sales, you have to spell out what counts as a sale in the lease," he said. "But this can certainly be a sticking point, given the growth of online channels."

While retail execs may feel it is fair to exclude online sales, landlords clearly have strong counterarguments, says Thompson. "If customers

are picking up online orders at that store, the real estate is an integral part of the transaction," he said. "Where else would the customer go?"

This may be why, in general, clauses referring to gross sales and percentage rent appear to be declining, Thompson observes. And even when percentage rent is part of the picture, some landlords are pushing to win more credit for the role of real estate, he says. So-called slot fees — in which landlords lump retailers' merchandising revenues into gross sales — are one example. "A lot of retailers raise revenue by charging product brands

for access to high-visibility merchandising positions inside the store," he said. "We're seeing some landlords add slot fees to make sure they capture a portion of those revenues, which certainly do depend on real estate."

Leverage is also a factor in how landlords and tenants handle e-commerce sales, Thompson notes. "National tenants have the human capital and resources to dedicate to keeping the language in their leases current to the times," he said. "Smaller tenants must either negotiate with landlords or just go along with how they choose to define gross sales." — JG