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MALLS' REAs AND THEIR EFFECT ON DEVELOPERS TODAY

Department stores and retail anchors in America's malls continue to exploit their power to maintain control over malls and the way shopping centers are developed by holding firm on the application of reciprocal easement agreements (REAs). These antiquated clauses were drafted decades earlier by mall landlords who previously relied on department stores and anchor stores to attract customers and drive business into the shopping centers. REAs gave anchor tenants the power to regulate the way mall property could be developed, including parking and use restrictions.

Ryan Rivera, a partner at the law firm Hartman Simons & Wood LLP, points out, "20 or 30 years ago, REAs made sense; today they are a hindrance." Most mall developers are struggling with these obsolete REA restrictions, tying developer's hand as they come up with an expeditious shift in retailing.

Rivera notes, developers are often prevented from leasing to businesses that provide services and entertainment to shoppers, such as gyms, bowling alleys and medical services. These are tenants that landlords pursue in order to provide customers with experiences they can't find online.

"These documents prohibit any other use that's inconsistent with a first-class shopping center," Rivera said. "Think of a bowling alley in a typical enclosed regional mall in the '80s -- they weren't first-class operations."

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