

Coronavirus: Impact on Commercial Real Estate

We have been advising our clients in the commercial real estate industry about the COVID-19 pandemic and its impact on their businesses. Below are some of the issues that should be considered. Our guidance is evolving and depends on the facts and circumstances, including the language of the underlying contracts.

There is no handbook for what is transpiring during these unprecedented times, during which all stakeholders are affected in ways that no one anticipated. Ultimately, solutions will require a collective effort. Parties should communicate in good faith to mitigate against the negative impact of the coronavirus.

If you have any questions regarding the issues discussed in this memorandum, please contact the attorneys listed below.

Leasing

- Tenant: Should I request some form of rent payment relief?
- Owner: How should I respond to my tenant's (i) request for relief or (ii) statement that it will not pay?
- Does COVID-19 fall under *force majeure* or inability to perform clauses? Is a tenant's obligation to pay rent excused under these clauses?
- Does the shutdown impact "continuous operations" provisions?

Acquisitions & Sales

- Have representations and warranties been breached as a result of the shutdown?
- Does the contract provide for a change in circumstances?
- Are there any closing conditions that cannot be satisfied due to the shutdown?
- Can closings occur remotely during the shutdown?

Lenders and Borrowers

- Should owners ask their lenders for mortgage payment deferrals, interest rate reductions, or maturity date extensions?
- How will the pandemic impact obligations and restrictions under loan documents?
- Do owners need lender consent to modify lease terms with tenants?

Property Taxes

- Lost rent means a reduction in income. Will COVID-19 impact property values? Should owners should seek property tax relief?

Insurance Considerations

- Will “business interruption” or “rental loss” insurance claims be covered as a result of COVID-19?

New York Litigation Advisory

- No papers shall be accepted for filing by a county clerk or a court in any matter of a type not considered an “essential matter” until further notice.
 - “Essential matters” are limited and include applications addressing, among others: landlord lockouts, serious code violations, serious repair orders, post-eviction relief, and “*emergency applications related to the coronavirus.*”
- Evictions: All eviction proceedings and pending eviction orders are suspended statewide until further notice.
- Statutes of Limitations: Any time limit for the commencement of any legal action is suspended and tolled until April 19, 2020.

This memorandum is provided for educational and informational purposes only and is not intended and should not be construed as legal advise.

This memorandum is considered advertising under applicable state laws.

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