



News & Types: Client Advisories

Real Estate Considerations and the COVID-19 Virus

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Practices: Real Estate

The quickly evolving events related to the COVID-19 virus, including the various Executive Orders now being issued by the Federal Government and several State Governors, may impact real estate transactions. It is, therefore, prudent for parties with pending sale and/or purchase contracts for real estate, leases of real estate, contracts for construction, and loan agreements, to review their contracts with legal counsel to determine how best to respond to issues that are arising as a result of this government action and market forces.

LANDLORD/TENANT MATTERS

A review of existing leases, regardless of whether you are the landlord or the tenant, is prudent in that the COVID-19 virus may very well affect matters related to access to premises (building closures, either voluntarily or government imposed), landlord or tenant buildout (availability of labor and materials), which may affect lease commencement and rent commencement, and possible delays in the rendering by landlord of operational services such as cleaning, utilities and maintenance which could impact a tenant's right to possession.

A review of lease terms related to any force majeure, rent commencement, commencement of a lease term, rent abatements, possible denial of access to the premises, and the impact on tenant's obligation to pay rent are all matters that may be nearly ripe. Consideration should also be given in residential landlord/tenant circumstances, where a municipality may impose a moratorium on evictions and residential borrower/lender circumstances where the applicable governmental authority may impose a moratorium on foreclosures.

PURCHASE AND SALE AGREEMENTS

A review of existing purchase and sale agreements is advisable with respect to the ability to physically inspect the property, procure professional inspectors and contractors related to exercising due diligence inspection rights, and pending applications for entitlements and zoning changes that could be impacted by delays in public meetings or hearings on those applications or government office closures. A further consideration relates to the closing of an IRS Section 1031 tax deferred exchange where precise deadlines must be followed when closing on the purchase of a replacement property or sale of a relinquished property. As of the writing of this alert, Section 1031 deadlines have not been extended. Additionally, issues may arise if there are delays in a transaction closing due to title company staff reductions or recording delays (if electronic recording is not available). In the absence of a force majeure provision, impossibility of performance may be a relevant consideration as well for the above issues.

CONSTRUCTION MATTERS

A review of existing construction contracts is relevant under current circumstances to anticipate the consequences of any delay in the delivery of materials and/or labor for construction and completion of the project on a timely basis. Force majeure clauses are relevant to this consideration.

MORTGAGE OBLIGATIONS

Review of mortgage payment obligations (and the underlying note) is important in the instance of late or non-payment of mortgage obligations. Rights of reinstatement under both the documents and statutory law is critical as a means of planning.

The foregoing is a list of points primarily intended for general consideration and is meant to be an introduction to risk and contingency management issues, talking points and possible reactions to the current environment in light of those contractual provisions that concern real estate matters.

For any questions with regard to the foregoing, feel free to contact any member of the Real Estate Practice Group.