

Real Estate Journal

THE LARGEST WEEKLY COMMERCIAL/INVESTMENT NEWSPAPER IN THE WORLD

Real estate litigation is up in a down market: Examining areas in which litigation has increased



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The same economic forces which have led to a general slowdown in transactional real estate activity have led to the opposite - i.e., an increase in activity - in real estate litigation. Among the areas in which we have seen an increase in real estate litigation include the following:

- Vendor/Purchaser
Down Payment Disputes

Difficulties in obtaining credit have meant that more contracts do not close. The fight by the purchaser to recover his down payment and the effort of the vendor keep the down payment as liquidated damages follows soon thereafter.

- Brokerage Commission
Disputes

With brokers chasing few deals and money generally tighter, we have witnessed an increase in actions to recover brokerage commission claimed to have been earned.

- Commercial/Landlord
Tenant Matters

The difficulty tenants are experiencing in making their rent payments has led to an increase in commercial/landlord tenant non-payment proceedings.

- Commercial Foreclosures

While nothing like the increase in residential foreclosures, commercial foreclosures have risen significantly. One of the reasons is alluded to above, the inability of tenants to pay their rents. Rent defaults and increased vacancies have caused property owners more difficulty in making their mortgage loan payments. Commercial foreclosure actions have also become more contested and protracted as mortgagors try to hang in there, hoping for the inevitable upturn. In most counties these cases are assigned to the commercial division where there is more judicial supervision of the action and its progress on the court calendar.

Title Claims

An increase in real estate litigation often leads to more claims being made on title insurance policies with title insurance companies being dragged into real estate actions.

Actions On Guarantees

The increase in loan defaults has led to more actions by lenders to enforce guarantees, as well as landlords seeking to enforce good guy guarantees for obligations accrued until surrender of the premises.

Mechanic's Liens

Tight money means contractors are not being timely paid, resulting in the filing and prosecution of more mechanic lien foreclosure actions where we may represent the lienor, property owner, or mortgagee.

Coop Boards, Condominiums, and Homeowner Associations

The slowdown in real estate sales seems to be accompanied by the increase in disputes between unit owners and coop boards, condominiums, and homeowner's associations. It is harder to just sell and move out.

Partnership

Disputes/Dissolutions

Tough financial times and defaulted obligations lead to more internal squabbling and partnership disputes among owners. Often these disputes between partners, shareholders, or members of a limited liability company lead to judicial dissolution proceedings.

Mortgage Fraud

Defaulted obligations and declining real estate values have revealed a plethora of mortgage fraud schemes and led to much litigation involving owners, lenders, and fraudsters.

Predatory Lending/

Lender Liability Claims

As lenders seek to foreclosure and realize on their collateral lender liability or predatory lending type defenses and counterclaims are more likely to be encountered.

Tax Certiorari Proceedings

As real estate values fall many commercial properties are over assessed, leading to more viable tax certiorari proceedings in an effort to reduce assessments.

Loan workouts

Given the economy, many lenders are reluctant to take back properties which they will have difficulty selling and are more likely to enter into workout agreements.

The volume of real estate litigation acts as a barometer of the health of the real estate market and when the volume of real estate litigation starts to decrease it will no doubt mean that there is an accompanying upsurge in transactional activity.

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