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GETTING *CREATIVE*

REAL ESTATE BAR STILL
FINDING A NEW BALANCE AS
MARKET SETTLES INTO NEW
NORMAL

By John McNally



Marcia Owens

HONIGMAN

Marcia Owens has practiced on commercial real estate matters for more than two decades and had seen it all; blips, bubbles, bull markets, and even a Great Recession.

There are no parallels to what the pandemic brought to her desk. Now, she's working even harder to help find equitable agreements that work for her commercial clients — and to protect her client's interests from the next unknown that could disrupt the market.

"People are negotiating specific provisions now in their agreements for COVID or a COVID-similar event," said Owens, a partner at Honigman LLP. "Assuming we're going to get past COVID, if something similar happens in the future so there's an automatic mechanism in terms of giving rent relief or differing obligations under an agreement."

The idea of what constituted an essential vs. a nonessential business wasn't a discussion before March 2020. When those business and court shutdown orders came in and business tenants sent letters to their landlords saying they won't be paying rent, Owens was left with few options for her clients.

"Everyone had to chart a new course," she said. "It really became a challenge on the owner's side to just start negotiating with tenants and some sort of middle ground. Calling them into default ... once you (did that) if they didn't comply and resolve the issue, you were left with very little remedies you could enforce in a timely manner."

Richard Traub, a partner at Freeborn & Peters, thinks back to the "extend and pretend" strategy of the Great Recession, where he would work on deals extending the terms of a loan instead of going into foreclosure.

"The one similarity that I see is that, for the people during the Great Recession who thought 'we'll get through this, no need to take radical steps,' " he said. "Cash isn't as critical as maybe it was as we headed into the Great Recession. So we're going to bid our time and we're going to figure this out step-by-step, month-by-month."

LEVERAGE GAME

Owens notes how some clients had to go reengage with their financiers to get some assistance and prove they'd been severely affected by the virus.

"One was many owners asked their lenders for some sort of relief," she said. "Lenders were deferring the loan obligations almost automatically, provided you could show the issue was COVID-related and the property wasn't in distress prior to (the pandemic).

Working with occupants of their space required a balancing act as well, specifically if there was going to be a complete abatement or just a deferral with a payback agreement.

"Then it was negotiation on what those terms would be," Owens said.

Traub notes that the commercial leasing world is rushing to incorporate new provisions inspired by the pandemic. With many business-interruption cases currently working their way through the court system, it's imperative to make sure leasing deals fill the gaps brought to light during the past year.

"(We) want to eliminate all these new theories that have popped up on both sides of the equation to why someone should or should not pay rent in the future," he said. "Leases have really adjusted for those realities they are seeing reflected in the litigation marketplace."

ON THE HOME FRONT

Mark Wolff, a sole practitioner and owner of Wolff Legal, who handles matters in residential real estate, says his creativity in breaking through moratorium battles with tenants is up.

"(Some) tenants take advantage of the situation," he said. "I've even had a couple of clients even try to pay their tenants to leave. It's been tough to the point where we can't get into eviction court unless it's based on danger of threats."

Wolff continually reminds his clients about relief options, like the federal American Rescue Plan Act, and makes sure they're ready to apply.

"It comes down to government assistance. We understand the risk that was there for people being evicted and the sheriffs having to work," he said. "It continues to come out from the federal and state (level), but I don't think it was fast enough. ...Maybe I'm speaking too soon and maybe enough will come out and everything will be fine. But, we get these calls and all we can do is wait and apply (for it)."

With property sales expected to remain high, according to Wolff, he is pleased business should remain steady after an early lull. Early in the pandemic, he paused marketing on his three-year-old business.

"There are a lot of calls coming in because people are buying right now," he said. "I'm busier now than before the pandemic, but courts are moving pretty slow because it's a different process for them doing everything online."

Getting those procedures in place for whatever the next major hurdle is thrown at Wolff and his housing attorney is the major lesson he's taking with him going forward.

"The effects aren't done," Wolff said. "I'm telling my clients 'be ready because as soon as the courts say we can get it, we need to get in.' Because it's going to be a very, very long process."

INDUSTRIAL REVOLUTION

Adam Laser, a principal and chair of Goldberg Kohn's real estate group, is optimistic about what 2021 will bring. He expects hospitality to rebound, maybe not in a major way like a return to a booming convention center hotel, but enough that people will be excited to venture from their homes as the summer and vaccinations come.

"I think the real estate market is going to show some real resiliency this coming year," he said. "A lot of it will depend on the kind of asset. Industrial, warehouse distribution, data centers, life science ... all of that has been a steady market for those assets. Even going back to the second half of 2020."

Owens also is watching a hot industrial market where online retailers — not just global goliath Amazon — like grocers crave proximity to their customers.

"They need more space and want to have their products closer to people," she said. "(They want to ship) them to you in a day, even in an hour."

Laser notes Goldberg Kohn's clients on all sides of the ledger and there's incredible deals to be struck if you have the right customers.

"There's just a lot of institutional capital chasing those deals if you have the right operator," he said. "There are deals to be made."

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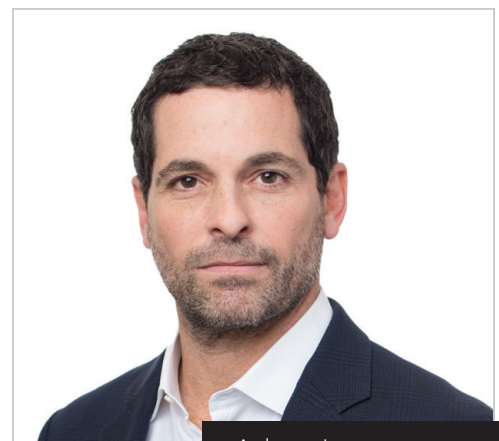
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