

Lawyers wrangle as market slides

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Real estate attorneys now see more broken contracts, requests for contingencies

By Melissa Dehncke-McGill

If brokers are on the front lines dealing with the dearth of buyers and sellers, lawyers are just a few yards back. In this month's Q & A, real estate attorneys in the city told The Real Deal that the slowdown in transactions has left a void in their portfolios of legal work.

And, not surprisingly, the work they are being called on to do has changed. No longer are they being asked to complete apartment or building trades at lightning speed. Instead, they are being asked to go back into already sealed contracts to add new clauses for price protections. Or, in some cases, they are being asked to negotiate contingencies for residential buyers that hinge on the buyer not being laid off...
...For more on how the legal real estate landscape is being affected by the recession, we turn to our panel of experts....

...Adam Leitman Bailey, owner, Adam Leitman Bailey

How is the changing market impacting your business as a real estate attorney?

We've hired two new attorneys to handle the increased litigation. Although the amount of litigation has increased, many clients have been agreeing to settlements that they would not even have entertained a year ago. The reason is the cost-benefit analysis. Clients are more likely to litigate if the litigation's cost is much less than the anticipated reward. As property values have decreased and credit dries up, new numbers come into play, which changes the settlement landscape.

How frequently are you seeing buyers back out of deals or try to change the terms of a deal?

Almost every buyer who enters into a contract purchased even seven months ago wishes they could renegotiate. We currently represent more than 40 boards/ homeowner associations in newly constructed buildings in disputes with developers, although many of them have settled.

What are the biggest challenges you're dealing with as a real estate attorney these days?

With many of our cases, we have to act like prosecutors without the ability to obtain a warrant or carry a gun. Mortgage and property fraud as well as property dispute cases have increased tremendously. Some developers who paid too much for a property and/or have run out of money need to cut corners and have failed to provide the building promised in the marketing materials and offering plan. For our building-owner clients, besides the financial perils, we have to guide them through potentially crippling new laws such as the state legislature's proposed new rent regulation laws or the Home Equity Theft Prevention Act. We are comparing our new real estate lives to fighting a war.

How does being a real estate attorney today differ from what it was like when the market was doing well?

Many of the transactional deals being completed are a result of a seller being in financial distress. Many

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of our building-owner clients have had an incredible amount of commercial tenants exercising their 'good guy' guarantees (which require one or more of the principals to personally guarantee the lease) and turning in the keys. Tenants are spending less time in landlord tenant court using loopholes to beat up a landlord and stay in possession as more personal and 'good guy' guarantees were signed in the new millennium. No one has ever seen a crisis like this. Most of the prior recessions were based on a single event, an oil crisis or a dot-com bust. This crisis is a systematic disease that has leveled the market. And those of us who live and breathe real estate know that the crisis is only getting started unless the government can inject a steroid into the market.

How do your new construction cases differ from your resales?

The key is the timeline. Resales usually close within 90 days so these buyers did not have an opportunity to watch the sky fall in the real estate market before closing. For newly constructed buildings, many contracts were signed over two years ago when the market was reaching heaven.

What kind of advice are you giving clients to get through this down market?

Never waste a good real estate crisis. The savviest real estate people know that many treasures can be found in a down market. Fortunes will be made based on good and sound decision making....