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2009 forecast for New England lawyers: Not necessarily "grim" for all

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The Federal Reserve recently issued its "beige book" report, in which the New England commercial real estate industry was characterized as "grim" and "depressing." As their clients brace for a bleak market in 2009, commercial real estate attorneys will have to adjust their practice focus to accommodate their clients' needs in a down market. Although fewer deals can be anticipated, lawyers with different sub-specialties can find ways to add value to their clients, and keep their own work flowing, even in this otherwise "grim" market environment.

Lending attorneys have faced a tough road as the ongoing credit crisis has shown little sign of abatement. With the recent infusion of emergency federal funds to New England institutional lenders, however, there is some hope that the credit markets will finally begin to thaw, and that transaction volume will pick up by the end of the year. Lawyers who handle acquisition and development transactions may also find opportunities depending on their client base or sub-discipline. While attorneys for commercial office and industrial property owners can expect acquisition deals to be rare, retail attorneys face a mixed picture.

Recent retail reports have indicated at least some retail segments have experienced better than expected holiday sales and continuing business strength, and those retailers who do not rely on financing for acquisition and development of store sites are insulated from the effects of the frozen credit markets. Attorneys who represent these retail clients (particularly those with recession-insulated products) can expect business to remain steady in 2009. Even attorneys for struggling retailers (e.g., big box department stores, small-box retailers who sell high end products, etc.) can provide value to their clients as they seek to restructure their operations.

Clients with significant real estate on their balance sheet, for instance, should be reassessing their space needs and looking for ways to dispose of excess or non-performing assets (through, e.g., consolidation and/or sale sale/leaseback of store sites or other real estate holdings). Real estate attorneys can provide a "value added" role in this process by handling related property dispositions, ground lease and space lease buy-outs, restructurings, or terminations, or sale leaseback transactions, and, most importantly, by ensuring that these restructuring activities achieve the clients' financial objectives and corporate balance sheet improvements.

Other disciplines that "spin off" of acquisition and development transactions may also find silver linings in this down real estate market. Title and conveyancing attorneys had a tough year in 2008, due to the mortgage crisis and resulting impact on the residential market, the erosion of the 1031 exchange market, and the dearth of commercial acquisition deals. Recent residential mortgage rate reductions, however, have produced flickering new refinancing activity, and there may indeed be some light at the end of the tunnel if reduced rates stimulate a general recovery in the residential market. Zoning and permitting attorneys may also, despite the slowdown in commercial acquisition

and development deals, see some light in this market. In the absence of financing for "big-ticket" development items (e.g. acquisition, infrastructure improvements, etc.), diligent developers can keep projects moving by proceeding with permitting, which generally does not require major capital investment. A stagnant economic climate can actually translate into a favorable permitting climate as local zoning board agendas are less cluttered, board members have more time to focus on fewer applications, and cash-strapped municipalities look for ways to improve their commercial tax base. Thus, commercial developers may actually enjoy a favorable political environment, and if they obtain their permits (which usually have 2-year lapse periods) now, they will be well-positioned when the credit markets loosen.

Commercial leasing attorneys may have a similar silver lining in this down market. Although their clients are facing weak demand, growing vacancy rates, and increasing tenant defaults, which will limit the volume of new lease deals, commercial leasing attorneys can look to other work that will flow from this downward leasing cycle. As lease defaults increase and more tenants become financially distressed, leasing attorneys will be kept busy with negotiation of lease work-outs and preparing lease amendments, restructuring agreements, rent forbearance/deferral agreements, and termination agreements. In addition, those that have a capacity for litigation will also see an increase in commercial eviction/summary process work.

These are certainly not halcyon times for real estate lawyers, but seasoned attorneys anticipate the normal ebbs and flows of the market and position themselves to remain active and provide alternative services that provide value to their clients even in a "grim" market.

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