



## **Part 1 of 2: Enforcing Remedies: Expedited Adjudication In New York Supreme Court's Commercial Division Now Available To Consenting Parties**

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### **Part 1 of 2**

Although parties to a real estate deal seek a "win-win" at closing, when defaults occur, and litigation ensues, court delays can be particularly frustrating to the party seeking to enforce its remedies.

A new rule in New York allows parties to a commercial real estate transaction to speed resolution of a lawsuit through New York commercial division courts. Parties who fail to analyze this opportunity and the rule's implications in the context of documenting their particular transaction do so at their peril.

#### **The Goal: Making New York's Courts More Responsive**

As another step to be responsive to litigants in the business and financial communities, the "Rules of Practice for the Commercial Division of the N.Y.S. Supreme Court" was revised by the state's chief administrative judge to add a provision to get a case "trial ready" quicker than had previously been possible. This new provision is sometimes referred to as a "rocket docket."

#### **The Method: Streamlining**

##### **the Lawsuit**

The New York trial court rules provide that matters using the accelerated process must be ready for trial within 9 months after a party files a request for judicial intervention. To accomplish this, the rules limit discovery, eliminate certain appeals, and make mediation mandatory.

#### **What Kind of Cases**

##### **are Eligible?**

Accelerated disposition of a case is applicable to any contract that can be enforced in the commercial division. The new rule applies to the full range of agreements which comprise a commercial real estate transaction. These include notes, guarantees, mortgages, purchase and sale agreements, joint venture agreements, and leases.

Accordingly, if both parties to the transaction seek to "opt in" to this accelerated commercial division process, the "remedies" section of each of the commercial documents should set forth a "consent triggering" clause, discussed below.

#### **Should These Rights be Waived?**

To make a "rocket docket" possible, certain waivers by each of the parties are required, including:

- \* Objections based on improper service of process of the summons;
- \* Objections based on an inconvenient place of trial;
- \* The right to trial by jury;
- \* The right to recover punitive or exemplary damages;
- \* The right to any interlocutory appeal; and

\* The right to discovery, except to discovery as agreed by the parties or as set forth in the rule. Although some of these waivers are already included as "boilerplate" provisions in many commercial agreements (such as designating a method to accept service of process, agreeing to the place of trial, and waiver of a jury trial), it's important for a party to understand that the waivers of seeking certain damages, of filing an interlocutory appeal of an adverse motion decision, and of extensive discovery, would also apply if consent is given.

If the parties agree to these waivers, they can elect to have a lawsuit placed on the "rocket docket," should a court action be needed to enforce rights and remedies.

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