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2008 legal outlook in the metro real estate and construction industries

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Before looking once again into my crystal ball about 2008, the Metro New York real estate market looks easier this year to predict than last year. 2007 was not a good year for the stock market and a horror for the financial institutions, ie. Merrill Lynch, Citibank, Countrywide, et al with their packaged and derivative sub prime mortgages. Oil prices have gone through the roof and there seems no trend reversal in the near future. Relief through ethanol is still embryonic because the Government is still pushing corn which when compared to sugar is far less effective. Retail stores in New York by and large had less than mediocre performance. The financial pundits are now talking about a real recession starting in 2008 unless we are saved by the Federal Reserve chairman Ben Bernanke with substantial interest rate reductions.

Certainly if the economy starts tanking, which seems reasonable, real estate will not escape unharmed; it just may take a little longer or perhaps even shorter depending on the tolerance of the developers' stamina for risk.

If history teaches us anything, the banks lend in the good times and don't in the bad. As my construction and real estate clients lament: "I was talked into borrowing from my bank when I really didn't need it and now when the loans are coming due, they want to pull the plug on me. That just isn't fair because I can't repay it now".

I usually reply: "Welcome to the real world and as you know history repeats itself."

The only positive sign I see is that my mail is still deluged with junk mail from the banks offering low rates on mortgage refinancing. This is a lot better than a recession atmosphere where the banks pull in their horns and refuse to finance anybody except for the triple A borrowers.

I believe that there are a lot of both big mogul and small developers who are seriously overextended these days and are pressed to generate cash flow to pay down their loans. The Sunday New York Times January 6, 2008 Business Section had its feature article on Harry Macklowe and how he was going to try to pay back a $6.4 billion debt payment coming due next month. Yes that was $6.4 billion, a lot of money even for the Macklowes. The thrust of the article was that the Mackowe organization could be overextended in a deteriorating real estate market.

If it turns out that developers are forced by their lenders to shed some of their holdings, it seems logical that a buyer's market develops and prices go down.

How does this affect the legal aspect of the construction and real estate industries in New York City? Well, first of all, the financial work-out legal specialists will be more in demand and, of course, for every sale you need attorneys on both sides to close. Hence, I foresee that real estate owners will be paying more monies for legal fees in this area of law than last year but their property values will be declining.

In my 2007 Outlook Report I anticipated that litigation between contractors, owners and sureties would continue on a decline. I believe I was on the money. In 2008 I feel that this trend will reverse itself. As money gets tighter and the economy declines, the dispute over change orders, delays and the other garden variety of contractor's claims will sprout like tulips in the spring. And where you have disputes, you will have mediation, litigation and arbitration. And where you have these dispute resolution procedures you will have more legal bills.

It is conceivable that the weak dollar will help support real estate prices, because of the influx of foreign money where real estate seems cheap to Europe, Kuwait, the Arab Emirates, Saudi Arabia and India. Considering the buying power of the British pound and the euro this could present an irresistible bargain for those not faint of heart.

Bruce Ratner's Atlantic Yards project is underway albeit that it is still under attack by collateral lawsuits of unhappy neighbors. This project should create lots of new real estate development in Brooklyn and promises to ignite (positively that is) a long downtrodden section of Brooklyn.

All in all, I do foresee an increase in the legal expenses for the real estate industry, where the dollars will flow more to litigation and away from transactional activities but I think the legal profession may be more affected than the real estate industry they service as clients are more sensitive to paying fees when the times are not good.

In summary, 2008 projects to be a cautious year where depending on the state of the dollar, the economy, the stock market and the recovery of the subprime mortgage disaster, lenders will directly influence the New York City real estate industry. My prediction is that real estate will not be as good as last year, but that the country, the state and city are not going into a big recession.

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