



## **The coronavirus pandemic and its impact on the CRE market by Marjorie Peerce and Brian Schulman**

April 10, 2020 - Front Section



Marjorie Peerce

Brian Schulman

The coronavirus pandemic has caused a lot of confusion, but even in the midst of great uncertainty, one thing is clear: The commercial real estate market is looking at a turbulent time up ahead.

Economists don't agree on whether we're in for a short-but-painful economic dip or a more drawn-out period of difficulty. In either scenario, the Recession of 2008 and its implications for New York's commercial real estate market have a few lessons we'd do well to heed as we prepare for what's coming.

Don't act out of panic: When things change as drastically as the New York and national economies have done in response to COVID-19 shutdowns, panic sets in. This can lead to an impulse to take unilateral action and find out if it's warranted later. This is an impulse that should be resisted. Rash decisions made when emotions are high typically turn out to be bad ones. When it seems an issue has arisen, it's critical to think carefully, act thoughtfully, and take measured action only after a full consideration of the matter at hand.

Force majeure clauses will increase in importance: Although they vary agreement to agreement, force majeure clauses generally excuse contract nonperformance due to an event that is beyond the impacted party's control, could not have been foreseen, and renders performance impossible. The biggest question with respect to the role force majeure clauses will play in commercial real estate is whether the coronavirus pandemic was "unforeseeable." Government agencies issued cautionary advisories as late as December 2019, but even so, the force and speed with which the pandemic shook the economy caught many well-informed people, from experienced investors to sophisticated market analysts, off-guard. As parties to development agreements begin to reconsider their positions, there's little doubt force majeure clauses will receive extra attention.

Open communication is beneficial: In our practices, we've seen that if trouble is on the horizon, early and open communication (under your specific circumstances, of course) can yield dividends. All market players are aware of the distress being experienced across virtually all sectors of the industry. In other words, if you're in trouble, the other parties to your contracts probably already

know it, so you won't be giving anything away if you initiate discussions. If nothing else, communicating can go a long way toward reducing the stress of not knowing where you stand. It can also help avoid the aggravation and potential friction that silence can engender. At a time when stomach-churning drops are roiling markets and questions are arising in nearly all sectors of every market, a sense of orderliness commands a strong premium.

New possibilities lie ahead: Just a few months ago, air filtration systems weren't something developers thought about much. Now, some New York landlords are adding them as a means of protecting their investments (in other words, making their multifamily dwellings places people want to live and retail space places people want to shop). Open-plan offices, which once were the cost-saving measure du jour, are also being rethought because they put people in close proximity to one another. The coronavirus might push us past our comfort boundaries, but it can also prompt creative problem-solving and innovative solution-building.

As a final thought, remember that market trends ebb and flow. While the coronavirus brought on economic change fast enough to temporarily send us all reeling, New York's commercial real estate market has weathered tough times before and will come out of this battered, but not broken.

Marjorie Peerce is co-managing partner of Ballard Spahr's NYC office and Brian Schulman is the practice leader of Ballard Spahr's Real Estate and Construction Litigation Group, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540