



An attorney discusses the “Pandemic Pause” in New York City - by C. Jaye Berger

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The “Pandemic Pause” (my term) is the expression I am using to describe when businesses in New York City started to close en masse during the Coronavirus Pandemic, like falling dominoes.

Workers and employees were let go and furloughed in numbers never heard of before in our lifetimes and everything seemingly changed forever. For me, this started after a court conference in early March. It was as though a giant thumb came out of the sky and pressed a red pause button creating an enormous pileup on the commerce highways across the country. Everyone is dazed and confused and getting out of their cars to check on the damage. We are still very much in the middle of this and the end is not yet in sight. All we can discuss at this point is some of the damage and things to watch out for as the smoke clears.

Construction Issues

When this all started, many co-op, condominium unit and townhouse owners were about to commence renovation projects or were in the midst of them. Everything was put on hold, except for “essential” work, as determined by the government. For anyone in that position, it will be especially important going forward to keep track of the length of the delay and the circumstances. How much of the delay could have been avoided and how much was unavoidable due to the pandemic and other circumstances. Some buildings have “time for completion” clauses in their Alteration Agreements with per diem (each day) penalty fines. Co-op and condo apartment and townhouse owners may also have such clauses in their direct contracts with the contractors.

While one would hope everyone would be fair under the circumstances, there will be aspects that are open to debate. The owner may think the contractor could have restarted on a certain date and the contractor may have reasons why he recommenced much later or not at all. The buildings themselves and their management companies also have a say in the timing and who is allowed in the building to work.

One unit owner was dissatisfied with the quality of the work to date and this created a good opportunity to terminate the relationship pursuant to contract. However, the building will not yet allow any contractors into the building to give estimates for completion.

When the parties are ready to resume work, I recommend having a change order signed by the contractor, the owner and the architect confirming how many days everyone agrees are allowed to extend the substantial completion date, rather than just leaving it open-ended for the parties to argue about it.

Real Estate Closings

Real estate closings are still taking place, but in a remote format and not all together in one room as is usually the case. Anything to do with a time limit needs to be re-examined. For example, on one deal, the buyer was not able to obtain a mortgage commitment within the contractually required time period, so the parties agreed to amend it in writing and allow more time. It still remains to be seen whether the bank will issue a commitment and the board will approve the buyer. New construction where the unit was to be completed by a certain date may have problems with termination requests.

The Court System

Our slow return from the Pandemic Pause can be seen in the court system. At first everything was cancelled. Gradually we have started to hear about how the different courts are handling things and how different judges are working within their parts to get things moving again. Communications are limited and more virtual in nature now. Most of it had to do with lawyers working remotely and judges wanting to be at a social distance from lawyers. This may become more widely used down the road for other changes in the norm, such as snow storms. At the moment, no new lawsuits can be filed.

New Co-Op and Condo House and Board Rules

Almost immediately, no nannies, housekeepers or contractors were allowed into buildings under new guidelines. The number of people allowed in an elevator or the laundry room was limited. As with the courts, boards want to move to virtual-conferencing for board meetings. For some buildings, this will require amending the by-laws.

Right now, it is unclear if this is the new norm or just the temporary norm. Be sure to review all proposed changes with legal counsel knowledgeable in this area.

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