

Tampa Bay Times

Coronavirus hitting Florida development like 'an economic hurricane'

Q&A with Tampa real estate and development attorney Robert Stern: Supply shortages. Nervous buyers. Delayed deals. But maybe a moment for speculators.

By Richard Danielson | March 19, 2020

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TAMPA — The coronavirus pandemic is hitting Florida's real estate and construction industry with the destructive force of a hurricane, except maybe worse, because hurricanes usually strike only part of the state.

That's the observation of veteran Tampa attorney Robert Stern, who co-leads the real estate and lending transactions group at Trenam Law.

"This is an economic hurricane, and it does impact the entire state, not just a specific swath," he said. Stern told the *Tampa Bay Times* he sees "five profound impacts" on Florida's real estate industry, which the National Association of Realtors estimates accounted for \$227.3 billion, or nearly 22 percent of Florida's gross state product, in 2018.

Here's the conversation, edited for length and clarity:

What's your assessment of how the overall impact of the pandemic is going to manifest itself?

The coronavirus has rattled the real estate markets across Florida and maybe even the globe. It is now a part of my daily conversation with clients on almost every real estate transaction we deal with. It reminds me a fair amount of the 9/11 crisis when everything came to a screeching halt that no one could anticipate.

In some ways, it seems more all-encompassing than 9/11.

Agreed. It is much more global, all-encompassing and severe than 9/11 was. There are five primary ways that I think I've seen it impact real estate folks.

Tampa Bay Times

No. 1, loans and financings are now an unknown. All projects need not only materials, they need capital and cash. I've got three or four hotels in different stages of loans, closings, construction. They're all uncertain. Some lenders have said, stop on any new hotel deals right now. A lot of lenders are being a little more cautious with their term sheets and their commitments. I'm just concerned about a loss of liquidity in the system. We don't want this to create a credit crunch similar to what happened in the Great Recession.

What's No. 2?

Construction supply is a concern. It's been devastating to some folks that China can't give you any certainty of when they will be caught up on getting their supplies timely delivered to the U.S. We can't comprehend how many construction materials actually come from China, and their delay becomes our delay. I just think the supply chain disruptions are going to have a tremendous negative impact on U.S. builders. It's causing me and other lawyers to closely examine all the contracts and find out what obligations, what liabilities are documented in those contracts. If there are delays, are they excused delays? Are they delays that cause damages and liability?

Is it possible even to guess how long it might take to work through some of these issues?

Not at all. It would be impossible to guess the number of ripples that are out there regarding some of these items. As far as construction supply, I understand China's starting to ramp back up their production. So maybe there's a 45- or 60-day delay, 90 days — who knows? I'm told they're starting to ramp up, but that doesn't make my clients feel any better.

Now the third item is this actually may be a buying opportunity if you have cash and liquidity and can move quickly when everybody else is pausing and sitting tight.

I have a friend from Clearwater who now lives out of state but is thinking of moving back. He went out before this pandemic blew up to look at condos near the water, but he was like, I need prices to come down.

If he still has the guts and the cash, now's a great time, because the demand has fallen and the supply is the same.

What tells you demand has fallen?

The number of buying clients that are asking me to prepare purchase contracts has fallen. Related to that is the stock market that's tanked over the past three weeks. Because of that, the wealth you thought you had to purchase something may have evaporated as well.

Tampa Bay Times

I think there are strategic investors, and if they have liquidity and cash they are becoming opportunistic. I also think that perhaps (with) the publicly traded REITs (real estate investment trusts) and the big public real estate companies, because of the stock plunge, there may be an opportunity to buy those assets owned by those institutions at a discount.

Those would be larger properties?

Correct. Larger trophy assets.

I think a lot of those big institutions may be taking a big pause, catching their breath and trying to reassess everything, but those that have dry powder when no one else does are in for a unique opportunity.

What's fourth?

Current deals are being held up. If you're doing a real estate sale, a loan, a lease or any other real estate transaction, I think they're all being held up for a slight pause while the participants take a knee and reassess risk. There's several deals that have been impacted by the virus. I think it's causing a lot of delay, and we're looking at all the contracts to make sure the key dates are still met, are still applicable.

My buying clients are asking for more time to close. And this temporary disruption of working from home is causing some difficulty in communication and decision-making. Whereas before you might walk down the hall and talk to people and get everything reviewed. Now working from home as is a new skill set and just causing some delays. I've seen several deals put on hold because of virus.

What kind of deals?

Purchase and sale transactions are moving slower. Loans are proceeding more cautiously. Leases are being reviewed in more detail.

The fifth impact is we're reviewing all of our contracts for force majeure, or act of God clauses, which is a valid excuse due to natural and unavoidable catastrophes. They allow you to escape liability and penalty if you are unable to perform. Such clauses allow parties to get out of certain obligations for unforeseen or uncontrollable events.

So, I've received a number of calls from my clients asking me to review their contract for force majeure clauses, and to help analyze those and walk them through it. Can they terminate the contract? A great example are the hotel conferences that are being canceled right now. So I'm a

Tampa Bay Times

member of the American College of Real Estate Lawyers. We just canceled a huge conference in Charleston. I can assure you that everybody is looking at that contract to see who pays and who has liability for a cancellation. And again, I think some of this is analogous to 9/11. But this is much bigger and much broader. But, you know, you're looking to see the same arguments and same provisions as to how it affects your leases, your contracts, your loan documents.

I know things vary from case to case, but is it possible to say what you're telling clients about whether force majeure applies?

I would say force majeure does have some applicability in this situation. That's why we're actually reading the specific provisions and advising clients on liability and whether or not it's outside their control. I'm receiving phone calls from clients almost on a daily basis as to how does the coronavirus affect their real estate.

With all this uncertainty, there's a shock to supply, as with construction supplies. Is there also a demand shock?

There are both supply concerns and demand concerns on both sides that are causing a lot of pressure to a lot of owners and developers. If you're a contractor and you have a contract that says you promised to have this building completed by Dec. 31, and if not, you have a per day penalty for every day past that you don't have the building complete, you're very nervous about supply chain and force majeure and the availability of labor.

It's too early in this process to fully forecast and understand all the ramifications. But we can certainly say that it's significant and it's on our mind every day and in every transaction.

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Tampa Bay Times

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