



DOUMAR LAW GROUP NEWSLETTER

A Periodic Publication Covering Legal Issues of General Interest

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Legal Trends in a Recession:

Commercial Leases

In local real estate markets, we have worked on several commercial leases this fall. For “A” space owned by large institutional landlords and managed by real estate companies, landlords are still negotiating strict default clauses and remain reluctant to advance much in the way of buildout costs, or provide much in the way of free rent. At the least, landlord’s tactics have not changed significantly. Individual or smaller landlords managing their own property are more flexible.

Fraud Litigation Trends

We continue to be successful in Virginia state courts in having fraud claims dismissed where there are related breaches of contract claims between parties. More and more judges are dismissing such claims, on a quicker basis, despite efforts to avoid such dismissals with arguments of fraudulent inducement.

From the Plaintiff’s side, making fraudulent inducement claims in a commercial context often leads to extra expense without any return, since such claims ratchet up discovery costs but usually end up being dismissed.

Mortgage Relief, for Banks.

We have had mixed results negotiating changes in mortgages for borrowers. Our experience is that most lenders are still not negotiating changes, but are proceeding toward foreclosure.

Several government initiatives under the Troubled Asset Relief Program (“TARP”) are in process, which may either facilitate negotiation, or facilitate new home purchases, but for right now financial assistance under TARP is being provided not to individuals but primarily to banks and potentially other institutions, based on applications.

Non-Competes (Enforceability Issues) and NDA’s

Non-disclosure agreements (“NDA’s”) are routinely enforced, and are advisable when discussing potential teaming agreements or other joint company arrangements. We continue to see non-compete clauses in company contracts that are unenforceable in Virginia. Non-competes are a good idea, especially with management employees, but broad non-competes that look good from the company perspective and scare employees may be stricken if challenged in court.