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## 3 Ways Real Estate Lawyers Are Preparing For A Downturn

By **Andrew McIntyre**

Law360 (August 12, 2019, 12:54 PM EDT) -- Real estate lawyers expect a market downturn in the not-too-distant future given that the current upward trend is roughly a decade long, and attorneys say law firms are doing a variety of things to ensure they are ready to help their clients when the market turns south.

Lawyers say one key to preparing for a downturn is ensuring that law firms have the capacity to handle real estate bankruptcy work, since that typically accompanies a slowdown and since the brick-and-mortar retail sector has already experienced its share of bankruptcies.

But while many asset classes are likely to see price pressure, lawyers see industrial as a continuing bright spot amid the ongoing growth of e-commerce, and attorneys say it will be important to be able to handle such deals amid a downturn.

Here, Law360 looks at three ways real estate lawyers are preparing for a downturn.

### Beefing Up Bankruptcy

It's inevitable that bankruptcies, retail and otherwise, will accompany the next downturn, and lawyers say law firms are doing two things to prepare for an expected uptick in work there: training young lawyers and seeking to hire veteran talent.

"Law firms are in the process of beefing up their bankruptcy and restructuring practices. We've seen some movement," said Gary Axelrod of Latham & Watkins LLP.

And law firms remain on the lookout for bankruptcy talent.

"We are hiring and expanding our bankruptcy department. We have two new hires coming in ... because we expect things to go in that direction," said Andrew Raines of Raines Feldman LLP.

Law firms are also particularly focused on giving younger associates the skills, tools and knowledge necessary to navigate bankruptcy aspects of a downturn, since those attorneys who started after 2009 have never been at a law firm during a downturn.

Axelrod said it's important to train young lawyers to do restructuring deals, matters that can later lead to bankruptcy.

"What are the counter-cyclical practice areas? ... Workouts, and even bankruptcy," said Jason Grinnell of Thompson Coburn LLP. "So law firms likely are kind of brushing up on those skills and making sure they've got people with those skill sets on their roster."

### Investing In Industrial

While many real estate asset classes will likely face price pressure during a downturn, industrial may fare differently, and for that reason lawyers say it's important for law firms to ensure they have attorneys on hand who have experience with that sector.

"Industrial is going to be counter-cyclical this time. Even if we go through a recession, industrial is ... the backbone of how retail is now delivered," Raines said. "If I didn't have lawyers who had access or experience in industrial purchases and leasing, I would definitely look for that."

Industrial deals differ from, say, office building transactions.

Tenants at industrial buildings often have more complicated requirements for improvements than do tenants at office buildings, since e-commerce retailers have a variety of different technologies and ways they use their industrial and warehouse space, and lawyers need to be up to speed on such negotiations.

And while industrial leasing work, as well as leasing work across all asset classes, will remain active during a downturn, industrial purchases and sales may also continue during a downturn, given the growth of e-commerce. Lawyers say it's important to have the resources to handle such deals.

Axelrod said there may be buying opportunities in various assets classes during the downturn for certain companies that have capital to deploy, and industrial could be one area where investors park their capital.

"Industrial remains very strong and retail remains very weak. Everything else is kind of in the middle," Raines said.

### **Doing More Debt Deals**

While bankruptcy is one common product of downturns, an uptick in lending work is another, and lawyers say firms are trying to make sure their real estate lawyers understand the specific type of debt-side work that may come when the market turns.

"At Latham, we're seeing an uptick in debtor-side work, from a retail perspective in particular," Axelrod said, adding that Latham is looking for more opportunities in those areas. "We're also dusting off our foreclosure and mezz[anine] foreclosure presentations, and talking to clients about how this cycle or downturn may be different from other downturns."

Lawyers expect the next downturn to be different from the Great Recession.

They expect that this time credit will likely not dry up to the extent that it did a decade ago, and that's a key difference, since access to credit is often a way for distressed companies to get out of difficulties during a downturn or recession. And that means there will likely be plenty of debt-side work available.

Law firms are eyeing distressed debt work particularly on the retail side, since that sector is the most likely to experience loan defaults in a downturn, given the struggles retail is currently having as it faces pressure from online retailers.

"Finance lawyers should be dusting off their forms of forbearance agreements, and preparing for the eventual discussion with troubled borrowers," said Seth Weissman of Jeffer Mangels Butler & Mitchell LLP, referring to agreements between borrowers and lenders that can delay foreclosures.

Of course, grabbing debt-side work in a downturn can be tricky, since companies that face financial pressures may be more apt to cut costs by keeping more legal work in-house. Raines said it will be interesting to see how companies approach the question of legal fees during the next downturn.

He said his firm was successful in continuing to get work through the last downturn in part by implementing alternative fee agreements.

--Editing by Marygrace Murphy.