

Real Estate Lawyers Chart Dealmaking Under Tariffs

By **Georgia Kromrei**

Law360 (April 16, 2025, 8:43 PM EDT) -- As real estate transaction attorneys navigate uncertainty in the market, some deals are being put on ice, while elsewhere, clients are rushing to negotiate protections from price hikes or find opportunistic deals.

The irregular implementation of tariffs earlier this month has already had a broad impact on the real estate market.

Attorneys expect the retail sector, which is highly sensitive to consumer habits, to be hit hard. Developers and lenders are employing a range of strategies to protect projects from price uncertainty. The multifamily sector is emerging as an attractive bet, because of strong demand for apartments and the ability to raise rents, but it's not the only play.

In the short term, many deals are getting put on pause as investors wait for the tariff situation to become more clear.

"Any real estate deals connected to consumer products have come grinding to a halt because nobody knows what's going to happen," said Morris Missry, managing partner of Wachtel Missry LLP and chair of its real estate department.

Some deals are getting paused even as the parties are putting finishing touches on agreements.

"I have so many deals that are, start, stop, start, stop, it's unbelievable," said Eric Greenfield, the division chair of Polsinelli PC's real estate division.

Attorneys' attitude toward paused deals depends on whether they represent the party pumping the brakes or the one pushing to close.

"If you have some sort of disruption or uncertainty in the marketplace, and you can take a breath, then take a breath," said Drew C. Flowers, a partner at Gibson Dunn & Crutcher LLP in Los Angeles.

But that's not always possible. Flowers said he closed several deals last week, and he expected to continue to finalize transactions this week.

"For deals that were already inked, or at some stage where you really couldn't take a pause, then they're going forward," he said.

A counterparty getting skittish is not always a bad thing in a negotiation. In one recent matter, Greenfield said the lender for a large development in Tennessee wanted to change terms just as the deal was at the finish line. He saw that as an opportunity to negotiate a lower price from the seller.

"We go back to the seller and say, 'Hey, look, this is what's happening, we're going to bow out if you don't lower your price, and by the way, it's not just us,'" Greenfield said.

In general, Greenfield said, some developers are quietly cheering tariffs, because it's "forcing sellers to come back to reality" on prices.

Price Control

Builders are doing what they can to guard against the effects of tariffs on their projects.

Lauren A. Rico, a partner at DLA Piper, said that, in the face of uncertainty, there is sometimes a rush to get construction contracts signed as soon as possible. Doing so allows developers to lock in pricing, including a guaranteed maximum price agreement with the contractor. In many cases, however, that's not enough to guard against all price-hike scenarios.

"It's not foolproof, because contracts still have escalation clauses, and so, if the price of lumber steel goes haywire, then you have to make sure you negotiate these clauses very carefully with the contractors," Rico said.

Jonathan L. Mechanic, chair of Fried Frank Harris Shriver & Jacobson LLP's real estate department, said that people are being thoughtful about how to account for price fluctuations in contracts, including by working out risk-sharing agreements in the event tariffs differ from levels expected when the agreement was hammered out.

Developers are thinking carefully about where they source materials and making changes based on the new tariff regime, but the inflation of the last few years has in some cases helped builders prepare for tariff-induced uncertainty.

Rico said she's noticed developers looking to "stockpile" building materials in recent years.

"For at least a couple years now, more than in the past, I've seen people buying and storing materials up front, because they don't know how much they're going to cost in six months, but they know how much they cost now," she said.

While some construction projects may have already set aside the materials, storing them stateside in a warehouse, Mechanic said that's not a given.

"People would like for that to be the case, but it's not across the board," he said.

Safe Bets and Opportunities

Uncertainty at the macro level is driving some real estate investors toward the safest bet: multifamily housing.

In an April blog post, Manus Clancy of LightBox, a commercial real estate data firm, said the multifamily space is reprising its familiar role as "old reliable" in the commercial real estate market. It's a well-known dynamic among real estate investors, supported by the lack of affordable housing and high barriers to entry to homeownership.

"In reality, multifamily for real estate has been the safest investment for a long time, not just now, because guess what? People need places to live," Gibson Dunn's Flowers said.

The market dynamics that support multifamily are also present in build-to-rent, Rico said, which is a small but growing asset class. Build-to-rent developments are generally contiguous parcels with 25 or more single-family units, a single tax lot and management provided by one company.

Rico closed a deal earlier this month, representing a major private equity firm on the acquisition of land to be developed into a build-to-rent townhome project. The transaction had been in the works since November.

"I think there's still long-view optimism towards the asset class," Rico said. "As long as you're delivering units in a place where you have people who need them, I think there's an optimism that this is still going to be a good, profitable asset class to develop, and people want to move forward."

While some investors are taking the safer route, others are leaning into the chaos and finding creative and attractive deals.

"Uncertainty is not a bad thing," Rico said. "There are deals to be had if we can look for them. If we're brave and not as cautious as others, and go out there and find them, we will find good deals."

One opportunistic strategy is being comfortable with waiting for the right moment. According to Greenfield of Polsinelli, some clients are buying huge portfolios of land on the cheap that are prime sites to be developed into multifamily housing in four or five years, after the dust has settled, they hope.

The practice is called land banking, and Greenfield said he hasn't seen it in years. The owners aren't starting construction anytime soon, and ultimately they will likely sell the land to a developer for a much greater sum.

In the meantime, however, there are real estate taxes to pay. One solution? Pickleball and food trucks.

"A lot of time, what we're doing with that land is putting in 50 pickleball courts and Airstream trailers to sell food," Greenfield said. "For the next year, we have a little cash flow."

--Editing by Haylee Pearl and Melissa Treolo.