



Real estate in a recess

As the housing boom turns into a bust and keys a worldwide economic downturn, Canadian real estate practitioners are feeling the heat.

But by adapting their practices to recessionary times and sharpening their focus on client service, many are confident they'll weather this storm.



GREG LOCKE

Susan LeDrew

Smyth, Woodland, Del Rizzo & LeDrew, St. John's

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To gauge the prospects for the real estate market these days, Raymond Mikkola often finds himself gazing out the window of his Mississauga, Ontario, office.

The view includes several high-rise condominium towers at various stages of construction, from just-poured foundations to nearly move-in condition. These skeletons of buildings will one day house thousands of tenants — or at least, that was the hope when the builders broke ground last year, during boom times for Canadian real estate.

Today, enshrouded as we are in a serious recession, things have changed — although you wouldn't know it to look outside at the small army of construction workers in hard hats still beaver away. But the activity has less to do with optimism about a growing economy and more to do with the obvious: "In many cases, there's no convenient way to cap construction on a building once it's started," says Mikkola, who heads the commercial real estate group at Pallett Valo LLP and chairs the CBA's National Real Property Law Section.

"We continue to be quite busy," says Mikkola. "But it's slowed down." That's an understatement for much of the Canadian real estate market these days. And with a downturn in that market has come a downturn in business for many commercial and residential real estate practices at law firms across the country.

The silence of the phones

For Jamie Stewart, a partner at McLeod & Company LLP in Calgary, one of the first indicators that difficult times were ahead was the silence of his phone.

"Up until the economic subprime fiasco hit the mainstream media, in my 19 years of practice, I had never seen the volume and growth of recent years. It was unprecedented," he says. "At peak, my phone was literally ringing off the hook. But around November 2008, it started ringing substantially less."

Stewart, chair of the CBA's Residential Real Estate Subsection for Southern Alberta, estimates that his practice has seen a 40% drop in conveyances. "It's almost as if someone just turned off the tap," he says.

In Alberta, that tap has traditionally run with oil — a sector that has, until recently, driven the Canadian economy to new heights. But with a rapid reversal in commodity prices lately — TD Bank Financial Group, for example, has slashed its oil price outlook to an average of US\$30 a barrel in the second quarter of 2009, down nearly 80% from its peak less than a year ago — Alberta's oil boom has stagnated.

With oil drying up, so has the market for, say, new housing for oil workers. In December, for example, ATCO Structures, a Calgary manufacturer of construction trailers, laid off 400 carpenters because of delays in oil sands projects.

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By Susan Goldberg



Raymond Mikkola

Pallet Valo LLP, Mississauga, Ontario

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Housing overall has taken a hit. As *Maclean's* magazine recently reported, Canadian housing starts plunged from a high of about 250,000 units a year between 2003 and 2008 — far more than the 180,000 warranted by Canada's population growth — to 172,000 annually as of November 2008, as the financial crisis forced developers to delay or abandon commercial and residential projects.

Mikkola confirms the trend. In his group's transactions for residential builders, “until recently, we would draft purchase agreements and get dozens back the first weekend. Now, we get one or two.”

Things are slow at the commercial end as well. “The transactions are still occurring, but there are fewer of them and they are typically now more vigorously negotiated — not only in

legal aspects, but also in the price,” says Mikkola. He notes that in the past five years, the majority of transactions conditional upon financing resulted in firm deals. “Today, more are likely to crater. Lenders are still lending, but they tend to take more security than they did a few months ago.”

On the west coast, Ramin Erfanifar, an associate at the Windsor Law Group in Victoria, also has witnessed a shift from the days of rampant pre-sales, multiple bids and quick flips. Residential conveyances are down about 20% at his practice, he estimates. “It's not so easy to flip your condo anymore,” he says. “And we are transferring more files to litigation, when purchasers are no longer necessarily willing to close and instead forfeit their deposits.”

Victoria is insulated somewhat by its climate, says Erfanifar. Its climate makes it a prime destination for retirees, who may be less affected by the vagaries of the job market — if not the stock market.

“What has affected Victoria and Vancouver sales is the psychological effect of the subprime meltdown,” he says. “Buyers are waiting for lower prices, and sellers don't want to accept offers well below asking. This wait-and-see approach is permeating the market, and it's affecting developers, real estate agents and lawyers.”

A little good news

The good news, Erfanifar says, is that pent-up demand isn't going away, and things will pick up eventually.

Stewart agrees. “There is cash out there, on the sidelines,” he says. “I doubt we are going to see the type and level of

real estate activity that we have over the last three or four years again, but if confidence is restored in the marketplace, I would like to think that we will creep back to a more level and stable market in the third and fourth quarters of 2009.”

At the other end of the country, Susan LeDrew is hopeful that the first three months of 2009 represent nothing more than the “traditional winter slowdown” at her St. John's firm of Smyth, Woodland, Del Rizzo & LeDrew — and that the balance of the year will be as fruitful as 2008.

Residential real estate transactions represented between 35% and 40% of her firm's revenue last year, estimates LeDrew, who is the secretary of the CBA's National Real Property Law Section. “We've just come off a huge year in real estate — literally. I was in the office on Christmas Eve and New Year's Eve, closing deals. That was unusual.”

LeDrew and her partners take a service-oriented, value-added approach to their residential real estate clients: they maintain frequent contact during the often-intense closing period, take pains to answer all questions, and consult about the legal transactions that can typically come with the sale or purchase of a home, like estate planning and family law. “We keep their interest paramount, try to stay relevant to the process.”

During the boom, Newfoundland enjoyed good economic times, boosted by record oil prices, steady declines in unemployment, tax cuts and new and ongoing offshore oil drilling projects.

The long-standing exodus to other, more prosperous provinces has started to reverse over the past year. That boosted Newfoundland's population for the first time in 15 years, simultaneously boosting markets for housing and for consumer goods and services. In fact, Newfoundland and Labrador emerged as one of the few hotspots in housing in 2008.

Can it continue? LeDrew hopes that it will, even as naysayers suggest that a sharp drop in oil production will cause the Newfoundland economy to shrink in 2009. If that's the case, says LeDrew, "then we'll again be glad that we have such good relationships with our clients. If they decide to consolidate their debts, they'll come to us. And if it turns out that we can't run the machine if the real estate industry falls to pieces, we'll make tough decisions. But we'll carry on."

Developing new practices

Carrying on is what many real estate lawyers and practice groups across the country are doing. And while no one is suggesting that a recession is preferable to its opposite, many are finding silver linings in the clouds of the slowdown.

Stewart's phone is starting to ring again, he says, but for different reasons than it did during better economic times: he's drafting lending documents, market documents, co-ownership agreements and the like. And his group is taking advantage of the relative calm to breathe, regroup, and ensure that clients are well serviced.

"Existing clients are also using this time to reassess their needs," he says. "They're looking at this time to review internal structures, and using our firm's resources as they do so."

Internally, says Stewart, "we have had to look at our business model and market creatively. Our focus area is on high-quality, competitive service. Providing that kind of service to existing clients means not only that they will stick with you, but that they will refer new work to you."

For better or for worse, some legal practice areas tend to thrive when times are tough. "Our foreclosure practice is up 25% for residential and commercial," says Stewart. McLeod & Company's bankruptcy and insolvency practices are also on the upswing — not surprising when you consider that, according to the Bank of Canada, in the third quarter of 2008, personal bankruptcies were up 17% from the year before.

As Erfanifar has observed, litigators may also see increased business, as purchasers look for ways to back away from deals they can no longer afford or that seem less appealing, and sellers seek to protect their interests.

"We're also seeing increases in corporate restructuring: a lot of businesses out there are seeing this as an opportunity to merge with or purchase another business, for example," he says.

Mortgage remedies and mortgage enforcement also represent an option for real estate lawyers with some time on their hands. As property markets take a downturn, this area of law



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McLeod & Company LLP, Calgary

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booms. More than simply putting people out of houses, lawyers in these areas specialize in trying to negotiate solutions when homeowners can't keep up with the mortgage payments — for example, helping homeowners restructure loans so that they can stay.

Erfanifar is getting up to speed on some of the areas of law

Ramin Erfanifar

Windsor Law Group, Victoria

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that, until recently, didn’t seem particularly relevant to his practice. “If I have a bit of time, I’m brushing up on things like bankruptcy and insolvency, areas I haven’t had time to look into until now.”

Now’s also the time, he says, to catch up on the networking and client relationship side of the business. “Do the things you didn’t have time to do during the boom: follow up with clients. Take them for lunch, for a round of golf. Network — become active in an association or volunteer for a board.”

Says Stewart: “Whether you’re a solo or in a medium-sized firm, in my opinion, you seriously need to think about being creative in marketing. There are fewer dollars chasing real estate services today than there were three years ago. I think there are still opportunities to carve out a living, but practitioners are going to have to get very creative and innovative.”

Mikkola also notes that interesting law often emerges from recessions. “In the last major downturn, a lot of law was made, particularly in the case of condominiums.” For the more academic-minded of his colleagues, he suggests, “this is a time to build personal capital.” What about going back, part-time, to university to earn that LL.M.?

“And then,” he says, only half tongue-in-cheek, “if you always wanted to write a book ... now’s the time.”

Weathering the storm

Of course, no one can predict just how deep and how long this recession will be, nor the extent of its impact on Canadian real estate and the lawyers who earn a living managing its transactions. Still, most are optimistic that the downturn will eventually reverse — and that things won’t get as bad as they were in the early 1990s.

At that time, Mikkola points out, interest rates were higher, as were the deficit and public debt, and the recession was preceded by a sharp spike in property values. As well, the early 1990s were recent enough that lawyers and law firms might well remember and have benefited from the experience.



“Pallett Valo is much better situated to weather the recession this time around,” says Mikkola. “We have a significant insolvency practice, and we don’t do residential real estate. We are much more realistic and have careful regard for overhead and productivity. We employ professional, non-lawyer management, which allows lawyers to practise and managers to manage.”

And those towers that he’s looking at out his office window? “By the time they’re in a position to acquire tenants, sometime in 2010, the present economic problem will — hopefully — be over.” ■

Susan Goldberg is a freelance writer in Thunder Bay, Ontario. Her most recent article for *National*, about preparing law students for legal practice, appeared in our December 2008 issue.