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I. COVID-19 Infects Commercial Real Estate: A Legal Update

A. *CARES Act and Paycheck Protection Program*. Discussion of DV Diamond Club of Flint, LLC et al vs U.S. Small Business Administration (US District Court, Eastern District of Michigan - May 2020). U.S. Federal District Court struck down SBA's PPP Ineligibility Rule, which had denied certain types of businesses, including those engaged in lawful live entertainment of a 'prurient sexual nature', the right to apply for a PPP loan and use the proceeds to pay their displaced employees. Congress intended PPP loans to benefit virtually all small businesses who met minimum criteria. SBA Rule could not thwart Congressional intent. (7 minutes)

B. *Leases*. Discusses legal theories by which the COVID-19 pandemic and related government 'stay at home' executive orders may relieve a party of contractual duty to perform under a lease. A *force majeure* lease clause excuses performance when prevented by a force beyond the party's reasonable control. The common law doctrine of frustration of purpose excuses performance when the purpose for the contact has been frustrated by events not reasonably foreseeable when contract was made, and neither party assumed the risk. Impossibility (or impracticality), another common law doctrine, applies when circumstance or event makes performance impossible (or extremely impracticable). (10 minutes)

C. *Business Interruption Insurance.* Unlike property insurance, which insures against physical loss or damage, business interruption insurance covers loss of income a business suffers. Coverage may be available for business interruption resulting from employees testing positive for or being diagnosed with COVID-19, and or from a government mandated business shutdown caused by a 'stay at home' Executive Order. (4 minutes)

D. *Constitutional Taking*. When government orders a business to close due to COVID-19 pandemic, is the business entitled to receive just compensation for a partial regulatory taking of its property under the Michigan State and or U.S. Constitutions? (4 minutes)

**Notable 2019-2020 Non-Covid Real Estate Cases**

**FEDERAL CASES (3)**

**Sitzer v. National Assoc. of Realtors, et al.**

No. 4:19-cv-00332-SRB (W.D. Mo.) [5 minutes]

Issue: Whether NAR’s “Adversary Commission Rule” Violates Federal Antitrust Laws?

***Top Agent Network v. National Assoc. of Realtors, et al***

No. 3:20-cv-03198-VC (N.D. Ca.) [5 minutes]

Issue: Whether NAR’s “Clear Cooperation Rule” Violates Federal or State Anti-Trust Laws?

**Knick v. Township of Scott**

\_\_ U.S. \_\_; 139 S. Ct. 2162 (June 21, 2019) [5 minutes]

Issues: May a property owner whose private property has been taken for public use by a local unit of government sue that local unit for “just compensation” in federal court (as opposed to state court)?

Why does it matter?

**STATE CASES (2)**

**Rafaeli LLC v. Oakland County**

No. 156849, 2020 Mich. LEXIS 1219 (Mich. July 17, 2020) [5 minutes]

Issue: When a County sells real estate it has acquired through foreclosure for non-payment of property taxes, may it keep any profits it makes on the sale?

***Locher v. Estate of Bradley M. Zimmerman***

No. 346566, 2020 Mich. App. LEXIS 1240 (Mich. App. Feb. 18, 2020) [5 minutes]

Issue: Whether the Purchaser of a Home May Sue for Fraud Under Michigan’s Sellers Disclosure Act?