

OTIS & BEDINGFIELD, LLC

ATTORNEYS AT LAW

2020 SPRING NEWSLETTER



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Landlords & Mortgage Holders—Take Steps Now To Protect Yourself



By: **Stacey Shea, Esq.**

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Commercial and residential landlords and mortgage holders are being faced with some tough decisions. It is important to start taking steps now to protect yourself and your business.

As of March 25, 2020, 19th Judicial District Chief Judge James F. Hartmann has ordered that matters regarding evictions and Rule 120 Orders for foreclosures will be postponed until after May 15, 2020. This applies to

any matters that were pending at the time and those that may arise. This is a significant amount of time for a landlord or lender to have no payment enforcement option. We do not know if the government will step in to provide relief for either side of these transactions. However, you should not wait to find out what relief there may or may not be before considering possible solutions.

Now is the time to contact your attorney to review the terms in ALL of your written agreements to clarify each party's rights and responsibilities. This includes loan documents, lease agreements, property management agreements, and any other contract associated with your properties. Your attorney will be able to guide you as to how the terms in each document may relate to the other documents.

Then start to open lines of communication. Don't wait

until someone is behind on their financial obligations. Begin to consider solutions that are sustainable by your business and can be reasonably fulfilled by your tenant or borrower. Ensure that the agreement is in writing, reviewed by your attorney for enforceability, and signed by all parties. Do not rely on a handshake, e-mail, or text message.

Realistically a mutually achievable solution may not be possible in every situation and a foreclosure or eviction may ultimately be required. If that time comes your attorney will be able to guide you through these options while keeping you apprised of the possible risks and developments in the law.

It will likely be many months before our economy is running at full steam. Don't wait for potential problems to become insurmountable to act. Now is the time to plan for and address these potential problems.

Providing a range of legal services throughout Northern Colorado

FORCE MAJEURE AND THE COVID-19 CRISIS



By: James Godbold, Esq.
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We are living in unprecedented times. COVID-19 has impacted almost every aspect of our lives. For businesses, this is an especially difficult time to navigate given various local and state restrictions and regulations, recommended practices, supply chain

issues, and general economic uncertainty. The ability of many businesses to perform contractual agreements as originally written has been called into question. Ideally, parties to a contract can renegotiate the terms given the current uncertainty. Where the parties are not able to reach a mutual solution, analysis of the provisions of the contract is necessary.

Many contracts contain a force majeure clause, which generally outlines the situations where a party's performance under a contract may be modified or excused. It is intended to remove liability for natural and unavoidable circumstances that interrupt the expected course of events and prevent the parties from fulfilling contractual obligations.

In determining whether or not a contract is enforceable based on the

COVID-19 crisis, a review of the specific force majeure provision within the contract is necessary. The first issue is to determine whether the language of the provision covers current events. This depends on the exact language of the particular provision as applied to the circumstances the parties are facing. The second step is evaluating what relief is possible under the provision. Is the party entitled to more time, a price adjustment, or can they be released from the contract entirely? The final issue is determining whether there is a specific process that must be followed to invoke the force majeure clause. Finally, if a contract does not contain a force majeure clause, other options may be available to excuse strict performance. A thorough analysis of the contract and the circumstances of the parties is necessary to determine the appropriate steps moving forward.

The firm is pleased to announce that Danielle S. Palardy has joined the firm as an Associate Attorney in the firm's litigation department.



Danielle's practice at Otis & Bedingfield focuses on business and real estate litigation. She obtained both her undergraduate degree and Juris Doctorate from the University of Georgia, where she focused on business law and transactions. During law school, Danielle worked in-house for an aerospace and industrial control systems manufacturing firm in Fort Collins, CO and she clerked for the 19th District Court for Weld County following law school. Danielle is an accomplished linguaphile, speaking Spanish, French, German, and Portuguese.

Danielle is a member of the Weld and Larimer County Bar Associations as well as the Colorado Bar Association. She also serves as the Byron White Inn of Court Secretary.

"Danielle is a superb addition to our litigation team. Her analytical skills and experience working for our local courts brings tremendous value to the firm and our clients. We are so pleased she joined us," said partner Lia Szasz.



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Estate Planning For All Ages



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Statistics show that the average American waits until the latter stages of life to obtain an estate plan, and while we all hope to live long and healthy lives, many people are leaving themselves in less than ideal circumstances should tragedy strike. In fact, a staggering 78 percent of millennials (ages 18-36) and 64 percent of

Generation X (ages 37 to 52) do not have an estate plan, many of whom have minor children.

While the main component of a complete estate plan, a well drafted will or trust, will effectively and efficiently distribute your assets upon death, it is also a vital instrument to name guardians for minor children. Should someone pass away with minor children and without a well-drafted will appointing a guardian, a judge will decide who will fill this role. The process of appointing a guardian can be extremely difficult for children and can lead to tension and emotional turmoil.

In addition to a will or trust, it is important to have general and medical powers of attorney. A general power of attorney

appoints an individual to make financial decisions on behalf of the principal. This includes paying rent or a mortgage, depositing paychecks, and paying routine bills. Further, a medical power of attorney appoints an individual to make medical decisions when the principal is incapable of doing so. Without this position designated, loved ones will be unable to make medical decisions for the principal in urgent situations. Both powers of attorney are necessary for any legal adult since an individual's parents or spouse do not have the authority to make legal decisions for the incapacitated person. Overall, a thoughtful and thorough estate plan is necessary for every adult regardless of individual circumstances.

Congratulations to Stacey Shea for recently earning her LL.M Degree from Villanova University!



Otis & Bedingfield, LLC

The attorneys at O&B are recognized leaders in real estate law and business law. We advocate for individuals, businesses, and families in the Northern Colorado region. Our clients are landowners, business owners, business professionals, businesses of all sizes, and individual families in need of guidance or representation in court proceedings involving commercial real estate or business issues.

For more information about our lawyers or practice areas, please visit our website at www.nocoattorneys.com or contact us at 970-330-6700, 970-663-7300. ◀

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