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Rich Coen - It takes a team: The professionals you may need when purchasing commercial real estate

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Selling commercial real estate in today's market requires a lot more than just putting a "For Sale" sign in the window. Sophisticated transactions entail multi-faceted marketing efforts that deploy a wide variety of tools to ensure that an optimal price is obtained as quickly as possible (even, or perhaps especially, in today's market).

Still, a much higher burden falls to potential purchasers. Buyers must do their homework before closing or live with the consequences. Although lenders often dictate to buyers an extensive laundry list of due diligence that must be completed as a condition to receiving financing, a careful buyer will go above and beyond that list to get a more complete understanding of the property. In today's environment every buyer has a "team" of professionals, and every member plays an important role in helping the buyer evaluate the property.

Typically, the first professional a buyer encounters is the seller's listing agent or the buyer's own agent. By the time a property is listed with a capable agent, a fair amount of information about the property is often already available: location, current use, building size, acreage, zoning and, of course, price. An experienced agent will be important not only in bringing together a seller and buyer, but in helping ensure that the property is a good fit for the buyer. If this preliminary information keeps the buyer's interest, the buyer should enlist the help of an experienced commercial real estate attorney to help prepare an offer, letter of intent, or purchase and sales agreement.

During any due diligence period under the purchase and sales agreement, the rest of the buyer's team is assembled. If the buyer does not already have a lender but needs one, arrangements for financing must be made. The buyer will then begin title due diligence and site due diligence. Title analysis is conducted by the buyer's attorney or a title agent on behalf of the buyer. A title review will typically be conducted hand-in-hand with a survey to be performed on the property. The title agent will confirm the identity of the current owner and identify the municipal zoning designation of the property and any mortgages or other liens. The surveyor will provide the location of encumbrances, encroachments and other restrictions of record on the property. Buyer's counsel plays a critical role in reviewing, analyzing and communicating these matters with the buyer, keeping in mind the buyer's intended use of the property.

The buyer's attorney will also negotiate with the title insurance company to minimize the exceptions to the title insurance policy and procure any title insurance endorsements that may be desired. Simultaneously, the buyer's counsel must act as a liaison between the lender and the title company/surveyor to ensure that the lender's required title insurance policy is obtained. Lenders separately hire an appraiser to opine as to the value of the property and any improvements. If the buyer does not finance the purchase, an appraiser will not be required, but having an expert's

opinion is still advisable, and a good appraisal will provide valuable information about the site and surrounding area.

While title-related due diligence is being performed, inspections of the physical condition of the property will be necessary. Environmental inspections, ranging from a review of state and local records to a formal Phase I environmental site inspection may be performed. The results of these reviews may lead to the necessity for further inquiry, including potential sampling of soil, air or ground water at the property to understand the nature and extent of any environmental conditions. Having a quality environmental engineer is invaluable to a buyer considering purchasing property that may be impacted by hazardous materials. Geotechnical engineers may be needed to explore subsurface conditions, particularly if construction is contemplated.

For existing buildings, structural and mechanical engineers can evaluate the condition of the building and major systems, providing a buyer leverage to negotiate a price reduction or other seller concessions. In the event that the property is being developed with new construction, design engineers and architects will be critical players. Even before closing, these professionals will have a role in assisting the buyer's assessment of the property. This work will include producing conceptual drawings and models to help the buyer determine potential tenant building sizes and locations, parking configurations and other key planning decisions.

In nearly all transactions, the buyer's real estate attorney will be instrumental. In addition to the tasks described above, buyer's counsel will be the key member of the buyer's team in the following areas:

- * Ensuring corporate formalities are observed.
 - * Reviewing existing contracts affecting the property, including leases and rent rolls.
 - * Reviewing the property's zoning designation and any existing or required permits.
 - * Negotiating loan documents.
 - * Preparing closing documents, including a settlement statement listing all payments to be made in connection with the closing.
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- * Advising the buyer on the best professionals to use and preparing contracts between those professionals and the buyer, as necessary.
 - * Attending the closing.
 - * Completing all post-closing tasks, such as making certain that the owner's and lender's title insurance policies are properly issued.

Complex, and often even not-so-complex, commercial real estate transactions require careful consideration and analysis. A diligent buyer will assemble a team of experienced, qualified professionals to assist the buyer in this process. The cost of not obtaining quality advice can far outweigh the expense of hiring the right people.

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