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Commercial real estate refinancing and tax credits figure into the mix

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As a regional law firm our business and finance lawyers get to know and work with a variety of clients in many business segments. Most businesses need a home and real estate figures in whether the real estate is the purpose or the platform for conduct of business. Our regional practice from Stamford to Boston gives us a chance to observe what's happening in New England. What we have seen is typical: the recovery part of the cycle is usually much further off than investors with ready capital seeking opportunity would like to think. But the recovery is underway.

So where is the action and who is having success?

For developers and acquirers of real estate, those who apply the fundamentals carefully: prudent underwriting, detailed legal and physical due diligence, and a keen understanding of the market for tenants, are succeeding. Loans are being made at attractive rates and LTVs (even for vacant or mostly vacant properties under the right circumstances) by commercial banks and life companies. We have seen a few instances where "out of town" investors are paying seemingly excessive prices for assets and driving up prices. This increase in acquisition activity may come from pent up energy of investors and the lenders' need to place money now that relative stability has returned. However, there is underlying growth. Vacancy rates in most asset classes seem to be falling, with the possible exception of lower level tower space.

For developers of affordable housing and renewable energy projects, federal and state tax credits play a significant role. There are a variety of them on the federal and states levels: renewable energy investment tax credits (e.g. solar), new markets tax credits (commercial mixed use in central business districts), low income housing tax credits (affordable housing), historic preservation tax credits (historic and other eligible buildings), each of which or in combination provide the non-debt portion of the capital stack. Tax credits come with conditions and we find that the sponsors of projects that utilize tax credits are experienced and willing to live with complex rules and regulations.

Typically, tax credits draw investors such as insurance companies and banks that have taxable profits to shield from federal and state taxes. Tax credit investors purchase a dollar of tax credit (and subtract that dollar from their tax bill) for, say, $00.85. Each investment has a yield determined by informal markets driven by the type of tax credit, the supply of tax credits and the profitability of businesses. These markets are managed by syndicators who perform the critical investment banking due diligence for the investors.

On the manufacturing side, many companies are sitting on cash, and the pressure to put the money to work if they feel they can reasonably predict need and growth for their products is real. However, uncertainty regarding operating (health care, energy) costs and the strength of the recovery and demand for products is hindering expansion (and therefore the demand for real estate) in this area.

The best performers remain those that are good at reading demand, whether demographically driven, such as assisted living or empty nesters or product or service expansion and who carefully execute plans in a timely fashion. Time, as always, remains the risk factor. Success in a recovering market calls for thorough market knowledge, careful due diligence, cautious underwriting, dependable financial partners and, as ever, a good sense of timing.

Frank Capezzera, esquire, partner, and Paul Baccari, esquire, partner, at Murtha Cullina LLP, Boston.