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# For property owners who position themselves for future success, this is a time of opportunity

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The slowing economy, financial market troubles and tightening lending standards are among factors currently affecting commercial real estate development and transactions.  Yet, for property owners who take steps to position themselves for future success, this is a time of tremendous opportunity.Â  Here are five suggestions on how to leverage the present economy to your financial benefit.

1.Â Good leases are critically important.Â  Make sure yours are solid and "bankable." For existing leases, now is a good time to review some of the key provisions.Â What is a default?Â What are your remedies?Â  What happens in a foreclosure?Â  A bankruptcy? What extension options does the tenant have? At what rent?Â Given current realities, does anything require renegotiation or a second look?Â For leases being negotiated and executed now, make sure the lease accurately and plainly reflects the economic deal you have so carefully negotiated with the tenant.Â Use a seasoned professional to eliminate unforeseen surprises and hidden costs.  Also, make sure your lease qualifies for loan underwriting purposes. You will have wasted time and money if your lender won't lend on the document.Â Involve your lender as early as practical.Â Do not forget about the lender when negotiating the form of Subordination, Non-disturbance and Attornment Agreement with the tenant.Â  Again, using a seasoned leasing attorney is critical to ensuring that current underwriting guidelines are incorporated into the lease, and that a lender will accept your lease and related documents in making a loan for your project.

2.Â Now might be a good time to seek a tax abatement.Â A loss of a tenant, changes in the market in general, and other variables may warrant an adjustment to your property's assessed value.Â Â Many tax abatement specialists will take cases on a contingency fee basis.Â  This is money in the bank.

3.Â If you see a good bargain, consider using a reverse tax-deferred exchange to complete the transaction.Â  This requires use of a qualified intermediary.Â  The sale of your existing property must occur within 180 days of the purchase of the "replacement property."Â  A reverse exchange is more complicated than a typical tax-deferred exchange (e.g., when you sell the existing property first and buy the replacement property afterwards) but can result in significant tax savings.Â  There are several technical requirements that must be strictly followed.Â  Make sure you consult with someone who is familiar with them.Â  There are risks associated with this tactic (i.e., what happens if your existing property does not sell with the 180 day period) but there can be tremendous financial benefits as well.Â  Carefully analyze the risks/rewards under several likely scenarios.

4.Â  Now is an excellent time to seek regulatory entitlements.Â  Many cities and towns are cash strapped and are more open and receptive to projects that will bring new revenues and jobs.Â  An owner/developer with permits and approvals in hand will be better positioned when tenants and users are ready to move forward.Â  You could be ready to complete a deal in four months instead of two years.Â Time is money and may be the factor that tips the scales in your favor over the developer of another site without permits in place.Â  Also, inevitably, over time, regulations become more complex and more strict.Â  Proceeding now, in the right way, can "vest" a developer/owner against the risk of adverse changes in the future.Â  Finally, it is much easier to extend and amend existing permits than it is to get them in the first place.Â  Securing regulatory entitlements is money well spent and will give you a strong advantage in the competitive marketplace.

5. Foreclosures and "short sales" are becoming more common.Â  These types of sales may present excellent opportunities for knowledgeable buyers. If buying at a foreclosure sale or as part of a "short" sale (where the purchase price is less than the existing mortgage debt), pre-sale due diligence is especially critical. There will likely be far fewer representations and warranties in these types of transactions, so have an inspection done as soon as possible.Â  Make sure title to the property is marketable in the very early stages of the transaction.Â  This will save other costs in the event there are problems and will allow you to proceed quickly and confidently with the transaction if the title is clean.  A title search will also help you better understand other potential liens affecting the property and your investment.Â  A "short sale" will have no impact on existing liens - other than the one being paid off with the sales proceeds.Â  A foreclosure sale will terminate junior liens and encumbrances - unless there is an existing agreement to the contrary (a subordination, non-disturbance and attornment agreement, for example).Â  If you are buying cash flowing property make sure you understand the precise impact a foreclosure sale will have on the lease(s).Â  Also, make sure you consider and account for all liens affecting the property.Â  With foreclosures, even junior liens may cause issues or delays at some point because many lenders will take some action to avoid being wiped out by the foreclosure sale.  With short sales, you will be buying subject to the junior lien, and you should be prepared to either pay those liens off or take over the debt service payments.Â Consider whether the short sale itself is a default under the terms of the junior lien.

It is very easy to get caught up in the negativity permeating the current economy.  However, despite today's less favorable conditions, there are many opportunities for commercial property owners/purchasers ready and willing to take advantage of them as they arise.  Seek opportunities prompted by adverse market conditions and consider them carefully in consultation with qualified professionals.  You should not only fair well in a difficult market, but will be better positioned to experience solid and steady growth as the market recovers.

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