

TEAMWORK

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Real estate counseling services can assist the attorney and the client in the decision-making process in a wide range of situations involving litigation, due diligence activities and general problem solving. When utilized properly, the counselor brings insights and experience that few others possess. The counselor not only complements the talents of the other professionals on the client-team, but he can provide a competitive advantage that is often decisive. Although attorneys are results-driven and always in search of ways to achieve tactical leverage, many are unaware of the full scope of services that counselors offer or the advantages conferred by this type of professional assistance. But improvement is in progress and better lines of communication are opening by professional counseling associations and practitioners to provide information on the extraordinary benefits available from the cooperative efforts of counselors and attorneys. The value of teamwork is underscored by The Counselors of Real Estate, the preeminent professional consulting group, consisting of 1,000 highly trained, deeply experienced real estate experts. Each member has the ability to provide his clients with unbeatable services through a most effective networking arrangement which accesses the expertise of all other members.

Counselors' backgrounds vary. Generally they include years of practical experience in one or more of the real estate disciplines which constitute *counseling* (e.g., market analysis, investment analysis, asset or property management, brokerage, appraisal, etc.). In addition, they are schooled in the fundamentals of real estate and receive technical training by attending formal courses, seminars and continuing education programs offered by organizations and universities. Some counselors are licensed or certified by the states in which they practice; others have earned designations conferred by respected professional organizations. In the final analysis, counselors are reservoirs of knowledge and experience from which attorneys and their clients can draw. Counselors can offer imaginative approaches and innovative solutions to real estate problems tempered by a theoretical and practical understanding of the dynamics that shape the marketplace.

Workouts

There is a growing recognition that active participation by counselors in workouts and restructuring loans is invaluable. Real estate counselors may represent the lender or the borrower. The key to a

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counselor's effectiveness in such situations is the extent to which they become involved. Attorneys have learned it is important to retain counselors at the outset because many technical questions arise that are beyond the expertise of the lawyer and/or client. Early retention of the counselor also ensures that the attorney will operate from an informed position and that the client will not be placed at a tactical disadvantage.

A look at what is really involved in real estate matters will highlight the need and importance of attorney/counselor teamwork. A parcel of real estate is not a homogenous unit; it is a package of real property interests, each having its separate qualities and existence. This has come to be known as the Bundle of Rights proposition. The task of problem solving begins with accurate identification of the interests involved. Since these rights are created in legal documents, the attorney plays the lead role in interpretations. The counselor will, of course, examine them in the context of the entire real estate market, but particularly in the sector that relates to the type of interest under examination. The study will reveal the benefits and liabilities of ownership. Very frequently the issue of timing arises. The various interests in a package have differing priorities of claim on the benefits the real estate generates. Usually they follow the chronology of their creation, but this can be altered by subordination agreements that rearrange priorities. Here again the attorney interprets and guides. The counselor then examines this priority framework and relates it to the flow of events in observed real estate markets. Vitality important risk rating of property interests is the product of such study. Only this sort of cooperative effort can supply a client with winning advice.

The counselor can assist in developing several restructuring plans, not all of which need be shared with the opposing side. This is a sensitivity exercise testing the feasibility and desirability of a particular restructuring proposal and whether it is in the client's best interests. Because restructuring plans are property specific, it is important for the attorney to receive professional advice that starts with an understanding of the real estate, its ability to service new debt, supply and demand, and current and future conditions likely to affect the asset (collateral).

In addition to modification of the debt, the counselor examines other options so they can be evaluated on a risk/reward basis. These alternatives would include the likelihood of financing obtained from other sources, whether the property could or should be sold, or whether foreclosure is the most prudent course of action.

Bankruptcy

Bankruptcy filings normally complicate foreclosure proceedings and present the counselor with a series of other issues to be addressed. Sometimes a counselor may not be retained until this stage. The counselor may be requested to study the reorganization

plan and comment on its adequacy and reasonableness. While this may appear to be relatively simple, it can often become a complex undertaking which tests the counselor's forecasting abilities as well as his knowledge of the social, economic, and political influences affecting the property. This may require detailed consideration of the local and regional economies, employment trends, age distribution of residents in the market area, income statistics and spending patterns, existing and future supply of space or product, job and family formations, etc. It is also likely to require a series of computer-generated cash flow analyses. Quantifying values usually is a process of discounting expected earnings. If valuations are to be believable or defensible, two important counselor functions must be ably performed. First, *forecasting skills* are needed to predict cash flows, and second, *knowledge of financial market conditions* is required for plausible discount rate selection. If an attorney hopes to be a successful advocate for his client's cause, he should buttress his performance by teaming up with a counselor who has expertise in these two fields.

Forecasting is not merely inserting numbers in a software program; it is the product of in-depth knowledge of economic activities throughout a specific real estate market. Existing and probable future competition as well as business expansions and population income are of paramount consideration. Trends are identified and projected into future periods. Capable execution of these operations requires strong foundations in understanding and awareness of the business cycle's movements.

Discount rates are selected based on their bringing competitively attractive earnings to the investors involved. How can attractive competitiveness be judged other than by thorough knowledge of alternative financial opportunities? Rates commonly selected are both current and future. To deal capably with the future variety, a counselor must be knowledgeable of the monetary policy operations of the Federal Reserve. Here will be found a clear cyclical pattern: monetary ease and low interest rates in business recessions followed by gradual tightening and rising rates as recovery proceeds, then a repetition when the next recession occurs.

The counselor's ultimate objective is to form an opinion, with the necessary support for that position, on the reasonableness or unworkability of the proffered reorganization plan. An attorney who plans to convince a court of the merit in his client's position needs to be supported by the real estate and financial market knowledge and data that are the counselor's stock in trade. Again, the value of teamwork is evident.

Tenant Representation

An area of real estate counseling that has grown enormously in the past 10 years is tenant representation. Simply stated, the counselor acts as the tenant's representative in lease negotiations directly with the landlord or with the landlord's broker or

agent. Clients can be large space users such as major national corporations or smaller local companies with more modest needs. Because of the financial implications to the tenant and the relatively long length of the lease term, many companies are realizing that representation by a counselor has become a necessity. Often, tenant representation extends beyond mere negotiations. The counselor frequently draws up option plans and comparisons. Sensitivity analyses and cost-benefit studies are performed. Alternatives are evaluated not only in economic terms (i.e., effective rents, concessions, workletters, etc.), but also in human terms (i.e., neighborhood environment and amenities, accessibility, labor pool, etc.).

In the current real estate market, as rents have fallen substantially below contract levels, counselors are being retained to renegotiate rents downward through lease modifications and extensions. Attorneys are expected to be masters of lease draftsmanship and to thoroughly understand the legal force and effect of all the document's provisions, down to the most minute element. But reality cannot be ignored. Counselors know that a voluminous 100-page lease providing for above market rent to a tenant of medium to lower credit standing is tantamount to no lease. Default in such situations occurs frequently, requiring the lessor to think seriously about restructuring. Also, a long lease to a highly rated tenant at a below market rent is a burden on the fee position, similar to a mortgage. Counselors know it will survive through thick and thin and that it offers little or no prospect of getting tenant consent for modification.

As conditions have worsened, landlords have been receptive to such proposals. A counselor's assistance in negotiating or renegotiating a lease can result in substantial savings to the tenant over the term of the lease. Because counselors are familiar with local customs (i.e., rentable vs. usable areas, passthroughs, concessions, etc.), needless posturing is often eliminated and negotiations tend to become substantive more quickly. Most important, the playing field is level and the client's needs are protected.

In such situations, real estate counselors negotiate the preliminary terms of the transaction and review drafts of the lease as well as the final documents. However, the final responsibility of closing the deal is turned over to the client's attorney. The counselor and attorney work in close association throughout this phase to avoid misunderstanding and to clarify any last minute issues that arise.

Litigation Support

Litigation support is a broad-ranging term that often reflects the most intense interaction between real estate consultants and attorneys. Again, lawyers draw on the knowledge, experience and training of the counselor so they can better understand technical issues. Counselors assist attorneys in preparing and reviewing interrogatories and attending depositions and reviewing transcripts of such proceedings. Litigation support services can be rendered orally or in writing. Usually they are a

combination of both. Typically these services consist of verbal advice offered spontaneously during a hearing or in the more reflective moments of a conference or meeting. A counselor may also be requested to prepare a memoranda or a more formal report to assist the attorney. Often testimony is required.

Real estate consultants also are called upon to review the reports of other professionals and to provide written or verbal critiques relative to their adequacy and accuracy. Such reports could be concerned with property or site contamination, leasing or marketing plans prepared for the subject property with specific performance expectations, market or feasibility studies or appraisals. In addition, counselors may be requested to review the work of other professionals in financial matters such as lending operations securities underwriting or investment banking activities (e.g., REITs, industrial bonds, etc.).

Before litigation support services are rendered, the attorney will usually confer with the real estate expert to explain the scope of the assignment, to frame the legal issues and to inform the counselor of his role. The real estate counselor must not only thoroughly understand the proceedings and the relevant legal issues, but also be perceptive enough to offer suggestions and alternatives. Communication is a key ingredient to success. Too often in real estate matters the true nature of a complex item is poorly understood and mistakenly regarded as a unitary entity. For example, a realty parcel is called a property rather than a package of rights. Also, the term "value" is often regarded as having one meaning when, in fact, there are a multitude of value types. Too often in real estate transactions experts are brought in by third parties rather than the principals. This limits communication and exacerbates misunderstanding problems. In the counselor/attorney relationship such carelessness cannot be tolerated. A client is entitled and has the right to expect excellence in the services he receives. To achieve this the professionals engaged must be in direct contact and share full understanding of all aspects of the issues.

Site Selection Studies

Counselors also frequently work with attorneys who represent domestic or foreign corporations seeking to develop a manufacturing plant, retail property or corporate or regional headquarters. Examples would be an auto or similar manufacturer in search of a new plant location; a department store seeking to enter a new market area; or a bank, insurance company, securities firm, law firm or accounting firm weighing a possible move to new quarters. In addition to the real estate issues (i.e., rent concessions, work letter, etc.), counselors involved here also will address other considerations such as the character of the work force, purchasing power of the area and competing properties. It is often necessary to research quality of life issues like infrastructure, reputation of local schools, affordability and housing prices, recreational facilities and similar amenities.

Frequently in such situations a series of sites will be identified and evaluated so the client has a series of options. Each option then is systematically explored in a series of meetings with the counselor, other professionals involved in the process, the attorney and the client.

Estates And Large Real Estate Holdings

Attorneys also use the services of counselors to manage real estate portfolios, develop exit strategies based on tax liability and market conditions, establish asking prices and rents, procure new financing, and make specific recommendations relative to value enhancement techniques and more efficient property operation. Many of the same services are needed in estate proceedings and in estate planning. Formal appraisals are usually required in such situations for legal and other reasons.

Conclusions

As the benefits of counselor/attorney interaction become more widely recognized, professionals from each discipline will work together with greater frequency. Communication, respect and proper understanding of the role that each plays are essential to ensure that the client's interests are effectively served. Demand for counselors' services will be driven by the realization that such interaction is absolutely vital in the current business environment.



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