

A Crash Course

A few tips for surviving the real estate market's nosedive.



BY PAMELA V. ROTHENBERG

When, as a second-year associate (more than two decades ago), I elected to switch my practice from corporate law to real estate, it seemed like the intelligent thing to do. In Chicago, where I began my private-practice legal career, it was easy to find corporate transactional work, given that “Chi-Town,” like New York and other major cities, is considered by most to be a business epicenter.

In the nation’s capital, however, at that time and even today, the government is the only obvious comparable “business” base we can reliably call our own. Of course, that reality struck me like a thunderbolt only after I had relocated to Washington. I proceeded to process that truth for several months in the face of my continuing quest to replicate the diverse, high-level, and busy transactional practice I had experienced in Chicago. I noticed and interviewed a number of happy (loosely speaking) transactional lawyers, most of whom had practices focused on the real estate industry.

Based on these investigations, I concluded that the real estate industry was in fact one of the few “businesses” in the Washington area that provided the type and volume of transactional legal work I was interested in pursuing. I decided to become a real estate lawyer and quickly landed a job at the highly regarded commercial real estate boutique whose successor by merger I work at today.

That career change continues to be among the most fortunate decisions of my life, second only to marrying my husband and having my three daughters. However, it remains a continuing enigma to me that, despite my painstaking efforts to engage in thoughtful and extensive due diligence about this career move, nobody bothered to tell me about the real estate cycle. How could I have missed that salient fact?

DREAD THE ANGUISH

I hate the real estate cycle. I despise the fact that my practice and my professional life, which normally move at

warp speed, can suddenly come to a dead stop. I now know, having lived through the torturous downturn that occurred in the late ‘80s and early ‘90s, how painful the cycle can be. Like any rational being, I simply dread going through this anguish again.

I know that my views and concerns are shared by numerous real estate transactional lawyers throughout the Washington metropolitan region. We “intense ones” tend to hang with others of similar persuasion and discuss these matters at length. My conversations with colleagues include reports that the deal flow has come to a dead halt or is limping along as if stuck in the middle of a molasses pool.

Sellers are still holding out for the higher values the market was commanding only months ago, and buyers are holding back, waiting for prices to reset to more appropriate market levels. Financing transactions, including those that were on the discussion board before the subprime meltdown became the news of the hour, have been put completely on hold or are being offered on less economically favorable terms.

While land deal opportunities are now more readily available than they were in the very recent past, new development projects are being severely affected by construction costs that are rising disproportionately to rental and pricing values. Many condominium projects are on the verge of failure, which will likely give rise to a need for significant restructuring transactions with lenders and equity investors and possibly even a new stream of bankruptcy work. Given the general volatility in the marketplace, many players are just standing by and waiting for things to settle down. They need to see with greater clarity where the dust actually settles.

While we real estate lawyers are currently wringing our hands in commiseration about the current economic circumstances, we know in our hearts that there is no avoiding the fact that history repeats itself. The real estate industry has boom and bust times, and we have entered a

period of slowdown that could lead to stagnation and possibly even a total crash.

A FEW IDEAS

What can we do to minimize the psychological and professional costs that the current real estate downturn presents? I share with you some of the approaches that I am in the process of pursuing, in the hope that they might provide you with some relief (or, at the very least, something to do until your deal volume picks up again).

- Use your newfound and unwanted free time to reconnect with clients that you have neglected during the busy times. When we are in our manic deal modes, we often wish we had the opportunity to spend more time on client relationships. Use this market shift as an opportunity to go through your Rolodex and identify clients and other business contacts with whom you should renew some friendship. Ask all of these clients what they are seeing in the marketplace, what they think is coming, and what they view as their biggest challenges. Information is power.

- Educate yourself about the specific industry issues your clients and targets are facing. Read everything you can get your hands on about real estate industry issues, particularly those materials that your clients are also reading in specific asset classes, such as the retail, commercial office, multifamily, industrial, and hospitality markets. Ask your clients what they are doing to stay informed, and emulate their approach.

- Publish articles and speak at conferences about the issues of import to your clients and targets. Focus on how your clients can manage these issues and mitigate the associated risks. Identify areas where you can become a thought leader and then take the steps that are necessary to project yourself in that way to the marketplace.

- Refresh your skills at handling workout transactions. If this is your first real estate cycle, develop some workout expertise. Spend time with the bankruptcy lawyers at your firm, and evaluate the possible scenarios and outcomes that your clients or targets might imminently be facing. Give thought to how to restructure deals that are heading south.

- Develop a new niche area of expertise that may be relevant down the road, as we live through and then come out of the downturn. For example, give thought to how legal issues associated with the “green” movement may affect the real estate industry. The world is changing at an incredibly rapid pace. New opportunities will inevitably arise, given the speed at which the global economy is shifting. Give thought

to the new areas of opportunity that will likely emerge and how you might play a role in them from a legal perspective. It is critical for us to give thought to the horizon and to new areas of opportunity that may be coming down the pike, whether for your own practice or for others in your firm.

- Invest more time in your organization. Law firms are complicated businesses that take considerable brainpower and effort to successfully operate and nourish. There are numerous needs and possibilities for investing sweat equity into your organization to make it a better place. Identify something that has been troubling you or is in need of improvement at your firm, and take the initiative to get involved in contributing to or even developing a solution for that challenge. It takes an entire village to build and sustain a successful law firm, and every contribution to that effort is meaningful.

- Do yoga and keep breathing. This sounds like a joke, but I speak the truth when I share with you that I have brought a yoga class into my firm’s Washington office, and it has made a dramatic difference in reducing the stress level of those lawyers who have taken the risk to participate. Whether it is yoga, exercise, or another wellness tactic that might resonate with you, engage in some activity that provides you with an outlet for the anxiety we all inevitably encounter in the face of a market shift that affects our practices, in particular one on a scale similar to the shift caused by the subprime meltdown.

The sluggish period in the real estate cycle, where we currently find ourselves, is particularly dreadful for someone like me, who needs to be moving at 900 miles an hour. While it is hard for some to believe, I actually become more revitalized (not less) in direct proportion to the craziness of the activity level of my practice.

As I endeavor to keep myself engaged in and focused on positive activities, such as those I have suggested, I will also struggle to call upon what little maturity I have to frequently remind myself that a cycle is round like a circle and the good times will invariably roll back around sometime soon.

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