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Real Estate Attorneys Focus on the Future

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The real estate industry is undergoing considerable challenges. To reduce the many risks and solve problems, developers and investors look to legal counsel to act as practical, business-oriented advisors who help guide their objectives, foster transactions, and provide mission-critical advice. Experienced real estate attorney Eric Seltzer, a director at Goulston & Storrs, reflects on the industry's current situation and where it may be going. Eric's insights stem from his diverse work advising real estate developers, investors and owners in complex commercial real estate transactions across the country involving various asset types, including life sciences, mixed-use and industrial properties, multifamily developments and office buildings.

CRAIN'S: What are some of the key priorities that real estate attorneys have been focused on this year?

ERIC SELTZER: The real estate industry faces significant economic headwinds—rising interest rates, high inflation, and greater labor and supply costs—which are leading to more conservative underwriting, constrained and costlier capital supply, declining real estate values, softening demand and, ultimately, a modest transactional slowdown. In such an environment, real estate attorneys must support their clients' business objectives and foster transactions by acting as strategic and pragmatic counselors who think nimbly and craft tailored solutions to address nuanced considerations. Through creative approaches to structure deals and assemble the capital stack, often alongside my tax colleagues, significant cost savings can occur, while competitive advantages, which help ink deals, may be created too.

CRAIN'S: Will those priorities evolve next year at all? If so, how exactly will they evolve?

ERIC SELTZER: The focus on helping clients mitigate risks and optimize value takes on heightened priority during challenging economic conditions. We routinely advise clients on how to combine capital and expertise through sophisticated joint venture arrangements. Since debt funding is more difficult and expensive to obtain, borrowers must navigate an increasingly lender-favorable power dynamic and strive to fill capital structure holes through preferred equity and mezzanine financing. The repurposing of existing assets—like converting an office building to residential or lab/life sciences—has become a popular way to pivot to alternative usages that potentially generate better returns. Additionally, ground leases are creative, up-front cost reduction tools that are being deployed with increasing frequency.

CRAIN'S: What type of impact will joint ventures and partnerships have in the coming months? Do you have any advice regarding these joint ventures and partnerships?

ERIC SELTZER: In a challenging marketplace, joint ventures will be increasingly vital tools for real estate investment, especially for development projects with higher capital requirements. It is critically important for you to know and trust your partner, while also aligning with them on key business interests, in order to minimize conflicts and forge healthy, strategic alliances. Expect potential partners to be more selective, while partners who have successfully worked together in the past will join forces on additional transactions and potentially evolve their relationship into more complex, programmatic joint venture arrangements. Parties should carefully evaluate and address potential downside risks at the beginning of transactions, including the negotiation of appropriate exit mechanics that allow partners to end relationships.

CRAIN'S: Are there any particular challenges that real estate attorneys have overcome recently? How exactly did they overcome them—and how will they utilize those experiences in the future?

ERIC SELTZER: The pandemic, along with the current economic downturn, has provided numerous economic challenges, as well as other issues, to the commercial real estate industry. Unfortunately, our clients have not been immune from the exogenous factors that are creating market turmoil. Therefore, their real estate investments are afflicted by the same issues that are plaguing the broader industry, often through no fault of their own. In such situations, we evaluate circumstances holistically, guide confident business decision-making through clear-eyed, practical assessments, based on deep market knowledge, and provide clients with perspectives for short-term, intermediate and long-term strategies. Direct and honest counsel also goes a long way as another method to support clients through difficult times.

CRAIN'S: And, finally, what are your projections for the field of real estate in 2023—and beyond?

ERIC SELTZER: The choppy real estate market will likely continue through 2023. There will be a typical flight to quality, that top-tier assets in primary markets will see the action. Life sciences, industrial, multifamily and student housing assets will remain the top performing market sectors. Urban zoning reform and ESG/sustainability will remain hot topics as the industry addresses pent-up multifamily demand and greens its development footprint. Distressed investors will capitalize on market dislocations to acquire underperforming and troubled assets. In time, market participants will adjust to new pricing and financing realities, while deal volume will increase. Investment discipline, along with the ability to execute transactions quickly, while also carefully evaluating the risks that are inherent in the new market, will be significantly important, in order to ensure deals are finalized.

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