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**PROGRAM MATERIALS**

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## **Pacing Yourself in Today's Real Estate Market**

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# **Pace Yourself!**

## **Surviving in “Hurry Up and Close” and “Hurry Up and Wait” Deal Environments**

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# Hurry Up and Close

2021: Real estate acquisitions and sales were on the fast-track, perhaps unexpectedly given the pandemic environment. After a bit of uncertainty at the very beginning of the pandemic in 2020, acquisitions and dispositions deal volume not only resumed, but increased substantially.

The speed at which clients want to sign and close deals increased, with the time to draft, negotiate and finalize contracts becoming shorter as 2021 progressed.

## *What were the drivers for the urgency in closing?*

1. Favorable Interest Rates.
2. Demand for certain commercial product types.
  - **E-Commerce Boom:** Need for warehouse space, logistics space and fulfillment warehouses.
  - **Multifamily Rents:** Record high rents drive demand for apartment building investment.
3. Taking advantage of market deals.

*Peter Grant, WSJ January 25, 2022*

**“Overall, commercial-property sales totaled a record **\$809 billion in 2021**, according to data firm Real Capital Analytics. **That was nearly double 2020’s total, and it exceeded the previous record of about \$600 billion in 2019.**”**

# Other Considerations Driving Pace:

- **Supply chain issues potentially slowing new development.**
- **Limited inventory of certain commercial property types (primarily warehouse/industrial and multifamily).**
- **Low interest rates funneled investments into real estate investments in the hopes of higher returns.**
- **Immediacy of need due to rapid shift to quarantine and remote working environments.**
- **Uncertainty of timing in interest rate increases.**

# Hurry Up and Wait

Unlike acquisitions and dispositions, 2021 was a tentative environment for commercial leasing. With some exceptions for certain commercial product-type in high demand (such as warehouse, industrial and medical uses), landlords and tenants proceeded hesitantly with certain types of tenancies, in particular, office and retail deals moved slower than usual, often “paused” while awaiting signs of tangible resolution of market factors.

Concerns related to construction and completion of leasehold improvements further expanded the timeline for lease negotiations. Favorable interest rates spurred construction work across all sectors of real estate and landlords and tenants found contractors reluctant to commit to pricing or scheduling a project until firm dates for work commencement and scope of work were established. Compounding the construction-related issues were supply-chain uncertainties. Long lead times for certain building materials, and in some cases, longer than usual periods in obtaining municipal approval for building permits created delivery date commitment concerns.

# Uncertainties Impacting Pace of Leasing:

- **Lockdowns**
- **Capacity Limitations**
- **Outdoor Seating/Operations**
- **Pending Vacancies (due to business closures)**
- **Remote Work Environment (temporary, permanent or a hybrid)**
- **Commitment to Build-Out Costs (for both landlords and tenants)**
- **Delivery of Space Concerns (contractor availability and supply chain issues)**
- **Post-Pandemic Normalcy (and what that will mean)**
- **Chilling Effect on Certain Types of Retail Tenancies by the Pandemic (previously active sectors in the retail market for Restaurant Uses, Fitness Users, Entertainment and Experiential Tenants were faced with uncertainty from both an opening and operating perspective)**

# 2022: What is Happening Now?



# Practice Points

What is the role of a real estate attorney in managing the timing concerns impacting current commercial real estate practice?

## **Flexibility**

Practitioners should not rely on what has been the usual pace for real estate deals. Market conditions have required the real estate practitioner be nimble and prepared to adapt his or her pace to accommodate external factors such as favorable interest rates, construction-related concerns and the ongoing and residual impact of the pandemic on services which rely on availability of personnel or labor.

## **Creativity**

With uncertainty in various sectors of the commercial real estate market and urgency to close deals on attractive product-type, drafting and negotiation strategies may require a certain level of creativity rather than strict adherence to what may have been practice in prior years. Appreciating that current market conditions may influence the bargaining power of one party over another in a purchase/sale transaction or lease, real estate attorneys may need to blend what had been traditional negotiation or drafting strategies with novel treatment of certain deal terms. Clients may be willing (or may need) to entertain alternative provisions to make a deal work.

## **Organization**

With real estate deals being rushed to closing, or as may be the case with leases, sudden urgency to paper the lease after business issues have been resolved, enlisting tools such as document checklists, critical date timelines, calendar reminders, and other productivity tools, become essential. In a hectic deal environment, utilizing such tools provide easily accessible reminders and summaries of where a transaction stands and helps avoid missteps.

## **Proper Deal Staffing**

As real estate practitioners, the importance of having the right person working on a deal is not lost on anyone. However, ensuring the right person is available when needed can be elusive. Having a plan in place which allocates attorney, paralegal and legal assistant time, and respective responsibilities, can help ensure that the right person is available when needed.

## **Manage Client Expectations**

This sounds much easier than it is since real estate attorneys wear many hats for clients over the span of a transaction, from drafting and negotiating documents, to managing receipt of property information and responding to third-party inquiries. It is nevertheless important there be a mindfulness not to overpromise. Consider that when a closing is occurring or there is a tight deadline on turning a document, it is likely you cannot “take a quick look” at a document. Rather, you are better serving the client by being realistic on when you can turn your attention to their request.

## **Responsiveness**

No matter the size of the deal, clients get concerned when they do not hear from counsel for a period of time. It is good practice to reserve time to update clients on status, even if there is nothing to report.

## **Communication**

Especially when a deal is moving at a fast pace, there is great value in communicating with all parties attached to the deal. The moving parts in many transactions involve third-parties that are not always copied on emails and documents. Consider that lenders, brokers, title agents, surveyors, consultants, etc., may not “be in the loop” on certain details and ensuring such parties are informed of status can avoid troublesome delays when the transaction is ready to close. Additionally, communicating and inquiring with opposing counsel on status of document preparation and review is important to keep the process moving.

## **Civility**

In transactions where there is an urgency to close or there are timing pressures of any nature, or perhaps a deal appears to be taking too long, the client, the business people and the lawyers will naturally be under stress. Although a level of frustration is understandable, compounding stress by being unpleasant or even hostile, does not facilitate closing. Remaining professional and civil at all times is a good practice strategy for both normal and high stress situations.

## **Take Care of Yourself**

The stress and demands of practicing real estate law can be unrelenting. Mentally stepping away from work is important. A recent Bloomberg survey showed that attorney burn-out is on the rise and attorneys are experiencing a decline in general well-being. The brain needs to rest and spending time with family and friends, and carving time out of your day to relax has incalculable benefits.



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