

Preface

There are probably more real estate investments occurring every day than anyone imagines. Virtually every adult has made an investment in real estate, although many do not recognize it as such. Every time someone purchases or leases a residence or an office or a store, he or she has made an investment in real estate. In many instances, these investors are only acquiring a possessory interest which is subject to the rights of the fee or leasehold owner of the property, but for however long it is that the investor retains the interest, he or she has invested. What is most surprising is that for one of the most common forms of investment, many investors and their professionals do not fully understand its parameters and the options available to them.

These three volumes explore those options in 16 self-contained chapters, which cover every aspect of a real estate transaction from the preliminary considerations involved in acquiring an interest in real estate to the various forms of investment, the tax and entity considerations, preparing for and closing the transaction, and such post-closing considerations as financing and leasing the property and constructing improvements. These volumes explain the differing aspects of real estate and provides insight into the things that each party to a transaction should be concerned about, regardless of whether the transaction is the acquisition, disposition, leasing or financing of the real property. The book is meant as an overview and, because of the breadth of its subject matter and the limitation of its size, cannot be all-encompassing. Nonetheless, it does provide an excellent framework from which to approach an investment in real estate.

Real estate is an interesting and exciting investment because no two properties and no two transactions are identical, even if they are between the same parties and relate to adjoining properties. Accordingly, each investment in real estate requires caution for both the investor and his or her advisors and counselors. However, the caution cannot be so intrusive that it prevents the transaction from proceeding. In most cases, the problems that arise can be averted with proper planning or can be resolved with creativity and an open mind.

When I was a young associate, a partner gave me a contract to review and, after I laboriously reviewed it, asked me for my comments. I gave him a list of everything that I thought was an issue and he told me that I missed the most important point. I was crestfallen until he explained that the point was that the contract was unsigned. His point, which I have never lost sight of, is if the contract does not get signed, then we have not succeeded in satisfying the client's need.

One of my favorite real estate stories occurred when I was negotiating a deal in Nashville and saw the deed of trust from the lender that was financing the acquisition contained a default clause that an event of default was if the lender ever felt insecure. When I questioned the provision, the banker said it was their Elvis Presley clause and when I asked what that meant, I was told that Colonel Parker, Elvis' manager, when asked why Elvis' contract had 16 provisions, answered that they had been screwed sixteen times.

The purpose of this book is to provide sufficient cautionary information to prepare the reader for the inevitable problems and to provide a sufficient understanding of the subject matter to allow the investor to deal with the difficulties and proceed with the transaction.

The one thing to keep in mind as you deal with the crises that seem to always be around us and in which we have to work is that every crisis presents opportunities and we just need the vision to see the opportunity and to be able to distinguish between the good ones and the bad ones. The funny thing is that not infrequently have I found particularly in the last few years, is that terrible events decades ago in retrospect would up putting me on a different path without which I would not be able to do the things I am doing today. Historians do not like to write about history for 50 years so they can see events in perspective; perhaps we should do the same.

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