

AROUND THE CLOSING TABLE

By Steve Bergsman



Plan Ahead, Work Ahead, and Close.



Steve Bergsman is a freelance writer in Arizona and author of several books. His latest book, "Growing Up Levittown: In A Time of Conformity, Controversy and Cultural Crisis," is available on all e-book outlets.

What's the secret to closing a real estate transaction? The answer is very simple: there are no secrets. You, the brokers, the principals, attorneys, and everyone else involved in the transaction should know every detail of the deal, whether it is a purchase or a lease, before coming to the closing table. In a sense, the signatures and activities at the closing table should only be formalities.

"No secrets should appear at the table," asserts **Jeff Bender, SIOR, CCIM**, executive managing director and principal of Cassidy Turley in Cincinnati, OH. "The most important thing a broker can do is plan ahead. What that means is all things that will occur at the closing table should be considered well in advance."

Professional Report spoke with SIORs from Puerto Rico to Quebec, and whether deeds are written in Spanish or the lingua franca is French, there is little difference in processes.

"When you get to the closing table things must be already decided and all parties should be aligned to close the deal," asserts **Hector Aponte, SIOR, MBA**, NAI Puerto Rico's business director in San Juan.

Or as **Jean-Marc Dube, SIOR**, a vice president with Colliers International in Saint-Laurent, Quebec, observes, "getting to closing

is more about preparing the two parties about the ultimate goal to be accomplished at closing. Be prepared with documentation and make sure everyone is on the same page."

This doesn't mean that last minute entanglements, questions, or the sudden appearance of undisclosed information doesn't happen, but good preparation tries to diminish the likelihood of such things occurring.

"Sometimes there are last minute changes, but the way to flush those out is through due diligence," says **Jeremy Kronman, SIOR, CCIM**, an executive vice president with CBRE in Pittsburgh, PA. "Be professional throughout so that when you get to the closing table the various options and other intangibles should have been agreed upon already."

Aponte suggests that it's a good idea to have a signed letter of intent or a sale contract already in place. "Having a previously agreed document in hand will definitely help you; there should be no surprises or claims at the last minute if you have everything outlined and everyone has agreed." Sometimes that takes a lot more work upfront.

Andrew Jaffe, SIOR, a senior vice president with Commercial Properties Inc. in Tempe, AZ, can testify to that. In 2012, a facilitator

Contributing SIORs



Hector Aponte, SIOR, MBA



Jeff Bender, SIOR, CCIM



Jean-Marc Dube, SIOR



Andrew Jaffe, SIOR



**Jeremy Kronman,
SIOR, CCIM**

for a company that did “wraps” for trucks and cars came into Arizona looking for a facility to open up on the eastern side of the Phoenix metro area.

“He was a wonderful guy, but way overloaded because he was doing every real estate transaction in the country for his company,” says Jaffe. “He was operating four to six locations simultaneously and would be flying from California to New York just for an overnight.”

What the facilitator required of Jaffe was more due diligence and to get confirmation on certain line items, which the facilitator could then turn over to his support people.

The facilitator didn’t have an individual in Arizona to do the due diligence and get questions answered, so I was required to,” says Jaffe. “As we got to closing there were still unanswered questions that we immediately had to resolve.”

Jaffe adds, “it was a challenge because the facilitator was doing so many locations he would sometimes get mixed up. My job was to stay one step ahead and anticipate some of the questions in order to keep the transaction moving forward.”

Even at the closing stage, there were things that cropped up and needed attention, Jaffe recalls. “So, when you get to the table, you have to have a full understanding of what your client needs.”

Some brokers like Cassidy Turley’s Bender use a check sheet, which is presented to the client. The check sheet should include all the physical issues that need to be investigated ahead of time, i.e., everything related to the building, including: structure, stores, equipment, mechanical systems, pavement, sprinklers, lighting, etc.

“You should avoid surprises; surprises occur because you have not gone through your checklist and done things ahead of time,” says Bender.

Sometimes, however, even a checklist is not infallible, Bender admits, as he tells this story of a deal that stumbled into problems after everything was signed, sealed, and delivered.

“I sold a one-acre industrial site for a small fee, and we did everything right in terms of what I like to do when someone signs a purchase contract, including letting the buyer know when the due diligence period expires,” Bender recalls. “But, the due diligence period went on and on. I chased down the buyer multiple times, asking, ‘where are you on the inspection process? Do you need help getting inspectors?’ The buyer kept saying this or that person at the company was handling it. Eventually, we had to close and I asked, ‘Have you done everything you needed to do?’ and they said yes. The closing occurred.”

Sure enough, when the buyer brought in his contractors to start building, he realized there were no utilities to the site.

“He was an unsophisticated buyer,” Bender concludes. “Turns out he never had any inspections done. About the only thing I could have done differently is



“You should avoid surprises; surprises occur because you have not gone through your checklist and done things ahead of time.”

to have forced him to show me all the research he had done.”

The end result was that the buyer needed to get an easement to cross an adjacent property so utilities could reach the site.

More often than not, problems occur because the other brokers have not done their job, not because of venality, but because they were not experienced or trained well enough to put their clients in the proper perspective.

“I was representing an industrial building and the only outstanding issue was an environmental report,” Dube recalls. “The other agent and I had conversations as to what would happen at the closing table. Everything else was resolved except this one outstanding issue. However, the other agent didn’t prepare his client, because at the closing the client brought up other issues, including price. That threw my client out of the loop and eventually the deal cratered.” That meeting would have never taken place if we knew the other side wanted to talk about other issues, says Dube. “The other agent had not communicated properly to his client what the goal was to be at the closing table. Once you start diverting from that, you are opening up to a whole lot of trouble.”

Sometimes, things do crop up at the last minute.

“If you do one last walk-through and your client happens to notice a fork lift sitting idly in the plant and asks if it can be thrown into the transaction, then I have no problem asking for that,” says Dube. “But if you are sitting around the closing table and on that day the buyer or lessor exclaims, ‘I’m paying too much and I need a price reduction.’ To me, that is working in bad faith.”

Professionalism on both sides of the table is important, which is why Kronman makes this incisive comment: “I love having an SIOR sitting across from me on the other side of the table.”

He backs this up with two tales, one positive, and one negative. The positive involves an unusual deal that came to a satisfying conclusion for all parties because the other agent was an SIOR and Kronman and the other agent trusted each other to make a nebulous situation very positive. The negative story involves a broker on the other side of the closing table that didn’t do his job well.

“We had a client that purchased an office building in Pittsburgh which he was going to renovate,” Kronman explains. “Coincidental to the deal, Williams, the natural gas company, was looking for 100,000 square feet in a hurry. We put the two parties together. Since the building was just acquired there were a lot of unknowns. We had to convey to the


second party that we would reach a general consensus on what this deal should be without knowing all the facts. We knew that in order to meet the time frame to get the deal done, there would be items popping up that we had not even considered yet and that any surprises would be sorted out, that the other agent and I would solve things together. Everyone looked at each other, shook hands, and signed the deal.”

That deal was done in less than 60 days, Kronman says. “Again, it was because there was a pair of professional brokers on both sides of the deal. It wasn’t anyone’s first rodeo.”

That satisfactory conclusion was a lot different than a lease transaction that should have been open-and-shut simple.

“We had one of our clients agree on rent and terms,” Kronman recalls. “We were scheduled to sign the lease the next morning and were finalizing last minute comments. The owner of the building was sitting in on the call when their lawyer says, ‘We cannot give you this level of interest because of our debt.’”

The deal went sideways immediately, but it all could have been avoided if the other broker knew the financial status of the tenant he was dealing with.

As Aponte observes, “the broker is responsible for outlining all the terms and giving the lawyer all the information. If information is missing it slows the process. That’s a difficult situation because time can kill a deal.” 

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