

18<sup>th</sup> Annual Real Property and Estate Planning Symposia  
Commercial Real Estate Transactions Group: Portfolio Transfers – Defusing Hidden Time  
Bombs in Portfolio Deals

April 26, 2007

Presenters:

Michael H. Friedman, Esq.  
Paul F. Hartzell  
Maggie McIntyre  
Brad A. Molotsky, Esq.  
Eric L. Stern, Esq.

Employing a mock contract negotiation to explore certain of the topics we plan to cover, Commercial Real Estate Transactions Group: Portfolio Transfers - Defusing Hidden Time Bombs in Portfolio Deals will introduce the following topics which arise in many of today's portfolio transactions:

Due Diligence in Portfolio Transfers - We will discuss approaches to ordering, organizing, managing, reviewing and resolving diligence issues arising in title, survey, environmental and zoning diligence; typical benchmarks of analysis, lender sensitivity, resolving problems with insurance, indemnities, cash settlements and other devices. We will comment on the emergence of E-room and data base technologies supplanting conventional document "war" rooms.

Entity Deals v. Asset Deals - Are we buying the buildings, or are we buying the partnership or llc that owns them? The agreements will look different, but the substance of either type will touch many of the same issues. We will explore possible advantages of and additional liabilities presented in entity transactions, the tax consequences of one structure versus the other, the utility of 1031 tax deferred exchange structures, and possible transfer tax consequences of varying deal structures.

Insurance Considerations - We will explore relevant considerations in placing insurance coverage for portfolio properties, including occurrence made versus claims made policies, and we will present an update on terrorism insurance and other catastrophic coverage issues.

Timing Considerations - We will explore a variety of issues which will affect the timing of a portfolio transaction, including SEC filings, if required, "bulk sale" and other tax clearance considerations, governmental certifications, permits and clearances, lender diligence and consent and related issues.

Representations and Warranties - We will offer observations about what portfolio buyers ask for, what sellers will give, and where the parties will settle; the difference between public and private deals, pre - and post - closing recourse and remedies, indemnities, baskets and caps, anti-sandbagging protections, and related issues.

We have provided seminar participants with the following source materials for reference at or subsequent to the program:

- CLE Objections Report
- CLE Flood Zone Report
- CLE Ground and Parking Lot Lease Report
- CLE REAs, Declarations and CCRs Report
- CLE Survey Checklist
- CLE Survey Comments Report
- CLE Title Review Checklist
- CLE Use Restriction Report
- CLE Sample Portfolio Agreement of Sale
- CLE Sample Portfolio Agreement of Sale with Leaseback Provisions

**Each of these materials are presented for reference and discussion purposes only. The Portfolio Agreements of Sale may be used in the course of the panel presentation as reference points in a discussion or mock negotiation of particular issues which frequently arise in portfolio transactions. These forms are intended for discussion purposes only and may not be suitable for use for any particular transaction. These forms contain specially negotiated provisions and are not representative of a “standard” agreement for either a purchaser or a seller of portfolio properties.**