

Inside This Issue

Four Common Legal Issues That Arise In Commercial Real Estate Transactions

Success Story

The Role Of An Attorney In A Corporate Merger

Spooky Fall Cocktail

Fall Bucket List

Northern California Super Lawyers Magazine

Structure Law Group Expands Practice Areas By Adding Attorney Ryan Penhallegon

Age Discrimination In Employment Act

Did You Know?

4 Common Legal Issues That Arise In Commercial Real Estate Transactions



Stephen Beals, Esq.

Commercial real estate transactions can be lucrative investments, though there may also be high risks associated due to the amount of money generally at stake in these transactions. The following are four legal issues that sometimes arise during the sale or purchase of a commercial property.

1. Accurate Property Valuation

When you are shopping for a product, it is often relatively easy to compare the price and quality to another similar product. However, pieces of real estate are unique, with no exact comparisons based on size, age, use, and/or state of the building or land, which makes accurate valuation significantly more challenging. In addition, any current income stream or potential for future income associated with commercial property is also a factor in determining a fair and reasonable price. Utilizing an experienced commercial appraiser can assist both buyers and sellers with determination of value.

2. Due Diligence

Just like any type of business transaction, commercial real estate transactions require considerable investigation. This allows a buyer to know exactly what is involved in the transaction and sheds light on any potential problems with the buyer's intended use. For example, you want to make sure that the zoning for the property allows your intended use, the property's title record identifies liens and assessments, and that you are familiar with the property boundaries which will assist in determining possible encroachments. Hiring an experienced attorney will help you avoid costly errors.

3. Assumption of Liability

Prior to purchasing a piece of commercial real estate, you will want to make sure you are not assuming liability for any violations of law that may exist on the building or land. For example, if you buy the property and then later find out about environmental hazards, you will be liable for eliminating the hazard regardless of whether you or the previous owner actually caused it. The liability for such a hazard may be expensive and the potential for it should be examined prior to closing a sale.

4. Evaluation of Financial Risk

Real estate can be a great investment for your business, though such purchases can also tie up a significant amount of liquid assets for a lengthy period of time. If you have difficulty filling vacancies or collecting rent from tenants, you may not be able to make your required payments to your financing company. Additionally, if you decide to sell the property due to financial struggles, it may take some time. All long-term risks should be evaluated before you close any type of commercial real estate transaction.



Success Story

Structure Law Group's client was faced with a Labor Commissioner claim from an individual who had performed accounting services. At the hearing, SLG's attorneys effectively cross-examined the individual and exposed several false statements she was making. When she denied receipt of a particular payment, SLG's attorney followed with a copy of the check she denied receiving complete with her signature on the back. Having completely undermined her credibility, the Labor Commissioner was unable to rely on her statements and issued a ruling in favor of Structure Law Group's client, who was thrilled with the result.

The Role Of An Attorney In A Corporate Merger

A corporate merger is a transaction in which two or more companies combine to form one entity. Due to the complexity of merger transactions, it is highly recommended that anyone contemplating entering into such a transaction retain legal counsel. Here are three examples of how an attorney can assist in a corporate merger.

An attorney will structure the way a transaction occurs

Mergers can occur in a variety of ways such as a reverse merger, horizontal merger or vertical merger with consideration being made with stock, cash, a combination of both and other variations. Each of these merger structures have various legal and tax implications that are often significant. For this reason, the advice of a skilled attorney is critical to structuring a merger transaction in the most beneficial way possible.



A lawyer will conduct a thorough due diligence review

An essential part of any corporate merger is conducting a thorough due diligence review. All parties to a merger should conduct an in-depth investigation of the other parties involved, including reviewing corporate documents such as the articles of incorporation, bylaws, tax returns and financial reports. Due diligence review allows all parties to have a comprehensive and informed understanding of the transaction into which they are considering entering and can also limit a corporate officer's liability in the event that a transaction proves unprofitable.

An experienced mergers and acquisitions attorney will ensure relevant regulations are observed

Corporate mergers are often subject to significant regulations under both state and federal law. For example, corporate mergers of a certain size will be reviewed for compliance with anti-trust regulations, and companies that are subject to Securities and Exchange Commission disclosure rules will need to report the proposed merger to that agency. An attorney can be an invaluable asset in identifying the relevant rules and regulations that must be observed and ensuring compliance with them.

Spooky Fall Cocktail



Purple People-Eater Cocktail

A tasty (and creepy!) cocktail that gets its' purple hue from blue curacao, grenadine, and cranberry juice.

Ingredients:

- 1 part grenadine

Baking & Spices

- 1 tsp sugar such as sanding sugar, purple
- 1 part sweet and sour mix

Drinks

- 1 part cranberry juice

Beer, Wine & Liquor

- 1 part curacao, Blue
- 1 1/2 part Vodka

Fall Bucket List



- Go to a pumpkin patch
- Bake cookies
- Watch *Hocus Pocus*
- Go to a football game
- Jump in a pile of leaves
- Have a bonfire
- Go to a corn maze
- Carve a pumpkin
- Roast marshmallows
- Dress up for Halloween
- Go to a haunted house
- Decorate for fall
- Drink hot apple cider
- Go to a street fair
- Go stargazing
- Bake pumpkin seeds

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Mark Figueiredo has been selected as a Super Lawyer for his outstanding work in the area of Mergers & Acquisitions. This marks the fifth year that Mark has received this honorary distinction. Only the top 5% of lawyers in Northern California are selected as Super Lawyers each year.

Mr. Figueiredo typically represents business owners in connection with their legal needs. This includes business formation, corporate governance, corporate financing, buy-sell agreements, stock option agreements, commercial contracts, intellectual property agreements, mergers and acquisitions and general business counseling. Mr. Figueiredo also works with the firm's litigation team in connection with shareholder and partnership disputes, licensing disputes, employment claims, real estate actions, contractual disputes and collection actions.

Super Lawyers

Structure Law Group Expands Practice Areas by Adding Attorney Ryan Penhallegon



Ryan Penhallegon, Esq.

Structure Law Group is pleased to announce that former Binder & Malter LLP attorney Ryan Penhallegon has joined our team. His practice focuses on commercial litigation, business and real estate transactions, with a particular emphasis on debtor/creditor rights, bankruptcy and insolvency litigation.

Mr. Penhallegon started his career specializing in real estate and construction law where he represented owners, developers, and contractors in a wide-range of real estate, construction, and business matters. Mr. Penhallegon is a member of both the California and Washington State bars.



Jaclyn Ford, Esq.

Jaclyn Ford has been designated as a Rising Star for her outstanding work in the area of Employment Law.

Ms. Ford's practice focuses on all aspects of business litigation and employment law. She advises businesses on compliance with state and federal labor and employment laws. She has additionally drafted and reviewed various employment documents such as employee contracts and workplace policies and procedures.



Employment Corner

Age Discrimination in Employment Act

The ADEA specifies any time an employer makes a decision about personnel, whether hiring, determining pay, firing or considering position changes, it cannot factor age into the final decision. Decision makers are not allowed to establish preferred ages in any step of the hiring process. It's important to note asking for a candidate's birth date on an application however, is not illegal.

ADEA Protects Disadvantaged Demographics:

Congress found older citizens are at a disadvantage in the job market after losing a long-time job. The Act is meant to give workers a boost after age 40, allowing them more work opportunities. The ADEA additionally prevents terminations or layoffs based on age as the displacement of older workers.

ADEA Limits: The ADEA applies to employment agencies, every business with more than 20 workers, federal positions, and many labor organizations. It doesn't protect elected officials, those in the military, and workers who are self-employed, such as independent contractors.

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**DID YOU
KNOW?**

- It is impossible to tickle yourself.
- In 1949, a man and a bear had an official boxing match. The bear won.
- Until the 1960's, men with long hair weren't allowed to enter Disneyland.
- Each year, 30,000 people are seriously injured by exercise equipment.
- A group of unicorns are called a blessing.



Mark Figueiredo



Rebecca McCracken



Rakesh Ramde



Ryan Penhallegon



Stephen Beals



Katya Mezek



Stephen Moses



Jaclyn Ford



Ethan Solove



Tanya Falleiro