

REAL ESTATE UPDATE

Spring 2010

The gloom and doom of the economic climate of the past two years appears to be finally subsiding and the curtain for the second act of opportunity in commercial real estate acquisition and leasing is rising. Opportunities will present themselves in the coming year that prudent and sophisticated real estate professionals will be able to pursue. Much like prior recessions, the biggest gains will come to those who are willing to make the investment to determine the true value of the underlying assets and have carefully analyzed and quantified the inherent risks, many of which will not be apparent.

Yet because many financial institutions and development companies have been losing money for the past several years, they are shorthanded and do not have the personnel to do this analysis and package assets for sale. As a result, most assets, be they loans or properties, will be sold on an "as is, where is" basis with no or limited representations being made by the seller. This necessitates due diligence and careful examination of the assets and their values by potential buyers.

Unlike new developments just coming out of the ground, most of these assets, even if not fully completed and leased, have a history; a history which has to be understood and evaluated by the prospective purchaser.

Opportunities will abound not just for the investor seeking to acquire a stalled project, but also for the business enterprise seeking space to relocate. Often opportunities to sublease space from commercial tenants who overextended will present a true bargain opportunity, but — just like buying a failed real estate development — the prospective tenant must understand what has happened before and the risks this may create.

In the last 12 months, our real estate department participated in the following selected transactions, representing:

- A major international media company, in all of its domestic and international leasing, as well as in the sale of surplus real property throughout the United States (including the leasing of substantial blocks of office space in Beijing and Tokyo and the sale of industrial facilities in California, Colorado, Illinois, Massachusetts, New York, and Pennsylvania).
- Orrick, Herrington & Sutcliffe LLP in one of the largest midtown Manhattan office leases of 2009 (220,000 square feet).
- ING Clarion in various aspects of its potential disposition of midtown Manhattan property that it acquired through exercising remedies when its mezzanine loan went into default.
- A major museum in connection with the sale of its air rights and an easement for light and air.
- An independent Episcopal day school in obtaining a site for the establishment of its new high school in lower Manhattan.

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1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 www.pbwt.com

- An established New York developer in the development of a NYC hotel with a boutique European hotel chain which will also contain a restaurant, spa, and nightclub in midtown Manhattan.
- The Official Committee of Unsecured Creditors in the Tarragon Corporation bankruptcy case. Tarragon Corporation was a publicly held real estate company which developed and invested in multi-family properties in various states.
- The New York office of a European real estate entity in connection with several financings and workouts of existing loans.
- The New York office of a European bank in workouts of existing loans and the establishment of a letter of credit facility for Host Hotels.
- A large pension fund advisor in connection with its portfolio of office, residential and retail properties in the New York Metropolitan area, in particular in dealing with potential tenant defaults and/or bankruptcies.
- Distinguished Programs Inc. in its lease of a full floor at 1180 Avenue of the Americas from Murray Hill Properties.
- A Las Vegas based development group in negotiations related to a movie theatre location in Brooklyn.
- The partners in several real estate partnerships in a lawsuit against the general partner alleging mismanagement.
- A new investment fund formed to make loans to not-for-profit entities which will purchase buildings or commercial condominium units in environmentally friendly buildings.
- Fashion Center Business Improvement District in analyzing a proposal to establish a building dedicated solely to the "needle trades" to help preserve affordable rents for trades-people.
- Owners of several properties in buying back subordinated debt on property which they owned at significant discounts.
- The owners of the Sunset Hotel in Los Angeles in connection with various partnerships and financing matters.
- A Midwestern manufacturing company in the sublease of a significant portion of an office building in Manhattan that it net leases.
- The owner of a large residential project in Alabama in negotiations with its lender on a defaulted mortgage loan.
- A large not-for-profit in the sale of a condominium complex on City Island, New York.

- A not-for-profit foundation in a complex sale of an Upper East Side Manhattan site to a developer and related agreements in connection with the construction of the new Hunter College School of Social Work.

In addition, one of our partners has been appointed the Temporary Receiver in the foreclosure by Bank of America of a partially completed office building in Manhattan.

In Other News...

- Four of our real estate partners, Andrew L. Herz, Lawrence P. Lenzner, Robert M. Safron (Top 100 List), and Kenneth L. Sankin were included in *New York Super Lawyers 2009*, a peer and independent review publication that ranks the top 5% of lawyers in New York City.
- For a second year in a row, our Real Estate practice was recognized by *Chambers USA*. The guide notes, "Leasing is undoubtedly the forte of this team, and its considerable expertise in advising landlords and tenants on office leasing has attracted a fine collection of household names to the group."
- Two of our partners, Robert M. Safron and Andrew L. Herz, were recognized in *Best Lawyers in America 2010* referral guide as leading attorneys in the industry. Both Mr. Safron and Mr. Herz are members of the American College of Real Estate Lawyers.
- Andrew L. Herz has been designated as one of only 11 real estate lawyers in the United States to be included in *The Best of the Best in Real Estate* for 2009 published by Legal Media Group. ♦

This newsletter is for general informational purposes only and should not be construed as specific legal advice. If you have any questions about the Real Estate Update or wish any further information, please contact one of the following partners or counsel from the Patterson Belknap Webb & Tyler LLP Real Estate Practice Group:

Hugh J. Freund	212.336.2370	hjfrend@pbwt.com
Andrew L. Herz	212.336.2910	alherz@pbwt.com
Lawrence P. Lenzner	212.336.2023	lplenzner@pbwt.com
Hope K. Plasha	212.336.2011	hkplasha@pbwt.com
Robert M. Safron	212.336.2250	rmsafron@pbwt.com
Kenneth L. Sankin	212.336.2380	klsankin@pbwt.com
Russell G. Wohl	212.336.2789	rgwohl@pbwt.com

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