



Protect your clients in sell - leaseback deals

June 02, 2009 - Spotlights

Do you want to set yourself apart from the pack and offer your clients a real value-added service? Establish a relationship with a reputable title company. By taking charge of the title search process upstream, you unearth any title problems early, and can begin taking steps to clear hurdles that would delay your closing. A good title company can also assist your clients in locating the correct representation and financing to structure the best possible deal, can act as escrow agent for contract deposits, and can ensure a smooth settlement.

For example, the current commercial real estate market has fashioned a "perfect storm" for sell-leaseback transactions - the economic downturn has reduced revenues and increased business indebtedness; but the commercial lending market is especially tight. With few other options to raise needed capital, more businesses are getting involved in sell-leaseback transactions, wherein they sell their assets, then lease them back for a set number of years. In most of these arrangements, the seller can buy back the property at the end of the lease for a specified price. But is this arrangement a good solution for the seller and a wise investment for the buyer?

Structured correctly, these transactions can work well. The seller gets needed cash while maintaining use of the property, expecting to repurchase the asset at a later date; the buyer gains a valuable producing asset at below-market value, along with a multi-year premium rate lease. Additionally, the buyer benefits from the commercial asset depreciation during the term of the lease. But caveat emptor: if the seller's financial woes include any liens or debts to secured or unsecured creditors, and a subsequent bankruptcy court determines the sale was an attempt to park assets, the transaction could be reclassified as a mortgage rather than a sale, returning ownership to the original seller. Other prospective nightmares: restrictive covenants limiting use or resale of property, partial ownership interests in the business, and outright fraud.

Getting started as early as possible with the title search can help protect your clients avoid pitfalls and structure a winning transaction that can close smoothly, a win-win for all!

Nurit Sonnenschein, COO/CFO of Sneeringer Monahan Provost Redgrave Title Agency, Albany, NY.