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Real Estate Law Continues to Thrive but Changes Are Looming

Real estate lawyers haven't had a lot of free time on their hands in the last several years, particularly in the last year and a half.

The real estate market steamed through 2021 and the first half-year-plus of 2022, creating high demand for attorneys in this area to help buyers and sellers close deals. In many cases, real estate transactions represented one of the best revenue generators for full-service law firms—and at some partnerships they've pulled in the most revenue. This was particularly true in the first quarter of 2022.

"Overall, the real estate market remains strong," says Christian Meyer, chair of the real estate practice at Michigan-based Warner Norcross + Judd. "Our real estate practice is extremely busy. We're seeing significant continuing strength in the medical and industrial markets [among others]."

Over the last several years, Warner has grown its national practice firm-wide, including its real estate base, which helps its attorneys serve buyers from states across the country who are looking to acquire property in The Great Lakes State. "We are also seeing many out-of-state buyers and investors in the Michigan real estate market," Meyer adds.

In another Midwest state, the real estate market is flourishing across nearly every submarket as well, keeping RE lawyers busy. "Regardless of the sector, except maybe the office market, the real estate law practice in Wisconsin continues to be robust," says Anne Wal, a partner who practices real estate law at Milwaukee's von Briesen & Roper, "with the development of both public and private projects, the sale, purchase and lease of commercial properties, and the purchase and sale of residential properties."

Shifting Currents

Recent developments, however, most notably increases in interest rates by the Federal Reserve Board, signal a potential slowdown in the near future, according to some. But for now, property deals and related legal work are still boosting the bottom lines of many firms.

"Currently, we are seeing real estate law practices remaining active, notwithstanding the Fed's increases in rates," says Guy Maisnik partner and vice chair of the global hospitality group at Los Angeles–based Jeffer Mangels Butler & Mitchell. "In part this may be the result of a great deal of private capital that still targets certain real estate investments."

Going forward, Maisnik adds, changes are coming. "Certainly, at some point the rate increases will cause headwinds for real estate investors, which will impact real estate practices at law firms," he says. "We are seeing some clients either pulling back from investments or wanting to proceed but re-pricing because of anticipated rate increases and market adjustments."

Real estate–related work in the hotel industry is driving much of the work at Jeffer Mangels, according to Jim Butler, a founding partner of the firm and its chair of the global hospitality group. "With hotels being one of the best inflation hedges, we are still seeing a lot of foreign and domestic capital seeking hotel investments," he says. "A number of these investors are new to hospitality and need hotel specialists with solid due diligence capabilities, which we can provide. Having worked on nearly 5,000 hotels, we attract a great many hospitality investors."

Real estate attorneys at Dallas-based Winstead also remain active "despite the interest rate volatility," says Jessica Straley, a partner in the firm's real estate development and investments group. "While we have seen some adjustments to pricing and debt proceeds on certain transactions, our regional and national real estate practices continue to be very active. Development transactions have remained especially active from an investment, lending and sponsor standpoint – particularly for the developments that would be delivered into hopefully less volatile capital markets in the future."

Like Jeffer Mangels, Winstead lawyers service a lot of hotel clients, and that work has been fueling its RE practice. "Activity in hospitality and leisure, which had remained fairly steady for us prior to the pandemic, has returned to previous levels and also appears to be increasing in certain sectors," Straley says. "Our firm has continued to work on several hospitality and resort developments across the country, such as the PGA of America-Omni resort in Frisco, Texas."

A Candid Look Ahead

While many RE attorneys are adapting to the sort of transactional adjustments Straley mentions, the market is shifting in other, big picture ways as well. Nationally recognized for his client service and wide-angle-lens perspective of the market, John Stolz sees instability on the horizon. Chair of the real estate group at New Jersey–based Lowenstein Sandler, which has offices in California, Utah, New York, and the nation's capital, Stolz candidly and colorfully explains why real estate practitioners are practicing at a slower pace and with a degree of uncertainty:

"Following more than a decade of unprecedented deal velocity, real estate law practices are generally starting to feel the effects of diminished deal flow as we pass the midpoint of 2022. This is largely due to a collision of market forces, including the prolonged effects of rising interest rates, creeping inflation, and ongoing supply chain woes. This unstable environment has led to underwriting uncertainty, and proliferated the ongoing disconnect between buyers and sellers on pricing. As a result, given the rising cost of funds, clients are increasingly hesitant to deploy capital for fear of catching a falling knife. The industry is in a 'wait-and-see' mode."

But Stolz says players in property markets are finding that often collaboration and creativity open up otherwise closed opportunities. "With tightening credit markets, we have also seen an uptick in real estate joint venture and sale/leaseback activity—alternative ways of doing business when the cost of funds is too high," he says. "In the near term, we would expect to see more real estate joint venture activity to enable higher cost projects with upside to proceed."

Clearly, attorneys will need to closely monitor market fluctuations as well as trends in the way clients do business—often using creativity to rethink and transform existing space. For example, developers in Milwaukee and elsewhere are repurposing old spacious buildings such as malls built in the 1980s or manufacturing plants constructed in the 50s, 60s, and 70s, according to von Briesen's Wal.

Developers are "bringing them to life on the tax rolls and providing labor at decent wages," Wal says. "The impact of these trends for von Briesen lawyers is avoiding complacency and assessing risk—keeping ahead of trends, studying business and legal risk and its effect on developer clients, using a team of attorneys to assist with due diligence to cover all risk aspects, [such as] environmental and title [issues] for buildings constructed in the 1950s and 1960s."

Hiring Outlook

Obviously, everyone in the legal profession knows about the competition for talent so it begs the question: Will real estate groups amp up their hiring efforts amid market changes and a talent war or will they hold their ranks steady? It depends on who you ask.

The RE team at Jeffer Mangels will continue to seek out and hire qualified candidates, and has a history of doing so regardless of market fluctuations. "The state of the economy really doesn't change our need for quality hires," Butler says. "During the last recession we continued to hire while many other firms cut back. High-quality lawyers who have a strong commitment to the practice, our industry, and clients will find a home at our law firm."

At Warner, Meyer and his partners are taking and will continue to take a similar approach. "Despite the tight hiring market, we are attracting young and ambitious legal talent," he says. "Warner is hiring at all levels in our real estate practice group, in all regions in Michigan."

But other firms are already being more cautious as they see how things play out. "I've got a [law firm] client who told me privately that he and his real estate partners won't put a freeze on hiring but they're definitely slowing down the pace with which they bring in young attorneys and laterals – at least for the time being," an East Coast consultant says, on background.

At Lowenstein Sandler, Stolz says the firm will hire more selectively than they already do. "We expect hiring to follow a more conservative trend to maintain current utilization, while remaining strategic in terms of targeting hires that can enhance revenue," he says, adding that real estate law tends to stay active through economic ebbs and flows. "Real estate is a dynamic and exciting sector; in good times and in bad, there's always interesting work to be done." ■

—Steven T. Taylor