
Help! My Property is Being Held Hostage!

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Imagine a world where the language is different from anything you've experienced and words don't necessarily mean what they appear. The law of gravity is suspended or at least operates intermittently, and the rules are a mixture of 16th Century court tennis and Mayan lacrosse. Sound bizarre? Welcome to the world of distressed properties and bankruptcy. This article provides an overview of this strange land, but be warned: Don't go there without a guide!

In a normal real estate sale situation, the parties have the luxury of timing the market, preparing and packaging the property for sale, drafting a spiffy brochure, and letting prospective buyers take their time in submitting purchase proposals. But in a bankruptcy or distressed situation, the name of the game is maximizing the value of assets while working under tight time constraints. Although real estate disposition is traditionally a lengthy process, in a distressed situation it is imperative that the marketing and sales process be expedited, while assuring that the price achieved is still fair market value. The distressed situation forces the broker to implement a marketing plan, negotiate with a buyer and have a closing in a fraction of the time normally associated with a real estate transaction.

From the viewpoint of the turnaround professional, who may be advising management or may have taken

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over as interim CEO or—an increasingly familiar moniker — Chief Restructuring Officer, the company's real estate assets represent unwanted illiquidity and a potential source of cash. The short-term perspective is frequently the only one that matters, and so the company can't afford the time to maximize the value of real estate assets that a traditional sales approach might realize.

Therefore, the turnaround professional will reach out for a specialist in distressed real estate situations, who has the capability to condense the process and get the property marketed and sold quickly. Such consultants are not limited by geography or type of property; they go anywhere and deal with every property use. Whether the

task at hand is disposing of retail stores in California, a distribution center in Tennessee, or a shuttered factory in Chicago, the real estate consultant is counted upon to turn illiquid assets into cash! quickly and efficiently, achieving an optimal tradeoff between time and price.

The turnaround professional may or may not look outside the company's management organization or his own turnaround firm for the expertise to sell off some of these categories of assets. For example, inventory liquidators abound that can run going-out-of-business sales, or even purchase excess consumer product inventories for their own account. Real estate is a case involving special expertise. The potential purchasers are widespread and disparate: While it might be possible to identify easily all the potential buyers of excess widg-

ets, the possible buyers of unneeded real estate could be practically anyone, located anywhere.

Why hire a real estate consultant in a distressed property situation, and not just a local commercial realtor? In a non-distressed situation, the ample time available for marketing and sale will allow a local realtor to publicize a property in such a way that prospective purchasers from out of the area will find him. But in a distressed situation, there is a lack of time for traditional marketing. A buyer must be found now while not sacrificing on price. That may seem a contradiction in terms, but it is done every day, but the proceeds are critical to the distressed company and its stakeholders.

If the distressed business situation is already in a bankruptcy proceeding, all professionals—including real estate brokers and consultants—must be retained through a court approval process which can take several weeks. However, the experienced real estate consultant understands this process and typically will begin work immediately while the approval process proceeds, weighing the slim risk of his retention being rejected by the court against the benefit of getting an immediate start on the marketing process. By contrast, a traditional real estate broker, inexperienced in distressed properties, might feel compelled to wait for final approval, if he undertakes the engagement at all.

The expedited marketing and sale process will focus the attention of potential buyers that may have interest in the property and force them to “kick or play.” The real estate consultant’s publicity and marketing efforts will be geared towards establishing an expedited time-frame for decision-making and action. By contrast, traditional real estate marketing rarely indicates a time period for a property sale, and so wind up on the bot-

tom of the pile. Buyers say, “I’ll get to that next week when I have a little more time.” But a sale engineered by a real estate consultant specializing in distressed property includes a date certain that the property will be sold, especially in a bankruptcy situation. A buyer who wishes to explore the opportunity will know that they have to get started on due diligence immediately or it will be too late.

Another benefit of the real estate consultant’s sale process is that a competitive environment is created. While a prospective buyer might believe that since it is a distressed property he will have the opportunity to “steal” the property, interest is attracted from many bargain-hunting buyers, forcing them into a bidding process whereby fair market value is likelier to be achieved.

The time allowed for due diligence is more limited than would normally be the case. Sales agreements are on an “as-is, where-is” bases subject only to warranty of clean title. This process weeds out the “tire-kickers” so the real estate consultant can concentrate efforts on qualified buyers. Sale through the bankruptcy process requires court approval which conveys absolute title. Normally the court will invite “higher and better” offers, which might discourage anyone from signing a sales agreement. However, most agreements therefore include a reasonable break-up fee. The form of sales agreement signed by the “stalking horse” bidder becomes the standard for all other bidders. The marketing and sale of properties in a turnaround situation can be an opportunity, but requires the employment of a capable real estate consultant who specializes, in such activities.