

Streamlining the Closing Process: Rules for Managing Transactions

By Aaron Strauss

December 10, 2007



Every real estate transaction is different - some are highly complex and others fairly simple, but for every closing there are three indispensable rules that can and should be followed to ensure a streamlined and successful closing process.

1. Control your documents.

In modern, large-scale commercial real estate closings, it is quite unusual to have an actual in-person closing with all parties in attendance. More often than not, documents are sent via pdf, with original signature pages following by overnight delivery to an escrow agent (invariably a title company), who is charged with closing the subject transaction in compliance with escrow instruction letters sent by all parties.

To the extent possible, you must retain control over your documents to ensure

that the latest negotiated revisions are finalized appropriately and that no inadvertent or intentional modifications are made by any other party in the transaction. Accordingly, when circulating documents for execution, be sure to pdf, and not forward finalized documents in word format. Additionally, you must always insist that signature pages on all documents be broken prior to execution by any party.

Even on relatively simple documents, one never knows what may arise as an issue in the interim period between actual execution and closing. Many real estate attorneys early in their career have faced opposing counsel who insists that a modification simply cannot be made to a document since their client has already executed such document and is now absolutely unreachable.

2. Bullet-proof your checklist and understand the flow of information. No complex closing can occur seamlessly without a quality checklist that accomplishes three goals: First, details in organized sections the entire list of items required to close; second, designates who will be responsible for delivering or preparing each such item; and third, provides a reference to

the current status of each delivery item.

When you are under to pressure to close by parties who have not been delivering items in timely fashion, circulate the checklist and highlight those items that are the responsibility of such parties. In reaching your goal of a smooth closing, you must also understand who manages the flow of information to each party. If there is a paralegal involved in the transaction, be sure to copy them on all substantive e-mails and correspondence. If your client is a large organization, be sure you know early in the transaction which individual will be responsible for coordinating each and every applicable closing item.

Never assume that information will flow from your recipient to other individuals at the same firm or company. Be sure to copy the title company on any e-mails or correspondence pertaining to recorded documents or any other documents which may require title company approval.

3. Whatever can be done today, do today. In every real estate transaction, there are countless tasks that must be performed

to effectuate closing. As a general rule, to streamline a closing, proactivity must be the norm, not the exception.

If you represent the seller, circulate closing documents for review at least two weeks prior to closing. Be sure estoppels are out to tenants as early as possible and be sure that a specific individual is charged with follow-up responsibility. If you represent the lender, attend to finalization of title and survey issues as early as possible so that you are able to focus on last-minute negotiations on loan documents when they arise. If you represent the purchaser, file a bulk sale notice well in advance of closing.

Review your closing checklist frequently - there is always an item that can be resolved or an issue that can be flagged earlier, rather than later. If you become aware of an issue that has the potential to substantively effect the subject transaction, be sure to advise all appropriate parties that same day.

The views expressed here are those of the author and not of ALM or its publications.

Aaron Y. Strauss is an associate in the Real Estate Group of the law firm Riker Danzig Scherer Hyland & Perretti, Morristown, NJ. He can be reached at astrauss@riker.com.