

## RE Law Has Become Much More Than Deals And Dirt

By **Kaitlin Ugolik**

*Law360, New York (April 10, 2014, 4:07 PM ET)* -- A growing number of real estate attorneys have found they must expand their expertise in order to thrive in a sector increasingly intertwined with other areas of the law, such as environmental, insurance, tax and energy.

The realm of real estate law has changed drastically over the last 30 years or so, as the number of laws and regulations affecting the industry — both directly and indirectly — has skyrocketed in the wake of environmental and financial crises.

Gone are the days of being a "pure" real estate attorney; now, practitioners say they must build a broader base of knowledge encompassing various areas of the law while surrounding themselves with experts who can step in when tax, environmental, insurance, bankruptcy or other expertise is required.

"Pure knowledge of just real estate law is not good enough to be a good real estate lawyers anymore," said Robert Best, a partner with K&L Gates LLP. "You have to be prepared to become proficient in several other areas or have a lot of people working for you who are."

### **Clients Adapt, Attorneys Follow Suit**

To stand out, close deals and accommodate sellers, clients are either stretching to do deals that are outside their comfort zone or entering new areas of the market that they previously wouldn't have considered.

"Some of this is driven by the competitiveness of property acquisition right now and over the last several years," said Laura Hannusch, a partner with Pillsbury Winthrop Shaw Pittman LLP. "Everybody's looking for a way to differentiate themselves, looking for projects that have complications that they may be able to handle where somebody else can't."

A seller might be facing a large capital gains tax with the sale, for example, and a buyer client who can be creative and come up with a solution to help solve that problem will be much more likely to close the deal, Hannusch said.

Many clients are getting into the development business when they'd previously focused solely on acquisitions, and experts say they may not have the expertise required for the projects they're now chasing. This leads to the creation of joint ventures with partners who do have the know-how, pushing attorneys previously accustomed to a more straightforward type of deal to become more familiar with

creative corporate hierarchies.

Hannusch said she is now much more involved in the inner workings of her clients' ownership structures than ever before, and while she has benefited from being at a large firm with corporate and tax experts who can lend their expertise, it's driven her to expand her own knowledge base as well.

"Negotiating limited liability company agreements and partnership agreements is not what I would consider typical 'dirt lawyer' work, but it'S an integral part of what we do now," she said.

Experts say the demographics of those participating in deals is changing as well. Many of today's deals are conducted by investment funds, which have varying goals and often limitations and requirements holding them accountable to their investors.

For attorneys, this means acquiring a working understanding of tax law, securities law and risk management, in addition to the needs of a particular client.

"Today's real estate attorney needs to understand the entire transaction and not simply the real estate component that he or she is responsible for," said Marc Epstein of Akin Gump Strauss Hauer & Feld LLP.

### **A New Environment**

Experts say one of the biggest changes to impact the real estate industry over the last several decades has been the influx of new environmental regulations that govern how, when and where property can be developed.

Many of the environmental laws and regulations that impact real estate deals and litigation might not be obvious to many real estate attorneys, experts say. For example, a recent proposed expansion of the Clean Water Act could have major consequences for developers outside urban areas where wetlands are a concern.

A growing interest in hydraulic fracturing — extracting shale gas from the ground using a pressurized liquid — has also had real estate implications, with judges and regulators around the country mulling the question of who owns gas and minerals under the land.

Relatively recent laws about the inspection of property for old, buried gas tanks can also have an impact on property value and ability to sell, according to John Schepisi of Schepisi & McLaughlin PA, who said he recently had an issue selling a house for a client because of an oil tank that had been buried on the property 50 years before, unbeknownst to the owner.

"Ten years ago there were some [regulations], 20 years ago they were minimal and 30 years ago there were none," Schepisi said. "These things are progressing and changing every day, and that's why attorneys have to stay on top of them."

On a day-to-day basis, this means a great deal more due diligence for attorneys, largely because banks need a significant amount of environmental information about a property before giving a loan, according to Daniel Hodin of Paley Rothman, a Maryland-based law firm.

"I find as an attorney now, as opposed to 20 years ago, I'm much more involved in these details," Hodin said.

## Surprising Connections

Sometimes the link between a real estate deal and another area of law isn't obvious even to the most experienced attorneys.

Bruce Bronster of Windels Marx Lane & Mittendorf LLP told Law360 that he has come across employment issues in several property deals; one involved a building superintendent, who traditionally lives in the building for which they work, and one involved a groomsman at a horse farm that was the subject of a deal.

In another situation, an attorney on the other side of a sublease deal insisted that it would not have to pay a transfer tax because it wasn't a traditional lease. Having encountered this issue before, Bronster said he knew that this wasn't the case, but noted the ability for an even sophisticated landlord's attorney to miss things like tax requirements as deals get more complex.

"The real estate world has become more complicated," Bronster said. "Since I was a young lawyer, there is more interplay between various areas of the law, and we find new things all the time."

When dealing with complex ownership and financing structures, things like bankruptcy can also become a real estate attorney's concern where they might not otherwise have been, because they may trigger "bad boy" guarantees or other indemnities, experts say.

And changes in the law regarding swap agreements and interest rate protection agreements aren't just for corporate or private equity attorneys anymore, according to Hannusch, who emphasized the importance of having a team of colleagues to tag in for these situations in addition to educating oneself.

"There's only so much that any one attorney can do confidently, so it's nice to be able to bring in experts because the deals are just typically much more complicated than they used to be," she said.

--Editing by John Quinn and Katherine Rautenberg.