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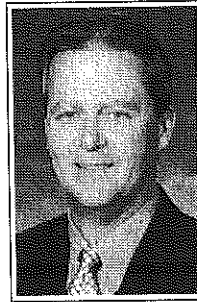
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Verifying Apartment Income

Before acquiring an existing residential rental property, you'll work out projections for the investment returns you can expect. The success of the investment, like that of any other real estate investment, depends primarily on the soundness of the investment itself. The projections that you make will be only as good as the numbers they're based on, so you will want to verify all of the information the seller supplies. This may not be as easy as it sounds.

Be careful of the one area that can be falsified easily — the bookkeeping records of rental income. What looks like a good rental income on paper may turn out to be less than you expected. Here are some tips on how to protect yourself against certain kinds of rent abuses.

Rent Concessions

Compare the rent levels with other comparable apartment buildings nearby. If the rents in each apartment are substantially higher than

other buildings, the dollar amounts on the leases that you see may not be the amounts that the tenants are actually paying.

When you are examining existing apartment buildings, always be on the lookout for rent concessions. A rent concession can take many forms. It could be a rent reduction, several months' free rent, free furnishings, etc. Remember that a record of a rent concession can take the form of a simple stamp on the back of a lease form stating that the rent has been paid up to a specified date or for certain months. Because of this, be sure to check the whole lease carefully, front and back.

Here's how supplemental lease arrangements might work:

The apartment leases call for specified monthly rentals. However, supplemental lease agreements entered into at the time of the →

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This publication is not a solicitation but is an information service from this office.

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When ideas in tax and other legal areas in this publication seem to fit your situation, it is recommended that you discuss them with your professional advisor before taking action.

Verifying Apartment Income... (Continued)

execution of the original leases call for concessions of several months' free rent at the end of the lease term. When the seller comes in with all the original leases, you check the leases and cross check the signatures on the leases with the names on the doors of the occupied apartments. You even check the records of the rent receipts, and they show that the specified monthly rentals have been received from the inception of the leases to date. On the basis of this examination, you conclude that the specified rental is the true rental for each apartment. You figure that everything is in order and, as a result of this work, go ahead with the deal.

Later, interviews with the tenants show the existence of supplemental agreements and concessions; but at this point, it's too late. You've already made the purchase. True, you might have some recourse against the seller, especially if he or she has made ironclad representations as to the rentals; but, obviously, you'd be better off if you hadn't been caught in this bind in the first place. Here are some things you can do to protect yourself against paying for rents you'll never receive.

Written Representations by Seller: Have the seller make written representations as to the entire rent roll, setting forth the amount of rent specified in each lease; the lease terms; and the amounts, concessions, or other writ-

ten or unwritten arrangements between the owner or his or her rental agent and the tenants. Include an express provision that these representations are to survive the transfer of title, that any misrepresentation discovered before such time will be sufficient grounds for rescinding the contract, and that the buyer will in such event be entitled to any and all costs and disbursements that are incurred.

Check Leases: Examine each lease and check it against the seller's representations and against his or her receipt books. Also check the names of the tenants as contained in the leases against the names of the occupants of each apartment as they appear on the building directory and each apartment door.

Interview Tenants: Interview a fair sample of the tenants as to all the matters covered by the seller's representations. Limit your discussions to lease terms and rents, or be prepared for an earful.

Seller's Affidavit: In addition to the above written representations, have the seller sign an affidavit that the leases submitted state all rental terms correctly, that there are no other lease agreements in existence, and that he or she is making these statements to induce the buyer to purchase, knowing that the buyer is relying on the affidavit. Many investors feel that, while a seller might be willing to misrepresent or withhold rental terms, he or she won't be willing to lie under oath. ■

Apartment Tenants Prefer Amenities To Lower Rents

Apartment living is a lifestyle decision for many tenants. Landlords might be advised to involve their tenants in the decision-making process in order to create and maintain desirable lifestyle living arrangements. One landlord, together with his management company polled tenants in a survey. They were surprised by the results.

They found that apartment tenants would rather have more car wash areas, longer pool hours, and a bigger club or recreation room on the premises instead of lower rent. The survey

found that tenants preferred that the landlord provide more and better amenities rather than making any changes in the rental arrangements.

Unexpected Results

Before the survey the landlord and management firm expected to see that tenants would want lower rent increases, bonuses or discounts for other changes more important.

In addition to the three most frequently mentioned amenities (car wash, pool hours, and rec room)—which the manager noted are the easiest for a landlord to give tenants—tenants also said they would appreciate having designated parking spaces, a barbecue or picnic area, tenant gardening, and permission to hold yard sales. ■

Solve Problems With The Tax Deferred Exchange

There are a number of real estate exchanges in which the owners, or maybe one owner, have different motives than deferring taxes. Often, the owner has a property that may be slow to sell in the normal sale market-place. The owner wants to move out of the ownership and into real estate that has more benefits for him. When some of these owners and their properties are matched, they can trade and close on each others real estate in a simultaneous closing. One or both or neither may have a tax deferred transaction.

For every person who will pay cash for a property, there usually are many others who will trade another property for it.

Here are some examples of exchange motivations:

- A geographical move. Exchange equity in income property to another part of the country.
- Eliminate active management of income property by exchanging to a low-management type of investment.
- Reduce current cash flow by acquiring a property that has large amortization instead.
- Expand business or commercial premises.
- Acquire more speculative property for a higher cash return. (Or, acquire a more conservative property for safety.)
- Increase leverage or decrease leverage.
- Divide a large property into several smaller ones for diversification. (Or, exchange several smaller properties for one large one for ease in management.)

An Exchange To Solve Two Problems

Tom Jackson had inherited a parcel of land that was zoned for commercial use. Jackson had the property for sale, because he wanted to use the money to purchase income property. He did not want to develop the land himself as he had no knowledge of the process.

Another owner, John Byers, was a developer who had built a group of small apartment

buildings in a tract and was selling them. Quite a few of the separate buildings had been sold for cash, but several were still unsold after many months. Byers was anxious to sell and move on to another project.

Each owner's broker was aware of what the owners wished to do with the proceeds of the sale. Jackson's broker was checking out all income properties since she knew that a tax-deferred exchange was probable for Jackson, if the right property was located. She contacted Byers' broker and proposed that each owner should be shown the other's property for a possible exchange.

The owners liked what they saw. The exchange was completed. Jackson received the income property that he wanted in a tax-deferred transaction. Byers received land for his next building project. Byers' end of the transaction was not tax-deferred, since a builder using inventory in either a sale or exchange will be taxable.

The Marketing Conference

Brokers who specialize in commercial property and exchanges will trade information on listed properties, the benefits for another owner, and the types of properties or benefits desired by the present owner. They add a new dimension to the marketing of the property, actively seeking an exchange, rather than just looking for a sale for cash that can be converted to an "exchange".

The big difference is the addition of information about benefits needed by the owner in a new property, rather than just giving information on their owned property for sale.

These brokers will meet in small local meetings with other brokers in the community, larger meetings with agents in a state-wide or regional meeting, and once or twice a year in a national meeting. At the larger meetings, hundreds of brokers may attend. Often, millions of dollars in transactions a day can come out of these "matchings" of properties and owner's benefits.

It is a unique opportunity for property owners represented by these brokers as thousands of properties throughout the country and the world are exposed for sale and exchange. ■

Lease Clauses For Protection Of Confidential Information

Typically, a landlord has access to leased premises at all times for purposes of making repairs and inspections. But in today's information age, many tenants have valuable trade secrets, confidential information, and unique documentation in tapes, disks, listings, and other intellectual property that should not be accessible to the landlord. A software company tenant, for example, should try to obtain the right in the lease to maintain locked documentation rooms where even the landlord's janitorial and maintenance people have no access and the landlord is given no copies of keys, passcards, or cipher lock combinations to the additional locks installed by the tenant on the documentation room door.

Lease Provisions

One legal expert suggested the possibility of lease provisions that software companies can use to protect against any access to trade secrets and confidential information. The following lease provisions might be negotiated:

Locked Documentation Rooms

Notwithstanding any other provisions of this lease to the contrary, Tenant shall be permitted to designate certain portions of the Premises as safe or confidential areas, to be known as Locked Documentation Rooms, to which Landlord shall have no access, unless accompanied by Tenant's authorized representatives. Landlord, when so accompanied by Tenant's representative shall have the right to inspect

any Locked Documentation Rooms during the Tenant's normal business hours after giving Tenant reasonable prior notice requesting such an inspection. Landlord shall not be responsible for providing janitorial services with respect to any Locked Documentation Room. Landlord shall not receive copies of keys, pass cards or cipher lock combinations to Locked Documentation Rooms.

Cipher Locks and Security System

Tenant shall be permitted to install (and substitute any existing locks) on interior premises doors with combination or cipher locks. Tenant shall also be permitted to install electronic security systems in the premises, including, but not limited to, pass card door lock systems and camera surveillance systems, subject to compliance with all applicable building and fire codes.

Landlord's Nondisclosure

The tenant should also insert in the lease a confidentiality/nondisclosure provision which prohibits the landlord from disclosing confidential information and/or trade secrets of the tenant to which the landlord may have gained access when exercising its rights under the lease. ■

Help With Investment Real Estate

When you have searched for new real estate investment opportunities, with values that have been changing, you know that finding and evaluating them is becoming more sophisticated and complex. More investors are turning to real estate consultants as a means of providing a sounding board for their ideas as well as expertise in the planning and construction stages for their projects.

Today's investor in real estate must have a grasp of market conditions and potential that is usually beyond their own available time to attain. Investors need assurance about the true condition of the market. With increased competition, the market place is becoming more complicated.

Feasibility studies are essential for commercial office, industrial, resort and hotel investors. With this kind of information, planning is better and there is less chance for error.

Real estate investing is not just looking for the structure

and the land. It is investing in the type of property that you want at the price and terms that suit you at the time you want to make the purchase.

Our office is open and ready to assist you. We have been experts in property values in this area for a long while. We can help you with enough information so that you can make your own decisions on the value of property either in listing your present property for sale or in purchase of another. If you wish to consider structuring a tax deferred exchange into that next property, we can guide and aid you with that transaction.

Let us guide you in your investments. ■



A CCIM is a professional real estate practitioner with proven technical expertise in commercial property. A CCIM is a person truly committed to the fundamentals of effective commercial-investment brokerage. The CCIM has completed a full schedule of Post Graduate Level Courses in investments, taxation, development and marketing all types of commercial-investment properties. The designation of Certified Commercial-Investment Member is unquestionably the highest degree awarded in the commercial-investment real estate practice.

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