

Client Alert

Real Estate Department

January 14, 2008

Triggering Shotgun Buy/Sell Clauses

Real estate investment LLC and partnership agreements frequently include “shotgun” buy/sell clauses in the event one partner wishes to force a sale of the property or to otherwise resolve a deadlock. (We use “shotgun” to refer to the “You buy us or we buy you at a value of \$X” type clauses where a sale of either side is required.) Many clients have asked for guidance on these clauses and we have put together the thoughts of our real estate and litigation lawyers experienced in exercising these provisions:

- Gather the final signed copies of the LLC or partnership agreement and the definitive mortgage and guaranty documents. Make sure you have all amendments and side letters.
- Case law imposes strict fiduciary duties on partners. If you are not a managing partner, make sure all material information on the property has been requested prior to the trigger.
- Review the terms of the prepayment, transfer and guaranty provisions of any mortgage or mezzanine loan on the property well in advance. Is consent needed with respect to either outcome? Is the release of a guaranty a condition to the closing? If so, plan for that event.
- Determine whether to discuss the possible trigger in advance with the other side. If you decide to raise the possibility, consult with us as to the steps to prevent a waiver of any beneficial provision.
- Obtain the advice of your other professionals (broker, mortgage broker, banker) as to the valuation to use for the shotgun, balancing the desire for obtaining the maximum payment if you are the selling partner vs. the ability to finance the property if you are the winning buyer.
- Consider aligning yourself with an equity partner prior to the trigger. While there may be a cost involved, the investment may be crucial particularly where there is a short closing window.

- Get us involved early. Most provisions have express time limits and conditions to the trigger. Many clauses also have ambiguities or gaps in the sequences and you will need legal counsel early and often.

Please call us to discuss these issues.

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