

“ONE-OFF” ACQUISITIONS

Bridging The Gap

Between Big Buyers And Local Sellers

By David M. Levenfeld

The process of acquiring so-called “mom and pop” or “one-off” storage facilities can be a lucrative pursuit, but it can also be fraught with pitfalls that can lead to costly mistakes. There are some steps you can take to help avoid some of the most common problems in the acquisitions process.

The Disconnect

By its very nature, the process of acquiring existing storage facilities rather than developing them from scratch tends to be the province of larger, well-capitalized buyers. Larger buyers tend to accept the lower rates of return associated with acquisitions, in contrast to the higher expected rates of return in the riskier development business.

Most development of self-storage facilities is still done by local players who know their home markets best and may only build one or two storage facilities during their entire work lives. The typical local developer also comes to the self-storage world from another business: most commonly, the building trades.

At the outset, this creates a potential disconnect. Buyers in the acquisitions world may have years of complex transactional experience, whereas the sellers tend to be inexperienced with large commercial transactions and, as such, may have little or no experience operating within what can be referred to as “customary business practices.” This is not to say that the developers are not successful; on the contrary, they may be quite successful. But they are accustomed to getting things done their own way, and their way may not conform to the requirements of your institutional equity partner or lender. Moreover, these devel-

oper/sellers may also be represented by attorneys who are sole practitioners with little or no experience with complex, multimillion dollar commercial real estate transactions.

Therefore, the bad news is that from the outset, you can have buyers and sellers speaking two different languages. The good news is that if the purchase price is agreed upon, everything else is likely to fall into place and the transaction can eventually be consummated.

Contract Issues

A few key points can help the buyer maintain control of the process while largely satisfying the seller’s sensitivities on the transaction. The points below are absolutely not to be construed as legal advice or as a substitute for seeking competent legal advice, but rather business points that can support your efforts to get the deal done while minimizing risk.

- Insist on using your contract form - Most buyers of existing facilities do a “volume” business whereas “one-off” sellers do so only infrequently. You will streamline the entire process if you work off your standard type of contract rather than starting with a new document on every deal.
- Don’t make the contract overwhelming - Keep the document as simple and short as possible while maintaining the key business points of the transaction and providing standard legal protections. One method is to first submit the draft contract to the seller and his attorney with only a few essential exhibits such as the legal description and the so-called “Exhibit C” document request. After the contract negotiation has gained momentum, the other exhibits can follow.
- Do not submit an overtly one-sided contract - The term “inexperienced seller” does not translate into either “stupid” or “reckless.” Avoid offending sellers by being sure to submit a draft contract that is fair and balanced, while maintaining the essential and customary legal protections that you and your attorney require.



Doing business with a one-facility owner requires different skills and strategies than purchasing from a large self-storage operator.

- Make sure your “Exhibit C” document request is comprehensive - This is your one chance to make sure that you have a legal right to obtain all documents such as historical financials, certificates of occupancy, and most anything pertaining to the property that you, your lender, and your equity partner will want or need in order to get the deal done.
- Control the deposit holder - Your worst case outcome should be that the deposit is held by a neutral party, such as a title company, with whom you have an established relationship. Never accept the seller’s attorney or a seller-related party as the deposit holder. This is not to say you intend to improperly seize the deposit, rather it is to avoid having the seller do so, which could result in costly litigation.
- Always insist on “sole and absolute discretion” - This is the heart and soul of your contract rights and it should never be compromised. During the due diligence (or feasibility) period, you must maintain the absolute right to terminate the contract for any reason or no reason and to get your deposit back. Most sellers will bristle at this point; all you need to tell them is that this is customary and you would not be going through all this trouble just waste their time.

Seller Relationships

Your ability to manage your seller is perhaps the greatest variable in any deal.

- Develop a trust relationship with the seller - Although everything may appear routine at the outset, inevitably, during the course of the transaction, you will need to call upon your relationship with your seller. More than likely you will need to ask for an extension to either the due diligence period or the time needed to close, or you will need the seller to obtain some document your lender needs. Whatever the eventual reason, make sure you invest in this relationship by being patient, reliable, responsive, good to your word ... and did I mention patient?

- Seller reasonableness - Being a successful developer does not necessarily make you good at hiring professionals. Every now and then it could be the seller’s attorney that is the biggest impediment to the deal. If this is the case, let the two lawyers get as far as they can on the contract and then, when they can get no further, call for a four-way conference call between the seller, both attorneys, and you. Watch, then, as the remaining issues evaporate as you patiently explain your positions to your new best friend, the seller.

Negotiating Points

There are a few pointers to remember along the way to a successful closing:

- Listen to sellers’ “hot buttons” - Sellers are people like everyone else and they all have idiosyncrasies. Maybe the hot button will be timing, as in wanting you to move the transaction more quickly than you comfortably can. Maybe it will be the tax impact of the transaction. Regardless, listen very carefully to their most pressing concerns.
- Be willing to make “concessions” that cost you nothing - In my experience, for example, an inordinate number of sellers are hung up on deposit-related issues. Putting down a large deposit while the deposit is still refundable may be an inconvenience, but it does not materially deteriorate your position in the deal. If a seller wants a bigger deposit, dig in on other substantive issues but give in on this one. This is what I refer to as a non-concession concession.
- Make effective use of “No” - Your most effective negotiating tool is always the most simple and certainly the briefest. Just say no. Incremental concessions on your hot button issues will only invite indefinite quibbling and a gradual erosion of your position. No is perfectly understandable and to the degree that the no is firm, the seller will have no choice if he wishes to do the deal but to respect your position. Obviously, no is to be used selectively, but on core issues such as “sole and absolute

discretion”, the answer should be a resounding NO.

The Finish Line

The trouble you take to get the deal done, not to mention whatever compensation will come your way, are only really worth it if you reach the finish line and close. Although most of what is written in this article can be categorized as common sense, there is one summarizing point to keep in mind: You the buyer are always closest to the finish line.

As the transaction progresses through contract negotiation and then the due diligence period, and you get closer to closing, leverage in the transaction subtly shifts evermore in your favor. The seller may already be counting his money in his mind, and although he may be attached to his property, at this point, he most assuredly does not want to see the deal die. So when you need the seller’s help for an extension or for whatever reason, do not to lose sight of the fact that once the deal is under contract, you are always the buyer with the greatest likelihood of closing the soonest.

While a seller may resist granting a concession such as an extension because they are anxious to close, exploit that anxiety by explaining that, even with a 10-day extension, you are likely to close 90 days sooner than any other buyer. And involving another buyer means the seller will have to start the deal all over again with another buyer that, just like you, may speak a different language than he is accustomed to.

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