

The art of closing

It takes more than just hard cold cash to seal a deal

By LOIS WEISS

SINCE there is so much capital chasing building sales, being the highest bidder doesn't always mean winning the deal.

Investment brokers say they typically screen bidders to make sure the person with the highest bid can also close the deal in a timely manner and not hang up the seller.

There are nightmare cases where the high bidder has signed a contract but then tries to flip — or retrade the property — hanging up the seller, sometime for years.

In one instance, the seller of a downtown lot had to sue the buyer who refused to close. This sophisticated property owner then felt used and abused by both the broker as well as the buyer.

More than a year later the owner got the court to void the contract and is now moving ahead with his own building on the site.

Woody Heller who heads the Capital Markets group of Studley say the buyer should have a fairly good understanding of what they are buying so it doesn't seem as if they are coming out of left field.

"We want to know you've done your homework and won't wake up and say, 'Oops!'"

In one instance, a sophisticated California buyer was chosen by a top investment company, but after conducting due diligence, the "name" buyer insisted on a lower price in a rising market — known as "retrading the deal."

Eventually that Class A midtown office trophy was sold to another buyer, but that investor may never be able to purchase in this town again.

"This is an ugly process," admitted Darcy Stacom, an executive vice president of CB Richard Ellis who handles many of the city's trophy sales.

"A buyer should be honest with themselves," Stacom said.

Potential buyers, she said, must decide if they really have the qualifications to convert this particular building or operate that trophy building.

If a corporate seller intends to lease back portions of the property, they also may not want to sell to a "no name consortium" but will be more comfortable with another stock exchange listed company, such as a Real Estate Investment Trust (REIT), as their future landlord.

Paul Pariser, a partner with Taconic Partners, knows when and when not to bid.

"The investments that are all clean and finished and done are going to be traded to an institutional buyer," he acknowledged.

Instead, Pariser ferrets out deals where partners could be feuding, or family situations that warrant a

quiet transaction.

Raymond Chalme, a principal with Broad Street Investors, admitted: "I won't look at a deal if I don't think I can step up to the plate."

That's because sophisticated bidders also don't want to waste their own time, efforts and money to conduct the due diligence needed to bid comfortably, if they know they are not going to be among the top qualified buyers.

"In a heartbeat you can be spending \$50,000," said Chalme. "Times that by 10 deals you didn't do, and you are spending a lot of money."

To save money on due diligence, Chalme is even outsourcing some of the simpler lease readings, and has heard of companies that further outsource them to India.

"A lot of people have gone into the business of due diligence — reading leases and financial statements," Chalme said.

"It's warp speed, 'Star Wars' real estate"

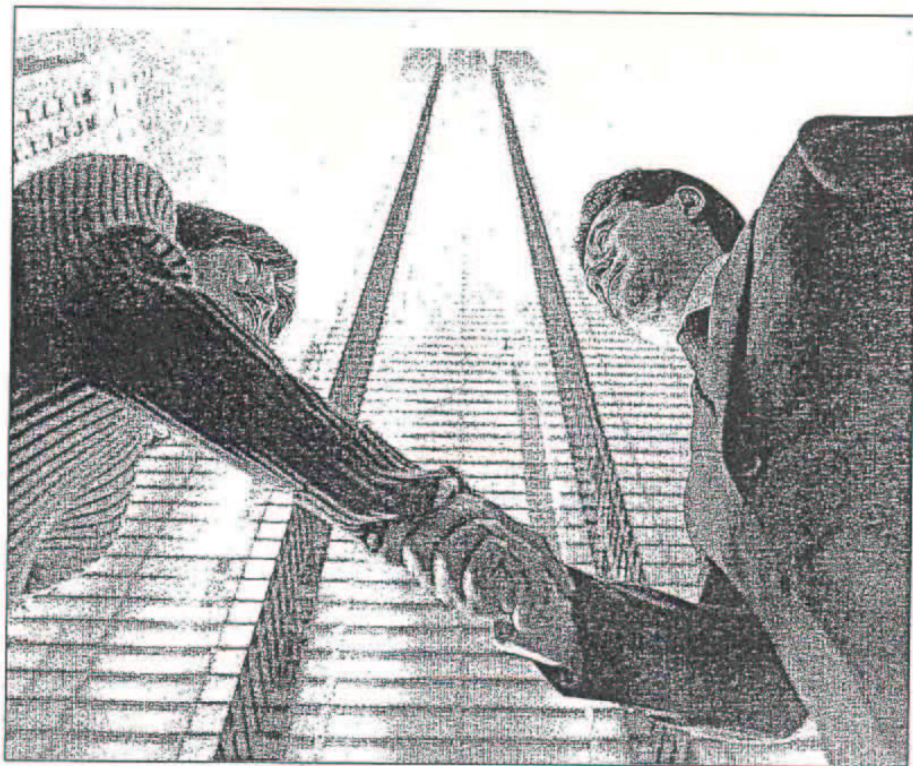
— Raymond Chalme, Broad Street Investors

For a property with 150 leases, Chalme says the bill from a traditional law firm "is tremendous and it may not get done in the time frame."

Because there are now so many bidders, in the last year it is typical for buyers to be provided with sample contracts to mark-up during the bidding process and must also conduct all their due diligence simultaneously and sometimes within days.

Chalme added, "It's warp speed, 'Star Wars' real estate."

Investment sales specialist Douglas Harmon of Eastdil — who has handled several billion dollars in transactions over the last two years, said: "A buyer's willingness to play along with today's seller-dominated rules, goes a long way to proving their level of credibility, while maintaining seller leverage



Ryan McVay/Getty Images

throughout the sales process."

Harmon says that buyers have not had it easy over the last two years, as they are at the mercy of sellers, competing against the world, and spending time and money with no assurances that a top five finish is possible.

"In today's game, second place is truly a painful and expensive place to finish," said Harmon.

Like Harmon, Stacom and CB Richard Ellis partner William Shanahan, conduct primarily open auctions, with nearly any qualified buyer able to bid.

Shanahan advises, "Listen to your broker."

He is often surprised when he provides advice to potential bidders and they do not follow the instructions, effectively putting

any bid they make at risk of being passed over.

To win the deal, Shanahan said: "The buyer should have certainty that they want to do the deal, be able to meet the price, and have reliability when it comes to closing."

Most of the bidders in these silent auctions receive some pricing guidance from the market, the press and the brokers.

Bidders usually are grouped in price bands, said Steve Kohn, president of Sonnenblick-Goldman, making it easy to knock out the lower bidders.

"In the second round of bidding you get it closest, and then you knock out the low number or those you deem to be not qualified [if they are not already out of the picture]," Kohn said.

"You might have a vision for the property that gives you an edge [to bid more than the others]."

Kohn says it is easy for today's buyers to find debt but much harder for them to come up with equity, and his firm also handles a lot of the financings and joint ventures to make the deals possible.

Thomas Beneville, managing director of capital markets with Jones Lang LaSalle, noted: "I don't want to find out two days before we close that a bidder just realized something everyone else knew, and now their price is different."

Taconic Partners often invests for and with pension funds and must also vet deals by returns.

To get the deal, Pariser advises: "Pay more than other people, move faster, and buy off-market."

On the other hand, brokers also want to know that the seller is real,

is realistic about the price, and not just using them to set a market for a refinancing.

"Buyers want to know the seller is within the world of reality," Beneville said. "I'm not going to represent someone who is unrealistic. No one wants to spend the time if a seller is out there fishing a price."

Investment broker Georgia J. Malone of Georgia Malone & Company will now only represent owners who agree to sell through an off-market transaction.

Here the sellers agree that Malone will offer the deal — which could be a multi-million dollar portfolio — to a handful of selected potential purchasers at a very high set price. "Whoever shakes our hand first gets the deal."

Malone explained: "If someone comes the next day and says they will offer \$5 million more, they will have to wait on the sidelines to see if the first buyer signs the contract."

To get the sellers and buyers to agree on this type of transaction, Malone says: "You have to have credibility and a reputation for integrity and being able to close deals."

When representing buyers of Harlem investment property, Ralph Trionfo of Upside Ventures said they package complete bids and demonstrate their client has the wherewithal to complete the purchase.

"We attach a profile of the buyer to the offer," Trionfo said. "We also put in a significant, non-refundable deposit, conduct the due diligence in advance, and offer the shortest closing terms."

TOP TIPS FOR WINNING THE DEAL

- Have the money ready — both debt and equity.
- Be prepared for all contingencies.
- Be in love with the building and know why.
- Have and show enthusiasm for the deal.
- Do the work including walkthroughs by you and your engineers, run the contract and leases past the lawyers, and complete the financing before the deal is awarded.
- Have a history of closing deals.
- Have integrity and be known for following through on your word.
- Be ready to put up a large, non-refundable deposit.
- Be prepared to close in a short time frame.

