EPISODE 335

[INTRODUCTION]

[00:00:00] ANNOUNCER: Welcome to The Real Estate Syndication Show. Whether you are a seasoned investor or building a new real estate business, this is the show for you. Whitney Sewell talks to top experts in the business. Our goal is to help you master real estate syndication.

And now your host, Whitney Sewell.

[INTERVIEW]

[00:00:24] WS: This is your daily Real Estate Syndication Show. I'm your host, Whitney Sewell. Today, our guest is Jeff Lerman. Thanks for being on the show, Jeff.

[00:00:32] JL: My pleasure. Thanks for having me.

[00:00:34] WS: Now, Jeff has established a nationwide reputation as "The Real Estate Investor's Lawyer." He helps investors nationwide with their transactions. Clients tell him that what sets him apart from other real estate lawyers is that Jeff is also an investor and he uses his investing experience to provide more practical, creative, and effective solutions.

So, I want to give a little story here. Last night, I was at a Meet Up. I was speaking just about syndication. A lot of people have never even heard about syndication and what that is, but also people were talking – and different investors that were there were saying, "JV, JV this," and using those acronyms, just those letters. And other people finally spoke up and said, "What? What is JV? What does that mean? What is that?" And a lot of us talk about these things and we just assume people understand.

Jeff is spending time with us today, discussing joint ventures, which is JV, joint ventures. And this is the cheapest, easiest, fastest, and safest alternative to syndication. So, I'm really looking forward to this discussion, Jeff, and just really getting your expertise on this topic. Why don't you give the listeners a little bit about who you are and your practice and what you all do? And then let's dive into why this topic is so important for investors to know.

[00:01:48] JL: Sure. Okay. Your story right there is very appropriate because you're right. I speak in front of investors all around the country. I have taught at the Private Money Boot Camp for one of the largest commercial real estate education companies in the country. And that actually was the genesis of why I started to speak on this particular topic, because what I discovered is that I would spend some time talking about syndication. It's a weekend boot camp, explaining everything there is to know about syndication. As you know, there are a lot of details that certainly are not intuitive about how to make sure you're complying with the securities laws if you are going to syndicate.

And one of the those happens to be that you have a pre-existing relationship with whoever it is you're going to make a pitch to, and invariably, what would happen after I teach them this particular aspect of security compliance, I get somebody coming up to me after the break with a very concerned look on their face. And they say, "You know what? That's great but I have a deal now. And if you're telling me that I can't talk to a potential investor about the deal, unless I already knew the investor and had some sort of "pre-existing substance of relationship," which itself is an assembly of terms, each of which has their own special meaning, then I got a problem. I got a deal now. I need money now. What do I do now?"

And in that moment, they realize that syndication isn't going to help them. And what I tell them is what I'm about to explain to you and your listeners, the alternative of a joint venture. So I'm really glad that you saw that firsthand because the people that you and I communicate with don't know. Very often, they don't know all the terminology about syndication for sure and they throw around the terms joint venture, partnership, syndication interchangeably. And they're definitely not.

What we do at our firm, Lerman Law Partners, is we focus – many years ago, when we started it, we branded our self as the real estate investor's lawyer. Because as you said in the intro, I'm an investor. I'm an unusual lawyer in that I'm the real estate investor's lawyer, but I'm also a real estate investor. I'm part of a family office, our family office. I'm the middle generation. There's a generation ahead of me, generation coming up behind me. And we have been doing deals for decades. We've developed thousands of [inaudible 00:04:27] apartments, hundreds of thousands of square feet of medical office, restaurant, retail, hospitality. And most of the deals that we have done have been joint ventures. So, it's a topic which is near and dear to my heart. I walk the talk on this. I'm telling your listeners how to do what I've already been doing for most of my career in real estate.

We focus on helping investors nationwide with their transactions. Everything in the cycle of ownership, from entity formation, to asset protection, joint venture syndication, purchase and sale agreements, commercial loans, construction agreements, commercial leases, virtually all of that the investor is going to encounter in this business. And if you're in California, we also can help you with your mitigations.

So that's who we are. That's what we do. We represent whoever's listening. Whatever city, whatever state you're in in the United States, we can help you. We have clients all around the country. So that's a bit of background not only about who I am but the genesis of this talk, which is a really important aspect of it.

[00:05:34] WS: That's awesome. I appreciate you elaborating on your practice and who you are, so listeners have a good understanding. But before we really get into what you mean exactly when you say joint venture, why is this so important for us to know as investors? Why do we need to know about this thing called joint venture?

[00:05:50] JL: You've kind of touched on it in your opening remarks, but the main things that – syndication is great. I do syndication. I've done syndication for my deals. I do syndication in a single deal. I often do a syndication and a joint venture in that one deal. And I can explain when and how those make sense, but that's something that's important to understand. And the challenges with syndication, aside from what we just discussed, which is that in many situations, the investor doesn't have the time to do a syndication because they don't have enough pre-existing substance of relationships. That's one reason why this is important because they may not have another option. But even if they do have the option, they do have preexisting substance of relationships.

Syndication is significantly more expensive from a legal standpoint than joint ventures. I can set up a joint venture for a fraction of the legal fees that they will have to pay me if I do a syndication. When I say cheapest, easiest, fastest, safest, there's a reason for each of those words. One of them is that it's cheaper. Second, syndication is too complicated. It's complicated for a variety of reasons. The least of which is that, again, it's not intuitive. As a matter of fact, in many situations, it's counterintuitive. Go back to my genesis story. The one where most investors think that the proper sequence of events in doing this business is find the deal. Then start looking for your investors. But as you know, in syndication, you have to have ideally your perspective investors lined up before you find the deal, not only for the reasons, for securities, for complaints, but also because if you start looking for the money after you find the deal, it's going to be more difficult to make sure you get all the money that you need to do the deal within the time frame that you're going to be able to negotiate to do it. It's got that going for it.

And depending on how much money you need for your deal, let's just say for every million dollars you're trying to raise, on the average, how many investors it's going to take. I don't know. Maybe 10. If everybody's putting in a minimum of $100,000, if you're going to accept investors with lower minimums, then it's going to take even more. So, it can be risky if you're trying to, depending on how much money you're trying to raise, to raise all that money from a number of smaller investors.

It takes too long to do a syndication. Typically, we've done a syndication is as short as three days. We did it that fast because the client had a need. We both worked long hours to make it happen and it was a sophisticated client who was able to answer my questions and give me what I needed fast enough. But in my experience, but I'm not sure how this drives with yours, but the biggest challenge for me in putting together a syndication is not what I have to do. It's what I'm waiting for from my client. They have to give me the business portion of the private place memorandum that I have to put in there. And then I have to reconcile everything and prepare all the other aspects of the PPM to accurately reflect the business terms and whatnot.

So, in my experience, it usually takes about 30 days to put together the entire PPM. Is that consistent at all with what you're experiencing?

[00:09:16] WS: Yes, I would say so. I would never imagine getting it back in three days. Not even close.

[00:09:20] JL: No. I'm not telling anybody to take that away and say, "Okay, three days is all it would take."

[00:09:26] WS: You're going to be the top syndication attorney now.

[00:09:29] JL: Yeah. Unless you're going to – anybody listening to this, if you're going to be doing a syndication, you should assume it's going to take that long and plan accordingly when you are negotiating your purchase [inaudible 00:09:41], which is another thing. A lot of times, people use the syndication lawyer and a separate real estate lawyer from negotiating the purchase and sale agreement. We do both. So, we automatically, if they – and actually, what we tell our clients is you should be coming to us when you do your letter of intent. Not when you need the purchases and sale agreements because the deal starts to really take form with the letter of intent. You need to really coordinate the timing and all that.

So those are the main reasons why this is something that the investors really need to understand. I tell you, whenever people come to ask me to do a syndication, I say I'm happy to do a syndication but I think your plan A should be to do a joint venture.

[00:10:24] WS: I mean, ultimately, joint venture is another type of partnership. It's not a syndication, but it's really a partnership, correct?

[00:10:31] JL: Yes. But again, syndication is a partnership as well, in a sense.

[00:10:36] WS: I just mean it's another type of partnership.

[00:10:38] JL: It is.

[00:10:43] WS: So maybe you can elaborate on some of those differences between JV or joint venture and syndication. Any other differences that we need to be aware of?

[00:10:51] JL: Okay. Let's talk about this from a documentation standpoint. If you and I decide we're going to do a deal, all we need – and let's assume that we're going to deal with the majority of joint ventures do, which is use an LLC to be the ownership entity and also the document which details the terms and conditions of our relationship as joint venture partners. So that's one document, an LLC agreement. And an LLC agreement is not terribly complicated. I mean it is and it isn't. I mean, it's not nearly as complicated as the documents for a PPM and everything that goes with a PPM.

So, contrast it, we have one LLC operating agreement. If we're joint venture partners, that LLC operating agreement is going to be somewhere between 30 and 40 pages give or take, depending on how complicated you're going to make it. With a PPM, we've had PPMs that not include – I mean, it depends how much, how long your business portion of the PPM is going to be that you give to me. But it's difficult to get a PPM done under 50 pages. You've got your PPM, your disclosures, your risk factors. You've got your investor questionnaires, some scripts and agreement. You've got the business portion of it. So, there are just a lot more moving parts in there. Plus, there is the time that you as the investor need to spend asking me questions to make sure you know what to do and me telling you. You're not even going to ask me as an investor all the questions you need to ask. You truly don't know what you don't know. So, I need to explain to you the dos and don'ts and you can and can't do, because – and I'm sure you've seen this as well.

I go to investor conferences all the time as a speaker and I'm also there networking. And I guarantee you, there are investors at every single of those conferences violating securities laws and tainting their offering every single time, every single day, just because you don't know. So that is probably the single most important distinction between the joint venture and the syndication. Go back to the cheapest, easiest, fastest and safest. Because if you do a joint venture and you do it the right way, then you don't have to worry about the securities laws. The securities laws don't apply. From that standpoint, it's the safest. Because, again, as you know, if you do screw it up, the potential consequences and the potential economic damages that you're exposing yourself to if you violate securities laws, including potential criminal sanctions, can be severe. So those are the main reasons why joint ventures are important for people to know as an alternative to doing deals with other people's money.

[00:13:30] WS: So, it is definitely something we need to be familiar with, especially in a syndication business. I feel like we get a tunnel vision, right? I mean, syndication is syndication. But it may not always have to be a syndication. But tell me, in your opinion, when would you do a syndication over a joint venture?

[00:13:47] JL: For me, I would never do a syndication instead of a joint venture unless the – I wouldn't do a joint venture anyway – unless I had a partner that I have any concern about having to deal one on one with. But if I did, I wouldn't be a partner with them anyway. I mean, again, one of the things that we do when we set up joint ventures is, we spend a lot of time helping our clients make sure that there's a good fit and that this is a good marriage before they even get started. For me, and given the relationships that we have, I would always prefer to do a joint venture instead of a syndication. The only time I would do a syndication in addition to a joint venture in the same deal, is if I want to bring friends, family, and clients with me into a deal.

Let's say you had a deal and we're talking about doing a joint venture, you and I. And I want to bring friends, family, and clients into the deal with me, which I do. I would do a syndication. You and I would have one LLC. And then separately, I would form your joint venture with me would be not with me individually but with my LLC. And my LLC would be a syndication with my friends, family, and clients. I would still observe all of the rules that you have to do in syndication on my side of the deal, but that wouldn't concern you.

And that's something that a potential structure that some of your investors might want to consider doing when you find yourself in that situation. But no, I mean, again, I walk the talk. Most of the deals we've done have been joint ventures, just for the reasons I've been describing to you. There are a couple other huge advantages to a joint venture that are important to understand. First, in our business, you know that there's always this element of risk. And you have your own gut level, risk tolerance level.

It's a whole different dynamic, if I'm doing a deal with you, an experienced investor and an experience syndicator and a passive investor, I would never ask a passive investor, "Hey, I'd like you to invest $100,000. What do you think of my deal?" I would never ask them that. I mean, I would say, "Here is the deal and here is why I think it's a good opportunity." So one of the main benefits of working with somebody who – and actually, I'm going to interrupt myself here, because we haven't yet really defined the difference between a joint venture and a syndication. And I think it's important for the point I'm about to make.

So, the difference between a joint venture and a syndication is simple. A joint venture is with another individual who's going to be actively engaged in the deal. And what that means, what that looks like in any particular deal, it's got to depend on a deal, but let me give you an example of a deal I did to give you some better idea. Some people think if you do more than two people, you can't have a joint venture and that's not true. I did a joint venture. There were four of us. It was a residential subdivision development deal. And in the deal, there was the guy who found the deal and who was giving the loan.

There was the developer. There was a broker who was involved in the design, marketing, and sale of the residential properties after it was completed. And there was myself. I was the one who brought the money to the deal. So, there were four of us in this joint venture. We were all sophisticated. All understood the real estate aspects of the deal. And we got together. We were actually in different cities and we got together on the phone every week for a standard meeting. One of the people was the secretary who took notes. We discussed everything we had. And in the minutes of those meetings, it said who said what, what were the thoughts –

And everybody's contribution was literally documented right there in black and white. That's a joint venture because we were all actively engaged and none of us were relying on the efforts of somebody else to make it profit for them. Those were the two things. You got to be actively engaged and sophisticated enough so that you are not relying upon the efforts of somebody else to make your profit. It goes back to securities case, the Howey's case, the famous case as far a definition of what a security is.

So that's the difference between a joint venture and a syndication. A syndication is anytime somebody is giving you money and expecting you to make profit for them. Return under investment, that's a security. Okay? We're on the same page on it, right?

[00:18:18] WS: Yes. That's great. I appreciate you elaborating on that, because I know a lot of people are wondering what the difference is and that's great. The myth here I think that you can dispel here that I'm sure a lot of people are thinking. They're thinking, "Wait a minute, Jeff. We're doing larger apartment complexes. We're not doing that duplex." I want you to be able to elaborate just on the size of a deal. And can we do a joint venture on large commercial projects as well? Because I know that's a question a lot of people have.

[00:18:43] JL: I can tell you, our family developed and still owns the Four Seasons Hotel in Los Angeles. That's a joint venture. We developed a 712-unit apartment project. We did that in a joint venture. We did a 261-unit condominium project in a joint venture. So, the answer to the question is it doesn't make a difference. The size of the deal doesn't matter. It's different today than it was when I got started. There are so many family offices out there and so many family office conferences and other ways that you can reach out to family offices, that if you don't have people that you know, right now, who have the wherewithal to be a potential joint venture partner, if you have a bigger deal. If you're willing to go out there and do what you need to do to network and find those people through all the different ways you can network, then they're out there. It's just a matter of how bad you want it. How bad you're willing to find them.

But the other thing, going back to the question I was answering when I interrupted myself. To have somebody who you can say, "I like this deal. What do you think?" and have their answer be not just giving you sort of an at the top of their head answer, but giving you an answer and being willing to put their money where their mouth is and say, "Yeah, I like that deal and I'm willing to put in a million, two million, three million, 10 million dollars." That has so much more power in affirming – because no matter what the deal, most deals, there's going to be that alternative risk and you might be saying, "Is it really good? Is it as good as I think it is?" It's great to have that feedback from somebody who's willing to put their money where their mouth is.

The related point, which is huge for anybody who's trying to build their portfolio and if they're listening to this podcast, that's you. When I bring you into a deal, I am opening up or I am cultivating, if I may already have it, a relationship for future deal flow. And in this business deal flow is where it's at, right? So, to be able to have somebody that – we have three partners that we've done multiple deals with. We bring the deal sometime. They bring the deal sometime. If we didn't have that relationship, a lot of those deals wouldn't have gotten done.

So that is to use an overused cliché. That is priceless. To have the right partner, that's huge. So those are the things you're not going to get from the syndication, because you're not going to get that feedback, at least not as good feedback from an investor. Either they invest, or they won't. And if they do invest, all it means is that they believe whatever you told them. Not that they really did a detailed analysis on the deal, right? It's unlikely that they're ever going to be in a position to give you a deal that you want, because they're a passive investor in your deal. So those are pretty huge advantages to a joint venture.

[00:21:27] WS: Yes. So even the number of people that are going to be in this joint venture, is that something we should be thinking about? Because they all need to be active, I believe is what you said. So maybe you can clarify that, or is there a limit to the number of people that could be in that joint venture?

[00:21:40] JL: The limit is always going to be a question of fact. If it ever comes under scrutiny, what's going to be looked at is not only what they said they were going to do, but what they actually did. I'm going to answer the question that always gets asked when I talk on this topic in front of a group. They say, "Okay. So, what if we just put in the operating agreement that he's going to do X, Y and Z. Is that it?" I said, "No. It's not it, because remember the story I told you that there are four of us and we had a document of proof of what we actually did. If it was that easy to circumvent the securities laws that all you have to do was create an operating agreement that said what you were going to do, but then you didn't do it, then the FCC would never let that happen."

So, the next question I guess is, "Well, how would the FCC know?" The FCC will know not if the deal is going great. It's when the deal goes south and your partner goes and talks to their lawyer and says, "Well, tell me what my remedies are." And the lawyer says, as I would do, "Tell me more about everything that happened."

As soon as I found out that ultimately what you did, my potential client, is just get the money. I'd say, "Okay. Well, then it sounds like this was a security and you guys didn't comply, and best claim is to go after securities fraud." So, it is important that every deal, we need to understand exactly what's being done. In a development deal, the more there is to do, the easier it is to have more joint venture partners involved, because it's easier to justify active engagement. That's one end of the spectrum.

The other end of the spectrum is let's say if you do a land bank, right? All you do is buy pieces of dirt, and that's it. So, on something like that, it does get more difficult to respond if the trial, whether it's a judge or the SEC, or jury, to the challenge that, "Well, really? Didn't they all they do is give you the money?" In a land bank deal, that may be all they did. So, the more there is to do and the more you can document the actual involvement, the better position you're going to be in to the defend yourself if it ever comes under scrutiny.

[00:24:02] WS: Documentation. It doesn't matter if we're doing syndication or if we're doing joint venture or numerous things. Documentation is so important. I'm glad you brought that up. Unfortunately, we're out of time and we're going to have to move to just a couple of more questions. But it's been great to just elaborate on joint venture and really opening our minds to that possibility and thinking about the difference in joint venture and syndication and what we need to know there and make sure we're doing it correctly. But, Jeff, what is one thing that's contributed to your success?

[00:24:28] JL: Well, again. Another million-dollar cliché. Persistence. If there's any business where persistence really pays, it's this one. I mean, there are so much that you have to do in order to sift through the haystack to find that needle. Once you find it, there are so many ways that the deal can throw curve balls at you, that you have to be able to deal with. I'll never forget, when I first got in the business, I was working with my brother-in-law and he said he got the loan approved on this development deal. I said, "Oh! Great! You go the deal. You got the loan. That's great." He says, "Yeah. Yeah, it's great. Now all we have to do is build it. It shouldn't be a problem." I do think persistence is the number one thing I think in any kind of business, but it's ever more true than in real estate.

[00:25:17] WS: How do you like to give back?

[00:25:19] JL: Like this. Going back to how we started this talk. The only reason we're talking is because when I was in a unique position to observe, teaching this topic of syndication and private money over and over again, year-in and year-out and seeing the look and the reaction on the faces of investors, like people who are listening to this podcast, when they were freaking out that they had just a few days left to raise the money they needed and they had come to this event in the hopes of finding that money. Then to hear me explain why if they do that, then they have a choice to make. Do you want to do the deal and violate the securities laws, or do you want to just pass on the deal?

As an investor myself, my heart goes out to them. I empathize. I don't know about you, but I've been in that position where I have money that's already gone hard and we still have few bucks we have to still gather to close a deal. Those are some sleepless nights there, right?

So, what I realized is I have to go out there and discuss this, because investors don't know and they shouldn't have to wait to spend thousands of dollars to go to a weekend boot camp to find out they've got a problem. They should be able to get some information for free through good podcasts like yours.

[00:26:38] WS: Awesome. Jeff, we're grateful that you're so generous with your time and knowledge and your experience too in sharing with us. I know I've learned a lot and I know that listeners have as well, and we're grateful. But tell them how they can get in touch with you and learn more about your practice.

[00:26:50] JL: Yup. Okay. So, it's really easy. Our website is Who They Are? The URL is realestateinvestorlaw.com. So it's realestateinvestor and just add law at the end, realestateinvestorlaw.com. That's how you get to us. Come to our website. There's lots of free resources. There's lots of free information. There are great testimonials from people just like your listeners who they can hear what we've done for others, and please reach out to us no matter where you live and we can help you with your transactions and look forward to talking to you.

[00:27:24] WS: Awesome, Jeff. Thank you so much.

[00:27:26] JL: Thank you. Appreciate it.

[END OF INTERVIEW]

[00:27:28] WS: Don't go yet. Thank you for listening to the today's episode. I would love it if you would go to iTunes right now and leave a rating and a written review. I want to hear your feedback. It makes a big difference in getting the podcast out there. You can also go the Real Estate Syndication show on Facebook so you can connect with me and we can also receive feedback and your questions there that you want me to answer on the show. Subscribe too so you can get the latest episodes. Lastly, I want to keep you updated, so head over to lifebridgecapital.com and sign up for the newsletter. If you're interested in partnering with me, sign up on the Contact Us page so you can talk to me directly.

Have a blessed day, and I will talk to you tomorrow.

[OUTRO]

[00:28:08] ANNOUNCER: Thank you for listening to The Real Estate Syndication Show, brought to you by Lifebridge Capital. Lifebridge Capital works with investors nationwide to invest in real estate while also donating 50% of its profits to assist parents who are committing to adoption. Lifebridge Capital, making a difference one investor and one child at a time. Connect online at www.LifeBridgeCapital.com for free materials and videos to further your success.

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