EPISODE 664

[INTRODUCTION]

[0:00:00.0] 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]

[0:00:24.4] WS: This is your daily real estate syndication show. I'm your host Whitney Sewell. Today, our guest is Trevor Crow. Thanks for being on the show, Trevor.

[0:00:33.7] TC: Hey, Whitney, thanks for having me.

[0:00:35.5] WS: Trevor founded Crow Legal LLC to deliver sophisticated and practical legal solutions to companies, their founders and investors and has done so for the last 10 years. Trevor has extensive experience representing sponsors and investors in syndicated real estate deals.

Trevor, thank you again for your time. Grateful, always somebody that's willing to come on and share your expertise and been in the business as long as you have. You know, why don't you give the listeners a little more about who you are, maybe where you're located and let's jump in to your unique skillset and some qualities that your firm has.

[0:01:10.9] TC: Yeah, sounds good. Trevor Crow as Whitney mentioned and I'm an attorney here in Denver, Colorado and I kind of grew up in the Denver area for the most part and went to – graduated from law school at Denver University in 2009 which is not a great year to graduate law school because of the downturn in the market there. But got to learn a lot about how to weather the storm there so that's been good experience and been practicing ever since then doing syndicated real estate deals and other business transactions.

And you know, I founded – I started at several different firms in Denver or bounced around to several different firms and before I started my own firm, that's Crow Legal in February of 2018 and now, we're a small boutique business transactions firm focusing on syndicated real estate deals.

It's me and two other attorneys and yeah, we've been doing it through the up and down cycles of real estate and so it's been a fun ride.

[0:02:11.3] WS: Nice, well, thanks again and I would like to just jump in, you know, before we started recording, you and I were talking a little bit about your firm and just this business in general and you know, you were telling me about just some qualities of that your firm has that you thought were very important.

And okay, let's focus on that because I know some of the listeners and myself, I remember when you were getting started in this business, it can seem pretty overwhelming just building your team and figuring out who those people should be and one very important – I mean, it's non-negotiable team member is your attorney and especially your security's attorney and you know, somebody that's helping you with those legal documents.

Let's just dive right in there and I'd love for you to elaborate on that a little bit just the qualities you were talking about your firm and why those are important and let's jump in.

[0:02:57.7] TC: Yeah, you know, I mentioned as I was at a couple of different firms before I started my own and the first firm I was at, I did less real estate work and more just business transactions and so for several entities, just startup companies, engineering companies or other sort of software companies, we would sometimes draft entity documents as LLCs and so with that, we'd have operating agreements and I thought I knew how to draft operating agreements. And then I went to a real estate firm and practiced there for a while and I quickly learned that a joint venture real estate operating agreement is way different than an operating agreement for just your typical service type busines or operating company.

I think you know, from our standpoint, one of our unique abilities is that we understand real estate joint ventures and putting together those operating agreements which I don't think – some people think they do and haven't really dived into it as much as we have and so it's hard to understand them.

But the thing with real estate joint ventures and syndicated deals is one, you obviously have to understand the securities piece of it and make sure you're not getting your client in hot water there. But the operating agreement itself, because typically, you know, real estate deals are done through operating agreements or limited partnership agreements. Most of our deals are LLC agreements, and really, it's business term driven.

And so, you know, the business terms drive the deal and I think a lot of people or some people think that attorneys can just pull an agreement off the shelf and switch out names and they have their agreement there. But it's really not the case here because it is so business term driven and so you could have 10 deals and the operating agreements for every single one of those deals, far different from the other. Understanding the business of real estate and how this works is huge and so you really want to have that, an attorney who understands that piece of it.

Those are going to vary depending on whether it's a ground up development deal, is it a deal where you're going to grab, buy an existing property, maybe add some value and then flip it? Is it a buy and hold strategy? I mean, all these sort of different business terms have to be memorialized in an operating agreement and if you don't have that expertise and that knowledge from doing these deals and paying attention to what the market is, you're going to really be behind the eight ball and might miss things or your attorney might.

[0:05:17.0] WS: Yeah, do you have an example or maybe you know, just like how you all, when you started to draft operating agreement why it was so beneficial for you all to understand the deal? I mean, obviously, you need to know a lot about the deal when you're drafting these documents because so much of it is unique, you know, very unique per the structure of the deal, I mean, the deal itself, location, all those things and the team. But any examples of how – you know, so crucial that you understood the business and just understood the deal when creating those documents?

[0:05:48.6] TC: Yeah, I think you know – For one, we represent both developers, promoters and you know, I kind of mix those terms together as the people or sponsor sometimes, people who are bringing the deal to the table and then we also represent investors. We've been on both sides of the table there and argued on both sides on the table there and argued on both sides of what should be in the agreement.

But you know, for example, we represented a promoter on a deal and you know, this was early on in my career, you know, I think it's even more important now thinking about this whole COVID environment and what's going on with that and how there can be downturns but one of the important provisions that we had in an operating agreement for our client, there was no for sale provision and so when there's a downturn in the market, sometimes the best option is to hold. Especially if you're the promoter of the deal because as many of your listeners may or may not know but the way that promoters get paid, they sometimes get management fees, acquisition fees or other fees that just come off the top, right?

But a lot of times, their big hit is the promote at the end the day. When they sell the property, you return capital, maybe your preferred return and then there's a split you know? Whether it's 80/20, 70/30, whatever it is and the promoter gets that 30 or 20% top which is their big payday, right?

They've done all the work, they put all the work into this and they developed this project and now it's time to sell and if they sell it for this profit, that can cover all the return of capital, preferred return items, then they get this big payday.

Well, if it's downturn in the market and the investors can force the sale, then there could be no promote. You know, maybe it's just a return of capital, preferred return and a little bit off the top and investors walk away with money and developers put in all this work and doesn't get the big payday. And so, we represented clients and had negotiated hard to get out those forced sale provisions so they can make sure that they're selling in a market that's going to be ideal for them and to actually realize the benefits of it.It's worthwhile to them to be able to hold on to the property for another year or 18 months or whatever it is, to get a better market or whatever, even lease up more, get whatever to get a better cap rate and sell that property so that they can actually get paid.

That's just one example I think of where we've helped out our clients to make sure that the business deal is memorialized properly into the agreement.

[0:08:15.2] WS: What's a good way to know that our securities attorney understands the deals like that, because I know, I mean, maybe – is it just length of time in the business or is it you know, maybe they've been part of some deals, personally or what's something you would look for there?

[0:08:30.3] TC: Yeah, well, I think you raised a good point there in the way that you phrased it because you mentioned securities attorneys. And so, you really need somebody in my mind, either a firm that has somebody that specialize in securities and then somebody separate who specialize in these joint venture operating agreements for real estate deals, or, you have somebody for example, the way I practice, I've done all of that. When I was at firms, the real estate firm that I was at prior to starting my own, you know, I was the guy who did the operating agreements and all the securities work and that's the way I've done it. You need somebody who understands both sides of it either whether it's one or multiple people.

But, understanding the security side and the exemptions is certainly one thing, understanding the business terms and what to write in that operating agreement is another and so, you want to ask questions about both of those in my opinion, you want to make sure that you find somebody who not only knows the business side of real estate deals, it can draft t hose operating agreements but also has the securities expertise to make sure that when you're offering equity interest in an LLC, that you're not running afoul of any of the securities laws.

[0:09:37.0] WS: Would that be something that you would typically have in house like both of those things, specialties in under one roof with one attorney or is that something that the listener may have to think about having two different attorneys for?

[0:09:50.0] TC: Certainly, you may have to think about that depending on who you're talking to. Like for our firm, we have both of those expertise in our shop, so we can handle both elements of that. Larger firms, you know, usually have separate attorneys that have that, maybe one's doing the securities work and one's doing the operating agreement. But if you're dealing with a smaller shop or a real estate attorney, a lot of times, that real estate attorney doesn't do securities work. And so, they want to make sure that they do, if they don't do it that they have somebody that does.

So, for example, you know, we work with other law firms that have real estate clients and that are doing syndicated deals. But they don't do securities work so they'll call us and a we'll do justice security's work for them. They can do the operating agreement, they do the identity formation stuff and they're comfortable with that, they're just not comfortable with security's work and a lot of that boils down to your malpractice policy because if you check the box that you do securities work to your practice insurer as an attorney, they're going to up your malpractice rate. You're paying more premiums.

Unless you're doing a decent amount of that work, it may not make sense to check the box there and also if you just don't have the competence in that area, you certainly don't want to check the box and try to practice in that area because there's a lot of pitfalls that you can – that can happen there.

Definitely inquiry you want to make on both elements of that and it will vary on firm and by attorneys on whether they have both of those expertise.

[0:11:19.7] WS: Are there any, like regulation changes that you see coming or in the future that we should know about or be aware of?

[0:11:28.0] TC: You know, the securities law landscape is always changing and the SEC is always getting hit with comments on it's difficult to raise capital this whole accredited investor and definition, you know, forecloses the opportunity for a lot of people who don't have a million dollars in the bank to invest in deals. And so, there's been a lot of changes in my career, you know, we have the JOBS Act when I first came out and I know there's a lot of JOBS Acts out there, everybody wants to call, every legislation that comes out, they want to call it the JOBS Act because everybody's so focused on creating jobs.

But there was a JOBS Act. I forgot the year of that but I think it was 2011 or something like that and then now there's been further regulation changes on with crowdfunding and Reg A+ and things like that but other than paying attention to any changes to just accredited investor definition, there is always talk about it but until that actually legislation come up, it is hard for me say or predict because it is a constantly changing thing.

A lot of comments coming out about it but not all always any different rules coming out. This is how I explain to clients all the time is securities loss can be boiled down to very simple statement. I mean when you are selling securities, which when you are selling interest in an LLC, unless somebody has any significant management rights, you have to presume that that's a security that you are selling and when you are selling a security you have three options. You either register it, which is like an IPO and it is a very expensive process. You got to file your registration statement with the SEC and go back and forth. And so, that's nobody's doing that with smaller real syndicating real estate deals. They are exempt from registration so you got registered, except from registration or its illegal.

You don't want to be illegal. You don't want to register, you got to find an exemption. You got to find an exception both at the state and federal law under federal and state law for where your investors are investing from.

And similarly, which comes up often is a lot of times clients come to me and say, "Well, we have this person who say they can raise money for us. They can get money and they are just going to take 5% or 10% of whatever they raise."

And so, the first question is, "Well are they broker dealer? Are they licensed broker-dealer?" Because anybody who has facilitating the transaction securities has to be either registered, exempt from registration or they're committing an illegal act. So again, you know if they have the registration that's great, you don't want to be illegal and the exemption, you know there is exemptions that apply to promoters or people who have ownership in the entity.

So for example, a company if you start at an LLC and you're promoting a deal, you have some property locked up and a purchase of sale agreement and now you need to go raise money, you can go out and depending on what exemption you're using you don't want to necessarily generally solicit maybe but you can go out and find investors as long as you are not taking transactional based compensation you are exempt from the broker-dealer registration requirements.

So that's just a simple rundown of the securities laws both at the broker dealer and sale of securities level.

[0:14:33.1] WS: Yeah, no, I like that. I like just laying it out like that. We don't want to be on the illegal and those three options there that's for sure no doubt about it. And so, any issues that you see in the industry right now just through the deals that you are doing or even common questions like that that, "Hey, what about bringing this guy in to raise capital?" You know we've talked about that a lot that issue but anything else that you see that's happening in the industry right now as far as on your end, on the legal side that we should be aware of or just anything?

[0:15:05.4] TC: Yeah, I think the strange times that we are dealing with now, I think kind of goes back to the example that I gave. One of the things that I really pay attention to in my mind is the term and making – you know in these agreements you're trying to align interest as best as you can and investors who come in they want to know when they're going to cash out, when they can cash out. They're tying up their money and they want to know when they can cash out.

You know promoters want to do the best they can do develop the project or value-add or whatever they are doing to the project and find a good sale at some point. But I think making sure there is flexibility in those provisions of when the terms of this deal is going to be done. When we do we have to see or can we may be forced to sell or is that just the promoter's decision to make whenever they deem it's right. So that is one big thing.

I think contributions is another big one. Which a lot of times investors come in and they say, "Hey we are going to put in this initial capital contribution and we don't want to put any more money," and so I don't know what the environments, it is hard to say what the environment is going to look like moving forward now and so I think some flexibility in how those capital contributions work because you can put out a budget – if it is an existing operating property you know for example in the hospitality industry. You're a hotel, your budget that you made a year ago is not the correct budget and so if you have –

[0:16:28.1] WS: Even six months ago.

[0:16:29.1] TC: Yeah, six months ago right, if you have cost overruns who has to come to the table to counter contributions and so that's a big one to think about and think through because you know when we draft these agreements and when we're advising clients, we try to tell them, "Hey, I know you have a good idea of what you think is going to happen but we need to make sure that this agreement has the flexibility to weather the storm up and down cycles because they inevitably happen. We can't predict them or we'd all be wealthy and doing other things."

And so, you know, real estate is a great way to build wealth and obviously it is and so there is a – you just got to be able to weather the storm of up and down cycles and so trying to incorporate that into agreements I think is a difficult thing and even more important now, one of the other things that I guess force majeure clauses, which you know are something that you learn about in law school.

But every attorney has skipped over that provision or reviewed it very quickly and as far as I have known since I have been practicing until now, now that's become a huge provision and so can you go outside of the budget without having approval for emergency items, you know? Things that are force majeure type of events, things where it wasn't predicted, it wasn't predictable at the time and it is out of your control. You know that is another thing to pay attention to now. I think that is more important than it was previously thought at least.

[0:17:51.4] WS: All right Trevor, unfortunately we just have a few minutes left. So, a few final questions, what's a way you've recently improved your business that we could apply to our business?

[0:18:00.2] TC: It's a good question, for me systems are key. So, checklists are key. You know I started this firm as I mentioned in February of 2018 and I thought, "Oh well, I am going to have…" you know I don't know where the next client's coming and I don't have a bunch of time to just create all of my systems and have everything lined up. So, when clients come in the door we can be just efficient as possible and I got busy right away, which was fortunate.

And so, it is a long process, it takes longer than you think but I think developing systems in your business whether it is checklists, whether it is there's software automation you know we use Trello as a project management tool and I think that's been helpful but you know systems is what I would say has really helped my firm and my firm grow and be able to accomplish things efficiently and do the things that we want to do. That has been the biggest I think element.

[0:18:53.0] WS: Is there anything specific that's helped with that like a book or something other than Trello or anything like that that's helped you to implement systems?

[0:19:01.9] TC: You know there is a – well I listen to a lot of podcasts and so there is a couple of attorney-based podcasts that talk about these. One book and I don't know how relevant this will be to all of your listeners but there is a book by an attorney called *The Power Of A System*. I think his name is John Fisher, which again the book was written from the perspective of a personal injury attorney in New York but the systems that he talked about in there were applied to a lot of law firms.

Some of them don't apply to me as a business transactional type firm but a lot of them were good and I thought that was a good one. Yeah, I think that's the one I would say and I would recommend especially for any attorneys listening but anybody else who wants to see the way this guy put it his together. I thought it was very interesting and helpful for me.

[0:19:50.4] WS: Nice, what's the number one thing that's contributed to your success?

[0:19:54.3] TC: Time. I mean honestly it is one of those things where I don't really – if I knew exactly where every client came from I would do more of that but it's really just been out speaking, networking, doing deals and being in the market and so I think that's been and it just takes a while to get out there and get known and I think this applies to real estate, people involved in real estate and you know you just get out there, get your name out there.

That is where you learn about deals, that is where you create your pipeline. So for me it's taking a while, it is a long sales cycle and it probably is in real estate as well if you're more on the real estate promoter type side but I think so time and just being consistent, staying in the market and stay invisible has been the biggest contributor to success.

[0:20:40.3] WS: And how do you like to give back?

[0:20:41.8] TC: Well, we do a lot of pro bono work and we also take on a lot of smaller deals and give discount rates. So even if we are not doing it pro bono, we help a lot of smaller clients, you know that first time real estate transaction person who is coming in, there are honestly a lot more work for us than the person who has done 20 deals because they – the person who has done – you know none of this stuff is rocket science and once you have done five or six deals, you understand the operating agreements and understand the big negotiation provisions and things like that.

And so, even those bigger deals are sometimes easier to do from the attorney standpoint because there is less handholding on the client side but we work with small clients who are doing just the small raises. We help them navigate securities laws and also put together their operating agreement and we can usually give them a flat fee of something that is reasonable and they can afford and the reason we do it, I guess it is not at all giving back.

Part of it is we want them to be successful and then they grow and then they have more deals and then we have more clients, more deals for us to work on and so I guess it's not all altruistic but we give back in that way.

[0:21:54.9] WS: Awesome. Well I appreciate you giving back in that way Trevor and just giving back in your time today, just sharing numerous things with us today whether it's from the qualities of your firm and you know we should be looking for in any firm that we are considering partnering with but then just understand, that they just understand how the business works but then regulatory changes and any issues that you've seen right now in the marketplace, grateful for that. Tell the listeners how they can get in touch with you and learn more about you?

[0:22:20.0] TC: crow.legal is the website, so www.crow.legal and my email is trevor@crow.legal and my phone number is 720-230-7123 and we do deals, real estate deals, you know we're based in Denver; we do real estate deals all over. So, I mean we got hills going on and Missouri, Kansas, Oklahoma, all across as well as obviously in Colorado. So, feel free to call me, email me anytime. I'm happy to answer any questions, I am happy to talk.

We don't have an initial consulting fee or anything like that. We're just happy to talk to you and if it we're the best fit to represent you then we'll move forward. If not, we can usually direct you to the right place.

[END OF INTERVIEW]

[0:23:05.9] WS: Don't go yet, thank you for listening to today's episode. I would love it if you would go to iTunes right now and leave a rating and written review. I want to hear your feedback. It makes a big difference in getting the podcast out there. You can also go to 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.

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[OUTRO]

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