

EPISODE 762

[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 Nick Moore, thanks for being on the show Nick.

[0:00:32.6] NM: Thanks for having me, appreciate it.

[0:00:35.0] WS: Nick is a commercial real estate and corporate attorney located in Atlanta Georgia. Having assisted clients with multimillions in real estate deals, Nick guides his clients from the inception of the deal to post close business matters and everything in between. Nick is also a general partner in commercial real estate and has assisted in the formation of private equity funds, limited partnerships, syndications, debt securities and corporate structure revisions to accomplish his client's complex objectives.

In 2020, Nick was selected by super lawyers as a Georgia rising star for the areas of corporate and business which is reserved for the top 2.5% of attorneys in the practice area. When he's not taking down deals with his clients, he enjoys hiking, golfing, spending time with his church and staying active in his faith.

Nick, welcome to the show, grateful for your time. Knowing somebody like yourself is a must for anyone in our business and I think whether you're a sponsor or whether you're just passive investor, you need somebody like yourself on your team. Thank you again for your time, get us

started, it's a little bit of who you are, what you do specifically in commercial real estate, I know we highlighted a little bit, but then we're going to jump in to just your super power and take maybe the listener through just that transactional timeline and some pitfalls and things like that to help prevent them.

[0:01:56.8] NM: For sure and thank you for the introduction, I was so close to what I do and you thought I wrote it, and I did. Yeah, absolutely, appreciate it, yeah, I got started in commercial real estate 2012, working on the McDonald's deals and then just rising up from there, just started doing the multi-family assets, picked that up, do the closing, all the contract work. I work with the GPs and the LPs as well so when we're talking syndications, obviously, our GP is a general partnership, those are the guys running the deal, LPs of course are our investors.

Kind of got my feet wet a little bit, there were some contract work for another larger law firm and just picked up the material, really loved the clients. Everyone just gets so excited about income producing real estate and specifically the multi-family that it was really just contagious. There's nothing like being a lawyer and having your clients with good spirits. I do some litigation as well and I've had some success with that and, you know, it's a little bit different, it's adversarial, tensions run high, the clients already think they're right before they even bring it to you so you have to do everything again to prove them right, while someone's trying to prove you wrong.

But with the commercial real estate, it's just so easy to enjoy it and to know that you're building and that you're in some form or fashion incidentally providing security to your clients' families. People are sometimes in it for wealth, some are in it for security for their families, whether it's passive and using the money that they've made in their career and are laying that into a better opportunity. And there is no better opportunity than multi-family real estate. Self-storage and these other income producing assets and so I service general counsel as well, externally to a quite a number of companies, that gives me the opportunity to go through these contracts, I do on a daily basis.

And then again, my litigation experience, I know how to phrase these things to avoid litigation or to prepare for some contingency that's going to help you out and something that we wouldn't have to get into a big dispute about, I can just point to the language and say hey, here's obviously the intent and that's just been a tremendous value. Number one for my GPs. Now, on

the LP side, I've been able to review PPMs, other agreements there and tell them you know, kind of here's what the group can do, here's what you can't do, here's the rights, here's how your waterfalls work, et cetera. Just get in and mixing up the deals, you know, like I said, just kind of fall in love with the subject matter. Fast forward here, you know, almost six or seven years while doing this on a daily basis.

[0:04:31.5] WS: No, that's awesome. I've had different LPs or passive investors asked me about should I have an attorney review the PPM or those documents and I've had some LPs mention that like they've asked an attorney to review it and they won't, on the LP side. I thought it's interesting, is there something about that, that the LP needs to know about or why maybe one attorney wouldn't do that for them versus another one like yourself?

[0:04:55.7] NM: Yeah, of course, that's a great question and I don't want to speculate as to what an individual attorney and would apply and I know you weren't to ask me that but if anybody told you that you shouldn't consult an attorney, that's the end of the advice from that individual, hands down, okay? That's where you go, "Thank you very much." And then digress to different topic.

Why they wouldn't review the PPM is because A, they may not understand it, we're talking about 150 page there about document that is very content specific, the implications of the language can vary in terms of how do you earn your money, what's the preferred return look like, what's the waterfall, what are these fertiles, what's the success beyond the front end, what's the divestment fee on the back end? Can I get my units back, these different things that if you don't work on it on the front end, transactionally, it's going to look like Greek to review it and try and describe this and then the other thing is charging for that, I think sometimes attorneys actually shy away from work and they find it difficult to determine how to bill it.

What I do for LPs is I give them 90 minutes at a particular rate so I'll give you an hour and a half and that gives me enough time to go to this PPM comfortably. I'm not scrolling through, you know, of course I know what to look –

[0:06:16.9] WS: I was going to say, you're familiar enough that you know what to look for, it's not some other attorney that maybe has a different specialty that this is kind of out of their wheelhouse, you know? It's like asking the knee surgeon to perform brain surgery, right?

[0:06:29.0] NM: Look at the brain scan, you know, that's kind of what it is, it's not so much even the surgery as much as like hey, check out the slide, I'm used to looking at knees, you know? Let me take a look at that, you're exactly right.

[0:06:39.8] WS: Well, let's jump in to the transactional timeline, I want us to be able to hit that before we run out of time. Go through that timeline and I'd love for you to just highlight some pitfalls and how to prevent them thinking through that, the transactional timeline of purchasing commercial property.

[0:06:54.5] NM: Yeah, absolutely. Obviously, you want to start with the LOI, right? That's our letter of intent. When you go and you find interest and you underwrite a deal and you want to make an offer on it, you want to put some terms in the LOI that are not going to be such a surprise once we go to execute the PSA. That's going to shorten the timeline and executing the PSA so you're not hey, I have no idea you were going to ask for these things in due diligence or that you wanted these timeliness with the inspection period or due diligence and the financing period or losing or extinction on some of these other things.

My LOI is very comprehensive, have a lot of that in it so they know what to expect. When I go ahead and release the PSA for red lines, there's very little to red line, okay? The LOI is accepted and it's signed, the PSA is submitted, the timeline should look like this ideally, okay? Your inspection period is historically about 30 days. I've seen a little bit less, I've seen a little bit more, sometimes the buyer wants more, sometimes the seller wants less, you just have to negotiate that. But you don't want the inspection period to start at the effective date of the PSA because that's really the date of execution.

The inspection period should really begin when you receive all the documents that you've requested, right? Because you don't want to have a 30 day timeline that runs in signature and then 21 days later, you're still waiting on a T12 to evaluate the expenses on the property or

operating statements or insurance loss runs or whatever you need this part of your due diligence.

We typically put in my critical dates checklist the date on which we received all of those documents and then 30 calendar days, and calendar and business days, obviously an important distinction, typically it's calendar days, 30 calendar days for then, would be the end of due diligence period. Now, I also like to put in a little qualifier there for property approval notice okay? And the property approval note has to be an affirmative document or communication from us to them at their notice, you put the property approval notice and then to let them know hey, we reviewed all the documents, we're going to proceed.

Now, most often, okay, the seller's going to want the property be sold as is, so once you provide that property approval notice, you kind of wave your issues with any of the documents that you received in due diligence up until that point. Now, if you have reps in warranties, there are certain things that you can put in there if you know that there may be an issue with the roof, the laundry room, unit 12, you know, these other things you want to put in, they can continue passed inspection. Make sure that they are responsible for some of the things that you addressed in due diligence, let's say you went and did the – either an appraisal or you win in two other two property and you found some patent defects and things that are noticeably issues, you want to bring those up and make sure that those provide the inspection period and they didn't merge with the property approval notice.

The reason that's important is historically, the earnest money that you put down which is give or take, 1% of the purchase price. Those hard, typically, at the end of the inspection period so once I submit that property approval notice, money goes hard, you're not getting it back, you got to go do your financing, find your lender, get all that and then do your syndication, PPMs, all that jazz, okay? Now, one of the things that we've done of late, particularly in the COVID era is try to make the earnest money not go hard until the end of financing because it's been so difficult to get financing whether through Freddie Mac, Fannie Mae, conventional even, don't really recommend SPA, high fees so everybody just you know, I'm not going to knock the SPA, it can be useful, but I don't think it should be option number one, in my experience.

That being said, earnest money doesn't go hard till the end of financing. Now, financing will either, historically run concurrent with the inspection period and a lot of times, will run beginning on the effective date, okay? But if you want to, you can work it in there because it's a negotiating point as all these are, okay? You want to put your finance in period of about 60 days from the expiration of the inspection period. That's going to give you enough time to work with the bank, nobody's feeling the pressure, you're not going to lose out on earnest money and you're not going to have to contribute more money under the extension, because a lot of times, which we're working to the deal is the option to extend the closing.

Historically, I've done a quarter of a percent of the purchase price put into escrow, again, it's not refundable because at that point, we've already moved out of the due diligence period, okay? Now it still can be but that would be put into escrow and apply to other purchase prices later down the road. But that's the consideration for the extension. Any option is basically a new contract the direct sizing has to be sold by consideration so you have to have a dollar value on that, okay? But you put in there if you know on the front end, kind of what the terms you want in finance and you go ahead and put those down in the PSA and say, hey, we're looking for something in the 5% interest rate range, we want a 25 year amortization, we want a 10 year note, balloon payment, three years interest only.

And try and put that in there to give yourself that opportunity so hey, if you don't get it, you can back out of the deal and get your earnest money back. I have fortunately never lost earnest money with a client. Okay? I've also in litigation had people bring me issues where they probably should have lost earnest money, I was able to get it back, okay? Just be very careful, you don't want to wager 1% of three million dollars which is 30 grand on not knowing what's going on, oversight on certain timelines. The financing contingency is very important. Now, what I do to hedge on costs is I don't go and file any of the registrations or any of these things until we get enough into the financing period that we've obtained the financing from the lender. Then we can start discussing the PPMs and getting your operating agreement and registering these entities that have a fixed cost on them as well.

Those measures together are going to create a safe environment for you to got take your deal down. There is plenty of outs and it's very easy to point to the language, a lot of times, last point on it, the earnest money is typically held by a third party escrow. Well, they can't release that

earnest money without consent from the side. I like to hold my clients investor funds because I'm not subject to that full party consent and if something goes south, I don't want them holding the investors bonds and have a derivative action or direct action come against my client. I'll just go ahead and release that back to the investors or I can at least report to them, hey, I'm counsel on this, we have your funds, we are working through some issues on the PSA, I'm either going to hold it until we resolve that or I'm just going to go ahead and return it to you and then we can work through the issues on the PSA.

[0:13:23.4] WS: The financial contingency thing is so important and I know we've had some sellers that recently even after COVID, you know, all these mess now or I would say eight months ago, it's like you had to go hard with hundreds of thousands of dollars on day one or else, you don't even get considered, you know, as a buyer.

But that changed a little bit, you know, after all these mess happened and then, you know, we even have a seller recently that had said, you know, no financing contingencies, whatsoever and we're like wait a minute, you know? We're talking almost a half a million dollars going hard and no financing contingency so it's a lot to work through. Glad you brought that up.

[0:14:01.9] NM: Absolutely and that's what you want to be careful of, I have seen those deals absolutely. My clients are historically more of a syndicating type or they take the deal down, organize them and then typically they have investors enqueue already. A lot of people will do their raising sort of on the front end building those relationships. A lot of my guys are going to buy those 506(b) as in 'boy' route, right? And because they are taking contributions from non-accredited investors. So they are doing a lot of that relationship building on the front end. They say, "Okay, once we got some soft commitments then we'll go find our target.

Take the deal down, syndicate this thing, wrap it up in subscription documents, etcetera and move forward at which point if you have that, maybe the financing can be reeled in a little bit, right? That is where you are going to shorter inspection periods, shorter financing contingencies but you never know with the lender itself what their appetite is going to be. Freddie Mac and Fannie Mae typically require an economic occupancy of 85 to 90%.

Well you can imagine with COVID of late, I'm in the deal right now and we are salvaging unfortunately I believe but the economic occupancy had some impact from these non-paying tenants and they are sheltered under the government moratorium on evictions. COVID has thrown in some wrinkle in some things but you know nonetheless, we want to make sure that in financing period that we have covered our bases.

[0:15:19.5] WS: Okay, we better move on the timeline. We went through the earnest money, financing contingency, anything else you want to hammer on through the timeline?

[0:15:26.5] NM: Yeah, absolutely. So let's talk about closing, let's talk about our friends at the lender, right? So they've got a whole cache of documents that they need and they want them the way they want them, okay? So I could look like a pro, I can do this in my sleep but it is probably only going to be with one lender because each lender has its own [inaudible]. Now it is easier when you go to Freddie Mac and Fannie Mae to have their own particular requirements.

The most complex thing for me to put together really is the org chart because there is all of these other nuanced things that frankly you can clean from the documents. It is just something nice almost a cover page but what happens in closing? I want you to notice from your attorney because I want you to really thank him at the end of the process when the deal closes because of all of this stuff that we got to do to get your documents organized.

They go very scrupulously through these documents, operating agreements, etcetera, signature box and all that and so any edits that happened that you made in the last minute are very pretty tedious. So how about yesterday we had a closing or a piece of property in Corpus Christi. So this piece property, didn't close but here is the escrow agent who's like, "Hey, wait a second, your PSA assignment from my client's asset manager to be holding this company, the operating entity didn't have two letters in the name."

And so we had to scramble at the last moment, of course it is all DocuSign and had to send that out and get that adjusted and unfortunately that was the only real sweat on the brow yesterday but those are the little things that we did to pull together. Hopefully your lender is giving you a good checklist from the front end that would be one that is going to be for the guarantors, the other of course for legal and then we'll pull that stuff together before you send it off.

Hopefully CC you on those emails, so you got some visibility to that and then it closes. The wires are made, the settlement statement is signed, everything is completed and that asset is yours and then the real review begins, right?

[0:17:21.5] WS: That's right. Anything post-closing quickly before you just want to bring out some pitfalls and the ways we can prevent them?

[0:17:28.4] NM: Yes, so post-closing. Okay, most of the time the things that are going to hang over are obviously we are going to have all security deposits and other lingering debt and some things. Be careful of bad debt. Make sure that you an account to that as best you can, holdover tenants that is going to be in rent rolls and things. So it is good to see that but number one you want to see what problems from the tenants that you are going to adopt at closing.

All right, provide for those as best you can on the front end. Next is latent defects on the property. If you don't have an as is, where is, with all thoughts of disclaimer, you could go back based on representations made by the seller and maybe get some credit but it is going to be difficult. Just make sure your reps and warranties are nice and clean. That means that the property has been operated in ordinary course of business and nothing held over because I can tell you it is extremely difficult to go back after closing and try and get anything from a seller.

They've already got their money, they've gotten their wire and you're going to have to pay me to maybe get a credit back in some form or fashion and then lastly, make sure your contracts are already assigned or that we have the assignments changing control and these other things, property management, landscape, cable, electric, all of these other things enqueue so that there is no lag time because you don't want your tenants necessarily to suffer or there was not the best planning as you get to closing.

[0:18:50.8] WS: Awesome, any other pitfalls Nick that we haven't discussed that you want to highlight that you see people are having trouble with?

[0:18:59.1] NM: Be very weary of good faith deposits when you are going to your lender, okay? Now when you are dealing with Freddie Mac and Fannie Mae and you are going through a

broker, a mortgage broker. Just be very weary of what the fees are they are non-refundable. Typically they want an X percentage or a flat fee as the good faith deposit. Now that good faith deposit is applied to the attorneys and title and all of these other folks, underwriters and things that's the cost of reviewing the deal.

Once you pay that, you're never going to see it again. They're going to be able to justify somehow the payment of all of these stuff that they did on the back end. So if you go through financing, put down your good faith deposit and then you can't syndicate the deal and you can't close it on that end, you're not getting that \$12,500 back from the lender. They are going to say, "Sorry, you know kind of costs to doing business." Also be weary on your attorney's fees.

So here's what I do just to breakdown, "This should be in a benchmark. It's not, it should be." You want where you can put a deposit upfront with your attorney and then have a success fee on the backend. Let's say take a ballpark \$10,000 flat fee. You want to be able to pay five to 6,000 upfront to get everything going then a success fee on the backend. If you don't even get through due diligence then at that point, you want to be able to be absolved of any further responsibility on that fee.

And frankly, the lawyer didn't earn it all because you didn't get out of due diligence. So basically I did a PSA for \$5,000. Now there is a risk on the front end but that is the only exposure you have. Most of the attorneys out here charge them \$10,000 plus and that doesn't include title and escrow. So your settlement fees and all of that are going to be an additional five to \$10,000 depending on the property but what you don't want to do is be in \$10,000 you lose it to due diligence because the roof falls through and there's insurance loss runs, the building burned down and all of this stuff.

And now you're out 10K and you didn't even get anything for it. So be very weary of those attorney's fees. I work nationally because this is a federal program. If you like to talk more about that, I'd be happy to but don't take to cleaners by the lenders, by your sellers, by your attorney, get it by like me. I am hard-nosed with a soft heart. That is what you need in an attorney.

[0:21:11.1] WS: This is just a great example of why you have to have someone like Nick on your team. I mean it is just a must, there is just no way of doing these types of deals and you

know you are buying 30 to 50 million dollar properties and there's no way I couldn't imagine doing it without an attorney, somebody that's guiding you through all of these pitfalls just like Nick is talking about. There is no way I can know them all that's why we have A players and attorneys. Including attorneys like Nick on our team, that can help us see those things so just from their experience. Nick, you know moving to a few final questions. Anyone that has a successful business has a high level of self-discipline and how did you gain a high level of self-discipline?

[0:21:49.6] NM: I think because I wasn't for a very long time. In my youth, I was very youthful and I had to play catch up a lot in my adult years and the only way to overcome those years of youthfulness was discipline and I realize that I came from a blessed family and had a blessed childhood, but not to the extent that I didn't have to work, right? And I realized I did enjoy the finer things in life. I aspired for more and the only way to do that was through my education.

Through self-discipline, exercise, mental fitness, spiritual fitness and those items. So I wake up early, I try to exercise every day at 7 AM for at least an hour. I try to run, eat well, I've got a family that enjoys eating good food as well. I like to cook. And all of these things translate through your life and I take that same discipline at home and I bring it to the office or if I am working from home, I bring it to the next room and sit down. But Whitney like I told you, I just love what I do. And discipline, even though it is discipline it is easier to do when you have a passion for it. And when you believe the positive qualities that you are getting as a product of that discipline. To me it is just kind of a perpetual motion kind of thing and it is just provided such abundance in my life.

[0:23:04.0] WS: Are there are a couple of daily habits that you have that you are very disciplined about that have helped you achieve success?

[0:23:09.3] NM: I am a man of faith. So I've got a personal relationship with God and certainly self-reflection, introspection and prayer every day. Exercise and eating well and really truly just trying. Waking up, putting forward that effort, every day. There are no days out, there's no lying in bed, I mean I'm announced to more. I have my law practice and so when I look at my beautiful family and my beautiful home and I have a responsibility to that.

But there is nothing you know really where I am kind of ritualistic almost. Nothing sort of like that, but my day to day is very similar between focusing on diet, exercise, faith and just spending time with a family and disconnecting, as much as I love the word, disconnecting is a critical part.

[0:23:55.6] WS: What's a way you have recently improved your business that we could apply to ours?

[0:23:59.4] NM: Consult your financial experts. We can't be everybody in the room. You know you want to rely and take those that worry and anxiety out of certain areas of your life and give them to the experts and pay for it. Pay for it. If somebody pays you for what you do best, it is okay to pay it forward and put these people in positions in your life to do their best for you. You cannot fail if you take that approach.

[0:24:26.1] WS: What's the number one thing that's contributed to your success?

[0:24:29.0] NM: Faith and family. I've just been blessed with a strong mind and I apply it and I read and I do things that stimulate the mind on a daily basis and it just changes you in such a positive way and hopefully it is contagious and then when you start surrounding yourself with people of that like mind and that love your energy and help boost yours and you boost them.

[0:24:49.1] WS: How do you like to give back?

[0:24:51.1] NM: So right now as busy as I am, it's really been more financial. So I like to contribute to the church, I like to contribute to our benevolence fund and so that kind of goes out in the community a bit more. Food banks, things of that nature and as my time frees up, I like to get involved a little bit more on an in person volunteering basis. Obviously that's been curtailed a bit by the COVID. But giving back is also working with clients in such a way who come to me who don't have the blank check. And being able to do things is such a tremendous value and knowing that my efforts and talents are helping them and their family. So there's kind of a perpetual giving in that regard. I don't think I have ever sent anybody an actual full invoice. I might start doing that but so far, I do just fine taking haircuts and giving back to my clients on that front.

[0:25:41.3] WS: Nick, I am grateful to have met and appreciate you just sharing today. Your level of expertise and experience and just going through this transactional timeline and pitfalls that the listener needs to know about and I think whether you are a passive investor or you're an operator either one, you need to understand some of these things so you can on the operator side, you better know them or have somebody that is on your side of council like yourself Nick or even as a passive investor, it just gives you good questions to ask your operator, you know have they thought through these things and understand that they are protecting themselves.

So grateful for your time Nick. Tell the listeners how they can get in touch with you and learn more about you?

[0:26:18.3] NM: I do have a website, it's capitallawgroup.co. My email is nmoore@capitallawgroup.co. If you just google my name, it comes up with my law firm and I think it comes up with a couple other articles and things including the super lawyer's name, which is a very humbling experience. We don't get a lot of accolades out here so that recognition was terrific. So there is a link per bio in there.

You can message me on LinkedIn, Nicholas G. Moore, bald, beard you know, yellow necktie that's me. It has syndication monitor on it so that you know who you're getting in. I'd love to answer any questions or help guide you through the process or like I said, be that bulldog with a soft heart, they can get these deals done for you.

[0:27:02.7] WS: Awesome, that's a wrap. Thank you very much. I appreciate your time.

[END OF INTERVIEW]

[0:27:07.1] 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.

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 are 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]

[0:27:47.7] ANNOUNCER: Thank you for listening to the Real Estate Syndication Show, brought to you by Life Bridge Capital. Life Bridge 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. Life Bridge Capital, making a difference one investor and one child at a time. Connect online at www.LifeBridgeCapital.com for free material and videos to further your success.

[END]