EPISODE 1315

[INTRODUCTION]

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Whitney Sewell (WS): This is your Daily Real Estate Syndication Show and I'm your host, Whitney Sewell. Today is a Highlights show that's packed with value from different guests around a specific topic.

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[INTERVIEW 1]

0:00:24

WS: Our guest is Trevor Crow. Thanks for being on the show, Trevor.

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Trevor Crow (TC): Hey, Whitney, thanks for having me.

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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 into your unique skillset and some qualities that your firm has.

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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 a 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.

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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 in your firm and why those are important and let's jump in.

0:02:49

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 sorts 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 business 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 a 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 sorts 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.

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WS: Yeah, do you have an example, or maybe you know, just like how you all when you started to draft the 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?

0:05:40
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 promotion at the end of 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 a downturn in the market and the investors can force the sale, then there could be no promotion. 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 don'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 in the agreement.

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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?

0:08:22
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 specializes in securities and then somebody separate who specializes 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 those 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.

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

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TC: Certainly, you may have to think about that depending on who you're talking to. As for our firm, we have both of those experts 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 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 that expertise.

[INTERVIEW 2]

0:11:12
WS: Our guest is Stephen Robison. Thanks for being on the show, Stephen.

0:11:16
Stephen Robison (SR): Thank you very much.

0:11:17
WS: Stephen is a board-certified specialist in Federal Taxation Law by the Ohio State Bar Association and President of Strategic Property Exchange, LLC. Ohio Bar Association board-certified specialist in federal tax law since 2001, he was named six times Ohio Super Lawyer by Law and Politics Media in the area of taxation law from 2003 through 2008. He earned his BA degree and his JD degree from the University of Cincinnati and his LL.M. degree in business and taxation from the University of Bridgeport. Stephen, thank you so much for your time. I know you're going to provide so much value to the readers of what we're going to discuss. Give them a little bit about who you are and what your focus is right now.

0:12:03
SR: I'm a tax lawyer and we also have an exchange company. When I say exchange company, that means that we help facilitate people who sell real estate, take those proceeds and reinvest them into other real estates so they don't have to pay the tax. If you can help someone save $1 million in tax, you have a friend for life and they'll send you Irish whiskey at Christmas time every year. We handled these property transactions all over the country and overseas as well. The way I pinpoint what is it makes us different than other people is that we will review every document, loan document, and operating agreement to make sure that what the client wants to achieve is actually achieved.

We're not trying to put off their other advisors like CPAs or lawyers. We're here as a second pair of eyes to make sure that what they want to accomplish does get accomplished. Typically, their other advisors have so many other clients that they can't keep on top of these quick changes where someone will call in at 2:45, the closing is at 3:00. "I want to borrow twice as much money. Is that okay? I want to go to Bimini with the money. Is that okay too?" You have to talk them off the cliff. You can't do that. Our job is to manage and monitor that process.

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WS: You brought up a great point too. You're reading every document, so you're making sure what the client wants actually happens. I know it's common that we don't read all the documents. If a PPM, Private Placement Memorandum is 100 pages, how many people are reading that?

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SR: They're designed so no one wants to read them. There are subliminal go-to-sleep messages on the pages. You're thinking, "Is that in ancient Greek? My Greek is rusty." You have to force yourself to get through that.

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WS: A lot of it we wouldn't understand even if we did read it. That's what you do for people. You're reading those documents because you understand the Greek terminology and you can explain it and make sure we are protected. We're getting what we're signing up for.

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SR: We translated it back into Standard English. From words that are meant to confuse you, to something that's basic. As a consequence, when the real estate market had a downturn, our clients had gone into properties like these that were syndicated and none of our clients had any problems. None of their properties blew up because we were careful in making sure that they understood what they were getting and that it was a solid investment. Some companies went under and the clients suffered greatly, but those were not the ones that we had advised people on.

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WS: Can you give us some examples of documents that are a must to be reviewed by somebody like yourself? If I'm going into under a contract and I'm fixing to invest. What are some documents that I definitely need to contact somebody like yourself to review?

0:15:07
SR: Prior to that, you have a purchase and sale agreement, which of course everybody would be looking at. Then a second one is an operating agreement. We had a sale of a property in Texas. In the operating agreement, there were two kinds of payouts. There was a payout while the property was operating, which benefited the managers, and then there was a payout for the owners when the property was sold where there was a 10% swing in the payout. The accountant had not picked up on that on the tax return. He showed a higher payout for the managers rather than a higher payout for the owners. When we were reading through it, we noticed that the client was entitled to an additional 10% of the sale proceeds. A big number because I think the property sold for $20 million.

We were like, "You see the words here, it says he gets more." That of course was a big stink when we discovered that. Another example is the loan documents. Where they say, "I'm going to borrow $1 million." He said, "That's great. That's the amount you need for your exchange," but then you read the loan document and it says, "No, I'm borrowing $10 million. I'm actually using the money to create a gold straddle partnership in Ukraine." You're like, "You can't borrow that additional money on this exchange because it's not going to the property." A loan document is another example of a tedious, boring document. You have to read operating agreements and other side agreements that suddenly appear out of nowhere. We have a side agreement, “Can I see that?” An undiscovered document shows up.

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WS: A side agreement, would that be something we get the contract whatever it may be, but then two weeks later we get this side agreement?

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SR: It might say something like, “I’m going to give 10% of the profits to a developer or someone who was involved originally.” Many times what we’ll say is, “That’s okay as long as it’s treated as a profits interest because that could be treated as a sale expense.” You don’t have to worry about, “Do I now suddenly have a partner in the deal that I didn’t know I had before?” and then they would have to go forward into the new deal and they don’t want to. It’s addressing who gets what and what this means.

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WS: Who’s your typical client? Is it going to be syndicators and passive investors or is it going to be mostly passive investors?

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SR: It’s going to be owners of real estate and they can either be in the form of an entity, like a partnership, a trust, whatever it might be, or in their individual names. They could be people that are much older. They’re looking to in the case of syndication, let’s say, for example, the husband’s passed away and the wife wants to sell your 40 apartment buildings. She wants to buy something that does not involve management. It would be a typical investor going into a passive investment or people who inherited property years ago. It was very common when the estate tax was much higher than people were gifting property left and right. They own this property since 1980 on a very low basis and they’re selling it because they’re getting a good deal, but they don’t want to manage the property. They have no understanding of how to manage the property. They might be an orthodontist in Pasadena, California. They have no desire to manage the property.

[END OF INTERVIEW]

[OUTRO]

0:18:31
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