



## “Good Legal Advice ... Is Good Business Advice.”

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I was recently having a chat with a friend who is a real estate broker. He offered his view that real estate lawyers should not give business advice to their clients. His point was that a lawyer should not be evaluating the economic advisability of a transaction and that the lawyer's role should be limited to so-called legal issues.

My own view is that often times there is no clear line between what is a business issue and what is a legal issue. Virtually every provision in a legal document has potential economic consequences. Therefore every bit of a lawyer's advice regarding that document is business advice in the sense that it should further the client's business objectives or reduce the client's risk of failure. If the lawyer's advice does not have these real business consequences then it cannot be very important or valuable.

This conversation made me consider what qualities of business judgment a good transactional lawyer should have. Here are some that I think are essential:

### **1. Being Able to Distinguish and Evaluate Risk.**

Virtually every provision in a legal document can possibly have a favorable or unfavorable effect upon a party. It is not practical to negotiate every provision in a way that is of maximum benefit to one party. The effective transactional lawyer should be able to focus primary attention on those provisions whose consequences are real and not on those whose potential consequences are remote.

### **2. Having the Experience and Judgment Necessary to Recommend Which Party Should Appropriately Be Responsible for a Particular Risk.**

An experienced lawyer who has been involved in many previous transactions of a particular type, whether they be sales, leases, loans or any other type, ought to know what the reasonable expectations of each party should be in that type of transaction. If a lawyer recommends that the client accept more risk or less risk than would be customary, there should be a good reason specific to that transaction and the lawyer should provide the client with an explanation of those circumstances.

### **3. Understanding the Client's Level of Risk Tolerance.**

An effective business lawyer must know the client

well enough to be able to assess how willing that particular client is to assume certain risks. For example, a sophisticated and experienced real estate investor might appreciate and accept the risk of accepting a property that is not in good condition whereas a different client might not appreciate that kind of risk.

**4. Understanding the Business Background.** It is essential to understand the factors that influence the client's desire to pursue a transaction. For example, if the client is not highly motivated to proceed with a deal, then the attorney can be more aggressive in the negotiations. On the other hand, if the client is highly motivated, the attorney might be less aggressive. The attorney must also know and understand what must happen in order to achieve a successful business result. Only with that knowledge can an attorney understand what the significant issues are.

### **5. Writing Documents in a Way that Anticipates Possible Circumstances and Reflects the Parties' Understandings.**

Many disputes arise because something happens that the parties did not anticipate and they have different expectations about how to deal with those circumstances. This leads to litigation which is usually not good for the business person regardless of its outcome. A good transactional lawyer will anticipate the possible scenarios at the outset of a transaction and make sure that the parties negotiate and agree clearly upon how they will deal with them.

**6. Understanding the Other Parties.** In order to complete a successful negotiation all parties must satisfy their business objectives. Therefore the good transactional lawyer must be able to propose solutions which can satisfy not only the client but also the other parties' reasonable concerns. Otherwise there simply will be no deal.

**7. Reflecting the Client's Business Style.** Every client has a unique style and personality. These qualities are critical to the client's business approach. The business lawyer must understand and to some extent incorporate that style and personality in order to represent that client effectively and authentically.

I would be delighted to discuss any business transaction involving readers of this newsletter and apply to it the skills and experience that I have acquired over many years. I can be reached by phone at 610-941-2555 or by e-mail at wstewart@kaplaw.com.