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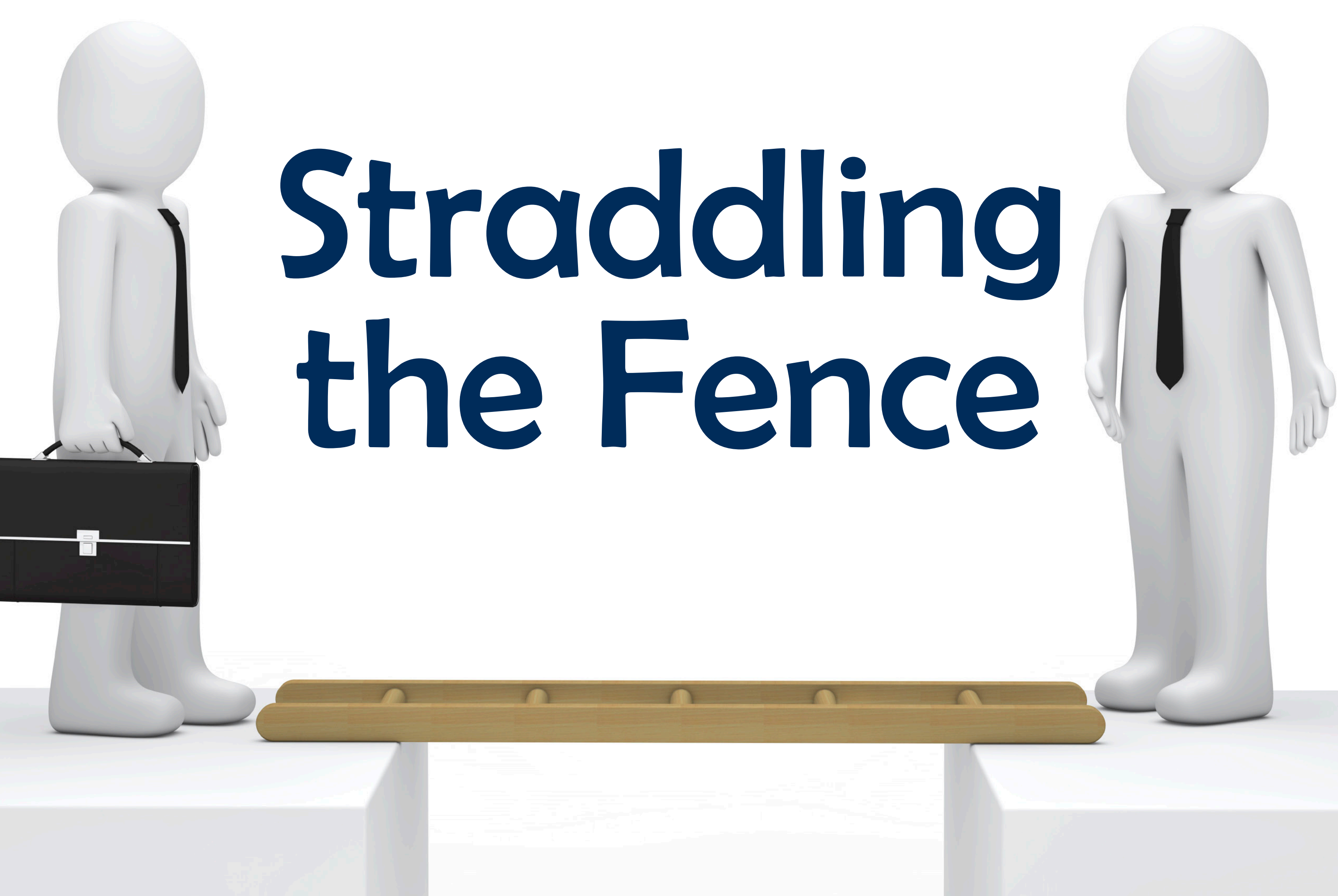
Straddling the Fence



By Steve Bergsman

How to Successfully Mange Cross-Border Transactions

Cross-border transactions have the tendency to either torment commercial real estate brokers or, conversely, to miraculously appear at the right time in the course of seeking new business. Some brokers fear these situations, others welcome it.

Whether your heart palpitates at the thought of an international play or not, it has become much easier over the years as the small incidentals that often tripped up novices have now been exposed. In addition, most brokers doing deals overseas belong to large international firms with other associate brokers nestled in hundreds of cities across the globe. For the independents, there's always the SIOR network, which now boasts a much deeper presence in global markets than ever before.

Here are the basics. Once you cross the border, things change, whether it's fees, negotiating processes, regulations, and/or ownership rules. You might not know those differences so it becomes imperative to find the person who does, and who can help you on your deal.

The same holds true for foreign investors coming into your market. They may not be familiar with your regulations, and when they knock on your door you have to be the source of information, the guide through the processes, and the procurer of legal services, if necessary.

U.S. Perspective

It's not always easy dealing with U.S. corporate clients who want to be overseas, says **Paul Waters, SIOR, CCIM, CRE, FRICs**, an executive vice president with NAI Global in New York. "The fee structure is different. In Europe, landlords don't pay the fees, the tenant does. You don't have the same industry stringent requirements for practitioners. There are also differences in zoning, use of building rules, and taxes, and you have to dig deep for ownership."

Waters' solution is to work with an NAI Global associate, and, as he says, "find a really good counsel and pay a premium for any work."

Even with that, things happen. Waters give this example: He had a food manufacturing client that wanted to build a new manufacturing facility near Moscow. One of the most important requirements for the site was having water accessible 24-7, but there was no guarantee that the site being proposed could accommodate. "The client wanted the tenant to make an infrastructure investment of close to a half million dollars," Waters recalls.

How did Waters resolve the impass? He worked with a quality broker from a rival company who found a pre-existing structure with an historical water supply. On smaller jobs, Waters relies on the NAI network, but on any space over 150,000 square feet, he boards a plane, flies to the location, and does his own on-site inspections.

"We had a three-page list of things that had to be done along with photos," says Wernisch. When the list was accomplished, the building sold.

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Conversely, there are always foreign companies needing to be in the U.S., and they face the same need for expertise that U.S. companies need elsewhere in the world. This is a very good flow of business if a U.S. commercial broker can tap this particular well.

In Miami, **Danny Zelonker, SIOR, CCIM**, a broker-associate, at Mizrach Realty Associates, reports 50 percent of his business is now cross-border. “I have investors from Israel, Argentina, Venezuela, and Brazil,” he says. He suggests that the three intangibles a commercial broker needs to offer foreign investors are: a contact person that speaks the language; an understanding of why they are investing in the United States (for Latin Americans, that often means port of safety for capital); and, at least initially, total care, which can mean a full boutique of services (i.e., property management) from the company, itself and reliable and recommended outside service providers such as attorneys.

“Most of the professionals that we use speak the investor’s language,” says Zelonker. “If they are from South America, they are more comfortable with Spanish. We just did a deal with an Argentinian group and the whole thing was conducted in Spanish including the banker we brought in.”

He adds, “As an SIOR I have a group of people I work with, plus accountants and attorneys, who will help if the investors want to open a business here. Recently, I had a client from Venezuela, a foreign national, who I was able to get a 90 percent SBA 504 loan, which is a difficult loan for a foreign national to get.”

In Miami, the foreign investors often have substantial means, which is a good indicator they will buy with cash. Zelonker notes, “I advise them to the right location with the least amount of risk because they are into safety. I find a professional who speaks their language so I know they will understand all the ramifications of the deal. The most desirable properties for these types of investors are multifamily, because of immediate return, and secondly, retail.”

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Contributing SIORs

Paul Waters, SIOR

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Contributing SIORs

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Bruce Schneider, SIOR

Outside the U.S., but Close By

Puerto Rico is a territory of the United States, but since it had a long history under the rule of Spain, many of its regulations are closer to those found in Latin America than in the United States. For that reason, its location, and having a Caribbean-hub airport, many international companies house manufacturing and distribution plants in Puerto Rico. Cross-border real estate deals are common, yet still confusing.

"The rules governing real estate are totally different from the United State and many are in Spanish," explains **Hector Aponte, SIOR, MBA**, a managing director at Kapitalwert Group in San Juan. "We are under the U.S. flag but our law is from Spain. It's very complicated."

Another problem in Puerto Rico is lack of uniform data, says Aponte. "We don't have a CoStar database of buildings. We have here only the information provided by current brokers. It can be very challenging to get data, but it's up to me to get that information and put together a good report for clients."

Currently, Aponte is working with a European pharmaceutical company that's interested in opening an office in one of the high-end venues near Old San Juan, and Pitney Bowes, which is looking for a manufacturing site in the San Juan area.

Aponte strongly suggests hiring a local broker for two reasons. First, to find the comps relevant for pricing, and secondly, to figure out what incentives are available.

"There are several incentives and tax breaks for U.S. companies to do business in Puerto Rico," Aponte notes. "Again, in original form these are expressed in Spanish so it helps to have someone who understands the laws and the language."

The way incentives are applied is also an issue for companies establishing offices or facilities in Canada. "Our incentives work differently here than in the U.S., where they are more negotiable," says **Randy Borron, SIOR**, the global managing director for the Data Center Advisory Group in Toronto. "Our incentives tend to be simpler. Values are fairly easy to ascertain once you understand the processes involved, whether the incentives are municipal, provincial, or federal."

Companies in the U.S. are very comfortable doing business in Canada as most *Fortune* 1,000 firms have a presence north of the border. In fact, says Borron, "Real estate decisions in Canada are often made by real estate executives in the U.S."

"One of the easiest things to note is that there are a lot of similarities between real estate transactions in the United States and Canada," adds **Chad Boddez, SIOR, CCIM, BComm**, a vice president with Colliers International in Edmonton. "But there are differences. Whenever you have an American company coming up and doing a deal in Canada, subtle differences do come into play."

One of the big variations that tends to get identified fairly quickly is the differences in the negotiation process. "In the U.S., it's very typical to use non-binding letters-of-intent to unwind the business terms of the transaction and then go straight to the lease," Borron comments. "Whereas in Canada, the typical process is to negotiate a binding or conditional offer-to-lease document and then go to lease." Both Borron and Boddez recommend having Canadian counsel on board with any deal.

The other big difference in Canada is the condition of markets. Key Canadian venues report very low vacancies and high costs. "Americans come to Toronto expecting prices to be flexible, but with vacancy rates in single digits, there isn't any flexibility," says Borron.

In northern Alberta, in the heart of Canada's oil sands country, servicers want to be in Fort McMurray, but industrial rates in that city are $40 a square foot – and Edmonton is a five-hour drive, Boddez reports. Borron and Boddez strongly suggest finding a local broker who knows the local market.

Bruce Schneider, SIOR, president of Schneider Industries Inc. in St. Louis, has been linking buyers and sellers of real estate for decades. Many of those deals have been in Brazil and Mexico. Recent transactions include the auctioning of an industrial property in Rio de Janero, where the equipment was sold to one party and buildings to another.

A bit more interesting is a deal the company brokered in Anahuac, Nuevo Leon, Mexico, where a manufacturing company was looking to close its plant and sell the property, but Schneider Industries instead found a buyer for the whole operating business.

"South of the border, there is a lot of paperwork," observes Dilceia Marshall, Schneider Industries' vice president of international operations. "Here it's easy to get a title. In Mexico it can take a very long time. Dealing with liens is also a lengthy process. There is usually a preliminary agreement, which means a party is interested in buying, but in order to close there has to be time to make sure there are no lingering problems."

Mexican laws can be complicated, she adds, "The buyers bring their lawyers, the sellers bring their lawyers and we bring our lawyers. Everyone reviews the agreement and then we move forward. However, as the middleman, we are the ones that hold the money until everything and everyone is happy and everything is done right."

The European Experience

Not only do many European commercial real estate brokers work with international companies, but an increasing number are members of SIOR, points out **Patricia LeMarechal, SIOR, BSc (Hons), MRICS,** vice president of client development for NAI Global in London. "There is so much more SIOR cross-border business than there used to be."

That's important, LeMarechal adds, because the key to success in cross-border deals is to have someone on the ground who does business in that particular market day-to-day, whether it is office, industrial, or anything else. When that person is an SIOR, one should assume you will get the local information that is needed plus trustworthy recommendations such as a local attorney.

When a client from North America, Asia or elsewhere contacts LeMarechal about needing a building somewhere in either the U.K. or elsewhere in Europe, one of the first things she does is arrange a conference call so that, "the person on the ground explains to everyone else what's happening in that particular market, and what's different about that market from the venue where the client is now."

The local person also needs to impart the local restrictions and regulations, LeMarechal adds. "Sometimes, a client will say, 'I want to build a factory in a certain location and I want to run it 24-7.' But, my person will say, 'you can't because legislation means you can only have your factories running from 8 a.m. to 6 p.m. and no commercial vehicles during certain hours.' On the other hand, the local person may tell the client of grants to be ascertained and an allowance to bring more employees into the region."

LeMarechal has noticed some particular quirks from American investors coming to Europe for the first time. "It seems," she notes, "a lot of people in the United States are frightened of picking up the telephone and calling a foreign country, but most Europeans in the commercial real estate business do speak English. So, send an e-mail, and you'll get a quick response." Secondly, she adds with a laugh, "There seems to be little awareness of time zones because people are always phoning us around midnight." And thirdly, Americans tend to be informal with names, but, she points out, outside the U.K. and the U.S. you don't call people by their Christian names, it's always Mr. So&So.

In Switzerland, **Matthew Leguen de Lacroix, SIOR, BSc (Hons), FRICS**, managing partner for DTZ in Geneva, has always recommended connecting through the SIOR network—that members in the U.S. and those elsewhere should get to know each other.

Leguen de Lacroix, often crosses the pond for SIOR conferences, meeting old associates, and getting to know new members. "Ultimately, it's letting them know how we can help their clients in Europe," he says.

Recently, he says, he received a call from an SIOR member in Connecticut who had a pharmaceutical client looking for 60,000 square feet in Lausanne, Switzerland.

"His first concern was wanting to be sure he had the right person in Switzerland," Leguen de Lacroix recalls. "He didn't want to send one of his best clients to someone he couldn't trust. The initial bond is through the SIOR membership, and then it's a question of track record, convincing each other you are right for each other, and then convincing the client. After that, managing the work is easy."

"This was a large transaction and the SIOR in the States received a good fee for having made a couple of phone calls and e-mails," says Leguen de Lacroix. "I actually had the chance to meet the fellow in Miami, a nice guy who is very enthusiastic about doing business internationally. For the U.S.-based SIOR, it's easy money for very simple out-reach."

Important Cross-Border Considerations

Cross-border generally means from one country to the next, but James Hochman, an attorney with Coman & Anderson PC in Lisle, IL, points out, when commercial real estate brokers do business across state borders problems can occur as well.

Hochman says the basic questions are: when can a broker work on a deal in another state; and are brokers putting their fees at risk by violating license laws when practicing real estate in another area where he or she is not licensed?

Hochman, who once worked as a junior counsel with CBRE, recalls a time when one CBRE broker came to him because he had done a couple of deals in Wisconsin, although he personally was based in another state. "He invoiced the developer, who figuratively stood on the northern side of the border in Wisconsin and thumbed his nose at the CBRE broker," Hochman says. "The client said to the broker, you don't have a Wisconsin license and I don't have to pay you because you can't sue me to collect a commission. The reality was that the man was correct because Wisconsin was not one of those states that welcome other brokers doing business without a Wisconsin license."

Generally speaking, Hochman explains, state jurisdictions fall into one of three categories: states that allow commercial practitioners to enter cooperative agreements; states where you can work on a transaction as long as you remain physically in the state in which you are licensed (you can not visit the property or negotiate a lease face-to-face in that state); and no business allowed (only way to represent a client is to refer the business to a local licensee).

Hochman's cautions, "If you are going to work on an interstate transaction, know how you are going to get paid and from whom."