

AUGUST 2019 NEWSLETTER

POZZUOLO RODDEN, P.C.
COUNSELORS AT LAW
THE BYE-BENSON HOUSE
2033 WALNUT STREET, PHILADELPHIA, PA 19103
215-977-8200
www.pozzuolo.com



CRUCIAL FACTORS TO CONSIDER BEFORE PURCHASING COMMERCIAL REAL ESTATE FIRM ANNOUNCEMENTS

A. AWARDS:

1. Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo was awarded The America's Most Honored Professional 2019-Top 1% by the American Registry. The American Registry was selected to be the official and authorized recognition partner for some of America's most trusted professional organizations at identifying business excellence. These organizations rigorously gather up peer review ratings, client reviews, industry analysis to ultimately uncover the best of the best professionals in the business. For 2019 the American Registry proudly announced that Joseph R. Pozzuolo is one of America's Most Honored.
2. Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo has been named a 2019 Lifetime Achievement Award recipient. Less than 5% of Marquis Who's Who listees are selected for this honor.

B. UPCOMING SEMINARS:

1. Joseph R. Pozzuolo, Esquire will be presenting the following two continuing education (CLE/CPE) webinar seminars for Clear Law Institute:

A) The Fundamentals of Starting A Business Including Ethics Webinar: Monday, September 16,

2019 at 3pm; and,

B) The Negotiation and Documentation of Commercial Financing Documents Including the Use of Convertible Loans With Put and Call Options Webinar: Tuesday, September 24, 2019 at 3pm.

2. Jeffrey S. Pozzuolo, Esquire will be presenting a CLE/CPE webinar seminar for Clear Law Institute titled "Estate Planning for the Millennial Couple" on October 10, 2019, at 1pm.

Please contact Christine Wainwright at: Chrissy@Pozzuolo.com for details if you would like the online details to attend any of these CLE/CPE seminars.

C. BLOGS:

1. The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website www.pozzuolo.com during the past month:

- a. Under What Circumstances May A Will Executor Change Or Go Against The Terms Of The Will?;
- b. Are Life Insurance And Jointly Held Property Considered Part Of The Estate Of The Deceased, And Thus Subject To The Estate Tax?; and,
- c. Is Your Estate Plan Out Of Date?

Please visit our website www.pozzuolo.com for more information on these and other relevant business, tax, estates, business litigation and employment topics.

2. The following are a few of the family law blogs posted on our family law website www.pozzuolofamilylaw.com during the past month:

- a. Court Ordered Equal Parent's Custody Where Older Child Ultimately Expressed her Interest For Equal Parenting Time;
- b. Court Awarded Shared Legal And Physical Custody To Non-Biological Lesbian Parent; and,
- c. Courts Are Reluctant To Disturb Existing Custody Arrangements Which Have Satisfactorily Served the Best Interests Of A Child.

Please visit our website www.pozzuolofamilylaw.com for more information on these and other relevant family law topics.

CRUCIAL FACTORS TO CONSIDER BEFORE PURCHASING COMMERCIAL REAL ESTATE

Whether you are looking to start a new business venture, to move your corporate headquarters, to expand to an additional location or to move to a new factory choosing the ideal commercial real estate property can have a profound effect on the success of your business and your personal net worth/estate planning. This newsletter provides a list of considerations to contemplate, and pitfalls to avoid, in searching for, evaluating, and eventually obtaining ownership to commercial real estate.

1. **Choosing the proper location:** The age old adage in real property is "location, location, location." In considering locations, it is very important to consider locations that are ideal for

your business. Different types of businesses have different location needs. Retail chains not only need high traffic/exposure, but need exposure to its target market. A posh, high end retail chain needs to be in an affluent neighborhood like SoHo or Rittenhouse Square whereas a McDonalds or Wendy's will thrive at a local truck stop or an inner-city location. A manufacturing plant or warehouse needs convenient logistical factors such as access to highways, rail, shipping, a central location to customers or suppliers plus the potential of finding and applying for federal and state real estate tax credits. Once you examine and evaluate your requirements, you can start selecting a subset of actual locations to review that fit your needs in the areas that serve your needs.

2. **Be realistic about space needs:** In addition to the location, having real property properly sized with sufficient square footage for your current and future business activity is essential. Do not purchase a factory or warehouse too large if you do not plan to use the additional space during next five to ten years unless the excess space can be rented during the non-use. On the other hand, do not purchase a factory, warehouse or office building too small and spend substantial money on the new location only to find that you have outgrown the new property in two to five years. Then again, for a small startup where the prospects are still unknown it may be smart business planning not to spend large sums for bricks and mortars until the business is proven successful.
3. **Decide whether to purchase or rent:** Purchasing versus renting comes down to three simple variables: 1) whether market conditions makes one more cost effective than the other; 2) whether you need flexibility during the foreseeable future or can commit to a commercial real property for the next 15 to 20 years, and; 3) whether you need/desire control over the property.

In some real estate markets rents are out of line with fair market value or purchase price of the property or vice versa. It may cost \$25,000/month to own the property (excluding principal amortization) versus \$15,000/month to rent the same facility. In such an instance, renting may be the better option whereas on the other hand owning may be the better option if the monthly cash outlay is not substantially higher. This is a variable that must be examined.

However, renting is more appropriate if you need flexibility, do not have the capital or credit to own, or cannot commit to one location for the next 15 to 20 years. In such an instance, it is better business planning to rent to learn the market and expand the business before obligating millions of dollars of capital on purchasing a factory, warehouse or office building when such funds can be better used to grow sales. Nevertheless, if you have a stable business and understand and comprehend your current and future sales, growth and cash flow, it may be in your best interest to commit to purchase a desirable piece of commercial real estate for your business. Finally, if you need/desire control over your location owning may be the better option. This is especially true if you are afraid of the landlord raising rents or not permitting you to make improvements to serve your business needs and expansion requirements. However, if you have the option to move to another location if the landlord becomes difficult or obstinate or increases rents, then renting may be your option.

4. **Do not solely rely on public listings:** Properties on public listings are third or fourth pickings after other real estate professionals have passed on the opportunity. Many properties are offered to friends, business partners, family members, private clients, private developer lists, private listings through private brokers, before they get to the public market. While you may not be a real estate developer requiring an ear on every possible opportunity, the use of private brokerage firms or networking with developer friends/associates will help tremendously.
5. **Failing to fully perform due diligence:** Due diligence before closing is important to ensure what

you are actually purchasing or renting is what you intended it to be. You do not want to get blindsided after the fact. This includes profitability analysis, cost analysis, environmental studies, if applicable, traffic/population studies, title insurance/searches, physical inspections, and appropriate zoning for your use. Below is a non-exhaustive list of considerations and factors during due diligence:

- a. **Avoid relying on the broker too much:** Realize that brokers only get paid if a real estate transaction closes. They receive no extra compensation if you are able to close on an excellent real estate transaction, unless they anticipate future work from you or your referrals. That is to say, absent being an active real estate investor, you may not purchase another property for another 10 to 20 years. Therefore, take their information, oral promises and assurances with a grain of salt. Confirm it!
- b. **Underestimating improvement/upfront/ongoing costs and the time involved:** Many individuals look at the purchase price and the ongoing operating costs of a property, but fail to give a full weight to certain upfront costs and accurate improvement assessments. Major upfront costs including transfer taxes, title insurance, business permit fees, professional fees to draft agreements, surveys, brokerage fees, bank fees and expenses, relocation expenses plus lost personnel time can be substantial and, if properly evaluated, affect your decision. Additionally, it is important to not underestimate improvement costs, the time it will take, and potential overages that may occur for both of them. If anything, it may be best to overestimate them where any slack will be a bonus. This helps ensure you do not purchase a property for \$3,000,000, expect to finance the purchase price over 30 years and have the new factory, warehouse or offices fully operable in 12 months, but suddenly you find the total purchase and improvement budget is now \$5,000,000 and it will take a full 27 months to completely relocate.
- c. **Title search/insurance:** This may seem like a basic pitfall, but some people try to save a dollar. Always get title insurance by the title clerk you choose, not the real estate agent or seller. Even if the property is inexpensive where, for instance, the purchase price is \$250,000 it is still good to obtain title insurance as you never know what liabilities are attached with the property. There could be \$100,000 of back property taxes or a \$200,000 judgment on the property. It is always better to have the title searched and insured by the title clerk chosen by you.
- d. **Local zoning/ordinances:** Make sure the existing zoning/ordinances do not interfere with your current or future use of the property such as lot size, height, density, sidewalks and street lights. If you intend to put a bar in the location, makes sure there is not any restriction because it is located within 500 feet of a school or church. If you intend to use certain hazardous materials within the property, make sure there are no restrictions. If there are, it is mandatory there is a zoning contingency requiring a variance included within the Agreement of Sale.
- e. **Environmental issues:** While environmental issues are less prevalent for residential properties, for commercial and industrial properties environmental due diligence is necessary to avoid any potential Superfund liability, especially if the property has oil tanks, or had prior uses that may indicate the use of environmentally hazardous materials on the property like gas stations, printing plants, dry cleaning plant, car washes, auto repair/maintenance facilities, industrial facilities, commercial properties with Leach Fields or drywells, etc. The Superfund Law imposes liability on parties responsible for, in whole or in part, the presence of hazardous substances on the site. The due diligence

starts with a Phase I Environmental report which identifies any potential significant environmental risks in the subsurface due to previous uses at the subject property or from nearby properties. If there are risks present a Phase II Environmental Site Assessment must be performed by highly-qualified professional engineers to reliably assess contamination risks including the testing of soil, soil gases and/or groundwater for possible contamination. That is to say, a Phase I or II report can help save your company substantial monetary fines before you purchase a property due to a Superfund cleanup!

f. Avoid making purely emotional decisions: Avoid making purely emotional decisions such as letting your ego get in the way or simply relying on a gut feeling without any further analysis. It is important to perform a proper objective analysis including a cost analysis; a business needs analysis, environmental, title, structural, and area survey. This avoids making a suboptimal decision that may be fine at closing, but could really hurt you and your company in the future.

6. Failing to take into account the correct entity structure: Many owners try to purchase the property in their individual name or in the name of the active business entity you intend to operate at the location. It is better to create a separate limited liability entity for the purchase of business real property. This helps to insulate the liabilities of the underlying business from the real estate and vice versa. This also creates flexibility in the future if you either want to sell the business but retain and rent the real estate, or sell/rent the real estate but sell or transfer the business. Just as important, titling heavily financed real property in a separate legal entity is an excellent estate planning tool and technique to transfer wealth to your children without the use of your federal unified estate tax credit.

While this is not an exhaustive list, this newsletter raises many important issues business owners who intend to purchase office buildings, factories or warehouses must fully assess and evaluate before a bad purchase puts a major strain on the current and future cash flow and profitable operation of your business. If you are looking for a new facility/location, it is extremely important to get your advisors in the process early so we can help you avoid making some of these pitfalls and help ensure you make the best decision for your business and personal wealth/estate planning.

PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: http://pozzuolo.com/Pubs_Articles.shtml

Corporate/Tax Articles

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

Estate Planning Articles

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.