



S.E.C. Real Estate Observer

AN E-PUBLICATION OF THE SOCIETY OF EXCHANGE COUNSELORS

Service. Experience. Counsel.



Inside This Issue

Welcome to the 2009 spring issue of the S.E.C. Observer. Tom Langel, S.E.C. President, encourages us to seek opportunity and find the “silver lining” in these challenging times.

William Stonaker, S.E.C., CCIM, presents Part II of “Deer in the Headlights,” and Stephen Barker, S.E.C., CCIM, explains why “kryptonite won’t work to eliminate debt.” Stephen England, S.E.C., ALC, warns us “not to ignore problems in this troubled economy;” and Ron Robinson, S.E.C., advises us that everyone they should adhere to the “code of the west” at all times. Chuck Sutherland, S.E.C., and Stephen Barker offer formulas to help you be more creative and so you can close more transactions.

Lance Warner, S.E.C., 2009 President of the S.E.C. Education Foundation, updates us on the important role of the Ed Foundation during the economic downturn; and Larry Browning, S.E.C., is “In the Spotlight.” The “History Files” in this issue were originally published in July, 1973. Cliff Weaver presents a technique for you to “hold on to more of your cash;” and Yvonne Nasch provides a “double in lieu of” formula that resulted in four closed transactions.

In this issue we are pleased to announce a new column from our national sponsor, “News from Exeter 1031 Exchange.” Bill Exeter will keep us up to date with new laws, tips, and techniques concerning exchanges.

Enjoy this issue, and as always, we welcome your comments, suggestions, and articles to be considered for publication. Please contact the S.E.C. office via email sec@secounselors.com.

Jackie Hellingson
S.E.C. Observer Editor

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“I Do Not Choose to be a Common Man”

Thomas Langel, S.E.C.
2009 President, Society of Exchange Counselors

It is my right to be uncommon—if I can.

I seek opportunity—not security. I do not wish to be a kept citizen, humbled and dulled by having the state look after me.

I want to take the calculated risk; to dream and to build, to fail and to succeed.

I refuse to barter incentive for a dole. I prefer the challenges of life to the guaranteed existence, the thrill of fulfillment to the stale calm of utopia.

I will not trade freedom for the beneficence nor my dignity for a handout. I will never cower before any master nor bend to any threat.

It is my heritage to stand erect, proud and unafraid; to think and act for myself, enjoy the benefit of my creations and to face the world boldly and say, this I have done.

By Dean Alfange

This is what it means to be an American!

Try as I may, it's not easy to find a silver lining in the pages of the newspaper, as I listen to the morning news, or as I scroll through reports on the internet. The chatter from savvy business people from my town, and towns just like yours across the nation are hearing the “T” word when it comes to government spending, but I've not heard of a single instance where anyone I know has seen a dime of those trillions thus far.

My ray of hope comes from the fact that week of March 19th; I was amidst men and women from across the nation who specialize in ferreting out opportunity. The Society of Exchange Counselors is the think tank of real estate, and it was great to participate in the exchange of ideas. We had over 80 members and guests registered to attend this meeting and it was a meeting full of focused energy.

The Stimulus Package that President Obama has been doling out on a near daily basis will hopefully start showing up in the business world that you and I live in very soon. In Tulsa,

Oklahoma at our second meeting of 2009, we are starting to unearth more ways in which each of us discover pockets of opportunity just waiting to be harvested.

Personally, I caught a glimpse of this kind of recession in the 1980's. The low interest rates and the slashing of prices that we're currently seeing present some remarkable prospects. When is the last time you have seen the opportunities that are available at prices we can leverage almost 100% and still see cash flow? This "perfect storm" provides an unprecedented potential to benefit from this unique combination of circumstances. Bringing together a collection of our resources through syndication, capturing some of the guaranteed loans, grant money for research and development, and putting solutions together with problems will be a primary focus of our meeting in Tulsa.

Earlier this month I asked each of you to send me a brief synopsis of where you saw opportunity in our current markets. Once again, your perspectives were optimistic, creative and resourceful and we'll expand on those thoughts throughout the coming months. Here are some highlights of those thoughts:

*Jobless = No Money
No Money = Problems
Problems = Opportunities
Opportunities = S.E.C.*

The Wolf will always appear from the shadows if the opportunity is right.
Mark Johnson, S.E.C.

Opportunities

- 1) Talent is more important than property and money.*
- 2) Secondary Paper is a big business.*
- 3) Auctions are a viable disposition alternative.*
- 4) Look for Improved Property with a Problem.*
- 5) Infrastructure in place has significant value.*
- 6) SBS, HUD, and other federal programs work use them.*
- 7) Be a secondary lender.*
- 8) Property Management and Brokerage are the Keys.*
- 9) The "Equity Market" is the only viable market today ... use it.*

Stephen D. Barker, S.E.C.

Surface and minerals – not long ago we were only seeing deals offered without the minerals. Now we are seeing the minerals thrown back in. Be careful how you value the minerals. Watch out for mineral leases that allow the lessee to put the gathering system anywhere they want to – it could hamper the use of the surface.

William E. Stonaker, S.E.C.

**Deer in the Headlights II:
“Where do We Go from Here?”**

William E. Stonaker, S.E.C., CCIM

Last edition, I wrote about being positive, communication with your lenders and partners, brainstorming at S.E.C. meetings and with your acquaintances, figuring out what works in a recession and upgrading your skills. This edition, I want to concentrate on personal development, focus, and time management.

Let there be no doubt about it, even if you did not vote for President Obama, he is now our president and the leader of the free world - and there is going to be change. Our goal must be to stay ahead of the change. Imagine being on a surfboard ahead of the biggest wave you have ever seen. As long as you stay on the board, you will be OK. Just ride the wave to the shore. But if you lose your balance, you are going to be swept into the undertow. This is where we are at this moment in time. So you can choose to participate or you can stay on the bank. It is your choice. But if you believe in the United States of America, you probably want to take some risks. No one ever improved their lot in life sitting on the porch. Be a big dog and run at the head of the pack. So here it goes with numbers 8-15.

8. Get an accountability partner. What the heck is an accountability partner? Well, first, it probably is not your wife or husband or your best friend. People that close to you usually won't tell you the truth. Find someone to brainstorm with who will keep you on track. It helps if you both have similar goals. This might be a fellow broker that you each work cold calls with. It might be someone in the gym that you work out with to make certain you both show up, ready to lift, at the designated time without hangovers from the night before. Find someone that will help you stay on track on whatever your goals might be. Note: Your accountability partner should be someone that is positive. If you get someone that is negative, it won't work. See # 10 below.
9. Stop and Think before you act. Dad used to tell me, “Engage brain before engaging mouth.” It was good advice. Spend some time alone really studying the situation before you act on instinct. At a time where deep discount deals are starting to flow and we are like kids in candy stores, we can fall prey to our “deal junky” mentality. Most of the Type A's love doing deals but would be very happy to hand them off to someone like Ted Blank or Ed Berlinski - the detail guys. Make certain the deal makes sense. In order to do that, we have to stop and engage brain. Plan a quiet time to think.
10. The Best Loss is the Early Loss. The best loss is always the first loss you can take. Imagine a stock falling. It goes from \$50 per share to \$40 per share. *But if I hold it, it*

will return to \$45 per share and I will sell then! Sell the losers early and let the winners run. This is true of real estate deals and even more so when it comes to clients. The first time I took Jim Brondino's *Counseling for Action*, I immediately went home and fired a client. She was wasting my time. Don't "spend" your most valuable asset – your time - with clients or real estate that is not working. Get away from losers quickly. Free up your time.

11. Stay in the Fairway. One of the most valuable lessons I ever learned was to stay in the middle of the action. Pay what it costs to stay in prime real estate (or clients). It always looks good to be able to pick up the retail pad for \$8.00 when the best pads are selling for \$15.00. But there is probably a reason for the discount. One thing we know for certain, is that you can always rent/sell/ground lease Class A locations for something. There are times that you can't give away the Class B- to Class C locations away. And during this time in the market, you can usually find deals right in the middle of the action. For those of us that syndicate deals or exclusively handle client's money, most of the best clients know that they need to be "in the market" all the time. This does not necessarily mean buying or selling all the time but the best clients are usually always ready to talk to you. Those that are going to "use" you only want to talk to you when they see opportunity or need help with the mistakes they have acquired. Stick with property and clients that are worth your time.
12. Don't Give Your Time Away for Free. Brokerage has historically been a contingency business. Let me have the listing and IF I sell the property, you can pay me a fee. It is not uncommon to have the prospective client (a potential client that you were not able to get a written agreement with) take your information and work around you. Been there. Done that. Never again! If you give your time away for free, the prospective client thinks you should be valued at that price - \$0.00. Zero! Consider charging an hourly fee and then applying it to the deal. It is called ***Counseling!*** Bill Broadbent, Cliff Weaver, Chuck Chatham and Colby Sandlian brought counseling to the forefront of S.E.C. and Jim Brondino, Ted Blank, Ron Bowden, Larry Browning and others have taken it to a new level. Ask them how they counsel their clients.
13. Donate Your Time. If you are going to give time and expertise away for free, be certain it is for a cause that you are excited about. Church, Scouts, the community hospital, cancer awareness, developing a course to teach for S.E.C., etc. It is amazing how many people I have met at events and activities where I intend to make no profit that have wound up being clients or partners.
14. What About the Kids? Our nation is going through some really tough times. Many of us have younger children. We are kidding ourselves if we think that our children aged 10 – 16 don't know what is going on. They read newspapers, listen to the news and even more, they talk to their friends. Talk to your kids. Tell them what is going on. Enlist them to tell you if the neighbor has lost their job, etc. Let them know that your

family is going to make it through but that they need to watch how they spend the family budget. They will be stronger for it. Enlist them in the process. Ask the kids which games or clothes are in vogue and which ones are “dumb.” You would be surprised how many professional stock pickers always ask their children’s opinions.

Congress just passed, and the president signed into law, a huge stimulus package. It is YOUR money. Now, what are you going to do about it?

Texas Governor Rick Perry made it clear from the start that he did not like the way Congress was going about “fixing” the economy but he also plainly stated that if the government was going to give away the hard earned dollars of Texans, he was going to do everything in his power to make certain that the State of Texas gets as much of it as possible. Isn’t it the same for us individually? Although we might not get much of the stimulus package directly, we can certainly work the lenders we know and take advantage of the outfall of dollars. When asked by law enforcement officials why he robbed banks, Willie Horton stated plainly, “Well, that is where the money is.” I am not suggesting that we go rob a bank but we need to work where the money is. Remember the 1980’s? When the financial institutions finally did start turning loose of the money (loans), things got better quickly in Texas. Let’s find out where the money is going to be and be and then wait with our own “shovel ready” projects.

Wayne Gretzky, “*The Great One*” stated, “**100% of the shots you don’t take don’t go in.**” Gretzky, born in 1961 in Brantford, Ontario, Canada, right down the road from where Darryl McCullough lives, never knew the meaning of “can’t.” He won the Hart eight times and was one of the most successful hockey players ever. Even if our careers are not as public as Wayne’s, our wins can propel us to where we want to be. But first we must know where we want to go.

Next issue:

15. Use Coyotes.
16. Burn some gas.
17. Seek the Enemy.
18. Keep the “A Bag.”
19. Trust Your Instincts – Act.
20. The 40%/40%/20% Rule.
21. Counsel Your Clients.

“Debt – Kryptonite Doesn't Work!”

Stephen D. Barker, S.E.C., CCIM

As we all know, it's hard to fly like Superman not only when your cape is on fire, but when you have a portfolio filled with Debt laden properties that are ready to hit the proverbial lender graveyard. Historically, Debt has undermined many great fortunes. Among our founding fathers, Jefferson, Adams and Franklin, (and most of the other founding fathers) experienced the continual and unrelenting anxiety associated with maddening Debt. More pertinent perhaps, today we are witnessing many of the same people problems and issues. Large and small developers and investment owners are struggling to make payments, doing their best to recast Debt or are literally walking away from projects. It is certainly not a time for the meek and mild.

The recent Carefree, Arizona S.E.C. meeting was an historically typical “downturn” marketing session as evidenced by the presentation of many properties burdened with a Debt problem that a year or two ago would have been considered “just fine.” The market deterioration and unquenchable lender resolve to get capital back into their coffers has repositioned values and has ultimately reduced equity to areas often much lower than ever anticipated. Some are below Debt amounts. The single family housing issue is a good example of this phenomenon. Reverse values are rampant when Debt is more than the value of the home or property.

Debt becomes sinister in some cases and casts the relationship between borrower and lender into an awkward and often time's litigious position as both scramble to gain positions to protect themselves. Adversarial situations pop up, friendly relationships are jeopardized, and things often get personal. Debt is a mean adversary when antagonized and puts us in positions not wanted and not often experienced. It has a nasty habit of becoming not only a financial problem, but a people problem.

With eight years in the banking business before starting my real estate career, I got a good taste of the philosophical viewpoint of lenders. I euphemistically refer to lenders and their institutions as “The Thieves Temple.” Okay, I don't presume all lenders are bad as I continue to deal with some great lender personalities who maintain the right balance between relationships and business. They generally don't lose their head in times of difficulty and are mindful of the future relationships they hope to salvage. However, in some cases the old adage of “If you need a heart transplant, ask a lender for his cause it has never been used,” is pertinent. Some of the tougher lenders, who purported to be your “relationship banker” in the past, are your pal in the good times and generally turn the file over to Guido, the in house work out guy, if your value and property deteriorate causing a loan problem.

I have also realized that Debt is not separate from real estate, but is part of real estate. Sounds kind of obvious I know, but it is important to reaffirm that both are joined at the hip. Therefore if it is part of real estate and we are practitioners of real estate then we must accept the fact that Debt, in its myriad forms, must be understood as a tool in developing equity and leveraging acquisitions.

If your new property needs to have the parking lot paved you research the various paving alternatives, asses cost, quality and quantity. Seldom do we think of debt in the same terms. It is a part of the entire property. It should not be divorced from consideration or be an afterthought. Colby Sandlian, S.E.C., and a mentor to many of us, stressed the importance of a ¼ point difference in a loan by measuring the dollar effect over many years. The details of your Debt are important.

Don't overpromise. This is a big one that we should guard against when considering the initial loan and before signing documents. Most often, the problem of debt starts when you negotiate the Debt terms and responsibilities without due consideration to the long term effect. In our haste to "pay off" another loan or "get the deal done," we may sacrifice our perspective and pay little attention to details. This may be a collision course for a future and possibly bigger problems.

Okay, so what about this Debt issue? How can we deal with it? Well the first thing is we can't get too emotional about it. As noted previously, Debt is part of the property. You wouldn't get emotional about a parking lot problem would you? Compartmentalize the Debt problem. As with most of you, this is a hard one for me because I take my obligations very seriously. We all must strive to honor our obligations. If, however, a realignment or modification ensues, I take it personally, (flying like Superman eh?) as my honor is at stake. Fortunately, I have avoided a lot of these issues over the years, but none the less we are all affected from time to time in varying degrees. The economic turmoil of today's market brings this closer to home. Certainly our clients are often times in OZ when it comes to dealing with problems like this. That is why they need us.

As noted, the inability to fulfill the obligation of a Debt is one area where even the most skilled of us have had to swallow our pride and forage for a solution that would appease the appetite of the Lender before it engulfs any remaining equity. If the value of the asset falls below the Debt, the Lender may thirst for and pursue a personal deficiency (guarantee) if the Lender falls short of its goal to achieve full recovery of the obligation. This is often devastating emotional baggage for most borrowers. I call it "Borrower Purgatory." (I have written a separate article on "guarantees" which may be of interest).

Depending upon the circumstances it may be best to personally sit down with the lender and discuss the options, or in the alternative, again depending on circumstances, sit down and map out all the possible conceptual ideas for solving the problem. Sometimes a brainstorming session with one or two S.E.C.'s or others can add additional insights. I use a program called "MindJet

Manager” which is a great tool to use when you have an issue or process you want to develop, but need a place to gather your wildest creative thoughts and freely organize them. Define the problem, decide on all the solutions available and then proceed and pursue till the problem is solved.

If the relationship is contentious, find an arbitrator or surrogate to meet with the lender. This often provides a buffer as the surrogate has no dog in the fight and can be more objective. A good attorney, CPA, other S.E.C.’s (this has been used many times in the Society) and other confidants are good sources. If the lender remains hostile, it means that the likelihood of an amenable resolution may not be in the cards....not yet anyway. What I mean by this is that lenders in a difficult loan must assess their position and it seems they always take time to get educated about the true nature of the problem. Sometimes they soften up when the realization of what they have hits them or the problem moves up the hierarchical food chain (larger banks primarily) to someone who can address it more rationally. Understand that a lender has timing, protocol, and procedure issues which take time to develop. Use this time wisely. A caveat here. I would not pursue an adversarial posture even if the lender is pounding his shoe on the table. This is really a renegotiation of a business agreement in which all parties have a stakeholder position. Nothing more. The lender does not want to own your property generally, he just wants to insure that in one form or another he has proper security and has a reasonable expectation of being repaid.

Read the loan documents. This seems like an easy recommendation, but is routinely overlooked by all of us when working through a Debt situation. The lender often makes a mistake which can allow us an opportunity to defer the lenders position a bit and get him to sit down and talk through the issue once you get a foothold. Several SEC’s have pursued this avenue first and found issues which may cast a cloud on the lender position, which will allow you to at least get their attention.

Some Debt solutions and formulas are:

- 1.) **Convert all or a portion of the Debt to Equity & a First Mortgage.** If a lender has a \$100,000 mortgage on a property worth \$100,000 and the loan is tenuous, ask the lender to create a new \$80,000 hard loan which meets all his lending criteria (and the Feds). The remaining \$20,000 is a contribution in the form of equity in the property and comes out first when the property is sold. If there is cash flow the \$20,000 gets a priority.
- 2.) **Convert all or a portion of the Debt to a First Mortgage & Second Mortgage.** Again, same example, if a lender has a \$100,000 loan on a property valued at \$100,000, ask the lender to create a new \$80,000 First Mortgage (again, acceptable in standards for all loans) and a very soft second mortgage for \$20,000. By doing this the lender has a fully saleable first and a frumpy second. The Second can be discounted and sold (rather than discounting the entire \$100,000 mortgage as most lenders generally do).

- 3.) **Partially Walk the Debt and Add Cash.** Again, our example, a property with a value of \$100,000 and a mortgage of \$100,000. Give the lender a first Mortgage for the \$80,000. Take the remaining \$20,000 and add it to say, \$50,000 cash added by the lender and make a new loan on another property. Let's say the other property is an F&C \$100,000 land parcel you own. You end up with two mortgages, but if the land is F&C you got financing where none was available and walked away from the deal with \$50,000 in your pocket to serve the Debt on both properties and expenses.

- 4.) **Who has the problem? Is it the lender or the borrower?** This obviously depends on value, equity (if any) and Debt. Let's use our example once more. You own what was at one time an appraised \$100,000 parcel of land. The mortgage was \$80,000 at inception. Fast forward to today and the property is now worth say, \$80,000 or is effectively 100% financed. Who has the problem theoretically? Of course, the lender does. The lender (conventional generally) is trying to avoid the possibility of getting the property back as he will have to declare it effectively an REO on his books, write it down further, and allocate other funding to offset this problem on its balance sheet. This predicament is the source of an opportunity. The solution becomes one of benefit seeking.

Okay, the reality of Debt in our dealings goes without saying as an integral part of our business. Be cautious, about what you sign and what you are agreeing to. Do your homework up front. William Zeckendorf, one of the first big real estate developers of skyscrapers and big deals in the 50's and 60's starts his book by describing the circumstances relating to his experience as a big time borrower, and how one small passage in one of his many mortgages caused his entire empire to fall. This lesson is repeated time and again. Debt is a partner that can get ugly or it can be a healthy adjunct to your wealth building model. Use it improperly and you will be like Superman with his cape on fire. Use it wisely and you will continue to soar. Remember, Kryptonite can't kill it, so handle it with respect, honesty and reverence.

Stephen D. Barker, S.E.C., Chairman of the Board and Chief Executive Officer of Catellus Group, LLC, a Michigan and North Carolina based corporation, has specialized in all facets of commercial investment real estate including development, rehabilitation, management and finance.

“Troubled Economy – Don't Ignore Problems!”

Stephen R. England, S.E.C., ALC

“Troubled Economy – Don't Ignore Problems!”

Stephen R. England, S.E.C., ALC

Some of us remember quite clearly the economic collapse of the 1980s. We all need to recognize that we are facing a similar time. Some of our clients, friends and maybe we personally could face some huge financial issues. What knowledge might be timely?

One of the most helpful concepts that I learned from previous bad times was the “**Four Stages of Grieving.**” Most people who experience severe financial stress go through the grieving process. These are emotions that experts tell us typically occur with a death, divorce, severe illness or huge family problem.

These financial “**Four Stages of Grieving**” include the following:

1. **To Ignore:** Go to work every day and fail to deal with your growing problems. It isn't happening to me!...or...it will get better with time!
2. **Become bitter and belligerent:** This is when people tend to blame others. They strike out at brokers, bankers, partners, sometimes even family, friends and their God.
3. **Depression:** Many fall into despair and it is very difficult for them to do anything. Sometimes in this stage one can take advantage of the person. Poor decisions are made because they are hoping for miracles. In the worst cases, it could take a doctor's medication to get someone through this stage successfully.
4. **Acceptance:** This is required before sensible decision making occurs. People have to move forward. They have to accept the consequences and circumstances of the market alternatives that have been given to them.

If you have a client with major trouble, your counseling skills will be fully tested. If you don't counsel correctly, you probably won't accomplish anything. Your client will be very frustrated and you could waste valuable time because you didn't understand the scope of the situation. If you are successful you will gain great satisfaction for helping someone who truly needed your service.

Tips for the Broker:

- You must get your client to open up about his entire financial situation. He may come to you trying to sell a specific stressed property but the solution may be within other assets or talents. You need to know everything!
- If you find out the client is deeply in financial stress then tell them not to feel alone. If you study any economic crisis early on, there seem to always be some high-profile suicides. Sometimes people go directly to Stage 3 and can't handle it. It usually helps when they find out others are in the same boat and you are an understanding associate that listens.
- If their comments are...**“I feel so bad”**...**“No one understands how hard I have tried”**...**“the market will come back soon”**...**“That banker is an SOB!”** or...? These are hints to which stage your client is in. I have found it helpful to explain the *Four Stages of Grief*. Let them know that the grief they are experiencing is natural. This sometimes helps.
- Realize that you have a difficult client and will probably never consummate a transaction unless you are willing to counsel them through their situation. Understand that a stressed client vacillates between stages. Be extremely understanding and listen intently.
- It may be necessary to involve family members or others they trust. Present possible solutions in a clear and concise manner. Always compare your proposed solution to the alternative, which is inaction. Make them see any adverse consequences from inaction.
- Look out for your own compensation. When it comes to saving assets for the client, the broker will not be the first in line if there is less to go around than expected. Sometimes lenders and creditors are very willing to make sure the broker gets paid in full to resolve a bad situation. Be creative!

In summary, we are in some very difficult times. No one seems to know what will happen next. Economic disruption of this magnitude will give us the opportunity to serve. Are we willing to learn the skills to be successful?

“The Code of the West”

Ron J. Robinson, S.E.C.

Jim Keller, a fellow S.E.C. Member, and I read western lore avidly, and have been doing so for more years than we care to remember. We both agree that the Western world of old, which we have grown to love, accurately depicts the true meaning of Americana. Those men of old had a code of conduct that was a way of life and woe unto the one who violated it.

We can all take a page out that book, for in times of stress when deals are, at the very least, difficult to bring about, there may be the temptation to cut corners. Daily we see all around us the moral decline and those caught up in an effort to fast track a profit at the expense of their own integrity. We see this from Wall Street to Washington. Bad examples for both grownups and young people alike, living rudderless lives..... living only on the very edge.

Members of the Society of Exchange Counselors have always taken pride in our integrity and the ability to rely upon the truth and know that when we give our word it is sealed in stone. We must guard this code of conduct and we expect it from anyone who participates in our meetings. We are already practicing the “The Code of West,” but it is good to remind ourselves of that occasionally:

CODE OF THE WEST

LIVE EACH DAY WITH COURAGE

TAKE PRIDE IN YOUR WORK

ALWAYS FINISH WHAT YOU START

DO WHAT HAS TO BE DONE

BE TOUGH, BUT FAIR

WHEN YOU MAKE A PROMISE, KEEP IT

RIDE FOR THE BRAND

TALK LESS AND SAY MORE

REMEMBER SOME THINGS ARE NOT FOR SALE

KNOW WHERE TO DRAW THE LINE

Ron Robinson is a commercial real estate broker based in Las Vegas, Nevada. He has been involved in the creative real estate market for many years. Ron is a long time member of the Society.

“Guerilla Financing”

Stephen D. Barker, S.E.C., CCIM

The recently well attended S.E.C. meeting in Carefree, Arizona, was the epitome of a selfless collaboration of problem solving professionals. The treasure trove of experience, knowledge and creativity highlighted a most productive marketing session. The years of work, education and building a systematic and principled Society of Exchange Counselors foundation, coupled with an arsenal of creative talent, is just what the doctor ordered in these times of economic uncertainty. So it is, that the tools honed and fashioned by the S.E.C.s, are an antidote to the real estate crisis we face today. As our new President Tom Langel referenced, “It is our time.” The meeting was full of participants highly motivated by the quest for solutions to their people related property problems. As anticipated, many problems were associated with the lack of “market financing.”

Obviously most conventional lenders are presently weak kneed and scrambling for dollars to capitalize their balance sheets. I must emphasize that there are still some small and medium sized banks, local in nature that remain in good standing but in general most are suffering. When a bank works on a 5%-10% net worth margin, more or less, it is easy to see why they get paranoid when the value of their assets decreases by 20%-30% overnight creating a “negative net worth”. Ironically, these are the same banks that require 30%-40% equity, personal guarantees, your kid’s trusts, your dog and everything else you own, to make a loan to you. Who is selling who? Maybe we should interview our banks to see if they are worthy of our good credit.

So where does financing come from with this topsy turvey lending environment? It is my opinion that investors, individuals, and unconventional lending sources tend to migrate to borrower capital users and needs by filling the void left by inactivity of the conventional lending crowd. They look and seek the capital user.

It is reasonable to assume that not everyone is going to be lining up at your office door to entrust their money to you. Then how do you tap into the money resource? There are several methods but for the sake of this article I wish to focus on one concept that has provided benefits over the years. The formula is what is referred to as the “Discount Sale-Buy Back-Lease Bank Formula.” This Formula is described with many other useful formulas in a comprehensive formulas book available through the Society website.

Let’s set the stage.

You (or your client) own a \$1,000,000 appraised commercial land parcel, which is free and clear. You have an opportunity to acquire another property, which has a killer upside, but you need \$500,000 cash in 30 days to take advantage of the opportunity. Your local bank is on a slow

morphine drip and your 25 year liaison with your loan officer ended when he got laid off. So where do you go?

You scramble to find other conventional sources, but you come up short. You decide, as a last resort, to attend a local marketing session in the hope of finding a solution. A local broker happens to pitch a client who is running out of time on his 1031 and needs to place \$500,000 immediately. A big tax awaits the client if a substitute property is not found quickly. The broker describes the owner as picky and wants a safe position, cash flow, and a little upside.

You approach the broker with an offer. Here is how it works.

- 1.) You agree to sell your \$1,000,000 property to the Broker's client for \$500,000 with the proviso that:
 - A.) The client agrees that you can lease the property back for three years for what is in effect an 8% annual return rate (the "Lease Payment"); and
 - B.) The client agrees that you can buy the property back within the three year lease term at a buy back amount equivalent to 105% of the purchase price cumulative each year.

Effectively the 8% monthly return in the form of the "Lease Payment" coupled with the buyback return at 105% of the purchase price gives the client an annual yield of 13% interest. Obviously, this is a good rate of return and gives the investor client a highly secure position in the property. More importantly, if you default he gets a \$1,000,000 property for \$500,000.

Now this may sound a little expensive and maybe risky, but let's analyze. If you go the conventional thieves temple (bank...if one is even lending) you would have to pay \$10,000-\$15,000 in lender related costs inclusive of appraisal, environmental, lender legal and the list goes on. Secondly it would take them 60 - 90 days just to approve the deal and get an appraisal. The timing alone puts your 30 day killer opportunity at risk.

However, the advantages are no loan committee, no credit minion located in a padded room in the basement of the bank purveying your last 20 years of tax returns and the intrusions go on, inept and slow responses, and bureaucracy of the ill fated "loan committee" approval. So in this context, does it appear reasonable to take this faster route to achieve your goal of accruing a new profitable deal?

A caveat is noted here; if you can't be assured of making money on the new deal, then don't play the game. Also be wary that you must be able to meet the timely lease payments you have just created for yourself.

Let's look at some possible variations of the Formula:

- First it can also work in a situation where you need to pay off a \$500,000 loan secured by the same \$1,000,000 parcel. Basically, look for investors who want good returns and safety typical of the previously described example. The new investor buys your property for \$500,000, which allows you to pay off the loan. You follow the same lease back and buy back arrangement as described in the earlier example.
- This is also a great tool to use when a lender (a \$500,000 loan) secured by the \$1,000,000 property you own, is willing to discount its mortgage to say \$400,000. Again by obtaining the investor to acquire your property for \$500,000 you use the proceeds to pay off the discounted \$400,000 mortgage. The extra \$100,000 could be escrowed for future lease back payments, taxes etc.
- Lastly, if the investor says "Hey I will give you the \$500,000, but you have to take a \$200,000 free and clear commercial lot as part of the deal." You agree to sell your \$1,000,000 land, as before, for \$700,000 to the investor. The investor 1031's into your land with the \$200,000 commercial land parcel and cash in the amount of \$500,000. Here is where an adjustment in the rate of return may be applicable. By contrast to the cash, the land has no return. The cash has an effective return of 13%. So \$200,000 at 0% blended with \$500,000 @ 13% produces a blended rate of return (lease back amount) of say an estimated 10%.

Again, the S.E.C.'s have developed a refined approach to handling people related problem solving by using innovative techniques applied to real estate. There remain many "coupled" formulas, which piggyback on the "Discount Sale-Lease Back-Buy Back Formula." Again, the way to find alternative financing is to think "outside the box" of conventional approaches. "It is our **truly** our time."

Stephen D. Barker, S.E.C., Chairman of the Board and Chief Executive Officer of Catellus Group, LLC, a Michigan and North Carolina based corporation, has specialized in all facets of commercial investment real estate including development, rehabilitation, management and finance.

“Land Plus Cash Equals Notes”

Charles E. Sutherland, S.E.C.

FORMULA: ADD CASH TO LAND AND FOR PAPER

If you own a piece of land and would like to receive the highest value, but you are currently unable to sell it for that value, consider adding some cash to your land and exchanging it for some existing or to be created notes.

Example: I once needed cash to pay off an existing institutional mortgage during a time when lenders were not making loans on the kind of property that I owned.

My friend Gary owned some commercial land in Michigan that he was unable to sell due to a recession in the state. Together we had two problems that needed solving.

Gary exchanged me \$150,000 of his commercial lots in Michigan plus \$150,000 in cash for a total of \$300,000 in notes. The notes were secured by two other parcels of land in Michigan and the property I own in another state that I had been unable to finance. The notes were at 10% interest rate with monthly payments. The balances on the notes were due and payable in five years.

The advantage of this transaction to Gary was that he was able to sell land for which there was no conventional market at the time. The advantage to me was that I obtained long-term financing on a property for which there is no conventional long-term financing available.

\$150,000 Land			
+	=	\$300,000 Notes and Deeds of Trust	
\$150,000 Cash			

Of course, you could substitute almost any property for the land in this formula. The land is simply the “vehicle” for the transaction. The goal is that two people solve their individual problem by working together.

Charles E. Sutherland, S.E.C., is a commercial real estate investor and developer based in Dallas, Texas. In the real estate business since 1971, Mr. Sutherland has been involved in the successful development of single and multi-family, commercial, retail, industrial, hotel and mini-storage projects.

This article may not be reproduced, or used for any purpose without prior written authorization by the author, Charles E. Sutherland, S.E.C., charlesesutherland@gmail.com.

“The S.E.C. Education Foundation”

Lance C. Warner, S.E.C.

As the new S.E.C. Education Foundation Board has been going about the work of organizing programs and tasks in support of Ed Foundation goals, we have not lost sight of our ongoing responsibility to schedule timely and pertinent education for our Sunday education forums held in conjunction with S.E.C. Marketing Meetings.

Jaylean Snow continues to work (with her ever effervescent smile intact) to identify and schedule timely and relevant presenters for our marketing meeting Sunday education forums.

Sandy Wanchick has been retained on a part-time basis to assist us with organizing and expanding our efforts to support and promote S.E.C. Ed Foundation courses and instructors. We continue to reach out to local and regional exchange groups with our offer to present classes in their venues. There is much more to this endeavor than one would expect, and we think it will have a significant impact on our efforts to reach new audiences and continue to serve old ones.

We are still in for a bumpy ride with the economy, and transactions are more difficult to create and close. The Ed Foundation approved courses will teach you to counsel your clients, create transactions that go beyond traditional methods, utilize formulas to close transactions that otherwise might not have closed, and help your clients reach their objectives.

The Ed Foundation instructors, our courses, the S.E.C. Marketing sessions, and the articles in the S.E.C. Observer can help you survive and prosper during the economic downturn. The need for creative real estate education, counseling skills, and knowledge of formulas is greater during these times, but beneficial even in the best of markets.

We invite you to explore our web site www.secedfoundation.com for the courses available, and contact us if you would like to bring a course to your area, and to read our quarterly web journal www.secobserver.com for ideas and skills to help you succeed in any economic environment.

S.E.C. National Invitational Marketing Session

Louisville, Kentucky

May 17–20, 2009

The S.E.C. National Invitational Marketing Session will be held in Louisville at the [Seelbach Hilton](#) Hotel • 500 Fourth Avenue • Louisville, KY • 40202.

Visit www.seelbachhilton.com to learn about the hotel and visit www.gotolouisville.com to learn about the Louisville area.

Visit www.secounselors.com and click on the Society Marketing Meetings menu tab for more information. Please contact the S.E.C. Office sec@secounselors.com if you have any questions about the Louisville Meeting.

“Beyond 1031 – Market Driven Exchanging”

Chet Allen, S.E.C., CCIM, EMS

The S.E.C. Education Foundation is pleased to announce that **“Beyond 1031 – Market Driven Exchanging”** will be presented by Chet Allen in Louisville, Kentucky, on May 17th. Chet is an Exchangor, Developer, Contractor, and Instructor.

Chet has an Economics Degree from Stanford University; he won the CCIM Campbell Award for the *Best Commercial Transaction in the USA*; and the CCIM Snyder Award for the *Best Exchange in the USA*; he is a past president of the Society of Exchange Counselors; and the author of *The Guide to Becoming Real Estate Rich*.

Mark your calendars now! Please visit the S.E.C. Observer at www.secobserver.com and click on Upcoming Events to access the calendar of events to view a brochure for the course, which includes a class outline.

Biography***Larry Browning, S.E.C.***

Larry Browning has gone through his life using the philosophy that his father, whom he describes as a man of honesty, imbedded the following into him when he was a child: “Your word is your bond, always tell the truth.” This statement is reflective in all aspects of Larry’s life.

Born and raised in Shelbyville, Indiana, a suburb of Indianapolis, Larry’s early life through high school was all about “sports and girls.” He grew up playing basketball and baseball. He attended college at DePauw University, graduating with a degree in political science. He played college baseball and studied overseas, which gave him a “great college experience.”

Larry is a caring and passionate individual. Whether it is his family or fellow S.E.C. Brothers & Sisters, his concern is more about the relationship than the task at hand. He is married to Connie, who he started dating in his junior year in high school, whom he credits for making a big impact on his life. He says “It is fun doing life with her.” Larry and Connie have three children: Carrie (who was married in 2007), Adam (who is now working as a broker in Larry’s business and is recently engaged), and Bess (who graduated college in 2007). Larry and Connie are fortunate to have all of the kids living within 50 miles of home, which helps them maintain a close-knit family.

Larry began his real estate career in Atlanta, GA, as a manager trainee with National Homes Acceptance Corp. A little homesick, Larry (now married) and Connie moved back home and began working part time in Real Estate sales. He then founded, Browning & Laird Agency, a local real estate company, and after two or three years moved to Indianapolis to work as a commercial broker for the Baird Company. In 1979, he was president of his local Board of Realtors. As part of that role, he attended the state convention where he attended his first marketing session. At this first marketing session, his life was changed as he was exposed to creative real estate by Harry Kennerk, a fellow S.E.C. member.

Harry hired Larry in 1982 to handle sales and acquisitions for his company, the Sycamore Group. Harry became a spiritual mentor who had a tremendous influence on his life. His first S.E.C. meeting was in 1983 and he became a Counselor in 1984. In 1989, he formed Evergreen Investment Corp. with Steve Steffel. He began the transition from broker to principal with a large land assemblage near the Indianapolis airport. Tired of driving to and from Indianapolis, in 2001, he opened his own office in Shelbyville with Ron Bowden. Together they developed a 141-acre tech park. He has been a successful developer ever since, completing many other large projects.

Larry's goals in life are simple and to the point. Everything he does is tied to the relationship with the other party and he focuses on the spiritual side of life. He wants his kids to be productive citizens and to love the Lord. He was also thrilled to become a grandfather! He is a founding member of Harvest Bible Chapel Church where he presently serves as Chairman of the Elder Board.

An avid Indianapolis Colts fan he also is a New York Yankees fan. He coached high school baseball for five years. Currently he plays softball and golf. He likes to read Christian books as well as novels authored by Tom Clancy. When asked how his best friend would describe him in three words, his reply was, "honest, friend for life, and loyal.

Larry has served as President of the Society of Exchange Counselors and has been on the Board of Governors for many terms. He is also the recipient of the Counselor of the Year award. Larry also served with Phil Corso in writing the business plan for the S.E.C. Education Foundation.

Most of all, Larry cherishes his relationships in the S.E.C., as he considers its members his extended family.

“A Stick, a String, and a Carrot”

Clifford P. Weaver, S.E.C.

Editor's Note: This article was first published in the July 1973 issue of the Real Estate News Observer.

Many Realtors use cash to buy or control real estate for their own account. This program is OK if you have plenty of the green stuff around. However, once you use cash, it's gone for a period of time, or what Jim Misko of Eugene, Oregon, calls “final spending.” The money is gone and gone probably when you need it.

Why not consider the following technique if the right opportunity comes along? We wanted to acquire a two-acre commercial parcel of land valued at \$60,000. The land was worth the price and was about two years premature.

If we paid cash for the parcel, we would lose the power of all that wonderful cash. If we purchased on terms (the standard 29% down game), we would have to make interest payments, principle payments and pack the taxes.

If we used any cash, it would be “final spend” cash that we had worked very hard for and eliminate most of our funds except for our contingent reserve. Wouldn't it make sense to develop another formula technique to handle this situation and acquire the property?

We took \$15,000 and acquired \$15,000 in time plan certificates from our bank. Stop by your banker's office and ask him to explain the time plan certificate deposit program in depth (he'll love you!).

We offered the owner of the lot \$10 for a three-year option to buy his property. We put up the \$15,000 in time plan deposits as additional security in the transaction. In other words, if we did not exercise the option, we would forfeit the deposits. This additional security, the deposits, put a little more teeth or backbone in the transaction. How could an owner turn down this offer? If we do not exercise our option in the three-year period of time, he gets the \$15,000 in time plan deposits. This \$15,000 represents 25 of his selling price.

This is a people business and the psychology behind the \$15,000 to be forfeited is quite a consideration for an owner.

However, what does this do for the buyer? You control real estate for three years for \$10. Your \$15,000 in time plan deposits is under the gun for three years (usually held in trust at the bank or in a holding agreement at the title or escrow company). However, you still earn interest on the time plan certificates.

The buyers felt, as we mentioned earlier, that the property was two years premature. That is why they secured a three-year option to give them an extra year cushion in case of a change in economy. Always plan your holding period a little longer than you require.

For \$10 and putting up \$15,000, as additional security, the buyers purchased the parcel of land at today's price and don't have to deliver until three years down the road (with three years of inflation working for them), plus no real property taxes, no interest or principle payments to make during the holding period.

Clifford P. Weaver taught "Broker Estate Building Techniques" for the Richard R. Reno Educational Foundation. Mr. Weaver was Secretary-Treasurer of the Society of Exchange Counselors. He taught "Broker Estate Building and Administration Techniques" for the Richard R. Reno Educational Foundation. Specializing in real estate problem solving, he conducted his practice in the San Jose, California, area.

“Double in Lieu Of”

Yvonne Nasch, S.E.C.

Editor's Note: This article was first published in the July 1973 issue of the Real Estate News Observer.

An interesting technique to start a multiple exchange is often over-looked, and many transactions that "could have been" never got off the ground.

I can best explain the technique by referring to a personal experience, a "double in lieu of" and happy conclusion. The important thing is to know the technique and put it to work.

An attorney sent three sisters to me with regard to their inheritance of an old free and clear house on an R-3 lot. Although the house was the birthplace of all three sisters, and they had a sentimental attachment to it, the house was old and most of the value was in the lot. While they wanted to dispose of the property and divide the inheritance, they were not inclined to subordinate or exchange for other improved property, or carry back on their property (or any other).

A break came in a package from Exchangor, Charles C. — an identical equity on a free and clear house in Portland, Oregon, which would qualify for FHA. His client wanted income property in Southern California.

The technique started with the offer of my clients' property to Mr. C's client based upon a double "in lieu of." His client would have Southern California property he could exchange for income property. My clients would be emotionally detached from the property they were to take on in an "in lieu of" basis.

At a marketing session soon there-after, **Jim Misko** became a taker for the Oregon house, with paper, and some of the cash from the crank.

Now—how to handle my clients who had previously rejected paper? Each wanted to go her own way so each of the three accepted notes secured by the same trust deed. It was no problem to find five units in Long Beach for Mr. C's client and exchange them for the R-3 lot with the old home. There were many takers for the R-3 lot.

Mission accomplished! The technique was two "in lieu ofs" that ended in four transactions.

Yvonne Nasch, S.E.C., was one of the most treasured members of the Society of Exchange Counselor. She was the 1979 Counselor of the Year. An award was created in her honor, to recognize the S.E.C. Member who completes the most transactions with other S.E.C. Members; and it is awarded annually in her memory. Yvonne had the distinct honor of being the first woman in the United States to hold the S.E.C. and CCIM designations; she also held the RECI and GRI designations. Yvonne served in many capacities as a volunteer for the various organizations she belonged to, as well as excelling in her private practice as a developer, exchangor, investor, and speaker.

Update from Exeter 1031 Exchange**William L. Exeter***President and Chief Executive Officer
Exeter 1031 Exchange Services, LLC*

Thank you for the warm welcome that Kim Englert and I received at the recent S.E.C. marketing meeting in Tulsa, OK. Kim and I look forward to working with each of you on your next 1031 exchange transaction, and to serving as your technical support team and sounding board for 1031 exchange related matters.

[Exeter 1031 Exchange Services, LLC](#) invests a significant amount of human and financial resources to keep abreast of new developments in the 1031 exchange industry, and in turn will communicate any important issues to you that may impact your 1031 exchange strategies. Here is what's new.

Partnership Issues

Partnerships have always complicated 1031 exchange transactions. Partners often want to go separate ways and dissolve the partnership upon the sale of real property held by the partnership, which in turn creates last minute structural problems for 1031 exchange strategies.

The most common strategies to work around this problem include:

- (1) 'drop and swap' where the partnership drops (transfers) the relinquished property out of the partnership and into the individual partners' names so that the individual partners can complete a 1031 exchange transaction after holding the property for a sufficient period of time; or,
- (2) 'swap and drop' where the 1031 exchange transaction is completed at the partnership level and then the partnership drops (transfers) the replacement property out of the partnership and into the individual partners' names after the partnership has held the property for a sufficient period of time.

The holding period is the problem. Advisors have historically recommended a minimum holding period of 12 months before property is dropped as described above. However, to further complicate the problem, the IRS has amended [Form 1065](#) (Partnership Tax Return) for 2008 and now specifically asks whether there was any property contributed into the partnership or dropped out of the partnership during the last two tax years (question nos. 13 and 14 on page 3).

Therefore, a minimum holding period of two tax years is now recommended in order to successfully and safely complete a 'swap and drop' or 'drop and swap' 1031 exchange strategy.

However, two new Private Letter Rulings recently issued by the IRS may provide some assistance with this issue. Private Letter Rulings [PLR 200909008](#) and [PLR 200807005](#) essentially allow the acquisition of 100% of the outstanding partnership interests to qualify as the acquisition of like-kind property. While Private Letter Rulings can only be relied upon by the taxpayer that requested them, they do provide some insight into how the IRS would view or treat similar transactions.

Please call me directly at (619) 615-4210 or on my mobile phone at (619) 602-9148 if you would like to discuss any of these issues in greater detail.

Kim and I look forward to seeing you at the next S.E.C. meeting in Louisville, KY.

William L. Exeter
President and Chief Executive Officer

William L. Exeter is the President and Chief Executive Officer for Exeter 1031 Exchange Services, LLC and Exeter Fiduciary Services, LLC and their affiliate companies. Mr. Exeter is based in the company's national corporate headquarters in San Diego, California.

Mr. Exeter has been in the financial services industry since 1980 and entered the 1031 exchange services industry in 1986. He has written and lectured extensively on 1031 exchange transactions pursuant to Section 1031 of the Internal Revenue Code and on Tenant-In-Common (TIC) Properties as like-kind replacement property solutions pursuant to IRS Revenue Procedure 2002-22.

In addition, Mr. Exeter is the owner and host of The Exeter Group Real Estate Talk Radio Show™, is a frequent guest expert on "The Financial Advisors — Money Talk Radio Show" on San Diego News Radio AM 600 KOGO and on the "Inside Business Radio Show" on Business Talk Radio AM 1000 KCEO San Diego.

Mr. Exeter also serves as an industry consultant through Exeter Consulting Group, LLC and as an expert witness on 1031 exchange related litigation.

Immediately prior to founding The Exeter Group of Companies he served as President and Chief Executive Officer of TransUnion Exchange Corporation (formerly Diversified Exchange Corporation) in San Diego, California for four years and prior to that as Executive Vice President and Chief Operating Officer of The Chicago Trust Company of California and its 1031 exchange subsidiary for 13 years that were part of the Chicago Title Family of Companies.

In addition, he served as a senior executive with two 1031 exchange companies in the 1980s during the 1031 exchange industry's infancy, and is one of the founding members of the Federation of Exchange Accommodators. He has administered in excess of 75,000 1031 exchange transactions during his career.

Mr. Exeter's professional experience includes 1031 exchange, title insurance and escrow services, fiduciary, trust and retirement account administration and services, trust operations, investment management services, commercial banking, and insurance administration.

Mr. Exeter is involved with numerous professional organizations including the Tenant-In-Common Industry Association (TICA), COREnet Global, AIR Commercial Real Estate, ICSC, the San Diego Chapters of CCIM and CREW, NAIOP, SIOR, California Escrow Association, San Diego County Escrow Association, and NorCal Escrow Association, and is one of the founding members of The Center for Wealth & Legacy Studies™.

Mr. Exeter graduated from California State University, Los Angeles with a Bachelors of Science degree in Accounting, and from the Canon Financial Institute, attaining the Certified Securities Operations Professional (CSOP) designation. He is currently working toward his Certified Commercial Investment Member (CCIM) designation.

Kim Englert, MBA
Business Development Officer
Los Angeles and Orange County Branch Office

Kim Englert is a Business Development Officer for Exeter 1031 Exchange Services, LLC, and its affiliated companies, and is based in our Los Angeles and Orange County Branch Office located in Irvine, California. She has day-to-day management responsibility for business development, educational program delivery, and client relationship management for the Orange and Los Angeles County region.

Prior to joining Exeter 1031 Exchange Services, LLC Kim was a Paralegal and Executive Assistant for over five years to the General Counsel of TransUnion Title and Escrow of California (formerly Diversified Title and Escrow Services Company). She also held positions as a Data Imaging Specialist and Customer Service Representative with the Huntington Beach Fire Department for over three years and as an Assistant to the Office Manager for the law firm of Fogel, Feldman, Ostrov, Ringler & Klevens, ALC for over three years.

She is involved with numerous professional organizations including, AIR Commercial Real Estate, ICSC, CCIM and CREW, NAIOP, SIOR, California Escrow Association, Orange County Escrow Association, San Gabriel Valley Escrow Association, American Association of Women Accountants (ASWA), and the Federation of Exchange Accommodators.