



S.E.C. Real Estate Observer

AN E-PUBLICATION OF THE SOCIETY OF EXCHANGE COUNSELORS

Service. Experience. Counsel.



Inside This Issue

Welcome to the 2010 spring issue of the S.E.C. Observer. William F. Richert, S.E.C. President, warns that “it is always darkest before the dawn,” but expresses confidence that our economy will improve. Bill Wilson allowed us to reprint the article he wrote for the Wichita Eagle that features the successful traits of one of our most treasured members, Colby Sandlian. Dennis Crull, S.E.C., CSPG, shares “tax-saving exit strategies for retiring real estate investors;” and Charles E. Sutherland, S.E.C. provides you with the “nine keys” to success in hotel turnarounds. Ted J. Blank, S.E.C., CCIM, asks us to “love a banker” — even in this market — in the first of a three-part series.

Lance Warner, S.E.C. Education Foundation President, updates us on the progress of the S.E.C. Education Foundation and the S.E.C. Bookstore. One of our most colorful and outspoken members, Hank Haden, S.E.C., is “in the spotlight” this issue.

Winston Churchill said: “The farther backward you can look, the farther forward you can see.”

The articles from the original Real Estate News Observer are published in the History Files with Churchill’s quote in mind. As we approach our 50th Anniversary in January 2011, these articles remind us to maintain the S.E.C. traditions of excellence in service, experience, and counseling; while also encouraging us to evolve, improve our skills, and look to the future. In this issue, Richard Reno’s article, “A Way of Life,” clearly defines the benefits of counseling and attending marketing meetings; and Cliff Weaver shares some of his basic strategies to help us build our “Nest Egg.”

Our national sponsor, Bill Exeter, Exeter 1031 Exchange Services, LLC, keeps us up to date on issues that concern our marketplace, and the extent of his knowledge is impressive. Read his article in this issue to determine whether your 1031 replacement property ID would withstand an audit.

Enjoy this issue, and as always, we welcome comments, suggestions, and submission of 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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“It's Always Darkest Before the Dawn”**William F. Richert, S.E.C.**

“These are the times that try men's souls” as Thomas Paine so aptly put it in the winter of 1776 — although, he could have been referring to our current economic crisis. As the recession lingers on around us, we become caught in the quagmire ourselves and it seems, at times, like we cannot see the light at the end of the tunnel. If we were each facing the challenges alone, it would be extremely tough not to lose focus and succumb to the problems we face every day. But we do have a tremendous support group and a sounding board for ideas and solutions to the issues we are facing. It is incumbent on us all to use and contribute to the forum we have (our S.E.C. meetings) for bringing problems and solutions into focus. Our most valuable asset in the Society is collectively ourselves and our openness to share ideas and solutions for the problems that are brought before the group OR to counsel as individuals when one of our Society members feels a less public session is more beneficial.

It is this quality in the S.E.C. organization that sets us apart from other real estate groups. The openness to share thoughts and ideas with each other, and with our guests, in order to lift the entire group, is what differentiates us. Perhaps others may focus on cranking numbers and filling out spreadsheets because they think that is more important, but that may not be the solution to the situation their client or they themselves are seeking.

This recession has not run the full term, as yet, and there will be additional struggles in the coming months that our group, or individuals in our group, and our industry, will have to face. But our members and guests know there is solace in coming to our gatherings, bringing their problems and issues that seem insurmountable, and letting the wisdom and experience of the group begin to unravel some of the obstacles to finding solutions. Sometimes the greatest comfort is knowing that you are not facing these situations alone. There are in our group some who have been there before, or some who are there now, and are looking for similar solutions. We all wear the scars of being in the fray of the real estate business, of being active and not sitting on the sidelines.

In the words of Theodore Roosevelt:

It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the

best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.

We are all where we are because we have chosen to enter the arena and take the risks. We will come out on the other side stronger and wiser than when we entered. Above all, keep the faith and stay the course and remain dedicated to each other and the Society to preserve the special bond and we have in this organization.

The Wichita Eagle

Kansas.com

POSTED Sunday, March 21, 2010

“Sandlian Succeeded by Always Being Out Front”

By Bill Wilson
The Wichita Eagle

After six active and profitable decades buying, selling and developing commercial real estate nationwide, it's past time for Colby Sandlian to sit back and enjoy the fruits of all that labor. Not a chance, scoffed the 79-year-old operator dubbed the Yoda of commercial real estate by his Wichita peers.

"I tried," Sandlian said with a laugh. "Too many hours in the day."

There's no end in sight to Sandlian's real estate career, and equally no end to the real estate careers he's birthed and nourished in Wichita as a broker, operator and resident sage.

"Colby Sandlian is the reason I'm in this business," said Steve Barrett, a commercial broker and developer at J.P. Weigand & Sons.

"He's one of the most passionate people in this industry about this industry. And he's as knowledgeable a person as you'll find. It's incredible to have people like Colby in Wichita." There's no deep philosophical reason why Sandlian began brokering commercial real estate, making enough money to build a huge portfolio that takes all of his time today.

"The obvious reason you get into real estate is you make a lot of money," he said, eyes flashing.

"You can make a good living in real estate. But you get rich by buying, building and owning property."

And by steering a steady course, Barrett said.

"Colby has a formula for everything he does, and that's why he's successful," he said. "Colby's out in front of everything. He was developing strips before they became popular, and he helped start the mini-storage craze that's become a total national industry."

Passion for Wichita

Optimistic, pragmatic, oftentimes blunt but always with a no-frills take on his accomplishments and his life's work: That's Colby Sandlian.

* Sandlian the optimist: The hometown he loves will be back after the recession, stronger than ever.

"Maybe we've got a little too much space in strips, but the Wichita market's better than most," he said.

"Fact is, the aircraft industry will be good again, sooner than you think. We're going to need airplanes, and we built a lot of very good ones here."

Ask Sandlian about his hometown, and the flashing passion in his eyes softens.

"Wichita is a fine city, right in the middle of everything," he said, smiling.

"I can be in California in four hours. I can be in New York in four hours. I'm going to Florida this week, and I can be there in three and a half hours.

"This is a good city. I could live anywhere in the world, and I still can, but my home is in Wichita."

* The pragmatic, blunt Sandlian: Greed brought the U.S. economy down, and hard work will bring it back, he said flatly, his look hardening.

"We went too high," he said, talking about residential and commercial real estate values.

"Difficult to say that because everyone wants to go high, but the result was a bunch of financial derivatives and securitized loans that were sold in packets. Terrible."

Treating real estate as a commodity, rather than an investment, helped bring the economy down, Sandlian said. Thus, it's time for mortgages to return to the hands of their lenders for service.

"Most of the mortgages out there are being paid, but you've got this group that isn't, and there's no one out there to send out to try to solve it," he said.

"I mean, the government wants you to short sale, do a bunch of things, but short sale what? A piece or a fraction of an instrument covering a thousand homes? A thousand properties? Makes no sense."

Wichita's 1959 economic collapse — when he said a third of the city's 90,000 workers were laid off — provides a blueprint for his commercial brethren to weather today's economic storm, Sandlian said.

"What you have to do is dig, work a little differently," he said.

"You dig to find good listings. Never take a buyer and go out and find something for them. Go find a piece of property — a building, land, whatever — that's a reasonable buy. Not too much below the market, but within the market.

"Spend your time analyzing, digging and digging to find good properties. And when you find one — a strip, a warehouse, land, a service station — that's truly a good buy, there will be people who will buy it."

'An acute sense of integrity'

Sandlian is a complex, disciplined, detail-oriented man with an almost unbeatable real estate system, Barrett said.

"He would have been a great coach in any sport because that's the way he attacks life, very disciplined, never deviates from his system," Barrett said.

But to truly understand Sandlian, you listen carefully to the story he tells with reverence about the first Wichita home his struggling family owned, an 1800s house in the 300 block of North Washington bought from the legendary Wichita real estate pioneer J.P. Weigand for \$900 in 1942.

"It wasn't a big deal, but my father felt like he treated it as one," Sandlian said.

Today, Sandlian's friends say he's the same kind of man.

"Colby has an acute sense of integrity, always has, and wouldn't do anything untoward to make a real estate deal," said a former employee, Wichita commercial broker Rod Stewart.

"All you need to know about Colby Sandlian is that his handshake is better than most people's written contracts," he said

"That's the person Colby's turned into: a rare package of talent, personality and integrity, a very special person," Barrett said.

Reach Bill Wilson at 316-268-6290 or bwilson@wichitaeagle.com.

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III. Society Columns A. Tax-Saving Exit Strategies for Retiring Real Estate Investors

“Tax-Saving Exit Strategies for Retiring Real Estate Investors”

Dennis R. Crull, SEC, CSPG, CCIM, ALC, CRB, GRI

March 19, 2010

Utilizing IRS Code Section 1031 Tax Deferred Exchanges is one of the most effective ways to create wealth in real estate. However, over time, a real estate investor may end up with valuable property and a low adjusted tax basis. This creates a very unfavorable situation when the investor reaches a point where they would like to sell their property and retire, but are faced with the potential of a substantial capital gains tax liability. All of the gains that have been deferred through careful exchanges now loom if the property is sold without a tax deferred exchange into another property.

There are numerous reasons for wanting to exit real estate. The investor may have reached a point where they no longer want to worry about the management of the real estate. They may be retiring and want passive income that does not require any work or oversight as they pursue other options. They may be widowed and have very little ability to continue with ownership of the property, or have any desire to learn.

After years of carefully avoiding taxes on appreciating real estate, the prospect of paying potentially hundreds of thousands of dollars in Federal and State income tax is unacceptable to many investors. Consequently, they continue with the burdens of ownership, many times unsuccessfully, until their death.

There are, however, some very effective exit strategies that a real estate investor can utilize to provide lifetime passive income, significant capital gains and estate tax savings, and substantial income tax deductions. These strategies involve the IRS Charitable Gift Tax Laws. Like IRS Code Section 1031 Tax Deferred Exchanges, these strategies require attention to detail so the IRS does not disallow the entire transaction and leave the seller with a tax bill simply because they failed to follow the rules.

The IRS (and the Federal Government) has consistently underestimated the creativity of American taxpayers and their advisors. As a result, the IRS often finds they are dealing with “Unforeseen Circumstances” when it comes to provisions in the code. Often, that means a period of time where there is considerable uncertainty about the legality of a particular strategy; therefore, taxpayers are hesitant to enter into arrangements where there is no clear understanding about what will and will not be allowed. That was once the case with all the strategies mentioned above, but the IRS has largely eliminated this uncertainty through a series of code revisions. These strategies are now empowered by the code, if the conditions set down in the

code are followed. Since there is considerable wealth on the line, it makes sense to follow the existing guidelines closely so there are no surprises down the road.

Some of the possible exit strategies that may be beneficial to retiring real estate investors are described briefly below:

Charitable Gift Annuity (CGA): A contract between a donor and a non-profit whereby the donor transfers the ownership of the property to a non-profit. In exchange, the non-profit establishes an annuity with fixed, regular payments to the donor for life. The amount of the payment depends on the value of the gift, the age of the donor, and the annuity rate. The income tax on the annuity is partially tax free with the balance taxed in a mix of capital gains and ordinary income. The donor gets an immediate income tax deduction for a portion of the gift and the non-profit receives the remaining principal balance at the death of the donor.

Combination Life Estate and CGA: Utilizing the Life Estate concept, an investor can donate property to a non-profit, retain the use of the property for the rest of their life, and receive a substantial income tax deduction that can help offset other income. Further, the difference between the value of the property and the Life Estate can be exchanged for a CGA that will provide lifetime passive income to the donor while they still have the use of the property during their lifetime. In addition, should the donor decide they no longer need the use of the property, they may be able to exchange the remaining value of the Life Estate for a second CGA that will provide them with an additional source of passive income.

Charitable Remainder Trust (CRT): Under this arrangement, the donor transfers ownership to a CRT with a charitable “Remainderman.” A trustee is named to manage the assets in the CRT and the donor receives passive cash flow for life, or for a fixed period of time, or for some combination of the two, i.e., life plus ten years. The donor receives an immediate income tax deduction, capital gains tax savings and elimination of estate taxes on the assets in the CRT. The corpus of the CRT passes to the Remainderman at the end of the term specified. Some of the different types of CRTs are described below.

Charitable Remainder Unitrust Trust (CRUT): A CRUT is a CRT with a payout that is a fixed percentage of the annual valuation of the trust assets.

Net Income Charitable Remainder Unitrust (NICRUT): A NICRUT is commonly used when a non-income producing asset or low-income producing asset is placed in a CRUT. The donor may receive a small (or no) payout until the property is sold and the proceeds are invested. If there is a “flip” provision, the trust then begins to function as a standard CRUT.

Net Income with Makeup Charitable Remainder Unitrust (NIMCRUT): A NIMCRUT is similar to a NICRUT except for provisions that allow for the makeup of the fixed percentage income that was lost during the time the corpus of the trust consisted of property with little or no income.

Charitable Remainder Annuity Trust (CRAT): A CRAT is a CRT wherein the donor receives a fixed dollar amount each year for the term of the trust.

Combination Exchange with CGA or CRT: Most non-profits require the donated assets to be free and clear of encumbrances. There are creative ways to structure combination gift plans/exchanges utilizing other assets owned by the non-profit to eliminate debt the donor may have on their property so they can take advantage of the gift laws that require the use of a qualified non-profit.

What about the donor's heirs? There are highly beneficial ways to provide an inheritance to heirs, some of which can be incorporated into the gift plan options previously described. Another option is to implement a Wealth Replacement Plan, which could include an Irrevocable Life Insurance Trust, funded by a portion of the increased income received by the donor due to the tax savings involved with the gift plan. This works well for couples who want to leave an inheritance to their children but need to maximize their passive income during their lifetimes.

As with IRS Code 1031 Tax Deferred Exchanges, there are a number of requirements that anyone considering a gift plan will need to be aware of so the plan has the desired outcome for the donor. Consulting with a Certified Specialist in Planned Giving (CSPG), or a Certified Financial Planner (CFP), Certified Public Account (CPA), or an attorney well versed in the gift planning laws is the first step in developing a successful plan and avoiding the pitfalls inherent with these types of transactions.

Dennis Crull
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If you would like to learn more, Dennis will be teaching a course in Kansas City, Missouri, on May 16, 2010. To register for the course, visit www.secounselors.com

“I Love My Banker”**Ted J. Blank, S.E.C., CCIM***First of a Three Part Series*

Yesterday I met with a Senior VP of a community bank. He has been in banking for 40 years. When I asked how he was doing, he said, “I’ve never seen it this bad, even during the RTC days in the 90s.” Do you have empathy for your local banker or disdain for their inability to make you a loan?

We have been talking to and working with lenders for 30 years. Rest assured, they much prefer the times of economic strength, liquidity, and lending. In my opinion, community banks are being overregulated in a time where credit and liquidity needs to be encouraged. FDIC and OTS regulators are restricting your bank from making loans, particularly commercial investment and development loans. Owner-occupied commercial, SBA, and some residential lending is encouraged. A bank with over 300% of their capital in development or commercial loans is not only encouraged not to make any new loans, but not to renew any existing commercial. This includes loans that have been current. Where does this borrower go? Answer: “Trouble in River City.”

Before you go into your bank to ask for a loan or to buy some of their troubled assets, know where they are financially. When most brokers meet with a client for the first time, we know very little about the client, maybe a little on their real estate. If one of your client prospects called to set a meeting with you to discuss selling their real estate and suggested they would e-mail you their detailed financial statement and income statement before the meeting, you would be more than shocked. It never happens. However, not with your local bank. Their financial data is updated quarterly and made public at www.FDIC.gov. Click on Call and Thrift Financial Report, then Call Report, then View Data, enter your bank name and location and 60 pages of financial data will appear on each FDIC insured bank. The main schedules to look at are the Balance Sheet, Income Statement, Loan Loss Reserves, Commercial and Construction Loans, REO, and Past Due and Non Accrual Loans.

Ratios to look for are capitalization rate at 10% of assets. Banks under 7% are at risk of Letter of Consent or takeover by FDIC. REO plus sub-performing loans should not exceed 100% of capital. Commercial and development loans should not exceed 300% of capital and total loans should be less than 100% of deposits. As you learn to analyze the bank’s financial position, solutions to their and your problems will begin to emerge. Our next article will discuss how to use this information.

Until then, research your main bank that you do business with and take your banker to lunch. Let them know you have empathy for their position. Share a little Love.

Ted J. Blank, Managing Partner

Ted was born and raised in Indiana but he has been a Colorado businessman since 1988. After graduating from Purdue University, he began his career in the commercial real estate business. For the past 25 years, Ted has specialized in syndications, note acquisitions, REOs and client-based counseling. He holds the CCIM designation from the National Association of Realtors.

Ted is a past President of the Society of Exchange Counselors. Founded in 1961, the S.E.C. is a dedicated group of commercial real estate brokers, experienced in counseling clients on acquiring or disposing of investment properties. These skilled professionals use creative and effective methods of marketing, exchange and sales of properties to extract the highest income and tax advantages available. Ted is a past recipient of the S.E.C. Counselor of the Year Award and serves on the Board of Governors.

As recognized experts in commercial real estate and note acquisitions, Ted and his partner, Charlie Muenzberg have been invited to speak to groups around the country about the current economic climate as it pertains to the note business. Ted And Charlie have been partners since 1993.

Ted also wrote and teaches a creative real estate education program for the S.E.C. Education Foundation entitled “High Touch Real Estate Brokerage.” The course examines the importance of understanding a client’s motivation when they are buying, selling, or exchanging. Using the skill of client counseling will allow any agent (residential, commercial, farm, etc.) to help his or her client reach a successful conclusion.

Ted is the founder of the “National Directory of Lender Owned Real Estate” and a member of 3 national, real estate marketing groups.

“Nine Keys to Hotel Turnarounds”

Charles E. Sutherland, S.E.C.
Inn-Ovation Hotel Groups, LLC

1. Evaluate the Overall Market.
 - a. Frequently, a problem with a hotel is not isolated to that hotel itself. The overall market has been impacted.
 - b. We were evaluating a hotel that was new, in great condition, but had done only an 18% occupancy its first year of operation. When we looked at the market, we discovered that the number of hotel rooms had almost tripled over a three-year period. Federal tax credits after Hurricane Katrina had resulted in substantial overbuilding as compared to the real demand in that immediate area. As a result, we created a plan to operate that hotel with lower occupancy the first year of the turnaround, far below what had been predicted by the original ownership and lender.
2. Inspect the Physical.
 - a. The physical hotel is composed of all the components of the hotel (furniture, HVAC units, lighting, telephone equipment, carpeting, landscaping, paving). An itemized inventory and inspection of each and every component is vital with recommended actions, budgets and timetables for repair, upgrade or replacement.
 - b. This inspection requires the work of someone who can drill down to detail. When we are evaluating a hotel room-by-room, making notes of every item missing, needing repair or replacement or not working in every room. Depending on the size of the hotel, it can take several days of solid work to complete the inventory and evaluation.
3. Assess the Staff
 - a. The Owner or Professional Management cannot be on the property 24 hours a day. Yet, interactions with guests and vendors occur around the clock. The staff either breathes life into the day-to-day experience of the customer or kills off their ever coming back. Make sure you have the right staff to fulfill on the “guest experience” being fabulous. Each and every person counts.
 - b. Obviously, the General Manager sets the tone for the entire facility. The turnaround will not work if the Owner, Professional Management and/or General Manager is not online with the plans.
 - c. Don’t overlook the importance of the bookkeeper, sales staff, head housekeeper and chief maintenance officer. Each of these staff roles are key for a successful turnaround.

4. Create a Plan for immediate action.
 - a. In a hotel turnaround, immediate actions are required to demonstrate movement and commitment...as much to your staff as to the customers. The Japanese have a business saying: "Fire...Ready...Aim." Paint a wall, deep clean a room, rearrange the lobby furniture...do something! And listen to the staff concerns, because they are looking to see if you are listening to them and will likely judge if they should trust you based on your short-term actions.
5. Create a long-term plan
 - a. Even though immediate action is required to break the inertia, a well-thought-out plan is equally necessary. Clarify where you want the property to go. What will it take in financial and human resources to make that vision real? In planning, be realistic about timetables, resources and results. Don't fool yourself.
6. Make sure you have enough money.
 - a. Turnarounds take money. Plan ahead for financial surprises. The old saying about budgeting twice as much money and twice the time carries some real wisdom.
 - b. A detailed inventory and a detailed plan will give you good information to create a realistic budget. But don't be fooled. Your budget is not infallible. Plan ahead.
7. Effectively Market and Sell to Customers
 - a. Marketing is constant...so are sales. And they are different. Marketing is getting your customers' attention and interest; sales is having them buy. Marketing itself is insufficient to consummate the sale.
 - b. I looked at a property several years ago where the owner had created a detailed marketing plan focused around advertising, thinking that would bring real business in the door. But the marketing plan was not designed to actually have people buy. It did not set up the sale, and no actions were directed at closing the sale. Effective marketing and sales must be focused on how much revenue the marketing and sales generate.
8. Be Creative
 - a. Don't let the obstacles cloud your vision and commitment. There will be plenty of "naysayers" who will advise you that your ideas won't work, that they know better how to make it happen, or that "the sky is falling." And there will be plenty of breakdowns and issues to deal with. Stay open to new ideas. And "keep your head up and your eyes open."
9. Hire a Professional Manager
 - a. Einstein said: "We can't solve problems by using the same kind of **thinking** we used when we **created** them." This isn't just about the turnaround of the hotel. It is about the turnaround of your thinking. It really takes something to turn your thinking around. Find someone you trust who has done this before and have them work with you.

S.E.C. Education Foundation

Lance Warner, S.E.C.
2010 President

During The Society's Las Vegas Marketing Meeting in January, the Education Foundation sponsored a luncheon with our supported instructors. Having everyone in the same room created an opportunity for an exchange of ideas and concerns that was very beneficial. We discussed ways to make our courses more available to groups and organizations around the country.

Also under consideration is a program that would provide financial support for instructors and moderators who travel to various regions to moderate another organization's marketing meetings. Our moderators have proven very effective in promoting education as they moderate, so it is an excellent way to expand our reach.

The Society's Ed Foundation is working with a TV producer and a script writer to draft a proposal for a commercial that we would use on our web site. When these materials are complete, they will provide an easy way to introduce our specialized instruction and instructors to real estate organizations and marketing groups.

The S.E.C. Bookstore is slowly but surely increasing the inventory of books available for purchase. We presently have "100 Equity Marketing Formulas," by Virgil Opfer and Dan Harrison; the industry classic by Royce Ringsdorf, "The Basic Steps in Real Estate Exchanging;" "How to Finance Any Real Estate – Any Time," by Jim Misko; and "real estate exchange" novel, "The Most Expensive Mistress in Jefferson County."

Visit the S.E.C. Bookstore <http://www.secounselors.com/about-the-society/sec-bookstore/> to purchase these books, and check back often to see what has been added. We are looking forward to adding a soon-to-be-released series of books by Bob Steele, S.E.C., "300 Strategies for Making Real Estate and Business Deals."

Please contact the S.E.C. Office sec@secounselors.com if you have questions, suggestions, or about our books, our courses, or to learn about bringing one of our instructors or moderators to your area.

S.E.C. National Invitational Marketing Session

Kansas City, Missouri

May 16–19, 2010

The S.E.C. National Invitational Marketing Session will be held May 16–19, 2010, at the Intercontinental at the Plaza • 401 Ward Parkway • Kansas City, MO • 64112.

Visit www.intercontinental.com to learn about the hotel, and visit www.visitkc.com to learn about the Kansas City 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 Kansas City Meeting.

“Tax-Saving Exit Strategies for Retiring Real Estate Investors”

Dennis R. Crull, SEC, CSPG, CCIM, ALC, CRB, GRI

The S.E.C. Education Foundation is pleased to announce that **Dennis Crull** will present **“Tax-Saving Exit Strategies for Retiring Real Estate Investors”** on May 16, 2010, in Kansas City, Missouri.

Course Topics

- Why are there Charitable Gift Laws?
- Gifts of Real Estate and Businesses
- Types of Charitable Gifts
- Planned Giving Alternatives
- Solutions and Benefits for Donor
- What about the Heirs?
- Exchange/Planned Gift Combination Transactions
- Case Studies

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.

*Biography***Hopkins “Hank” Henry Haden, III, S.E.C.**

The life of Hopkins “Hank” Henry Haden, III depicts an adventurous, independent and competitive ‘deal making’ spirit reflecting the roots of his Texas City, Texas, upbringing.

Family

Hank Haden was born in Galveston, Texas. Hank attended junior and senior high schools in Texas City where he lived with his parents, Galveston native Hopkins Henry Haden, Jr., and Texas City native Lois Noble Haden, two sisters and one brother. Hank is the oldest of the four children. His brother Earl Noble Haden lives in Austin, Texas. Hank’s two sisters, Nancy Haden and Peggy Yates, reside respectively in Dallas, Texas, and Cocoa Beach, Florida.

Hank has three children, all of whom live in Texas. “Hoppy,” Hank’s eldest son, born in 1963, lives in Lockhart. His second son, Jake Martin, born in 1965, lives in Willis. Hank’s daughter, Holly, born in 1967, lives in Austin.

Hank’s most significant life event in his words is, “My three children, and marrying my wife Diann.” Hank states, “That was a very happy, happy day for me.” Diann and Hank met in The Woodlands, Texas, in 1980 at a Chamber social, with both working in the real estate sales business at the time. Hank and Diann currently live in The Woodlands and find themselves “blessed with fourteen grandchildren between the two of us.”

Education and Introduction to the Real Estate Industry

Upon graduation from North Texas State in Denton, Texas, Hank’s first job experience was in retail sales in Dallas followed by a position eighteen months later with Hallmark Cards in El Paso. At this juncture, Hank met Bill Schmitz, who was his first manager. Hank recalls Bill’s wise counsel, “He told me to always follow my heart, even when it comes to business.” Hank continues, “Real estate has been my heart for many years. I love real estate and all that is connected to it.”

Five years with Hallmark in El Paso allowed Hank to accumulate the capital needed to begin his real estate investment career in 1970. He initially began with residential rentals.

Early Interests Contributing to Real Estate Strengths

Hank's early interests during high school and college carry over into his real estate career today. Hank is a sports enthusiast including baseball, football (Houston Texans) and routinely, a less structured "street fight." Additionally, he enjoys outdoor interests such as hunting and fishing (especially in Old Mexico). The "street fighting" particularly carries over to his passion in regards to the "pricing of real estate." He enjoys "buying cheap" and "selling cheap." "Still realizing the same 25% return on your investment" . . . "Beating the seller up," referencing the street fighting of his youth. Hank sees his strengths in the real estate business as owning residential property, developing land and being able to recognize a "really good deal."

Potential Weakness in Real Estate Business

When questioned about his weakness regarding real estate, Hank will tell you that it is "trusting everyone to do what they say they will do."

Motivation

Hank loves "doing the deal." Hank considers himself a true "deal junkie" and continues to find value in "doing any deal" one decides to pursue.

Regarding one such deal, Hank notes his "ever so fair" Corsicana experience. (Those who know Hank personally may recall him using a different description in regard to this city.) Hank surmises, "I met some fine people there, and I learned a lot from the small town folks with really big ideas and hearts to see them through. A small town can become a big town overnight with several players involved." 'Corsicana' was a land development project *in* Corsicana, Texas, that required a tremendous amount of persistence and tenacity to complete in an ultimately profitable manner. Hank's counsel to aspiring land developers is simple: 1. Acquire the land at a price you can afford. 2. Divide into tracts per market demand. 3. Plug in your development costs (water, sewer, roads, etc.). 4. Determine from the analysis of the numbers if you "can make a profit."

Real Estate and Civic Leadership

- President of Montgomery County Board of Realtors
- President of NCE (The National Council of Exchangers)
- Principle Broker and Owner of a Century 21 Franchise
- Active Member of Lions Club

Most Significant Event in S.E.C.

- **Winning the Yvonne Nasch Award in 1993**

In Overview

Hank Haden embodies success, honesty, wisdom, candor (Corsicana) and humor regarding his lifetime of real estate results. During his real estate career, the professional techniques he employs include the following:

- Effective Real Estate Counseling
- Land Development and Redevelopment
- Exchanging
- Rehabbing
- Mentoring
- Investing, Individually as well as in Partnerships

Hank is quick to say “*Do* your due diligence” and “*watch out*, because if anything can go wrong, it probably will.” In summary, Hank’s philosophy on real estate and business is, in his words, “Do what you can do and be happy with the results. It will change anyway!” His closing comments were, “My sense of humor has kept me smiling for a long, long, long time. ‘Hope that never leaves me.’”

When asked about Hank Haden, anyone who has known Hank for any length of time mentions his dry wit and sense of humor. Hank has the ability to laugh at himself as well as outside humor. His manner clearly reflects his self-expressed life goal of “being nice to everyone and helping all I can help.” As business goals, Hank had planned to become a millionaire by age forty, and to have at least five million by age fifty. “Still working on these; I am not dead yet,” he quips.

Hank’s wife Diann concludes, “I have never met anyone with more *‘heart’* than Hank Haden!”

“A Way of Life”**Richard R. Reno, S.E.C.**

Editor's Note: This article first appeared in the January 1977 issue of the Real Estate News Observer.

The national Society of Exchange Counselors is to be credited with experimenting with and perfecting real estate problem solving. Problem solving actually is a result of brainstorming a problem wherein *pros* and *cons* are all brought out. In properly done problem solving, all minds in the room are centered on the same problem at the same time, with nothing else in front of them except the package that describes the property and the problem at hand ... perhaps some scratch paper or a calculator and some blank Preliminary Exchange Proposals.

When the one who is giving the problem from the front of the room is telling about it, all should listen carefully. By experience and for best results, the following format seems to be the best to use:

1. First, give any changes in the package if necessary. Other than that, don't talk about the property unless there is some particular thing that must be clarified. We all attempt to hold the package down to a single sheet if possible, but sometimes in complicated situations, there is not enough room to explain everything, so such things as very complicated financing could be explained in detail so that everyone will understand the position.
2. Next, the presenter should tell what he thinks the audience should know about the client and the primary problem he is trying to get solved. Telling a little about the client and his family often sparks some thoughts that otherwise might be lost.
3. Now questions should come from the audience until everything seems clarified. None of these questions should be "wouldjatake." If anyone is at the point of asking if a client would take this or that or the other, that thought and question should be put on a Preliminary Exchange Proposal or on a long form. It has been found, again by experience, that at problem-solving sessions, a Preliminary Exchange Proposal serves a better purpose than a formal offer, mainly because of time. By use of the Preliminary Exchange Proposal, in triplicate on NCR paper, it is nearly always possible for the writer to quickly find out whether a transaction is possible or probable.

Now ideas should come from the audience — wild ideas, all kinds of ideas,

whether they make sense or not. There should be no judicial thinking in problem-solving sessions; any judicial thinking must be done after the session is over. There should never be a negative thought in a problem-solving period. All must be positive. It is by the accumulation of many ideas that come forth quickly from the hunch, which is *intuitive thinking*.

4. Now is the time to write the Preliminary Exchange Proposal, or at least jot down the thinking on it quickly, and perhaps complete it at a writing break.
5. Sometimes the format might be varied and after every three, four or five presentations, the group breaks into round tables where each of the presenters up to that point conducts a roundtable and those interested in his package go to the table and in this way additional brainstorming of a more specific nature can be done. This system sometimes leads to a three, four or five-way exchange being started at the table.

Exchange counselors take the problem-solving sessions quite seriously. Why? Because today it is costly to move around the country, and results *must be obtained* ... results that become transactions by problems solved.

Richard R. Reno, S.E.C. (San Diego, California) was the highly regarded founder of today's modern real estate exchanging profession as a "people" business. Mr. Reno was president of the Society of Exchange Counselors, and past president of what today is the Commercial Investment Division of the Institute of Real Estate Brokers. His vast knowledge has attracted a national following over the years.

“The Nest Egg”
(A *Basic Approach*)

Clifford P. Weaver, S.E.C., CCIM

*Editor’s Note: This article first appeared in the March 1974 issue
of the Real Estate News Observer.*

When thinking about building their own estates, most real estate practitioners give up before they start because they don't have a "nest egg" (a reasonable amount of cash for investment). This is a faulty concept because a practitioner can have his nest egg if he sets it as a goal.

Certain amounts of cash can be set aside "off the top" of fees for investment. Examine the last fees taken and add up 15% that could have been set aside for the nest egg. The history of past earned fees can indicate how much money can be set aside in the future to build a reasonable nest egg.

Once a percentage of earned fees is set aside in a separate account, it can be invested in short-term programs (buying paper at discounts, time plan deposits, bank stocks, etc.) This is a form of compound investment, as the nest egg account should only be used for investment purposes and nothing else.

Within a short time, small investments coupled with continued additions to the nest egg account will furnish funds to invest in larger transactions.

The Estate Builder must have a goal for his nest egg; for example, to provide cash flow in a few years. An Estate Builder may wish to have \$600 per month as cash flow after ten years. This planning eliminates continual worry about eventual cash flow. The concept of leverage combined with the nest egg will add more benefits for the Estate Builder.

In a ten-year period, the Estate Builder will have the advantages of amortization and appreciation, by having a leverage tool in real estate. Let's see how this works!

1. By retiring a loan over a specified period of time, this creates a form of direct savings. The investment debt at the end of the holding period is a lesser figure than at the beginning, thus your debt reduction is a form of equity gain. If you borrowed \$40,000 on an office building and nine years later owed \$30,000, you would have saved \$10,000 during the holding period (bless the renters as they make this possible). Amortization is a nice benefit in real estate.

2. A leveraged investment in real estate gives additional desirable benefits. Check back over the past years to see how real estate in your area has appreciated. A conservative calculation would be no less than 2% per year. The beginner may be startled to learn that appreciation on an investment is not determined on the equity (if encumbered) or the loan amount, but on the total amount of the investment. Assume you purchased a \$20,000 parcel of land six years ago; the property has probably appreciated a minimum of 2% per year compounded (at the end of the first year the property would be worth \$20,200, the second year \$20,608, etc.) Appreciation takes place even if the Estate Builder does nothing to make the property more valuable.

Other techniques affecting the growth of your nest egg account are making money by buying low, making improvements, upgrading, selling on terms, packaging the property for a developer — the list is endless.

What if you are the kind of person who cannot save money in a separate account? What if you can get the program going but will have to dip into the nest egg account to make ends meet?

This is a typical problem of many Brokers and Salesmen. Find the answer in the next issue of the Real Estate News Observer in the final part of the "Nest Egg Approach" to Estate Building.

Will Your Replacement Property ID Withstand An Audit?

By

William L. Exeter

President and Chief Executive Officer

Exeter 1031 Exchange Services, LLC

Identification of Your Replacement Property

As we all know, there are very specific requirements for identifying potential replacement properties in a Delayed 1031 Exchange. The requirements seem pretty clear at first glance, but there can be all sorts of pitfalls when trying to put them into practice.

First, let's revisit the identification process so that we are all on the same page. The replacement properties that you are considering for your Delayed 1031 Exchange must be identified to your Qualified Intermediary (Exeter 1031 Exchange Services, LLC) no later than midnight of the 45th *calendar* day following the close of your relinquished property sale transaction.

So, for example, if your relinquished property sale closed on October 31st, the first day of your 45 *calendar* day identification period would be November 1st and the 45th *calendar* day deadline would be December 15th. Our article entitled [*1031 Exchange Deadlines and Due Dates*](#) goes into a lot more detail if you are interested.

The number of properties that you can identify is limited by three identification rules. You must comply with one – *and only one* – of these identification rules in order to have a valid replacement property identification. The three rules are: (1) Three Property Rule; (2) 200% of Fair Market Value Rule; or (3) 95% Exception Rule. These rules are not important for purposes of this discussion, so I will not delve into them at this time. We go into much greater detail here if you would like to learn more: [Identification Requirements for Like-Kind Replacement Properties.](#)

The relevant points for our discussion today are those requirements contained within the Treasury Regulations, including: (1) your replacement property identification must be unambiguous, and (2) you must acquire property that is substantially the same as what you identified.

Identification Pitfalls and Potholes

It is along these lines where life has a very bad habit of getting significantly more complicated when it does not need to, especially when investing in real estate. You will often be confronted

with all sorts of ‘what if’s’ and ‘gray areas’ when you’re trying to identify and ultimately acquire replacement properties in your Delayed 1031 Exchange transaction.

The majority of these identification issues can easily be solved, worked around and/or fixed with proper planning. Unfortunately, many investors do not take these issues seriously and often ignore the issues entirely. That is until their Delayed 1031 Exchange is disqualified under a Federal or state audit.

Consider the following examples of potential identification challenges:

Acquisition of a Fractional Interest

The most common identification pitfall stems from investors who intend to acquire a fractional ownership interest or co-ownership interest in real estate together with other co-investors. When it comes time to submit their replacement property identification, the investors routinely identify the replacement property by its street address such as 123 Main Street, Anytown, USA. However, by identifying property merely by using the street address the investor is essentially implying that he or she intends to identify and acquire 100% of the property as opposed to a fractional interest of the real property.

The issues involved here are as follows:

- (1) Has the investor unambiguously identified the replacement property?
- (2) Has the investor ultimately acquired property that is substantially the same as what he or she identified?

Personally, I can argue this issue both ways. However, the California Franchise Tax Board recently disallowed an investor’s Delayed 1031 Exchange because the investor identified 100% of a property using the street address, but only acquired a 10% fractional interest in the property.

The FTB argued that the identification was ambiguous and that the investor did not acquire substantially the same property as what had been identified. This is clearly just one state’s opinion, but shows the care that should be taken when identifying replacement properties.

Acquisition of Fractional Interest in Syndicated TICs

Syndicated TICs (tenant-in-common properties) are not as popular as they once were, but are still somewhat in play today. Syndicated TICs pose some additional identification challenges that are similar to the problem described above under Acquisition of a Fractional Interest, but have a slightly different twist.

Investors are still buying a fractional ownership interest in a Syndicated TIC and therefore have the same identification issue described above. However, the fractional interest actually acquired by the TIC investor can often be adjusted at the last minute at the closing by the TIC sponsor in

order to make room for all investors. This means that an investor could specifically identify a 3% interest and end up with a 2.75% or 3.25% interest in the property.

The same issues are involved here:

- (1) Has the investor unambiguously identified the replacement property?
- (2) Has the investor ultimately acquired property that is substantially the same as what he or she identified?

I think the answer to the first question is yes, their replacement property identification is unambiguous. However, the problem is that he or she did not receive the exact same percentage as they identified, which raises the second question. One can argue that it is outside of the investor's control, but ultimately it is what it is.

One can also argue that the percentage received is close to what they identified and therefore is substantially the same as what had been identified. There is an actual example in the Treasury Regulations where the investor ultimately acquired 75% of what they had identified plus other contiguous property, so it would seem that a slight variation in the actual fractional interest acquired might be permissible for Federal tax purposes. However, this could very likely be an issue that some state audit authorities would disagree with.

Multiple Delayed Exchanges Buying Into One Replacement Property

Structuring multiple Delayed 1031 Exchanges with the intent to pool the transactions by acquiring one (1) replacement property is not necessarily problematic, but it does require careful review of the individual identifications.

Generally, investors sell one (1) relinquished property and then acquire one or more replacement properties. These transactions are classic Delayed 1031 Exchange structures and only require a single identification with multiple replacement properties listed on the identification.

However, for strategic planning and/or practical purposes, investors may choose to structure individual Delayed 1031 Exchanges for each of the individual relinquished properties, with the intent to acquire only one (1) replacement property. The investor must be careful when completing the individual identifications for each Delayed 1031 Exchange to identify only a fractional interest in the one (1) replacement property for each of the individual Delayed 1031 Exchanges.

Identifying only the property's street address such as 123 Main Street, Anytown, USA in each of the individual Delayed 1031 Exchange files would result in identifying more than 100% of the same replacement property between all of the Delayed 1031 Exchanges. Instead, the investor needs to view each Delayed 1031 Exchange as a completely separate transaction with completely different replacement property identifications that can each stand on its own.

Acquisition of Replacement Property Prior to 45th Day

Investors often acquire one or more replacement properties before the end of their 45 day identification deadline (i.e. inside their 45 day identification period). Replacement properties acquired during the 45 day ID period are considered to be properly identified for 1031 Exchange purposes because they were actually acquired through the Qualified Intermediary during the 45 day identification period.

This also means that the properties actually acquired during the 45 day ID period are counted as part of, or toward, the investor's total properties identified as if the investor had included the property on the written identification made to the Qualified Intermediary. Investors should exercise caution when completing their identification form to ensure they include all properties whether or not they have already been acquired.

Identification and Acquisition of Property Held in a Single Member LLC

Properties are often owned and held in single member limited liability companies. And, for many strategic or practical reasons, investors often make offers to acquire property via a transfer of 100% of the membership interest in the single member limited liability company.

Single member limited liability companies are considered to be pass-thru entities and disregarded entities for Federal income tax purposes. This means that any and all tax consequences pass-thru to the underlying member's income tax return, and that the legal entity does not exist for income tax purposes.

Generally, this makes complete the 1031 Exchange relatively easy. You can identify the replacement property and then choose to acquire either the property to 100% of the single member limited liability company. However, not all states follow the Federal code in this regard, so care must be exercised when identifying and acquiring potential replacement property as part any 1031 Exchange transaction.

For example, the State of New Hampshire's Department of Revenue recently issued a ruling that is contrary to the Federal position. The investor in question sold relinquished property, which they owned through a single member LLC, and identified and acquired replacement property through the acquisition and transfer of 100% of the membership interest in another single member LLC, which owned the replacement property. The State of New Hampshire's

Department of Revenue took the position that single member LLCs are not disregarded entities and that the entities in this case were not considered to be the same taxpayer. They therefore disallowed the 1031 Exchange.

These issues can be easily avoided with proper planning and guidance. It is important to remember that state law does not necessarily follow Federal law, especially in terms of selling, identifying and acquiring relinquished and replacement properties that must be of like-kind to each other.

Combined Reverse/Forward or Forward/Reverse Exchange

The identification process gets substantially more complicated when an investor needs to combine a Reverse 1031 Exchange and a Forward 1031 Exchange. There are identification requirements for each separate 1031 Exchange, but they may need to be integrated depending on the over all transaction structure.

Issues Easily Address; Just Require Proper Planning

While the identification issues discussed seem to be overwhelming, they are actually easily addressed with the proper planning and guidance. And, there are certainly other issues that can and do arise when trying to complete your identification of replacement property. [Exeter 1031 Exchange Services, LLC](#) is always available to assist you with your identification strategy and process. Call us at (866) 393-8370.