

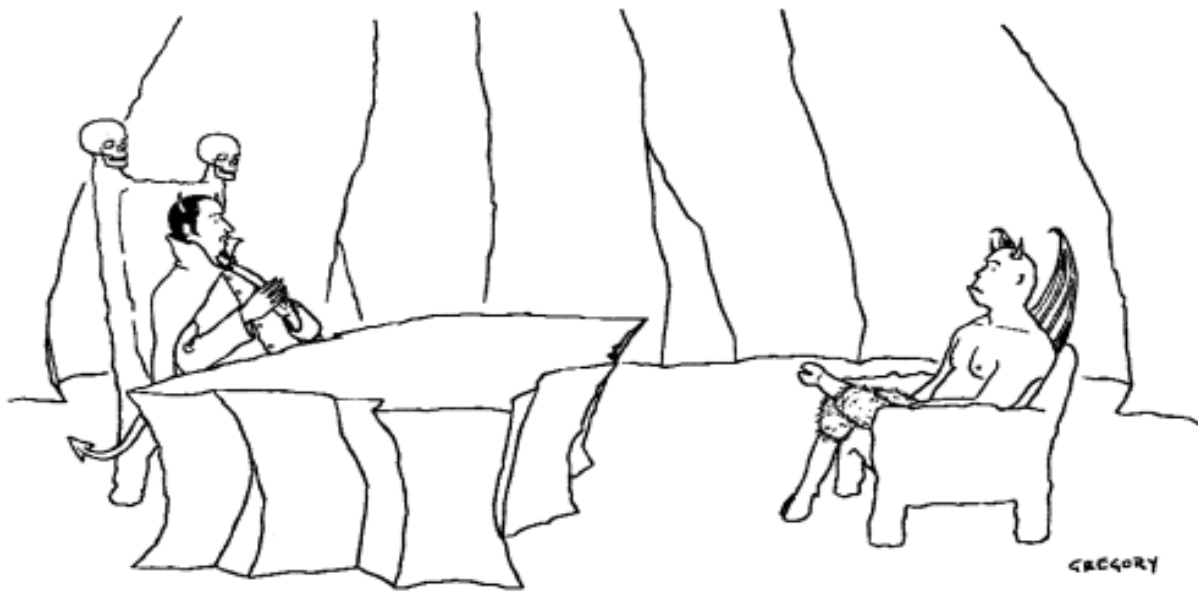


Unlock Value through Real Estate Sale-Leasebacks and Monetization Strategies

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June 20, 2018

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*"I need someone well versed in the art of torture—
do you know PowerPoint?"*

Sale-Leasebacks

- Alternative Financing Transaction
- The Sale
 - Seller/Tenant deeds property to Buyer/Landlord
- The Lease
 - Buyer/Landlord concurrently leases back property to Seller/Tenant
 - "Triple Net" Lease



Purpose: Conditions and Advantages

Investment Environment

- Low Interest Rates
 - Interest rates remain low, but are expected to continue to rise, increasing the cost of capital
 - For now, Buyer/Landlords can finance at low rates
- High Asset Valuations
 - Commercial real estate prices have generally returned to pre-recession levels
 - Seller/Tenants can monetize their assets

Business Purpose

- Seller/Tenant
 - Tax Advantages
 - Deduct rent as a business expense
 - Access to Capital
 - Reinvest proceeds of a sale into the business or the property
 - Conventional Financing often Insufficient
 - Loan to Value Ratios limit conventional borrowing
 - Credit issues may restrict ability to borrow

Business Purpose

- Buyer/Landlord
 - Portfolio Diversification
 - One or multiple properties
 - Absentee Landlord
 - Established Cash Flows
 - Seller/Tenants may be franchisors with valuable branding
 - Transferability
 - Valuable asset to a REIT and in the § 1031 Exchange market



Mechanics: Sale of the Property

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- The Purchase and Sale Agreement ("PSA")
 - The agreement memorializing the terms and conditions of the purchase, including:
 - Due Diligence
 - Conditions Precedent
 - Representations and Warranties
 - Damages Caps
 - Closing Documents

Mechanics: Sale of the Property

- Due Diligence
 - Title & Survey
 - Seller/Tenant is already familiar with the property, but must convey marketable title
 - Environmental
 - Phase I & II
 - Building Inspection
 - Zoning Verification Letter
 - Estoppels, if multiple tenants

Mechanics: Sale of the Property

- Conditions Precedent
 - Negotiate the Lease simultaneously with the PSA
 - Lease commences and rent accrues as of the closing date
 - Seller/Tenant should have the right to terminate the PSA if the parties cannot agree on a form of Lease by a certain date
 - Buyer/Landlord may want additional time to negotiate
 - Compromise: "Best and Final" Lease ultimatum

Mechanics: Sale of the Property

- Representations and Warranties
 - Seller/Tenant responsible for maintenance under the Lease, and should avoid making representations and warranties in the PSA
 - Buyer/Landlord should consider the long term value of the property—discovering problems now will protect the asset value after the Lease ends
 - Key Issue: Survivability

Mechanics: Sale of the Property

- Damages Caps
 - Seller/Tenant should aim to limit liability by requesting a post-closing damages cap in the PSA
 - Market rate: 1-10% of purchase price

Mechanics: Sale of the Property

- Closing Documents
 - Deed
 - Non-Foreign Affidavit
 - Bill of Sale
 - Lease
 - Memorandum of Lease
 - Record a memorandum to put 3rd parties on notice, without publicizing the terms



Mechanics: The Lease

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- Sustainable, long-term relationship
- "Triple Net" Leasing
 - The Lease should be the economic equivalent of debt
 - Seller/Tenant assumes all maintenance and costs
 - "Absentee" Buyer/Landlord

Mechanics: The Lease

- Master Leasing
 - Less flexibility for tenants, but more attractive to investors
 - Cross-default provisions
 - Bankruptcy issues
 - Accept or reject all leases, as opposed to selecting individually

Mechanics: The Lease

- Transfer and Assignment
 - Seller/Tenant desires flexibility in business operations
 - Buyer/Landlord wants to maintain benefit of the bargain
- Compromises
 - Net Worth requirements
 - Franchisor or affiliate assignments
 - Shorten term
 - Tenant remains primarily liable

Mechanics: The Lease

- Maintenance of Improvements
 - Seller/Tenant must respond to changing business conditions, but are wary to invest near the end of the Lease
 - Buyer/Landlord focused on maintaining the value of property after the Lease terminates
- Permitted Use
 - Seller/Tenant wants flexibility for changing business and operations
 - Buyer/Landlord wants the permitted use narrowly defined

Mechanics: The Lease

- Environmental Conditions
 - If not addressed in the PSA, environmental problems arising during the Lease term can cause disputes between Landlords and Tenants
 - Potential Compromises
 - Seller/Tenant retains existing environmental risks, and assumes new issues that it causes during the Lease term
 - Buyer/Landlord assumes risks of migration and environmental issues not caused by Tenant after the Lease term

Mechanics: The Lease

- Default
 - Tenant Remedies:
 - Seller/Tenant termination rights decrease the value of a Lease considerably
 - Consider including exculpation clauses
 - Seller/Tenant needs relief if Buyer/Landlord breaches terms, but must commit to the location
 - Landlord Remedies:
 - Seller/Tenant cannot be removed from the location for a "foot fault"

Mechanics: The Lease

- Condemnation
 - Determining When to Rebuild
 - Distribution of Proceeds
 - Buyer/Landlord should require Seller/Tenant to fund the difference between the condemnation proceeds and the present value of the cash flow from rent

Mechanics: The Lease

- Leasehold Mortgagee Protections
 - If the Seller/Tenant will need future financing, Buyer/Landlord should carefully consider what it will accept
 - E.g., subordination, rights of the lender to approve amendments, etc.
 - The Leasehold Mortgagee will require a stable, secure leasehold mortgage

Tax Concerns

- Reinterpretation as Loan
 - Under Supreme Court jurisprudence, the IRS has the authority to reinterpret a Sale-Leaseback as a loan where there is no underlying business purpose
- Tax Cuts and Jobs Act of 2017
 - New rules on capital gains, deductibility of debt

Questions?

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THANK YOU



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