

Stein's Law

How Do You Sell Real Estate?

Commercial real estate changes hands in all kinds of ways. At one theoretical extreme, a smart seller might already know and identify the one perfect buyer and makes a deal with that buyer. At the opposite extreme, the seller hires a broker and fully exposes the property to the market, all possible buyers or perhaps a selected group of them. Or the seller might bring in some form of auctioneer to advertise the availability of the property far and wide. Then there would be an auction, either "open outcry" or online or some combination, then a closing.

What works best?

In my experience, every buyer wants to find and close an "off-market deal," without having to compete with (too many) other buyers. Some buyers say that's the only way they do deals. Good luck with that, if you can do it. A buyer who does only "off-market deals" needs to know the right universe of sellers and have a reputation within that universe of paying a reasonable price—maybe not top price—but, above



Joshua Stein

all, getting the deal done and closed.

A seller, in contrast, will presumably always want to achieve the highest possible price. But that's not the seller's entire agenda. A careful and thoughtful seller wants to know the buyer will close and the transaction will not end up in litigation, every defaulting buyer's business solution to any problem in closing. Avoiding that risk has substantial value to a seller. So the seller may end up with something less than top dollar in exchange for certainty of execution and for avoiding the risk of litigation. Speed counts too.

A seller also knows that if their selling process casts a very wide net—whether an auction or a widely advertised investment offering—this will have secondary consequences that may not all be good.

As a starting point, it's a lot of work to deal with a lot of potential buyers. They all pay attention and ask questions. Few are stupid. They all ask for more information and often lots of it.

Even if you set up a complete online data room, each prospective buyer will always manage to come up with some question or concern that no one else thought of and will figure out a way to raise their own issues. All of this will require time and attention. It's a lot of work.

The process only gets worse once you narrow the group of buyers down to a "short list" and start to negotiate detailed contract terms. At that point, each possible buyer has their own smart and careful attorney, who asks more smart and careful questions and raises more smart and careful issues. No two attorneys ever seem to ask the same smart and careful questions or raise the same smart and careful issues.

Many but not all of those questions and issues amount to pimples on the tail of the dog, tangential to the main event: the sale of this particular property for this particular price. But they all require attention and assume their own importance, often entirely disproportionate to taking into account the transaction as a whole.

At the same time, by looking too far and wide for purchasers and then dealing with all of them and their attorneys, a seller may scare off the best purchasers—the ones that prefer "off-market" deals and close quickly and easily and don't have the energy or inclination to persuade a seller that they're the best possible buyer.

A seller will also remember that if the availability of their property becomes widely known and they ultimately don't close a deal, then their property becomes "damaged goods"—the market will know that the seller tried to sell and ultimately couldn't make or close a deal. The next time around, buyers will look for a bargain. And that won't be good for the seller.

Even if a seller starts out by dealing with a very small universe of potential buyers, almost an "off-market" deal, the exercise often broadens, as the seller gets tempted by the interest and offers received and starts to think they might do even better by searching even more broadly for purchasers. But will that scare off the first prospective buyers, the ones who thought they were getting an off-market deal? That question is not a real estate, legal or even business question but ultimately a psychological one.

Much of it depends on the state of the market. Five years ago, no one wanted to buy anything. Today, everyone wants to buy everything. If a seller undertakes an auction or a wide marketing program, aggressive buyers will probably pay attention and show up. But will they be the very best buyers? **MO**

Joshua Stein is the sole principal of Joshua Stein PLLC. The views expressed here are his own. He can be reached at joshua@joshuastein.com.