

## Legal Work Vs. Leg Work

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Lawyers are good at legal work. That's what they do. But the legal work involved in closing any major real estate transaction often crosses over into non-legal work – the organization, coordination, and digging necessary to understand the real estate at issue and make sure the transaction gets closed.

If you leave that “leg work” to the lawyers, or don't make clear who does what, then you risk paying legal fees that may feel disproportionate or surprising. But it's easy to allow that to happen, because lawyers are, and should be, happy to do whatever you ask them to do. You must remember that if you ask lawyers to do things that others could do equally well or better, you could end up paying for “leg work” rather than “legal work,” and the “leg work” might not even be done as well as others could have done it.

To prevent that, one person needs to run a transaction, identifying what it requires and who best should do it. The ringleader can certainly be one of the lawyers, but that person should approach the task as a client would – by minimizing the amount of billable time lawyers spend on leg work rather than legal work. One way to help achieve this is to avoid last-minute emergencies. Those emergencies often get handed to the lawyers to solve at high cost. For that and other reasons, whoever assigns responsibilities should do it as early as possible.

As due diligence deliveries start to arrive, a non-lawyer can track and review them and figure out which ones really need legal involvement. If the transaction will require estoppel certificates and nondisturbance agreements, for example, the lawyers should define what those documents will generally look like. But it doesn't take a law degree to fill in blanks in those documents, send them out, keep track of what comes in, and follow through as needed.

When it's time to order title, survey, municipal searches, and other third-party deliveries, a non-lawyer can do that. The same person can track what has arrived and bug the third-party vendors when necessary.

If you limit the role of lawyers, you might create a risk: when the lawyers negotiate the documents and do actual legal work, they may not know everything they should about the transaction and the property. For example, without legal attention, title or survey issues disclosed only by some handwritten note in an exhibit to an estoppel certificate might go unnoticed. So someone needs to

watch for those problems as well and call in counsel as needed. Organization, communication, and planning ahead make a huge difference.

Substantial legal documents will typically require factual information about the property and the transaction, often in the form of exhibits. In many cases, pulling together those exhibits will require time, digging, and persistence. It may involve third parties. Treat those exhibits as independent projects that need to get completed for the closing – not just an incidental part of the lawyers' jobs in preparing the documents. This will not only reduce lawyers' work (i.e., legal fees); it will also help prevent last-minute emergencies.

As the closing approaches, think about the numbers and the closing statement. All too often, no one accepts responsibility to collect, review, and organize all the numbers and the flow of funds. It's leg work, not legal work, but it often falls to the lawyers because no one else wants to do it, and it must get done or the deal can't close. That's a particularly absurd use of legal time. Pulling together a closing statement is an accounting or bookkeeping project. Someone with that expertise will probably do a better job than the lawyers. Having the lawyers do it costs more and takes time away from doing the legal work to get the deal closed.

The lawyers should certainly take a look at the closing statement to confirm it matches “the deal,” but that doesn't mean they should pull together the closing statement. To prevent that, whoever runs the transaction should assign responsibility for the closing statement early in the process. And, as an aside, no rule says you can't distribute a draft of the closing statement long before the closing.

All these suggestions simply represent variations on one theme. Lawyers are in a service business, with a service instinct and mindset. But it's an expensive form of service. If you can find lower-cost providers, as you can for practically all the non-legal work, use them. If you don't watch the gap between legal work and leg work, you may find that legal fees get out of control and important pieces of the transaction don't get handled as efficiently as they should.

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