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Post-Recession Economy Breeding Speedy RE Closings

A quick closing has become increasingly important in real estate deals in the post-recession economy, as the scarcity of properties allows sellers to set tight timelines and has buyers rushing to outrun rising interest rates, experts say, but sometimes that need for speed leads to sacrificing key steps like due diligence.

In key markets like New York City, San Francisco, Houston and Washington, D.C., there have been more potential buyers chasing fewer deals in the last couple of years, as the availability of financing finally catches up to pent-up demand.

"There's clearly a lot of cash sitting still on the sidelines, and when a good property comes on the market, there are a lot of potential buyers swarming around it, and I think that encourages sellers to try to set conditions like very tight timelines to closing," said Lydia Stefanowicz of [Edwards Wildman Palmer LLP](#).

In many cases, this means limiting the time allowed for due diligence — when buyers choose an asset, they need to be ready to sign a contract, put up a hard deposit and proceed quickly to close, according to Andrew Charles of [King & Spalding LLP](#).

"It's a lot of time and money that a client needs to spend in advance if they are seriously considering chasing some of these investments," he said, noting that it can be a risky situation because, in a bidding process, there's no guarantee of winning.

"They've got to do the work in advance and secure the financing in advance, even though they don't really know whether or not they're going to win the asset," Charles said.

Less time for due diligence often means cutting back on certain types of investigations and procedures that are typically completed before a contract is signed, attorneys say.

On a tight schedule, some of these procedures are deemed more important than others, and environmental surveys sometimes typically don't make it past the chopping block, according to William Waller of [Pillsbury Winthrop Shaw Pittman LLP](#).

"From a buyer's perspective, it can really be a problem because of a lot of things you're hard-pressed to get done in a short period of time, environmental due diligence in particular," Waller said.

There are typically significant lead times in terms of getting information from the necessary agencies regarding the fitness of a property and what can and cannot be done with it, and while things can sometimes be pushed through in one or two weeks, they often won't be complete, according to Waller.

If a contract is signed based on, for example, a statement that an environmental review board has been contacted though no response has been received, then the buyer will be out of luck if a negative response comes in later.

Stefanowicz said that she has seen everything from Class A trophy properties to distressed assets sold on a speedy schedule, as holders of real estate aim to get rid of some of their backlog and monetize it.

The desire to close quickly is strengthened among buyers by the fact that interest rates remain artificially low but are slowly rising and by the ongoing volatility in the U.S. and world economies, experts say.

The main concern with speed for sellers is being sure that a deal will close at a price matching what they think their property is worth. If a deal falls apart, the property gets a bit of a black mark, and lower-tier bidders will take advantage of what they perceive as a new window for negotiation to bring the price down.

Some of the push for speedy closings has also been driven by real estate funds that are reaching their own closing dates and haven't met their selling targets. A fund's life is typically around 10 years, and the last five or so years have not been the best for finding high-yield deals.

On the buyer side, in addition to outrunning rising interest rates, a major incentive to move more quickly is often simply wanting to hold on to financing, which, while easier to come by than in recent years, is still not always a guarantee.

"For a lot of buyers, what we're seeing is they're thinking, 'We've got a commitment for credit, and we want to make sure we get it closed while we still have it,'" said Bob Schiappacasse of New Jersey law firm [Archer & Greiner PC](#).

Faster closing times necessitate an additional level of protection for attorneys representing buyers in such deals as well. Attorneys should be very careful to specify in contracts with clients that the buyer is the one holding the responsibility if anything goes wrong because of a speedy closing, he said.

"If a client is willing to sacrifice some of the time necessary to do proper due diligence on an accelerated timeline, that decision needs to be made by the client, and the client needs to bear the risk of that," Schiappacasse said.