

YOU GOTTA' KNOW THE TERRITORY: LOCAL TRANSFER LAWS

By Jim Hochman & David Liebman, SIOR

Yes, the title comes from the old Broadway musical "Music Man," but this is oh so true in commercial real estate. And that means more than finding the listed property; more than understanding the market; more than knowing the owners, landlords, tenants, and brokers. You have to know your way around certain cities, suburbs villages, or towns—especially around Chicago, where there are so many of them, and they all have their own particular requirements on property sales. One hard working SIOR, who was kind enough to refer his client to this attorney co-author for the sale of a property in one Chicago area village, warned me that "Sometimes this village has its demands..." Was he ever right!

Transfer taxes are one way that municipalities generate revenue. When a property is sold, we all expect that the state and county will assess a transfer tax, and that that tax must be paid in order to record the deed. The sales price and other details are collected in one or more transfer declarations (sales price, parties, tax parcel number, use, etc.). This information goes (post-closing) to the tax assessor, so that property taxes can be adjusted going forward. That

is rarely good news for the buyer. But transfer taxes can also be assessed by other municipalities, and you better understand where, how much, who pays them—if not specified in the transfer ordinance, this should be covered in the purchase and sale contract—and most important, what the pre-closing and documentation requirements for that transfer tax will be. You need to meet the pre-closing requirements to get the transfer tax stamp, and that stamp is required to close. For example, Chicago Title Insurance Company lists 114 different transfer taxing bodies which have requirements in Illinois, and you can bet that the amounts, rates, and pre-closing requirements vary widely.

This first case in point involves the sale of a small industrial property in an incorporated village near Chicago. It's our collective experience that smaller stand-alone industrial properties are rare and therefore quite marketable; but in some cases, that isn't the case. Let's consider the following, about 20,000 square feet. Its sellers will tell you they have shown that building "lots of love," which may indeed be the case depending on its condition when they bought it some 20 years ago. But the years have not been

kind; this building needs work, and our friends at the Village have outside third-party inspectors who believe it is their mission in life to upgrade every building being sold within its borders. To say that the fine-tooth comb came out—separate inspectors for fire, electrical, plumbing, and other—was an understatement; and the inspectors' pre-closing requirements list was a real corker. Not only was it long, but it contained one request that so far cannot be done. We simply cannot find a contractor to deal with installation of what is the mother of all backflow preventers—and might even require an easement over adjoining property to install the device where village water is connected. This deal isn't "done" yet, and while the buyer has its own pre-closing work (zoning), my seller clients still have to satisfy the village. Meeting village requirements can happen in two ways: completion of the work and a satisfactory post work inspection (yes, 37 of 38 items are done); or escrow of funds to insure completion of any work not completed before closing—assuming this is also acceptable to the buyer.

In order to satisfy the village's escrow requirements, there must be a bid for the incomplete work, so that the village