

Q&A With Foley & Lardner's Beth Corey

Law360, New York (November 01, 2011, 1:34 PM ET) -- Elizabeth L. Corey is a partner in the Chicago office of Foley & Lardner LLP, where she chairs the firm's national real estate practice. She specializes in representing U.S. and international investors in real estate assets, investment funds and gaming for real estate acquisitions, developments, financings, leasing and workouts of distressed real estate. Her practice includes retail centers, sports arenas, hospitals, health care centers, senior living projects, hotels, casinos and mixed-use developments. Corey also counsels clients with gaming projects, including lotteries, Virtual Technology Lottery and Internet gaming.

Q: What is the most challenging case or deal you have worked on and what made it challenging?

A: We represented two prominent German fund clients. One was a closed-end fund, and another was an open-end fund. The clients wanted a single U.S. law firm to represent their interests since each of them had separate German legal counsel. The German funds were essentially the purchasers of a Chicago trophy office building from a bevy of U.S. investment funds.

The property was troubled in terms of occupancy but it was in a good location with distinctive contemporary architecture. Its future was potentially jeopardized by a planned unit development that would allow development by almost the identical sellers of a competing office tower adjacent to our clients' trophy property. To make matters worse, our clients' trophy property was already encumbered with easements to allow the potential building to share elements of the foundation and certain essential features for parking and utilities.

The challenges arose in some measure because our clients had different exit strategy needs, and the sellers of the investment group had vastly different short-term and long-term objectives. Ultimately, the single most prevailing impediment was the inability of our clients to directly communicate with a decision-maker of the sellers!

Although the extended closing missed two reporting dates for our clients, we succeeded in renegotiating the existing easement to protect our clients' trophy building use, its visibility and light, and the ultimate impact of the burden of the potential second building on parking and utilities. At the celebratory closing dinner, the lead lawyer for the sellers directly pitched our clients for business.

In the most unprofessional closing story I have ever heard (there was alcohol involved, and cigars), I think the sellers' lawyer may have suggested his wife would be "available." My clients let this cocky lawyer know he would first have to pay for dinner and the excessive attorneys' fees resulting from his posturing on behalf of his absentee clients.

Q: What aspects of your practice area are in need of reform and why?

A: My real estate practice today ranges from development projects to service projects for non-real estate business clients. The industries we reach are corporate, industrial, residential, health care, sports, retail and energy related, for the most part. I would say in each instance my practice area would benefit from the greater discipline of project management.

As real estate lawyers, we need to take a page from our clients' playbook to support bringing our projects in on time and on budget. We must be disciplined enough to work with our clients to provide a well-defined scope of services with an agreed-upon budget for timely delivery. In this way, we can better add value to our clients by identifying the issues clients are truly concerned about and allowing clients to take their own risk on issues they do not "value."

Q: What is an important issue relevant to your practice area and why?

A: The most important issue relevant to my practice area currently is accessing debt and equity funding. There doesn't seem to be a shortage of prospects for deals, but accessing capital timely has resulted in more than one failed project. Law practitioners need to be able to guide clients to alternative sources for funds through state and federal entitlements including tax programs, EB 5 Regional Centers, economic development incentives and structures of transactions that promote easy access to investors. Having the network and talent to make introductions between clients goes a long, long way in this market.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Richard ("Rich") Klawiter of DLA Piper has impressed me most over the years. Many, many years ago, I tried to hire Rich when both of us were at other firms. I could see he had all the right stuff, great credentials, excellent understanding of deals, a confident air (without arrogance) and a wisdom far beyond his years. He also had a real passion for real estate in the city of Chicago. Well, Rich took his mother's advice and didn't accept my offer. Over the years, we've worked together a few times and it feels good to know my instincts were right. He's a terrific real estate lawyer and well known in Chicago.

Q: What is a mistake you made early in your career and what did you learn from it?

A: One mistake I made early in my career happened within a few months of passing the bar. I was in charge of a cash closing, and I forgot to record the deed for a week or two. I remember the instant I realized it and the hot flush that swarmed over me late at night. I thought of a list of "horribles," including intervening liens.

After recording the deed and personally paying for a title search, I could finally close my eyes and sleep at night. Without going into too much detail, the lessons I learned quickly were: have and follow your checklist (“not having a plan is planning to fail,” not sure who said that); ask questions early and often (the only stupid question is the one you don’t ask); and admit your mistakes early; say “I’m sorry” early and often. Then move on.

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