

REAL ESTATE DUE DILIGENCE

GASFA 2011

REAL ESTATE DUE DILIGENCE

VIEW FROM 10,000 FEET



TAKE AWAYS?

- 1. DD Can vary by type of transaction.
- 2. “Defense to Strict Liability” is a great reason but not only reason.
- 3. Use quality professionals.
- 4. Don't use their documents or “standard terms”
- 5. Get drafts and review drafts before approving finals.

Types of Transactions Discussed

- Dispositions
- Easements (granting or obtaining)
- Gifts
- Acquisitions

Transactions NOT discussed (but still with DD implications)

- Demolitions
- Leases as Landlord
- Leases as Tenant

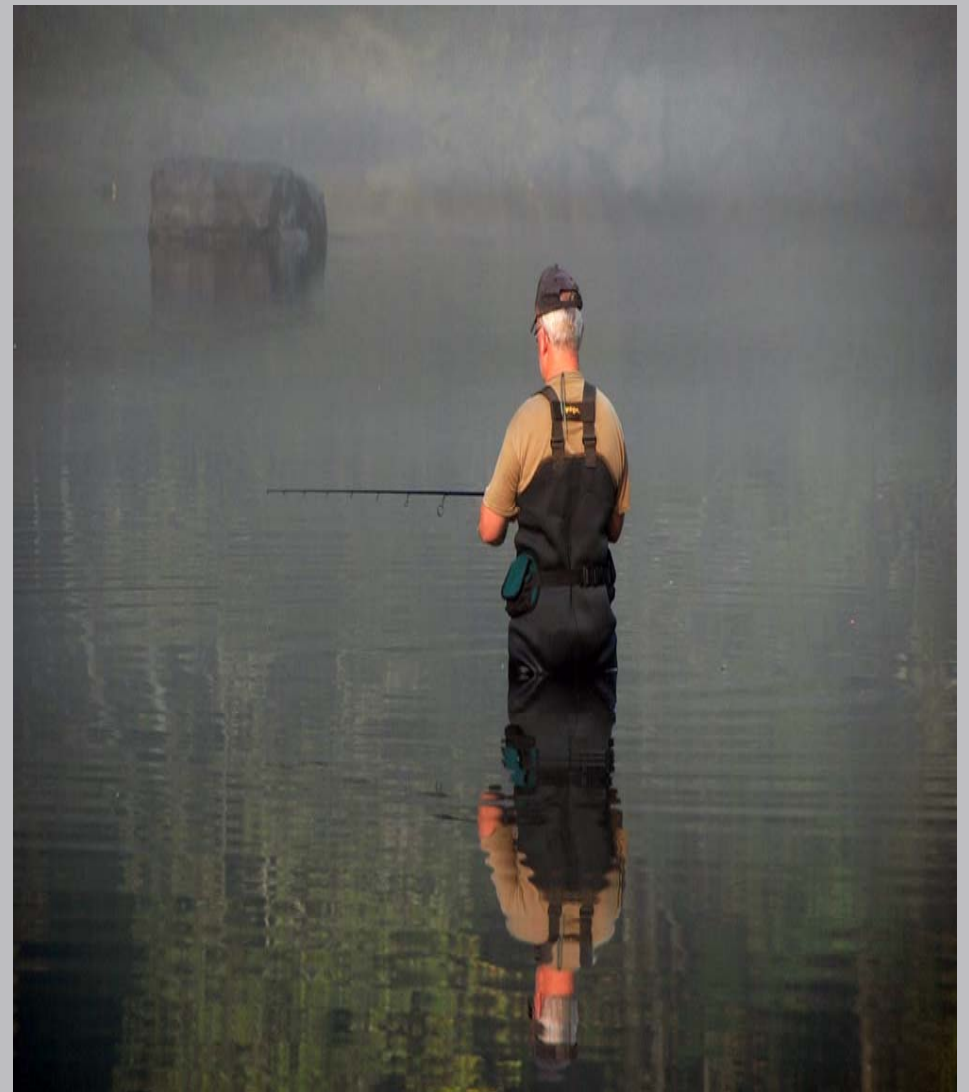
Disposition of Real Property

- More common in era of “surplus property”
- Fiduciary Duty – Think “Trustee”
 - FBO all people of State of Georgia
 - Appraisal rules vary – MAI probably worth it
- GEPA - Think any State action with potential impact – GEPA assesses whether there is a likely impact.
 - NOT PHASE I !!!

Other considerations? “Candidate” for Historic?



Other Considerations? Use Issues?



Qualified Professional?

GEPA
State action with
potential impact

If a Phase I
please engage
legal counsel
first.

"Pre-Demo" Review



EASEMENTS

- Complex area of the law.
 - Engage legal counsel.
 - Clearly identify the rights involved with help of counsel.
- In GA usually considered a Property interest.
- Less than Fee Simple (“all the sticks”).
- The problem with a license.

GIFTS of REAL PROPERTY

- Law not really equipped to deal with gifts
- Consideration for the transaction?
- Part sale – Part gift? Be careful...

KEY ISSUE: WHAT IS THE GIFT – REALLY?

DD is key!

Acquisitions

ISSUES OF VALUE

MAI –
Member Appraisal Institute
Standardized training and
ethics requirements

CONSISTENCY AMONG APPs
If multiple APPs are they
“clustered”? Why not?

COMPARABLES
Real comparables or
manufactured comparables?
Why?

CONDEMNATION
POTENTIAL?



What is it?

As we have discussed Environmental is a small party of the investigation...



WHAT IS IT???



Maybe its **Historic?**



Can we use it for what we want?, i.e., physically developable?

Utilities?
Soils? Rock?
Terrain?
Cultural or other
protected resources?
Interments?



ENVIRONMENTAL

- CERCLA
- Strict Liability – Joint and Several?
- Defenses/Contribution actions
- All Appropriate Inquiries?

QUALIFIED PROFESSIONAL

PLUS
GOOD CONTRACT

REAL LIABILITY

REPORT SAYS WHAT IT
NEEDS TO SAY WITHOUT
WAFFLE LANGUAGE

ACTUALLY SIGNED

FOR CORRECT PROPERTY

FOR CORRECT PARTY

WITHIN TIME LIMITS FOR
CLOSING



FACILITIES CONDITION?

- What are we really getting?
- Laser survey/BIM
- Capital costs within first 5 years?
- Somebody to hold responsible (blame?) if not accurate.

SURVEY

- DRAFT add recordable at a later date
 - Negotiate for “working drafts”
 - Please review with legal counsel while draft
- Negotiate for a low cost “re-opener” if title issues identified
- ALTA? Policy versus best practice.

TITLE ISSUES

COVENANTS OR OTHER
RESTRICTIONS?

CONSERVATION
EASEMENTS?

TRANSFERRED
DEVELOPMENT RIGHTS or
TDR's?

FEES?

RIGHTS OF ENTRY
or Self Help?

INDEMNIFICATIONS
of any kind?



REAL ESTATE DUE DILIGENCE

THANK YOU