

Print and Online Resources for Factual Investigation in Connection with Real-Estate Transactions

By Ruth S. Stevens

Michigan attorneys are fortunate to have a number of excellent state-specific resources to turn to for help with real-estate transactions. Books such as Cameron's *Michigan Real Property Law: Principles and Commentary* and Deems' *Michigan Real Estate Practice and Forms*, both now in third editions, are staples in the libraries of most Michigan real-estate law practitioners. These texts provide help with legal issues as well as forms related to the real-estate transaction. Westlaw and Lexis also have extensive libraries with national treatises and form books, such as *Real Estate Transactions, Structure and Analysis with Forms*¹ (Westlaw) and *Powell on Real Property*² (Lexis).

Yet a lawyer's role in a real-estate transaction extends beyond simply negotiating a deal and drafting and reviewing documents. The lawyer representing the buyer has a responsibility to help with "a thorough investigation of the property—often referred to as the buyer's 'due diligence'—before the closing."³ This article will first examine some of the online and print resources that will help the attorney design an effective due diligence search. It will continue with a discussion of online sources that will help the attorney carry out due diligence responsibilities. These resources are also useful for other areas of practice involving business and investigative research.

The attorney embarking on a due diligence check must first identify the type of information that is potentially available. Several resources give an excellent overview of the fundamentals of conducting a due diligence check. Stuart Saft's *Commercial Real Estate Forms*, 3d,⁴ provides an in-depth look at areas of inquiry that should be included in the check. These include not just environmental issues, but also general informa-

tion about the property and its owner. Another source for a due diligence checklist is the American Bar Association publication, *A Practical Guide to Commercial Real Estate Transactions*.⁵ This book takes the reader step by step through the areas that must be investigated, from title issues to the authority of corporate officers to environmental matters. It provides a thorough, yet succinct, explanation of areas of concern in relation to each one.

The job of an attorney gathering information as part of a due diligence check has been made both easier and more difficult by newer corporate disclosure laws. Michigan attorney Mark High points out in his article, "Due Diligence Issues in Real Estate Acquisitions after Sarbanes-Oxley,"⁶ that the attorney conducting a due diligence check now has access to more corporate information than ever as a result of the stricter disclosure requirements of Sarbanes-Oxley.⁷ Some of this information is held internally by a company, and other information is accessible through a public records search. While the buyer may benefit from increased access to information, it also places a burden on the buyer's attorney to locate and explore the information.

High notes two government websites that are important sources of information about a company and the property it owns. The United States Environmental Protection Agency Enforcement & Compliance History Online (ECHO)⁸ is a searchable database

that provides a summary of facilities owned by a business, and a three-year history of inspections and enforcement actions by the EPA. This relatively new database must be checked as part of a thorough review of potential environmental issues relating to the property. The Securities and Exchange Commission EDGAR⁹ database, also available on Lexis and Westlaw, is a familiar resource, but it has become even more valuable post Sarbanes-Oxley because of the greater level of detail required for corporate disclosures.¹⁰ This database can be accessed directly from the Securities and Exchange Commission website or from Westlaw (EDGAR) or Lexis (EDGAR Online).

Many other databases on Lexis and Westlaw can aid in a due diligence check, including databases with real-estate tax and transfer records and records of pending foreclosures.¹¹ Both Lexis and Westlaw offer the attorney a number of options for searching real-estate records, ranging from a search by individual county to a combined search for records in all 50 states. A caveat for the researcher using West and Lexis: neither service has comprehensive coverage of state public records, so it is always important to check the description of a database to verify which states and counties are covered.

The website NETR Online¹² can help the researcher fill gaps in coverage on Westlaw or Lexis. The researcher can enter the name of a U.S. city or town and find out the name

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of the county in which it is located. NETR then provides a link to complete contact information for the county, including the county website, if applicable. This allows the researcher to go directly to the source to gather property or other records. There are several other resources for finding state and local government contact information. The Free Government Records List,¹³ sponsored by BRB Publications, Inc., covers all 50 states. The University of Michigan Document Center provides links to Michigan governmental entities.¹⁴ This useful resource is organized by county and includes links to maps and local ordinances.

The general Lexis and Westlaw public and corporate records databases are also helpful for due diligence research. The Lexis databases include sub-files with civil and criminal court records, records of regulatory actions, company and financial information, and records on individuals. Westlaw offers a similar range of databases and also gives the researcher the option of generating a "Legal Due Diligence Report"¹⁵ on a specific company. This report is helpful for quick access to information, but it may need to be supplemented by searches in other databases.

Depending on the type of transaction, it may be necessary to look for other types of records as part of the due diligence search. The Virtual Chase, a website known for its high-quality information, has several research guides covering factual and investigative research, any one of which might be helpful in a due diligence search. Its Company Information Guide¹⁶ provides annotated links to sources of information on officers and executives, corporate filings, litigation, public records, and news, including both free and fee-based services. The guide explains how to locate and access both commonly used information and more specialized data, e.g., Canadian foreclosure records. The website also has a separate People Finder Guide,¹⁷ which is useful when a due diligence check requires locating information about individuals.

As the above discussion illustrates, factual research skills are more important than ever for attorneys and their staff. With the help of both fee-based services and free Internet sources, the real-estate attorney will

be able to uncover information that may impact a real-estate transaction and help his or her client avoid post-closing surprises. ■



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FOOTNOTES

1. Westlaw database: RETSA. Westlaw also has several combined databases with secondary materials relating to real estate, such as PUIREF-RP and PUIREAL-RP. For a complete list of West databases relating to real property, see Westlaw, *Real Property Database List*, available at <<http://west.thomson.com/documentation/westlaw/wlawdoc/wlres/rpdbl05.pdf>> [accessed October 15, 2007].
2. See Lexis, *Powell on Real Property Database* and other real-estate databases available at <www.lexis.com> Areas of Law-By Topic> Real Estate>. Lexis also provides Real Estate Law Practice Area Updates at <www.lexisnexis.com/practiceareas/realestate> [accessed October 15, 2007].
3. Stein, Fisher & Stern, *A Practical Guide to Commercial Real Estate Transactions*, p 119.
4. Saft, *Commercial Real Estate Forms* (3d ed), §1:4 et seq and §8:2 et seq. Available also on Westlaw database: COMREFRM.
5. Stein, n 3, *supra*, §3.01 et seq, pp 119-176.
6. High, *Due diligence issues in real estate acquisitions after Sarbanes-Oxley*, 32 Mich Real Prop Rev 73 (Summer 2005), available at <<http://www.michbar.org/realproperty/MRPR/summer2005.pdf>> [accessed October 15, 2007] (reprinted at 84 Mich B J 24 [November 2005]).
7. PL 107-204, 116 Stat 745.
8. United States Environmental Protection Agency Enforcement & Compliance History Online [ECHO] <<http://www.epa-echo.gov/echo/>> [accessed October 17, 2007].
9. U.S. Securities and Exchange Commission, *SEC Filings and Forms* (EDGAR), available at <<http://www.sec.gov/edgar.shtml>> [accessed October 15, 2007].
10. High, n 6, *supra*, pp 25-26.
11. See, e.g. Westlaw databases: RP-ALL and RPF-ALL and Lexis, Tax Assessor and Deed Transfer Records databases.
12. Real Estate Information and Public Records Research, *NETR County Locator*, NETROnline.com, <http://www.netronline.com/frameset.asp?StateID=c_loc> [accessed October 15, 2007]. The contact information for the county can then be found at <http://www.netronline.com/public_records.htm>.
13. BRB Publications, *Free Government Public Records Site: State, County and City Sites*, available at <<http://www.brbpub.com/pubrecsitesSearch.asp?subcat=State%2C+County%2C+and+City+Sites&st=Michigan>> [accessed October 15, 2007].
14. University of Michigan Documents Center, *Michigan Government: Local Governments*, available at <<http://www.lib.umich.edu/govdocs/michloc.html>> [accessed October 15, 2007]. See also Capitol Impact, *Government Gateway*, available at <<http://www.capitolimpact.com/gw/statepage.asp?state=mi&sfips=26&stname=Michigan>> [accessed October 15, 2007].
15. See Westlaw GSI-DDR database and description at Westlaw, *Legal Due Diligence Reports*, <<http://west.thomson.com/documentation/westlaw/wlawdoc/wlres/duedil06.pdf>> [accessed October 15, 2007].
16. The Virtual Chase, *Database of Sources: Company Information Guide*, available at <http://www.virtualchase.com/topics/company_information_index.shtml> [accessed October 15, 2007].
17. The Virtual Chase, *Database of Sources: People Finder Guide*, available at <http://www.virtualchase.com/topics/people_finder_index.shtml> [accessed October 15, 2007]. For more resources on factual research on the Internet, see Collins, *Internet Strategies for Legal Professionals* (Eau Claire, WI: National Business Institute, 2006) and Levitt & Rosch, *How to Use the Internet for Legal & Investigative Research: A Guide for Legal Professionals* (Culver City, CA: IFL Press, 2004).