

# Considerations in Constructing a New Law Office Building

The Second National Bank Building opened in 1925 at the busy intersection of Washington and Genesee Avenues in downtown Saginaw. This beautiful 12-story building was, and remains, a landmark of the city. Our firm's origins date back to the opening of the Bank Building. Attorney William O'Keefe was an original occupant of the building. O'Keefe's partnership with James Finkbeiner merged with the partnership of Hugo Braun and William Kendrick in 1951, and the firm continued in the building, which housed not only the bank but the offices of many other lawyers as well as doctors, dentists, and other businesses.

By 1998, our firm consisted of more than 40 attorneys. With support staff, our total personnel count was near 100. We were occupying five floors of the building, and we were the Bank's sole tenant. We also had a Bay City office with seven lawyers and a nearby Saginaw Township office with four lawyers, both locations having come from mergers with smaller firms. Our multiple locations and the number of floors needed by us in the Bank Building regularly challenged our firm administrators and Executive Committee in such matters as technology upgrades, personnel administration, and associate recruiting and training. The allocation of legal assistants and collaboration among lawyers and staff were also ongoing concerns. Not to mention that our past and present partners had paid rent at various locations for decades, and had nothing to show for it.

As a result, in 1998, our Executive Committee determined that it was time to explore our options. In November, we presented information to our members concerning historic and future occupancy costs, projected changes in professional and non-professional

staff, and whether we could obtain economic efficiencies through a consolidation of our Saginaw and Bay City offices. The membership authorized the formation of a Space Planning Committee, which was charged with investigating the economic and non-economic implications of consolidating the offices.

The conclusion to this is that we moved into our new, two-story, 40,000 square foot office building in January, 2002. This article discusses some of the things that we learned in the process, particularly those that are related to being a law firm.

## Delegation

Although the ultimate decision as to whether to build or not will usually be made by the partners as a group, the pre-construction and construction processes are much too involved to be handled by the partnership as a whole, unless your firm is comprised of only a few partners. Our operating agreement requires a super-majority vote for a major decision such as acquiring a new building. So as not to hamstring the process as it moved forward, we decided upon the major parameters for the project (maximum cost, location, and similar issues), and agreed that subsequent decisions that were within the established parameters would be within the authority of our Executive Committee or, in certain instances, subject to approval by a simple majority of the members. Even though the governing body of the firm, such as our Executive Committee, may have the authority to make most of the decisions, it is not likely to have the time to manage the project, and it may not have the right people. For this reason, the firm should establish a building committee. The specific tasks that should be considered for delegation to the building committee are the development of the concept, the identification and assess-

ment of prospective sites, recommendation on the architect and general contractor, pre-construction planning, financing, ownership structure, the negotiation of contracts, and construction phase supervision.

Our Space Planning Committee evolved into a Building Committee, and it remained involved in the process from inception through completion. Certain tasks, such as the negotiation of financing and recommendations on the ownership structure, can be delegated to other partners with expertise in those areas. One very important decision is the selection of the chairperson of the building committee, who will be the firm's representative throughout the process and handle the day-to-day management of the project for the firm. This person's attributes should include experience in construction matters, very broad shoulders, and a high energy level. The firm should recognize at the outset that the process will require much time and attention, particularly from the building committee chair and certain of the firm's non-attorney administrators (in our case, the firm administrator and the information systems manager). The firm should be ready to compensate the building committee chair both to make up for lost production and to recognize the time commitment, and it should also be ready to pay bonuses or other compensation to the non-attorney staff involved, because some of them will be required to devote extraordinary time and effort to the project.

## Financing

Issues such as selecting a lender and deciding whether to elect a fixed or variable rate of interest are much the same as for other commercial borrowers. In a firm where there are more than a few partners, there will probably not be unanimity among the partners as to whether to construct a new building, so a

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process should be established to ensure that everybody "shows up" when it comes time to make capital contributions and sign guaranties, both of which are more likely than not going to be required by a conventional lender. At the outset, the firm should adopt amendments to its governing documents to handle these issues. The firm must also look toward the future. Law firms tend to have regular admissions and withdrawals of partners, so the firm should consider addressing issues pertaining to the financing, such as the ability of the firm to make capital calls, a requirement that newly admitted partners sign guaranties in favor of the lender on the same basis as existing members, and how and when the remaining members will hold a departing member harmless from any calls on the departing member's guaranty. Internal financing must also be considered: the financial effect of the project on the cash distributions to the members and required capital contributions should be carefully assessed and fully and frankly discussed before the project is undertaken.

### **Ownership**

There are several options for project ownership, including the firm itself, a group of the members, or a third-party developer. If the firm owns the building, there is no need to develop a lease, which can cause friction among firm members if not all of the members participate in a separate building company. If the firm owns the building, since the building is used in the firm's business, tax issues such as passive activity losses are not of concern. If the building is owned by the firm, it will be exposed to claims against the firm. On the other hand, if the building is owned by a separate entity, the revenues of the firm will not be directly available to support the mortgage, so the lender will probably require a long-term lease and/or a guaranty by the firm. In the case of ownership by the firm or a separate company, the firm will have to provide for the buy-in by new members and buy-out of retiring members, issues that are

familiar to most business lawyers and beyond the scope of this article.

### **Client Relationships**

Client relationships will come to bear in many ways, including the selection of the lender, architect, general contractor, pre-approved subcontractors, engineers, interior designers, and the like. The firm should establish processes for selecting the project participants so that it can explain the relevant process and provide an objective explanation of its decision to a client who wanted to be involved but was not selected. The firm should also determine early in the process whether client relationships and/or political considerations make it necessary or prudent to require the payment of "prevailing wages" on the project, since this will have implications in the selection process and the project budget. Finally, the firm must recognize that the selection of a client may ultimately lead to conflict with the client during and after the project.

### **Political Considerations**

Many established law firms are located in original central business districts, which may no longer be considered by the firm to be the ideal location for its new offices. The decision of the firm to relocate can generate a great deal of attention and impact upon the firm's relationship with municipalities, particularly those that are clients.

### **Design and Layout Considerations**

In the interests of firm harmony and to minimize competition for office location, we decided to follow several rules: all of the attorney offices are located on the perimeter of the building (and so have a window), they are all the same size, and there are no corner offices. This has made it easy to locate attorneys by practice group, and to move people when it is advantageous to do so.

We also decided that we would have a lot of conference rooms, 13 in all (about one per three attorneys), so that offices could be devoted primarily to work and not to client meetings, which let us design smaller, yet comfortable offices.

Our building is designed with the public areas located around the lobby. Four of the conference rooms are located in the lobby area on the first floor, and they are the most heavily used for client meetings. We also from time-to-time host alternative dispute resolution proceedings in them. Another five conference rooms are located above the lobby on the second floor. Of the second floor rooms, four are small rooms with no windows that are used more as "war" rooms than for client conferences. The fifth room, which will hold 50 or more, is used for firm meetings and large closings. It is also regularly used for board or committee meetings of public charities and other civic organizations in which our attorneys are involved, which is a great marketing tool. Four of the conference rooms are located at the front corners of the building (two per floor). Since these rooms are in the office (private) areas, they are considered "practice" conference rooms, and their primary uses are for practice group meetings, training, telephone conference calls, and staging for transactions and litigation.

The decision to build a new law office building is full of challenges, and is incredibly time consuming. However, it can give a law firm its first opportunity to have its offices conform to the way it does business, instead of the other way around. A new office building can also increase the firm's visibility in the community, be a base for promotion of the firm's business, and lend the firm a new image. ♦

*Michael J. Sauer is a member of Braun Kendrick Finkbeiner P.L.C. He was a member of the firm's Executive Committee and Building Committee and the chairman of the firm's business law department during the planning and construction of the firm's new office building, and was responsible for the negotiation of the construction and end financing for the building and the drafting of amendments to the firm's operating agreement regarding the building. He is a graduate of Oakland University and The University of Michigan Law School.*