

Acquiring and Developing Income Producing Real Estate
By **Richard H. Swesnik** (Reston Publishing, Prentice Hall 1979)

Preface: The author started in residential selling, moved to syndication, then became a developer. If you are worth over a million dollars and would like more, you can probably get it faster as a developer than by any other route.

- (1) You must have absolute integrity
- (2) It may be advantageous to be a "fits and spurts" type of worker
- (3) You will not win popularity contests. You will make some business enemies.
- (4) The business is excruciatingly challenging and exciting.
- (5) There are many benefits available to developers/syndicators:
 - A "non-taxable" piece of the action.
 - Leasing and management fees slightly higher than usually charged
 - Original loan fees and refinancing loan fees
 - Casualty insurance commissions
 - Exclusive right of resale
 - Other income opportunities í parking, concessions, laundry, vending

CHAPTER #1: You: Developer or Syndicator

<i>Syndicator:</i> acquires existing buildings <i>Developer:</i> creates new buildings

Go it alone, or use investor's money?

- (1) If you borrow, you *must* service the debt. It gets people into trouble.
 - Borrowing-out í borrowing all the funds for a project.
 - Windfall í borrowing *more* than all the funds necessary.
 - Ungawa í too large/expensive (like secondary market interest rates).

No one in the secondary market can make enough cashflow to repay the debt.

(2) Use other investors. The benefits to a syndicator/developer are so great, it is not necessary to *own* the entire project. After you are known to be well-capitalized with other investors joining you, you can borrow money at a cheaper rate for a longer time.

Isn't it better to own smaller percentages of larger properties safely financed than to own one large property in which you could lose your entire investment?

Acquire or develop? Money is made in both, but *more* is made developing. Developers usually receive 25% of all benefits:

- 25% of all tax losses attributable to construction
- 25% of the cashflow (most not taxable during the early years)
- 25% of the proceeds from refinancing
- 25% of the cash proceeds distributable at sale

Plus: leasing/management fees, and exclusive right of resale
parking, laundry, vending (although fraught w/problems, better to contract out)
casualty insurance í it's a profitable business, and everyone will want yours,
so much that they will let *you* become the insurance broker and pocket the commission.

Nuggets: (1) Put all the developer's goodies in a corporation.
(2) Use speculative architects, not award-winning institutional architects.

CHAPTER #2: Them: the Investors

The top benefit of real estate investing is the federal tax break. Developers need an expert tax attorney.

With large expenses and no rental income, investors benefit due to the tax losses.

If the building rents-up quickly, cash flow commences and depending on the speed of depreciation, some, all, or *more than all* of the cash flow is sheltered from income tax.

Refinancing: Principal payments increase (amortization) while interest decreases, and depreciation decreases annually. Between 8th - 12th year, principal payments may be higher than depreciation & income becomes taxable. This is the time to refinance.

- (1) Refinancing means a fee for the developer + happy investors.
- (2) The proceeds from refinancing are not taxable. The taxable gain is the eventual sales price minus book value.

Taxable income = Cash-flow + Amortization – Depreciation
Whenever depreciation is greater than amortization, tax shelter results

Sale: After refinancing, it may be a good time to consider selling. Over time, everything wears out. The developer seeks to prevent future operating losses and insures his investors are not locked-into a deteriorating situation.

- (1) Sell when the building is "prime" & the point in ownership life where cashflow could diminish, generally between the 10th and 12th years.
- (2) Sell while the building is still desirable. Paradoxically, the investors will want to sell only when the property is already sliding downward. Buyers fade away when the building already shows signs of being troubled.
- (3) Sell when you think it is time & don't let the investor's dollars guide you.

Educate the investors:

- (1) They must understand how illiquid the investment will be & unsophisticated investors never seem to know this.
- (2) The major value of owning income-producing property is that it is one of the few investments that moves up with inflation.
- (3) We preach safety, appreciation and cashflow. But the investor makes his investment decisions on the basis of tax considerations & losses and sheltered income.

Congress uses our income tax laws to stimulate the flow of funds in one direction or another. Congress shapes our tax laws to help our economy. Tax preferences are tools used by lawmakers to keep the free enterprise system going.

**Any one may so arrange his affairs that his taxes shall be as low as possible.
He is not even bound to choose that pattern which will best pay the treasury.
There is not even a patriotic duty to increase one's taxes.
(Judge Learned Hand)**

CHAPTER #3: Both You and Them

What kind of real estate should you develop? Avoid surpluses í look for scarcity. If apartments are 100% rented in your community, consider additional apartment units.

Hardly anyone knows much about developing income-producing properties. Most developers became so by accident. You can become one by desire.

Designing winning ventures assumes good decisions on site selection, design and construction. It also assumes avoiding mistakes.

Tailor your first development (however small) to your own life experiences í a location you are familiar with, a high-rise or shopping center or apartment complex that you have lived or worked in. Caution:

- (1) Do not do anything spectacular
- (2) Develop a property that has the least amount of negative criticism.

The legal vehicle for owning: *Not* a corporation (double taxation, hard to liquidate/sell). Try a **limited partnership**, instead í especially where the limited partners have no active part in administering the affairs of the partnership. Limited partners vote on only two key issues:

- (1) To refinance or not
- (2) To sell or not

Rules of thumb:

- | | |
|-------------------|--|
| Apartments: | More is better í 150 or more. |
| Office buildings: | Larger is better (economies of scale) í 150,000 sqft min |
| Shopping Centers: | Larger is better í 125,000 sqft or more |

Other (inferior) investment possibilities:

- (1) LAND: Not appropriate because it does not produce income.
- (2) FACTORY, WAREHOUSE: Even AAA tenants go bankrupt, you may end up owning a vacant building. Not even the Federal Government is a sure thing.
- (3) HOTELS, MOTELS: No, covered later.

Location is a moving target. Locations change. Real estate is trendy. Analyze the direction of movement and forecast the best location 10 – 12 years in the future. Buy in an 85% location that will be a 100% when it's time to sell.

You are limited to developing what your local area can absorb. Very few persons have made a success in real estate development *outside* of their own backyards.

**Developers have eliminated certain words from their vocabularies:
Always. Forever. Never.**

CHAPTER #4: Organizing the Venture

Assign anything related to the development process to the partnership in exchange for a future interest in profits. Assign contracts to acquire the land, to get a loan and contracts with the general contractor.

Investors are more comfortable emotionally if they know the developer is investing along with them. Developers may or may not invest in their own projects.

If you are getting a 25% interest in future profits you:

- Receive 25% of the cashflow, refinancing proceeds, sale proceeds
- Deduct 25% of the partnership losses

100% of the investors' capital gets 75% of the benefits of construction.

First Outs (Priority Rights): The investing partners receive a predetermined % of the cashflow prior to any developer distribution. Make the investor pay. Strangely, if you ask for 25% instead of 50%, first-outs are rarely mentioned. Two responses:

(1) OK, you take the first 10% of the cashflow, and I'll take the next 20% of the cashflow in a 50/50 split thereafter.

(2) OK, you can take a first-out of any size when you have recouped your investment (no interest), I'll take half of whatever you then own.

The original partnership agreement must allow for dealing with ourselves in management and leasing for at least a decade.

Management and leasing fees are the only steady income for the developer.

They are the first deduction from gross income.

Sales commissions must be specified, and be in cash.

Casualty insurance is very profitable for an insurance company to write. Serve as the company agent and get 20% to 30% of the premium.

Ensure management company (you!) can act as general contractor in the event of a casualty. Charge 10% overhead and 10% profit.

No certified statements except at the expense of the requesting limited partner.

Partners meetings in scrupulously *avoid* group meetings. Communicate with your partners frequently. Report results, but NEVER *forecast* results.

Keep reserves in cash.

Partnership will pay general partner's legal fees in defense of any lawsuits

Charge a fee for changes to the Limited Partnership Certificate.

Establish priorities for dealing with negative cashflow:

- (1) defer interest/principal on long-term mortgage payments.
- (2) seek a commercial loan
- (3) general partners may make a loan at prime + 1% to the partnership
- (4) limited partners may make loans to the partnership at prime + 1%
- (5) borrow from the secondary market

People misbehave when serious amounts of money are involved, and they misbehave more intensely in direct ratio to the amount of your commission involved.

CHAPTER #5: Acquisitions

The easiest way to begin as a developer is to acquire an existing, improved property that is producing cashflow.

No one I know has a doctorate in the development of income producing properties.

A proven method: nuggets

- (1) Before buying, use a good real estate lawyer who also knows partnership law.
 - (2) A larger building is more economical to operate than a smaller one.
 - (3) Criterion for acquisition, in priority order:
 - Size í take advantage of economies of scale, larger is better
 - Age í ideally, a building in the first decade of use
 - Location í buy in 85-90% locations after studying population movement, targeting eventual sale when the area is a 100% location.
 - Quality of construction í have it inspected by a general contractor and a mechanical engineer. Water causes more damage than any other casualty. Do not buy a flat, built-up roof, no matter how good the quality.
 - Free-standing building í open on all four sides. Better for tenants.
 - (4) Tenants will leave office buildings because of poor elevator service, poor mechanical service or poor cleaning/janitorial service. Lack of space is the only other reason.
 - (5) Charges:
 - If you can't get 15% of future profits and losses, it's not worth it.
 - Do not charge a brokerage fee upon acquisition í most investors look askance when the developer takes a fee off-the-top of the investor's initial outlay.
 - (6) Delay settlement 6-9 months í time to develop the partnership agreement and locate the equity dollars from investors.
 - (7) Get the best legal and accounting professionals í don't try to save money here. Don't depend on your accountant for tax advice, get a tax attorney.
 - (8) Consider leasing the land í control it without owning it, have option to repurchase.
 - (9) Public versus Private offerings: Nothing is more critical than complying with federal and state rules relating to syndicated offerings!! Have your attorney determine whether or not your offering is really private or whether it should be registered.
 - Public í anyone w/money can play, it's always registered, often advertised
 - Private í entry restricted to invited players, never advertised
- Author's personal feeling ... a public offering is a private offering in which the project is suffering negative cashflow and will be eventually foreclosed.**
- (10) More than 20 participants in one venture does not make good business sense. Something is wrong with the venture or your sales technique if you need over 20.
 - (11) Your banker is a tremendous asset.

Don't let your attorneys and accountants get too creative. All the gymnastics in the world cannot make a winner out of a loser.

CHAPTER #6: Developments

You *need* the real estate community desperately í protect your RE broker and his commission.

All the money made in development is controlled by all the work done before a shovel hits the dirt. Once construction starts, it's too late to change anything.

Architect: Your 1st need. From his calculations, determine if the project is feasible.

Stay away from any building that is not a rectangle or a square

Always use a local architect í too many delays w/unavailable out-of-towners

Land: No bargains. You may overpay. If you underpay, you may have inferior land.

Purchase land that is already properly zoned.

Never select a material over õstandardö if it costs more, unless:

it reduces owning costs and the pay-back period is <6 years

it will increase the rent immediately

Talk w/contractors: Check his performance record with the owners of his last 3 projects.

Once hired, he cannot be discharged.

Have your attorney check legal records and ensure the contractor has not sued an owner in the last 5 years í and that any subcontractors are not suing him.

Don't price-shop for contractors.

Don't knock heads with the general contractor you have tentatively selected, especially about his fee. There are many ways your GC can "get even".

The development process í the order things happen:

Acquire the land

Architect prepares a compilation sheet, giving max rentable space.

Prepare a pro forma income and expense statement

Structure permanent loans so that you break-even at 80% occupancy.

Raise funds, and the investors become limited partners.

Research! Imperative to attend the 3 one-wk sessions taught by the Realtor's Institute, sponsored by the Nat'l Assoc of Realtors. Best research tool available!

Speak to the resident managers about the bad features of the building

The worst mistake possible is to develop an obsolete building

You can't please everyone, so displease as few as possible

Specifications: You (developer) determine what is õstandardö

Building exterior: Spectrum runs from brick to marble.

Elevator system: max waiting time is 30 seconds, no less than 3 units

Char service: Discuss with other commercial property managers

HVAC systems: Don't experiment with anything new in your building

**You are trying to develop positive cashflow, not win awards.
Your money could not be better spent than the payment for outside consultants.
Make sure you have an error-free building to sell 8-to-12 years hence.**

Seeking the permanent loan commitment í most developers use a mortgage broker. Do NOT apply to more than one lender at a time for the same loan.

You are in the driver's seat: You'd be a preferred customer and be romanced by your mortgage broker (he wants a steady future client).

If the lender wants an economic study í it means they are seriously interested.

Make the Loan Officer comfortable í seek a loan amount you can service comfortably with only 80% occupancy.

Safety is the lender's creed í risks can put the lender out of business.

Avoid lender participation í lenders know there's no "something for nothing"

A lender seeks *interest* on the funds he is lending.

An investor seeks *profits* on funds invested.

Points í income for the other guy, expense for you. Expect to pay 1 point for the permanent loan commitment and another point for the mortgage broker.

Permanent loans have no personal liability í sole security is the property.

Never sign a loan with any personal liability.

Construction loan í generally short-term (about 30 months) and suited for commercial banks. Permanent loan may be insurance company or pension plan.

Gap loans í the permanent loan, say \$10 million, may require 80% pre-leasing before it funds. No commercial bank would make the \$10 million construction loan, but they might loan \$8 million, "holding back" \$2 million. But, the developer needs the \$2 million, so he gets a "gap" loan í with several points and high interest.

Leverage í excessive leveraging is the path to economic failure. If you borrow too much and the rent-up is slow (due to factors out of your control) í disaster.

Negotiating with the General Contractor í don't ever get into an adversary position.

No "cost plus" contracts. Negotiate a price and include incentives for cost savings and penalties for cost overruns.

Each dollar saved goes 25% to the contractor, 75% to the developer.

Each dollar overrun goes 25% to the contractor, 75% to the developer.

For "tenant finishes" over standard í contractor credits the tenant for the standard material, then charges him for the over-standard material, plus 10% overhead, 10% profit (for 21% surcharge) í split the 21%: 1/3 for developer, 2/3 for contractor.

Insist on approving all subcontractors í no nepotism, no cronyism, and you might want a particular artisan for a specific job.

Follow through financially í contractor has weekly payroll to meet.

Talk to the Real Estate Assessor í need his estimates to project future operating costs.

Tax benefits í sometimes available as incentives. You must know about them in the planning stages in order to take advantage.

CHAPTER #7: WHO and WHERE Are They?

Do NOT discuss the offering with anyone except your lawyer and accountant.

You will have done the following:

- (1) developed the pro forma cash flow statement
- (2) have good estimate of construction costs í be generous in estimating õrent upõ time

But you still don't í

- (1) have permanent financing or construction financing
- (2) have a guaranteed maximum upset price with your contractor
- (3) have a partnership agreement

Start writing the õfferingõ (public or private):

- (1) How much to charge? 25% if developing, 15% if syndicating. Temper that w/eye towards potential cashflow. Most ventures rarely show returns greater than 10-12% in the first 2 years. Don't force the figures to project higher return. Sophisticated investors are suspicious if the return sounds too juicy. Over 12% and *you will lose some investors.*

If your project produces less cashflow than projected, you may be accused of being dishonest. No one will think you dishonest if it produces *more*.

- (2) Record the Certificate of Limited Partnership: It is very useful to have it recorded because partners enter the investment knowing that it *cannot* be easily changed.
- (3) Marketing the equity participations: Some developers will not do this themselves. They just don't want to approach an investor for money. They should be prepared to pay about 10% for someone else (stockbroker, Merrill Lynch, etc) to do it for them.
- (4) Placement memorandum: Partnership agreement, cashflow, all costs, and projected taxes. It must not show any profit at sale.

Locating the investor: Use the LEEP procedure.

L í Living at a profit. His net worth must be increasing, and he has some savings in a temporary resting place (CD, savings account, money market, etc). Do not discuss any facet of the venture until you are convinced the person has sufficient cash-on-hand.

E í Education. He must know about tax sheltering. ANS: $CF + A \acute{O} D = TI$

E í Experience. He must have already demonstrated his willingness to subordinate his judgment to that of another õproõ. You cannot do business with a virgin investor.

P í Profession. He must be in a profession with no continuing demand for capital (attorneys, doctors, dentists, engineers, accountants, etc). No retailers or wholesalers.

Old money (inherited wealth). Forget them. Old money is frightened money.

Closing the investor: Proven method.

- (1) Make the call yourself, set appointment at 10:30 AM. He must come to your office.
- (2) õAssumptive approachõ í you have nothing to sell, he must want to be a partner.
- (3) Tell them everything negative about the project í the investor will start defending it.
- (4) Have him sign a Letter of Disclaimer outlining the facts í memory aid later on.

CHAPTER #8: Your Development Begins

Nothing will produce better results at a low cost than a sign identifying the project.

- (1) Signs: Don't get stingy with the signs, do it right. Restrict number of competing signs on the property.
- (2) Ground-breaking ceremonies: Mid-week noonish, make a personal speech, invite all those important people without whom the job could not start. Fun & light, catered.
- (3) Your consulting engineer: The GC and field superintendent cannot see everything, or be everywhere. You need your own consulting engineer, providing a weekly job report. Do not have your architect act as your consulting engineer.
- (4) Topping-out party: It's become traditional, but it's really just for the construction crews. Lots of testosterone being released! Don't go, you will be an outsider.
- (5) Brochures and marketing tools: Don't let an ad agency talk you into spending a bundle of money on *words* & words are meaningless to anyone who can see. Describe the data important to a tenant & *facts*. Sell space, not fashion. Report demographics.
- (6) Rent-up Period: A critical factor, and entirely unpredictable & part of the reason why being a developer is not a business for the timid or ulcer-prone.

Apartments: Lowering rents will increase rent-up speed. You've already done your financial planning based on break-even at 80% occupancy.

Office buildings: Lowering rents will not increase rent-up speed. Instead you will attract a lower class of tenants. The best strategy is to *raise* rents & don't give away the space, on the contrary, charge more. Attract quality tenants.

Shopping centers: Permanent financing is rare without a lot of pre-leasing. Retailers look for one thing & location! Two truisms believed by retailers:

- (1) No rent is too high if the volume of business is high enough
 - (2) If the location is bad, not even *free* rent will attract a top retailer.
- (7) Leases: They should include escalator clauses for increases in operating expenses, utilities, services, taxes, insurance and CPI (consumer price index).

CHAPTER #9: Your Property is Leased

Do not substitute for experience and knowledge of the Certified Property Manager (CPM).

Managing the Partnership: Send cash-flow reports for the preceding 3 mos, and their pro-rata share of the distributable cash-flow. It's reaffirmation of what you're supposed to be doing & producing a stream of income.

- (a) Do not *forecast* & just be factual. Never fail to communicate.
- (b) Group meetings of partners are always a disaster & don't do it. Besides, the IRS may call it a stockholder-meeting and start to tax you as a corporation.
- (c) Limited partners vote on only two things & refinancing and sale.

Sale: Usually between the 8th and 12th year (when cash-flow is subject to taxes). The developer has exclusive rights to resale, 5% commission w/51% of partners agreeing.

- (1) Offer the property to the mortgage lender & they know how well it has been doing.
- (2) Offer the property to the limited partners & a subset may want to purchase.
- (3) Consider selling the partnership interests to city, county or state rather than the asset

CHAPTER #10: Other Ways

Developers/syndicators may feel the process is too much trouble, too time-consuming and too slow to react.

Real Estate Investment Trusts:

Developers w/large capital amounts can pool their money to lend to *other* developers. Usually these are developers who cannot get bank loans í credit history problems, and projects in poor locations.

Blind pool limited partnerships: Some partnerships are so successful at raising money that they exist solely to finance attractive income-producing projects í they look for investments.

CHAPTER #11: Will They Come Back

Galloping winners in real estate occur less frequently than abysmal losers.

Investor repeats, on the average, occur with about 1/3 of the previous investors.

(1) Coming off a winner, many cannot be dissuaded. I must disabuse them of the assumption that a new venture will be as successful as the last.

(2) A quality building in a good-and-getting-better location, properly financed, can hardly ever be a loser.

CHAPTER #12: Special Risks

A few things to watch out for.

Raw Land: This is strictly for masochists í only if you like punishment. Classic example of negative cash-flow. To breakeven, you must *triple* your money in 10 years.

Hotels and Motels: They are much more of a business than an investment. Hotel owners start each morning with 100% vacancies. They are much more vulnerable to uncontrollable forces. High risk í but if you can stand it, high rewards, too.

Industrial buildings: The tenant must come first í loans for unleased warehouses are non-existent. Railroad sidings and road access are critical. Leases are *triple net*:

1st net: all operating expenses

2nd net: all interior and exterior repairs and maintenance

3rd net: all property taxes and insurance

Special purpose buildings: If customized for a particular tenant, and he cannot, or will not pay, you have an empty, unique building in your hands.

Multi-tenanted properties: The difference between comparable income-producing properties is í the *quality* and *number* of tenants. Multi-tenanted properties are the best of all worlds: less risk, good return.

CHAPTER #13: Sharpening Negotiating Skills

Understand basic emotions.

Examine similarities: Every emotion stems from either the will to survive, or the will to propagate. Tap those emotions.

Love: Know the family status of those with whom you are negotiating.

Sex: Aggressive libido and power drive go together and mean success.

Guilt: The entire life insurance industry depends on this.

Fear: Produces fight or flight when about to part with a lot of money. The antidote is a calm and reassuring approach.

Greed: Necessary in a capitalistic culture í point out benefits to buyer or seller. But too much greed and no one will buy from you or invest with you.

Status: Who has the most money?

Winning and Losing: A good deal is good for all parties. Your attitude should be one of cool-confidence í do not enter with an adversarial point-of-view.

Rarely does a negotiation fail because of price.

Meet in your office í minimize interruptions.

Make yourself likable í be natural, listen

Intimidation í promise yourself ðI will not nor cannot be intimidated.ö

Easy does it, but not always í tell a highly-charged, emotional person to ðcool itö because you cannot negotiate with a maniac. Always control your emotions. Never close the door to a settlement. When asked to respond to a negative statement, restate the question in the positive.

Implicit communications í *poor* communications as well as bad manners. Be specific, precise and clear about what is meant.

Negotiation goals í decide *before* the meeting! Don't have any papers in front of you while negotiating.

Timeliness í there is *no* excuse for wasting other people's time. Top executives everywhere appreciate promptness.

One-on-one í always insist on this. If the other side has more than one person, know this in advance. Don't be out-numbered or surprised. Reach agreement before the entry of the CPAs, lawyers and counseling professionals.

Leaving í there must be a good taste in everyone's mouth. Make a date for the next meeting, then leave í do not hang around.

Dress í everybody wears a ðuniformö. Non-conformance gets you written-off.

Closing í you need an OBJECTION to close. Without an objection, the other person will not buy or sell. Never, never leave on an objection. Stop talking after the close í get out immediately.

CHAPTER #14: Don't just Sit There

Any structure, anywhere, built by anyone, can be improved upon.

Develop a positive plan í write down the pluses and minuses of developing apartments, office buildings or shopping centers. Get input from others.

Be deliberate í it involves great responsibility, much money and takes much time.

Remember the goodies í most developers are multi-millionaires:

- (a) Non-taxable õpiece of the actionö í 15% to 25% interest of the project
- (b) Leasing and management fees
- (c) Financing and refinancing fees
- (d) Casualty insurance fees
- (e) Exclusive rights of resale at 5% of the gross sales price

Your skills cannot be bought in the marketplace í if you become a qualified developer, your market skills are priceless. Academic training is not a prerequisite. Experience is critical.

I was once asked, “What is the most important trait of the successful real estate developer?” I answered ... Stupidity.

- (1) The stupidity to go forward with a project when there is no clear evidence it will rent-up.**
- (2) The stupidity to make a multi-million dollar investment decision without all the facts.**

That kind of stupidity is sometimes called courage.