



Of Counsel Interview ...

Bay Area Firm Uses Creativity & Internal Examination to Carve Real Estate Niche

During this Great Recession, we've learned (or re-learned) a lot about the legal profession.

Here are a few examples: Law firms that aren't diversified in practice and that carry too much debt will often go belly up, never to be seen again. Megafirms will issue pink slips en masse, if such layoffs protect their profit-per-partner levels (although they'll talk about all the "emotional pain" involved in these "gut-wrenching business decisions"). Midsize firms will take advantage of their positioning and lower fees and grab clients away from the larger firms. Real estate attorneys will be hard-pressed to work enough deals to keep them busy.

Regarding that last example, a few firms with extensive real estate practices have figured out a way to survive and even thrive in this dour economic environment. Miller Morgan Blair is one of those firms.

The 22-attorney partnership based in Walnut Creek, CA, actually does more than

just real estate; it also has a business & technology practice. And, partners at the firm have found that, by focusing their strengths in these two practice areas, with subsets under each one, they've been able to maintain a strong revenue stream and attract top-shelf, experienced attorneys from much bigger law firms, primarily those across the bay in San Francisco.

At the heart of Miller Morgan's success are two elements: its innovative flexibility, specifically, its creation of a distressed asset group within the real estate department that has flourished during the recession, and a creative marketing campaign that benefitted the firm both externally and internally. That is, in creating marketing materials, firm leaders interviewed their attorneys, learned a lot about themselves, and discovered that they had more talent and experience than they thought they had.

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Of Counsel Profile

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Christopher Hunter is the chair of Miller Morgan's real estate practice group. Recently, *Of Counsel* talked to Hunter about his career, the firm's distressed asset division, its internal attorney interviews, marketing campaign, law firm culture, and other topics. What follows is that excerpted interview.

Of Counsel: What attracted you to the legal profession?

Chris Hunter: I always enjoyed problem-solving. We did some mock legal projects in junior high and high school, and I always enjoyed it. I'm one of those lifers, so when I was at Cal [University of California at Berkeley], I worked for a three-lawyer law office and then I took a year off between undergrad and grad school and worked for McCutchen Doyle [now Bingham McCutchen] as a legal assistant. I worked during the school and summers all through law school, so it's just one of those things that I wanted to do for a long time.

OC: After law school, where did you go?

CH: I went to a firm called Leland, Parachini [Steinberg, Matzger & Melnick, based in San Francisco]. I worked on bad real estate loans: workouts, receiverships, foreclosures, and bankruptcies. Basically every aspect of a bad real estate loan was what I did.

OC: Did you intend to go into real estate or did it just sort of happen that way?

CH: I was always interested in that area. In law school, I took all the bankruptcy, remedy, secured-property classes, all the courses relating to that. Initially I thought that I might go clerk for a bankruptcy judge. I liked working at Leland, Parachini when I started working there in the fall of '93.

Sophisticated Work in Own Backyard

OC: You came to Miller Morgan Blair in 1998. What attracted you to the firm?

CH: I wanted the ability to live and work and practice in my own community at a top-quality firm. It was beyond just a simple commute question, but really the ability to work in my own backyard. The big consideration was that I wanted to be able to do sophisticated work, to make sure that the work would be challenging and interesting and offer me a great opportunity to grow. And that's proven to be true.

OC: What is the strategic thinking behind having just two practice groups, business & technology and real estate?

CH: The thinking is that those are the primary places where we can get the type of sophisticated work that we want to do. So, for instance, we don't want to do work that's governed by insurance companies and we don't want to do work that's going to be rate-restricted in that way. What we found is that there's a lot of overlap in those two areas. So really we want to be a business law firm that encompasses both. The business of real estate and then sort of general business—corporate, M&A, tax, that kind of thing.

OC: Now of course we've been in this recession for the last couple years and a lot of real estate groups have not been able to do very well. A lot of real estate lawyers have been sitting on their hands hoping that work comes through the door. How have you been able to remain busy?

CH: I can give you the 10,000-foot view and then drill down. For most of the decade, whatever the '00s are called, we represented some lenders, but we were more on the development end, representing the owners and developers. We worked on billions of dollars for joint ventures for residential developments as well as billions of dollars in loans

for commercial development. I think 2005 was the peak year in terms of building permits for the residential side. 2006 was the second-best year in history.

But also in 2006, or early 2007, you really started noticing that there were some changes, and those pre-date the changes that we saw on the commercial real estate side, because I don't think that started having issues until later. But one of the interesting things about a troubled loan on a piece of dirt is, until you have something producing income, dirt is really a liability and not an asset. Technically it's an asset, but it can't be monetized for a long time. So regardless of whether we represented the bank or the borrower in these kinds of situations, it's different than if you own an apartment building or an office building and the borrower is not paying and you just go put it in receiver or you foreclose and you take it over and it's a pretty straightforward process.

But when you're dealing with raw land, you really have to be as creative as possible. So we helped land development clients and, because we knew a lot of people in the industry and had worked with them and had a good reputation, we had built an element of trust. So trust and creativity has helped us stay busy in the real estate area.

We also realized that there was a need to create a distressed asset group. It really was an internal and an external thing. We had a bunch of us at the firm who had experience in this arena. For me, all I had done was work on all the aspects of bad loans for most of the '90s, and then I had moved one seat down the table to representing the borrower or the lender.

We spent time polling people internally to make sure what we could do and what we couldn't do, and then invested a bunch of time internally on education, and having seminars within the firm, going to training. We wrote articles. We went to conferences and spoke on topics, all of these things to help sharpen our skill set, and then went out and externally marketed what we can do.

OC: So you really created a niche for yourself.

CH: Yeah. Let me give you the example of the Orinda Gateway project [which involved a \$108 million loan by Merrill Lynch for land development in the East Bay city of Orinda that went into default]. The project had been brewing forever, subject to environmental review, objections, etc. Finally the developer, who was about the fourth developer, got the agreements from the city of Orinda, and it was marching forward. Then, of course, this downturn hit, so they defaulted.

One thing that's really interesting when we talk about how land in and of itself doesn't have a value until it's producing income somehow is that one of the most important pieces is to maintain the entitlements, because if you didn't have the approvals to build your project, you could go forth and foreclose, but the bank or whoever bought the foreclosure sale wouldn't have the right to build. The prospect of going out and restarting that entitlement process isn't appealing. Essentially, in the worst case, you could have relegated this land back to being cattle land, and you know what that's worth per acre.

So in order to maximize the value Merrill Lynch hired our firm, and we have two lawyers, Patty Curtin and Kristin Schenone, who are land use experts, and it's their job to negotiate with the city of Orinda. It's a two-way street. Without the entitlement, nobody can build this project, but also all the parks that you're expecting, all the fee revenue that you're expecting, everything is going to be contingent upon us amending all of our entitlement documents and having an agreement that's going to be assignable and flow to any subsequent purchaser.

This was a very complicated and politically delicate assignment, and a lot of these land-use assignments are. But in the end there was a successful resolution. The people at Merrill Lynch were extremely appreciative of the work that Patty and Kristin did.

An Educational Marketing Effort

OC: Your firm has an interesting marketing campaign with slogans mentioning “fertile minds” and your ability to be “lethal efficient” and “quick to react.” What were the strategies behind these campaigns that seem so creative and clever? And how is it paying dividends?

CH: It speaks to an idea of coordination. If you ask what’s the one reason that we’re able to generate work, especially work as far-flung as what we do, it’s because we did a good job of identifying internally who does what, what can we do, who can we train to fill out any gaps, and where are the opportunities going to come because so many of our opportunities have come when Lawyer X says, “Oh, I don’t do this, but now I know that you do this.”

One of the things that we put together was a distressed asset group brochure of two pages with all of the representative transactions that we’ve done. It was very helpful putting this brochure together and asking everyone, “What have you done?” We did a lot of outreach within the firm and put together a list of 20 to 25 different types of distressed asset concepts. We could have done a 20-page brochure, and it might have been easier than culling it down to a shorter brochure. But it wouldn’t have been as effective.

For this [information-gathering effort], we didn’t send an email to all of our attorneys saying, “Dear lawyers in the firm: Tell us everything you’ve worked on in distressed assets.” We’d probably have gotten only one-third of our attorneys giving us thoughtful, truly helpful responses. Instead, we actually spent a lot of time crafting the questionnaire and capturing everything [that the lawyers had done in this area]. Then we broke it all down into a pretty little brochure.

OC: Are you finding that this has been generating some work?

CH: Yeah. I would say that in some ways there is an internal benefit as well as external,

because we were able to get everyone on the same page. Just the process of going through all this was beneficial. Now if somebody says, “Hey, have you guys ever dealt with a receivership?” We can say, “Oh, yeah, sure, we have a whole department. Here are four receiverships that we’re working on” and so on. It gives everyone a level of understanding and I think that that’s a big piece.

And, it also helped us when we thought, okay, what are the cool and fun and interesting areas that are out there? Representing receivers became a big one, because in the Merrill Lynch deal there was a receiver, and now there’s an enormous project in Sunnyvale called the Sunnyvale Town Center, which is now troubled, and so we are representing the receiver, which wasn’t one of our [existing] clients. That really calls into all our skills. If you can imagine everything involved in a half-finished project, there are land use issues; there are many liens on the property; there is general property management in that we don’t want people wandering in and slipping and falling; there is every possible issue.

It becomes a bit more challenging than a completed office building where you throw a receiver in. It has actually helped us in terms of the bread and butter work, too. I think clients think, “Wow, you guys are working on the Sunnyvale Town Center receivership and the Orinda Gateway project for Merrill Lynch, these nine-figure deals.” It makes it easier when you’re going to someone and they say, “We have a three million dollar development that needs a receiver.”

High Quality, Low Cost

OC: Clearly generating the copy for the brochure was helpful internally and is helping externally. What about the other campaign where you’ve got an ad that pictures grass coming out of a guy’s head with the caption that talks about clients wanting “innovative solutions that spring from minds focused full-time on creating value for their business”?

What was the thinking behind that and who are you trying to attract with that?

CH: The whole theme of that campaign is that most of us came from sophisticated law firms, primarily from San Francisco, and clients will get the same kind of service as they would by retaining a San Francisco firm. They just won't get all the bad elements of those firms [for example, exorbitant fees and young associates working on clients' matters].

We also let clients know that we don't hire lawyers right out of law school. We let other firms hire them and invest the money to train them as these young attorneys figure out what they want to be when they grow up. So you'll never get someone dumped on your case who needs to learn on the job. There won't be these nameless and faceless associates working for clients.

We aim to capture the highest-value of work. We make an effort to avoid commodity-level work, and we approach the work we get very creatively.

OC: How would you characterize your firm's culture?

CH: Almost all of our lawyers live in the East Bay. The typical story is that the person who comes here worked for a big firm and saw all the good and the bad of a large firm. That person wanted to work at a place that provides first-rate service and offers quality compensation but doesn't care about making that last dollar. Our rates are lower and we don't do the leverage model; we're partner-heavy. It's not the way to riches but it's a great way to practice law. ■

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