The sooner you know about the complexities, the sooner you can deal with them.

So, it turns out that the deal you thought was so simple, so cut-and-dried that any first-year lawyer could do it, is not so simple after all. You’ve been on the phone every day for a month, sent and received hundreds of emails a day, and still can’t see how this deal’s going to close. What you’ve got is a complex real property transaction.

It might be the sale of some vacant land that turns out to have environmental issues. It might be the sale of an industrial site that has a bunch of Philadelphia lawyers breathing down your neck. It might be the lease of multiple floors of an office building with an opposing lawyer who never learned the meaning of the word “fair.” But whatever it is, it’s eating up all your time, and your client’s getting concerned about all the bills.

So, what do you do? If not this time, then next time one of these deals comes up? We don’t know what
you’re going to do, but this article discusses some of the things that we’ve done.

1. Communicate, Communicate, Communicate

All deals need some communication. Complex deals need lots. You need to know your client’s objectives, in detail. Your client needs to explain those details and how the real estate fits into the big picture. You need to explain to your client how the laws affect those details. You need to communicate this to opposing counsel, without disclosing attorney-client communications. This means you can’t forward your client’s emails to opposing counsel. Cut and paste instead.

2. Start With A Document Checklist, And Build On It

Every lawyer should start every deal with a checklist. Even a simple one. Read the contract and make sure the checklist includes every document called for by the deal. Include deadline dates. Give a copy to opposing counsel. Get everyone on the same page. Attached is a sample documents checklist.

3. Draw Diagrams To Depict The Structure Of The Deal

A picture says a thousand words, and a diagram pictures the deal. Do a diagram with rectangles for parties and arrows for deeds, leases, mortgage, easements, etc, pointing from one party to another. If you can’t draw, use Shapes or MindNode apps on your Mac or Visio on your PC. Attached is a sample deal diagram.

4. Diligently Do Due Diligence

Complex real estate transactions include complex due diligence with architects, engineers, consultants, surveyors, contractors, and experts you’ve never heard of. Find out from your client who’s in charge: you or them? Even if it’s them, stay in the loop to help your client follow the contract provisions for due diligence and its deadlines. Attached is a sample due diligence checklist.

5. Ever Done A 363 Free And Clear Sale?

If the seller is in bankruptcy court and has liens on its land, consider a free and clear sale. It’s complicated, but it might be the only way to get the deal done. Attached is a 363 sale checklist. Be sure to bring in a bankruptcy lawyer.

6. Use A Checklist To Manage Legalities Of Vacant Land Development

Vacant land is not necessarily bare, naked land. It’s got a past, present, and future. Enter the developers, the government, and the wheeler dealers. This is prime territory for a detailed legal checklist. Attached is a sample checklist.

7. Releasing And Assuming, It Must Be The Environment

We found oil in them thar hills. Now what? Well, if the buyer still wants the property, maybe it’s time for an environmental release and assumption agreement. Attached is a sample. Then everyone got worked up. Be sure to have an environmental law practitioner review this.
8. Defease The Mortgage, Please

The contract’s been signed, the due diligence done, the financing in order, the closing is set. You request an estoppel letter from the mortgage holder and get a reply that the mortgage has a no prepayment clause. Not a no prepayment penalty clause, but a no prepayment allowed clause. The mortgage has been sold as a security on the stock market. Your only choice: defease the mortgage. It’s time to call in the experts at www.defeasewithease.com or www.astdefeasalance.com or Wells Fargo. Yikes, it’s expensive. But, they’ll substitute other collateral for the land as security so you can close your deal.

9. You’re Selling Securities When You Sell the Entity That Owns the Land

So, your client owns the land in the name of a corporation, and the CPA says there’ll be big tax to pay if your client’s corporation sells the land, but much less tax if the client sells the corporation’s stock. That is, the CPA recommends a stock deal instead of an asset deal. The buyer gets the corporation and the land in it. So, what’s complex about that? The state and federal securities laws, that’s what. Whenever you sell stock, or even offer to sell it, you trigger those laws. That means it’s time to call in the securities lawyer to advise on registration exemptions and anti-fraud compliance. Attached is a sample form, but every deal’s different so don’t cut and paste.

10. Links, Links, I Love Free Links

Our clients use Google to draft their docs and only call us when they can’t find the right form. Is that true? Well, it is true that there is much good information for free online. Here are some sample links to title company websites:

- **The Fund (www.thefund.com)**. This is primarily for Florida lawyers. For non-members the Fund website allows access to an overview of products available and does not provide forms of title documents. On the website you can access an order form for brochures and publications available, which link denotes items available to members and non-members and costs for same. As a member of The Fund you can be set up to access FundNet, which is the online access site within the Fund’s website that gives members access to online products, i.e. generating CPL, policy jackets, title searches, etc. You can also access Fund Title Notes and Fund Concepts via this website, after login as a member. As a member you will also be set up to receive alerts and bulletins that affect title agents, such as bank failures.

- **Fidelity National Title Group (FNTG) (www.fntg.com)**. For non-members the main FNTG website allows access to an overview of products available but does not provide forms of title documents. This website links you to the current title insurance underwriters that are part of the Fidelity National Financial family of companies, such as Chicago Title Insurance Company, Commonwealth Land Title Insurance Company, Lawyers Title, and Fidelity National Title Insurance Company and also advises of former title insurance underwriters. Contact information can be obtained for the underwriters and their office locations in the main menu under “Title Insurance”. As an underwriter under FNTG, Chicago Title Insurance Company (CTIC) has its own website www.ctic.com, which can also be accessed via the FNTG website. For non-members the CTIC website allows access to only an overview of products
available; however, it does offer limited services such as Rate Calculator for title premiums and GFE Calculator for good faith estimates for loans. You must be a member of FNTG to have access to online products and title services with the various underwriters. As a member of FNTG you can be set up to access the CTIC agent site known as AgentTrax, which gives members access to online products and services such as generating CPL, policy jackets, title searches, policy remittance and reporting, etc. The website for log in by members is www.agenttrax.com. At www.fntgflorida.com you will find an extensive selection of forms that are useful to address title insurance commitment requirements. Examples: Notice of Termination (of NOC), Contractor’s Final Payment Affidavit, General Partnership Affidavit, Borrower’s Affidavit-Commercial Property, Construction Indemnity Agreement, etc. As a member you will also be set up to receive alerts and bulletins that affect title agents, such as bank failures.

- **Old Republic National Title Insurance Company (ORNT) (www.oldrepublictitle.com).** For non-members it allows for an overview of products available only, and does not provide title document forms. It does allow non-members some services such as Premium Rate Calculator, Patriot Act Searches, Real Estate Dictionary, etc. You must be a member to have access to online products and title services. As a member of ORNT you must be set up in order to access OASIS, which gives members access to online products, i.e. generating CPL, policy jackets, title searches, policy remittance and reporting, etc., The OASIS site also includes full access to title insurance forms, endorsements, supplies, etc., and helpful links to other websites affecting the title insurance industry. The website for log in by members is www.ortoasis.com. As a member you will also be set up to receive alerts and bulletins that affect title agents.

**CONCLUSION** • So, here’s one final tip for handling the complex real property transaction: be alert. The sooner you realize you’re in the middle of a complex deal, the more time you’ll have to deal with the complexities.

**APPENDIX 1**

**Sample Real Estate Closing Documents Checklist**

Date: ______________________, 20___  
Seller: ______________________________________
Buyer: ______________________________________
Closing Date: __________, 20___
Closing Place: ________________________________
Persons Present at Closing: ________________________________

**Contract Documents**
1. Contract
2. Amendments
3. Listing agreement or brokerage commission agreement

**Approvals**
4. Mortgage loan approval
5. Mortgage assumption approval
6. Mortgage release approval
7. Condo or homeowner association approval
8. Lease review and approval
9. Franchise approval

**Inspections, Insurance, Utilities, Taxes**
10. Title insurance search ordered
11. Survey (meeting or exceeding Minimum Technical Standards)
12. Termite inspection
13. Termite treatment contract
14. Professional building inspection
15. Phase I environmental site assessment inspection with Radon and asbestos
16. City or county inspection, zoning, setbacks, pending citations, & local city rental requirements search and research
17. City and county special assessment search
18. Financial books and records inspection by CPA Sales tax payment verification
19. Sales tax dealer registration
20. Ad valorem real and tangible personal property tax payment verification (County Tax Collector)
21. Property, casualty, liability, workers comp, and flood insurance with loss payee and additional insured
22. Utility accounts paid, disconnected and changed (gas, electricity, water, trash, phone, cable tv, sewer)
23. Tenant estoppel letters
24. Licenses and permits to be obtained or transferred
25. Employees to be retained or hired
26. Secretary of State certificates of existence
27. Corporate resolutions and minutes authorizing sale, conveyance and encumbrance
28. Affidavits of incumbency
29. Regulatory requirements

**Closing Administration**
31. Closing statement or HUD-1 settlement statement
32. Prorations statement