


# School District Real Estate: The Basics and Beyond (and a Couple SIGNIFICANT Legal Updates!)

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## OVERVIEW OF PRESENTATION

- Land Purchases and Sales
- Leases and Other Land Use Agreements
- Construction Project Essentials
- Title IX Update
- FLSA Update



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# Land Purchases and Sales



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## Land Purchases and Sales: Issues in Both Purchase or Sale Transactions

- What are transaction particulars?
  - Cost
  - Scope of project
- Use a broker or other real estate agent?
  - Pros and Cons
- Form documents:
  - Pros and Cons
  - Different variations: WB forms are most common and best for straightforward transactions
- Legal loopholes:
  - Representations and warranties
  - Type of Deed: Quit Claim Deed or Warranty Deed?
  - Indemnification obligations

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## Land Sales: When the District is Selling

- A buyer's offer to purchase contract:
  - Establishes "rules" of transaction
  - Due diligence/inspection issues
    - Materials and potential confidential information
    - Timing
- Key legal considerations:
  - Representations and warranties regarding property condition
  - "As-is" sale
  - Immediate indemnification and ongoing obligations
- Quit Claim Deed conveyance



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## Land Purchases: When the District is Purchasing

- Detailed Offer to Purchase:
  - Purchase circumstances drive the details of the contract
- Due Diligence:
  - What is the intended use?
  - Inspections
  - Title review
  - Other reports and data in possession of seller
  - Other approvals necessary, such as municipal use or zoning approvals?
- Warranty Deed



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## Land Purchases and Future Planning

- Utilize land or other real estate purchases as part of strategic plan
- Opportunities for public/private partnerships
- Avoid increasing cost of land and facilities' construction or redevelopment



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## Lease Agreements and Other Land Use Agreements



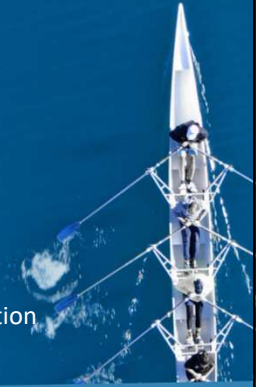
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## Lease Agreements and Other Land Use Agreements

- Benefits:
  - Provide flexibility
  - Negotiable
  - Short term and customize to address specific needs
- Public utility agreements
- Legal “Landmines”:
  - Term and automatic renewal clauses with buy-out requirements
  - Rent, expenses and triple net cost considerations
  - Maintenance and other operational obligations – who does what?
  - “Quality of life” considerations
  - Example: “Who opens the restrooms and when?” may be the most pressing question constituents want answered!



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## Lease Agreements: Cell Tower Leases

- What can the District negotiate?
  - Lease payments: What is the true value?
  - Maintenance and repair obligations for lease’s facilities and District facilities
- Safety considerations
- Assignment requirements
- Legal “Landmines”:
  - Rights of first refusal
  - Long terms or automatic renewals without increase lease payment
  - Indemnification provisions



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## Sports Facilities Agreements

- May be flexible tools for the District's needs
  - Seasonal terms
  - Streamlined additional services, such as bathrooms, concessions, maintenance, janitorial needs
  - Shared utility costs
- May provide financial benefits (as Lessor or Lessee)
- Community partnership potential
- Downside: Sharing
  - Agreements should be as specific as possible!
  - Avoid "agree to agree later"



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## Construction Project Essentials



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## Construction Projects: The Importance of Planning

- Even before designing the project, you have to start planning.
- Important Questions:
  - What are we building?
  - What is the time?
  - How much are we spending?
  - Who are we building with?
- *But how do we know what we need?!*

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## The Importance of Planning (cont.)

- RFP for initial design and scoping.
- You may receive solicitations and recommendations.
- An RFP may not be necessary if a school district already knows its scope.

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## Some Team Lessons From the Trenches

- Form an oversight committee – continuous oversight (NOT micromanagement) and learned expertise.
- Appoint an internal single point of contact responsible for contract administration and to serve as direct report to committee.
- Other team members:
  - Owner's Representative
  - Legal counsel



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## Other Lessons From the Trenches

- Understand that reference checks are difficult – you may not hear the whole story.
- Talk to other school district officials.
- Provide updates to keep school district board members and the public educated about the process and next steps.



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## Construction Projects: A Note on Public Bidding

- Whether to publicly bid or not to publicly bid....
- 2023 Assembly Bill 723: Proposed amendment to require public bidding for public school buildings and public school facilities.
  - Tabled on February 20, 2024
  - Failed attempt to bring forward on April 15, 2024
- While no statutory requirement to publicly bid, ensure compliance with policies
- Whatever the decision, ensure contract properly reflects requirements

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## Construction Projects: Project Delivery Methods

- Definition: The process by which all the procedures and components of designing and building a facility are organized and put together in an agreement that results in a completed project.
- Key considerations:
  - Time
  - Cost
  - Quality
  - Scope
  - Function
  - Safety



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## Construction Projects: Project Delivery Methods

- Traditional: Architect designs, contractor builds.
- Design Build: One-stop shop
- Construction Manager
  - CM at Risk
  - CM as Agent



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## Project Delivery Overview: Traditional

- Lineal approach: First comes the architect, then comes the contractor.
- Not typically used in commercial or institutional projects unless the project is very small.
- Primary risk: Cost overruns and schedule delays, which are transferred as the Owner's cost.
- Primary benefits:
  - Easy to fit in public bidding method.
  - Architect's and contractor's fees are often lower than in a construction manager delivery method.



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## Project Delivery Method: Design-Build

- Growing in popularity, especially on larger projects
- Process: Owner engages one entity to act as architect and contractor.
- The primary benefit: A single point of contact to which the District may turn with issues.
- The primary disadvantage: The “all eggs in one basket” syndrome.
  - Lack of checks and balances
  - If the single point of contact fails, the project fails.



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## Project Delivery Method: Construction Manager

- What we usually think of as a contractor in a construction project...
- Two types: CM at Risk and Agency CM
  - CM at Risk
    - Traditionally, CM is contracted with Owner
    - May have separate contract with Architect
    - CM delivers at a guaranteed maximum price (GMP)
    - Many other variations of the contractual relationship
- Agency CM
  - CM *advises* owner in its contractual relationships with Architect and Contractor
  - CM is not at risk for the budget, the schedule or the performance of the work.
  - *Not a true delivery method*



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## Project Delivery Method: Construction Manager at Risk

- Primary Benefit: Contractor/CM is involved from the beginning
- Since the contractor is involved with the design while it is being created, the contractor should have the opportunity to clarify its questions and suggest cheaper or faster ways to construct the project. If the contractor does its job, it will reduce or eliminate RFIs and Change Orders.
- The contractor, rather than the architect, develops costs estimates for the project as the design proceeds. The contractor usually has a better idea of cost than an architect. The contractor becomes bound to its cost estimates when it delivers a Guaranteed Maximum Price ("GMP") Contract.

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## Project Delivery Method: Construction Manager at Risk (cont.)

- Owner is better protected from cost overruns by the GMP
- Owner has leverage to cause the contractor to put more workers on the project if it is behind schedule.
- BEWARE: This project delivery method does not fit nicely in the competitive bidding laws or policies – great care must be taken to ensure compliance
- "The object of the game is to mitigate risks as much as possible."
  - Contract terms are essential.

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# Construction Project Contract Considerations



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## AIA Documents: Overview

- Series of contract documents intended to work together.
- The AIA document used will be determined by the project delivery method and parties involved.
- WARNING: AIA documents appear easy, but are filled with ambiguities and loopholes.



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## AIA Documents: Famous Quotes!

- “These are never modified!”
- “This is standard. Having your lawyer review will waste time and cost you more money.”
- “These have been around since 1911!”
- “Why make it so difficult? Use the form!”



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## AIA Documents: General Points

- Generally, the AIA documents are favorable first to the Architect, next the Construction Contractor, and finally the Owner.
- Reality: Complicated documents and intended to work in conjunction with other AIA documents.
- All AIA documents can be modified.
- All revisions should be shown, available when using AIA software.
- Key points: Early review and contract planning is essential.



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**Remember:**  
**“The object of the game is to mitigate risks as much as possible.”**

**Key terms to in risk mitigation:**

- Indemnification provisions
- What is a “change order”?
- Who is contracting with subs?
- Contingency fund usage and control
- “Profits” upon termination





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## Top 10 List of Contract Pitfalls

- 10. Dispute resolution process
- 9. Consequential Damages
- 8. Information to Owner
- 7. Insurance requirements
- 6. Controlling bids from subcontractors to bring a project in below the GMP
- 5. Controlling costs of self-performed work
- 4. Controlling cost of contractor-supplied rental equipment
- 3. Controlling costs of “general requirements” and reimbursable expenses
- 2. Termination provisions
- 1. Change orders



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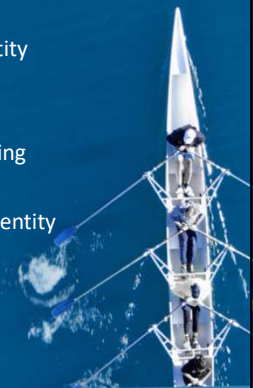
# New Title IX Regulations



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## New Title IX Regulations – Released 4/19/2024

- Broadens definition of conduct which will be subject to the Title IX complaint and grievance procedures
- Streamlines grievance process by providing flexibility in players and timelines
- Prohibits discrimination (for the first time) on the basis of sexual orientation and gender identity
- The DOE intends to issue a separate final rule addressing Title IX's applicability to athletics.
- DOE did not specifically address use of restrooms and locker rooms
  - BUT – Creation of “de minimis” harm standard for sex separation that is allowed by existing regulations
    - Preventing an individual from participating in school consistent with their gender identity causes that person more than *de minimis* harm.
    - Anti-discrimination requirements apply to bathrooms and locker rooms



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## Implementation by August 1, 2024

- Start Now.
  - Prior to conclusion of 2023-2024 school year:
    - Develop strategy for implementation
    - Determine who is on your team
- Early Summer 2024
  - Engage in policy review, revision, and update processes
    - Policy committee meetings, multiple board meetings/readings
  - Shoot for adoption of new policy(ies) by July 1, 2024
- July 2024
  - Train administrative staff, summer/fall coaches and activity advisors, and buildings and grounds and custodial staff.
- July/August 2024
  - Train all instruction staff and any other remaining staff during new-staff onboarding and/or Welcome Back PD days



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## Appropriate Process for Response

### Policy Development = Proactivity.



- Policies serve as a framework by which issues are judged.
- Policy provides guidance as to the District's pre-determined response to a situation
- Policies, by their nature, are a reflection of the community's values.



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# DOL Final Rule – Salary Requirement



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## Final DOL Rule – Salary Threshold for Exempt Employees – 4/23/2024

- Increases salary threshold for exempt employees as follows:

Effective Date	Standard Salary Threshold	Salary Threshold for Highly Compensated Employees
July 1, 2024	\$844 per week (\$43,888 annually)	\$132,964 annually
January 1, 2025	\$1,128 per week (\$58,656 annually)	\$151,164 annually

\*\*\*Current threshold \$684/week (\$35,568 annually)

- Does not impact job duties test for exemption purposes
- Note: Teachers and School Administrators remain exempt



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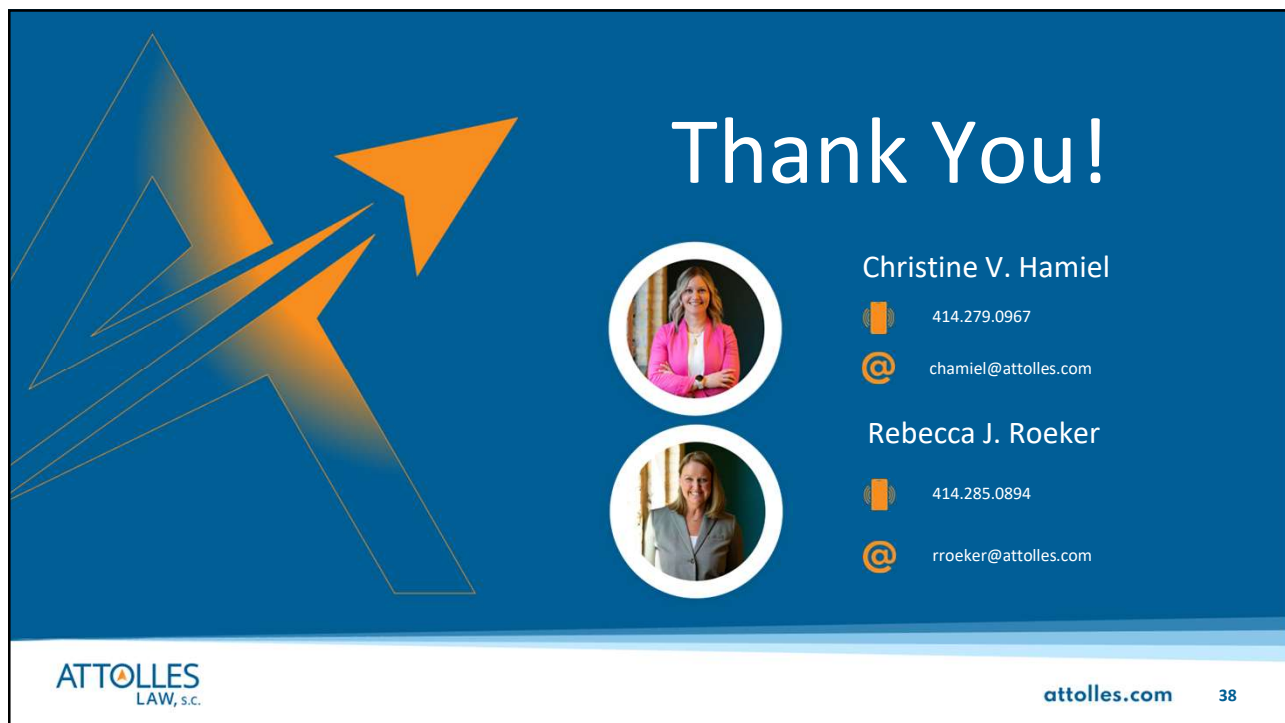
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# Q&A

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A slide with a blue background and a large orange graphic of a stylized letter 'A' with an arrow. It says "Thank You!" and lists contact information for Christine V. Hamiel and Rebecca J. Roeker. The Attolles Law, s.c. logo and website are at the bottom.

# Thank You!

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