

Town and Country executives to score big with merger deal

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Town and Country Trust CEO Harvey Schulweis could take home more than \$13 million from his company's acquisition by a joint venture including Morgan Stanley Real Estate.

Schulweis would receive a payment of \$3.6 million if he leaves or is let go immediately after the deal, according to a Jan. 30 Securities and Exchange Commission filing. Regardless of what happens with his employment, Schulweis will get another \$9.6 million in cash for restricted stock that would immediately vest at the deal's closing, a Feb. 24 SEC filing shows.

Under certain circumstances, Schulweis also would be entitled to redeem his units of Town and Country's operating partnership for properties the firm owns.

Many public company executives have "change-of-control" agreements providing big payouts if they quit or lose their job after a merger. Schulweis' change-of-control agreement would pay him three times his salary and bonus, plus other benefits. Pay experts say three times salary and bonus is a common standard -- but with high executive pay under scrutiny, some of the nation's major companies have recently decreased executives' potential merger payouts.

"My sense is that there's a change taking place," said Tim Ranzetta, CEO of California-based compensation analysis firm Equilar. Huge merger payouts for top CEOs have attracted shareholder ire, and proposed SEC rules would require companies to spell out the value of executives' merger pay packages for investors, he noted. Hewlett-Packard Corp., International Paper Co. and Chevron Corp. are among those that have recently limited potential severance and merger payouts, Ranzetta said.

Baltimore apartment owner Town and Country struck a deal in December to be acquired by the Morgan Stanley joint venture for \$1.3 billion in cash, or \$33.90 per share. But a month later, a bidding war for the trust broke out. A group including California multi-family apartment company Essex Property Trust competed to acquire Town and Country, and a third bidder, Boston's Berkshire Property Advisors, also made an offer. When it was all over, Town and Country had a new deal with the Morgan group -- this time for \$40.20 per share.

The Morgan joint venture does not have employment agreements with any Town and Country executives, according to SEC documents. Town and Country officials have maintained silence since the bidding war started, and president Thomas Brodie said he could not comment when reached by phone this week.

But in December, Schulweis told the Baltimore Sun that he did not expect to have a role with the company after Morgan bought it. Lesley Bogdanow, a spokeswoman for the Morgan group, said details about executive roles "will be announced at the appropriate time."

Schulweis exercised options to buy more than 16,000 shares of Town and Country stock Feb. 15, leaving him with no stock options, SEC documents show.

If Brodie quits or loses his job, he would receive a payment of \$3.25 million -- which includes an

award of three times salary and bonus -- plus another \$4 million from vesting of stock and options. Payments for several other executives include awards of 1.5 to 2 times salary and bonus.

The change-of-control agreements also provide for payments to the executives to offset excise taxes. The cash payments for executives at the real estate investment trust include the value of other benefits, such as:

- The cash value of stock options and restricted stock awarded in the last fiscal year,
- Health and life insurance,
- Automobile leases,
- Reimbursement for some legal and tax-preparation expenses,
- And reimbursement for "reasonable" legal fees to dispute termination-related issues.

Many of those perks are relatively common for change-of-control agreements. In a summer 2005 survey of Fortune 100 companies, Equilar found that three times salary and bonus was the median for change-of-control agreements.

The vast majority of those agreements would also provide health and life benefits for several years, and two-thirds provide payments to offset excise taxes. The Fortune 100 companies, with billions in revenues, are much larger than Town and Country, with \$127 million in rental revenues in 2004.

It's also common for executives' restricted stock and options to immediately vest in a merger, further increasing their potential take-home pay.

Schulweis' severance agreement was struck a year ago, according to SEC documents -- after Town and Country began mulling a buyout, but long before the bidding war. In the merger, Schulweis can have his 215,000 operating partnership units redeemed for selected Town and Country properties, or portions of properties, with a fair market value equal to that of the partnership units. The move, SEC documents show, is "intended to afford Mr. Schulweis the opportunity to defer the gain existing in his common units" of the partnership.

For the Town and Country executives, the change-of-control agreements would kick in if they are terminated without cause or leave for "good reason" in the two years after the merger, SEC documents show. The agreements would also be triggered if an executive chose to leave for any reason in the 30 days after the first anniversary of the merger.

The shareholder meeting to vote on the deal is set for March 9.

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