



## **Commercial Real Estate Purchasers – Be Diligent With Your Due Diligence**

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It is all too easy to toss aside a commercial real estate purchase agreement once signed. However, it is important for the purchaser of commercial real estate purchases to be aware of the terms of the agreement. One of the most critical terms is the deadline by which the purchaser must complete its due diligence for the property.

The due diligence period provides the purchaser time to inspect the property before buying the property. If the purchaser receives unsatisfactory results, the agreement typically allows the purchaser to terminate the agreement and receive its earnest money deposit back from the escrow agent. In order to preserve these rights, however, the purchaser must timely perform its due diligence and notify the seller that it will terminate pursuant to the contract. Due diligence helps the purchaser to evaluate the risks and costs associated with the subject property. Examples of common due diligence items are:

**Title Concerns:** The purchaser should always order a title search and commitment from a reputable title company. This will reveal any title concerns that would affect the purchaser taking good title to the property. These include mortgages, liens, judgments, probate issues, foreclosures, etc. A title search will also surface any recorded easements, maintenance agreements, restrictive covenants, etc. It is essential to thoroughly review all title documents associated with the property. For example, a maintenance agreement may reveal monetary obligations that the purchaser did not anticipate.

**Survey Concerns:** The purchaser should also order a survey as soon as possible after the contract is signed. The survey and the title should be reviewed together to determine any easements, utilities, encroachments, or other matters that need to be addressed.

**Zoning and Land Use:** The purchaser also will want to confirm that the use it intends for the property is permitted under the zoning and land use regulations for the property. An attorney can research the zoning use, or the purchaser can obtain a zoning verification letter from the applicable municipality.

**Environmental Concerns:** It is important to obtain a Phase I environmental assessment. This ensures that there is no environmental concern with the property. Obtaining the Phase I protects the purchaser from liability associated with a prior owner's use of hazardous substances on the property. Even if the property never housed a business with a high likelihood of contamination (e.g. gas station), it is important to obtain this environmental assessment.

**Building Inspections:** If there is a building on the property, the purchaser should also obtain a close inspection of the condition of the building. This inspection should cover the roof, electrical, plumbing, sprinklers, elevators, HVAC, etc.

**Tenants:** If the property has tenants, the purchaser must obtain and review copies of each lease agreement. The purchaser should also request a tenant estoppel letter and rent roll.

This list is not exhaustive, and due diligence will vary depending on the property being acquired and its proposed use. But no matter the property, the importance of due diligence remains steady. While due diligence can be costly, it costs much less than handling issues with the property after it has been purchased.