

COMMERCIAL REAL ESTATE

Top 10 reasons for due diligence

Even if you are a sophisticated and seasoned commercial property owner, each transaction and each property is different and commercial experience alone does not replace the need to thoroughly perform due diligence on each property being purchased.

The following questions should be answered by your due diligence:

Are there any title concerns?

A thorough review of the title commitment and all of the documents referenced therein is critical. Title concerns may include: mortgages, liens, judgments, assessments, probate issues, pending lawsuits or foreclosure suit.

Are there any survey concerns?

Order survey as soon as possible after the contract is signed. Review the survey in conjunction with the title commitment to determine if there are easements, encroachments or other matters that need to be addressed.

Is there insurable access to the property?

Existence of a road is not the same as insurable access. Lack of insurable access may create future problems if you attempt to develop, finance or sell the property.

Do current zoning and land use classifications allow you to use the property as you intend and what are the permitted uses for adjacent properties?

Request a zoning verification letter from the applicable municipality.

Are there any environmental concerns?

Perform a Phase I environmental assessment inspection. Obtain a Phase II environmental assessment inspection depending upon Phase I report. Do not assume because the property has never been used as a gas station, dry cleaner or similar business with higher likelihood of contamination that there are no environmental concerns.

Are there code enforcement liens, expired permits, unsatisfied development obligations or unpaid municipal liens?

Some code enforcement liens may



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attach to all property owned by the seller, called "cross attaching"

Are there any major issues with the building, roof, electrical, plumbing, fire sprinklers, elevator, HVAC, etc?

Obtain inspections to evaluate any repairs that may be required.

Are there tenants?

Review each lease agreement to determine landlord and tenant obligations, if the tenant has a right to purchase or relocate, if tenant has exclusivity, if tenant paid a deposit or advance rents. Obtain tenant estoppel letter. Obtain rent roll.

Are you purchasing a business along with the real property?

If so, the business will have its own laundry list of due diligence matters you must investigate, which are beyond the scope of this article.

Real property related concerns to be considered may include the type of business licenses required.

How will you take title to the property?

Determine before closing to avoid incurring additional costs post-closing, such as additional documentary stamp tax and related costs. Contract should allow buyer to assign the contract.

Bottom Line

This list is not exhaustive but illustrates the depth of due diligence that should be performed before purchasing commercial real property to can fully evaluate the property and the risks and costs involved with the purchase of the property.

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