

DUE DILIGENCE CHECKLIST FOR COMMERCIAL REAL ESTATE

GENERAL PROPERTY INFORMATION

Property Objectives	<ul style="list-style-type: none"> ○ Owner-Occupier? ○ Investment - Acquiring for ROI, cash flow? ○ Developer acquiring to change the character or use of the property to add value, usually short to mid-term exit strategy? ○ Lender Involvement? Revenue for cash flow (if there is revenue) and sufficiency of collateral
Type of Property and Potential Uses	<ul style="list-style-type: none"> ○ Land? ○ Building? ○ Fixtures? ○ Other Improvements? ○ Other Rights (e.g., water rights, oil/mineral/natural gas/timber rights)? ○ Entire fee title interest including all air rights and subterranean rights? ○ Development rights? ○ Intended Use?
Physical Condition and Location of the Property	<ul style="list-style-type: none"> ○ <u>Property Physical Condition</u>: structural systems; mechanical and electrical equipment; roof; curtain wall; fire and life safety systems; elevator maintenance; load limits; parking lot; drainage systems; soil erosion. <i>Any deferred maintenance? Code compliance? Remaining useful life?</i> ○ Roof and mechanical warranties; copies of as-built plans; certificate of occupancy; occupancy placards ○ <u>Access</u>: Roads; curb cuts; circulation/parking/loading; railroads; public transit ○ <u>Utility Service</u>: Utilities to site? Adequate utilities for intended use? Separate metering? ○ Demographics?
Taxes, Land Use and Governmental Impositions	<ul style="list-style-type: none"> ○ <u>Real Estate Taxes and Assessments</u>: Do taxes comport with value? Has assessed value been increased or appealed? Are there special assessments or special service areas? Public user fees? Water and/or sewer charges? ○ <u>Zoning If No Development</u>: Does current use conform or qualify as pre-existing? ○ <u>Zoning If Intend to Develop/Change Use/Improve</u>: Do you need variance, special use, rezoning? Any issues with subdividing? Density? Public use? Height, setback requirements? Design criteria? Landscaping requirements? Sprinkler/Fire life safety? ADA requirements? Adequate parking? Traffic mitigation? Affordable housing restrictions? Historic/landmark district restrictions? Traditional Special Uses (e.g. drive through windows)? ○ <u>Private Land Use Controls</u>: CC&Rs, deed restrictions, ground leases, master leases ○ Americans with Disabilities Act requirements and restrictions ○ Licenses (e.g. liquor, entertainment, outdoor dining) ○ Confirm tax credits (e.g. historic preservation, open space)

FINANCIAL ASPECTS AND CASH FLOW

**Leases and Other
Income Streams**

- Rent Roll
- Lease Review
- Security Deposits?
- Options to Extend Term?
- Options to Purchase?
- Rights of First Refusal or Offer?
- Expansion or Cancellation Clauses?
- Maintenance Obligations?
- Duty of Landlord to provide utilities?
- Real estate tax or CAM escrows?
- Delinquent rent?
- Pre-Paid rent?
- Tenant mix/use controls?
- Tenant exclusives?
- Tenant parking requirements?
- Automatic subordination of Lease to future mortgages?
- Signage requirements?
- Other material Lease terms?
- Fixtures?
- Subleases?
- Seller-Controlled On-Site Businesses: (e.g. sundries store, sale of supplies at self-storage)
- Ancillary Income Sources: (e.g. laundry leases, kiosk licenses, leased parking rights)
- Standard Form of Estoppel Certificate for Leases: Does Purchaser and Lender Approve?

**Costs and Assumed
Liabilities**

- History of Operating Expenses and Capital Expenditures
- Year-to-date and year-end financial statements and operating and capital budgets
- Assumed Service Contracts (if assignable)?
- Schedule of incomplete tenant improvement work?
- Current on-going construction contracts
- Notices to Tenants of Lease violations
- Utility bills and service contracts
- Property Management
- Insurance: Confirm Tenant's Certificates; Confirm Cost and Insurability of Property; Evaluate Deductibles and Self-Insurance

TITLE AND SURVEY	
Title Commitment and Title Clearance Issues	<ul style="list-style-type: none"> ○ Updated Title Commitment/Title Abstract/Pro Forma Title Policy (latest ALTA form) ○ Lender's Policy? ○ <u>Review All Documents of Record</u>: Easements; Covenants running with the land (CC&Rs); Reciprocal Easement Agreements (REAs); Liens or other financial servitudes; Leases; Development or subdivision agreements; Condominium declarations; trust or land trust documents ○ <u>Title Policy Endorsements</u>: e.g. Extended Coverage; ALTA 3.0 or 3.1 Zoning Endorsement (with parking, exclude marketability); ALTA Comprehensive Endorsement 1; Location Endorsement (street address); Access Endorsement (vehicular access to public streets and ways); Contiguity Endorsement (the insured land comprises a single parcel with no gaps or gores); PIN Endorsement (insuring that the identified real estate tax permanent index numbers are the only applicable PIN numbers affecting the collateral and that they relate solely to the real property comprising the collateral); any other applicable endorsements as determined by review of the survey, the commitment or other special circumstances ○ Title Policy Endorsements Required by Lender? (e.g., all of the above plus Creditors Rights (if available); EPA Lien; Usury; etc.) ○ Title insurance needed for Easement rights or other appurtenant rights? ○ UCC, Tax Judgment and Lien Searches Against Seller ○ Estoppel Certificates for any ground lessor or CC&Rs or REAs with lien rights
Survey	<ul style="list-style-type: none"> ○ Updated ALTA/ACSM Survey with all Necessary Table A Options ○ Review survey in conjunction with Title Commitment ○ Confirm size of parcel and building footprint; whether there are any encroachments to or from the property; location and graphic depiction of all easements; setbacks and building lines; building height, number of parking spaces and other information necessary to confirm zoning and title zoning endorsements; utility locations; street access; etc. ○ Confirm survey with parcel and subdivision maps ○ Lender's survey requirements? Lender's Form of Surveyor's Certificate?
ENVIRONMENTAL FACTORS	
Tests and Samplings	<ul style="list-style-type: none"> ○ Phase I Environmental Survey ○ Phase II Study with Soil Borings and Groundwater Sampling ○ Additional Environmental Assessments and/or Remediation Plans ○ Underground Storage Tanks: In Use? Abandoned? Leaking? Remediated? Removed? ○ Asbestos Audit ○ Lead-Based Paint and Radon Testing ○ Indoor Air Quality Testing (LEED or other certification?) ○ Audit of Property's current treatment, storage, disposal and recycling of hazardous materials (NPDES (National Pollutant Discharge Elimination System) Permit? Storm Water Pollution Prevention Plan (SWPPP)?) ○ Environmental Operating Permits ○ Confirm environmental status of adjacent properties ○ Material safety data sheets for materials produced or used at the property

Environmental Risks to Consider	<ul style="list-style-type: none"> ○ CERCLA or RCRA sites ○ Leaking Underground Storage Tanks ○ Wetlands or Natural Water Issues ○ Mold/Indoor Air Quality ○ Endangered species ○ Flood zone issues and need for flood insurance ○ FAA restrictions (if proximate to airport) ○ Noise restrictions
OTHER INTERESTS PURCHASED WITH REAL ESTATE	
Personal Property	<ul style="list-style-type: none"> ○ Schedule of Personal Property Purchased with Real Estate: confirm seller's property being purchased as distinct from tenant's trade fixtures ○ Inspection of all personal property, appliances, specialty maintenance equipment, furniture or trade fixtures as applicable ○ UCC Searches on Personal Property ○ Evidence title of personal property vested in Seller ○ <u>Schedule amount of Purchase Price Allocated to Personal Property</u>: Confirm accurate reflection on all closing documents, including any transfer declarations or application for transfer stamps
Other Interests Purchased with Real Estate	<ul style="list-style-type: none"> ○ Any business interests, sales of goods or employees purchased in connection with real estate: Need bulk sales, sales tax and unemployment tax liability protection ○ Adjacent air or subterranean rights? ○ Property document water rights, oil/mineral/natural gas/timber rights ○ Assignment of Applicable Contracts, Permits and Licenses ○ Franchise Rights? ○ Intellectual Property? ○ Assignment of Management or Employment Agreements? ○ Vehicle registration?
IDENTITY OF THE PARTIES	
Issues Concerning the Seller	<ul style="list-style-type: none"> ○ Seller Entity? (e.g., Individual? Trust? Partnership? Corporation? Limited Liability Company? Other legally existing entity?) ○ Does the Seller validly exist and in good standing? ○ <u>Does the Seller have authority to convey</u>: Board of Director Approvals? Shareholder Approvals? Manager Approvals? Member Approvals? Partner Consents? Other Consents? ○ <i>Who Has Authority to Bind Seller?</i> ○ Qualification to do business in jurisdiction of Property? ○ Federal Tax Withholding? ○ If foreign entity, US Patriot Act compliance? Other applicable special requirements? ○ Are sale proceeds sufficient to pay off all liens?

Issues Concerning the Buyer	<ul style="list-style-type: none"> ○ Purchaser Entity? Has it been organized and in good standing? ○ Articles of Incorporation/Organization and Certificate of Good Standing ○ Operating Agreement/Partnership Agreement/Joint Venture Agreement/Bylaws ○ Authority to own and operate Property, and if applicable, finance acquisition: Manager/Trustee/Board of Director Approvals; Member/Beneficiary/Shareholder/Partner Approval? ○ Resolutions to Purchase (and to borrower, if applicable) ○ Incumbency Certificate ○ Qualification to do business in jurisdiction of the Property? ○ If foreign individual or entity, are any special requirements applicable? US Patriot Act compliance? ○ Bank Secrecy Act/Anti-Money Laundering compliance? ○ Who is authorized to bind the Purchaser/Grantee?
FINANCING THE TRANSACTION	
Business Terms of the Loan	<ul style="list-style-type: none"> ○ <i>Review Written Loan Commitment</i> ○ Confirm general loan business terms (loan amount, interest rate, repayment terms) ○ Confirm collateral: Only real estate? Personal Property? Income and Accounts Receivable? Additional Collateral? ○ First lien or junior lien? Intercreditor Agreement? ○ Single advance loan, multiple advance loan, construction loan? If it is a multiple advance loan, can the principal be re-borrowed once repaid prior to maturity of the loan; making it, in effect, a revolving line of credit? ○ Reserve Requirements? Interest reserve, repair reserve, real estate tax reserve, insurance reserve, environmental remediation reserve, other reserves ○ Require open business accounts with bank? Minimum balances? Are those accounts collateral? ○ Repayment Fees? Repayment Blackout Periods? Yield Maintenance Requirements? "Prepayment Penalties"? ○ Lender equity or profit participation? ○ Loan Commitment Fees? Loan Brokerage Fees? ○ Expense reimbursement obligations to lender? Are they capped? When are they due? ○ <i>Ramifications if Loan does not Close</i>
Financing Assumed by Purchaser	<ul style="list-style-type: none"> ○ Review all notes, mortgages, deeds of trust, security agreements and other loan documents with respect to any existing financing ○ Confirm feasibility of assumption: Consent of Mortgagee? Due on Sale? ○ Fees for assumption and responsibility of party to pay ○ Any modifications of loan by Purchaser? ○ Obtain estoppel certificate from each Lender: Confirm loan terms, outstanding balance, loan in good standing

CLOSING DOCUMENTS FOR PURCHASE AND LOAN

Closing Documents for Purchase

Since documents vary based on type of Property purchased, this list is not exhaustive:

- Deed of Conveyance
- Affidavit of Title
- ALTA Statement
- Marked-Up or Pro-Forma Title Commitment
- Bill of Sale
- State/County/Municipal Transfer Declarations
- Assignment of Leases and Original Copies of Leases
- Certified Rent Roll
- Tenant Estoppel Certificates
- Letters to Tenants
- Assignment of Contracts/Licenses/Permits, etc.
- FIRPTA
- GAP Undertaking
- Bulk Sales or other Tax Stops
- UCC/Tax Lien/Judgment Searches
- Payoff Letter (to include Release of Recorded Mortgage and release of UCC1 & 2 Financing Statements)
- Release of Pending Liens (e.g., management company, real estate broker, ongoing construction)
- Utility Letters and Final Readings
- Purchaser's Organizational Documents (cert. of good standing, articles of incorporation/organization, corporate/company resolutions, incumbency certificate)
- Escrow Instructions
- Closing Statement
- Keys, Security Codes, Key Fabs, etc.

Closing Documents for Loan

Documents vary based on type of Property and type of loan. In addition to those mentioned above:

- Promissory Note
- Personal Guaranties (full, partial, secured, unsecured, payment or collection guaranties?)
- Loan Agreement
- Mortgage (Mortgage, Security Agreement and Fixture Filing)
- Assignment of Rents and Leases
- Security Agreement
- Financing Statement (a "UCC-1" or "Initial Filing")
- Borrower's Organizational Documents to Borrower (resolution to borrower, borrower's certificate, certified copies of above organizational documents)
- Lender's Title Commitment or Pro Forma
- Opinion Letter of Borrower's Counsel
- Tenant's Subordination, Non-Disturbance and Attornment Agreements ("SNDAs")
- Environmental Indemnity
- Certificate of Insurance (naming lender as additional insured)
- Credit Underwriting Documents (e.g. tax returns, property operating statements, etc.)
- Compliance Agreement/Errors and Omissions Agreement