Do your homework

Do your due diligence to maximize the terms of your real estate deal

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When purchasing a commercial property, there is a lot of "homework" that a buyer should do, both before and after signing an agreement of sale. When buyers do preliminary due diligence before signing an agreement of sale, they can avoid costly negotiations for an unsuitable property and negotiate more favorable and appropriate deal terms. Additional due diligence, which is completed during a contingency period after the agreement is signed, can help buyers determine not only if they wish to proceed, but if the deal makes economic sense or if additional modifications to the deal terms are in order.

"The more you know about a property before you commit, and the more you learn about a property before you can't turn back, the better off you are," says Catherine Marriott, a member of Semanoff Ormsby Greenberg & Torchia, LLC.

Smart Business spoke with Marriott about how buyers can protect themselves by doing appropriate due diligence before and after an agreement is signed.

What types of due diligence can a buyer begin before signing a letter of intent or an agreement of sale?

Before making any type of binding commitment, buyers should do some preliminary due diligence to determine if any modifications may be required to conform the space to their needs and if desired financing will be available for the project. Buyers should consult with the local zoning office to determine if their use is permitted under the local zoning classification for the property as well as the procedure for any intended improvements. In addition, many commercial property listings will include some pertinent information regarding lease revenue (if occupied) and operating expenses that will be helpful in analyzing the economic outlook for ownership. This can assist buyers with establishing an offering price.

What further due diligence will a buyer do once an agreement of sale is signed?

Just about every agreement of sale will include a contingency for any due diligence that a buyer will want to complete, including, without limitation, property-related inspections and document review, title and financing. Buyers and their team of professionals will negotiate a reasonable time period, usually anywhere from 30 to 90 days, but sometimes longer with new construction or development, to determine if they are satisfied with any and all aspects of the property and terms of the deal. During that time, buyers should examine everything from the physical condition of the property to its financial viability, including physical and environmental inspections, title examination and survey review, lease and operating expense examination, evaluation of the municipal zoning file and any requirements related to development, construction or improvements, and any other due diligence that may be unique to the property or the deal itself. If financing is desired, buyers will also work with their lender to confirm that suitable financing options are available. These inspections could result in a modification of the financial or other business terms of the deal, or ultimately a termination if there are insurmountable issues.

What if the deal is "as-is?"

Even if a property is listed 'as-is,' it doesn't mean that a buyer can't do inspections or have a right to terminate. Many properties are listed 'as-is' to indicate to a buyer that the seller doesn't wish to negotiate repairs and credits after the business terms have been agreed upon. Buyers should still insist on a contingency period during which they will complete the necessary examinations. Even if they won't seek to renegotiate the deal, they will be protected from losing their deposit or other potentially costly losses associated with terminating an otherwise binding agreement to purchase the property.

Potential buyers of commercial real estate should do some preliminary homework before making any verbal or written commitments. Also, any eventual agreement should provide a buyer with further opportunities to examine any and all aspects of the property and deal terms, allowing a buyer to walk away or make appropriate modifications to the business terms. Prudent buyers will allow legal and real estate professionals to assist with this process, which can help them avoid costly mistakes. ●