

Four Ideas to Maximize Study Period Time in Real Estate Acquisitions

By James E. Goodrich



Purchasers of commercial property often face the challenge of performing all of their due diligence on a property within a limited due diligence period. Sellers often resist any more than a 30 or 45 day study period. Here are four ideas purchasers may want to consider in order to maximize their due diligence time:

1

Order the Title Commitment Before the Contract is Signed.

Although no purchaser wants to spend money on due diligence before the purchase agreement is fully executed, a purchaser might consider ordering the title commitment before the parties execute the purchase agreement. Title commitments are typically relatively inexpensive, since the insurance premium is not included in the basic charge. If the purchaser wants to obtain an ALTA survey, the surveyor will need the title commitment before completing the survey. If a purchaser waits to order a title commitment until the agreement is executed, it may be difficult to obtain both the title commitment and the survey within a short due diligence period. By ordering the commitment a week or two before the agreement is signed, the purchaser may be able to avoid this problem. Alternately, the purchaser could try to negotiate for a longer deadline to raise objections based on the survey.

2

Begin the Study Period When the Seller Delivers Documents to Purchaser.

Contracts often require seller to deliver property documents that are in seller’s possession, such as seller’s title insurance policy, survey, environmental reports, and leases. The seller may take some time after the contract has been fully executed to deliver these documents to purchaser. This could in turn delay the start of the study period if the contract so states. A practical justification exists for such a clause. Seller’s documents may assist purchaser’s investigation. Perhaps purchaser will discover that prior studies only need to be updated.

3

Automatic Extensions for Weekends and Holidays.

Require that any deadline that otherwise would fall on a Saturday, Sunday, or holiday is automatically extended until the next business day. These contractual provisions often will use the term “legal holiday.” This can be ambiguous as the federal government and state and local governments may recognize different holidays. For example, Veterans Day is a federal holiday, but not a holiday observed by the Baltimore City government. To avoid any ambiguity, consider using the term “federal holiday” instead.

4

Make Notices Effective When Sent.

A purchaser should pay close attention to when notices are effective under the agreement. Contracts often give the purchaser the right to terminate the agreement by notice to seller prior to the end of the study period. Purchasers often will perform their due diligence up to the last day of the study period. A purchaser may consider having the notices section provide that notices shall be effective when sent. If notices are effective only when received, a purchaser may need to send its notice terminating the contract one or more days before the technical end of the study period to ensure that seller receives the notice prior to the end of the study period. If notices are effective when sent, purchaser may be able to wait until the last day of the study period before issuing a termination notice. Alternately, allow for notices by e-mail or facsimile.

While study periods are often hectic, these ideas may help a purchaser to maximize its study period days.

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