

8 Steps to Prepare a Commercial Property for Sale Amid COVID-19

Orlando

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As commercial real estate deal flow has significantly decreased due to the novel coronavirus/COVID-19, there is no better time than the present for sellers of commercial real estate to plan in advance for the successful sale of their property.

In real estate transactions, the timely exchange of property due diligence and title documentation is one of the most important, but overlooked, parts of the deal. Many real estate closings are delayed because an issue arises resulting from the buyer's due diligence review of the subject property. The seller can anticipate and avoid many of these delays by anticipating potential issues, and assembling responsive documents and information that may be required by the buyer, or closing agent. Following is a list of items and information that sellers should consider putting together in a diligence package before listing the property for sale:

- Survey. To expedite the buyer's turnaround time to obtain a new survey of the property, oftentimes the seller's existing survey can be updated by the original surveyor more expeditiously than if a new surveyor is engaged. A seller could pre-negotiate a time frame and price with the existing surveyor to further streamline the process.
- Title insurance policy. A current owner's policy of title insurance can reduce the time period for a title examiner to identify title issues in need of attention.
- Environmental reports. Any environmental site assessment reports (e.g., Phase I or Phase II reports) and related environmental studies (e.g., wildlife studies) should be located and reviewed in order to prepare for the buyer's inquiries regarding environmental aspects of the property.
- Leases. A review of any leases on the property will confirm whether there are any rights of first refusal, options to purchase the property, or lease extensions in favor of the tenant so that these issues can be promptly addressed during purchase contract negotiations, and can confirm the amount of the security deposit and rent to prorate on the closing statement.
- Mortgage lenders. If the property is subject to a mortgage, then the seller should locate contact information for the lender (particularly in the case of a private mortgage), and confirm whether there are any prepayment penalties, yield maintenance obligations, or other amounts that must be paid in addition to the payment of principal and interest. Identifying these items in advance can help structure the purchase contract in a way most favorable to the seller.

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- Personal property. A written list of personal property (equipment, furniture, etc.) can help the seller, the buyer, and the closing agent know exactly what property will be transferred at closing.
- Pending litigation. Documents pertaining to any pending litigation involving the property or the seller. Documents related to pending litigation against the property or the seller should be gathered and reviewed by professionals before the property is listed for sale so that the seller can make informed decisions about how to address the litigation in the purchase contract.
- Organizational Documents. Organizational documents for any business entity or trust with an ownership interest in the property and/or seller. Documents evidencing the seller's organizational structure (whether a business entity or trust) will need to be reviewed by the closing agent. The contents of such documents and requirements of the closing agent occasionally surprise the seller (such as the identity and number of persons who may be required to consent to a sale and/or sign closing documents, particularly in the case of a complex organizational structure).

The diligent seller should also retain the services of a real estate lawyer who conducts commercial real estate closings. A lawyer can order a new title search before the property is listed for sale, as well as perform a review of the documents referenced above to assist the seller in negotiating the most favorable purchase contract under the circumstances. Since a title search will eventually need to be ordered, doing this sooner, rather than later, will reveal whether there are any liens or other matters recorded against the property that are unknown to the seller and which, if known, can be appropriately addressed in the purchase contract. These issues could include contractor liens, code enforcement liens, liens in favor of any associations or districts with authority over the property, wild deeds, easements, etc.

Identification and resolution of the foregoing matters before listing commercial property for sale will expedite the closing process, help the seller and their counsel structure a most favorable purchase contract, and result in fewer closing delays, particularly at a time when lenders are tightening their lending standards, commercial real estate valuations are in flux, and the pool of potential buyers may be shrinking.

About Michael A. Sjuggerud

Michael A. Sjuggerud is a partner in the Orlando office of Shutts & Bowen LLP, where he is a member of the Real Estate Practice Group. He is Board Certified in Real Estate Law by The Florida Bar. Michael advises financial institutions, businesses, local governments, and others on transactions involving the sale, purchase, financing, leasing, development, and use of real property. In connection with his real property experience, he regularly works on title matters - including title issuance, title review and title issue resolution with respect to a wide variety of property classes. Michael also advises clients on commercial transactions involving the sale, purchase, financing, and use of personal property.

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