

GUIDE FROM
EJP_{LAW}

COMMERCIAL REAL ESTATE

**NAVIGATING
INITIAL
OBJECTIVES IN
COMMERCIAL
REAL ESTATE
TRANSACTIONS**

A Legal
Perspective



Overview

In the world of commercial real estate, every transaction brings with it a unique set of challenges and opportunities. From the initial handshake to the final contract signing, the process of buying or selling commercial properties involves a complex interplay of legal considerations, financial negotiations, and strategic decision-making. At the start of this intricate dance lies the initial objectives of both the buyer and the seller, each party seeking to protect their interests, mitigate risks, and maximize the value of the deal.

Whether you are a seasoned real estate professional, an investor, or someone new to the commercial real estate arena, this guide aims to shed light on the pivotal initial legal objectives for each side of the deal. We'll delve into the nuances of these initial objectives, providing insights into the legal frameworks, best practices, and negotiation strategies that can help facilitate smoother, more successful transactions. Our aim is to empower you with the knowledge and tools needed to navigate the complex terrain of commercial real estate, ensuring that your interests are protected, and your objectives are met starting with the initial stage.

Purchaser's Objectives in a Commercial Real Estate Transaction

During the initial phase of a commercial real estate transaction, the buyer plays a critical role in setting the foundation for a successful deal. The buyer's objectives are multifaceted, driven by a need to protect their investment, ensure regulatory compliance, and secure their interests. Here, we outline key objectives that the buyer should prioritize during this crucial stage:

1. Identify all Property Included in the Transaction.

One of the primary objectives for the buyer is to comprehensively identify all elements of the property included in the transaction. This extends beyond the physical land and buildings to encompass personal property, equipment, and property agreements such as leases. A meticulous review of these components is essential to understanding the full scope and potential of the investment.

2. Determine Necessary Due Diligence and Arrange for its Performance.

Due diligence is a cornerstone of any commercial real estate transaction. The buyer should identify the specific due diligence requirements applicable to the property and arrange for its performance. This includes investigations into the property's physical condition, environmental status, legal history, and financial records, among others.

3. Identify and Arrange for Necessary Third-Party Approvals.

Navigating the complex web of regulatory approvals is often a critical step. Buyers should identify and address any required third-party approvals, which may include zoning, subdivision, building department, or other governmental authorities. Failure to secure these approvals can lead to significant delays or even the derailment of the transaction.

4. Negotiate the Purchase and Sale Agreement with Adequate Contingencies.

The purchase and sale agreement is the contractual backbone of the transaction. Buyers should negotiate this agreement with precision, ensuring it accounts for adequate contingencies that protect their interests. Provisions related to inspection contingencies, financing contingencies, and other relevant safeguards should be carefully crafted and reviewed for your legal team.

5. Restrict the Seller from Modifying the Property.

To safeguard their investment, buyers should negotiate terms that restrict the seller from making significant modifications to the property or taking actions that could negatively affect the property or the buyer's interest in it. These restrictions help maintain the property's value and integrity.

7. Negotiate Adequate Remedies for Seller Defaults.

If the seller defaults under the purchase and sale agreement, buyers should negotiate and establish adequate remedies. This may include specific performance, damages, or other legal remedies that provide recourse should the seller fail to fulfill their obligations.

By focusing on these initial objectives, buyers can lay a strong foundation for a commercial real estate transaction that is well-prepared, legally sound, and conducive to their ultimate goals. Engaging legal counsel and experienced professionals is often crucial to achieving these objectives effectively and efficiently.

Seller's Objectives in a Commercial Real Estate Transaction

Just as buyers have initial concerns, sellers have their own set of strategic objectives, carefully crafted to protect their interests and maximize the value of their property. During the initial phase of a transaction, sellers should pay close attention to the following key objectives:

1. Ensure that the Property Being Sold is Only for the Physical Property.

Sellers must take steps to ensure that the property being sold encompasses only the actual real property, excluding any personal property or equipment they wish to retain for their own use. Clear delineation of what is included and what is excluded can prevent disputes and streamline the transaction.

2. Allocate Risk to the Purchaser and Minimize Representations and Warranties.

Sellers often seek to allocate risk to the buyer and minimize the extent of representations and warranties they must provide. This can involve negotiating provisions that place responsibility on the buyer to conduct thorough due diligence and accept the property in its existing condition, reducing the seller's exposure to post-closing liabilities.

3. Preserve Operational Freedom During the Contract Period.

To maintain flexibility and operational control, sellers should negotiate terms that allow them to continue operating the property as they wish during the contract period. This objective is crucial, as it ensures that the seller's business interests are not unduly disrupted prior to closing.

4. Minimize Contingencies and Conditions to Closing.

Sellers often aim to streamline the path to closing by minimizing the contingencies and conditions that could delay or jeopardize the transaction. Negotiating for a straightforward and efficient closing process is key to achieving this objective.

5. Limit Post-Closing Liability

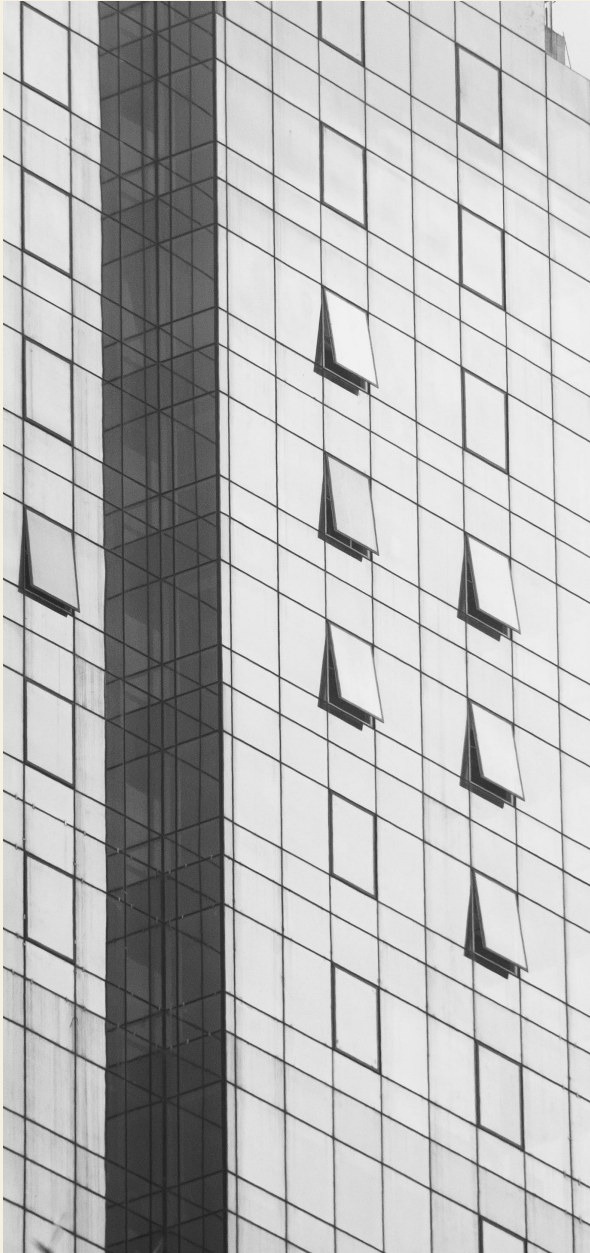
Sellers seek to limit their post-closing liability by negotiating provisions that define the scope and duration of their responsibility for any issues that may arise after the transaction is complete. This limitation helps protect sellers from unforeseen liabilities and disputes.

6. Negotiate Remedies for Purchaser Defaults

If the buyer defaults under the purchase and sale agreement, sellers should negotiate remedies that provide recourse. These remedies may include retaining the purchaser's earnest money deposit, seeking specific performance, or pursuing other legal actions to protect the seller's interests.

By focusing on these objectives, sellers can navigate the complex landscape of commercial real estate transactions with a clear strategy designed to safeguard their investment and operational interests. Engaging legal counsel and experienced professionals is often essential to effectively achieving these objectives and ensuring a successful transaction.

Conclusion



You're now armed with the knowledge of initial objectives to evaluate your next commercial real estate transaction whether you're the buyer or seller. But remember, one of the most important initial steps is to ensure you're working with real estate professionals (brokers, lawyers, and accountants), as they'll help guide you through the unique process for your sale or purchase.

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