

What is Commercial Real Estate?

The term commercial real estate includes businesses including or not including business property, industrial property, plazas, hotels, malls etc. Commercial Real Estate is generally for profit, either from capital gain or rental income or business income or a combination of the three. Although churches, museums and non-profit corporate buildings are also commercial and would raise the same concerns.

What is the difference between commercial and residential real estate?

There can be huge differences between commercial and residential real estate. Commercial real estate transactions can be far more diverse and wide-ranging than selling homes. The risk and potential liability exposure that you face on a commercial real estate deal can be much greater than when you buy a house. Depending on the nature of the business, commercial property may have all kinds of liens and title problems. There may be greater concerns about hazardous materials or zoning issues. And there will always be questions about the suitability of the property's location for your business needs.

In most instances, a buyer does not have the same consumer protections on a commercial real estate deal that may be available when purchasing residential real estate. In Michigan, residential home buyers are given greater protections against abusive lending practices than are business owners. Likewise, there are mandatory disclosures required in residential real estate matters that may or may not be required in a commercial transaction.

Whether you're buying a home or a piece of investment property, there will always be risks involved. Your goal should be to lessen these risks as much as you can. Examples of potential problems that often times lead to legal disputes include:

- * Defects in title
- * Debt service and lender requirements
- * Mechanics liens
- * Zoning and land use problems
- * Market fluctuations
- * Hazardous waste and environmental contamination
- * Issues of due diligence
- * Contract provision disputes

What is due diligence?

Due diligence is a term used for a number of concepts involving either the performance of an investigation of a business or person, or the performance of an act with a certain standard of care. It can be a legal obligation, but the term will more commonly apply to voluntary investigations.

Why is due diligence important?

By conducting proper due diligence, you will be better able to evaluate the strengths and weaknesses of a business and determine whether the business is compatible with the buyer's business, identify issues that need to be addressed to ensure an orderly transition, identify liabilities and obligations of the business so you can avoid assuming unwanted or unexpected risks or business problems.

In analyzing the legal consequences that could flow to a buyer who has not conducted adequate due diligence, it is helpful to consider the two sides of the seller's balance sheet: the "asset" side and the "liabilities" side. Obviously, due diligence also allows you to "know what you're buying," and will enable you to better negotiate the terms of the transaction. In addition, the transition to new ownership may require certain steps to be taken that will ensure you get good title to all of the seller's assets.

The following checklist are areas that need to be verified to help protect you as a buyer before you close on the sale of the business.

- * Does the owner have the right to sell?
- * Is there a landlord?
- * Should I hire an attorney?
- * Do I need to hire a CPA?
- * Are there any pending lawsuits, liens & judgments?
- * What other types of liabilities do I need to know about?
- * Environmental liability
- * Employee benefit plan liability
- * Product liability
- * What about future construction and zoning changes?
- * Does it matter if my state has a bulk sales law?
- * What about equipment and machinery?
- * What else do I need to do to practice due diligence?
- * Check permits and liabilities
- * Review customer list
- * Examine the company's return policy
- * Verify patents and trademarks
- * Review all contracts the company has with suppliers
- * Review personnel and job descriptions
- * Incorporate a non-compete clause and indemnity agreement
- * Confirm insurance

Due Diligence Checklist

- * Financial information
- * Organizational documents
- * Lawsuits, liens & judgments
- * Assets

- *Real estate, permits, licenses
- *Intellectual property
- *Agreements company is part of
- *Insurance policies
- *Customer information
- *Employee information
- *Supplier information
- *Hazardous materials and environmental issues
- *Outstanding security interest in personal property

After the sale?

There are also a number of things that must be done to protect your investment.

For all your commercial real estate law needs, **Goodwin, Gillis & Heck, PLC** can assist you with all aspects of the transaction.

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