

COMMERCIAL REAL ESTATE

5 land mines that can derail a deal

Just like the explosive land mines that lurk beneath the surface, similar “bombs” can derail a commercial real estate deal.

Although bodily injury may be avoided, the fallout created is nonetheless painful. It’s important to recognize where these land mines might be hiding.

So let’s discuss the most common land mines you could encounter when buying or selling a building.

Environmental

Generally, buying a building includes borrowing money. An environmental assessment will be a part of your loan approval. Unseen but lurking under the soil may be environmental contamination.

An examination of current and previous uses of the building along with a review of local and regional conditions is undertaken to determine if any subsurface testing is recommended.

If there is cause for concern, soil borings are collected, tested and a course of action pursued. Based on the findings, your deal may be delayed or completely derailed.



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Entity status

Typically, ownership of commercial real estate is vested in an entity other than an individual. Most common among ownership entities is the limited liability company or LLC.

In order for the LLC to conduct business — i.e. sell real estate — the entity must be active in the state in which the entity operates.

All tax returns must be current and all taxes, if any, paid. The entity must pay its annual filing fees. And a statement of information must be on record with the state.

If any of these boxes are unchecked, the entity may be suspended.

A laborious process to revive the LLC must be undertaken. Searching in Corporation Wiki or the Secretary of State should tell you the status of your entity.

Loan reconveyance

When a loan is paid in full, a reconveyance is necessary. Otherwise, the loan balance will still be recorded against the property.

Owners incorrectly assume once

the loan is paid, they are done. Wrong. Reconveyances are easy to accomplish at the time the loan is satisfied. Not so easy if attempted years later.

Clouds on title

Mechanics liens, tax liens, “lis pendens” — nasty little critters that prevent a seller from deeding property.

Frequently, sellers of commercial real estate are clueless about matters affecting the title of their property.

Before considering selling a building, it’s best to order a preliminary title report and have your title officer review it with you.

Insurance

Your purchase will require insurance. Get your insurance professionals working on binding a policy early in your escrow.

If you wait until you’re at the closing table, the process will screech to a halt.

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