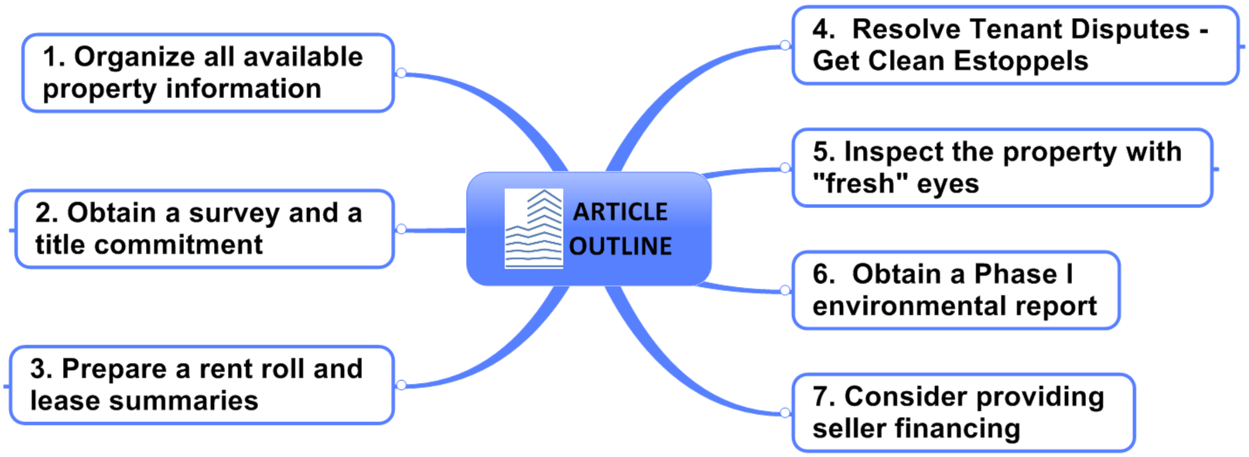
Seven Steps to Expedite the Sale of Commercial Real Estate

Owners selling commercial real estate should consider these seven practical steps to expedite the due diligence period, decrease the negotiated reductions in sales prices, and speed up the eventual closing.



1. Collect and organize all available property information to provide to potential buyers as early as possible.

Gather and organize property information prior to placing the property on the market. Your ability to promptly deliver well organized due diligence materials will shorten the buyer's due diligence period. Information to collect includes: financial information (rent rolls, operating statements, tax bills and other expense information), leases, environmental reports, soil reports, physical inspection reports, termite reports, surveys, plans, permits and warranties.

2. Obtain a survey and title commitment to shorten buyer's due diligence period.

Obtaining and delivering a current title report, together with a copy of the underlying documents, from a financially sound title company may enable seller to negotiate a shorter due diligence and contingency period. Additionally, Seller should consider obtaining an American Land Title Association (ALTA) Survey, which will disclose the encroachment of improvements across property lines or over existing easements. An ALTA Survey is necessary to obtain extended coverage protections that will be required by most buyers, depending on their sophistication and the type of property at issue.

Extended coverage generally provides additional protection against (i) rights or claims of parties in possession of the land not shown in public records, (ii) easements not shown in public records, (iii) conflicts in boundary lines, shortages in the area, encroachments and any facts that correct a survey and inspection of the property would disclose which are not shown in the public records, and (iv) liens for services or labor imposed by law and not shown in the public records. Although buyers bear the expense of a survey in most transactions, if the seller does not have an existing survey in its possession, it may be beneficial for the seller to incur this expense in advance of a sale. Having a survey can save time in the due diligence process, and the cost may be insignificant when compared to the sales price.

3. Prepare a rent roll and lease summaries.

For properties with numerous tenants, sellers should consider preparing a rent roll and lease summaries for all tenants.

Lease summaries should contain a recitation of (i) operative lease documents, (ii) legal name of tenant and any guarantors, (iii) material deviations from the property's standard lease form if one exists, and (iv) material lease terms, such as term commencement and expiration, usable and rentable square footage, rent, free rent (if any), rent escalations, percentage rent (if any), expense pass-through obligations, security deposits, options to extend and/or terminate the lease, options to expand, options/rights of first refusal to purchase the property, permitted uses and exclusive uses, signage rights, and parking rights. The purchase agreement should provide that the lease summaries do not constitute representations and warranties of the seller, but are provided for the convenience of the buyer.

4. Resolve any outstanding disputes with tenants.

Resolving outstanding disputes is important so you can get "clean" estoppel certificates from the tenants, which evidence that seller has performed all obligations under the lease and that no outstanding disputes exist with the tenants.

5. Conduct a pre-sale inspection of the property with "fresh" eyes.

Do a pre-sale inspection to determine if any defects require repair or if portions of the property need sprucing up before sale.

6. Hire a competent and reputable environmental engineer to prepare a Phase I environmental report. This can save up to a month in the due diligence process.

If the Phase I report is clean, the buyer may agree to waive any further environmental investigation and testing. In considering this approach, be aware that the environmental engineer chosen by the seller may not be on the approved list of the buyer's lender. If this is the case, then the buyer's lender may require a second Phase I report to be conducted by an approved environmental engineer at the buyer's expense. Notwithstanding the possibility of this redundancy, there may still be benefits to a seller who would be able to market the property with a clean Phase I report.

If the property has environmental problems, it may be more advantageous for the seller to remediate the contamination before selling the property, versus selling the property subject to environmental problems. Generally, a seller can remediate the property for less than the reduction in price a buyer will demand to cover the estimated and uncertain costs of remediation. By performing the remediation, the seller can be sure that the remediation has been properly completed, and eliminate further liability after the property is sold.

Alternatively, seller can obtain bids for the remediation, which can serve as the basis for negotiating a price reduction to cover the cost of remediation for contamination that is to remain in place after the closing.

7. Consider providing seller financing.

Depending on the existing loan(s) encumbering the property and the seller's financial position, seller should consider offering seller financing. If there is a lack of available financing from traditional sources, such as banks, savings and loans, and insurance companies, seller financing offers a viable alternative solution. It also offers certain advantages that may make the property attractive to a larger pool of buyers. For example, seller financing may be at a lower interest rate than traditional financing sources (attractive to buyers, yet still at a higher rate that seller may be able to obtain in an otherwise secure investment). Additionally, sellers usually do not charge any points, origination fees or other similar costs customarily charged by institutional lenders. Finally, the seller may be able to treat the payments under installment sales tax rules, allowing the seller to defer a portion of gains over the term of the note.