

Friday, November 5, 2021
12:00 PM – 1:15 PM

Seminar 20

Scoring a Touchdown for Your Client on the Toughest Purchase-and-Sale Provisions: Fight for Every Yard or Fight to Make a Deal?

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- I. Negotiating Specific Purchase and Sale Agreement Provisions in purchasing a Shopping Center
 - A. Parties to the PSA
 - 1. Purchaser – or assigns
 - 2. Seller - SPE
 - 3. Title Company/Escrow Agent
 - 4. 1031 Parties
 - B. Material Adverse Conditions clauses
 - 1. Post Due Diligence Issues
 - 2. COVID applications/discussion
 - C. Due Diligence
 - 1. AS IS- WHERE IS language
 - 2. Release of Seller language
 - 3. Leasing Activities Before and After Hard Money
 - D. Prorations
 - 1. Rent, Additional Rent and Percentage Rent
 - 2. Major Tenants versus Small Shop Space
 - 3. Tax Prorations
 - 4. Other Revenue sources (Marketing funds, advertising accounts)
 - 5. Leasing Commissions, Tenant Improvement Allowances, Reimbursements and Concessions
 - 6. Closing Escrows and Holdbacks
 - 7. NNN versus Absolute Net, Sale Leasebacks
 - 8. Post-Closing True Up and Cooperation for CAM reconciliation
 - 9. Master Lease for Rent Shortages
 - E. Representations and Warranties
 - 1. Items to be Represented
 - 2. Seller's Knowledge and other qualifications of Representations/Imputed Knowledge on Buyer's disclosures contained in Due Diligence Materials
 - 3. Survival
 - 4. Baskets/Caps on liability (exclusions from liability)
 - 5. Security to back up Representations and Warranties
 - F. Estoppels and SNDA's (Percentages, Tenant Forms, Knowledge and other Qualifiers, Conditions to Close
 - 1. Major Tenants
 - 2. Small Shop tenants
 - 3. Lender issues

4. REA Estoppels and Retail Condominium Association REA's (Assignment of Rights as Approving Party Under REA)
 5. Seller Estoppels
- G. Conditions to Close
1. Due Diligence items
 2. Financing
 3. Casualty/Condemnation
 4. Governmental Notices/Issues
 5. COVID
 6. Bring Down of Representations
 7. Condition of Title
 8. Third Party Deliveries (Consents/Estoppels) and Property Specific Conditions
- H. Miscellaneous Items
1. Successor Liability

II. CONCLUSION – Q&A