

SIMULATION 2

Commercial VS. Residential

- Return on Investment vs. Use/Enjoyment
- You must know how the selling and buying of commercial properties differs from that of residential properties to ensure they can accurately identify and fulfill all your obligations

DAY 1 – Commercial Property Type (OFFICE)

How do you think your role as a commercial salesperson is different than your role as a residential salesperson?

- Timeframe; typically, much longer transaction periods for commercial over residential
- Commercial transactions are usually much more complex than residential transaction
- Zoning requirements will play a larger factor in best/highest use of property
- More knowledge is required by the salesperson with regards to tenants/owners
- Higher level of emotion in residential transactions vs commercial transactions
- More business hours with commercial (9-5) vs residential (evenings/weekends)
- Commercial can involve non-disclosure/confidentiality agreements
- Commercial buyers are typically more experienced in real estate transactions
- Commercial ownership often involves corporations rather than individual ownership
- Residential resale typically does not have to pay HST
- HST is always payable on commercial transactions

Commercial transactions may have the following traits:

- There are more forms of ownership (e.g., corporations vs individual); corporate buyer, investment buyer
- Decisions are more based on monetary considerations (non-emotional)
- Proforma (future projections and expectations which includes financials)
- Long-term leases
- Larger and/or multiple deposits
- More conditions for due diligence
- Conditional time periods are much longer
- More third-party involvement (including lawyers, ESA, accountants)
- More environmental considerations
- Forms... 500 & other Commercial forms; not residential forms
- Every transaction is unique
- Transactions tend to involve higher dollar amounts
- The use of confidentiality agreements
- More niche-based, even within the property types

Salesperson's role:

- The hours working with a client tend to be more 9-5, although the salesperson's research will continue outside of these hours
- Commercial transactions tend to be more complex due to the intensive research and due diligence required
- Salespersons need to learn more than just the fundamentals
- There is more intensive training involved.

APS Commercial vs. APS Residential

- FORM 100 – For HST - (included in/in addition too)
- FORM 500 – For HST - (no option for included in/**always in addition to**)
- FORM 500 (Extra line is for Name of Corporation/Company, if none exist, line is left blank), seal will go under signing officer

- How does the agreement of purchase and sale for a commercial property differ from an agreement for a residential property (look at HST section 7 as well as signature section)?

- Most of the commercial properties are subject to HST, if the sale is not subject to HST then seller agrees to clarify on or before the closing. Any HST on Chattels is not included in the purchase price.
- Signature – on commercial side, an authorized person would sign, a corporation seal would be there and a statement that says “I’ve an authority to bind the corporation.”

Office Buyer Storyline Beginning Gathering and Verifying Information for Office Properties

Your objectives in this activity are:

- Determine the requirements of the buyer for the purchase
Size, Time frames, Location, Amenities, Financial Capacity - budget, Type of property, intended use of the property, Stand alone or Condo type, zoning type,
- Gather all the relevant information required for the property
- Access the appropriate sources to verify the information

Information to Verify/Gather for Office Properties

- Zoning, added value components
- Parking
- Proximity to highways
- Survey
- Building accessibility
- Visibility
- Lot dimensions
- Potential for improvements
- Short/Long term investment
- Determining price range for purchase
- **Why do we verify information we have gathered?**
- To determine material facts and protect and promote the best interests of the buyer to comply with REBBA

Where would you find these information?

GeoWarehouse, Municipality, Economic Development Departments, from real estate boards and associations.

What information would you, as a salesperson, be required to gather and/or verify to perform due diligence?

****Conditions to be considered for agreement of purchase or sale of Office Property****

(RECO requirements, not real-world scenario)

Points of discussion during the class debrief:

Difference between commercial / residential property, clients’ needs, how to verify information, how to access the information

Clauses to Include for an Office Property

Scenario Background Information

This buyer has never bought an office property before and you as a salesperson are helping them do so. They have only bought multi-family properties. You need to be aware of any issues regarding office properties that may be relevant to the buyer.

Identify issues that may require clauses – from the following list.

- Zoning – **included** – determine best use/legal conforming use
- Financing – **included** – determines financial viability and provides assurance
- Energy Efficiency – **included** – it may be included or not, it depends on the buyer's choice. To determine monthly/operating costs
- Parking – **included** – does available parking meet zoning requirements
- Building Condition – **included** - structural integrity can be verified, deficiencies noted
- Telecommunication System – **included** – verify ample building support for telecom
- Building Permit – **included** – yes, provides verification that all work orders are closed
- Severance – **excluded** – not looking to divide land, do not need to include
- Environmental Issue – **include** – could identify past environmental issue/area of concern
- Tarion Warranty – **excluded** – Tarion does not apply to commercial, builder may warrant
- Demographics – **excluded** – not needed as demographics apply to retail, not office
- Service Contracts – **included** – maintenance, snow removal, property management
- Leases – **included** – covers current leases, provides relevant tenant history/turnover
- Financials – **included** – outlines cost/income, provides full financial picture of property
- Legal Advice – **included** – always promote and protect best interests with lawyer

- When identifying issues –
 - Consider...
 - Property details
 - Surroundings area
 - Buyers concerns
 - Protect buyers' best interests
 - Who is to do it?
 - Who is to pay for it?
 - What is to be done?
 - Within what time limit?
 - What is to happen in the evening it is not done?
 - That it may be waived
 - Refer to third party professional.

- Your objectives during this activity are to be able to write a condition:
 - That addresses the buyer's specific requirements
 - That promotes and protects the best interests of the buyer
 - That is accurate and complete
 - By using the "W" steps for reference

My Custom Condition:

During your conversation with the buyer, they mention they'd like to give the property more exposure by erecting a pylon sign. This requires you to create a custom clause (condition precedent) to address the buyer's concern. You will need to write a custom condition to determine if a pylon sign can be erected on the property in the desired location and size.

My condition

This offer is conditional upon the buyer determining that the buyer, at buyer's own expense, can be allowed to erect a pylon sign of the size and in a location suitable to the buyer, on the subject property. Unless the buyer gives written notice to the seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 5.00 pm on May 15th, 2021 that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfillment of this condition. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

REBBA Compliant Condition: A Proper one..! ☺

This offer is conditional upon **the Buyer determining, at the Buyer's own expense, that a pylon sign may be erected on the subject property, of a size and in a location that is suitable to the Buyer at their sole and absolute discretion.** Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto **not later than 5:00 PM on the 30th day of May 2020**, that this condition is fulfilled, **this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction.** The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfillment of this condition. **This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.**

My condition was almost close to the REBBA compliant condition. Some words needed to be replaced.

LEASEHOLD IMPROVEMENTS:

Who pays for leasehold improvements?

- Landlord provides tenant with allowance or sometimes the tenant or buyer pays in full or part for that.

Who owns leasehold improvements?

- Landlord owns all leasehold improvements (not trade fixtures)

What happens to them after leasehold expires?

- Ownership is with landlord; landlord may require tenant to revert any improvement back to original state of property

Transition from Office to Retail Properties

Convenience centers / Strip Plaza, Neighbourhood Centers, Community Centers, Power Centers, Lifestyle Centers, Outlet Malls, Super Centers, Big Box, Freestanding Retail (gas station convenience store)

Areas Performed Well

Understood commercial v/s residential differences, role of salesperson in commercial transaction. Various clauses to be used during commercial offer.

Areas for Improvement – Writing custom clauses, some leasehold improvements' ownership after lease expired.

DAY 2 – Commercial Property Type (Retail)

Preview of the Day's Activities • Gathering and Verifying Information for Retail Properties • Identify Clauses for Agreement of Purchase and Sale for Retail Properties • Write a Custom Condition for a Retail Property • Explaining Clauses to a Retail Buyer • Determining the Value of a Retail Property • Gathering and Verifying Information for Industrial Properties • Identify Clauses for Agreement of Purchase and Sale for Industrial Properties

Gathering and Verifying Information for Retail Properties

The buyer is interested in purchasing a retail plaza. As a salesperson, for due diligence purposes, you need to ensure that the buyer consults a third-party professional or completes an environmental site assessment before they plan to give an offer. You will need to gather and/or verify much more information to perform a complete due diligence for the buyer.

This activity will focus on the importance of gathering and/or verifying the information while performing due diligence for retail properties. Salesperson: Your objectives in this activity are: • Determine the requirements of the buyer for the purchase • Gather all the relevant information required for the property • Access the appropriate sources to verify the information

Gathering and Verifying Information for a Retail Property

Why does the following information matter?

- **Competition**
- **Range**
- **Clustering**
- **Threshold**
- **Traffic Counts**
- **Transit**
- **New Development**

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- Types of retail spaces commonly found in the marketplace:
 - Neighborhood Shopping Centre
 - Community Centre
 - Outlet Centre
 - Power Centre
 - Big Box Retailer
 - Regional Centre
 - Lifestyle Centre
 - Freestanding Retail (gas station convenience store)

What questions would you ask client about needs for retail properties?

- Budget/price point
- Return on investment, what are their investment goals
- Location, accessibility, amenities
- Timeframe
- Property management/maintenance

What kind of information should we collect for due diligence?

- Demographics
- Zoning
- Marketing
- Location
- Accessibility
- Improvements
- Competition nearby

Why is this information important?

- Competition – avoid similar retailers or competing businesses within the vicinity
- Range – distance clients or customers are willing to travel for goods or services
- Clustering – grouping together of complementary businesses
- Threshold – Determining the demographics of population and economic considerations
- Traffic Counts – Estimated number of people passing by whether driving or walking
- Transit – Property is accessible by multiple modes of transportation (car/bus/train)
- New Development/Redevelopment – could affect viability of retail plaza in the future

Where would we find this information?

- Geowarehouse
- Economic Development Offices
- Municipality (Zoning/Planning/Public Records)
- Real Estate Boards

Salespersons Responsibilities:

- Determine the requirements of the buyer
- Gather all relevant information
- Know where and how to gather information from various sources

Based on the buyer's requirements, you shortlist two retail plazas for your buyer. Details about the two properties you shortlisted:

Plaza 1 tenant mix

- Variety store • Restaurant • Dry cleaner with in-house cleaning • Hair/nail salon • Real estate brokerage • Clothing store

Plaza 2 tenant mix

- Shoe store • Jewelry store • Dollar store • Music store • Dry cleaning depot • Vacant unit

What potential issues might you be concerned about while performing due diligence for the two properties?

Plaza 1

- Plaza 1 – Environmental issue with the in-house dry cleaning (Phase 1)
- Plaza 1 – Possible cleanup required
- Plaza 1 – Possible financing issue due to environmental concerns
- Plaza 1 - Tenant mix / safety systems

Plaza 2

- Plaza 2 – Has a dry cleaner but does not do on-site cleaning. Therefore, there would be no risk of environmental contamination
- Plaza 2 – Must find a suitable tenant for the vacant unit, which could take up to six months or longer
- Plaza 2 - Tenant mix / security

Identify Clauses for Agreement of Purchase and Sale for Retail Properties

Scenario Background Information Now, the buyer feels the property is underutilized and would like to investigate adding another unit. You begin the offer plan by determining details such as deposit, completion, and title search dates along with offer math and by selecting clauses and looking more deeply at the Agreement of Purchase and Sale for the retail property. You gather all the relevant information for the buyer and review it with them.

Clauses to Include in Retail Offer Plan

- Zoning – **include** – determine best use/verifies legal conforming use
- Financing – **include** – determines financial viability and provides assurance
- Parking – **include** – does available parking meet zoning requirements
- Building Condition Inspection– **include** - structural integrity can be verified, deficiencies noted
- Building Permit – **included** – yes, provides verification that all work orders are closed
- Environmental Issue – **include** – could identify past environmental issue/area of concern
- Service Contracts - **include** – maintenance, snow removal, property management
- Leases – **include** – covers current leases, provides relevant tenant history/turnover
- Financials Statements – **include** – outlines income/expenses, provides full financial picture
- Legal Advice – **include** – always promote and protect best interests with lawyer
- Insurance – **include** – cost does not exceed what client can afford
- Inspect Systems – **include** – Check HVAC, life safety systems, sprinklers et cetera
- Warranty Equipment – **include** – warranty on systems and equipment
- Custom Condition – **include** – Ensure additional unit can be built as desired if there is enough empty space available on the lot.

- Energy Efficiency – **included** – it may be included or not, it depends on the buyer's choice. To determine monthly/operating costs
- Telecommunication System – **included** – verify ample building support for telecom

My Custom Condition: (Additional Unit): This offer is conditional upon **the buyer determining, at the buyer's own expense and satisfactory in the Buyer's sole and absolute discretion, that an additional unit measuring 2,000 sq. ft. can be added to the north side of the existing building on the subject property.** Unless the buyer gives notice in writing to the seller personally or in accordance with any other provisions for the delivery of notice in this agreement of purchase and sale or any schedule there **to not later than 5:00 PM on the 30th day of May 2021**, that this condition is fulfilled, **this offer shall be null and void and the deposit shall be returned to the buyer in full without deduction.** The seller agrees to cooperate in providing access to the property if necessary, for any surveys or gathering of information for the fulfillment of this condition. **This condition is included for the benefit of the buyer and may be waived at the buyer's sole option by notice in writing to the seller as aforesaid within the time period stated herein.**

REBBA Compliant Condition: This Offer is conditional upon the Buyer, at the Buyer's expense, and satisfactory in the Buyer's sole and absolute discretion, determining that an additional 2,000 sq. ft. can be added to the north side of the existing building. Unless the Buyer gives notice in writing to the Seller in accordance with the provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto **not later than 5:00 p.m. on the 30th day of June 2020** that this condition is fulfilled, **this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction.** This condition is included for the benefit of the Buyer and **may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.**

With a Condition Precedent there is a waiver provision included

With Condition Subsequent, there is no waiver provision included and if condition is not completed by expiry of the condition period, the condition is deemed waived

When choosing between precedent and condition subsequent, which shows more commitment by the buyer?

- Subsequent has no waiver, shows more good faith and is binding if nothing is done

Explaining Clauses to a Retail Buyer Role Play Introduction

Explain the details of a condition included in Schedule A and confirm the buyer's understanding.

Explained to the buyer that:

- The offer is conditional upon:
 - o Inspecting and approving the property and improvements
 - o Review of the leases
- If they are not satisfied with any of the inspections:
 - o They may terminate the agreement by written notice within the time period
- If they do not terminate the agreement within the time period:
 - o The offer shall remain valid and binding
- The seller agrees to supply:
 - o All the leases and/or offers to lease

- o A set of “as built” building plans
- o All documentation must be supplied by specified time
- The seller will allow the buyer, and their agents and employees access to inspect the property
- The seller authorizes government agencies to release information and documents on file to the buyer
- Any searches that are done will be at the buyer’s expense
- If the property is affected in any way due to the inspections, the buyer will be required to restore the property to its original state
- If the buyer is not satisfied with the results of the inspection, they will notify the seller, who may decide to fix the issues
- If the seller decides not to fix the issues, the buyer will have the option to terminate the agreement within the time.

Remember to:

- Ensure all the details of the pre-printed and selected clauses have been fully explained to the buyers
- Confirm that the buyers fully understand all explanations prior to the buyer signing the offer

What financial information do we need to determine value of a retail property?

- Income and Expenses (rent, other income)
- Expenses (property taxes, maintenance, service contracts)
- Assets (building value, land value, equipment)
- Liabilities (mortgage, commitment to franchise agreements, accrued taxes)

Key points to remember before you proceed further:

- When you are doing per sq. ft. calculations, it will be an annualized number
- TMI stands for taxes, maintenance, and insurance, which are expenses that the landlord will try to recover as additional rent and is not considered income for the building.
- We are looking for a potential rental income calculation. Therefore, include any vacant units while doing calculations.

TERM	FORMULA
Cash Flow	Net Operating Income – Gross expenses
Net Operating Income	Gross Operating Income – Annual Debt Service
NOI (Net Operating Income)	Capitalization Rate X Value of Property
Capitalization Rate	Net Operating Income / Value of Property
Potential Rental Income	Number of Tenants X Annual Rent Per Tenant
Value	Net Operating Income / Capitalization Rate
Cost Approach	Land Value + Soft Cost + Hard Cost

When determining value of a retail property it is important to remember:

- **Price per Square Foot is always annualized**
- **Do not include TMI in income as they are recoverable**
- **Always use market rent (fully occupied) vs vacancies**
- **Keep eye out for additional income**

“What steps could you take to become more comfortable determining the value of a retail property?”

Access and verify the financial information. Make sure to read and understand the information. Double check the numbers. Use proper formulas to calculate the number to come to proper value.

- Zoning – **included** – determine best use/legal conforming use
- Financing – **included** – determines financial viability and provides assurance
- Energy Efficiency – **included** – determine monthly/operating costs
- Parking – **included** – does available parking meet zoning requirements
- Building Condition – **included** - structural integrity can be verified, deficiencies noted
- Building Permit – **included** – yes, provides verification that all work orders are closed
- Environmental Issue – **include** – could identify past environmental issue/area of concern
- Service Contracts – **included** – maintenance, snow removal, property management
- Financials – **included** – outlines cost/income, provides full financial picture of property
- Legal Advice – **included** – always promote and protect best interests with lawyer
- Custom condition – **included** – anything to do with adding accessory building (storage)
- Insurance – **include** – cost does not exceed what client can afford
- Inspect Systems – **include** – Check HVAC, life safety systems, sprinklers et cetera
- Warranty Equipment – **include** – warranty on systems and equipment

Introduction to Industrial Properties

What are the three types of industrial properties?

- General purpose - can be easily converted e.g. warehouse
- Single Purpose – cannot be converted e.g. refinery,
- Special purpose – limited options to convert e.g. distribution facility, school

Scenario Background Information: The buyer wants to expand and purchase a larger industrial property with multiple loading docks, clear height of 30 ft., 20,000 square feet of space, at least 10% office space, ample parking, a fenced perimeter, and a heated warehouse, with the requirement of a transformer to increase voltage, and an adequate sprinkler system. In addition to all these requirements, the buyer would also like to have a separate building for the storage of containers/cylinders of Puron gas. For the main property the buyer is looking at, a Phase 1 environmental assessment was done five years ago and there was no evidence that a Phase 2 assessment was required. The business next door at the time was an automotive repair shop (which relocated four years ago).

Gathering and Verifying Information for Industrial Properties Salesperson:

Your objectives in this activity are:

- Determine the requirements of the buyer for the purchase
 - multiple loading docks, clear height of 30 ft., 20,000 square feet of space, at least 10% office space, ample parking, a fenced perimeter, and a heated warehouse, with the requirement of a transformer to increase voltage, and an adequate sprinkler system.
 - In addition to all these requirements, the buyer would also like to have a separate building for the storage of containers/cylinders of Puron gas• Gather all the relevant information required for the property
 - Location, Time Frame, Financial Capacity, Accessibility, Amenities, Transportation Facilities, Security, Size of building and lot,

- Zoning – to determine if a separate building for storage would be allowed to be built on the property
- Environmental – to investigate if there could be contamination from the property next door
- Loading docks/truck access – to determine if it meets the buyer's requirements
- Proximity to highway, airport, rail – to determine the ease of access for transport and delivery purposes
- Parking – to determine if there is ample area for employees' vehicles as well as truck traffic

Identify Clauses for Agreement of Purchase and Sale for Industrial Properties

Clauses/Conditions to be included when purchasing Industrial property:

- Zoning – **included** – determine best use/legal conforming use
- Financing – **included** – determines financial viability and provides assurance
- Energy Efficiency – **included** – determine monthly/operating costs
- Parking – **included** – does available parking meet zoning requirements
- Building Condition Inspection – **included** - structural integrity can be verified, deficiencies noted
 - o (Under building inspection -Requirement of a transformer – **included** - to verify ample voltage to be delivered to meet the needs.)
 - o Telecommunication System – **included** – verify ample building support for telecom
- Building Permit – **included** – yes, provides verification that all work orders are closed
- Environmental Issue – **include** – could identify past environmental issue/area of concern
- Service Contracts – **included** – maintenance, snow removal, property management
- Legal Advice – **included** – always promote and protect best interests with lawyer
- Custom condition – **included** – anything to do with adding accessory building (storage)
- Insurance – **include** – cost does not exceed what client can afford
- Inspect Systems – **include** – Check HVAC, life safety systems, sprinklers et cetera
- Warranty Equipment – **include** – warranty on systems and equipment

- **Day 2 & 3 – Commercial Properties (Industrial)**

General Purpose, Single Purpose or Special Purpose

- General Purpose – can be easily converted
- Single Purpose – cannot be converted
- Special Purpose – limited options for conversions

What information would you, as a salesperson, be required to gather and/or verify to perform due diligence?

- Clients wants vs. needs, budget and timeframe
- Bay width, bay height, clear height, floor load, dock access
- Environmental site assessment
- Zoning
- Building Permits
- Proximity to transit (air, sea, road)
- Parking/Accessibility

Where would you find this information?

- Municipality (Planning, Zoning)
- Economic Development Office
- Ministry of the Environment / Environment Agencies, Third party pros.
- Geowarehouse
- Real Estate Boards/Associations

What do you see as different for gathering and/or verifying information for an industrial property?

- Ceiling height, bay depth, loading docks
- Proximity to transportation
- Buyers safety needs

Day 3 – Commercial Properties – Industrial Property

Elevator Pitch Example:

My name is Saurabh Patel

For last 6 years as a Real Estate Broker, I help on an average 8 to 10 people a month with their real estate need. I'm working with ABC Realty in the Greater Toronto Area.

There are many people like you, who are actively planning/working to buy or sale some sort of real estate. But worried about how to handle complicated, legal and other multi-level challenges coming thru in the process.

Helping gentleman like you in real estate by using my expertise to save your valuable time and your hard earn money and prefer to get results which are most suitable and favorable to your needs is part of my profession. Let me know how my services can be helpful to you. Here's my business card. You can contact me anytime for your real estate needs.

My Custom Condition:

This offer is conditional upon the Buyer, at Buyer's own expense and satisfactory in the Buyer's sole and absolute discretion, determining that an additional storage unit measuring floor area no less than 2500 sq. ft., for the purpose of storing containers/cylinders of Puron Refrigerant/Gas, can be added separated from the existing building on the subject property. Unless the Buyer gives notice in writing delivered to the seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 5:00 p.m. on the 30th day of May 2021, that this condition is fulfilled, this offer shall be null, and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfilment of this condition. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

REBBA Compliant Condition: This Offer is conditional upon the Buyer, at the Buyer's expense, being satisfied that an outdoor storage facility may be built having a gross floor area of 2,500 square feet for the purpose of storing containers/cylinders of Puron refrigerant. This condition must be satisfactory to the Buyer at their sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 6:00 p.m. on the 5th day of December 2020, that this condition is fulfilled, this offer shall be null, and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfilment of this condition. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

Environmental Site Analysis:

Phase 1 – Visual inspection and historical investigation of property and surrounding area

Phase 2 – Determines the extent of contamination through soil samples, ground water

Phase 3 – Remediation process, contamination is removed, clean soil is brought in to replace

Explaining Clauses to an Industrial Buyer

ROLE PLAY

Building Report – Floor Load Condition This Offer is conditional upon the confirmation by a structural engineer that the floor load capacity will support restaurant equipment of up to 5 metric tons, at the Buyer's own expense, and obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than 5 p.m. on the (15th) day September, 2020 that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to cooperate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period herein stated.

Sprinkler Systems Condition This Offer is conditional upon the confirmation by an commercial insurance provider that the existing sprinkler system is capable of extinguishing a fire in a warehouse which will contain the storage of restaurant equipment and related paper products, at the Buyer's own expense, and obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than 5 p.m. on the 15th day of September, 2020 that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to cooperate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period herein stated.

Structural Engineering – Crane Condition This Offer is conditional upon the confirmation by a structural engineer that a 5-ton bridge crane can be installed in the warehouse, at the Buyer's own expense, and obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than 5 p.m. on the 15th day of September, 2020 that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to cooperate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period herein stated.

Explained Clauses in Schedule A:

• **Explained the following:**

- o That conditions were selected to promote and protect the buyer's best interests
- o That these conditions provide the opportunity for the buyer to do their due diligence prior to the offer becoming firm and binding

• **Explained the following conditions:**

- o Building Report – Floor Load – Allows for confirmation by a structural engineer that the floor load capacity will support restaurant equipment of up to five metric tons
- o Sprinkler Systems – Allows for confirmation by a commercial insurance provider that the existing sprinkler system can extinguish a fire in a warehouse which will contain the storage of restaurant equipment and related paper products
- o Structural Engineering – Crane – Allows for confirmation by a structural engineer that a five-ton bridge crane can be installed in the warehouse

• **Explained that in all conditions:**

o The buyer is allowed a specific period of time to give the seller written notice that conditions have been fulfilled or waived

o If the buyer does not send written notice to the seller within the time period, the offer will become null and void

o That the conditions are inserted for the buyer's benefit and may be waived by the buyer regardless of whether the conditions have been fulfilled

o The Seller agrees to provide access to the property for the purpose of the inspections

Cost approach is most effective for industrial properties (property is used rather than leased out), **more objective than subjective**

HARD COSTS – Structural, mechanical, electrical, site preparation, landscaping, excavation, tangible, easier to estimate, the preparation of the property to get it up to functionality

SOFT COSTS - not considered direct construction costs, includes everything from architectural and engineering fees, to legal fees, pre- and post-construction expenses, permits and taxes, insurance, etc.

****Industrial properties use hard and soft costs for the building only, do not include total land calculation that is for farming/agricultural****

REAL WORLD – On the job, when using a waiver, always use the other form that goes with the waiver (acknowledgement Re: Conditions), never let a client waive without it!

Industrial Buyer Storyline Conclusion Let's wrap up with the industrial buyer. As it turns out, the buyer's condition for separate storage cannot be satisfied due to zoning restrictions. Since the buyer still wants to proceed with the transaction with a price reduction, you prepare an amendment with a new price, which the buyer signs, and the seller agrees and signs the amendment. The buyer then waives the condition on the outdoor storage and completes a notice of fulfillment for all other conditions and the agreement becomes firm and binding.

- Amendment for price reducing, send to seller, seller agrees and sign it back to buyer, buyer make waiver and send to seller, seller accepts it and bind the APS

How is an industrial condominium different from an industrial freehold building?

How does a real estate transaction for an industrial condominium differ from a transaction involving an industrial freehold building?

See answers bellow:

Condo vs Freehold Industrial

Condominium:

- You own your unit and a share of the common elements with other unit owners
- There are rules and regulations that each unit owner must follow (e.g., restrictive covenants)
- Must pay share of maintenance fees for the common elements

Freehold:

- You own the building and land
- There are no common elements
- Property owners are responsible for their own maintenance

2) How does a real estate transaction for an industrial condominium differ from a transaction involving an industrial freehold building?

- Due diligence – Same, other than lawyer's review of the status certificate
- Clauses – Conditional clause for the review of the status certificate

Commercial Properties – Commercial Condominiums

- 3 types – office, retail and industrial
- Status certificate, monthly fees, special assessment are all factors now

LEASING Commercial Condominium –

Gross Lease – Tenant pays fixed rent, landlord pays all expenses

Single Net Lease – Tenant pays base rent, plus any 1 additional rent (e.g. taxes)

Double Net Lease – Tenant pays base rent, plus any 2 additional rent (e.g. maintenance/insurance)

Triple Net Lease – Tenant pays base rent, plus additional TMI (Taxes, Maintenance/Insurance)

Percentage Lease – Tenant pays base rent, plus a percentage of sales

Retail Ground Lease – Land lease or pad lease, rental of land only

Base Rent – The actual rent for the premises

Additional Rent – Composed of recoverable items, expenses related to maintaining property

TMI = 3 items - Triple Net Lease

2 items = Double Net Lease

1 of these items = Single Net Lease

Usually Landlords will recover Taxes and/or Maintenance first, then insurance last...

“What do you think is the most important information to have about a property when trying to determine the type of lease?”

Zoning, permitted usage, rules – bylaws, Type of Lease, Rent and TMI amount, Size, Location, Amenities available, accessibility

Role Play Introduction

Salesperson Card:

7. ADDITIONAL RENT AND CHARGES

Explained the details of the following clauses:

- Additional Rent and Charges:

- o Determines who will pay for which services and costs
- o Determines the proportionate share of cost and expenses between the landlord and the tenant

- o Costs and expenses include:

- Maintenance of the property
- Utilities
- Realty taxes
- Insurance

15. OCCUPANCY OR RENT TO ABATE

Occupancy or Rent to Abate:

- o Protects landlord from any liability in the event construction of the unit is not completed by occupancy date
- o The tenant agrees accept the abatement of rent, which means they don't have to pay rent until the unit is ready for occupancy
- o Other than the abatement of rent, the tenant agrees not to make any other claims against the landlord

16. ASSIGNMENT

- o The tenant agrees not sublet or assign the agreement of lease without the landlord's written consent
- o The landlord cannot withhold the consent unreasonably
- o If the landlord gives the tenant consent for a sublet or assignment, then the tenant remains liable for whole term of the lease
- o If the tenant is a corporation and transfers the majority of their shares,

Landlord Card:

- “What if the taxes, maintenance, and insurance increase next year? Who will pay for the increase?”
- “How long can occupancy be delayed before the tenant can make a claim against me?”
- “What does it mean that consent cannot be unreasonably withheld?”

As a salesperson, I explained # 7 and 15 very well, #16 was half way well and couldn't understand for the corporation share related information.

Most 2 important questions you should ask to your potential client:

Looking at me as a Hope for their need.

- How was your (client's) previous experience with the Real Estate Agent?
- What are your ideal characteristics of a real estate agent?

Tenant Concerns and Issues Related to Commercial Properties

When representing a tenant, some items you should discuss include:

• Free rent period • Length of the lease • Taxes, Maintenance, and Insurance (TMI) concerns in a triple net lease • Option to renew

1. What does a tenant need to understand regarding rent-free periods?

TMI to be paid, a Cap / Limit on time frame

2. Why might a tenant be concerned about the length of lease?

According to their business plan. Business or financial projection. Is it renewable? Can a tenant cancel the lease in between if they want to move due to some reason?

3. Why might a tenant be concerned about a Taxes, Maintenance, and Insurance (TMI) in a triple net lease?

Tenant is paying TMI from their pocket, less profit, potential of rate increase any time.

4. Why might a tenant be concerned about an option to renew?

If no option to renew then tenant may need to find another option or be ready to higher rent after lease expiry and may be pay higher rent again.

5. How would you confirm that the tenant has a full understanding of the issues that were covered?

Ask them about understanding, look for visual cues or facial / physical expressions, ask them to repeat what they understand.

6. Why is it important to recommend that the tenant obtains third-party legal advice?

REBBA Compliance, I'm not an expert and should refer to third party professionals.

“How might you prepare to be more comfortable communicating with tenants about their concerns?”

Have knowledge of the current market condition, issues. Understand what is written on the documents and be ready to explain. Always refer them to the third party professionals.

Why should you consider the following variables, when representing a client who is buying/selling a farm?

Considerations	Rationale
Arable Land	The amount of land that is workable
Soil Type	The best use of the land
Bush Acreage	Type of trees or applying for the Ontario Managed Forest Tax Incentive Program
Existing Buildings	Whether they have contributory value for financing
Creeks and Streams	Under the jurisdiction of the Ministry of Natural Resources
Quota	Marketing board approval
Specialty Farms (e.g.,fruit)	Income potential
Leased Land	How much per acre can it be rented for. Extra income for the property
Zoning	May be able to have more than just agricultural uses
Tile Drainage	Adds value to low lying land that has poor drainage
Farm Property Tax Reduction	May qualify for the Farm Property Class Tax Rate Program
Financing	May qualify under the Farm Credit Corporation (FCC) for a mortgage
Soil Testing	What types of fertilizers should be used for best crop production
Provincial Legislation	The Farming and Food Production Protection Act (FFPPA) protects farmers from nuisance and complaints

Why should you consider the following variables, when representing a client who is buying/selling development land?

Considerations	Rationale
Planning Act	Controls how the land may be used and developed
Development	Assess the land for future potential development and intended use
Sewage/ Storm Water/ Water/Hydro	The distance to municipal services and what services will be available, if any
Highest and Best Use	Consider the factors that may affect the highest and best use of the land
Title Restrictions/Easements	Limitations may exist that may affect the intended use of the property
Environmental	May impact the development, use and affect adjacent property
Accessibility	Access may be limited and affect future development and use
Brownfield	Developer will be required to clean the contamination based on their intended use
Acoustics (rail, airport, road)	Proximity may impact future development and use of the land due to noise levels
Public input	May influence future development and use of the land
Subdivision/Severance Process	Must meet the requirements under Section 50 of the Planning Act
Financing Options	Options will be limited for vacant land sites and may have to seek alternative methods (e.g., seller take back)
Adjacent Properties	Environmental conditions or a change in use of adjacent properties may affect future development or use of the land
<i>Places to Grow Act, 2005</i>	Intended use of the land may be impacted by the Act

- Brownfield – Federal Contaminated Sites Action Plan (FCSAP)

Why should you consider the following variables, when representing a client who is buying/selling a business?

Considerations	Explanation
REBBA Requirements: Statements	REBBA has specific requirements for the sale of a business requires a profit and loss statement for the preceding 12 months or since the *
REBBA Requirements: Fixtures and Chattels	REBBA requires a listing of fixtures and chattels and equipment that are not included in the sale, but it is a good practice to include fixtures and chattels that are to be included.
Business Ownership	Business ownership can be in several different forms (e.g., sole proprietor, partnership, corporation).
Leases	Provide all the leases of the property and any equipment.
Franchise Agreements	If the business is a franchise, then the appropriate Franchise Agreement should be in place.
Licences	Licences are required to operate a business. However, there may also be licences to operate different parts of the business, such as a liquor licence or lottery licence.
Financing Options	There are several types of financing other than bank financing to acquire the business, such as seller take back.
Valuation Methods	There are several ways of valuing a business, such as yield capitalization, income approach, and gross income multiplier.
Training	Upon the sale of a business, the buyer may require training for the transition.
Discretion	Business showings are very discreet as the seller may not want their staff or customers to know they are trying to sell the business.
Business Shares or Assets	Businesses can be sold as an asset sale or a share purchase.
Inventory/Goods	When a business is sold the inventory of the business is sold separately, so the inventory has to be counted before the transfer of business at the seller's cost.
Accounts Payable/Receivable	In the sale of a business, the business being sold will have payables to their suppliers, and the business customer may owe the business money. These amounts will have to be adjusted in the selling price.

* business was acquired and a statement of assets and liabilities. If either of these statements are is not supplied, then a "Sale of Business – Statement Under Oath" must be completed and signed by the seller and the waiver portion signed by the buyer.

Summary of Key Points Many variables impact the value of:

- A farm
 - o Arable land
 - o Property taxes
 - o Drainage
- Development land
 - o Planning act
 - o Environmental
 - o Services
- Sale of a business
 - o REBBA requirements
 - o Leases
 - o Financial statements

Escalation Period/Clause – Also known as a stop clause or participation clause. In a commercial lease, a provision that requires the tenant to pay its pro-rata share of increases in building costs, such as real estate taxes and operating expenses. The tenant's payments under an escalation clause are in addition to the base rent payable by the tenant under the lease.

Pro-Rata - (Proportional/Pro-Rated)