

Improving your odds

Have the right team in place before you buy to improve the chance for success

INTERVIEWED BY ADAM BURROUGHS

Having a qualified deal team is crucial to the success of a commercial property transaction. The combination of a commercial real estate lawyer, commercial realtor, accountant and mortgage broker helps the buyer with everything from determining the right time to buy, to financing, ownership structure and negotiating the best terms for the deal.

“People who are looking to purchase a commercial property for the first time may not be familiar with the process,” says Danielle G. Garson, an associate at McCarthy, Lebit, Crystal & Liffman Co., LPA. “They don’t know what to look for or who to rely on, and that can expose their assets to costly risks.”

Smart Business spoke with Garson about forming a deal team to help execute a commercial property purchase, and how to structure ownership to control risk.

What are the responsibilities of each person on the buyer’s deal team?

The commercial lawyer can negotiate with the seller and lender on behalf of the buyer and advise on the best way to structure the entity used to purchase the property. The lawyer should also look at zoning and permissible uses, and draft a contract in such a way as to protect the buyer’s rights and to further ensure that the deal is structured to the buyer’s maximum advantage.

The accountant will analyze the financial aspects of the deal, while the commercial realtor helps identify properties and the mortgage broker secures financing.

The process to obtain commercial lending can also be complex. The buyer should talk to his or her bank prior to entering into negotiations so there is clarity on the terms of the loan. The buyer’s attorney can also negotiate a financing contingency

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in case financing is not unconditionally approved before the agreement is signed. In approving a loan, banks often require environmental and other reports, which may require the expertise of appraisers, engineers and environmental specialists. Often the commercial attorney or realtor will make referrals to find those specialists.

What are some rules to live by for first-time buyers?

Rule 1) Sometimes buyers get so immersed in a deal and put so much time and money into a purchase that they continue to pursue it despite clear signs that it doesn’t make financial sense. Every deal has its hiccups, but if it becomes clear prior to closing that the buyer has underestimated the expenses in either purchasing or owning that particular property, thereby greatly diminishing the expected return, it probably is wise to walk away.

Rule 2) Buyers also must choose their partners carefully. It is imperative that the buyer is comfortable with all business partners who will share the purchase, in addition to having a strong, legally binding agreement that dictates the rules of ownership.

Rule 3) Buying isn’t necessarily the best answer. Leasing may be the better option, especially for newer businesses, as it has less upfront costs, frees up money for

other business expenses, provides annual flexibility, and retains the option to move out of the building if the business outgrows the space or needs to downsize.

How can buyers structure the ownership of their property to reduce risk?

Buyers can use the structure of a single purpose entity (SPE) to silo non-tax liability and risks. In this arrangement, the SPE owns the property and leases it to the operating company. Rent payments are made to the SPE, which in turn pays the mortgage.

This arrangement protects the commercial property from the unpredictability of the business and insulates one from the other’s creditors. If the business suffers a major loss or even goes into bankruptcy, the SPE may have a far greater chance to keep the property. That gives the SPE the option to sell it, lease it out or otherwise find a way to profit from owning the property.

The lawyer will get the SPE up and running by drafting the operating agreement and/or bylaws, getting a unique tax ID number and setting it up with the secretary of state.

By following a few relatively simple rules and having the right team in place to help implement those rules, a buyer will greatly enhance his or her probability for success in the purchase of any commercial real estate. ●