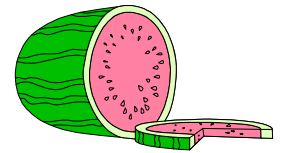




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## *“Tip of the Month”*

### **Real Estate Purchase and Sale (P&S) Agreements**

When buying real estate, whether commercial or residential, one of the most important documents in your transaction is the purchase and sale (P&S) agreement. This is often seen as a pre-printed Realtor form called Sales Agreement and Deposit Receipt.

Because the P&S ultimately guides the whole transaction, the parties should pay close attention to the terms before signing. The Buyer wants to make sure everything is right about the property before closing. The Seller wants to avoid wasting time on a Buyer who might walk away before closing.

The P&S starts with an identification of the parties. This sounds simple, but you want to be sure the right parties are bound by the agreement. A Buyer of commercial property might plan to form a holding company for the real estate. In the P&S, the Buyer would indicate his or her name, “or assigns.” The Buyer can substitute the name of the newly-formed company later.

The description of the property must be accurate. It is worth a little bit of advance due diligence for a Buyer to make sure all the right lots are specified in the P&S. The P&S can be used to enforce a sale if the Seller tries to back out improperly.

The amount of the purchase price is usually something the parties get right in a P&S. But the amount of the Buyer’s deposit can be negotiable, both in amount and in timing of payment. The Seller wants the deposit to be as large as possible. If the Buyer defaults on the deal, keeping the deposit is usually the Seller’s only remedy. The Buyer likes to minimize the deposit.

Clear title is a pre-condition to closing. The Buyer wants both “marketable” and “insurable” title. A Buyer should always plan on getting title insurance. The Seller usually wants a reasonable amount of time allowed to cure title problems that are found within the Buyer’s time limit for notifying the Seller of such problems.

Other pre-conditions (contingencies) sought by Buyers include: removal (or not) of tenants; sale of the Buyer’s existing property; Buyer’s ability to obtain specified financing; a variety of inspections of the property including well and septic if applicable. The Seller usually wants to put time limits on a Buyer’s contingencies. The Seller will put “time is of the essence” on P&S deadlines.

Extensions of deadlines and other P&S addenda should always be in writing. Should you need any help with a P&S, please give us a call.

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