



COMMERICAL REAL ESTATE CHECKLIST

DALTON
TOMICH

Zana Tomich

Buying or selling any type of real estate is a complicated process involving any number of steps and potential pitfalls.

That's emphatically true of commercial real estate transactions, where the monetary stakes and potential liabilities are particularly large. That's not to mention zoning and environmental factors, which typically figure more prominently in commercial real estate deals than others, along with other potentially complex considerations like 1031 exchanges, easements, and the involvement of third parties like lessees.

If you're planning to buy or sell a piece of commercial property, knowing what to expect can help you plan appropriately and manage the process—not to mention your stress. While no two deals are exactly alike, this checklist will help you navigate a sale or investment with confidence that you are covering the necessary details.



Zana Tomich
Attorney at Law
ztomich@daltontomich.com
313.859.6000

DALTON
TOMICH

STEP 1: CONTRACT A LICENSED REAL ESTATE BROKER

When selling a property, agree upon the listing agreement (duration, commissions, other party commissions, post-agreement deals) to avoid disputes on the eve of closing. Not addressing these issues at the outset can delay or derail a closing. Be sure to keep a signed copy of the agreement for your records. When buying a property it is also helpful to have a signed representation agreement that spells out terms like duration and commissions.

STEP 2: LETTER OF INTENT

Once a buyer has identified a property, negotiations have taken place, and a seller has agreed to initial terms, the real estate agents or brokers will want to agree upon the general key terms of the deal by memorializing them in a written Letter of Intent. The Letter of Intent should be reviewed by an attorney to confirm important terms are addressed appropriately, and that basic rights are preserved.

STEP 3: PURCHASE AND SALE AGREEMENT

The details of the Letter of Intent will then be further expounded upon in a Purchase and Sale Agreement. The Purchase and Sale Agreement will include all the details of the terms including purchase price, manner of payment, deposits, due diligence periods, title inspections, environmental inspections, contingencies, type of deed delivered, tax prorations, and how extensions of inspection periods are handled, breach of this agreement and how deposits are handled; as well as remedies, should also be addressed in the Purchase and Sale Agreement.

STEP 4: CALENDAR ALL TIME FRAMES

Once agreed upon, all of the time frames should be carefully tracked and calendared. It is helpful for one person on each side of the deal (often the attorney) to keep track of these deadlines.

FOR EXAMPLE:

- Delivery of earnest money deposit
- Title commitment delivery
- Title review and objection date
- Inspection periods
- Inspection extension periods
- Financing deadlines
- Closing date

STEP 5: DEPOSIT EARNEST MONEY

Once the purchaser deposits earnest money with escrow agent, the timeline starts. Most escrow agents require an escrow agreement prior to accepting funds. The escrow agreement protects the escrow agent and requires both buyer and seller to agree upon the terms of when the escrow deposit is released.

STEP 6: TITLE COMMITMENT

The seller obtains the title commitment for title insurance in amount of purchase price and shares with purchaser. This usually starts the timeline for buyer to review the title, and make objections to title to the seller, which then triggers seller's rights to cure the title defects.

STEP 7: DUE DILIGENCE

Depending on the transaction the due diligence can and should include:

- Title Review and Inspection.** Early on in the transaction, a title commitment will be ordered. Do not ignore this until closing. Both parties should review every exception and address them early on. The purchaser should object within the time frame provided in agreement and the seller should cure the objections within time frame allowed.
- Survey.** Purchaser obtains a survey to determine if there are encroachments, easements, and other encumbrances.
- Environmental Inspection.** Phase I environmental inspection should be conducted at a minimum. A Phase II should be conducted, if necessary.

STEP 8: REVIEW OF SURVEY

If a new survey was obtained, review and confirm it is consistent with title review, insurance, legal descriptions, and the title policy reflects the same.

STEP 9: ZONING APPROVALS

Review and obtain land use approvals required by municipality. This will vary depending on the transaction, but in some cases a buyer may need a variance, special land use approval, or may be making a rezoning request.

STEP 10: OBTAIN OR EXERCISE EXTENSIONS OF DUE DILIGENCE INSPECTION

Depending on the contract, parties may have agreed upon extensions of the due diligence period. Extensions of the due diligence period often require the deposit of additional funds to escrow, or may even require release of escrow funds to trigger the extension. Keep record of any extensions that are exercised and an accounting of funds deposited or released.

STEP 11: OBTAIN LOAN COMMITMENT/FINANCIAL APPROVAL FOR PURCHASER

Review and address loan commitment requirements, including entity approvals, opinion of counsel, and representations and warranties. These requirements are often administrative in nature, however, may take time if board approvals are required. Be sure to address these requirements well before the closing date.

STEP 12: PURCHASE CLOSING DOCUMENTS

- Settlement statement
- Owner's Affidavit
- Deed
- Tax prorations
- Allocation of costs
- Compliance with foreign investment in Real Property Tax Act
- Review loan documents

STEP 13: CLOSE ON THE TRANSACTION

Typically, the closing is facilitated by the title company once funding is approved and all due diligence is completed. The parties exchange signed documents, escrows are credited to purchase price, funds are wired, and deeds recorded. It is helpful to have a closing checklist ready to ensure all documents are properly executed.



The best way to navigate this process is with a legal partner by your side.

Each step leaves room for legal considerations and negotiations to come to the surface, and it's essential to understand your rights and make sure your contracts and documentation are set up correctly from the beginning.

At Dalton & Tomich, not only do we advise you on all legal matters regarding your transaction, but we also manage the process for you every step of the way. That means we worry about this checklist so you don't have to, always staying one step ahead of what is needed next and making sure everything moves forward according to plan.

Do you need a partner for your commercial real estate deal? Contact us today.

About the Author



Zana Tomich is a co-founding partner of the Detroit-based law firm Dalton & Tomich, PLC. She is a business lawyer who helps small and mid-sized businesses in Michigan capitalize on opportunities and manage risks. She regularly represents commercial property owners, landlords, and tenants in a wide range of transactions, including commercial real estate acquisitions and leases. A trusted advisor to her clients, Zana also often serves as a fractional general counsel, helping businesses with a variety of legal issues, including the sale, lease, and zoning of real estate. She has been named a 2020 Go-To Business Lawyer by Michigan Lawyers Weekly, a Top Woman Attorney in Michigan by Hour Magazine, and a SuperLawyers Rising Star.

313.859.6000 ext. 2

ztomich@daltontomich.com



DALTON
TOMICH