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Buying Business Property Offers Numerous Perks – and Potential Pitfalls

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Business owners can sometimes save money by buying the building where they're housed. Rather than monthly payments going toward rent, mortgage payments build an asset the business can sell or use as loan collateral. Corporate business owners can buy property privately and rent it to the business, providing income for the owner and a deductible expense for the business. When the business owns the property, depreciation expense is maximized and the asset side of the balance sheet is strengthened. However the property is purchased, several aspects of the purchase agreement require review.

Deadlines: Title contingencies in purchase agreements often specify when the seller must provide documents to the buyer, when the buyer must review the documents and inform the seller of objections, and when the seller must respond to those objections.

Notice: What constitutes proper written notice is spelled out in the purchase agreement. The "notices" provision also dictates when notice is given and includes contact information for buyer and seller. If a lawyer or real estate agent is involved, the notice provision often requires that he or she should receive copies of notices.

Title contingency: Transfer of title rests on provisions stated in the title contingency. The seller usually orders, pays for and delivers the title commitment to the buyer, but this is negotiable. Unless the purchase agreement specifies that a missed deadline terminates the agreement, late delivery of the title commitment generally won't breach the agreement. Buyers should request legible copies of all documents mentioned in the title commitment.

Disputes: How the buyer's objections are handled before closing is the most likely area of dispute in the performance of title contingency provisions. Under most purchase agreements, the seller doesn't have to address the purchaser's objections. But failure to respond to a buyer's objections normally allows the buyer to terminate the contract, fix the problems independently or proceed to closing with problems unresolved.

Surveys: A survey contingency is more likely to appear in a commercial transaction than a residential one. Survey contingencies generally follow deadlines triggered by specific events. For

example, the real estate purchase agreement may direct the seller to give the buyer a survey within 20 days of signing the agreement. The buyer then has a set number of days to examine it and notify the seller and surveyor of any objections. The seller or surveyor then has a deadline to respond.

Earnest money: Disputes over earnest money are common when sales collapse. Title companies normally require a written agreement by both parties before they release earnest money from escrow. If the dispute isn't resolved quickly, the title company can file an interpleader action, which places the earnest money with the court to determine who is entitled to it. If the buyer makes a legitimate objection based on the title contingency or survey and the seller does nothing to resolve it, the buyer generally can terminate the purchase agreement and recover the earnest money.

Business owners considering the purchase of commercial property should consult an attorney or real estate agent to help them meet all obligations. This article is no substitute for such legal advice.

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