
Due Diligence Checklist For Real Property Acquisition
(Improved Property With Tenants)

The following is a basic checklist of due diligence review items which a buyer should perform in acquiring a developed property with tenants. If your project involves financing, a joint venture and/or development post closing, then additional due diligence items would be advisable.

VERIFY FINANCIAL PROJECTIONS

1. *REVIEW LEASES AND OCCUPANCY AGREEMENTS.* Verify rent roll, rental income, pass throughs, lease terms, options, termination rights, restoration obligations, security deposits, unpaid allowances, responsibility for structural and compliance costs, etc.

2. *REVIEW TENANT FINANCIAL INFORMATION*. Request current financial statements from existing tenants.

3. *OBTAIN TENANT ESTOPPEL CERTIFICATES.* Verify rent, presence of defaults, outstanding allowance obligations, security deposits, and completeness of documentation.

4. *REVIEW EXPENSE AND TAX STATEMENTS.* Also review existing service contracts, particularly those with parties related to the seller.

5. *REVIEW PENDING LISTING AGREEMENTS AND CONSTRUCTION CONTRACTS*, especially for any possible commission or lien claims.

6. *REVIEW LEASING COMPS AND ANALYZE REPOSITIONING OPPORTUNITIES.* Also determine if any rent control limitations apply.

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7. *OBTAIN APPRAISAL.*

REVIEW TITLE AND ZONING

1. *ORDER AND REVIEW PRELIMINARY TITLE REPORT AND UNDERLYING DOCUMENTS.* These show existing ownership, mortgages, liens, tax payment status, special assessments, easements and other restrictions on the use of the property. Review easements, CC&Rs and other recorded documents. Obtain

Helen Sedwick, Attorney at Law
Bennett Valley Law
www.bennettvalleylaw.com

estoppels if necessary about status of on-going obligations. In most transactions, all outstanding mortgages and delinquent taxes are paid at closing.

2. *ORDER AND/OR UPDATE ALTA SURVEY.* This shows boundaries, encroachments, easements, set backs and other key elements.

3. *DISCUSS FORM OF TITLE POLICY AND ENDORSEMENTS WITH TITLE OFFICER.* Title products change frequently so discuss your options and costs with your title officer.

4. *REVIEW SUBDIVISION STATUS.* An agreement to purchase a lot which is not yet a legal parcel may not be enforceable.

5. *REVIEW ENTITLEMENTS TO CONFIRM THAT ZONING AND USE PERMITS ALLOW EXISTING AND CONTEMPLATED USES.* This may involve a visit with the local planner. Also review setbacks, traffic restrictions, EIR requirements.

6. *CONFIRM ACCESS TO PUBLIC STREET.* If the property does not have legal access rights, get them before closing.

7. *DETERMINE IF PROPERTY IS WITHIN A SPECIAL STUDIES ZONE (FIRE, FLOOD, EARTH MOVEMENT, ETC).* The seller should provide you with a report or there are companies who will perform the research for you.

8. *OBTAIN COPIES OF USE PERMITS AND CERTIFICATES OF OCCUPANCY.* Also confirm all construction and development work was performed with permits and in compliance with laws. Determine if there are existing Development Agreements and/or condemnation and redevelopment plans. Inquire as to the pace of getting planning and building approvals and whether any development moratoriums are pending or under consideration. Find out development fees and low income housing requirements.

INSPECT PHYSICAL CONDITION OF PROPERTY

1. *ORDER VARIOUS REPORTS,* including

    i. Phase 1 Environmental Assessment. The Phase 1 Assessment will determine if further testing and inquiry are needed.
    ii. Soils/geotechnical
    iii. Structural, electrical, elevator, life safety and other building systems
    iv. Seismic, sprinkler, ADA compliance
    v. Archeological, Special status species, wetlands
    vi. Roof (verify warranty is transferable)
    vii. EIR and traffic studies

2. *CONFIRM LEVEL OF AND ACCESS TO WATER, UTILITIES, SEWER, COMMUNICATIONS, ETC.* Also check on signage restrictions.

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FINANCING

Determine whether financing will be provided by a standard bank loan, a joint venture, or other vehicle. Commence the process early since loan closings frequently delay purchase closings. Determine if guarantees will be required and who is willing to provide them

FORM OF ENTITY

Deciding on the form of entity to take title will depend on a number of factors including lender requirements, 1031 exchange flexibility, management control, and IRS, REIT and ERISA regulations. Discuss the options with your tax advisor and attorney.

The article above was prepared by HelenSedwick of Bennett Valley Law.

After more than 20 years of practicing law with major firms in San Francisco, Helen Sedwick founded her own firm, Bennett Valley Law in 2007. She continues to specialize in commercial real estate transactions, primarily sales and acquisitions, leasing, entity formation, financing and management. Clients include developers, investors, start up companies, bio-tech companies, solar technology companies, wineries, restaurant franchisees and owners, and individuals. For more information, please visit www.bennettvalleylaw.com.

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