



Commercial Agreements of Sale in Pennsylvania

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INTRODUCTION

“COMMERCIAL” AGREEMENTS OF SALE

- Industrial
- Retail Centers
- Housing Development/Apartment Complex
- Agricultural Lands

INTRODUCTION

DRAFTING

- Before You Draft...Ask Questions
 - Understand the business deal
 - Understand the property
- Visit the Site
- Create the First Draft / LOI

BASIC AGREEMENT PROVISIONS

IDENTIFYING THE PROPERTY

Describe with Reasonable Particularity

1. Land

DBV and Page; Tax Parcel No.; Lot and Block

2. Buildings/Structures

25k SQF Building; Professional Office Building commonly known as ABC Center.

3. FF&E

4. OGM rights

* PAR Block 2; Para. 5; OGM Addendum.

PROPERTY ID ISSUES

- Perform Survey

(Avoid unbuildable or landlocked property).

- Inquire of Seller

(Ask for Quit Claim deed for any area outside of boundary lines to tack prescriptive easement rights in adjacent land).

- Check Recordings

(Any Declaration of Takings not identified in deed;
or any unsatisfied mortgage or assignment of rents)

BASIC AGREEMENT PROVISIONS

THE PARTIES

1. Check the Name

Examine vesting deed; Search State Corporation Bureau

2. Right to Convey or Purchase

Examine POA or Guardianship, Examine Operating Agreement

BASIC AGREEMENT PROVISIONS

THE PRICE

- Deposits (Initial and Additional, PAR para. 2)
(No personal checks)
- Escrow (PAR para. 2(C) and 24(D))
- Balance (No personal checks)
- Letters of Credit as Deposits

BASIC AGREEMENT PROVISIONS

Contingencies

- Financing PAR para. 7
- Inspections PAR para. 10

BASIC AGREEMENT PROVISIONS

Financial Contingency

Bank Loan

- Amount, Term, Interest Rate
- Time frame for Application
- Failure to apply in good faith will be deemed a default.

vs.

Seller held Note

- Promissory Note with COJ

BASIC AGREEMENT PROVISIONS

Inspection Contingency

May be waived.

If elected, part of Due Diligence

- Physical Condition
- Suitability for Intended Use
- Statutory Land Use Restrictions
- Zoning
- Environmental hazard
- Deed (boundaries and restrictions)
- Insurability

BASIC AGREEMENT PROVISIONS

DUE DILIGENCE, cont.

1. Scope
2. Time
3. Delivery of Documents by Seller (eg. existing leases)
4. Confidentiality (NDA); Return of Documents
5. Access; Scheduling
6. Restoration, Indemnification and Insurance
7. Signed Satisfaction by Buyer.

BASIC AGREEMENT PROVISIONS

MUNICIPAL REQUIREMENTS

Municipality May Require an Inspection and/or New C.O. and Correction of Violations.

Agreement Should Address:

- Who is responsible to obtain?
- Seller's obligation to correct deficiencies.

BASIC AGREEMENT PROVISIONS

OPERATIONS AND MAINTENANCE PENDING CLOSING

Agreement Should Require the Seller :

1. To operate and manage Property in ordinary course until Closing
2. To perform obligations under the Leases and Contracts
3. To comply with laws, ordinances, regulations and permits and correct notices of violations
4. Maintain insurance
5. Refrain from further encumbrances

BASIC AGREEMENT PROVISIONS

RISK OF LOSS; CASUALTY

3. Most Commercial Agreements:

- Put risk of loss on Seller.
- Require Seller to provide notice of damage to Buyer.
- Give Buyer termination rights.
- Require Seller to maintain insurance at current level.
- Provide an extension of the closing date to accommodate Seller's repair/restoration if required.
- Address which party gets insurance proceeds in excess of amount applied to repair.
- Address credit for insurance deductible.

BASIC AGREEMENT PROVISIONS

CONDEMNATION

1. Typically, Buyer has Right to Terminate
2. Entitled to Credit if Electing not to Terminate

BASIC AGREEMENT PROVISIONS

TIME

- When is there an Agreement?
 - Statute of Frauds – Specific Performance
 - Verbal – Available Breach of Contract Damages
- Computation of Time Periods
- Survival of Certain Obligations (e.g., Restoration, Indemnities, Confidentiality)

BASIC AGREEMENT PROVISIONS

Litigation

- AS-IS/Release Provision
- Representations Provision
- Governing Law, Jurisdiction, Venue
- Waiver of Jury Trial – Mediation
- Attorneys' Fees

BASIC AGREEMENT PROVISIONS

CONDITIONS OF CLOSING

1. Conditions on Seller's Obligation to Close:

- Buyer has performed all obligations under the Agreement.
- Buyer's representations are true and correct in all material respects at Closing Date.
- Buyer has delivered Closing Certificate to Seller confirming representations/warranties.
- Buyer has executed and delivered all documents required under the Agreement.
- Buyer has paid in full.

BASIC AGREEMENT PROVISIONS

CONDITIONS OF CLOSING

2. Conditions of Buyer's Obligation to Close:

- Seller has performed all obligations under the Agreement.
- Seller's representations are true and correct in all material respects at Closing Date.
- Seller has delivered Closing Certificate to Seller confirming representations/warranties.
- Seller has executed and delivered all documents required under the Agreement.
- Seller has executed and delivered the Deed and other documents necessary for issuance of title policy to Buyer.
- Seller has marketable title

BASIC AGREEMENT PROVISIONS

CONDITION OF TITLE

1. Right of Buyer to Obtain Title Commitment and Survey
2. Buyer's Version
3. Seller's Version
4. Exceptions (Eg. ROW Location)
5. Mechanics Lien Exception / Lien Releases

BASIC AGREEMENT PROVISIONS

CLOSING COSTS, APPORTIONMENTS AND ADJUSTMENTS

1. Realty Transfer Taxes
2. Real Estate Taxes
3. Sewer and Water Charges and Lienable Municipal Assessments
4. Planned Community, CCR, Condo and Similar Assessments
5. Recording Charges
6. Title
7. Broker Commissions

BASIC AGREEMENT PROVISIONS

BROKERS

1. Identify parties' brokers.
2. State who is paying commissions.
3. Include notices regarding Real Estate Recovery Fund.

BASIC AGREEMENT PROVISIONS

DEFAULT AND REMEDIES

1. Buyer Default
2. Seller Default
3. Other Remedies
4. Notice and Opportunity to Cure

BASIC AGREEMENT PROVISIONS

IDEMNITY FOR PRE AND POST-CLOSING MATTERS

1. Scope of Indemnity
2. Liability Limits
3. Time Limits to Assert Claims
4. Notice, Opportunity to Defend, Right to Settle

LEASED PROPERTY PROVISIONS

NOTICES

Require Seller Notice to Buyer of Any:

- Defaults
- Request for Amendment
- Proposed Assignments
- Exercise of Renewal or Expansion Rights
- Tenant Vacating Space
- Tenant Bankruptcy, etc.

ADDITIONAL PROVISIONS AND DISCLOSURES

PLANNED COMMUNITIES AND CONDOMINIUMS

Special Provisions:

- 68 Pa.C.S. §§ 3101 et seq. and 5101 et seq.

Declarations and By-laws

ADDITIONAL PROVISIONS AND DISCLOSURES

STATUTORY NOTICES AND DISCLOSURES

- Pennsylvania Sewage Facilities Act 35 P.S. §750.1, et seq.
- Pennsylvania Real Estate Licensing and Registration Act 63 P.S. §§455.101, et seq.
- Disclosure of Zoning, Compliance and Notices of Violation 21 P.S. § 611 – 615
- Coal Severance Clause 52 P.S. § 1551
- Subsidence/Subjacent Support Notice 52 P.S. §1406.14
- Notice of Disposal of Hazardous Substances, Etc. 35 P.S. §6020.101, et seq.
- Private Transfer Fee Obligation Act 68 Pa.C.S. §8106

ADDITIONAL PROVISIONS AND DISCLOSURES

STATUTORY NOTICES AND DISCLOSURES

NOT REQUIRED OF COMMERCIAL SALES

PA Real Estate Seller Disclosure Law

Does not apply to sale that consists of more than four residential dwelling units.

68 Pa. Stat. and Cons. Stat. Ann. § 7103 (West)

But Common Law Misrepresentation (negligent and fraudulent) theories still apply.

Commercial Agreements of Sale Wrap Up

- Know the Parties
- Know the Property
- Know the Contractual and Statutory Obligations
- Know the Default and Exculpatory Provisions
- Protect and Advance interests of Client, but
in doing so, remember the Client's Objective which is
to sell or buy the Property.