RITCHIE MILL LAW OFFICE

Barristers & Solicitors

102, 10171 Saskatchewan Drive
Edmonton, Alberta T6E 4R5

Phone: 780.431.1444
Fax: 780.431.1499

Multi-Family Purchases Tips and Tricks

Alberta REIN™ Workshop
Saturday, July 6, 2002
Ramada – Edmonton Inn

It is ULTRA-important to contact us before you sign your deal!

Richard M. Bell
r.bell@rmlo.com

Barry C. McGuire
b.mcguire@rmlo.com

Toll Free 1-888-333-8818

Introduction

Multi-family purchases are substantially different from single-family purchases. This handout contains some of the more obvious issues. It is not an exhaustive list. Your very best protection is to make sure Ritchie Mill Law Office is involved in the negotiation process. It is very easy to make your offer, "subject to buyer's lawyer's approval". Now for some Tips and Tricks.

1. Form of Contract:

As with residential contracts, there are many forms of multi-family contracts. At the minimum, you should use the MLS form of commercial contract. It isn't perfect, but it deals with way more issues than the MLS residential contract. We strongly recommend you do not use the short form REIN contract with Schedule A.

2. Timing:

Multi-Family Transactions take at least twice as long to process as residential contracts. If you want CMHC financing, add at least another month to your time frame. If your contract is subject to financing, then,

a) For conventional financing, give yourself 6 weeks on your financing condition.

b) For CMHC financing, add a month and give yourself 10 weeks on your financing condition.

We completely understand that although the real estate market is very active and everything takes longer, sellers may want to give you less time. They feel it's a seller's market and they don't have to accommodate a buyer.

If you are being pushed for time, make sure you say, loud and clear, "We will use our best efforts, but everyone needs to understand extensions of financing and/or closing dates, may be required."

3. Due Diligence:

Due diligence is far more extensive, both

a) what you ought to do for yourself,

   i) tenant information with respect to rent and security deposits is so important. Ideally, you want to review current leases. Then, you want tenants to sign a document called "Tenant Estoppel Certificate" or "Tenant Information Form". This form is signed by the tenant confirming important details like, current rent, security deposit, move-in date, prepaid rent or other side deals with landlord.

ii) You should do a thorough inspection of every suite. Many times a landlord pushes to have you look only at a suite or two. If you have a choice, inspect every suite and make careful notes.

b) what your new lender will require. For example, many REIN members are familiar with Canada Life Mortgage Services (CLMS) as a commercial lender. CLMS lawyers send us a 36 point!! checklist. They won't give us a dime until everything is satisfied.

4. Fire Safety Code:

Your contract, whatever form you use, must contain wording that says, "The seller warrants that the property is in full compliance with all fire safety code issues." Any new lender will absolutely require this. Fire safety code compliance is becoming a standard term, just like the seller's requirement to provide a current Real Property Report and written evidence of municipal compliance. If you don't get fire safety code compliance when you buy, chances are you will be getting and paying for it when you sell.

5. GST:

As well all know, generally speaking, there is no GST on the sale of a "residential complex". However, every multi-family complex is not always a residential complex as defined by the Canada Customs and Revenue Agency (CCRA).

An example of this situation would be a multiple-unit building with commercial tenants on the main floor but residential tenants on the upper floors. In this case, the lower units would not constitute residential complexes while the upper units would. The purchase price would have to be allocated between the commercial and residential space on a reasonable basis. There is way more to this, and buyers pay GST, so please be aware.

6. Tenant Arrears:

Most buyers take the position that they are not interested in playing collection agent for the seller's outstanding rent. Sellers are, after the sale, in a tough position to recover tenant arrears. Buyers could likely do well to offer to acquire the arrears at a significant discount. Again, this is a complicated situation, and with significant arrears revealed by your due diligence and Tenant Information Forms (see above), you may think twice about acquiring such a property. However, with a badly managed property and a motivated seller, this could have the dual effect of helping you to acquire rents at a discount and protect what are now your tenants from the seller's attempts to collect that rent, which would impact your new position as owner.

7. Seller's Pre-Closing Obligations:

Again, this is another area that is way too complicated for this type of handout, but:

a) If vacancies of commercial or residential space are possible or anticipated before closing, the seller's responsibilities in this area must be adequately set out. For example, will a seller be motivated to lease space if he has to pay leasing commissions and tenant inducements?

b) Contracts commonly contain a clause that says “Seller must continue to manage the property in a professional way and to the same standards as the property is currently managed.” There are many varieties of this kind of clause. Every purchase is unique. Constructing this clause involves a pretty good analysis of the property’s current rental status, length of time until closing, vacancies, maintenance, who has leasing responsibilities and under what format…, the list is endless. If you don’t specify, and considering that sellers are naturally less motivated, you risk a deteriorated property.

Again, this list is not exhaustive but we sure hope it helps.