

A close-up photograph of two people in business attire shaking hands. The person on the left is wearing a dark blue suit jacket, and the person on the right is wearing a light blue dress shirt. The background is blurred, showing an office environment with a potted plant on the left and a chair on the right. The text "Negotiation, PSA & Due Diligence" is overlaid in the center in a white, bold, sans-serif font.

Negotiation, PSA & Due Diligence

Purchase & Sale Agreement (PSA)

- A good PSA starts with a good LOI
 - Letter of Intent (LOI) should say Buyer's Attorney will generate First Draft of PSA
 - Stronger position
 - Ensures LOI terms are accurately included
 - Controls the Timing – Critical Dates

Purchase & Sale Agreement (PSA)

- Control the “Effective Date”
 - “Upon delivery of all due diligence materials”
 - Automatically adjusts for Seller Delays
 - Follow-up items
- Never Accept a Broker’s Form Contract
 - No protections for the buyer in those

Purchase & Sale Agreement (PSA)

- How Detailed Should My LOI Be?
 - Price
 - Earnest Money (\$, when deposited, when hard)
 - Due Diligence Period (# days, starting point)
 - Closing Period (# days after DD, “on or before”)
 - Basic Contingencies (Clear Title, Financing)

Purchase & Sale Agreement (PSA)

- Definition of “Purchaser”
 - Assignability
 - As the Buyer, we don't want an “assignability clause”
 - “Purchaser” = Capital, LLC, its successors and/or assigns
 - If Seller Insists
 - Should be able to assign freely, without Seller's consent
 - Seller should not be permitted to assign
 - Don't get into percentages of purchaser's interest

Purchase & Sale Agreement (PSA)

- Earnest Money (Deposit)
 - Business Days vs. Calendar Days
 - Extra Time – 15 Business Days = 3 weeks (21 Calendar Days)
- Separate Escrow Agreement with Escrow Agent
 - Return of Deposit if Seller Defaults
 - Buyer selects escrow agent and who holds the money
- Inspections and “Re-trading”
 - Additional deposit delivery can be a point of negotiation

Purchase & Sale Agreement (PSA)

- Inspection Period
 - LOI Exhibit with all required due diligence materials
 - Document what has and has not been received
 - Early Access agreement – while negotiating PSA
- Deemed Accepted vs. Deemed Terminated
 - As the Buyer, you want “Deemed Terminated” to protect your deposit from automatically going hard
- Insurance during Inspection
 - Limit risk and exposure – Certificates from all vendors

Purchase & Sale Agreement (PSA)

- As-Is Sale
 - Buyer's Preference = NO "As-Is" Clause
- Except for Seller's Representations & Warranties
 - Buyer is relying on these
 - "As-Is" is not a get out of jail free card for the Seller
- Material Term of the Contract

Purchase & Sale Agreement (PSA)

- Title Objections
 - Lead Time Issues
 - Title, Survey, Financing, Insurance
 - No Objection = deemed waived and accepted
 - Monetary liens
 - Permitted exceptions
 - New Exceptions
 - Process – Seller's Responsibilities – Extend Closing

Purchase & Sale Agreement (PSA)

○ Seller's Representations and Warranties

○ Need an Exhaustive List

- Rent Roll
- Security Deposits
- Notices of violations
- Legal actions
- Service contracts
- Tenant discounts
- Right of first refusal
- Seller's branding & Website
- Tax appeals
- Authority to sell
- Personal property
- True/accurate prorations

Purchase & Sale Agreement (PSA)

○ Seller's Representations and Warranties

○ Survival Period

- Buyer's choice – as long as possible (1 year – 6 months)
- Seller's choice – as short as possible (30 days – 6 months)

○ What Survives?

- Prefer all of them
- Seller may want certain ones shorter than others

Purchase & Sale Agreement (PSA)

○ Seller's Representations and Warranties

- Notice to Buyer of a change

 - Option to terminate

- Who's Knowledge?

 - Seller: Identify specific person – “who is the person with the best knowledge of...”

 - Buyer: Who can receive notice?

Purchase & Sale Agreement (PSA)

○ Seller's Representations and Warranties

○ Seller's Breach

- Must give notice
- Time limit to sue
- Material breach or just any breach – Define what is “material”
- No limit minimum or maximum on Seller's breach

Purchase & Sale Agreement (PSA)

- Operations of the Property During Contract Period
 - Maintain Status Quo
 - Management – Leasing – Marketing
 - Service Contracts
 - Termination or assumption of existing vendor contracts
 - New Leases or Contracts
 - Buyer must approve – contracts must be terminable with notice
 - Condemnation or Damages
 - Insurance – “Material” damage amount – Termination rights

Purchase & Sale Agreement (PSA)

○ Termination Rights

- You want as many as you can get
 - Inspection Issues
 - Change in Seller's reps and warranties
 - Damage or condemnation
 - Failure to meet closing conditions
 - Financing contingency

Purchase & Sale Agreement (PSA)

- Closing Conditions
 - Reps and warranties still true
 - True and correct documents delivered
- Prorations
 - Rent – Security Deposits – Utility Deposits
- Closing Costs
 - State customs
 - Escrow & Title Fees