



Real Estate Purchase Agreements and Preliminary Title Commitments and How They Affect Land Use Due Diligence

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Summary

Discuss strategically with your client real estate purchase agreements and preliminary title commitments and how they affect land use due diligence. We completed legal editing and analysis of authorities cited here as of the date listed above.

I. Real Estate Purchase Agreement's Role in Land Use Due Diligence

A real estate purchase agreement plays a pivotal role in land use due diligence by defining the purchaser's obligations to investigate the property, the assessments required, and the consequences of failing to meet these obligations. The agreement also influences the extent of due diligence required based on the property's intended use.

A. Due Diligence Period

The due diligence period is a critical component of the purchase agreement, ensuring that the buyer has ample time to uncover any potential problems that could affect their intended use of the property. As such, the purchase agreement often obligates the seller to provide necessary documents and information so that the purchaser can perform due diligence.

📌 Practice Note

During the due diligence period, it is crucial for the purchaser to thoroughly investigate all relevant facts and avoid making any assumptions. This approach ensures that the purchaser will have a comprehensive understanding of the transaction and minimize potential risks.

The purchaser's investigation usually includes reviewing the following to identify potential environmental liabilities that may affect the property value:

- Title commitments;

- Surveys;
- Zoning compliance;
- Land use; and
- Environmental site assessments, such as for Phase 1 and Phase 2.

B. Consequences of Inadequate Due Diligence

Failure to fulfill due diligence obligations can have significant consequences, including the forfeiture of deposits, termination of the contract, and potential legal and financial repercussions. It is crucial for buyers to meet their due diligence obligations to avoid these adverse outcomes and to preserve their rights under the contract. In *Redwood Original Corp. v. 7022 Valjean, LLC* (Super. Ct. L.A. County, 2023, No. 22VECV01466) 2023 Cal.Super.Ct. Lexis 47115, the court emphasized that a buyer's failure to conduct due diligence can undermine their claims for justifiable reliance on the seller's representations. The court noted that the buyer's obligation to investigate was clear under the contract, and failure to do so could not be excused. (*Ibid.*)

Buyers and sellers should stipulate language governing reimbursement for certain fees if the contract is terminated because of unacceptable due diligence findings. (*Bison Capital v. People's Care Holdings* (Super.Ct. L.A. County, 2017, No. BC628207) 2017 Cal. Super. Lexis 16816.)

C. Title and Survey Reviews

The purchase agreement outlines the requirements for title and survey reviews, specifying what the buyer must review and the standards for these reviews. The buyer examines the preliminary title commitment and survey to identify any encumbrances, easements, or other issues that could affect the property's use.

D. Allocation of Responsibility for Mitigation

If due diligence reveals issues that require mitigation, such as environmental contamination or zoning noncompliance, the purchase agreement typically specifies who is responsible for addressing them. This might involve the seller remedying the problems before closing or financially compensating the buyer.