

Purchase and Sale of Commercial Real Property (FL)

A Practical Guidance® Practice Note by David K. Blattner, Becker & Poliakoff, P.A.



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There are many issues to consider when buying or selling commercial real estate (CRE) in Florida. The considerations that buyers and sellers face are sometimes different and these issues may differ by asset class as well. This practice note focuses on general considerations for CRE transactions while noting some specific instances that may arise in different asset classes. While this note differentiates the considerations of the buyer and the seller, it is not possible to identify every situation that can arise in a CRE transaction.

No two transactions are alike and new issues confront real estate professionals every day. This note looks at a CRE transaction sequentially from inception through closing and can serve as a guide to help parties involved in a deal think about the road ahead.

For further guidance on the purchase and sale of commercial real property in Florida, see [Purchasing and Selling Commercial Real Estate Resource Kit \(FL\)](#).

Deciding to Sell a Property

Why Are You Selling?

Getting the sale process started is sometimes the hardest part. In evaluating a potential sale, a good place to start is to ask, “why are you selling?” Some possible reasons include the following:

- The seller wants to cash out and use the equity invested in the property for some other purpose.
- The current financing on the property is coming due. Has the seller exhausted refinancing options or considered bringing in investors?
- The property is not performing. This could be for several reasons, including that the property has too many vacancies or needs extensive repairs.

If the sale is not a cash-out situation, the seller should consider how the difficulties it faces might affect the desirability of the property to a potential buyer. If the current financing is maturing and the seller has been unable to refinance or attract investors, will a new owner have similar issues? Are these issues property or market driven rather than borrower driven? A potential buyer might have to commit more equity in the purchase to obtain financing. In other words, a new buyer will likely have a low loan-to-cost ratio. Similarly, a nonperforming property will be unattractive, as is, to potential buyers. The sale will be considered a distress sale bringing low offers. These properties will be redevelopment targets and perhaps the use will be changed. The seller should set price expectations accordingly.

Use of Proceeds on Sale

Next, the seller should consider what it will do with its proceeds following a sale. Proper planning is essential for tax and estate planning purposes.

If the seller intends to reinvest the proceeds in another CRE project, consider a 1031 tax-deferred exchange which would allow a seller to defer paying capital gains taxes upon the sale of the property and reinvest the proceeds in a property of like kind and of equal or greater value.

There are strict time periods that must be followed to complete a 1031 exchange; if a seller is going to complete one, it must be ready to complete a purchase quickly. The process for purchasing the replacement property might need to begin even before the seller starts the process to sell the property. For more on 1031 exchanges, see [1031 Like-Kind Exchange Resource Kit](#).

Other tax considerations involve estate planning. Whether a seller holds onto the sales proceeds or reinvests through a 1031 or otherwise, it is good sense for a CRE investor to have an estate plan in place to protect against probate upon death and save on additional taxes, including estate taxes.

Engaging a Commercial Broker

It is important to engage a broker who specializes in commercial property, not residential property. These are two different skill sets. Brokers who concentrate on commercial properties have experience dealing with the complicated aspects of a CRE transaction including the review of property financial statements, market studies, and commercial appraisals. They understand rent rolls and capitalization (CAP) rates and are skilled at negotiating issues specific to commercial real estate.

In selecting a commercial broker, look for one who specializes in the particular asset class being sold; a broker specializing in office buildings is not the right person to sell an industrial property. Some brokers also have better connections within the specific market where the property is located. Finally, it is important that the broker has the capability to market on all major outlets, such as MLS, LoopNet, and CoStar.

For more information on real estate brokerage, see [Brokerage: General Issues and Relevant Topics](#).

Preparing the Due Diligence Package for Potential Buyers

Every prospective buyer will want as much information about the property as possible before making an offer, so the seller must assemble a comprehensive due diligence package for interested parties. A good broker will be able to assist. The due diligence package should, at a minimum, include the following information:

- **Property financial statements.** These should include income and operating statements for the last three years and, if possible, pro forma statements going forward.
- **Rent roll, if applicable.** The rent roll should show the current rent and operating expenses (CAM) paid for

each tenant, including escalations, security deposits held, original and remaining term of each lease, and whether there are any renewal options. Additionally, the rent roll should show if any tenant has expansion options, rights of first refusal, or options to purchase.

- **Maintenance reports.** Maintenance reports for the property should include scheduled, planned, and recently completed maintenance.
- **Schedule of material contracts.** Include those that can be cancelled on 30 or fewer days' notice to the vendor or provider as well as those that must be assigned to and assumed by the buyer at closing.
- **Prior title policies.** Prior title should show the seller's insured ownership of the property. The buyer can use these as a base to order new title searches for the property.
- **Existing surveys.** If available, include topographical and as-built surveys of the property.
- **Third-party reports.** Include all environmental and geotechnical reports and prior appraisals prepared for the property.
- **Licenses.** Include all licenses, permits, authorizations, and approvals relating to the property.

For a sample due diligence checklist, see [Commercial Purchase and Sale Due Diligence Checklist](#).

Non-disclosure Agreement (NDA)

Because much of the information in the due diligence package is confidential, the seller should ask its attorney to prepare an NDA for prospective buyers to sign.

This is a simple agreement where the buyers acknowledge that they are being provided with confidential information prior to entering a contract and they agree not to disclose the confidential information to third parties, except for attorneys, accountants, and other professionals necessary to help them to evaluate whether to enter into the transaction. The NDA provides that such professionals must agree to keep the confidential information private as well.

Getting Ready to Purchase Property

Planning

The process of planning to purchase a property begins long before site selection and differs if the purchase is for a land development deal or an existing, operating project.

Land Development

- **Product type.** Many developers specialize in one product, ranging from single-family home communities to shopping centers to office buildings to industrial parks. Some very large development companies touch many asset classes and have different experts handling the separate products. However, there is one truth in land development. Not every property is right for every type of project; the type of project a developer wants to build determines what property to purchase.
- **Market studies.** Before looking for a specific property, a developer should conduct market studies to determine what geographic region will best support the project the developer wants to build. If the developer specializes in grocery-anchored retail centers, he or she should find what areas are in need of this type of shopping center, how many households currently exist in the area, and how many households are planned in the coming years that would be able to support such a center. Given the amount of time it can take to locate a property, design the center, get approvals, lease up, and build the center, the number of houses coming down the line is just as important as the number of houses already in existence. A market study would provide this type of information to a developer and to a potential lender.
- **Area.** After reviewing the market study, the developer can determine what geographic area to focus on in selecting a site.
- **Contact with local government.** In narrowing down to a geographic area, and specifically, to a municipality, developers should have preliminary conversations with local governmental officials about the plans for the project, even if a specific site has not been selected. The developer should get a feeling for how the project will be received by the city. Will there be opposition because the project is high density or some other unpleasant use? What can the developer do to assure the city of the positive attributes of the project? These preliminary conversations are helpful in making specific conversations go smoothly when the developer selects a site.

Operating Project

- **Asset class.** As with land development deals, many real estate investors and operators tend to stick to an asset class that they know. But that is not a rule. Large companies, REITS, and insurance companies, for example, buy and sell CRE in all asset classes. In the broadest sense, CRE is generally divided into retail, industrial, residential, office, and hospitality.
- **Class within asset class.** Each class of CRE has subclasses. For example, within retail, there are enclosed

shopping malls, strip centers (class A, B, and C), and triple net leases, to name a few. Industrial can be divided into light, manufacturing, cold storage, marine, and aviation, for example. What is important to know is that choosing the type of asset, particularly if the buyer is new to CRE investing, can be the key to the buyer's success or failure. Owning and operating each type of asset may require different skill sets.

- **Capitalization (CAP) rates.** As a buyer/investor begins shopping for investment CRE, one of the first things he or she will evaluate is CAP rates for each property. CAP rates are the relationship between the expenses of the property and the purchase price of the property, calculated by dividing net operating income (NOI) by the purchase price. NOI, in this calculation, means the total rent for the property, less taxes, insurance, maintenance costs, utilities, vacancy reserve, and other expenses excluding debt service. The CAP rate assumes that the buyer will purchase with cash and, therefore, helps a buyer determine how much can be financed for the property.
- **Budget.** At this point, the buyer should think about the budget for both the purchase of the property and the entire project. See Making a Deal below for a further discussion on the closing costs that a buyer might pay. In addition, the buyer should consider the other costs that it will incur as a consequence of owning the property. If the property is an operating investment property, does the buyer have plans to upgrade and renovate the property? Are there known maintenance issues that must be addressed and can these repairs be made or paid for by the seller?

For new development and construction, the buyer should have some general ideas as to the costs of the project. Certainly, it will be too early to know what these costs are, other than the closing costs. However, having a general ideal of a budget will help the buyer decide what the maximum cost of the land should be.

Engaging a Commercial Broker

Just as it is important for a seller of CRE to engage a commercial broker, it is extremely helpful for a buyer of CRE to engage its own broker who specializes in commercial property. A buyer should also look for a broker who specializes in the asset class that the buyer is looking for and has connections in the target market. Brokers can be extremely specialized; some brokers are particularly adept at identifying vacant land for development of certain types of projects, while others focus on strip centers and can also help with the leasing of space. The right broker can make the process of identifying a property fast and easy.

Making a Deal

Buyer's Preliminary Due Diligence

Although the buyer has done some homework, there are concrete steps to take to locate the desired property and get it under contract:

- **Site visits.** The broker will have identified one or more properties for the buyer to visit in person which may occur after reviewing online presentations. There may be multiple visits to the favored site to help to determine the property's potential for development or investment. Like a homebuyer, a CRE buyer will look for possible defects, physical and otherwise, that would affect expense and price.
- **Comparable sale prices.** The broker is invaluable in providing comparable sale prices (or comps), which helps the buyer to formulate a possible offer price.
- **CAP rates.** Consideration of the CAP rate for the prospective property is a key factor in making the offer. See the discussion of CAP rates above. The CAP rate for a particular property helps a buyer determine how much can be financed for the property.
- **Discussions with potential lenders and investors.** Prior to making an offer, the buyer should have a good idea of how the property will be financed. Are there lenders willing to provide financing for the project? Are the terms acceptable? Does the buyer have sufficient equity available or are additional investors required? If so, what are the terms of the investment/partnership agreement?
- **Approvals.** In new development or a redevelopment, another conversation with local government is essential. The buyer should be clear on what approvals will be required for the project including zoning and variances, land use, plat, site plan, and environmental. Is the city/county willing to support the project? It is smart to have these conversations with planning and zoning staff, the city/county manager, and elected officials.
- **NDA.** The seller might require that the buyer execute an NDA (see Deciding to Sell a Property above) to release a due diligence package. Review the NDA with an attorney and sign as soon as possible to start the process.

Offer / Letter of Intent

The offer, in most CRE deals, is made via a letter of intent (LOI). Sometimes the broker prepares the LOI and sometimes the buyer's attorney prepares it. It should contain the following essential terms:

- The name of the buyer and the seller

- Description of the property (preferably the legal description)
- The proposed purchase price and deposits
- Contingencies, including financing, governmental approvals, environmental permits, and any other conditions to the buyer's obligation to close
- Due diligence provision
- Confidentiality
- Closing date

The LOI should state that it does not constitute a binding agreement, except for the confidentiality provision, and that no agreement will exist between the parties until a formal contract is executed. Be sure to also include all other provisions important to the transaction and LOI. For instance, the buyer may want an exclusive negotiation period to finalize a contract.

For further guidance on LOIs, see [Letters of Intent](#). For a form of LOI to use in your commercial purchase and sale transaction, see [Letter of Intent \(Commercial Purchase and Sale\)](#).

Contract

Generally, but not always, the buyer's attorney prepares the contract. The contract should include the following essential terms:

- **The parties to the contract.** The named seller should be the party having legal title to the property. The buyer's attorney can obtain a copy of the recorded deed from the public records to confirm. The buyer might not yet have formed the entity to hold title to the property so it is good practice to add "and/or assigns" after the name of the buyer in the contract and to add an assignment clause in the contract to permit the buyer to assign the contract, at least to an entity related to the buyer, if not outright.
- **Description of the property.** It is essential to include the legal description of the property in the contract, usually attached as an exhibit. In Florida, many, but certainly not all, legal descriptions are platted (by lot and block in a recorded plat). Unplatted legal descriptions are surveyed metes and bounds legal descriptions. The legal description can be copied and pasted from the deed of record or from a prior title policy or survey. Define whether anything else is included in the term property.
- **Purchase price, deposits, and method of payment.** Include when each deposit is due, who is to hold the deposits (escrow agent), and how the purchase price and deposits are to be paid (by check or wire).

- **Due diligence.** State in detail the scope and time to complete the due diligence. The seller should require that the buyer repair any damage to the property resulting from the due diligence and indemnify the seller from and against any loss or injury resulting from the due diligence. Describe specifically what happens at the end of the due diligence period. Does the buyer have the right to terminate? If there is no termination right, is there an additional deposit due?
 - **Title and survey examination.** Who obtains and pays for the title commitment and survey? Set forth the time to obtain and review the title commitment and survey and the procedures for objecting to and curing title exceptions. If there are known title exceptions prior to the execution of the contract, the seller should list them in the contract and require the buyer to accept them up front as "Permitted Exceptions."
 - **Contingencies.** These include financing and approvals and any other conditions that must occur before either the buyer or seller has an obligation to close. State the timing for the contingencies to be satisfied and what happens if they are not satisfied by the deadline. Does the buyer have the right to terminate and is the deposit returned to the buyer? Can the buyer extend the closing? Is there an extension fee?
 - **Development considerations.** In many CRE deals in Florida, the parties must execute additional documents if the seller retains adjacent properties or if the property is part of a larger development. If the parties must execute easements or reciprocal easement agreements or other development agreements as part of the closing, the contract should require that the parties agree to these documents by a date certain in advance of closing. In the alternative, the form of agreement might already exist and the buyer might have to agree to sign that agreement at closing. In that case, attach the form to the contract as an exhibit; the parties can negotiate the agreement simultaneously with the contract and finalize the form before executing the contract.
 - **Casualty and condemnation.** Include language in the contract addressing the parties' rights and obligations in the event the property is damaged by casualty or taken by eminent domain prior to closing.
 - **Representations and warranties.** The buyer should request representations and warranties from the seller as to the existence and authority of the seller to enter into the contract, that there are no lawsuits or other actions that affect the property, confirming the accuracy of the rent roll and financial statements of the property as well as the leases, affirming no hazardous waste and no physical defects, and verifying no pending condemnation and no known physical defects to the property or improvements.
 - **Default and remedies.** Sadly, these are the most important provisions of the CRE contract. It is essential that the contract set forth the procedure for declaring a default, how notice is provided, and whether there is any opportunity to cure. Explain the remedies for the buyer's and the seller's breach. If the deposit is to be released, there should be explicit directions to the escrow agent.
 - **Costs of closing.** State which party is responsible for what closing costs. Closing costs generally consist of the following, all of which are typically negotiable (except perhaps the brokerage commission):
 - **Documentary stamps on the deed.** These are calculated at \$.70 per \$100.00 of consideration paid. Note that in Miami-Dade County, documentary stamps are calculated at \$.60 per \$100.00. However, Miami-Dade County also charges a \$.45 deed surtax, so the effective tax is \$1.05.
 - **Cost of title commitment.** In Florida, it is customary for the seller to pay for the title search, but the parties can negotiate otherwise in the contract.
 - **Title premiums and endorsements for owner's title policy and mortgagee's title policy.** All title premiums in Florida are promulgated by the State Department of Insurance and are based on the amount of insurance purchased. Talk to your client about the premium and be aware that the insured is entitled to a rebate of a portion of the premium, known as the Butler Rebate. See *Chi. Title Ins. Co. v. Butler*, 770 So. 2d 1210 (Fla. 2000).
 - **Cost of survey.** The buyer is typically responsible for paying for the survey.
 - **Brokerage commission.** Usually, the seller has agreed to pay its broker a commission and the seller's broker agrees to split its commission with the buyer's broker. In some circumstances, the commission might be so low that the buyer agrees to pay its own broker a fee.
 - **Prorations.** Taxes, rents, utilities, and escrows are among the items that should be prorated between the buyer and seller at closing. Pay particular attention to the prorations when dealing with office, retail, hotel, and other income-producing properties.
 - **Closing and closing date.** Where there are contingencies, the closing date will probably not be expressed as an actual date, but it should be easy to calculate. For example, "Closing shall take place thirty (30) days following the date the buyer receives Site Plan Approval." Describe any closing extension options, how they are
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exercised, and whether there is a fee or deposit for the option. If there is a fee or deposit, is it refundable and applicable to the purchase price? Today, most CRE closings take place virtually and documents are emailed to the parties, signed, witnessed, and notarized in their own offices and returned via email and overnight courier. The closing paragraph should provide for this type of remote closing.

- **Brokers.** A provision naming the brokers involved in the transaction and confirming who is entitled to a commission is essential to protect both parties from third-party claims for unearned commissions. The provision should contain a mutual indemnity for such claims arising under the respective party.
- **Notices.** The notice provision ties with many provisions in the contract. It tells all the parties in the contract what constitutes effective notice. Include the method of delivery, the time notice is effective, and addresses in this paragraph.
- **Other provisions.** There are numerous other provisions that could be in a CRE contract. Some boilerplate provisions to consider include “Time of Essence,” “Modifications,” “Assignment of Contract,” “Radon Gas Disclosure” (mandatory for improved property), “Choice of Law,” “Attorney’s Fees,” and “Survival.”

For further guidance on drafting commercial purchase and sale agreements in Florida, see [Commercial Real Estate Purchase and Sale Agreements \(FL\)](#). For forms of commercial purchase and sale agreement to use in Florida, see [Commercial Purchase and Sale Agreement \(Long Form\) \(FL\)](#) and [Purchase and Sale Agreement \(Short Form\) \(Pro-Seller\) \(FL\)](#).

From Contract to Closing

Buyer Considerations

The buyer has work to do before closing. Most importantly, due diligence review begins and should include, at minimum, the following:

- **Environmental.** Obtain a Phase 1 Environmental Report including asbestos and lead-based paint, if the property is improved. If the Phase 1 Report recommends additional testing, conduct the Phase 2 testing. In most cases, the buyer will need an extension of the due diligence period to perform Phase 2 testing. For further information on environmental review during due diligence, see [Environmental Due Diligence in Real Estate Transactions](#).
- **Physical, structural, mechanical, and systems.** For improved property, licensed contractors should conduct these inspections. In Florida, roof and HVAC inspections are key.

- **Soil/geotechnical.** These tests are necessary whenever the buyer plans to perform new construction.
- **Financial, rent roll, and operational.** Although the seller may have provided preliminary information in the due diligence package, obtain accurate, up-to-date information.
- **Approvals.** Formal discussions should be proceeding with governmental authorities for all required approvals. The buyer should note the timing to apply for approvals set forth in the contract. For example, do applications have to be submitted during the due diligence period or only after the buyer elects to proceed?
- **Preliminary design.** Again, timing is important. Design is tied to applications. Plans must be prepared before applications can be submitted and professionals must be hired to prepare plans. The buyer must make sure that everyone understands the timeline.
- **Title and survey.** One of the attorneys will provide the title commitment but it will be up to the buyer to engage the surveyor within the time frame set forth in the contract. The surveyor will need the title commitment to complete the survey and everyone must coordinate with each other. For further guidance on title and survey review, see [Title Insurance](#) and [ALTA Survey Review](#).
- **Contingencies.** The buyer must be aware of the timing to satisfy contingencies and be certain not to miss critical dates. Financing contingencies (the date to have a commitment for a mortgage loan or equity commitment) often come up by the end of the due diligence period, if not earlier. Deposits may be at risk if the buyer fails to keep track of these dates. Benchmark dates for approval contingencies can be scattered throughout a contract. And, the date to obtain a final approval is paramount.

When the end of the due diligence period arrives, the buyer often has a choice to make: terminate and receive a return of the deposit, or proceed to closing which might still be months or few weeks away. Usually, if the buyer does not terminate, then the buyer is deemed to have waived the right to terminate.

Seller Considerations

The seller has less to do once the contract is executed but should still consider the following:

- **Documents and other deliveries.** The seller should make sure to timely deliver all documents and other materials to the buyer as the contract requires. Many contracts penalize the seller for failure to timely deliver documents to the buyer and the penalties include extensions of the due diligence period.

- **Due diligence.** Although due diligence is solely the buyer's responsibility, the seller should cooperate with the buyer and the buyer's agents in providing access to the property and making sure the seller's employees and advisors are reasonably available to answer questions.
 - **Applications for approvals.** Where the buyer's obligation to close is contingent upon obtaining any governmental approvals, the seller will be obligated to cooperate with the buyer in obtaining the approvals. This cooperation encompasses the execution of all necessary applications for the approvals and might also include powers of attorney authorizing the buyer or its engineers to act on behalf of the seller, as property owner, in processing the application. It might seem counterintuitive to allow a stranger to take action that affects your property without any controls. However, the contract protects the seller. The buyer will be obligated to close once the approvals have been obtained and the deposit will be fully at risk if the buyer does not close. Further, obtaining zoning, land use, and related approvals in Florida is very costly. A buyer is unlikely to take on that expense all the way to approval and then put its deposit at risk and not close.
 - **End of due diligence.** At the end of the due diligence period, the buyer can terminate or proceed. If the buyer is satisfied with the results of its investigations, then, most likely, he or she will proceed. Depending on the contract provision, the buyer may need to pay an additional deposit at that point. If the buyer is not satisfied with the property for any reason, including nothing to do with the inspections, the buyer must follow, to the letter, the process for notifying the seller and escrow agent, if applicable, of its decision not to proceed. The notice must be timely. Any deviation from the process set forth in the contract could result in an escrow dispute.
 - **Contingencies.** All contingencies must be satisfied or waived prior to closing or the contract may be terminated. If it is terminated for failure of a contingency, the buyer may or may not receive a return of the deposit, depending on what the parties negotiated. The buyer may have negotiated away its right to the return of the deposit in exchange for an extension of the contingency period. If the buyer takes no action to terminate the contract within the applicable time period, the contingency will be deemed satisfied or waived and the buyer will be obligated to close.
- Role of the buyer's attorney:
 - As soon as the contract is signed, prepare a critical date list of all the important dates in the contract that the buyer must meet. Then keep the buyer on track with these dates, alerting the buyer when an important benchmark date is approaching.
 - Review the title and survey to assure compliance with the standards set forth in the contract and to make certain that no matters shown on the title and survey adversely affect the proposed (or existing) use of the property. Prepare the title objection or notice letter to the seller and coordinate with the title company to assure satisfaction of all title requirements (Schedule B-1) and resolution of any underwriting requirements or issues. In Florida, the buyer's attorney often acts as the title agent for the title company. In these cases, the attorney may retain a portion of the premium paid for the title policy which should be disclosed to the buyer. For further guidance on reviewing title and preparing an objection letter, see [Title Insurance](#).
 - Assist the buyer in evaluating due diligence matters, alert the seller of any issues that may arise, and negotiate amendments to the contract if necessary.
 - Obtain lien letters and open permit searches and check for code enforcement liens.
 - Review and negotiate the seller's closing documents.
 - If necessary, assist your client in obtaining land use and zoning approvals. The buyer should retain an attorney who specializes in zoning and land use. For more information on zoning review, see [Planning and Zoning](#).
 - Advise on ownership structure, form the ownership entity, and prepare resolutions. Consult with corporate and tax counsel and advisors and assist in preparation of partnership, shareholder, or operating agreements.
 - Negotiate with lenders and investors for financing and/or equity documents. For more information on financing an acquisition of CRE in Florida, see [Commercial Real Estate Acquisition Loan Resource Kit \(FL\)](#).
 - Issue opinion letters to lenders. Opinion letters can be highly negotiated documents. The buyer must understand that no attorney will simply sign their name to a form that a bank requests. The attorney must read all the loan documents carefully and then must consider the opinions that the bank is requesting before issuing the opinion. Many opinions are somewhat standard. But some—such as non-

Closing

Closing is often anticlimactic. If the buyer and seller and their respective teams have done their work properly to this point, the closing should be a simple procedure. Still, everybody has a responsibility.

consolidation opinions, which relate to bankruptcy remote protections for lenders—are complex, and the attorney takes a risk in issuing the opinion. The buyer/borrower must be aware that legal opinions can add significantly to legal fees for a transaction. For more information, see [Opinion Letters in Commercial Real Estate Financing Transactions \(FL\)](#).

- Role of the seller's attorney:
 - As soon as the contract is signed, prepare a critical date list of all the important dates in the contract that the seller must meet and keep the seller on track with these dates, alerting seller when an important benchmark date is approaching.
 - Assist the seller in preparation and delivery of due diligence materials and be available to answer the buyer's inquiries relating to due diligence.
 - Respond to and resolve the buyer's title and survey objections.
 - Provide information pertaining to the seller's lenders and other existing lienholders.
 - Prepare the seller's closing documents and closing resolutions. For forms of conveyance and closing documents to use in Florida, see [Purchasing and Selling Commercial Real Estate Resource Kit \(FL\)](#). For more information on closing documents generally, see [Closing and Other Ancillary Documents Required for Commercial Real Estate Purchase and Sale Transactions](#).
- Role of the closing attorney (often the buyer's attorney assumes this role but sometimes the seller's attorney or a title company does):
 - Order the title commitment and coordinate with the title company/underwriter.
 - Obtain estoppel letters from the seller's lender and other lienholders and coordinate payoffs.

- Prepare the closing statement.
- Act as closing escrow agent, receive closing funds, and disburse funds pursuant to the closing statement.
- Record all documents in the order required by the parties and to properly insure title. For more on recording documents in Florida, see [Recording Procedures \(FL\)](#).
- After closing, return recorded documents to the parties, issue the title policies, and disburse remaining funds.

Mechanics of Closing

The buyer's, seller's, and lender's attorneys exchange the agreed documents by email and forward them on to the parties for signatures. Documents are executed, witnessed, and notarized in each party's own office or home office and returned, first via email for review, and then via overnight courier. The parties' attorneys prepare and circulate explicit instructions as original documents generally must be sent to different parties. Documents that must be recorded always go to the closing attorney. Original loan documents go to the lender's attorney. The buyer's attorney and seller's attorney determine which original documents they need. The attorneys can agree that the closing attorney can initiate the wires upon receipt of email signatures or they might wait until the original documents are in hand. Scheduling for signing of documents is, therefore, very important.

Closing of a CRE deal is not the end. Once a buyer owns the property, he or she must build or operate it. The issues facing landlords and developers are also complex, and buyers should always keep them in mind throughout the acquisition process. The seller must invest the sale proceeds, perhaps in new CRE, which would mean the seller becomes a buyer and starts the process again.

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