

The Contract is signed – now what? Part II

In Part I, we learned that timing of the Contract and Title Commitment are important. We are prepared to take care of those items, so we can relax right? Not yet. Two very critical items need attention, now! The following deal points are the two items that delay closings most often. It takes concentration and perseverance to accomplish these items in a timely fashion.

1. Financing:

Obviously, real estate transactions **never** close without funding. Therefore, one of the most important steps to closing is determining the source of funds. Financial capability demonstrates ability to perform and is important to any seller. As a matter of negotiation, we always advise buyers to be prepared to provide financial references and financial statements in order to demonstrate financial capability. Once buyer and seller enter into a contract, it is important for the buyer to commence contact with its potential lenders. This step is especially important for those buyers that are owner/operators and do not have an established relationship with a lender. Buyers who are well prepared, increase their chances of obtaining a favorable response.

Lenders will often ask for a variety of items from a prospective borrower, but for starters, buyers should be prepared to deliver the following:

- Resume of buyer and all partners/investors
- Federal Tax return(s) (last 3 years) of all partners/investors
- Personal financial statement(s) of all partners/investors
- Offering memorandum of the property including:
 - ♣ Property Summary/Property Description
 - ♣ Photographs
 - ♣ Last 3 years Profit/Loss Statements
 - ♣ Last 3 years Federal Tax Returns, if single entity
 - ♣ Community Profile of the area
 - ♣ Competitive Summary
- Property Proforma/Business Plan, especially if you plan to upgrade or improve performance. Most lenders will ask you to provide a 3 to 5 year projection of operations.

Lenders tell us the most significant obstacle in processing a loan application is timely delivery of document requests from buyer and seller. If both parties are well prepared to cooperate with lending requirements, the path to financing will be much easier.

2. Be Aware of the Franchise Requirements – Part A:

If your property is franchised, a franchise contingency will usually be part of the Purchase and Sale Agreement. Unfortunately, being a franchisee is a two edged sword. As a

owner, you have benefited from the franchise association. On the other hand, the buyer (and you) will also be subject to the franchise transfer requirements, which will include a product improvement plan, aka PIP. In a perfect world, sellers should have a copy of the PIP and cost estimates available, prior to contract negotiations. However, unless you, as a seller, ordered and paid for a PIP inspection and have actual knowledge of the product improvement costs, these requirements and associated costs will be unknown until the PIP inspection has been completed and the PIP document drafted and delivered. In essence, and in most cases, you don't have a deal until these items are known and agreed to. In counseling our clients through contract negotiations, we advise them to attach a time frame to the buyer's franchise application **and** PIP inspection. By doing so, the buyer has agreed to begin the inspection and application process under certain time restrictions, thereby creating a timeline for delivery. Based on the seller's past QA inspections scores and any new upcoming franchise standards, most sellers have some idea of what to expect from the PIP. However, buyers and sellers are often surprised at the scope of the requirements, which, on occasion, can result in a second round of negotiations or a collapse of the deal.

If sellers have realistic views of their property and buyers apply for the franchise application/inspection in a timely fashion, the parties are better prepared to respond to the "deal killer" surprises often found in the PIP.

3. Be Aware of the Franchise Requirements - Part B:

Once the PIP document has been received the buyer, he/she should have the right to review it and determine whether it is acceptable. Once the buyer has agreed to accept it, the PIP will become part of the buyer's franchise agreement. Therefore, the PIP will need to be negotiated and approved by buyer prior to finalizing and submitting the franchise agreement for franchisor approval. The foregoing is important in the context that the parties should not close the transaction until the franchise agreement has been signed and provided to the franchisor. Buyers must be diligent in contacting the franchise licensor in order to request the UFOC document (Uniform Franchise Offering Circular), together with the franchise application. Most contracts will have time lines for this purpose that must be complied with in order to avoid delays with the franchise licensor. Buyers must be diligent in contacting the franchise licensor in order to request the UFOC document (Uniform Franchise Offering Circular), together with the franchise application. Most contracts will have timelines for this purpose that must be complied with in order to avoid delays with franchise licensor. Usually, franchise applications go through a committee and waiting periods apply to franchise documents. Closings can certainly be delayed while waiting on the documents. Buyers should not wait until the last days of a transaction to send in the franchise documents.