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LDEV 687 Property Conveyance Assignment

Chronology of Events

A real estate entrepreneur locates land to build a 40,000 square foot retail site with investment backing from a friend. These individuals drive the area of interest, locate the land parcel of interest, and then likely find the owner's information on the local tax assessors' website. The scenario contemplates the real estate entrepreneur contacting the landowner to inquire about willingness to sell the land and negotiating a purchase and sale agreement with a zoning continency instead of an options contract. The 5-acre parcel is currently zoned for residential so they would need to get this rezoned to commercial. The conversation with the landowner, Isaac Newton, is as follows:

1) The entrepreneur inquires about the seller's willingness to sell the property, which he confirms he has considered in the past.
2) The entrepreneur communicates interest in purchasing the real estate if it is rezoned to commercial as this would greatly increase the value of the land.
3) The seller asks about the price that would be paid, and the entrepreneur indicates he can pay up to $3 million if he can get the land rezoned which is much more than a residential developer could pay.
4) The seller then asks about the timing of close, and the entrepreneur indicates closing could occur withing 30 days of getting the zoning approval and after expiration of the appeal period (just in case someone files an appeal).
5) The seller then asks how long the rezone would take, and the entrepreneur communicates he hopes to be able to close in 9 months but isn't sure of the timing.
6) The seller then inquires about downpayment, and the entrepreneur states he would be willing to put down $300,000 to show serious intent in purchasing the land (10% of purchase price from above).
7) Newton (seller) and the entrepreneur agree to proceed and draft a purchase and sale agreement with a zoning contingency. Key elements of the contingency are as follows:
    a. Purchaser's obligation is conditioned upon getting the land rezoned from Residential II-A to Commercial B zone.
    b. Purchaser agrees to make immediate application for the rezoning.
    c. Seller agrees to sign whatever documents are needed for the application and agrees to appear at any public hearing in support of the application.
    d. Purchaser agrees to close within 30 days after both:
        i. A favorable decision by the Zoning Commission is published.
        ii. Any appeal period has expired with no appeal being filed.
    e. If rezoning is not obtained, the purchaser may terminate the contract and seller must return the downpayment.

Summary of Advantages of the Contingency Contract vs. Option Agreement

The primary benefit of a contingency contract when compared to an option agreement is that the earnest money is refundable to the buyer if said contingency isn't met. In this case if the rezone is unsuccessful, the buyer is entitled a refund of the downpayment of $300,000. With an option agreement, if the rezone doesn't occur and the buyer doesn't purchase the property, unfortunately the fee to purchase the option will be forfeited to the seller. Essentially with the zoning contingency you have tied up the property with no risk to the money deposited as the downpayment. The other great benefit of this specific example of a zoning contingency is that there is no time limit on getting the land rezoned. The purchaser has tied up the property for an indefinite period, which means theoretically you could reapply for a rezone even if it is initially rejected. Other than immediate application, the wording of the contingency includes no expiration date or number of attempts to rezone. The seller would be wise to include a date at which the contingency must be fulfilled (or a clause that dictates one attempt at a rezone), otherwise the purchaser must terminate the deal or waive the contingency and proceed to close.

There are many other examples of contingencies that can add value to a transaction and lower the risk for the buyer. Some stated in the book include financing contingencies, contingencies based on purchase or sale of another property, contingencies based on cost of environmental cleanup, and many others. It is of utmost importance to have proper legal representation to draft the wording of these contingencies in the contract. As in the previous example, the seller should make sure to include end dates for contingencies to protect themselves and have some control over timing. Likewise, it would be prudent for a buyer to include an amount when using a “purchase of another property contingency” as the seller of the other property could be willing to sell but at an exorbitant price (i.e., when trying to create an assemblage). The goal is to give yourself as much control over the contingency event as possible (control of deal with no risk).