

Legal Issues in CRE: Purchase Process



I don't know what I expected.

Who is your team?

Key Team Members:

- Commercial Broker
- Commercial Real Estate Attorney
- Accountant/CPA
- Insurance Broker
- Others (examples):
 - Property Manager
 - Construction Manager



Team Members: Broker Role v Attorney Role

Broker: Identifies a variety of properties meeting your criteria; analyzes the neighborhoods and various sales prices based on comparable sales in specified neighborhood; has pulse on current negotiation strategies/leverage ("Buyer's market" or "Seller's market", interest rates, concessions, etc)

Attorney: Protects your legal rights in the purchase agreement (what are your remedies if the contract is breached, who has risk of loss, when you can cancel the contract versus get a purchase price adjustment, etc)

The Basics

- **LOI**
- **Purchase Agreement**
- **Due Diligence Process**
- **Closing**

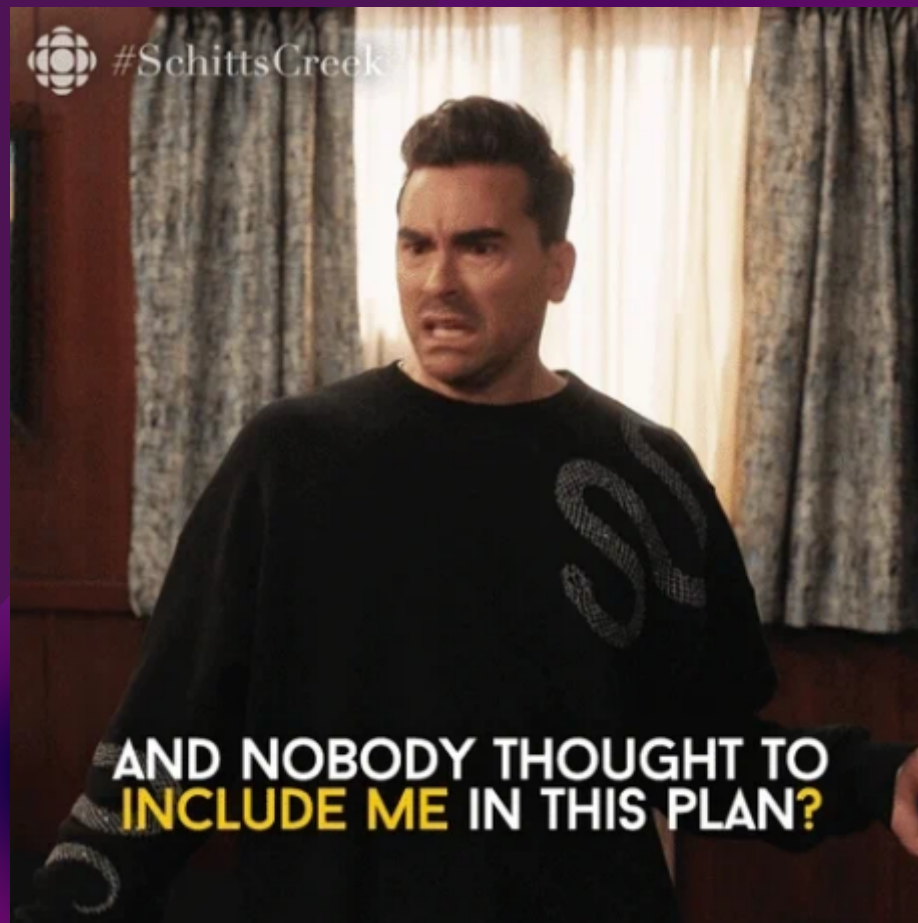


Why LOL?

Purchase & Sale Agreement

The "Legalese":

- who is buyer
- who carries risk between PSA and close?
- allocations
- Seller responsibility to keep property up
- What happens on default?



Due Diligence



Title & Survey
Zoning
Environmental
PCA

Property/Operating Information

Ownership Entities

Sole Proprietor

In your own name

YOU ARE LIABLE for everything!!



Corporation

Also limits liability to assets of the entity IF you respect it as a separate entity.

Company is taxed and then you pay tax when you get a dividend ("double taxation")

LLC/LP

Limits liability to assets of the entity IF you respect it as a separate entity. Taxes are "pass-through"

Superstar Developers LLC

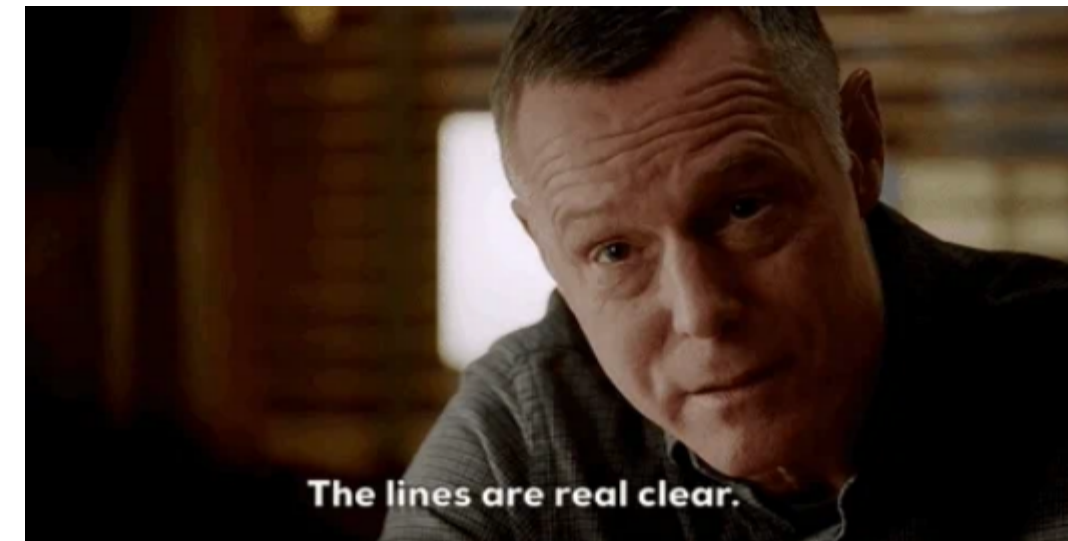
Mixed Use 1234 Main
Street LLC

Multifamily Apts LP

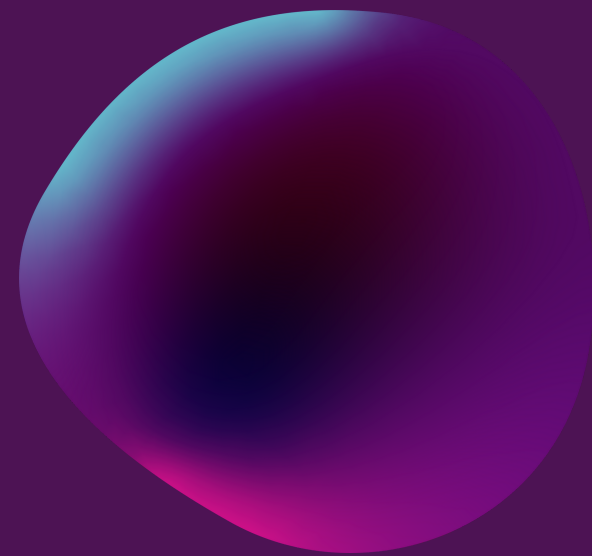
Mixed Use 5678
State Street LLC



...BUT you gotta
respect
boundaries



Without Financing:



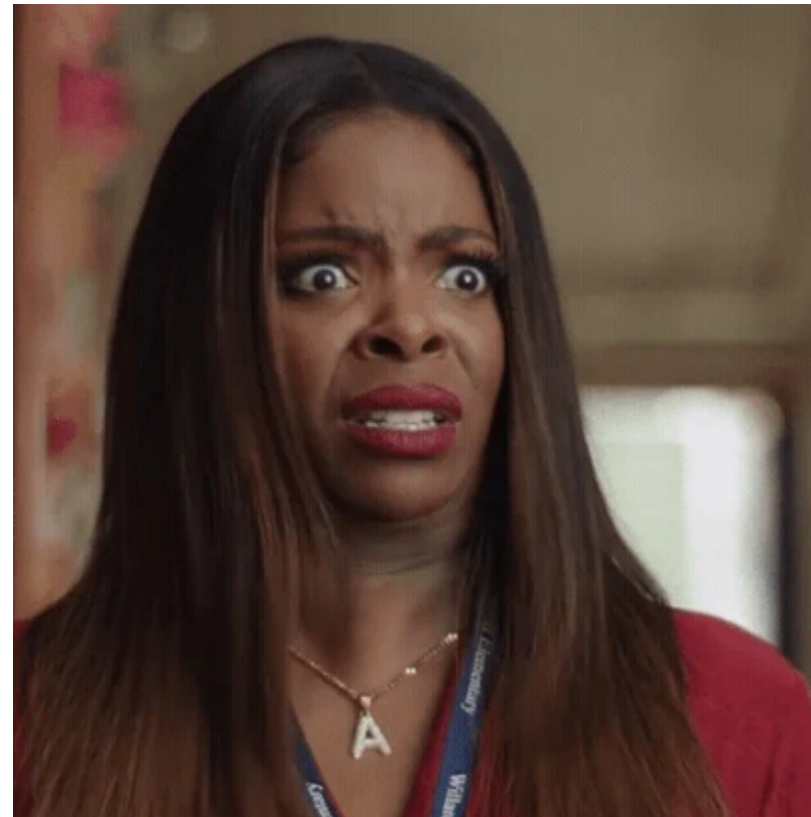
Lender Due Diligence

Pro Forma

Lender is going to vet your pro forma to determine if there is going to be enough cash flow that they will get repaid.

Contracts

Lenders will want to review all contracts: your Architect and General Contractor contracts will be assigned to them as part of the closing documents (so if you don't complete the project, they can step in and complete).



The Property Due Diligence

Lender will:

1. order appraisal (LTV reqs);
2. want reliance letter for ESA;
3. will require Lender's title insurance policy

Personal Finances

Lender will likely do a background check as the success of the deal is based on:

1. the team
2. the business plan

... And they will want a personal guaranty

Questions?

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