



James G. Dibbini
J.D., C.P.A., M.B.A.



**JAMES G. DIBBINI
& ASSOCIATES, P.C.**

Attorneys At Law

570 Yonkers Avenue - Yonkers, NY 10704

TEL (914) 965-1011- FAX (914) 965-0019

e-mail: jdibbini@dibbinilaw.com - website: www.dibbinilaw.com

THE IMPORTANCE OF DUE DILIGENCE WHEN BUYING OR SELLING PROPERTY

Buying a home or commercial property is undoubtedly one of the largest investments one can make. Thus, it is imperative that a buyer do his/her due diligence at the beginning of the transaction and usually before signing contracts.

If you are a seller, you should be aware that a buyer will need to do his/her due diligence. It is beneficial to know what a buyer needs before he/she even requests it as missing documents can stall or even kill a deal sometimes. Further, as an owner you are often the sole source of information about a property so it may be a good idea to gather the information once you have decided to sell your property.

To assist buyers and sellers with the due diligence process our office prepared the following checklists. Note this list is not exhaustive and the unique circumstances of each deal warrant a tailored due diligence approach:

RESIDENTIAL REAL ESTATE TRANSACTIONS:

- Take a trip to the local municipality's building department** (you may be able to ask your realtor for assistance with this) – and get copies of the following:
 - **Certificate(s) of Occupancy (“CO”)** – this document describes the legal use and occupancy of a property
 - **Certificate(s) of Completion (“CC”)** – confirms permits opened for work done to a building after its original construction (i.e. finishing a basement, adding a deck, patio, or pool, etc.) were properly closed out.
 - **Open Permits** – should be properly closed out by obtaining certificates of completion
 - **Violations** - If any, should be resolved prior to closing. If you purchase a home with out-standing violations, it becomes the buyer's obligation thereafter to address the violations.
 - **Survey** – determines the dimensions, structures, encroachments & easements upon property.

* *If obtaining financing a lender will usually require the proper certificates, that open permits are properly closed out, and a survey of the premises be available.*

** *In New York City most of this information can be obtained online at www.NYC.gov/buildings*

- Obtain copies of:
 - real estate tax bills/history (any pending tax certiorari matters)
 - utility bills (including gas, electric, oil, water & sewer)
- Have an engineer or home inspection of property, including a check of:
 - Structural (roof, floors, foundation) and mechanical (electrical, plumbing heating) components
 - Asbestos, lead paint, mold, underground tanks and etc.
 - Underground Oil Tanks
 - If there is one, hire a tank tester to test the tank to determine if there is a leak, which can cause soil contamination. Evidence of water or soil contamination may trigger a pollution remediation order under federal (and state) laws.
- Additional inspections that can be helpful:
 - Termite, radon gas, septic system, well water & lead paint inspections
- Confirm the school district with the town, village or city and don't rely on the property's address
- Visit the property at different times of the day/night for unusual or unexpected activity
- Determine if any warranties exist (i.e. roof or appliances) and if transferable to the new buyer
(Please see below for commercial checklist)

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NEWSLETTER

VOLUME MEMBER OF NEW YORK STATE BAR ASSOCIATION, WESTCHESTER COUNTY BAR ASSOCIATION AND YONKERS LAWYERS ASSOCIATION

COMMERCIAL/INVESTMENT REAL ESTATE TRANSACTIONS:

- Take a trip to the local municipality's Building Department** (you may be able to ask your realtor for assistance with this) – and get copies of the following:
 - **Certificate(s) of Occupancy (“CO”)** – this document describes the legal use and occupancy of a property
 - **Certificate(s) of Completion (“CC”)** – confirms permits opened for work done to a building after its original construction (i.e. finishing a basement, adding a deck or apartment, etc.) were properly closed out.
 - **Open Permits** – should be properly closed out by obtaining certificates of completion
 - **Violations** - If any, should be resolved prior to closing. If you purchase a property with out-standing violations, it becomes the buyer's obligation thereafter to address the violations.
 - **Survey** – determines the dimensions, structures, encroachments and easements, if any upon property

** If obtaining financing a lender will usually require the proper certificates, that open permits are properly closed out, and a survey of the premises be available.*

*** In New York City most of this information can be obtained online at www.NYC.gov/buildings*

Obtain from the Seller and/or his agent:

- Leases with any and all renewals and/or modifications (ETPA, Section 8, DSS and etc.)
- Current rent roll with security deposit information for each tenant
- Current rent arrears schedule
- Notes and mortgages, if debt is being assumed
- Old title policy
- Insurance policies and claims history (from seller's insurance agent) for the property
- All service contracts – i.e. elevator maintenance contracts, parking lot contracts, super, union contracts, pest control, HVAC systems, security systems, landscaping/snow plowing, extermination and etc.
- Copies of real estate tax bills/history (any pending tax certiorari matters)
- Proof of filings for boiler/oil tank/Income and Expense Forms to the County and/or City
- Proof of Division of Housing and Community Renewal (DHCR) filings for past 4 years
- Copies of all recent appraisals, engineering reports, environmental reports
- Physical inventory of furniture, fixtures, and equipment, and supplies
- Copies of utility bills: water, sewer, gas, electric (at least one year of monthly statements)
- Litigation history: details of any past or pending litigation (if none, then affidavit from owner)
- Research comparable fair market value space (apartments/retail/commercial space) and compare to current rent roll of subject property
- Engineering Inspection, including a check of:
 - Structural (roof, floors, foundation) and mechanical (electrical, plumbing heating)
 - Asbestos, lead paint, mold, underground tanks and etc.
 - Environmental Phase One (often required by a lender): An Environmental Phase One (1) Assessment is an inquiry conducted to determine the environmental status of a property or facility in connection with a real estate property transaction.
 - Environmental Phase Two (may be required by a lender): Assessments/Subsurface Investigations: These projects include but are not limited to subsurface drilling and sampling, monitoring well installation and sampling, ground penetrating radar, and asbestos and lead sampling.
- Contact mortgage broker/lending institutions for current lending requirements and terms
- Prepare an income and expense analysis using projected financing terms

If you or your client have additional questions about the due diligence process or need legal representation on a purchase or sale, please call James G. Dibbini and Associates, P.C. today.

Our office also provides legal services in the areas of:

- **Commercial & Residential Real Estate Closings**
- **Civil Litigation**
- **Landlord & Tenant Law**
- **General Business Law**
- **DHCR Representation**
- **Tax Certiorari, and**
- **Zoning Matters**