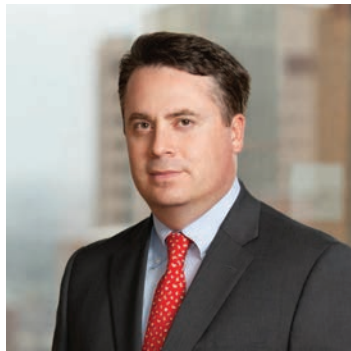




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Initial Considerations



- Title Defects are the greatest source of purchase price reduction for seller, and greatest risk of post-close loss to buyer.
- Buyer's goal: due diligence examination is main remedy to ensure that they receive what they have bargained for.
 - Post-closing remedies, such as indemnification claims pursued against seller for various breaches of PSA is much more expensive and less likely to result in buyer being made whole.
- Seller's goal: limit Buyer's time to find defects, limit Buyer's right to adjust purchase price for same, and ensure that after diligence period Buyer takes title as is, where is, with all faults, with no recourse against seller.

3

Initial Considerations



Three principal time constraints drive diligence decisions for Buyers:



4



Initial Considerations

Seller's wants

- Short diligence period
- Limit Seller's staff to assist Buyer with the organization and dissemination of Seller's records provided to Buyer
- No obligation for Buyer's diligence engagement costs

Buyer's wants

- Long diligence period (in some transactions, diligence periods can extend into a post-closing period)
- Robust records delivery obligations for Seller
- Efficiency with respect to diligence costs

The framework of reconciling the Buyer and Seller issues are dictated by the PSA.

5



Diligence Time Frame

Generally 30 – 90 days.

- Usually occurs between PSA execution date and 1 – 2 weeks before closing.
- Generally prudent to do a small amount of pre-execution diligence to be sure transaction is worth pursuing. If deal falls through, Buyer wasted funds (attorneys/land personnel) on a failed transaction.

The smaller the number of assets and the simpler the transaction, the better argument the seller has for a short diligence period. The greater the number of assets and more complex nature of a transaction lend toward buyer obtaining longer diligence.

Other factors:

- Distribution of Allocated Value
- Status of Seller's Records

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