

Closing the Sale

How to Negotiate Commercial Real Estate Sales Contracts



1

Negotiating Leases vs. Sales



2

5 Common Deal Point Categories

1) Property

2) Sales price

3) Earnest money

- a) Specific performance
- b) Liquidated damages

4) Contingencies

- a) Time-based
- b) Events-based
 - i. Title
 - ii. Financing
 - iii. Environmental
 - iv. Property condition
 - v. Entitlements
 - Zoning
 - Utilities

5) Closing date

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Ask Nunya About These Issues

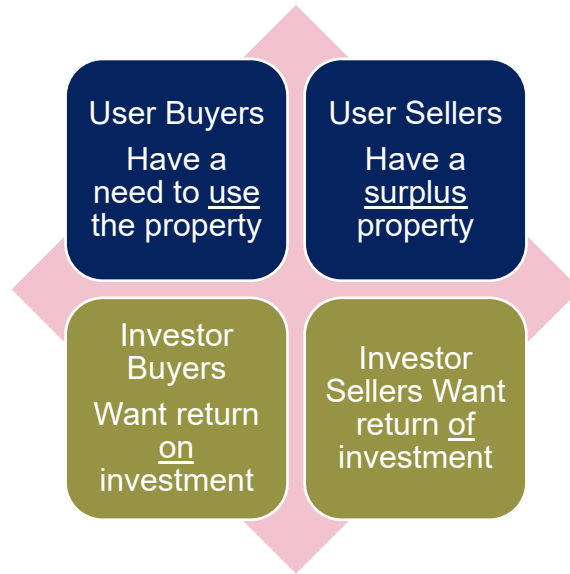
Legal Topics Beyond the Skills of RE Licensees

- Title
- Survey
- Zoning
- Insurance coverage
- Condemnation
- Environmental/Hazardous substances
- Casualty/Destruction or damage
- Governmental regulation



4

Types of Buyers & Sellers



5

Break Time



6

“Typical” Acquisition Timeline (see note below)

Typical Process & Timeline*	Introduction		Identification	Negotiation*		Documentation	
	# Mos.		# Mos.	# Mos.			
	1	2	??????????????	1	2	3	4
Sign engagement							
Define need							
Long list							
Tour							
Monitor market							
Offer							
Counter							
Biz points							
Legal points							
Inspection							
Design/pricing							
Live earnest money							
Close/build-out							

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Six Case Studies



The One That Contributed to a Business to Failure (Bought)



The One That Was a Special Purpose Building (Sold)



The One That Sold in a Normal Timeframe (Sold)



The One Involving a Difficult Personality (Bought)



The One During an Oil Market Collapse (Sold)



The One With the Environmental Issue (Bought)

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The One That Contributed to a Business to Failure (Bought)

Case Study #1

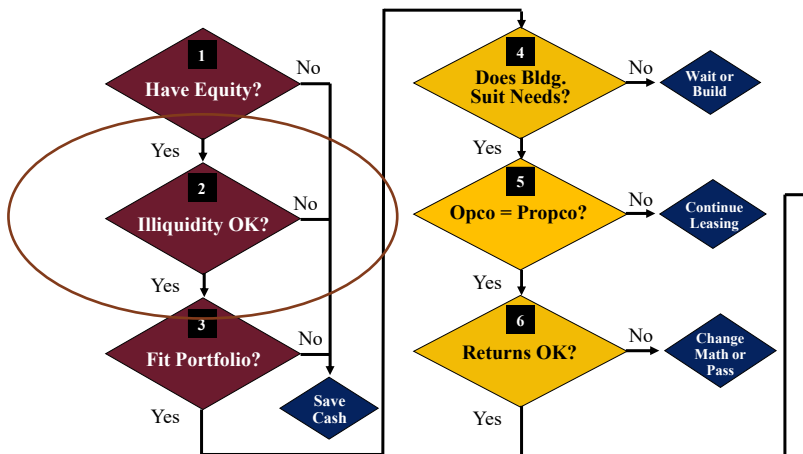
Real estate is an illiquid asset!



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Case Study #1

Take-Away



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The One That Was a Special-Purpose Building (Sold)

Case Study #2

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
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Dear Client

As you may recall, the Sales Listing Agreement between [redacted] Our firm [redacted] and Client "XYZ" [redacted] dated March 14, [redacted] expired as of September 14, [redacted]. I am writing to inform you that, effective immediately, Our firm [redacted] will no longer be marketing this property for [redacted] XYZ [redacted] to new prospects and that we will not be renewing the Sales Listing Agreement. I will be directing any future inquiries to you. If you list the property with another brokerage company, the pending sale of the property to [redacted] Purchaser [redacted] will be excluded from any future listing agreement(s).

With regard to the pending possible sale of [redacted] Property [redacted] to [redacted] Purchaser [redacted], Our firm [redacted] will spend a reasonable amount of time and will continue in good faith to work toward an executed Real Estate Sale Agreement between this group and [redacted] XYZ [redacted] and toward the ultimate sale of the building in keeping with the terms of an executed Real Estate Sale Agreement if one materializes. Under the terms of the possible Real Estate Sale Agreement and in keeping with laws of the State of Georgia, [redacted] XYZ [redacted] will pay X % of the sales price of the property to [redacted] Our firm [redacted] in cash at closing in the event of an eventual sale to [redacted] Purchaser [redacted].

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The Asset

Case Study #2

1																	
---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--



- ≈18,000 SF on two floors
- Low parking ratio
- Limited glass for offices
- Declining neighborhood

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ed@edriggins.com
404-660-4231

Bad Vibes From The Outset

Case Study #2

1 2

From: Colleague in TX
To: Me
We need you to take a small dispo assignment to support our efforts with a client we're working with.

From: Me
To: Colleague in TX
Sure, happy to help

From: Me
To: Client
This won't be an easy one, because of the property. I recommend a \$1MM price and reduce it in 90 days if we don't get any activity

From: Client
To: Me
Naah, let's start out at \$1.3MM.

From: Me
To: Me
This feels like scope creep...

30 days later

From: Colleague in TX
To: Me
Client is upset. Need you to do bi-weekly reports.

From: Me
To: Colleague in TX
Really, dude?

From: Colleague in TX
To: Me
I need you to take one for the team...

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Stayed in Touch, Worked, and Waited...

Case Study #2

3 4 5 6 7 8 9

Me to Client: Nothing to report

Me to Client: Nothing to report

Me to Client: Nothing to report

Me to Client: Nothing to report

Me to Client: Nothing to report

\$1.3MM → Reduced price → \$1.115MM

Me to Client: WE HAD A TOUR!

Me to Client: Nothing to report

Me to Client: Nothing to report

From: Client
To: Me
Boss wants to know demo cost. Maybe it's really a site?

From: Me
To: Client
Demo not accretive to value, and besides, no demand.

Me to Client: Nothing to report

Me to Client: WE HAVE AN OFFER!

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Final Negotiation

Case Study #2

10 11 12 13 14 15 16 17 18



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Case Study #2



Take-Aways

- 1) The most likely buyer is nearby
- 2) Scope creep is real
- 3) Know when to walk away (with class)
- 4) Get what you're owed as you leave
- 5) People with a steady paycheck have:
 - a) a time horizon different than yours
 - b) three main goals:
 - i. don't get fired
 - ii. don't get fired
 - iii. don't get fired

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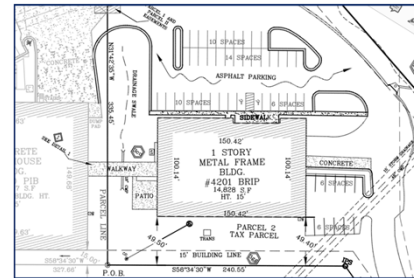
The One That Happened in a Normal Timeframe (Sold)

Case Study #3 

1	2	3	4	5	6	7	8	9	10	11
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15K industrial bldg.
Attached by breezeway



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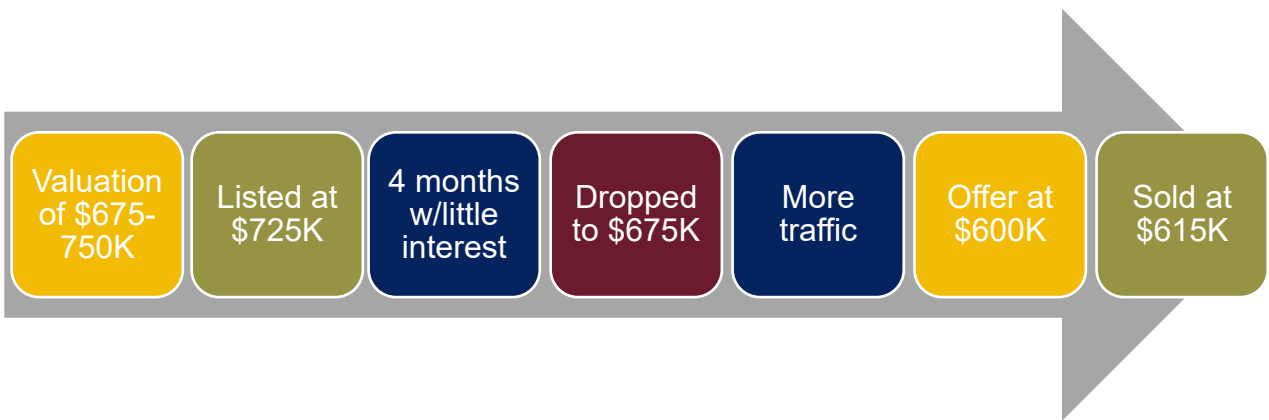
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The One That Happened in a Normal Timeframe (Sold)

Case Study #3 

1	2	3	4	5	6	7	8	9	10	11
---	---	---	---	---	---	---	---	---	----	----



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But Getting Hired Took a Little Time...

Case Study #3



Yr. 1

Yr. 2

Yr. 3

Yr. 4

Yr. 5

Yr. 6

Yr. 7

Yr. 8

Yr. 9

Cold called local

Phone contact w/ President for 18 mos

Met President at HQ

6-month lag

Valuation \$880-960K

Stayed connected 7 years



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Case Study #3



Take-Aways

- 1) Keep calling; you never know when something will change
- 2) Set expectations early and reinforce your message
- 3) Working with sophisticated clients is less stressful
 - a) Client had:
 - i. Willingness to pay for as-built drawing
 - ii. Property survey
 - iii. Loan release documents
 - iv. NFA letter on UST
 - v. Experience with real estate



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Break Time



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The One Involving a Difficult Personality (Bought)

Case Study #4

Item	Cost
Parking lot	100,000
HVAC	300,000
Windows	250,000
Total	650,000



	Price	Haircut	Eat it	Total
Contract	3,380,000			3,380,000
Re-trade	2,730,000	650,000		3,380,000
Final	3,161,000	219,000	431,000	3,811,000

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The One Involving a Difficult Personality (Bought)

Case Study #4

Dec Jan Feb Mar Apr May Jun July Aug



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The One During an Oil Market Collapse (Sold)

Case Study #5

West TX Intermediate Crude Price



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Source: St. Louis Fed

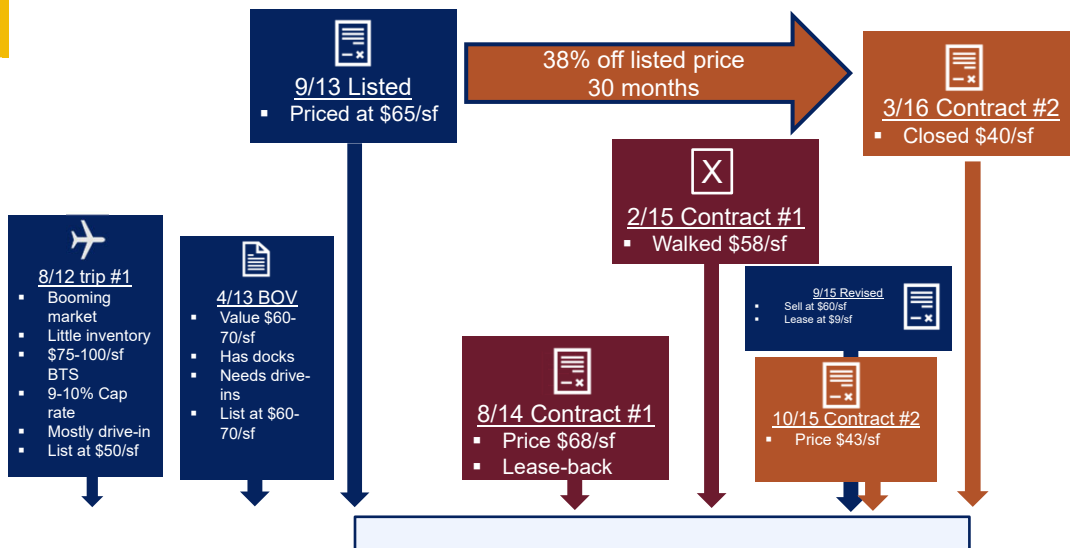
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The One During an Oil Market Collapse (Sold)

Case Study #5



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Source: St. Louis Fed

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Case Study #5

Take-Aways

- 1) You're only as good as your local partner
- 2) Communicate often. Otherwise, the client assumes you're golfing
- 3) Offer options, even ones they don't like
- 4) Agree to time-based price adjustments in advance
- 5) Make the client look good to their boss

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The One With the Environmental Issue (Bought)

Case Study #6



November 20, 2000
 Mr. Steve _____
 President

Dear Steve:

I enjoyed meeting you last week and speaking with you again by phone on Monday. At any given time, there are a number of buildings available in the _____ area that are in the 20,000-square foot range that offer outside storage.

With the hope that I will have an opportunity to work with you at some point in the future, I am enclosing information about our firm along with my business card and professional profile.

I'll be back in touch, and I wish you much continued success.

Sincerely,

Ed Riggins
 Executive Vice President
 (404) 257-8866 ext. 233
 eriggins@ceepartners.com

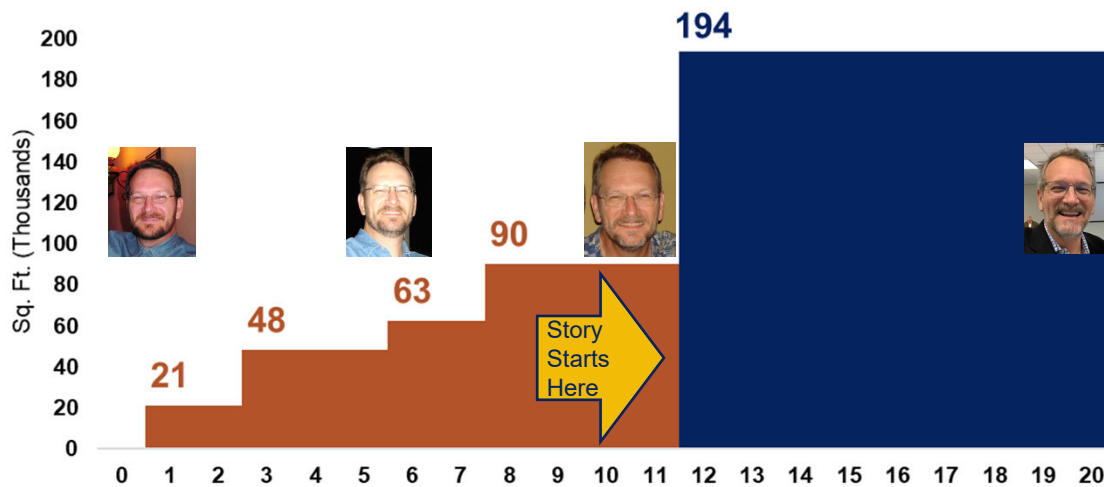
Enclosure
 Enclosure w/ general profile & business card

11/20/00 Steve after meeting on CC, wants to buy 20K w/5K off and more yard space, 2 yrs. left on lease. outgrown his banker needed to be in bus 2 yrs. to get larger bank to look at him and has done that. Wants to line up financing before looking. Played college football and grad school. Lives in _____ and _____ area works well. Said he'd talked to (competitor) and then it died. letter Will know more Q1 about his business plan.

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The One With the Environmental Issue (Bought)

Case Study #6

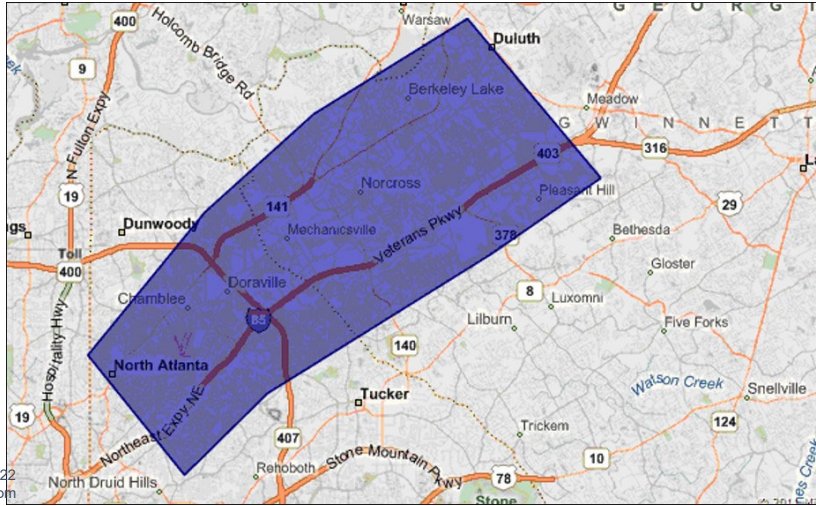


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Initial Search Area

Case Study #6

1



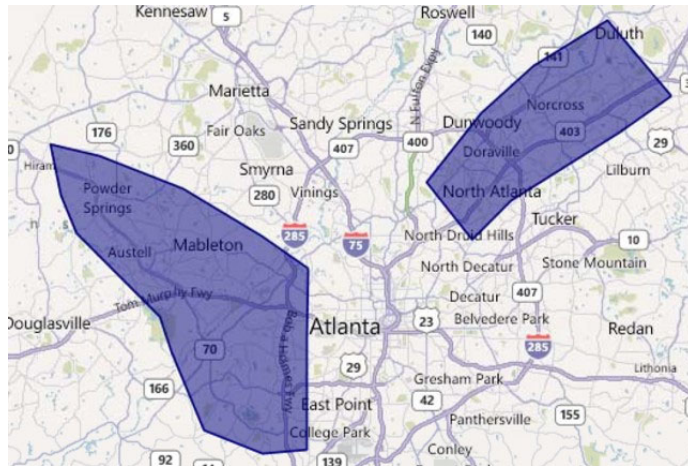
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Revised Search Area

Case Study #6

5



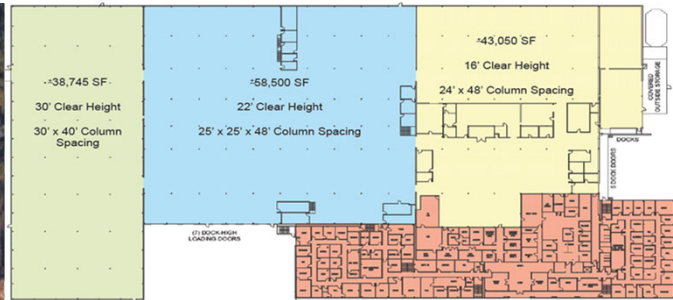
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Found One!

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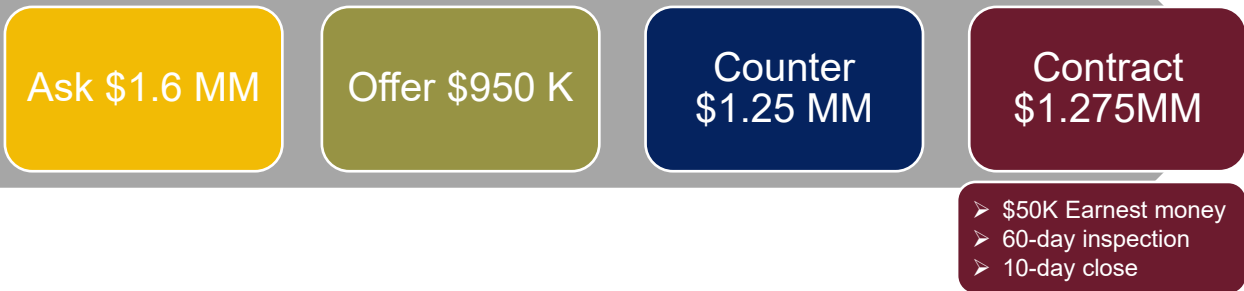
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The Contract Negotiation

Case Study #6



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Environmental: Defining the Problem

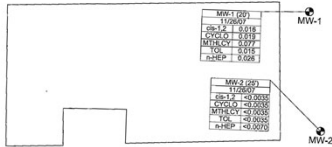
Case Study #6

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4.0 CONCLUSIONS

This report presents the results of the Phase II ESA prepared by located at:

This investigation has identified constituents in the soil and groundwater:



Groundwater					
Well ID	Date	Toluene	cis-1,2-Dichloroethene	Tetrachloroethene	Trichloroethene
MW-1	8.8	<5.0	<5.0	<5.0	<5.0
MW-2	<5.0	38	100	66	
MW-3	<5.0	<5.0	<5.0	<5.0	
MW-4	<5.0	<5.0	<5.0	<5.0	
MW-5	<5.0	<5.0	<5.0	<5.0	

Soil							
Well ID	Depth (feet bis)	Date	Cyclohexane	cis-1,2-Dichloroethene	Methylcyclohexane	Toluene	n-Heptane
MW-1	20		0.019	0.016	0.077	0.015	0.026
MW-2	25		<0.0035	<0.0035	<0.0035	<0.0035	<0.0070
MW-3	25		<0.0038	<0.0038	<0.0038	<0.0038	<0.0077
MW-4	25		<0.0048	<0.0048	<0.0048	<0.0048	<0.0098
MW-5	30		<0.0050	<0.0050	<0.0050	<0.0050	<0.010

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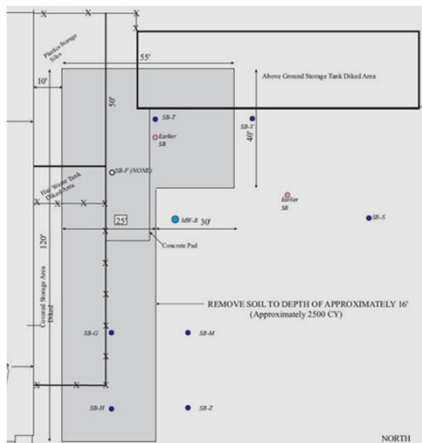
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Environmental: Cost & Escrow

Case Study #6

13 14 15 16 17



ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Escrow Agreement") is entered into and effective this [redacted] day of [redacted] [redacted] Bank ("Escrow Agent" or "Bank"), [redacted], a limited liability company organized under the laws of the State of Georgia ("Seller") and [redacted], a limited liability company organized under the laws of the State of Georgia ("Buyer") (collectively the "Parties");

WHEREAS, pursuant to that certain Standard Commercial Sales Agreement between Seller and Buyer dated as of [redacted], (as amended, the "Contract"), Seller has agreed to sell to Buyer and Buyer has agreed to purchase from Seller certain real property located in [redacted] more particularly described in Exhibit A attached to the Contract (the "Property"); and

WHEREAS, Seller and Buyer agreed to enter into an escrow holdback agreement to pay for the cost to complete certain work under a Corrective Action Plan (the "CAP"), the scope of such work being set forth in that certain Cost to Completion Estimate letter (the "Cost to Completion Letter") dated September [redacted]; and

WHEREAS, Seller and Buyer agree that Seller, using approved contractors, shall complete the Remediation Work in accordance with the Cost to Completion Letter and the terms of this Escrow Agreement, and that Seller shall be permitted draws to pay such contractors for such work, as permitted under the terms of this Escrow Agreement; and

WHEREAS, Seller and Buyer agree that Seller shall deposit, and Escrow Agent shall hold, one hundred fifty percent (150%) of the estimate set forth in the Cost to Completion Letter, being the sum of Three Hundred Twenty-One Thousand Two Hundred Sixty-Five and 50/100 Dollars (\$321,265.50) (the "Deposit"), to be released and paid pursuant to the terms herein set forth.

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Getting Government Approval of Plan

Case Study #6

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Response and Remediation Program

Hazardous Sites Response Program
Land Protection Branch

Re: Brownfields Corrective Action Plan

Dear Mr. [REDACTED]:

[REDACTED] is pleased to submit two copies of the enclosed **Brownfields Corrective Action Plan and Application for Limitation of Liability** for your review. The property has been impacted by the upgradient Site and has been substituted under HSI # [REDACTED]. The site has also been impacted by a toluene spill, reportedly from a former underground storage tank.

We note that the prospective purchaser of the property, [REDACTED], has delayed closing on this property, pending the acceptance of the property into the Brownfields program. With this in mind, we will greatly appreciate any efforts you can make in the expeditious review of the attached document. Of course, we will promptly provide any additional information or any assistance you might require to this end.

Again, thank you very much for your time, effort and consideration on our behalf. I look forward to hearing from you soon and I remain,

Very truly yours,
[REDACTED]
Senior Environmental Scientist

Georgia Department of Natural Resources
Environmental Protection Division
2 Martin Luther King, Jr. Dr., S.E., Suite 1462 East, Atlanta, Georgia 30334
Judson H. Turner, Director
Land Protection Branch
Keith M. Bentley, Branch Chief
Phone: 404/657-6800 FAX: 404/657-6807

Attn: Steve [REDACTED]

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Re: Limitation of Liability

[REDACTED]
Atlanta, GA
Parcel A Number [REDACTED]
Parcel B: [REDACTED]
Parcel C: [REDACTED]

Dear Mr. [REDACTED]:

The [REDACTED] Environmental Protection Division (EPD) has completed its review of the Brownfields Eligibility Form and Prospective Purchaser Corrective Action Plan (PPCAP) for the above-referenced [REDACTED]. We have determined that [REDACTED] is eligible to receive a limitation of liability for preexisting releases at the above referenced qualifying properties. The properties are described in the attached legal description marked as Exhibit A, and are depicted on the attached survey plat marked as Exhibit B and the tax map marked as Exhibit C.

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Getting SBA Approval of Plan

Case Study #6

21 22

SBA.GOV
U.S. Small Business Administration

**U.S. Small Business Administration
Sacramento Loan Processing Center**

6501 Sylvan Road, Suite 111
Citrus Heights CA 95610

[REDACTED]

Florida Business Development Corporation

RE: Environmental Report Evaluation

Trade Name: [REDACTED]
Address: [REDACTED]

Transaction Control Number: [REDACTED]
Loan Number: [REDACTED]
e504 Tracking Number: [REDACTED]

The environmental report submitted on the above property is acceptable to SBA, subject to the following conditions.

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Finally!

Case Study #6



CLOSING STATEMENT

SELLER: _____
PURCHASER: _____
PROPERTY: _____
PURCHASE PRICE: \$1,275,000.00
DATE CLOSED: _____
CLOSING AGENT: _____

- Multiple lease/buy analyses
- Dozens of calls & emails
- Dozens of document reviews
- Standing weekly calls for 9 months
- Chemo for a key team member
- Accountability emails after most calls
- 6 contract amendments

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Case Study #6

Take-aways

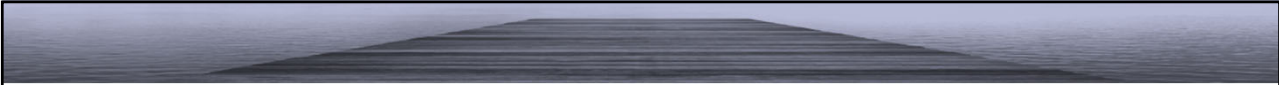
- 1) End calls/meetings with: “who will do what by when?”
- 2) Carry the less-knowledgeable person (it might be you next time)
- 3) The Seller’s Motto?
 - a) More is better than less (obvious)
 - b) Now is better than later (time value of money)
 - c) For sure is better than maybe (risk)

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ed@edriggins.com
404-660-4231



Known simply as “Riggo” to the thousands who have laughed and learned while attending in his programs, Ed Riggins has had a career that proves you can enjoy serious success without taking it all too seriously. He learned from doing stand-up comedy that if you want to find the truth, look for the funny. He learned from improv comedy to find the natural flow and go with it.

Before becoming a national top producer, being named “Who’s Who of Commercial Real Estate” by the Atlanta Business Chronicle and recognized as a “Power Broker” by Costar, Riggo mowed lawns, customized cars, drove a forklift, and was a small engine mechanic, on his way to becoming a first-generation college graduate. Ed is among less than 1% of practitioners nationally to have earned both the SIOR and CCIM designations.

Ed Riggins, CCIM, SIOR
404-660-4231
ed@edriggins.com
www.edriggins.com

