

# PUBLICATION

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## Key Points in Commercial Real Estate Purchase and Sale Contracts: Negotiating the Payment of Purchase Price and Deposit

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In a multipart series, we're examining important points to consider when negotiating commercial real estate purchase and sale contracts from the perspectives of buyers and sellers. This first post in our series offers suggestions for negotiating the payment of the purchase price and deposit.

### Negotiating the Purchase Price and Payment Structure

When negotiating contract terms, it is important for both sellers and buyers to specify in the agreed-upon term sheet or letter of intent (LOI) the purchase price and how it will be paid. This includes detailing the amount and timing of the initial deposit and subsequent deposits (if any); the party who will serve as escrow agent to hold the deposits; whether all or any portion of the deposits will be refundable, under what circumstances, and when they become nonrefundable; and whether the buyer will obtain financing or pay cash for the balance of the purchase price due at closing.

### Deposit Terms: Amount, Timing, and Financing Arrangements

With respect to the amount and timing of deposits, the LOI should specify the amount and due date for each deposit. The initial deposit is often due upon signing of the contract. In addition, it is typical for commercial purchase and sale contracts to require between ten percent and twenty percent of the purchase price as the deposit. A seller may want to require an additional deposit to be due at a later date, such as upon expiration of any due diligence period. The parties should also specify who will hold the deposits, which are often held by the buyer's title company.

A seller may want to push for language in the contract that makes the deposit nonrefundable in the event of a default by the buyer and upon expiration of the due diligence period. Conversely, a buyer may want to include in the LOI that the contract will contain language that makes the deposit fully refundable in the event of a default by the seller, material misrepresentation by the seller, the seller's inability to cure a title or survey defect, or failure of a party to satisfy a contract contingency.

If a buyer is obtaining financing, or if the parties agree to a purchase money note at closing, the terms of such financing or purchase money note and any security should be specified in the LOI and in the purchase price section of the contract. It is prudent to negotiate the purchase money note and mortgage, if applicable, at the same time as the contract and to attach agreed-upon forms of the note and mortgage as exhibits to the contract.

### What's Next: Negotiating the Due Diligence Period

In our next post, we will examine the importance of negotiating the due diligence period and offer suggestions as to how a buyer and seller might each optimize their positions.

If you have any questions about drafting and negotiating commercial real estate purchase and sale contracts – or handling any aspect of transactional real estate matters such as commercial leasing, acquisitions and dispositions, title matters, diligence, and financing – please contact [Allison S. Mercantini](#) and [Zlata Fayer](#).

