

CONSIDERING PURCHASING A BUILDING FOR YOUR BUSINESS? Four Items to Consider Before Closing the Deal

Rather than continue to pay ever rising rents to a landlord, many business owners are discovering that purchasing a building presents an excellent opportunity to have more control over day-to-day operations, as well as a chance to invest in the neighborhood in which they conduct business. When deciding if purchasing a building is the right step for your business, there are numerous factors to consider, including: 1) financing, 2) down payment, 3) liability considerations and 4) exit strategy.

Financing.

Unless the business has a significant cash reserve that is not otherwise needed to run and expand the business, financing will be necessary to complete the deal. Financing issues include:

- Does the business have existing financing? Do the terms and conditions of that financing restrict further borrowing that may be necessary to purchase the building? Will the company need to refinance its existing loans in order to purchase the building?
- If necessary, what collateral can the business provide to the lender in addition to a mortgage on the building?
- Will the lender require that the owners guarantee the loan which would result in greater liability exposure as compared to a lease?
- Does the business have a strong credit history, or are there issues that could hinder the business from acquiring competitive financing terms?

Down Payment.

Going hand-in-hand with financing considerations, nearly all lenders are going to require a significant financial contribution towards the purchase of the building. Generally, a down-payment ranging between 10-20% will be expected, and this number can be higher if the bank is concerned about the creditworthiness of the business. Business owners must consider:

- What will be the source of funds for the down-payment?
- If the business must borrow money from the owners to fund the down-payment, what will be the terms of re-payment?
- Will the down-payment cause a cash-flow problem? Should the company defer the purchase until more funds are readily available?

Liability.

Business owners must consider the additional liability associated with owning a building. A prudent business owner must consider:

- What method of property ownership makes most sense for the business (i.e. limited partnership, limited liability company, land trust, etc.)?
- What additional liability will the business be exposed to as the owner of a building when compared to a lease?
- Will the business occupy the entire building, or will it have excess space it desires to sublease?
- Are there environmental issues, perhaps caused by other tenants in the building, that could be attributed to the business once it purchases the building?
- What steps does the business need to take to be certain that liabilities of the business are separate and apart from the liabilities associated with ownership of the building?

Exit Strategy.

Often the most neglected topics is what happens when it is time to sell the property. When the time comes to either sell the business or move to another location, an exit strategy will be important to allow for a smooth transition. Business owners must give careful consideration to:

- What events should trigger the sale of the building?
- If the business outgrows the building, will you be able to transfer ownership in a deferred "tax-free exchange"?
- What if one of the owners wants to sell or assign his or her interests in the building to a third party?
- What happens if one of the owners dies or becomes disabled?

The attorneys at Levin Ginsburg are highly qualified in assisting business owners in making these critical decisions. Please contact any of our attorneys in the real estate department today so we can help you answer these questions and determine if the purchase of a building is the best course of action for your business.