

3 Key Considerations for Canadian Purchasers of Commercial Property

The process of purchasing commercial or industrial real property in the U.S. can include some surprises for the unprepared or those not familiar with real estate closing in the U.S. Here are some key considerations for Canadian investors when entering the U.S. market:

1. The Purchase Contract. Your Purchase Contract should include the following vital protections:

- Authorization to perform structural and financial due diligence.
- The right to review all title work for the property.
- The right to perform an engineering inspection and Phase 1 Environmental Report to identify any unknown conditions.
- The right to cancel the Purchase Contract if unable to obtain adequate financing.
- Other potential contingencies if the purchase will require public financing.

2. Choice of Purchasing Entity. One of the most important decisions a Purchaser will make is the type of entity or organization to form to own the real property. Although there are many options to consider, Canadian investors often choose, due to income tax and liability considerations, a limited partnership. A limited partnership offers liability protection to its limited partners (who are often the Canadian investor(s)) while its general partner bears the full liability for all debts and obligations. In most instances, this general partner will be a U.S. Corporation, solely owned by a Canadian entity, which further insulates such investor(s) from potential liability. From an income tax standpoint, the limited partnership is a pass-through entity; namely gains or losses and net income pass through directly to the individual limited partners.

It should be noted that when purchasing residential real property in the U.S., this analysis may change and other vehicles (including an irrevocable trust, for example) may become a better option for a Canadian investor.

3. Timing. Once the choice of entity analysis described above is complete, the typical timeline for purchasing U.S. commercial real property is approximately 60 to 90 days from contract signing.

These are just a few of the items to consider when entering the U.S. industrial real estate market. We would be happy to work with you to establish the most effective plan for your purchase.

For further information on this topic, please contact Thomas M. Gordon at Gross Shuman Brizdle & Gilfillan P.C.

465 Main Street, Suite 600, Buffalo, NY 14203. | Tel: 716.854.4300, Ext 287 E-mail: tgordon@gross-shuman.com | www.gross-shuman.com