



Frequently Asked Questions in Commercial Real Estate Law

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1. Do I need title insurance?

While there is no legal requirement for title insurance, it is usually a best practice to get title insurance when you buy a property. The title company should conduct a title search to identify important information which is recorded in the property's title history including who owns the property, what liens and encumbrances are on it, and if there are other recorded claimants. Unfortunately, title insurance is not a silver bullet. There are many exceptions and the policy is often limited to what appears in the public record. As a result, it is important to consider getting representations and warranties from the seller as well as a survey on the property. A title insurance policy is no substitute for good due diligence.

2. Should I set up a separate entity to hold my commercial real estate?

While there is no legal requirement to do so, holding property in a separate entity can provide valuable benefits and protections. By separating the operating entity from the real property, a significant hurdle is erected to protect the assets of one entity from liability or a judgment solely against the other entity. Additionally, by separating them, the entities can have different ownership, rights, management, and even tax benefits. Unfortunately, there are some down sides. The liability protections are not absolute and there is an added cost of managing and operating two separate entities. Initial, and ongoing, consultations with your attorney and CPA can go a long way in maintaining these protections and maximizing the benefits of separating the two entities as the laws, rules, and regulations are always changing.

3. Where is my deed? Do I need to hold onto it?

Your deed, whether a warranty deed, quit claim deed, or otherwise, should be recorded in the register of deeds in the county in which the property is located. The recording of the deed functions to put the

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public on notice of your rights to the property. While it is always wise to keep important records (like deeds), if you misplace it, you can generally get a copy of the recorded deed by visiting the county's register of deeds and paying a nominal fee.

The answers to these questions are meant for general information purposes. Please discuss with legal counsel before taking any action. If you would like to learn more or have further questions regarding Commercial Real Estate law, contact Rob Hamor at 248.785.4737 or at rhamor@fosterswift.com.