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Commonly Negotiated Provisions in a Sale-Leaseback Purchase and Sale Agreement

Sale-leaseback transactions continue to be a popular structure for companies looking to unlock the value of their real estate while retaining operational control of their property. These deals offer benefits to both parties: sellers gain immediate capital, and buyers acquire stable, long-term tenants. Both the purchase and sale agreement and the lease agreement are typically negotiated in tandem. However, in this post, we focus specifically on the most commonly negotiated provisions found in the purchase and sale agreement.

New to our sale-leaseback summer series? Get started with this breakdown of [sale-leaseback fundamentals](#) or brush up on the most important [due diligence considerations and other legal issues](#) typically in play with such deals.

Commonly Negotiated Provision #1: Representations and Warranties

In sale-leaseback transactions, the purchase and sale agreement often includes more detailed representations and warranties from the seller, who will also become the tenant. This is largely due to the seller's knowledge of the property, having owned and developed or operated it. These representations commonly include environmental warranties, such as confirmation that the property complies with applicable environmental laws and regulations, and that there are no known environmental hazards or contamination. In addition to environmental assurances, the agreement typically addresses the physical condition of the property. This may involve representations that the property is in good working order, free from major defects, and built or maintained in accordance with relevant building codes. Provisions may also cover the quality and condition of any improvements made to the property. Furthermore,

the seller may warrant that there are no existing leases, service agreements, or encumbrances affecting the property.

Although similar to a standard commercial real estate purchase and sale agreement, the buyer/landlord will expect more detailed representations in sale-leaseback transactions. (For example, instead of merely stating that seller has not received written notice of a violation of any environmental laws, the representation in a sale-leaseback transaction will likely require the seller/tenant to represent that no violations of environmental law exist.)

Commonly Negotiated Provision #2: Financial Terms

Alongside these legal considerations, it is important to understand the financial provisions of the agreement. Assessing the property's worth for a sale-leaseback involves evaluating the company's finances, estimating affordable rent, and analyzing market lease rates to set an attractive and realistic asking price.

Commonly Negotiated Provision #3: Contingencies

Contingencies are crucial for buyers, providing an opportunity to withdraw from the agreement if certain conditions are not met. Common contingencies include financing, inspection, and appraisal. Buyers should negotiate contingencies that protect their interests while ensuring they have sufficient time to fulfill these conditions. For sellers in sale-leaseback transactions, a common contingency might include securing a lease agreement with favorable lease terms. This contingency helps sellers ensure a smooth transition from ownership to tenancy. Both parties benefit from clearly defined contingencies that protect their interests and provide time to meet the necessary conditions.

The purchase and sale agreement establishes the current financial and legal foundation of the transaction, but it's only part of the larger framework. The lease agreement plays an even more pivotal role, shaping long-term financial commitments and the ongoing

control and use of the property. In the next part of this series, we'll examine the lease agreement and how its provisions shape a successful sale-leaseback transaction.

Please contact the authors or any attorney with Frost Brown Todd's [Retail and Shopping Center Finance](#) team if you have specific questions about purchase and sale agreements or would like assistance determining whether a sale-leaseback transaction is right for you.

Check out other articles in our sale-leaseback series:

- [Breaking Down Sale-Leaseback Transactions | Part 1](#)
 - [Reverse Build-to-Suit: Sale Leaseback Transaction with a Twist | Part 2](#)
 - [How Investors Use 1031 Exchanges and Sale-Leasebacks to Maximize Returns and Preserve Capital | Part 3](#)
 - [Sale-Leaseback Due Diligence Considerations | Part 4](#)
 - [Integrating Sale-Leaseback Transactions with Mergers and Acquisitions: A Value-Maximization Strategy | Part 5](#)
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