



### "Only You" (Making the most of your Assignment provision)

Commercial real estate purchase agreements typically contain provisions regarding the assignment of the agreement prior to the closing. It's no surprise that sellers want to know who they are dealing with and dislike agreements that are freely assignable and allow a buyer to flip the contract to another buyer. As such, real estate purchase agreements commonly provide that the contract is not assignable or only assignable with the seller's consent. Unfortunately, inattention to a contract's particular requirements can mean trouble for a potential buyer needing to change the initially named buyer.

Below are some issues to consider in connection with any assignment provision:

**Affiliate.** Buyers should always insist on the right to be able to assign the agreement to an "affiliate." After all, a named party may decide to form a new entity, such as a limited liability company or other form of entity to own the property. While discussions can arise defining "affiliate," requesting the right to assign to affiliates is a common and reasonable request, and often a legal necessity.

**Release.** Buyers will want the originally named buyer to be released following an assignment. Concerns can arise when the new named buyer is a recently formed company with no assets. Seller will want the originally named buyer to continue to be responsible for all obligations under the agreement. Sellers often do not want to allow for a release as it is easier to hold all parties liable for the pre and post closing obligations, than it is to engage in an evaluation of the creditworthiness of the new party. This issue is often intertwined with what rights and remedies available to the seller in the event buyer fails to close.

**Closing Logistics.** Even where agreements are fully assignable by a buyer, both the seller and the title/escrow company involved in the transaction will want to know the name of the assignee party. This information needs to be made available far enough in advance of closing to ensure that the Deed, Title Insurance Policy and other closing documents reflect the correct name and satisfy any requirements the either may have in connection with the new party's formation or authority.

**Seller's Rights.** Buyers should be wary of terms that allow a seller to assign an agreement and generally reject such language as it frustrates the purpose of the purchase agreement, as well as undermining the title review and control over due diligence.

We help commercial real estate purchasers and investors structure their acquisition and review and negotiate all forms of purchase and sale agreements.

For more information please call (480) 889-8948, send an email to [info@steinlawplc.com](mailto:info@steinlawplc.com) or visit [www.SteinLawPLC.com](http://www.SteinLawPLC.com).

### Upcoming Speaking Engagements

**Scott J. Stein** will serve as a faculty member for the [National Business Institute \(NBI\)](http://www.nbi-sems.com) and present a seminar on *Handling Real Estate Transactions With Confidence* on **Thursday, December 1, 2011** (time and location to be confirmed).



Mr. Stein's presentation is entitled "Step-by-Step Through the Purchase Contract" and will offer proactive strategies to confidently navigate through commercial property transactions and prevent future disputes.

More information is available at [www.nbi-sems.com](http://www.nbi-sems.com).

### Third Anniversary

On December 1, Stein Law will celebrate its three year anniversary. We wanted to take a moment to again thank our clients, friends and family for their ongoing support.

Happy Thanksgiving!

### Stein Law Recent Developments Archives

The following is a link to our Stein Law, PLC Recent Developments

Archives:

[Recent Developments Archives](#)

#### Practice Areas

Stein Law, PLC is a boutique business and real estate transactional practice offering legal services in the areas of:

- ◆ real estate purchase and sales, leasing and development;
- ◆ business transactions, joint venture and operating agreements, and corporate contracts;
- ◆ entity formation;
- ◆ loan financings, workouts and modifications; and
- ◆ hospitality development, management and licensing matters.

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