



Distressed properties "do the due" - The importance of compliance due diligence

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Today's tight banking credit market - although slowing construction to a crawl - has seemed to have an opposite effect on the marketability of distressed properties. The result of a large amount of equity funds on the side lines bidding for a scant few properties desirable distressed has caused many dollars to chase a few properties that are stalled but well along in the construction, design and approval process. Owners of these properties with no pressure for foreclosure by their current lenders (many lending institutions do not want to increase their portfolio of non-performing loans, and thus trigger additional cash (reserve requirements), have no incentive to make a deal or let their property go at a bargain.

The lending institution (not desiring to become an owner) would prefer to sell the debt thus requiring the mortgage purchaser to either make a deal with the current debtor or begin costly and time consuming private foreclosure proceedings.

This "paralysis" has made the necessity of a due diligence review of the "compliance" aspects of a project even more important as component of evaluation of the sale.

For a stalled project that is not in the stalled site program (which makes the approval good for a 4 year period) one must review the approval components. Non-permitted, non-stalled site project approvals are only good for 2 years and a lapse could require the project be re-filled and re-reviewed under more costly parameters of the 2008 code.

Also for a sale of an occupied building where there exists only a TCO, one must be cognizant of potential audit parameters which can cause a re-review on an already occupied or close to a TCO'd project- these already built projects may be subject to construction changes due to the need to resolve new audit objections.

This audit can be particularly onerous on existing professionally certified jobs.

It has not been unheard of having "zoning" items such as light and air issues raised that if not resolved that can render previously designated "habitable" rooms only "occupiable," thus making a 2 bedroom into a 1 bedroom apartment thus playing havoc with approved attorney general offering plans.

This can also be an issue on professionally certified jobs that have a final C of O and exist as a rental but have not been built to plan thus having some code issues that can be revealed as the premise is converted to a condo.

This is why due diligence review of the approval history, the plans themselves and the walkthrough of the project are imperative.

Also a review of the violation history is the key because costly unresolved violation may exist for elevator and boiler annual certification where substantial fines can accrue. In addition, a review of the violation history can document problems with construction or adjacent property owners which

still might not be resolved.

There may also be a history of violations that will show problems with the adjacent property owners in regard to foundation work, lot line windows, chimneys, etc., which have to be resolved prior to receiving an FCO.

Also, the process of going from TCO-FCO can be quite costly if required items such as controlled inspections were not completed or DEP letters of satisfaction for environmental issues not received as well as sewer connection, water tap and fire alarm issues not resolved.

Also, prior permit contractor might be owed money (especially mechanical licensed trades who are needed for final signoff such as Elev., PL, SP, SD, Boiler) and are needed to close out the job-holding the new owner hostage for funds owned that were never revealed.

These are just a few items that should make a purchaser beware and requires one to "do the due."

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