

## **Letters of Intent**

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Before parties sign a final contract, but after they have reached agreement on the basic terms of a deal, they often sign a letter of intent - a short writing containing the terms of the deal to which the parties agree. Such letters are common in US real estate transactions and they can be helpful in moving a transaction forward to negotiation of a final deal. However, they also can create significant liabilities for the parties should the deal fail. If the parties fail to negotiate a final contract, a letter of intent may nevertheless be held to bind the parties to the deal reflected in the letter or to otherwise create obligations on the part of the parties.

A letter of intent can be any written document containing the important terms of a prospective deal that is signed by the prospective parties to the transaction or their agents. For instance, in a leasing situation the landlord and the tenant (or their brokers) might sign what is commonly referred to as a term sheet, which is a form of a letter of intent.

The document does not need to state that it is a letter of intent. It may be called a lease proposal, it may be a lease term sheet or it simply can be a letter with the parties' signatures. The document also does not need to be written by a lawyer - in fact, most are written by the parties and their brokers. Frequently the parties do not even consult a lawyer because they do not think of a letter of intent as imposing binding obligations on the them. Nevertheless, the parties usually contemplate that they will negotiate in good faith to reach agreement on the terms described in the letter of intent. Since such letters do not contain all the terms of a deal, they can potentially cause confusion. However, signing such letters is common practice in the United States for various types of commercial real estate transactions - especially in larger deals that are more complex - because they perform several useful functions.

Signing a letter of intent can be a time saving, inexpensive way for parties to grasp and to memorialize the basic business terms of a proposed transaction, and to provide them with the comfort necessary to negotiate the remaining deal terms and finalize a contract. Drafting the letter can highlight for the parties issues for future negotiations and help the parties identify any deal breaking issues before they have invested too much time in the negotiation process.

However, in drafting and signing a letter of intent, caution must be used, as a letter of intent can be given the binding effect of a contract and enforced by a court. Thus, when a letter of intent, it is advisable to include the following language: "A more definite and formal contract is contemplated by the parties hereto, and the terms and provisions hereof are subject to the review and approval of the parties' legal counsel.

Of course, the more significant the transaction is, the more imperative it is for you to secure the advice of your legal counsel before signing the letter of intent. At Blustein, Shapiro & Rich, we routinely handle and advise our clients with respect to letters of intent involving a wide variety of commercial transactions. Frequently, our advice alerts our clients to overlooked legal issues, unforeseen consequences, and the need for express contingencies to provide for an exit strategy to protect our client if the deal does not ripen in accordance with their expectations and requirements. Call one of us before sign any document that may have significant legal or financial consequences.