THE REAL ESTATE PURCHASE: THE IMPORTANCE OF THE LEGAL DUE DILIGENCE

In order to prepare the purchase or sale of a property or set of properties it is necessary to analyse the real estate assets involved in the transaction and, to this end, the realization of a legal “due diligence” is an important and fundamental process that enables us to have accurate and organized information in order to know which factors must be considered to submit an economic offer.

Thus, the aim of a “due diligence” is to enhance transparency and build trust among the parties involved in the deal and it is an almost compulsory step which must be taken before undertaking some major real estate transactions.

The “due diligence” consists in carrying out a detailed study covering everything which is needed to execute a real estate purchase or sale agreement. And, in this context, the following aspects should be taken into account:

A) Real Estate “Due Diligence”

It is vital to consider the personal issues such as the ownership, domain constraints or administrative easements; the rights in rem (usufruct, mortgages and other charges); the legal status of the property such as the rural and urban leases, statements of new construction, properties in community and horizontal property regime; and finally, the formal elements: ownership title, public deed as well as registry and cadastral verification of the real estate.

B) Urban “Due Diligence”

As a first approach to the information planning, in order to study the economic viability of the real estate development project, it is essential to consider the council urban planning, the personal data of the holder of the urban development rights, the urban aspects of real estate such as the urban situation or plot conditions, and the verification of licenses.

C) Building “Due Diligence”

This section analyses the conditions to build a plot, the location and shape conditions of buildings (the building line, the outer alignment, the maximum building line or the separation to boundaries, among others); the type of works, the documentation that must
be submitted to the promoter at the conclusion of the works, the importance of the act of acceptance of works regarding the responsibility of the risks covered by the insurance, the construction insurance for developers, builders and subcontractors; the replacement of the beneficiary of the policy in favour of the purchaser; and the building’s book.

**D) Real Estate Tax “Due Diligence”**

The revision of tax issues includes the following sections:

1. **Direct taxes:**
   - Personal Income Tax (IRPF); Non-Residents Income Tax (IRNR)
   - Corporate Income Tax (IS)
2. **Indirect taxes:**
   - Value Added Tax (IVA).
   - Transfer Tax and Stamp Duty (Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados)
   - Tax on the Increase in Value of Urban Land
   - Business Tax (IAE)
   - Local taxes: Real Property Tax, Municipal Added Value Tax, Tax on Constructions, Installations and Building Works, Fees, etc.
3. **Tax inspections.**
4. **Proceedings before the Administration** (including the analysis of the sale of properties through companies).

**E) Litigation**

It includes the study of actions to protect property (boundaries, claiming ownership, third-party proceedings, etc.) and/or the existence of expropriation proceedings, among others.

The information contained in this note should not be regarded in itself as specific advice on the matter discussed, but only a first approach to the subject. Therefore it is highly recommended that the recipients of this note search professional advice about their particular case before taking specific measures or actions.
CONFIDENTIALITY

The above notes and comments are published as a service to our clients and collaborators only for informative purposes. The object of such comments does not substitute the specific legal advice that should be required for every case and its transmission does not create any binding relation lawyer-client between the sender and the recipient. Bufete B. Buigas, S.L. makes available to you all the services of its law firm if further or additional information is required on the subject contained in this Newsletter. The information contained in this message and/or attached file(s) is confidential/privileged and it is only addressed to the recipient. If you read this message and you are not the intended addressee or you have received this communication in error, we inform that any disclosure, distribution or reproduction of the whole document or part of such communication is completely forbidden and might be illegal and we ask you to inform us immediately and to return the original message to us. Thank you very much.

LOPD

Pursuant to the Organic Law 15/1999, of 13th December, of Personal Data Protection, we notify that the personal data you can provide to us are included in automatic files on behalf of Bufete B. Buigas, S.L., where you can address in order to exercise your right of access, rectification, opposition or cancellation provided herein by means of a written communication to Bufete B. Buigas, c/ Iradier, 19-21, 08017 Barcelona.

LSSI

If you do not want to receive more communications write an e-mail with “unsubscribe” as a subject of the e-mail to the following electronic address buigas-request@listas.buigas.com