

Letters of Intent:
Be Careful What You Ask For

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- “Thus, for example, an instrument which expressly states that it is a gentleman’s agreement or otherwise not a binding commitment will generally not be treated as creating contractual duties, although it is nevertheless an agreement.”

I WILLISTON, A Treatise on the Law of Contracts § 1.3

- “That a letter of intent is not a useless document, but it is not, in principal, a contract, except perhaps a contract to continue bargaining in good faith.”

1 CORBIN, Corbin on Contracts, § 1.16.

"Final Proposal

- First National is given a 10 year put at a capitalization rate of 9% at the then current annual rental. Federal Realty to cooperate with tax free exchange.
- Federal Realty to be given a call at the end of ten years at a 9% capitalization rate.
- First National to be offered an option to lease office space of up to 5000 square feet in the new Santana Row complex at \$4.00 per square foot per month, subject to the terms and conditions of a new lease.
- First National to be reimbursed \$75,000 to buy out the current lease holder, New Things West.
- Federal Realty to pay for the moving expenses of First National Mortgage not to exceed \$25,000.00.
- Federal Realty to prepare a legal agreement for First National's review to finalize the agreement.
- Effective date of agreement as of date of vacating premises.
- The above agreement must be accepted via fax to 408-249-9214 no later than 10:00 a.m. California time on August 25, 2000, at which time this counter offer will automatically expire.

The above terms are hereby accepted by the parties subject only to approval of the terms and conditions of a formal agreement."

First National Mortgage Company v. Federal Realty Investment Trust, 631 F.3d 1058 (9th Cir. 2011)

Outline

- I. Choosing the Purpose
- II. Choosing the Tactics
- III. Good faith/Bad Faith
- IV. Choosing the Executioner
- V. Binding/Nonbinding
- VI. Style Don'ts
- VII. Take Away Points

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