



Lancaster, Brooks & Welch LLP
BARRISTERS AND SOLICITORS

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Due Diligence
by David Edwards

This is an expression which is often heard, but often misunderstood. It is an expression which is common place in a commercial transaction. A press release in a large transaction might read that the purchase of the business is conditional upon the completion of *Due Diligence* by the purchaser. What that means is not, however, always clear.

Commercial transactions often have one or more conditions which must be satisfied before the agreement becomes binding upon the parties. One type of condition is one which provides a period of time during which one or both of the parties, has the opportunity to confirm that certain things are correct. For example, a vendor might represent that the sales of the business are a certain amount. The purchaser has indicated that it is prepared to purchase the business for a price which will be a multiple of the sales figures. The sales figures of the vendor are therefore very critical to both parties. In that instance the purchaser would have a time period commencing after the signing of the purchase agreement and terminating before the closing of the purchaser during which the purchaser can review the sales documentation and satisfy itself as to the accuracy of the sales. If, at the end of this review, the purchaser is not satisfied, the purchase is aborted. This is a type of *Due Diligence*.

Due Diligence is therefore the process by which a party to a legal agreement satisfies himself or herself with respect to something before being legally committed to the contract. The types of *Due Diligence* are as varied as the types of legal agreements into which people enter. A purchaser of land will want to have his *Due Diligence* period expanded to allow for the confirmation of zoning, environment, potential tenants, and rent rolls if the property is a plaza/shopping mall. A purchaser of a business will want the opportunity to check the financial data provided by the vendor; to review the legal contracts of the business; to assess the physical condition of the premises; to examine employee liabilities.....

The critical point is that before committing oneself it is very important that the terms of the *Due Diligence* be drafted by a lawyer to insure that all of the important aspects of the business or land be subject to *Due Diligence* and that you are able to abort the contract if you are not satisfied with the results of your inquiries.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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