

# Summary of Contents

## Volume 1

### **PART I. PURCHASE, SALE, AND LEASE**

Chapter 1.	Negotiating the Purchase and Sale of Real Estate
APPENDIX 1.1.	Contract of Sale
APPENDIX 1.2.	Letter of Intent for Acquisition for Real Estate
APPENDIX 1.3.	Surveyor's Report
APPENDIX 1.4.	Seller's Representations and Warranties
APPENDIX 1.5.	Purchase Price
APPENDIX 1.6.	Guarantee of Minimum Operating Income or Profit for Buyer
APPENDIX 1.7.	Manner of Payment of Purchase Price
APPENDIX 1.8.	Existing Mortgage
APPENDIX 1.9.	Purchase Money Mortgage
APPENDIX 1.10.	Third-Party Financing
APPENDIX 1.11.	Title and Title Insurance
APPENDIX 1.12.	Zoning Change
APPENDIX 1.13.	Building or Zoning Violations
APPENDIX 1.14.	Certificate of Occupancy
APPENDIX 1.15.	Existing Leases and Tenancies
APPENDIX 1.16.	Condition of Premises
APPENDIX 1.17.	Environmental Hazards
APPENDIX 1.17.5.	Lead Warning Statement
APPENDIX 1.18.	Damage, Destruction, or Condemnation
APPENDIX 1.19.	Remedies for Failure to Close
APPENDIX 1.20.	Title Closing Worksheet
APPENDIX 1.21.	Agreement of Purchase and Sale (Short Form for Complex Transaction)
APPENDIX 1.22.	IRS Form 8288: U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests
APPENDIX 1.23.	IRS Form 8288-A: Withholding Statements on Dispositions by Foreign Persons of U.S. Real Property Interests

APPENDIX 1.24.	IRS Form 8288-B: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests
Chapter 2.	Tax-Free Exchanges of Real Estate
APPENDIX 2.1.	Checklist of Information Needed From Exchanger
APPENDIX 2.2.	Analysis of Tax Positions of Exchangers
APPENDIX 2.3.	Annual Property Operating Data
APPENDIX 2.4.	Cash Flow Analysis
APPENDIX 2.5.	Agreement Contemplating Acquisition of Property to Be Designated by Exchange Party
APPENDIX 2.6.	Checklist for Drafting an Agreement for Exchanging Properties
APPENDIX 2.7.	Exclusive Authorization to Exchange Property
APPENDIX 2.7.50.	Clause Obliging Buyer to Cooperate with Seller's Like-Kind Exchange
APPENDIX 2.8.	Agreement as to Difference in Property Values and Method of Paying Amount of Difference
APPENDIX 2.9.	Checklist for Planning a 1031 Exchange
APPENDIX 2.10.	IRS Form 8824: Like Kind Exchanges
APPENDIX 2.11.	IRS Form 1099-S
APPENDIX 2.12.	Certification for No Information Reporting on Sale or Exchange of a Principal Residence
Chapter 3.	Negotiating The Commercial Lease
APPENDIX 3.1.	Checklist for Office Lease Transactions
APPENDIX 3.1.50.	Lease provision mandating compliance with laws and purposes
APPENDIX 3.2.	Lease Provision for Flat Rental Payments
APPENDIX 3.3.	Lease Provision for Step-Up or Step-Down Rental
APPENDIX 3.4.	Rent Escalation Clause Based on Increased Real Estate Taxes
APPENDIX 3.5.	Rent Escalation Clause Based on Increased Operating Expenses
APPENDIX 3.6.	Rent Escalation Clause Based on Porters' Wages
APPENDIX 3.7.	Rent Escalation Clause Based on Cost-of-Living Adjustment
APPENDIX 3.8.	Lease Provision Against Assignment, Mortgage, or Sublet
APPENDIX 3.9.	Lease Provision for Renewal Rent to Be Adjusted According to Price Index

## SUMMARY OF CONTENTS

- APPENDIX 3.10. Lease Provision for Renewal Rental to Be Fixed by Arbitration
- APPENDIX 3.11. Automatic Renewal Provision
- APPENDIX 3.12. Lease Provision for Option to Purchase Premises
- APPENDIX 3.13. Lease Provision for Right of First Refusal
- APPENDIX 3.14. Work Letter Checklist
- APPENDIX 3.15. Short Form Net Lease Agreement
- APPENDIX 3.16. Office Lease in Multitenant Building
- APPENDIX 3.16.50. Lease provision for commercial signage
- APPENDIX 3.17. Clauses Covering Advance Rentals and Security Deposits
- APPENDIX 3.18. Right to Assign or Sublet to Related or Merged Corporation; Definition of Subsidiary, Affiliate, and Successor
- APPENDIX 3.19. Mutual Waiver of Subrogation Rights, Including Deductibles; Waivers of Right of Recovery
- APPENDIX 3.20. Manner of Notice of Cancellation of Lease
- APPENDIX 3.21. Parties to Use Commercially Reasonable Efforts to Mitigate Damages
- APPENDIX 3.22. Checklist for Office Building Insurance Coverage

## **PART II. FINANCING**

### Chapter 4. Methods of Financing Commercial Real Estate

- APPENDIX 4.1. Construction Loan
- APPENDIX 4.2. Takeout Commitment
- APPENDIX 4.3. Mortgage Note
- APPENDIX 4.4. Mortgage
- APPENDIX 4.5. Deed of Trust
- APPENDIX 4.6. Balloon Payment Mortgage
- APPENDIX 4.7. Alternate Rate Mortgage Note With Negative Amortization
- APPENDIX 4.8. Second Mortgage
- APPENDIX 4.9. Wraparound Mortgage
- APPENDIX 4.10. Leasehold Mortgage

### Chapter 4A. Methods of Financing Residential Mortgages

- APPENDIX 4A.1. Rev. Proc. 2013-16
- APPENDIX 4A.2. Mortgagee Letter 2014-21
- APPENDIX 4A.2.50. Mortgagee Letter 2017-12
- APPENDIX 4A.3. Loan Estimate

APPENDIX 4A.4.	Closing Disclosure
APPENDIX 4A.5.	Consumer Finance Protection Bureau—TILA-RESPA Integrated Disclosure FAQs
APPENDIX 4A.6.	Executive Summary of the Residential PACE Financing Rule
APPENDIX 4A.7.	Modification to Closing Disclosure for PACE Financing Transaction, Model Form
Chapter 5.	Mortgage Loan Commitments
APPENDIX 5.1.	Loan Commitment Letter
APPENDIX 5.2.	Checklist for Construction Loan Commitment
APPENDIX 5.3.	Checklist of Permanent Mortgage Commitment
APPENDIX 5.4.	Construction Loan Commitment with Commentary
APPENDIX 5.5.	Brokerage Agreement
Chapter 6.	Mortgage Loan Underwriting and Documentation
APPENDIX 6.1.	Selected Promissory Note Provisions
APPENDIX 6.2.	Selected Deed of Trust (or Mortgage) Provisions Generally
APPENDIX 6.3.	Leasehold Loans: Selected Deed of Trust (or Mortgage) Provisions Where Fee Interest is Subordinated to Leasehold Interest
APPENDIX 6.4.	Leasehold Loans: Selected Provisions Where Fee Interest is Not Subordinated to Leasehold Interest
APPENDIX 6.4.3.	Leasehold Mortgagee Protections: Operational Protections for Leasehold Mortgagees
APPENDIX 6.4.7.	Leasehold Mortgagee Protections: Mortgagees' Notice and Opportunity to Cure
APPENDIX 6.5.	Borrower's Assignment to Lender of Leases and Rents as Additional Security for Loan
APPENDIX 6.6.	Agreement to Complete Construction Where Borrower Fails to Do So
APPENDIX 6.6.5.	Construction Loan Agreement: Select Representations and Warranty Provisions
APPENDIX 6.7.	Buy-Sell Agreement
APPENDIX 6.8.	Estoppel Certificate in Support of Buy-Sell Agreement
APPENDIX 6.9.	Tripartite Agreement
Chapter 7.	Joint Ventures and Participating Debt
APPENDIX 7.1.	Participating Mortgage Provisions for Additional Interest— Participation in Cash Flow and Appreciation
APPENDIX 7.2.	Convertible Mortgage—Purchase of Equity Interest
APPENDIX 7.3.	Agreement Creating Joint Venture

## SUMMARY OF CONTENTS

- Chapter 8. Real Estate Securitization
  - APPENDIX 8.1. Glossary of CMBS Terms
- Chapter 8A. SEC: The Dodd-Frank Act and Related Legislation
- Chapter 8B. Servicers and Receivers
- Chapter 8C. Dodd-Frank Credit Risk Retention Requirements
- Chapter 9. Case Studies in Creative Real Estate Financing
  - APPENDIX 9.1. Selected Provisions of Agreement of Limited Partnership Succeeding General Partnership
  - APPENDIX 9.2. Selected Provisions of Lease of Land Only
  - APPENDIX 9.3. Selected Provisions of Sublease
  - APPENDIX 9.4. Agreement to Repurchase Mortgages
  - APPENDIX 9.5. Junior Leasehold Mortgage Provisions
  - APPENDIX 9.6. Limited Partnership Provisions Concerning Allocations of Tax Losses and Cash Distributions
  - APPENDIX 9.7. Wraparound Leasehold Note and Mortgage
  - APPENDIX 9.8. Conversion Provision of Promissory Note
  - APPENDIX 9.9. Buy-Back of Limited Partnership Interests
  - APPENDIX 9.10. Leasehold Mortgage Note
  - APPENDIX 9.11. Wraparound Leasehold Mortgage
  - APPENDIX 9.12. Joint Venture Agreement

## **PART III. INVESTMENTS**

- Chapter 10. Real Estate Investment Analysis Using Modern Finance Theory
- Chapter 11. Investing in Raw Land
  - APPENDIX 11.1. Checklist: Buying Raw Land for Resale
  - APPENDIX 11.2. Checklist: Investing in Raw Land Near a City
  - APPENDIX 11.3. Sample Clauses
  - APPENDIX 11.4. Sample Agreement: Option to Purchase Property
  - APPENDIX 11.5. Sale of Land in Subsection
  - APPENDIX 11.6. Installment Sale of Land to Developer (With Partial Release Clause)
- Chapter 11A. Investing in Apartment Buildings
  - APPENDIX A. Checklist for Investing in an Apartment Building
  - APPENDIX B. Apartment House Investor's Checklist
  - APPENDIX C. Apartment House Financial and Operating Data
  - APPENDIX D. Apartment House Data Concerning Owner, Agents, Tenants, and Community

- Chapter 12. Ground and Net Leases
- APPENDIX 12.1. Sample Clauses
  - APPENDIX 12.2. Absolute Net Lease of Office/Warehouse
- Chapter 13. Sale-Leasebacks
- APPENDIX 13.1. Letter of Intent for Sale-Leaseback of Land
  - APPENDIX 13.2. Sale and Leaseback of Property Subject to Existing Mortgage Tenancies
  - APPENDIX 13.3. Sale-Leaseback and Assignment of Lease and Subleaseback
  - APPENDIX 13.4. Contract of Sale and Leaseback of a Shopping Center Before Construction
  - APPENDIX 13.5. Contract of Sale Contemplating Leaseback of Existing Center
  - APPENDIX 13.6. Checklist-Drafting Sale and Leaseback Agreements

## Volume 2

### **PART IV. OWNERSHIP CONCERNS**

- Chapter 14. Real Estate Restructurings and Workouts
- APPENDIX 14.1. Mortgage Clauses to Protect a Lender Against Distressed Real Estate
  - APPENDIX 14.2. Recasting Agreement
  - APPENDIX 14.3. Forbearance Agreement
  - APPENDIX 14.4. Preworkout Letter Agreement
  - APPENDIX 14.5. Subordination, Nondisturbance, and Attornment Agreement
  - APPENDIX 14.6. Tenant Estoppel Certificate
  - APPENDIX 14.7. IRS Form 4219-Statement of Liability of Lender, Withholding Taxes
- Chapter 15. Environmental Laws and Real Estate Transactions
- APPENDIX 15.1. Federal Environmental Offices
  - APPENDIX 15.2. State Environmental Offices
  - APPENDIX 15.3. Indemnification by Seller—Including remediation costs
  - APPENDIX 15.4. Indemnification by Seller
  - APPENDIX 15.5. Sample Clause: Seller’s Representations and Warranties
  - APPENDIX 15.6. Sample Clause: Environmental Provisions in Loan Commitment Letter
  - APPENDIX 15.7. Sample Clause: Mortgagor’s Warranty of Compliance With Environmental Laws and Regulations
  - APPENDIX 15.8. Sample Clause: Warranty by Seller

## SUMMARY OF CONTENTS

APPENDIX 15.9.	Sample Clause: Environmental Audit Clause in Sales Contract
APPENDIX 15.10.	Sample Clause: Environmental Provisions in Mortgage Note (Short Form)
APPENDIX 15.11.	Sample Clause: Environmental Provisions in Mortgage Note (Long Form)
APPENDIX 15.11.50.	Sample Clause: Indemnification for Environmental Claims (Lender's favor)
APPENDIX 15.12.	Sample Clause: Tenant's Compliance With Laws
APPENDIX 15.13.	Sample Clause: Tenant's Use of Hazardous or Toxic Material
APPENDIX 15.14.	Sample Clause: Assignment and Subletting by Tenant
Chapter 16.	Forms of Income Property Ownership
APPENDIX 16.1.	Characteristics of Forms of Investment
APPENDIX 16.2.	Summary of Legal and Tax Aspects
APPENDIX 16.3.	Agreement to Hold Real Estate as Co-owners
APPENDIX 16.4.	Agreement to Hold Real Estate as Tenants in Common Pending Improvements
APPENDIX 16.5.	Partnership Agreement to Acquire and Hold Particular Property
APPENDIX 16.6.	Limited Partnership Provisions
Appendix 16.6.10.	Death of limited partner sample clauses
Appendix 16.6.20.	Assignment of limited partnership interest
APPENDIX 16.7.	Agency Agreement Between Nominee Corporation and Beneficial Owner
APPENDIX 16.8.	Real Estate Joint Venturers' Buy/Sell Agreement
APPENDIX 16.9.	Termination of Real Estate Joint Venture
Appendix 16.9.50.	Real estate development joint venture agreement
Appendix 16.9.60.	Management clause, 50/50 real estate joint venture (non-member manager)
Appendix 16.9.70.	Management clause, 50/50 real estate joint venture (member manager)
Appendix 16.9.80.	Management clause, 50/50 real estate joint venture (managing member subject to approval)
APPENDIX 16.10.	Deed In Trust
APPENDIX 16.11.	Land Trust Agreement
APPENDIX 16.11.50.	Land Trust Agreement; lodging provision
APPENDIX 16.12.	General Partnership to Engage in Buying, Selling, and Investing

APPENDIX 16.13.	Agreement Between Developer Corporation and Corporate Property Owner
APPENDIX 16.14.	Agreement to Hold Real Estate as Tenants in Common Pending Improvements
APPENDIX 16.15.	Articles of Organization for Real Estate Limited Liability Company
Appendix 16.16.	Residential Condominium Conversion Application
Appendix 16.17.	Condominium de-conversion request form
Chapter 17.	Real Estate Aspects of the Americans With Disabilities Act
APPENDIX 17.1.	ADA Regulations and Technical Assistance Materials
Chapter 18.	Real Property Management
APPENDIX 18.1.	Property Manager—Job Description Checklist
APPENDIX 18.2.	Management Agreement Bet. Property Owner and Agent
APPENDIX 18.3.	Property Takeover Checklist
APPENDIX 18.4.	Market Survey
APPENDIX 18.5.	Building Exterior Inspection Report
APPENDIX 18.6.	Work Order
APPENDIX 18.7.	Request for Service by Tenant
APPENDIX 18.8.	Work Order Log
APPENDIX 18.9.	Service Priority List
APPENDIX 18.10.	Property Service Record
APPENDIX 18.11.	Rent Roll
APPENDIX 18.12.	Operating Budget
APPENDIX 18.13.	Statement of Operations
APPENDIX 18.14.	Comparative Statements Between Income and Operating Expenses
APPENDIX 18.15.	Management Summary
Chapter 19.	Valuation of Real Estate
APPENDIX 19A.	Valuing Real Estate for Tax Purposes
APPENDIX 19B.	Analyzing Value in Real Estate: Appraisal Concepts
APPENDIX 19C.	Revenue Ruling 59-60—Valuation of Closely Held Corporations

**PART V. 2015 TAX GUIDE**

Chapter 20. Income Tax Planning

Chapter 21. Family Tax Planning for Real Estate Investors

**Table of Laws and Rules**

SUMMARY OF CONTENTS

**Table of Cases**

**Index**