

MULTIFAMILY LAUNCHPAD

WITH JONATHAN TWOMBLY

REAL ESTATE INVESTMENT
EDUCATION



THE LETTER OF INTENT

Module 5 – Video 5

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THE LETTER OF INTENT

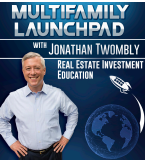


What we'll cover in this video:

- The purpose of a letter of intent
- How to use a letter of intent to set the terms of the negotiation

Disclaimer: I'm a lawyer, but I am not a real estate lawyer. And I am definitely not your lawyer. LOIs and contracts involve complicate legal issues requiring specialized expertise. You may not rely on anything here for legal advice. You must hire your own lawyer to review your LOIs and contracts.

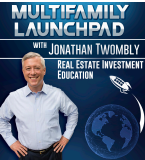
THE PURPOSE OF THE LETTER OF INTENT



Purpose of the LOI

- In commercial transactions, you must make a written offer to start negotiations
- LOI sets the terms of the negotiation, forces the seller to negotiate off your points, and locks seller into a position before you even start negotiating the contract

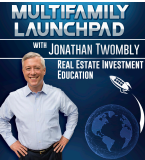
USING THE LOI TO SET TERMS OF NEGOTIATION



Using LOI strategically:

- Many buyers don't put much thought into the LOI. They just use it to offer a price. This is a missed opportunity to control the negotiation from the outset.
- Use the LOI not just to offer a price, but also to establish:
 - Contingencies
 - Hard money deposit amount and timing
 - Internal timing deadlines
 - Due diligence materials you are entitled to receive
- This forces seller to counter your proposals and to negotiate off your offer. The less you leave open, the more the seller has to negotiate off your proposal.

WHAT ARE CONTINGENCIES?



What are contingencies?

- A contingency is an event, the happening of which allows the buyer to obtain a full refund of its deposit.
- The standard contingencies are:
 - **Seller default** – Seller fails to convey. So basic that sometimes it isn't even stated (leave out of LOI)
 - **Inspection** – buyer is allowed to terminate contract and obtain full refund for any reason or no reason at all during this period
 - **Financing** – buyer may terminate if they cannot arrange suitable bank financing
 - **Title** – buyer may terminate if seller is unable to convey good title
 - **Survey** – buyer may terminate if survey reveals major defect
 - **Environmental** – buyer may terminate if inspection reveals undisclosed or unknown environmental issue on the property that impedes ability to finance, etc.
 - **Structural** – usually wrapped up in inspection but can be stated separately

CONTINGENCIES IN DIFFERENT MARKETS



Contingencies will change depending on the type of market (buyer vs. seller):

- Buyer's market – you will typically get all contingencies and can even add your own
- Seller's market – contingencies will erode as market strengthens, particularly:
 - Financing
 - Structural
- However, these contingencies almost never go away, though inspection typically shortens:
 - Title
 - Survey
 - Environmental
 - Seller default
 - Inspection

TIMING



LOI also allows you to set timing:

- In a buyer's market, you can usually get 90-120 days to close
 - 60-90 days to inspect
 - 30 days to arrange debt financing
 - Additional time to wrap up and close
- In a seller's market, you may have to compress everything into inspection period, and you may also need to shorten inspection period
 - This means you must finish due diligence, title, survey, financing, and equity raise during inspection period, or your money will go hard with you at risk of not closing
- Whether the market is a buyer's or seller's market, make sure that clock does not start running until seller has provided all due diligence materials requested in LOI
 - Very difficult for sellers to object because it will look like they are trying to hide something from you
 - This buys you a little extra time, because most sellers are not prepared to provide all materials on Day 1

DUE DILIGENCE MATERIALS



Use LOI to lock seller into providing the due diligence materials you need:

- Seller's won't object because it makes it look like they are trying to hide something
- My LOI provides a list of due diligence materials, and when they sign the LOI, they are committing themselves to providing those materials

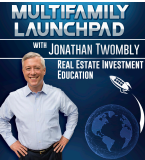
OTHER CONSIDERATIONS



Other considerations for the LOI:

- LOI is generally non-binding. This means it is not a contract, and it will be superseded by the contract.
- So seller is not technically bound by the LOI. But once they have agreed, in practice it makes it hard for them to go back on something they already agreed to.
- You should make two provisions binding, however:
 1. Confidentiality of the negotiations and the materials provided, as this gives seller comfort and also protects you
 2. “Off-market” – the seller agrees to stop marketing the property between the time the LOI is executed and the contract is signed, which automatically takes the property off the market and gives you control over the deal

QUICK TOUR OF THE LOI



Now, let's take a quick visual tour of the LOI provided with the program, which you can cut and paste to put on your own letterhead.

QUESTIONS?



Questions on the materials?

As always, ask questions in the Facebook group or on the monthly calls – the First Wednesday of every month (check time in the group).



NEXT VIDEO

MODULE 5 – VIDEO 6
“THE PURCHASE & SALE
AGREEMENT”