

Best Practices for Real Estate Syndication Deals

The Ideal Operating Agreement should contain the following provisions:

1. Fees Addendum

No Fees should be tucked into the OA. The OA should clearly state that there are NO FEES except the ones reflected on the Fees Addendum. All fees should be clearly displayed and transparent on the addendum.

2. Due Diligence

The due diligence process should be conducted objectively. This includes properly evaluating the investment's risk profile, weighing the pros and cons, assessing the potential upside and downside, and presenting the findings transparently — ideally through an unbiased third party.

3. Closing Statement

True and accurate closing statements should be circulated to all Investors the day of the closing.

4. Arm's Length Transaction

Disclosure that this purchase is an arm's length purchase, meaning there exists no prior affiliation between the seller and the buyer, it's not an internal flip, and there is no increase in basis from the seller's purchase price. If one of the above scenarios is indeed occurring, the amounts should be disclosed and clearly detailed in writing.

5. Access to Books & Records

The Investor or their representatives should have the right to access all relevant financial books, records, ledgers, statements, software, and finance employees.

6. Ownership

The company should have only 100 equal shares and all shareholders should be treated equally for distributions or cash calls.

7. Audit

Any Investor should have the right to request an audit of the company's books and records at their own expense.

8. Ownership Split

70% to Investors and 30% to Syndicators seems to be industry standard, and a deviation from the ordinary should be reflected on the addendum.

9. Reporting

Standardized reporting should be in the OA and the intervals monthly, quarterly, or annually.

10. **Comingling of Funds**

There should be no comingling of funds from different properties or different companies.

11. **Crisscrossing of Deals**

There should be no cross investing, cross-collateralizing, or cross lending from one company or property to another, especially when charging or incurring interest at the expense of Investors.

12. **Kickbacks**

There should be no kickbacks from brokers or vendors, as it leads to decision-making that's not in the best interests and is at the expense of the company and the Investors.

13. **Capital Expense Accounts**

Separate Capital Expense accounts should be maintained and accurate reports shared with the Investors.

14. **Exit or Sale**

Upon a sale, the Syndicator must disclose if there is a prior relationship to the new buyer and if they are remaining in the deal for future benefit.

15. **Addendums should include:**

- Fees Addendum
- Key Terms Summary
- Syndicator Disclosure Form
- Investor Acknowledgment Form
- Negotiated Terms specific for this deal

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