



It is always best to devise a clear strategy when pursuing opportunities in property that has not been legally separated from a larger parcel of land.

In today's depressed real estate market, many buyers see opportunities in smaller projects. Some find that the best opportunities may be in property that has not been legally separated from a larger parcel of land. When pursuing such properties, it is always best to devise a clear strategy to ensure the buyer is adequately protected if the property division is denied or delayed.

While it may be legally possible to close on a metes and bounds legal description prior to the land split, this is not advisable for several reasons. For example, some municipalities may require that the land split be accomplished before issuing a building permit. In addition, if the land split is not accomplished prior to closing, then until it is accomplished the separate owners will need to agree on a method to allocate all taxes that are going to be assessed against the larger parcel.

Below are some considerations and creative approaches buyers may want to explore early during negotiations with the seller when pursuing property that has not been legally separated from a larger parcel of land.

→ SHARING

A buyer should recognize that the seller will often control the land split (or "minor land

division" as it is sometimes called) process with the applicable governmental authorities and ultimately be responsible for the related costs, though the buyer should always require the right to approve the new plat and legal description prior to submittal and recordation. A sharing of the costs is always a matter of negotiation and costs may get worked into the purchase price.

→ TIMING

A buyer must be aware of the time required for obtaining the land split in relation to the negotiated due diligence period, permitting period and closing date. Timing varies depending on the particular city and county. A buyer should also consider negotiating benchmark dates that trigger other rights and remedies. The land split should almost always be a closing condition, the failure of which, at a minimum, provides the return of the earnest money deposit.

→ CLOSING

Terminating an agreement usually also means walking away from actual "hard" costs incurred by the buyer regarding the investigation and pre-development of the

