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Tips for making the commercial loan closing experience easier and possibly help save money - by Philip Hastings

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Philip Hastings, Cleveland,
Waters and Bass, P.A.

For novice and seasoned real estate owners, investors and developers alike, the commercial loan closing process can be time consuming, frustrating and expensive. Here are a few things that can make closings easier (and perhaps save the borrower some money, too).

Pay attention to the loan commitment

The lender's loan commitment is not a mere formality. In addition to identifying the key terms of the loan (amount, interest rate, repayment terms), it contains requirements binding on the borrower and sets forth specific conditions that must be satisfied before the lender will advance the loan proceeds. Some of these conditions can impose substantial burdens on the borrower – What is the lender requiring for additional collateral or guarantees? Will the lender require an opinion of the borrower's counsel with respect to the loan transaction, the status of permits and approvals, or zoning compliance? Will the lender need estoppel certificates from tenants? Will the lender want a survey of the property? What endorsements to its title policy will the lender require?

An inaccurate loan commitment is likely to cause delays and confusion at the closing and can inadvertently commit the borrower to unfavorable terms which may be difficult to negotiate later. Because the loan commitment provides a road map for the closing, even mundane details – the wrong name of the borrower or property address, for example – can get a closing off-track from the very beginning. Having a lawyer review the loan commitment on behalf of the borrower and help negotiate its terms before it is signed will go a long way to minimizing problems and reducing costs.

Address real estate issues early

Obviously, the real estate is the center-piece of a commercial real estate loan. Regardless of loan-to-value, no lender will close until it is assured that the borrower's title is sound. If the borrower does not have a title policy covering the property, then it should make sure that it will be able to obtain one at closing. Well before closing, the borrower should position itself to have the title transferred to the borrowing entity (if different). Find out whether the lender will want the survey

exception deleted and whether this will require a new survey. Make sure old mortgages have been discharged and all leases will be subordinate to the new financing. Satisfy all outstanding tax liens. Take care of any boundary or access issues. If you have worked with a real estate attorney before, then check with the lender to see if that attorney can provide the title commitment instead of lender's counsel. This will give the borrower better control over how title issues are being handled and avoid duplicative efforts.

Relatedly, the borrower should make sure that all leases are current, security deposits are properly accounted for and that all landlord obligations have been fulfilled. The borrower should take care to ensure that the conditions of any land use permit (e.g., site plan review) have been satisfied (especially with newly-constructed projects) and that the property complies with zoning and land use regulations.

Organizational housekeeping

Not paying attention to the legal requirements for corporations or limited liability companies are a sure way to mess up a closing and add costs to the transaction. The borrowing entity and all entity guarantors should be duly formed, in good standing and registered to do business in the jurisdictions in which they operate. Corporate and LLC record books, shareholder agreements, bylaws, and LLC operating agreements should be up-to-date. Internet-based form documents should be avoided; they are notoriously inadequate and lender's counsel will probably insist on revisions. For corporate borrowers and guarantors, directors and officers should be named, and managers should be named, if necessary, for LLC borrowers and guarantors. Trade name registrations should not lapse. In the long run, it's cheaper to pay a lawyer to take care of these issues on an ongoing basis than it is to deal with them on an expedited basis at closing.

Closings don't just happen. Paying attention to certain details, with the help of capable real estate professionals, will reduce aggravation and save time and money.

Philip Hastings is the president and a shareholder and director of Cleveland, Waters and Bass, P.A., Concord, N.H.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540