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Flex pricing and what it is in commercial real estate

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"Flex pricing" and, what it is...is a question that is beginning to roil in the commercial real estate financing market today.

Flex pricing - the allowance of the lending institution to revisit an original quote to change it, if it appears the deal will not be able to attract investors at the original pricing level - had its last significant showing over a decade ago. Today, this clause is reappearing, much as the "MAC"/material adverse change clause appeared, as a response to the credit and liquidity crisis in the monetary markets.

Language indicative of flex pricing can be as such:
...the agents and arrangers reserve the right, based on market reception, with the consent of the borrower (which shall not be unreasonably withheld or delayed) to modify or otherwise change the structure, terms, pricing and/or fees of the facility, prior to and after the closing, if the agents so determine that the changes are necessary in order to ensure a successful syndication...
Flex pricing was most notably and recently used in the New York City GM building financing syndication. Pricing for that financing was originally priced at about 165 bps over swaps, but with the flex clause, the syndicators had the right to, and did invoke flex pricing to get the transaction completed. In the end, the syndicate partners demanded higher returns and got higher pricing.

In speaking with those in the market who deal with clients, it is amazing that this kind of clause has any life in the market. But, for those deals, especially in the significantly higher dollar range and more complex deals, the use of the flex clause has become a reality.
And, it is an unwelcome one at that for owner/developer/acquirers. Fees are significant in these transactions and borrowers are expected to go forward with changes as determined by the agent/arranger.
The reality of the flex clause is one that can have a chilling effect on transactions going forward, especially on the buy/sell side, because of the fact that inherent in any quote going forward is the potential actuality that the underpinnings of terms and pricing are potentially changeable. Without deep financial pockets to meet increased equity requirements, if pricing becomes more steep, the flow of the deal can be impaired or terminated.

Flex pricing is perceived by lenders as a way in which lenders are trying to keep transactions moving in a very difficult and tenuous marketplace. The unfortunate reality is that it is nearly impossible to see how deals can move forward with this aspect and whether the marketplace will have to embrace with caution this new wrinkle.

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