



Feeling Committed

Commercial real estate buyers using financing to acquire property often find themselves in limbo. Buyers are often required to spend substantial sums chasing a property (and assume a fair amount of risk) before knowing that their lender is absolutely committed to funding. Unfortunately, this market is not kind to financing contingencies (especially when dealing with REOs, debtors in possession or other distressed sellers) and buyers are having to go hard on deals without loan commitments, instead relying on verbal assurances from their loan brokers and lender contacts. This path can be expensive and risky, and result in nothing to show for itself except a pile of "dead deal costs" should a loan not come through at the last minute.

Borrowers go to great lengths to "time" deals, to delay incurring sizable loan application & commitment fees, good faith deposits, the costs for third party reports and the lender's attorneys' fees, until they know they are moving forward with the real estate deal. At the same time, Borrowers must make sure their lender will have enough time to approve the loan and fund.

Some of these risks are difficult to control. Others can be mitigated with the help of a skilled attorney.

As part of our engagement, we commonly review and comment upon initial loan applications, and encourage our clients to push their lenders to clearly define how funds will be expended and the steps for issuing the actual loan commitment. We also help stage and spread out the transaction to make sure the timing works for the acquisition and the loan - with as much flexibility as possible.

When reviewing loan commitments themselves, we find it essential to limit the conditions for funding and to require the lender acknowledge the conditions that have been met. After all, it is only fair that lenders confirm those boxes that have been checked for funding.

As seasoned investors know, the only thing worse than a dead deal, is a costly dead deal. And, while Borrowers operating in good faith may be able to assert lender liability claims arising from their lender wrongfully failing to fund a loan or wrongfully refusing to honor a loan commitment, those legal battles can be difficult to prove and rarely fully compensate borrowers that have also lost their real estate deal in connection with the failed loan.

As borrower's counsel, our role goes beyond the negotiation of the loan documents themselves, to ensure that the necessary steps have been taken to close the transaction and loan, minimize our client's exposure on those transactions that don't close, and help our clients rely more than just "feeling committed."

For more information please call (480) 889-8948, send an email to info@steinlawplc.com or visit www.SteinLawPLC.com.

Awards and Honors



We are proud to announce that **Scott J. Stein** has been named by Super Lawyers as a 2012 Southwest Rising Star.

Stein Law Recent Developments Archives

The following is a link to our Stein Law, PLC Recent Developments Archives:

[Recent Developments Archives](#)

Practice Areas

Stein Law, PLC is a boutique business and real estate transactional practice offering legal services in the areas of:

- ◆ real estate purchase and sales, leasing and development;
- ◆ business transactions, joint venture and operating agreements, and corporate contracts;
- ◆ entity formation;
- ◆ loan financings, workouts and modifications; and
- ◆ hospitality development, management and licensing matters.

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