



Stein Law, PLC Recent Developments

April 2009

DON'T FALL VICTIM TO A MAC ATTACK

Today's investors looking to take advantage of the opportunities in the current market will no doubt face new types of challenges and hurdles as a result of the tumult in the capital markets and finance sectors. If financing is available at all, it will be on significantly stricter terms than seen in recent memory. New loans, and amendments to existing financing, will surely come with higher interest rates and lower loan-to-value ratios. In addition, these tough financial times have caused some lenders to rely heavily on their material adverse conditions ("MAC") clauses contained in their loan commitments, rate lock agreements and loan agreements.

The MAC clause allows lenders to terminate a proposed loan or call a borrower event of default under existing financing agreements because of a change in circumstances either impacting the proposed collateral, the borrower or the greater market. Even early on, MAC clauses can have perilous results for investors; in particular, buyers relying on a financing commitment from a lender to complete the acquisition of a business or real estate may lose their earnest money deposits and default under their underlying purchase agreement (in the absence of a well negotiated financing contingency) if the lender triggers a broad MAC clause to pull-out of the deal. Lenders have also been using MAC provisions to renegotiate more favorable terms from borrowers under existing loans.

MAC clauses can, of course, serve legitimate purposes and provide needed protection to lenders against unpredictable events and changed financial circumstances. However, borrowers need certainty to avoid the dubious actions of capricious lenders. Consequently, borrowers and their counsel must carefully examine the breadth of the lender's MAC clause - starting early on with the term sheet. Otherwise, a borrower could face an inability to commence or complete a lucrative deal.

We negotiate to limit the scope and ambiguity of lender's MAC clauses and help real estate investors navigate other new issues raised in this challenging environment.

For more information about negotiating real estate finance commitments and loan agreements and other *Recent Developments* impacting your business please contact Scott J. Stein at (480) 889-8948 / scott@steinlawplc.com and visit www.steinlawplc.com.

New Website Launched!

Please visit www.steinlawplc.com and take a minute to view the new Stein Law, PLC website, which also includes a link to the firm [blog \(http://steinlawplc.wordpress.com\)](http://steinlawplc.wordpress.com).

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