STEIN LAW, PLC

Recent Developments

Big Picture. Small Details. Distinct Approach.

February 2011

Playing With Fire

Our dear friends at regional banks, commercial lenders and life insurance companies are making new commercial real estate loans. In recent months, Stein Law has closed several new financing transactions. But we have also witnessed a more concerning trend - borrowers getting strung along by lenders or brokers only to be left at the altar late in the game when they are told that their deal is not going to be funded.

There is no doubt that the Great Recession and Credit Crunch have impacted underwriting guidelines and that traditional lenders are now utilizing untraditional means to evaluate deals with greater deliberation before pulling the trigger. So what can a borrower do to protect themselves from getting all the way to the closing, only to find out their lender will not fund their loan?

- **Risk, But No Reward**. The risks to getting to closing without a reliable financing source are substantial. If the financing is to be used to fund an acquisition, a borrower can get a reputation for being unreliable - and not a "closer." Additionally, if the contingency period under the purchase agreement has expired, a buyer can lose their earnest money deposit. Lastly, some would-be borrowers are left with the feeling that Lenders are simply running-up fees for applications, reports and other due diligence items - without ever having the intention of funding a loan.

- **Trust But Verify**. Borrowers cannot rely on lenders and mortgage brokers with soft approvals and baseless promises, as they run the risk that their loan will not be approved when it reaches committee. And since financing contingencies are not common in this market, senior bank executive approvals should be obtained early on before going hard with earnest money on the underlying purchase. Borrowers need to ensure that they have adequate time and alternatives should the funds fail to be delivered.

- **Paying for Nothing**. When signing loan applications and broker commitment agreements, borrowers must take caution in not paying for undeliverable loans and that the fees and deposits being provided are refundable if the lender does close. If fees and deposits are not refundable in their entirety, then make sure that the mechanism and calculation for releasing the remainder is fair and verifiable.

- **Commissions Without Closing**. Eager and hardworking brokers are caught in the middle between their lenders who profess a desire to lend and their borrowers who are relying on the broker's ability to deliver funds in exchange for a commission. Many broker agreements require payment following an approved commitment even if the deal does not close. Unfortunately, some deals do not get funded through no fault of the borrower and because of events outside of their control. Borrowers should not be obligated to pay a broker fee unless and until the funding occurs.

In many ways, dealing with lenders to obtain a commercial real estate loan can be like playing with fire. We help borrowers of all sizes to review and negotiate their loan documents and take the necessary steps to ensure that their deals are getting closed, minimize their risk for those that don't and help them from getting burned.

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

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.**

Contact Us
Download Scott J. Stein's v-card

Download Scott J. Stein's V-card