



STEIN LAW, PLC

A Real Estate & Business Deal Firm

Big Picture. Small Details. Distinct Approach.

Recent Developments - 1st Quarter 2015

See This Quarter's Notable Closed Deals Below

When You Assume

We are seeing a great many multifamily and commercial real estate deals being accomplished in this market involving an assumption of a seller's existing debt. Obviously, there are added considerations for both the buyer and seller when a property is being conveyed with an existing loan, which need to be taken into account as part of the transaction.

For starters, from the buyer's perspective, it needs to consider the existing loan terms and conditions, including the rate and maturity date like any other asset being evaluated. As part of the due diligence, we assist buyers review the existing loan documents for important deal terms of the existing loan.

From the seller's perspective, there are some additional obligations that the seller takes on that would not arise if the buyer were not assuming the loan. For example, once the purchase contract is executed, the seller will need to deliver copies of the existing loan documents, which may include sensitive information. Sellers also need to be prepared to cooperate with the loan assumption approval process. In addition, the seller will most likely have an affirmative obligation to maintain the existing loan in good standing up to and through the closing on the property. Finally, there may be additional representations and warranties in the purchase contract regarding the status of the loan and an obligation to point out any issues with the loan, such as matters that could result in a default if uncured.

In all commercial property purchases, timing is a concern for both buyers and seller. When a buyer seeks to assume an existing loan, that assumption process adds an additional layer of complexity and timing considerations. In addition to the typical due diligence or investigation period related to the property itself, the buyer will also require a certain amount of time for the approval of the loan assumption. Buyers will want to push this assumption contingency deadline as far out as it can. On the other hand, sellers will want the buyer to have a certain time period within which the buyer must use commercially reasonable efforts to move the loan assumption through the approval process and pull the trigger on closing the deal. The seller will want to make sure that the buyer is obligated to inform the seller when the assumption has been approved.

If the existing lender does not approve of the loan assumption by the agreed-upon date, then the buyer will want to have the option to terminate the purchase contract and receive a refund of the earnest money and have this contingency to extend through closing. However, sellers usually resist such an open-ended contingency period and will usually include a parameter in the purchase contract for an approval time period corresponding to the due diligence period, after which the buyer must take risk if the assumption falls through (for any reason except a default by seller).

Cost allocation is also a major consideration. Although costs are negotiable, typically the buyer will be responsible for payment of the all costs and expenses related to the lender's approval of the loan assumption, including the assumption fee and all of lender's appraisal, environmental, survey, engineering and other third party report costs and lender's title insurance costs, while the seller may be responsible for any prepayment penalty. The purchase contract will typically specify that each party is responsible for its own attorneys' fees.

Stein Law has experienced attorneys that provide legal counsel to buyers and sellers for real estate transactions involving loan assumptions. For more information please call (480) 889-8948, send an email to info@steinlawplc.com or visit www.SteinLawPLC.com.

Stein Law, PLC is a boutique business and real estate deal firm focused on:

- Real estate acquisitions and sales, development and leasing (both tenant and landlord);
- Business transactions, operating agreements, joint venture structuring and corporate contracts;
- Loan financings, workouts and modifications; and
- Hospitality development, management and licensing matters.

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

Below are some noteworthy 1Q15 Stein Law closed deals:

- Portfolio loan refinancing with traditional financing (Phoenix area, January, 2015)
- Apartment complex purchase with Freddie Mac financing (Denver, Colorado, February, 2015)
- Pad sale with development integration (Phoenix, March, 2015)
- Shopping center acquisition and lease-up (Phoenix, March, 2015)
- Purchase multi-family apartment with Freddie Mac financing (Houston, Texas, March, 2015)
- Fund formation and multiple Apartment complex acquisition and financing (Phoenix area, March, 2015)

[Recent Developments Archives](#)



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