

How to make your commercial mortgage closing go more smoothly:

We're all aware of the "time value of money". Well we should also compare the strategic value of a simple action taken at the right time, vs. the value of the same action taken too late in the game. The difference can (and usually does) amount to an easy task that has now been transformed into a pressure-cooker, error-prone, last minute nightmare. Whenever possible, use the fallow time (between accepting a lender's offer and receiving the commitment) to your best advantage, clearing as many obstacles out of the way as possible.

Anticipate the Obvious:

While no one can ever anticipate every possible contingency or problem that might arise during the financing process, it's fairly simple to anticipate a number of routine occurrences and requirements, and to sweep as many of them out the way as early in the process as possible. Clearly, once you have accepted an offer from a lender and you're waiting for the commitment to be issued, it's usually a good idea to pull the trigger and order the title searches. Most real estate attorneys can order the title work from a company that they regularly use which is willing to assume the risk that if the deal does not close, there will be no fees for the searches.

Since title work is still one of the more primitive and time-consuming parts of the process, the earlier you start, the better. That way there will be plenty of time to deal with delays and to resolve pesky violations or other issues that may arise before the stress-laden pre-closing days arrive.

With regard to the survey, at the very least, make sure you're aware of the new lender's requirements. For example, if your new lender will require an ALTA survey, and the old survey was not prepared to those specifications, order it once you've accepted an offer rather than waiting for the commitment as the survey could easily take 4 - 6 weeks. Many surveyors are currently quite busy and not famous for quick turnaround, so by all means don't leave this until the end.

Assignment of old mortgage - 1) God-given right, or 2) professional courtesy typically extended

" What do you mean, I'll have to pay \$154,000 in mortgage tax?!!!!"

No one wants to pay any more mortgage recording tax than absolutely necessary. Remember that if the property is in New York City, the borrower will have to pay mortgage recording tax for loans above \$500,000 of \$27,500 per million. Clearly you will want to minimize this tax by having your new lender take an assignment of the old mortgage. Let your new lender's attorneys review, comment upon and approve the old mortgage and note early, rather than late, in the process. This is one more simple step that you and your attorney can take to minimize stress in the days leading up to your closing.

Don't paint yourself into a corner:

With regard to the structure of the loan, at the outset, consider all the different ways your project may play out and plan appropriately. For example, if there is a chance that you will convert your newly acquired multifamily or mixed-use property to condominiums sometime down the road, you will want to be 100% sure that your lender will agree to having their loan repaid as units are sold (and as their collateral is whittled away). A long-term fixed rate might be a terrific play given today's interest rates, but not if you might convert your new project to condominiums and may therefore need to prepay your mortgage incrementally.

Similarly, if there's a good chance that you might sell the property within a few years of your closing, plan carefully about your prepayment penalty and/or your new lender's willingness to permit a buyer to assume the mortgage.

To sum up:

There are enough things that can go wrong and/or cause delays. In order to achieve a smooth closing, use any slack time to move as many of the obvious tasks from the "to do" column to the "completed" column sooner, rather than later. When crunch time comes just before the closing, you'll want to be concentrating on any important loose ends in the mortgage documents, rather than being distracted by the trivia and "white noise" of routine tasks that should have been completed weeks earlier.