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12 Ways to Get Lenders to Call Back

Help borrowers encourage lenders to respond to requests for loan extensions or modifications

IN THE PAST FEW MONTHS, COMMERCIAL lenders and servicers have seen increased defaults for their on-book loans and commercial mortgage-backed securities (CMBSs).

Many borrowers, however, are becoming proactive. Anticipating upcoming maturity dates or imminent cash-flow distress, they are calling their lenders to try to negotiate short-term loan extensions or modifications that can provide debt-service relief until the market recovers.

But their calls are not always returned — and some frustrated borrowers are stopping debt-service payments to force a response.

Borrowers often are not receiving immediate attention because lenders and servicers are increasingly cautious. They're revisiting their existing parameters and requirements for approving extensions and loan modifications for a more conservative approach.

There are ways, however, that commercial mortgage borrowers can help motivate their lender or servicer to respond to their requests in distressed-asset situations. Mortgage brokers who also understand these methods can help their clients through what could be a lengthy, arduous process.

Consider the following 12 tips for expediting a response from the lender or servicer when clients are seeking a loan extension or modification:

1. Identify the proper contact. Lenders often designate a servicer to handle

daily loan management. This is typical for CMBS-originated loans, in particular. Once a loan is in default — typically, after one to three months — it is transferred to a special servicer that can consider an extension or a modification or pursue remedial action, which could include foreclosure. Knowing who to call from the start will save time and minimize borrower frustration.

- 2. Understand the nature of the existing or imminent default.** Providing a “wish list” of loan mods will not get your client an audience with the lender or its servicer. The loan must be in default or in imminent default, and the nature of the default clearly must be because of an ascertainable market consequence. Citing the reason for the request as simply a loan’s imminent maturation likely will not elicit an extension. Borrowers must prove that they have approached a reasonable number of reputable lenders and that have all refused to refinance the loan because of market uncertainty.
- 3. Provide detailed financial information and comply with reporting requirements.** Supporting information regarding the cause of the default and the basis for the request is critical. For example, a hotel may be experiencing cash-flow shortfalls because of economy-driven reduced travel. When seeking a loan modification, its owner could include market information showing that the experts believe the current downturn will pass in six months to a year. If the lender

allows certain modifications during the recovery period — and the borrower takes cost-cutting measures as shown in the revised budget — then based on the hotel’s included historical financial information, it likely will survive and resume the regular debt-service payments.

Market information, revised budgeting plans showing cost-cutting measures, and current and historical financial information will help the lender’s evaluation process.

- 4. Share the business plan for surviving the down cycle.** Your clients should treat their lender or servicer as a business partner. Borrowers should share how their business model, asset structure and operations — including cost-cutting measures and revised budgets — have been revised to help them survive the temporary market conditions. The business plan must demonstrate how the requested loan extension or modification will help them survive and succeed.
- 5. Prepare for a lender request for access to financial books and records.** The lender may request that a consultant review the borrower’s books and records. Allowing this access gives credibility to the borrower’s workout proposal. Understanding the borrower’s business needs and requirements and the potential for success of any proposed workout plan will help the

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lender analyze its remedial options and likely will expedite the process.

6. Expect a prenegotiation letter from the lender or servicer prior to any discussions. Often, tensions run high, and lender-borrower communications may be stressed, uncontrolled or inhibited. A pre-negotiation letter can help relieve tension and allow communications to occur without concern that statements will be used in court. This letter will also contain “reservation of rights” language in favor of both parties. This allows each party to reserve and retain any rights and remedies it may have under the loan documents and applicable law.

Note that these letters may include a borrower waiver of any claims to date or a requirement that the lender or servicer be reimbursed for any fees and expenses incurred to date. Some view these provisions as aggressive, they usually are negotiable.

7. Understand the lender’s potential actions and strategize accordingly. Have an attorney review loan documents carefully to determine if the financial distress of the borrowers or their assets has triggered any notice or disclosure requirements, springing escrows or lockboxes for property income, financial-covenant defaults, or recourse carve-outs. If a default has occurred, the lender may have the right to stop future advances, impose a default interest rate or take enforcement actions. These actions could include cutting off access to bank accounts, exercising set-off rights, accelerating loan maturity, or proceeding to enforce liens and security interests in collateral.

8. Request a temporary standstill or forbearance agreement. This can allow the parties to focus on evaluating the borrower’s and collateral’s condition and developing a proposed workout strategy. Be aware that some agreements may propose that upon expiration of the forbearance period, the lender may pursue all remedies without notice to or objection by the borrower. The lender should have the right to pursue any right or remedy; borrowers should not agree

in advance to waive their rights with respect to any action the lender takes, however.

9. Evaluate the lender’s liens and collateral position. Understanding the lender’s rights and what action it likely will take can help negotiations. The borrowers’ attorney can review the loan documents and the lender’s security interests in any collateral for flaws that may encourage lender cooperation. If the lender already has sent a notice of default, the attorney can determine if the notice was provided properly.

If a notice of default contains flaws such as incorrect contact parties, improper methods of notice, failure to provide a proper cure period or immediate acceleration versus notice of intent to accelerate, it may be invalid. This allows the borrower the potential right to obtain a restraining order on the date of the foreclosure sale. Conversely, if there are any problems with the loan documents, the borrower should expect that the lender will cure these flaws in connection with any extension or modification.

10. Offer terms that show the borrower has a stake in the game. Borrowers’ proposals must show that they are committed to the loan and the collateral. Offering lender-protective terms will influence the plan’s success. Examples include infusing capital to improve the collateral property, paying down the outstanding debt, adding a lockbox to trap cash, adding escrows, adding a guarantor and providing a current release of borrower claims.

11. Communicate potential consequences for failure to extend or modify. Discuss what may happen if the loan cannot be extended or modified. For example, in the retail sector, market conditions are causing less shopping activity and less profits — and ultimately, tenant departures. Continuing full debt-service payments without any relief may risk cash-flow shortfalls to pay normal operating expenses, including payroll and taxes. If the borrowers do not have the cash to pay for these deficiencies, and

the lender does not provide temporary relief, borrowers may have no choice but to file for bankruptcy or close down. The lender may not be prepared to take on the expense of foreclosure or possession of its collateral. It should weigh its alternatives and the potential expense.

12. Be prepared for the extension or modification request to fail. An extension or modification may be unavailable because of market conditions, the property status or market-recovery projections. The borrower’s cooperation with respect to the lender’s or servicer’s remedial action plan, whether a deed in lieu of foreclosure, foreclosure or something else, may be more cost-efficient for the lender and may settle potential litigation against borrowers. Filing bankruptcy or handing the keys to the lender or servicer may risk recourse carve-out liability and lender litigation. A cooperative and cordial workout, even if it is not an extension or modification, may benefit the borrower and preserve a relationship with the lender or servicer.

Taking these steps, commercial mortgage borrowers proposing a loan modification or extension to their lender or servicer may see faster responses. ●