

Working out your issues with your lender

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It is a fair statement that no one could have predicted the direction of the economy and the havoc that the economy would play in the commercial real estate market. Investing in real estate seemed like the ideal investment at the time—several years ago. It seemed like there was no way to lose, offering better returns at the time than in the stock market.

What a change several years can make! While there are normal cycles in the commercial real estate market, this is an exceptional downturn in the marketplace. As a real estate developer or investor, you could have done everything correctly in picking the right property for the right use in the right marketplace, and you could still be facing problems now in your financing, as you attempt to survive the downturn in the market.



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Unless you have a securitized loan, if you know that you are going to have a problem making a payment or fulfilling a covenant contained in your financing, you need to let your lender know what the issue is and what to expect. Lenders, like most people, do not like surprises and a surprise default by you can harm your credibility with your lender. If this month's interest payment on the loan will be delayed, call your lender and let the lender know when the payment will be made and stick to it.

If you know that the loan cannot be maintained by you, as potential buyers have not been willing to buy at this moment in today's economy, or in the case of rental property, the tenants are not willing to move into your building, you are going to need a plan.

It is a good idea at this time to use a competent commercial real estate attorney to assist you in developing a workout plan for your real estate loan. Together with your attorney, you will first determine the cause of the proposed default.

Besides the economic downturn, there could have been labor disputes, weather delays, extras in the contracts, poorly managed construction costs, defaults by contractors or subcontractors, to name but a few. You may have purchased more real estate when the marketplace was "hot", only to find that there are not available buyers or tenants now that the market has "cooled down".

Now that you have identified the reason for your default, you and your attorney need to develop a plan that you will present to the lender.

What is it that you will need to get the project back online when the market rebounds? Will you need to have a lower interest rate for the short term or will you need funds for marketing expenses to reposition the property more in line with current conditions? Are you suggesting that the lender increase the loan for a portion of the marketing expenses you will be needing? Will you need a different general contractor to keep better control of your costs? Do you have a new investor who may be willing to add additional capital? Do you have a plan to sell the real estate and if so, when?

The answers to all of these questions become part of the plan that you will propose to your lender.

While you may think that the lender will not be interested in working with you, the odds are that the lender would consider it and would be willing to work with you, as long as you present a viable plan and stick to it. The lender is in the market place to make and service loans, not to foreclose and manage properties. A better alternative is to present a plan that will make a potentially bad situation into a “win-win” scenario.

A workout plan may end up being “tough love” for both the borrower and the lender, but may provide a basis to continue the project to fruition. Perhaps the borrower will not make the amount of money from the project that the borrower originally anticipated, but the project will be successful, to allow the borrower to move on to the next project. After all, there are some great deals out there in the real estate market, right?

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