

Checklist for Lenders in Turbulent Times: Reviewing Your Portfolio

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Real Estate Alert

3.24.20

The coronavirus (COVID-19) has impacted the commercial real estate industry in an abrupt and significant way. In response to this new environment, lenders are taking many steps to prepare for a period that is anything but business as usual, including a review of their existing portfolio of investments. The following is a checklist of steps and issues that lenders will wish to focus on in the near term:

1. Review your portfolio of investments (whether they include whole mortgage loans, participations and/or mezzanine loans) and identify those positions that you believe could be impacted in the short, medium and/or long terms.
2. Confirm you or your custodian is in possession of all original promissory notes (together with all allonges) and guarantees, as well as limited liability company interest certificates and/or stock certificates, if they were part of the transaction.
3. Confirm that all security instruments (mortgages, deeds of trust, etc.) and other applicable collateral documents have been recorded and filed of record and that you have the originals in hand (or at least copies, if the originals have not yet been returned to you from the recorder's office).
4. Identify those transactions that have "cash trap" features and/or other steps that you may wish to take in response to a "trigger event" under your loan documents.
5. Identify those transactions where there are co-lenders, other lenders or participants in the lender group(s). Freshen up your recollection of how the applicable intercreditor, co-lender or participation agreement(s) work in the event of a default of the underlying loan(s). Also, review the scope of your consent or approval rights with respect to the requests or actions of other lenders.
6. Be prepared for various requests from your borrowers. Inquiries will run the gamut, including requests for modifications to loan covenants. Your response will, of course, be informed by a multitude of factors, including the asset's historical performance, the borrower's level of candor, communication and cooperation with you, the scope of any requested relief, the status of the market and perhaps legislative action or regulatory guidance at the federal and state levels.
7. Dust off old underwriting diligence, including lease reviews, to identify co-tenancy provisions, "go dark" clauses and other lease peculiarities. This is especially important in retail centers anchored by tenants whose businesses are deemed "non-essential."
8. Before beginning any discussions with the borrower regarding the loan or the underlying collateral, require a pre-negotiation agreement be executed by the borrower and the guarantor(s) to make sure all parties understand the "ground rules" from the outset for any discussions and actions going forward. From the lender's perspective, the importance of an executed pre-negotiation agreement at the beginning of any loan modification discussions cannot be understated.
9. Have frequent and open communications internally among those who will be dealing with special servicing and/or special situation requests in your portfolio.
10. Recognize that certain things we all have taken for granted, such as an open county recording office or secretary of state office, may not be available if, for example, a loan modification instrument needs to be recorded or if a corporate document needs to be filed or retrieved. Workarounds and cooperation among the parties, including title insurance companies, will be required.

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While many lenders have excellent quality control procedures and protocols in place to monitor their portfolios, this checklist of reminders will be helpful during the currently intertwined health and economic climate impacting the real estate industry.

If you have questions or would like guidance related to these steps, please contact Tim Davis, (davist@whiteandwilliams.com; 215.864.6829), Will Johnston (johnstonw@whiteandwilliams.com; 215.864.6341) or another member of our Real Estate and Finance Groups.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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