

What's Really Negotiable in Lending Transactions?

WHAT LENDERS WANT – WHAT BORROWERS NEED

Niles W. Holmes

Introduction

This article will discuss the most common borrower comments to commercial loan documents and the response of a typical lender's counsel. I will also look at some recent developments, such as interest rate swaps, changes in financial norms, regulatory limitations, condominium structures and tenant-common considerations, whose implications require careful consideration by both borrower's and lender's counsel.

Notice and Cure Provisions

Most requested change to loan documents:

- ▶ **Monetary Defaults** – grace period after due date; additional time after written notice from lender; limited to certain number per year
- ▶ **Non-Monetary Defaults** – some period to cure default after written notice; time may be extended if can't be cured in specified time and borrower has commenced and is diligently pursuing cure
- ▶ **Late Charge** – Specify that late charges do not apply to failure to pay at maturity

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