

# Intercreditor Agreements

## Avoiding Lender-on-Lender Violence In the Closing Process

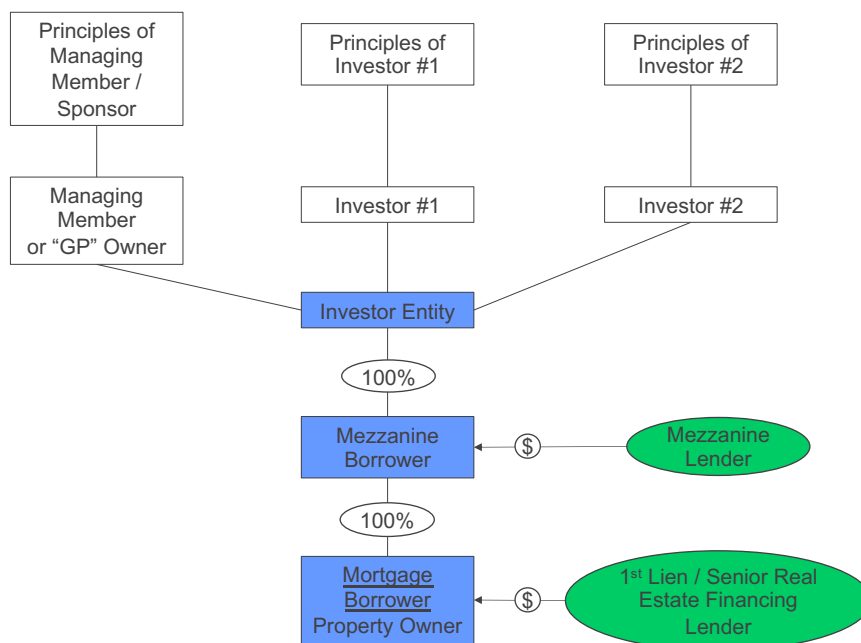
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## Features of Typical Senior-Mezzanine Intercreditor Agreement

1. Nature of mezzanine debt
2. "Sequential" vs. "Pari Passu" funding
3. Notice and cure rights
4. Right to foreclose equity
5. Right to buy Senior Loan
6. Limitations on transfer rights
7. Limitations on modification rights
8. Amendment to Senior Loan terms after Mezzanine Foreclosure

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## Borrower/Owner Perspective

1. Typically Intercreditor Agreement not visible to Borrower/Owner
2. Degree of Difficulty
3. Dual obligation to the lenders
4. Expectation: Timing and Legal Fees
5. Consideration applicable if Mezz Lender takes over

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## **ISSUE #1 SUPPLEMENTAL GUARANTIES**

1. Identity of Supplemental Guarantor
  - Control over Borrower
  - Minimum economic stake
  - Creditworthiness requirements
  - "Excluded Parties"
  - Pre-Approval Issue
2. Nature of Supplemental Guaranties
  - Any sponsor guaranties being omitted?
  - The "going forward only" argument

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## **ISSUE #2 OTHER CONDITIONS TO MEZZANINE FORECLOSURE**

1. Identity of "Qualified Transferee"
2. Construction Transition Issues
3. Reserve Replenishment
4. Cure of Defaults
5. KYC/OFAC Approval
6. Procedural Matters

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## Title search: Intercreditor Agreements - Avoiding Lender-on-Lender Violence in the Closing Process

Also available as part of the eCourse

[2024 William W. Gibson, Jr. Mortgage Lending and Servicing eConference](#)

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"Intercreditor Agreements - Avoiding Lender-on-Lender Violence in the Closing Process"