



# Negotiating Commercial Real Estate Loan Documentation: Bridging the Gap Between Borrowers and Lenders

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**Disappointment is the gap that exists  
between expectation and reality.**

**John C. Maxwell**



# Statutory Updates

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- None!
- There are statutes that apply to loans and loan documentation
- But not our focus today



# Caselaw Updates

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- None!
- Be aware of them and how they impact your practice
- But also not our focus today



# Know Your Client

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- Know their business
- Know their personalities
- Know their sensitivities to particular loan provisions



# Know the Loan Terms

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- Loan commitment letter/term sheet
- “Hello” package from lender’s counsel
  - Title requirements
  - Survey requirements
  - SNDA/estoppel forms
  - Legal opinion (but use FL Bar sections’ report on third-party legal opinions)



# Negotiate Efficiently

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- Limited number of blacklines in early negotiations
  - Initial changes to lender's form documents
  - Second round of changes from lender's counsel
- Schedule a conference call with clients and attorneys
- Don't have a "war" of blacklines



**Get It Done**

# Get It Done

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- Maybe cliché, but it's what we need to do
- Rarely will you encounter an issue that is truly a “non-starter”
- Time kills deals
- This is where it helps to know your client
  - Creative compromise
  - Know what's not negotiable



# Close the Loan

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- This is everyone's objective
- Your client moves forward with their business
- You issue the title insurance
- You get paid



# LaserPro Documents

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- Internally prepared by lender using proprietary software
- “We can’t make changes to our documents”
- Depending on relationship, changes can be made via amendment



# Promissory Notes

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- Consistency with loan commitment letter/term sheet
- Economic terms that can impact repayment
- Client sensitivities



# Loan Agreements/ Mortgages

# Loan Agreements/Mortgages

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- Often separate documents, but sometimes combined in mortgage
- Consistency with loan commitment letter/term sheet
- Definitions
- Covenants
- Default provisions and remedies
- Client sensitivities



# Guaranty Agreements

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- Consistency with loan commitment letter/term sheet
- Consistency with loan agreement/mortgage
- Delete any homestead waiver (not included much anymore)
- Client sensitivities



# Environmental Indemnity

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- Consistency with loan commitment letter/term sheet
- Consistency with loan agreement/mortgage
- Delete any homestead waiver (not included much anymore)
- Client sensitivities



# Affidavits

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- Lenders request these for various things
- Just say no unless absolutely necessary
- False statement under oath is a third degree felony
- Typically these can be certifications instead of affidavits
- Watch out if notary acknowledgment included on certification
- An affidavit could turn a difficult civil matter into a potentially criminal matter



# Exculpation Provisions

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- Non-recourse loans
- Generally limits lender's remedies to foreclosure
- Borrower/guarantor still liable for “bad boy” acts
- Becoming more difficult to negotiate



# UCC-1 Financing Statements

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- Use of UCCs
  - Goods
  - Fixtures
- Name of debtor and secured party
- Effectiveness and duration of filing
- Where to file
  - Clerk of the Circuit Court
  - Florida Secured Transaction Registry
  - Out-of-state debtor





**Git-R-Done.**

**Larry the Cable Guy**





*Thank You!*  
for attending