

Letter to the Editor...



BUYER BEWARE – READ THOSE LOAN DOCS!!

Provisions in your current commercial loan docs may require you to request a pay off demand 60 days out (usually before an offer is even negotiated - which makes this impossible) and the pay off must be made exactly on the "Payment Date" specified and ONLY on the "payoff payment date". Failure to hit the nail on the head for that exact date could cost you tens of thousands!!!

My client was well aware of her 5% harsh prepay but failed to notice the two sentences prior to the 5% that contained the confusing payoff date language and she got hit with an additional prepayment fee that truly hurts! (Usually, pay offs are requested 10-20 days prior to closing by escrow). Not that the 5% wasn't enough additional profit for the lender - **it cost her over \$6,000 on a small loan of \$500,000 for missing an exact date to close the deal.**

*...failure to fund and close on this specific day
could cost you tens of thousands of dollars –
the amount equal to 30-90 days of interest payments!*

We need to alert owners and Sellers to look hard and be prepared for a rude awakening if you think lenders are not trying to capitalize on an extra bonus on your way out of your loan. When we tried to negotiate the fees on the above mentioned loan (this was with M&T Bank), we were told this loan was already sold to a pool of investors and we could write a letter and they would respond in 60 days ... hence, Seller beware!!

To the best of my knowledge, many of the existing Citibank commercial loans over the years have this or similar provisions in their loan docs and they are collecting these extra fees. In addition, the new Washington Mutual DUS program loans also designate a specific "Payment Date" for pay off and failure to fund and close on this specific day could cost you tens of thousands of dollars - the amount equal to 30-90 days of interest payments!

We need to be proactive and expose the tricks being played on investors who are signing loan docs without attorney opinion letters. Keep in mind that 95% of loan docs in California do not require a attorney opinion letter (and an attorney is not used) and in New York, 99% of docs for commercial property loans will mandate an opinion - hence this might be the rationale as to why this is being overlooked and capitalized upon.

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