LOAN PROCESSING CONTINUES TO EVOLVE

As regular readers of my column in the Mysak Newsletter are aware, the lending/borrowing landscape has changed dramatically over the last few years. Borrowers are often caught off guard by new regulations. A recent example is interesting and, in fact, quite typical at lending institutions.

A borrower who owned a number of apartment buildings for several years was in the market for new financing. However, the borrower had not been active for four or five years. The borrower was taken aback at the level of financial information and disclosure that was requested, which was much more detailed than what he was used to. He eventually got to the point of saying "take it or leave it", which might have worked in years past in terms of proceeding with the deal. However, the lender had no choice but to leave it, for the following reasons:

- The regulatory climate in Canada (and G8 countries generally) has become much more stringent due to new laws relating to anti-terrorism, money laundering and tax avoidance.
- The federal banking regulator in Canada, OSFI (the Office of the Superintendent of Financial Institutions), has made it clear that compliance with the regulations will be strictly enforced.
- OSFI maintains a strong presence at major lending institutions to review files to ensure compliance with the regulations.
- Failure of financial institutions to comply can result in serious censure, including fines and restrictions on lending activity. No institution is going to willingly risk such penalties for one loan. Accordingly, there is little "wiggle room" and lenders must ensure borrowers meet the requirements for disclosure.

On the subject of disclosure, a common issue that crops up time and again in loan processing is the question of who actually owns the asset. A borrower will declare ownership at the outset but at closing it becomes apparent that the asset is not owned by the borrower but rather by a trust, typically controlled by the borrower who has complete control over the asset. This leads to complications and additional legal expense in order to redraft documents that reflect the accurate ownership. The current regulations obligate the lender to confirm ownership, which in turn might impact the guarantees required by the lender for the loan. CMHC policy, for example, requires all beneficiaries to provide guarantees for a loan amount that is 85% of property value.

By the way, in the example above, the borrower eventually provided the information that was requested in order to complete the transaction. There was no other choice.

Speaking of CMHC, readers will recall the spring 2013 Mysak Newsletter where I pointed out that OSFI had taken control of CMHC and borrowers should be monitoring this considering CMHC's strong presence in apartment financing. There have been a few changes. The senior executive ranks have turned over and my own observation is that underwriting and disclosure standards have tightened up. This is not surprising – as noted above more stringent regulations have become commonplace and one should expect CMHC to reflect these new standards.

Another area that has seen changes recently is the product offering by mortgage lenders. From the abyss of the financial crisis a few years ago – when lending declined substantially – to the present there has been an explosion in new mortgage products: mezzanine lending, conduit lending, bridge loans, more conventional lenders in the marketplace. Each product lends itself to a specific financing problem that borrowers face from time to time. I would be pleased to review these options with borrowers who need a solution that is not a "cookie cutter".

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