

# MIAMI TODAY

January 29, 2009

## Refinancing a loan? Developers running out of resources

BY MARILYN BOWDEN

With traditional lending sources drying up, experts say developers who need refinancing or new loans for projects already under construction have few options.

"It's a big problem," said attorney George Pincus, a member of the distressed real estate practice at Stearns Weaver Miller. "What we're seeing is a huge credit crunch in commercial real estate, making it very difficult if not impossible to refinance."

"For the most part," said Neil Rollnick, chair of the Real Estate Department with law firm Adorno & Yoss, "the normal channels for financing construction loans are hardly existent in today's market. To the extent that they do exist, the rules have changed.

"For one thing, greater equity is required. So even if there is some availability to refinance an existing project, the terms under which that can be done are

far more stringent than they were before we went into this economic downspiral."

Robert Barron, a shareholder at Berger Singerman, said that while historically the loan-to-value ratio a bank would lend on was about 80%, now it's more likely to be 50%-60% - if funding is available at all.

"There's no market standard out there," he said. "Part of the challenge to a developer is that it's difficult to understand the motivation of their particular lender. If you take a business approach, you would think it would be wiser to complete the project. But market forces - whether the Federal Reserve, new restrictions, the fact that every dollar they loan out is a dollar they can't use for other purposes - are challenging lenders, so the old rule that 'If it's a good deal, we should do it' may not apply. And the developer has no clue what is happening at the bank. So that is a real frustration."

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Not only have the rules changed, said Matthew Zifrony, a director with law firm Tripp Scott, "but they put you through a tremendous amount of paperwork or due diligence, and then even after they've decided they're going to lend they may come back and say, 'We changed our mind.'

"We're seeing more instances where banks that have agreed to fund construction financing are evaluation those loans for a way out - for example through the 'material adverse change'

clauses in loan documents."

In some cases, entrepreneurs or investment groups are stepping in, Mr. Rollnick said.

"A number of banks and other institutions have been shedding what they consider to be bad loans as quickly as they can in order to get a cash infusion," he said. "Some have written down loans 50% and greater in order to get rid of what they consider to be marginal, bad and toxic loans.

"Individual entrepreneurs are looking at projects encumbered by these loans and then acquiring the loans. The entity that has acquired the loan for less than 50% of the amount of money that has been dispersed is now in a position to finish the project, and if the borrower is an honest and decent person, knowledgeable in what they are doing, they will frequently enter into joint-venture or partnership agreements under which the original borrower finishes the project. The new money together with a good interest

rate comes out first, and then the profits are split on some basis."

Mr. Zifrony said he represents a handful of groups looking to finance construction loans.

"They're asking me to contact bank clients to let them know they are there so the bank can sell them the loan," he said. "Because they don't have the lender's underwriting requirements, there can be a lot more flexibility."

But a lot of the debt is securitized, Mr. Pincus said, which means the individual borrower has little liability.

"There are no personal guarantees," he said, "so the guy who owns the project can't be sued. As this debt matures, values deflate and there is no credit around to refinance, a lot of them are handing the keys to lenders and walking away. This is going to become a huge problem in the commercial real estate market."