

Features

Managing Intercreditor Agreements Is Critical in CRE Now

By Erik Sherman Features  June 06, 2025 at 08:22 AM

The current financing conditions in CRE offer challenges for borrowers. Many developers and owners have faced hurdles in refinancing because of interest rate increases. That's led to tangled and complex financial structures to make deals work and keep them efficient.

However, that makes for complicated relations among different financial sources, which is why intercreditor agreements — contractual arrangements among lenders to a single borrower in which loans are secured by the borrower's assets — are receiving more attention than usual. The wave of pandemic financing is hitting its initial maturities without the traditional assurance of refinancing.

“When the initial terms came up in 2023, many places hadn't had opportunities to stabilize, so they had to exercise options to extend,” Kamin Kamali, a real estate lawyer and senior attorney at Clark Hill, told GlobeSt.com. “Some were able to get bridge financing. All had to push maturities [out]. At some point, unless the market changes — and you have no control over that — the [more conservative] performance calculated even by lenders hadn't been realized.”

“It was a significant decrease that no one is talking about,” Kamali said. “I think that's a conversation that's going to take place. These bridge

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of bridge financing, additional collateralization was needed.”

Many borrowers didn’t have additional capital. They had already used their interest reserves. Often, leases aren’t bringing in enough revenue to cover higher debt service, more expensive utilities and taxes. Kamali has seen per-square-foot prices in the low \$3s and even in the high \$2s.

Two of the choices borrowers have made are to use preferred equity and cross-collateralization. That has created a couple of major problems. While intercreditor agreements are common with multiple lenders, preferred equity and cross-collateralization are technically not loans, even though preferred equity can act as though it were. But if there are problems, the traditional lender will be in the senior position “and call the shots.”

The second problem is the current deal valuation. “If there was a \$100 million loan and there was a preferred equity of \$25 or \$30 million from a REIT, and they expected the project to be \$180 million, there would be a cushion. But in places like Downtown LA, completed new projects are now going for \$120 million, \$115 million.” The projects are underwater, and everyone can either hold on, mark to market, or liquidate.

However, if there is no credit agreement between the preferred equity provider and the lender, the former can find themselves frozen out. “We’ve already gone through one maturity wall in 2022, 2023,” Kamali says. “They already kicked the can one time. Meanwhile, the economy isn’t doing as well [as it had].”

“A lot of this will come down to the debt stack, who’s the winner, who’s the loser, and who wants to take advantage of the capital stack,” says Kamali.



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