



Reviewing Borrower's Offering Memorandum as Part of Land Use Due Diligence by Lender's Counsel

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Summary

Strategically discuss with your client how lender's counsel should review a borrower's offering memorandum as part of land use diligence. We completed legal editing and analysis of authorities cited here as of the date listed above.

I. Overview of Borrower's Offering Memorandum

Real estate is inherently complex, with each property possessing unique characteristics that can impact the due diligence process for the lender's counsel. By thoroughly reviewing the borrower's offering memorandum (OM), the lender's counsel can identify the strengths, weaknesses, opportunities, and threats associated with the property transaction. This knowledge enables counsel to mitigate potential risks effectively. The following guidance provides a framework for when you are the lender's counsel, to help you understand and utilize the OM in land use due diligence.

By following a structured approach, as lender's counsel, you can thoroughly review and understand a borrower's OM. This ensures that the lender is fully informed about the property, borrower, and transaction, enabling sound lending decisions and adequately protecting its interests.

II. Key Information in the Offering Memorandum

The OM, often prepared by developers, typically provides detailed information about a real estate project, including:

- **Investment Overview:** Detailed description of the property.
- **Market Analysis:** Investigation of the local real estate market, including demand, competition, and economic factors.

- **Financial Projections:** Predicted income, expenses, and cash flows.
- **Legal and Regulatory Considerations:** Information regarding land use, zoning, environmental factors, and any required entitlements or permits.

III. Critical Areas for Lender's Counsel to Focus On

As the lender's counsel, you should concentrate on the following areas within the OM as part of your land use due diligence.

A. Verify Property Details

- **Physical Characteristics:** Confirm that the property's physical qualities, location, and boundaries are accurately described.
- **Existing Structures and Improvements:** Review information on existing structures and any planned improvements.

B. Examine Title and Survey

- **Title Report:** Verify ownership and identify any liens, encumbrances, easements, or restrictions that may affect land use.
- **Survey:** Ensure there are no encroachments or boundary issues that could impact the project.
- **Single-Purpose Entity Requirement:** Ensure that the borrower is a single-purpose entity that owns no other assets, to protect the property from other business risks.

C. Verify Zoning and Land Use Compliance

- **Zoning Regulations:** Ensure that the property's current and proposed uses comply with local zoning regulations. Cross-check the information provided in the OM with local zoning ordinances and maps.
- **Permits and Approvals:** Identify and confirm the status of any necessary permits, variances, or approvals for the project. The key is to make sure that these are either in place or realistically obtainable.

D. Consider Environmental Issues