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Know Your Borrower

Misrepresenting a troubled client can risk your reputation

COMMERCIAL MORTGAGE BROKERS ARE aware that a host of factors influences a lender's decision on whether or not to extend a loan. And one of the most critical points is the perceived image of a borrower's ethics and conduct. Regardless of the lender or the program, the fundamental question always revolves around the risk of default by the borrower and how this borrower would handle the payment obligation in case of adversity.

Because of the intermediary role played by commercial mortgage brokers, this factor is even more critical. Many lenders share an unwritten rule: "Show me who your clients are, and I'll tell you who you are." In other words, it can be damaging to your reputation if you submit a deal to a lender and advertise your borrower as a strong candidate only to find out the borrower has a record of delinquent payments, foreclosures, litigation, or even worse, felony convictions. Even if not malicious, the lender may assume that you're attempting to push an undesirable borrower through without these issues getting noticed, which likely will end your relationship with the lender.

Although verification of all these factors historically has been costly and time-consuming, current technology and legal requirements make this information easily accessible and relatively inexpensive. Commercial mortgage brokers should review the following key areas thoroughly no matter how confident they are that their prospective client has impeccable credentials. There are many opportunities to overcome deal-specific concerns, but there are no opportunities to overcome misrepresenting a prospective client's character.

1. Personal credit history

Perhaps the most effective document to



Illustration: Dennis Wunsch

convey a borrower's character is the credit report. Commercial mortgage brokers should require clients to provide either a recent credit report or to run a credit report themselves before submitting a loan package to prospective lenders. The only format that is acceptable from a client is a tri-merged report from all three bureaus generated within the past 90 days. If commercial mortgage brokers run credit reports themselves, they should work with a reputable risk-management service provider. The reports should be approved by all lenders for accurate FICO score reporting. Typical costs are between \$10 and \$16 per report and are available instantly. Before running a credit check, clients must be provided with a credit-disclosure form that has to be signed.

The form typically includes personal information like name, current residence address, birth date, Social Security number, etc. It also should state that the information

is strictly for loan-application purposes and will not be shared with any individuals outside of the appropriate lenders. Additionally, it should allow for requesting civil litigation, felony convictions and bankruptcy reports. If clients have concerns regarding multiple credit reviews affecting their scores, inform them that the actual impact of running multiple inquiries in a

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short period of time for mortgages is generally less than 10 points and shouldn't be a cause of concern.

In the case of a client who has multiple late payments in conjunction with foreclosures, short sales, collections or tax liens, the best route to take is to address these problems with the client directly. You will need to request, or assist in the preparation of, letters of explanation for every derogatory item. A seasoned commercial mortgage broker with a thorough understanding of the lender's credit criteria then will have the option to proceed, recommend working with a credit-repair professional or have the client address the issues personally.

Whatever option is selected, it will be better than submitting a file that is destined for failure and destined to be a reputational blemish with lenders.

2. Professional conduct

Although a client may have an impeccable credit history, professional misconduct and extensive civil litigation reinforce character concerns that rarely survive underwriting. Public information is a valuable tool if used wisely. For example, a simple search on the Web will demonstrate everything from negative tenant reviews to indictments. It is the broker's responsibility to address each of these problems with clients because they are likely to be the first thing every lender's underwriting team will look for and find.

If the broker finds that the accusations are inaccurate, being prepared with documentation — such as letters of explanation, letters of opinion from counsel or an affidavit of identity — is essential to eliminating lender concerns. If licensing is a critical part of a borrower's qualifications, it's imperative that all licenses are active, in good standing and address any history of disciplinary action. Most licenses are city- or state-specific, and as required by the Freedom of Information Act, are publically available with the appropriate department

of licenses or professional regulations.

3. Civil-litigation check

Personal civil litigation, property-specific violations and bankruptcies are a key component of a borrower's character. Nearly every county in the United States has a website for its respective circuit clerk's office that includes a detailed history of recent civil court cases. Commercial mortgage brokers should particularly check the chancery section, which is relevant for all lending-specific litigation.

All other categories of litigation also should be checked, and the known entities owned by the client should be reviewed to confirm that they have not been in litigation for building-code violations, illegal leasing practices or misconduct toward tenants. Bankruptcy information can be sourced through various paid services that have access to all state and federal court records. The most comprehensive and cost-effective source of information is the Public Access to Court Electronic Records.

Commercial mortgage brokers should analyze all of this information carefully to confirm accurate identity, the extent of previous litigation, the potential damages incurred from current litigation and the overall image these things convey about the client. This analysis will help brokers decide whether or not to go ahead with representing a client.

To tackle issues that can be a risk to lenders, brokers should provide supporting documents from the counsel that specifically represented or are currently representing the client in the litigation of the initial loan submission. This ensures an immediate response from the lender regarding these possibly deal-terminating factors, and it saves effort and economic resources.

4. Felony background check

Representing clients who attempt to conceal felony convictions is one of the

easiest ways to lose lender relationships. Although exceptions rightfully exist, most lenders deem any felony conviction as a reason to decline a loan request. As convictions can occur at the state level and the federal level, it is recommended to sign up for state and federal background check capabilities with the same credit-verification service utilized for FICO reports. These reports typically are more expensive than a personal credit report and generally should only be ordered if information was discovered independently or provided by the client directly that indicates a high probability of a conviction existing.

Generally, ethical borrowers with prior convictions will have prepared documentation from their counsel regarding any incident with a detailed explanation of the circumstances and, hopefully, confirmation of the conviction being expunged. If the broker believes the situation merits working with the prospect, these documents should be submitted directly to the lender's counsel at the beginning of the process. Being forthright will eliminate future concerns or a declined transaction after third-party reports are completed.

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Professional commercial mortgage brokers should know that their competitive advantage lies in the reputation they have with lenders. This reputation can be bolstered by the quality of clients they represent and the clients' track record in meeting their obligations. The ability to efficiently identify and address character issues of prospective clients is an invaluable tool to eliminate waste of resources and reputation damage, as well.

Commercial mortgage brokers who use free and paid services to quickly confirm personal FICO, professional conduct, litigation and convictions will have an advantage that ensures career longevity and good standing in the lending community. ●