

SHAKESPEARE WAS ONLY KIDDING! – PART I

By Patrick Niland

When refinancing your co-op's underlying mortgage, your first call should be to your lawyer – not a lender!

People always complain about lawyers, their confusing language, their focus on “process” versus “results”, and the overly-litigious state of our society. Several years ago, a University of Texas economics professor even estimated that our country has 40% more lawyers than it needs, and that this excess costs the U.S. economy over \$600 million per year and reduces the annual compensation of the average American worker by more than \$2,500! If those numbers are true, Shakespeare won't be the only one suggesting that we kill all the lawyers!

Now, whereas some lawyers might deserve Shakespeare's punishment, most attorneys have skills and experience that could prove very helpful. I regularly meet with co-op boards to discuss the refinancing of their building's underlying mortgage. In these meetings, I am struck by the wide range of attorney involvement. Some boards won't buy light bulbs without legal counsel. Other boards call their attorneys only in an emergency. Still others plan to contact their lawyer eventually, but not before they get a loan commitment. “So he can't run up the meter!” they proudly explain. With alarming frequency, I still find boards who operate *without* an attorney at all! (For these boards, I carry a list of lawyers skilled at processing and closing underlying mortgages.)

Whenever I meet to discuss a refinancing, I urge the board to call their attorney as soon as possible. Since both the board and I will need their lawyer eventually, I strongly recommend that the board involve their attorney right from the start. After all, refinancing is the most important decision that a board member will ever make. Their choices will affect not only the monthly maintenance but also the market value of every shareholder's apartment. Therefore, this decision, more than any other, requires the skills of a well-coordinated professional team. The co-op's attorney should be a key player on that team.

As I've noted in previous issues of the CFQ, any refinancing passes through six important phases. Your attorney (like the other essential members of your “refinancing team”) will make valuable and cost-effective contributions during each of these phases.

Up-Front Preparation

Before calling any lender or mortgage broker, the board should prepare itself well. The co-op's attorney can guide this preparation and, therefore, should be involved in the board's earliest discussions about raising money. The attorney will help the board evaluate alternative financing possibilities and, if refinancing is the proper course of action, explain the various terms that should be included as part of any new loan. A good attorney will review the existing loan's prepayment terms and verify the current lender's notice and pay-off requirements. They also will request preliminary searches of the property's title and building department records to determine whether there are any encumbrances, unsatisfied liens, fire or safety violations, unpaid taxes, or any other problem that might prevent the co-op from closing a new loan.

If the board decides to use a mortgage broker, the co-op's attorney will prepare an agreement that protects the co-op from misrepresentations and authorizes the payment of a brokerage commission only if the broker produces a loan that meets the board's objectives. Lastly, the co-op's attorney can help the board evaluate different loan offers, determine when a particular loan's interest rate becomes "locked", and translate lender terminology into language that each board member can understand. It is quite possible that the co-op's attorney has closed other loans with some of the same lenders that the board is considering and can give the board the benefit of that experience.

At Application

Involving the co-op's attorney becomes crucial once the board has chosen a lender and is about to fill out an application. Not only will the co-op's attorney explain the basic terms of the deal, but they also will search (or add) the fine print to determine how the lender will deal with such issues as:

1. the amount of the good faith deposit;
2. the terms under which the co-op's deposit will be returned if the deal falls through;
3. the third party reports that will be required, their costs, and the procedure to be followed should any problems be uncovered by these reports;
4. whether the lender will escrow for taxes, water and sewer charges, and/or insurance;
5. the new loan's prepayment terms;
6. estimated closing costs;
7. the time allowed to file the application, accept a commitment, and close the new loan.

It always is better to address these (and any other issues) in the application, before too much time and money has been invested in a particular deal. As any experienced attorney will tell you, it is much harder (and costlier) to negotiate changes to a commitment letter.

Please read the conclusion of this article in Part II.