

July 2009 Bank Alert

Following last month's advice regarding some common errors in loan documentation, we have run into two different circumstances where mortgagors granted mortgages on their property to secure notes given by their businesses. The bank, however, failed to obtain a guaranty or a hypothecation agreement. Without this, the mortgage which is supposed to secure an obligation of the mortgagor does not accomplish this goal. There needs to be a debt or an obligation of the mortgagor for the mortgage to secure.

Furthermore, in circumstances where a husband and wife own property, but only the husband or wife owns an interest in the borrower, the bank has to be concerned about Regulation B. There is an exception, however, to Regulation B which generally provides that a spouse under circumstances where he/she is granting collateral (but is not going to personally guaranty the debt) can sign a non-recourse guaranty limited to his/her interest in the real estate so that the collateral can properly be pledged. This will not run afoul of Regulation B and you can protect your mortgage interest.

As always, please do not hesitate to contact any one of us with any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to be 'P. Shrair', with a long horizontal line extending to the right.

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