

## Co-Lending – An Institutional Perspective

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Early and frequent communication between the lead lender and co-lenders is key to a successful shared loan. Each institutional lender has its own assumptions, procedures and hot buttons, but may not be aware that these differ from those of other lenders. The trick is to discover and resolve differences early, and without involving the borrower. Below are some issues that counsel can make sure the lenders address early in the process. Attached is a more detailed list of diligence and other pre-closing matters that lenders may treat differently. Having a clear understanding among the lenders on all of these items will facilitate a smooth closing. It will also likely result in a satisfied borrower, which is very important to most institutional lenders, since borrowers are our customers.

1. Will there be a pre-closing agreement between the lenders, as well as a co-lending and servicing agreement? Whose forms will be used? Who will draft?
2. Will there be a servicing fee paid to the lead lender by co-lenders?
3. Will outside counsel be retained or will in-house counsel be used? If the former, will outside counsel represent one or both lenders? For what scope of work? What are the estimated fees?
4. To what extent will co-lenders have direct contact with the borrower (both pre- and post-closing)? Will documents be negotiated through counsel, or are long, multi-party conference calls in store? Group emails can really help.
5. What decisions does lead lender make and what decisions require co-lender consent (both pre- and post-closing)? Is this process invisible to the borrower? See pre-closing issues checklist (attached).
6. What if the lenders disagree on an approval before closing? After closing?
7. What if the lenders disagree on whether to accelerate the loan and exercise remedies after a default?
8. Consider including a special provision in the loan commitment spelling out to the borrower the basics of how the relationship with lenders will work. Clarifications may include: Will there be more than one promissory note and, if so, will payments be made to each lender separately or to the lead lender, as servicer? Will each lender actively review and have the right to approve all diligence matters? Is each lender only committed to fund if all other lenders actually fund as well? Is lead lender only committed to fund its share? Will borrower be entitled to rely on communications with lead lender to bind co-lenders? Is the answer to this question different before and after closing?

