

Real estate finance solicitors: Key roles in lending - TAB U Podcast - S2 E7 - #TABUniversity

Podcasts

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What is the role of real estate finance solicitors in the lending process? Your top questions are answered in #TABU podcast season 2, episode 7.

TAB is joined by [Daniel Fireman](#), a partner and real estate solicitor at [Gunnercooke](#).

Daniel gave TAB an insight into why real estate finance solicitors are important in the lending process as well as explaining what he looks out for during cases and the different types of documents that are required.

The top five questions asked on this week's podcast are:

1. What is your main role when acting for a lender?
2. What do you look out for when looking at cases?
3. What is a ROT?
4. What are the challenges that can come up under time pressures?
5. How did you become a bridging finance solicitor?

What is your main role when acting for a lender?

Well, there are three principal roles. The main concern really is to ensure that we get the money out safely for the lender and that they can get it back. And in the course of doing that first, we look into

the borrower, we do our due diligence. We make sure that the borrower is the person that we intend to lend to, and there's nothing dodgy about the borrower.

Then we look at the property in detail, we make sure it's gonna be good security for the loan. And finally, we prepare the loan and security documents, make sure they reflect the terms that have been offered to the borrower and make sure that the loan is gonna be properly secured on the property and with any guarantee or any other security that the lender wants.

What do you look out for when looking at cases?

We work closely with the underwriters in most cases, they present us with the bare bones of the case, the details of the borrower, and the details of the property, and we then drill down deep, and make sure, firstly, as I said that before the borrower is who they're supposed to be, and then we look at the property and we carry out effectively the same type of investigations that you do when you're buying a property. We make sure that the title is good, and that the borrower actually owns the property. We look into any matters that affect the title. So there can be restricted covenants saying you can't do certain things on a property. There can be rights that you need in order to get to the property or to get out of the property. There can be other matters that affect the property. We look at who might occupy the property and the terms on which they occupy the property. Effectively we look at anything that might affect the ability of the lender in the hopefully unlikely event that it has to enforce its loan. Anything that might affect its ability to recover possession of the property or sell the property and recover its money.

What is a ROT?

It's a R.O.T., but we all call it Rot in the office because there are so many of them going on that it's the easiest way than having to say 'report on title' every single time.

It stands for 'report on title', and it's a report that the lender's lawyer will prepare, which looks at the title to the property that as the security identifies all the relevant issues in that title, tells the lender

whether it's freehold or leasehold if it's registered, what the title number is, the land registry, it tells them about any matters that are contained in the title that might impact the property.

So, if it's subject to leases then it will explain that it's subject to leases and it will set out a summary of the terms of those leases. If it is a leasehold property itself, then it will set out a summary of the terms of that lease. If there are any covenants, for instance, if there's something on the title that says the borrower can't use the property for anything other than a single dwelling house then we'll communicate that. Access rights - if the property is on a road, that's not a public roadway or not an adoptive roadway then we'll make sure that there's a right of way to and from the property over private land and anything else that might be of interest to anyone who either owns the property or wants to be able to sell a property in the future, we'll identify. So it's anything that might adversely impact the value of the property, the marketability of the property, or the opportunity to mortgage the property.

Hence why once we get a draft ROT we then send it straight to the valuer who's valued the property, so they can then check that against their valuation to make sure that anything that our solicitors or lawyers have reported within the report and title don't adversely affect the evaluation because it's not fully signed off the valuation until they've received that. If the valuer says, "No, that's fine," then we can proceed with the valuation, alternatively, they could say, "Okay, we didn't know about this. Based on the fact there's an overage payment from a previous owner, there could be an access point. We're now going to have to drop 10%," then that could then go on and affect our loan, which we might then have to reduce as a result of the final valuation.

What are the challenges that can come up with certain time pressures?

Well, the important thing about trying to get a deal done within a very short timeframe is that everyone's pulling together in the same direction. So all of the counterparts involved, whether they're representing the borrower or the lender, have to be there, they have to be active, they have to be proactive, they have to be reactive, and if they all work together, then you can get deals done and turn around very, very quickly. It helps a great deal when the borrower's representatives are knowledgeable. So a broker who really understands the market, who understands the nature of the deal - that's essential, and a solicitor who's used to transactional work who understands the requirements of lenders, acts for the borrower, and can explain to the borrower what they want is

very helpful.

Of course, nothing beats an experienced borrower who's done this before time and time again and understands that rather than arguing about issues that they're just asked to deal with they just accept everything that's requested of them, and accept that there are questions that need answers which have to be dealt with - they have to be addressed, they're not going to be swept under the carpet, and that they just produce the answers to us as and where we want them. And then we can get the deal done in double quick time.

How did you become a bridging finance solicitor?

Well, I kind of fell into it. I'd always been acting for lenders of one coin, a lot of banks and many years ago for bridging lenders. And then for quite some time I was the managing partner of my law firm. So I didn't really have that much opportunity to find new areas to practice. So I always kept my hand in looking after lenders, and then after the financial crash in 2008/2009, a lot of new bridging lenders started just emerging to fill the gap where the banks weren't able to operate anymore. I found myself offering advice very similarly to the advice I'd offered decades before to similar types of lenders. I felt that for someone like me, this was a good opportunity to actually build up a niche. I eventually merged my law practice with another much bigger firm, and then took over the banking and real estate finance team at that firm and built that hub, at the same time just focusing on acting for lenders.

So since 2014, I've done nothing but act for lenders on secured lending transactions. And some of them are small bridging lenders and development funders. Some of them have been challenger banks. Some of them have been major clearing banks and international banks.

Thanks to all our listeners! See you next time. Don't forget to like, share, subscribe and comment. See you next time. Bye!

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