

Is Your Demand Loan Demandable?

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A demand loan is a loan that a lender can require to be repaid by the borrower in full at any time. A demand loan has no term, but is simply repayable on demand. They are codified through a commitment letter or promissory note or other underlying base loan document with ancillary security such as a mortgage, assignment of rents, general security agreement etc. Often, the borrower may prepay a demand loan all at once without prepayment penalties. To enforce a demand loan, a lender is required to issue a demand letter to those persons liable to pay under the mortgage loan before issuing a Notice of Sale under the *Mortgages Act* (Ontario). Section 42 of the *Mortgages Act* precludes the lender from commencing further enforcement proceedings during the demand period specified for repayment.

A lender's commitment letter (or other lender base loan document) often contains elements of both demand and committed term loans. It is imperative that the demand nature of the loan be explicit and the term loan element be complimentary and not contradictory to the demand nature of the loan. This would be evident in the loan clauses such as repayment, availability, multiple advances, acceleration, events of default to name some. The demand loan must, by its express terms, specify that that it may be cancelled by the lender at any time without notice. The last thing a lender wants is for the term loan clause to supersede the demand loan option for the lender.

For sample demand loan clauses, please feel free to reach out to the author.

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