

KEEPING CURRENT

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Commercial Lending Where There is a Limited Partnership

By Zev Zlotnick

A limited partnership is a business structure comprised of at least one general partner and one limited partner. General partners are liable for all of the partnerships' obligations and losses whereas limited partners enjoy limited liability up to their investment amount. The limited partners have no right to participate in the management of the partnership or to act on its behalf. A limited partner's right to the property of a limited partnership is a right to equal division of profits on the basis agreed upon by the limited partnership. Limited partnerships are beneficial structures because they provide the limited partners with limited liability.

With respect to ownership of real property, in Ontario limited partnerships are not commonly registered on title. In a limited partnership arrangement, registered title is often held by a title nominee or by the general partner of the limited partnership, in both instances, for and on behalf of the limited partnership as beneficial owner of the real property. As mentioned in prior articles, this separation between registered and beneficial ownership of the real property necessitates a commercial lender, at the very least, taking security from both the registered title holder in the form of a mortgage, assignment of rents etc. and the beneficial owner limited partnership in the form of a charge of beneficial interest agreement.

There are nuances to a limited partnership structure that a commercial lender should be aware of when setting out the security to be provided in a real property commercial mortgage transaction. For example, if a title nominee holds title to the real property for the limited partnership beneficial owner, should the lender require searches and security against the general partner of the limited partnership? What are my security options with respect to a limited partnership? Should I also be asking for a guarantee of the loan from the limited partnership? What security, if any, should be provided by the general partner?

If you have any questions or comments with respect to the subject matter of this article or any other matters, please do not hesitate to reach out to the author at any time.

Contact Us

If you are in need of legal advice, please do not hesitate to contact [Zev Zlotnick](mailto:Zev.Zlotnick@grllp.com), at 416.865.6601 or zzlotnick@grllp.com.

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