

# KEEPING CURRENT

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## Specific Assignment of Lease

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Commercial real estate mortgage lenders in Ontario require a comprehensive security package to safeguard their investment. One critical component of this package is the assignment of leases. There are two types of lease assignments: a general assignment and a specific assignment. Understanding the distinction between these and the unique advantages of a specific assignment of a commercial lease is essential for lenders.

### What is a Specific Assignment of a Commercial Lease?

A specific assignment of a commercial lease is a legal agreement in which a borrower (the landlord) transfers its rights to a particular commercial lease or leases to the lender as collateral for a loan. This assignment gives the lender the right to collect rents directly from the tenant(s) in the event of the borrower's default. It is distinct from a general assignment of leases, which assigns all current and future leases related to the property.

### Differences Between Specific and General Assignment of Leases

1. Scope:
  - Specific Assignment: Targets a particular lease or specific leases.
  - General Assignment: Covers all leases related to the property, including current and future leases.
2. Control:
  - Specific Assignment: Offers the lender control over specific, identified leases, making it easier to manage and enforce.
  - General Assignment: Provides a broader scope but may be harder to enforce due to its general nature.
3. Enforceability:
  - Specific Assignment: Easier to enforce because it deals with particular leases, making the terms and tenants clear.
  - General Assignment: Can be complex to enforce due to the inclusion of all leases, especially future ones that are not yet known.

### Why Should Lenders Take a Specific Assignment of a Commercial Lease?

1. Enhanced Security: A specific assignment provides direct access to rental income from particular tenants. This direct access can be crucial in ensuring continuous cash flow, especially in times of borrower default.

2. Clear Rights and Obligations: The specific assignment clearly outlines the lender's rights concerning the assigned leases. This clarity reduces ambiguity and potential disputes, making it easier to enforce the lender's rights.
3. Direct Rental Payments: In the event of borrower default, the lender can directly collect rent from the specified tenant(s), bypassing the borrower. This ensures that the property continues to generate income, which can be used to service the loan or cover property expenses.
4. Mitigation of Risk: By securing a specific assignment, the lender mitigates the risk of relying solely on the borrower's financial stability. The rental income from assigned leases provides an additional layer of security.

### Legal Considerations

1. Notification to Tenants: The lender should notify the tenant(s) of the specific assignment. This notification ensures the tenant is aware of the lender's rights and the possibility of paying rent directly to the lender in case of default.
2. Enforceability: The assignment agreement should be carefully drafted to clearly outline the circumstances under which the lender can exercise its rights.
3. Due Diligence: Lenders should conduct thorough due diligence on the tenant's lease terms, financial stability, and compliance with lease obligations to ensure the assigned lease is a valuable asset.

A specific assignment of a commercial lease offers commercial real estate mortgage lenders in Ontario a targeted and effective way to secure rental income as collateral. By understanding the benefits and implementing this strategy as part of the lender's security package, lenders can enhance their security position, reduce risk, and potentially offer more favorable loan terms.

For any related questions, please contact the writer. To see my previous 1-Minute Reads for Commercial Mortgage Lenders, please visit the Blog portion of my profile at <https://www.grllp.com/profile/zevzlotnick>

### 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 [zlotnick@grllp.com](mailto:zlotnick@grllp.com).

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