

# Retail Property Lending: Managing Risks Amid Changing Retail Landscapes

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Commercial mortgage lending for retail properties in Ontario has become increasingly complex as the retail sector faces transformative market pressures. The acceleration of e-commerce, combined with the economic disruptions caused by the COVID-19 pandemic, has led to higher vacancy rates, tenant instability, and evolving lease arrangements. Lenders must carefully assess these dynamics to protect their security and minimize exposure.

One key area of concern is the structure and enforcement of retail leases. Co-tenancy clauses, which allow tenants to reduce rent or terminate leases if anchor tenants vacate, can significantly impact income stability. Rent abatements and force majeure provisions introduced during the pandemic have further altered landlord-tenant relationships, sometimes delaying or reducing rental income critical to debt service.

Consistent enforcement of lease or loan covenants is essential. Ontario courts have repeatedly held that a landlord or lender who knowingly overlooks a breach or continues to treat an agreement as subsisting may be found to have waived strict performance or be estopped from later relying on that default *Malva Enterprises Inc. v. Rosgate Holdings Ltd.*, [1993] O.J. No. 1645 (C.A.); *High Tower Homes Corp. v. Stevens*, 2014 ONCA 911). The principle reflects the Supreme Court's guidance in *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490, that waiver arises where a party, with full knowledge of its rights, unequivocally elects not to enforce them.

Lenders should demand detailed tenant financial disclosures and maintain oversight of occupancy levels to promptly identify early signs of tenant distress. Loan agreements must include covenants requiring borrowers to maintain minimum occupancy thresholds and report, or even request for approval, lease modifications, renewals, or defaults without delay.

Environmental considerations remain a critical part of due diligence, especially with legacy retail sites that may have housed gas stations, dry cleaners, or other uses with contamination risks. Failure to identify and address environmental liabilities upfront can result in costly remediation and reduce recoveries.

Regulatory developments related to commercial evictions and rent relief programs also affect retail property lending. Although many COVID-19 emergency measures have been phased out, some protections and dispute resolution processes remain, requiring lenders to stay informed and adapt enforcement strategies accordingly.

Overall, lending on retail properties demands a multifaceted approach, combining thorough legal review, tenant risk monitoring, and proactive loan structuring. By anticipating market changes and regulatory shifts, lenders can better manage risks and protect their security interests throughout the loan lifecycle.

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For more information please contact: [Zev Zlotnick](#)

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## Author



**Zev Zlotnick**

Partner

416.865.6601

zzlotnick@grllp.com



**Bay Adelaide Centre — East Tower**  
22 Adelaide Street West, Suite 3600  
Toronto, ON M5H 4E3

Phone: 416.865.6600  
Fax: 416.865.6636  
contactGR@grllp.com