

Independent Directors and Managers: Not Just for Lenders Anymore

Most commercial real estate lenders now routinely require customers to form Bankruptcy Remote Entities (BREs) with independent directors (or independent managers in the case of LLCs) as a way of protecting their investments. Rating agencies, lender's counsel, regulators and corporate boards have become increasingly interested in these vehicles, and the trend is expected to continue.

However, the lender is not the only party that stands to benefit from the appointment of truly independent directors and managers at a BRE. Borrowers, who foot the bill for the BREs and their independent directors, can also profit from this requirement. How?

For starters, the formation of a BRE and the appointment of an independent director can give a borrower access to significantly better financing rates, because they provide the lender with increased assurance that the loan is safe. Lenders are further reassured by the appointment of professionals working for established, nationally recognized providers of independent directors, which again translates to a more favorable relationship and rates for the borrower. Such benefits more than offset the costs associated with appointing independent directors.

Additionally, in the unlikely event that a borrower must consider declaring bankruptcy, an experienced independent director can bring valuable knowledge to a difficult situation. If the director is truly independent, and has properly reviewed all the material regarding the action, then his or her decision will most likely not be challenged by the lender, permitting the borrower to avoid additional costly legal battles.

In order for borrowers to best leverage the services of an independent director, they should look for the following characteristics when selecting a provider:

- **Independence:** Directors should have no material ties with any lender, underwriter, bank, insurance company or securitization administrator. No party should be able to assert undue influence over the director.
- **Experience:** Directors must be qualified professionals who are able to act with intelligence and practicality.
- **Staff and Resources:** Borrowers need an organization that can provide customized independent director services quickly, and has qualified professionals available whenever their services are needed.

CSC: The Right Choice

Corporation Service Company is uniquely qualified to meet these criteria. “CSC has been providing Independent Director/Manager services for over a decade, and is a name that commercial lenders trust,” says Beth Peoples, Director of Independent Director Services at CSC.

“CSC is a privately-owned company with diverse businesses spread among thousands of clients, which means that no one company can exert its influence,” Peoples explains. “Many other smaller providers of independent directors cannot say the same,” she points out.

The CSC independent directors are qualified, and have experience with taking material action. “When we have been required to vote on bankruptcy we work in a professional manner with all the parties involved,” Peoples explains. “We make educated and prudent decisions based upon the information at hand, which ultimately benefit both lender and borrower.”

Unlike many other companies that provide similar independent director services, CSC does not require clients to take out a Directors and Officers insurance policy for each transaction. “Again, we use our expertise to determine when to require these policies, in order to avoid saddling our customers with unnecessary costs,” Peoples says. This unique approach to risk management allows CSC to offer customers high levels of precision, flexibility, speed and value.

The company also uses an adjustable rate structure based on each transaction’s circumstances, and on the number of BREs involved. “We have also developed a special pricing model for Tenant-in-Common transactions which generally involve a large number of entities,” Peoples notes.

At CSC the customers’ needs are directly tied to the service provided. “We can turn things around very quickly so that clients’ deadlines are always met,” Peoples says. “We understand that these transactions are complex, and that a lot of pieces will often fall into place at the last second. We’ve had clients call us from the closing table. And when they call us, they need to know that we’re there.” Smaller companies and individuals simply cannot provide that level of assistance or assurance, she adds.

In addition, CSC is always looking for new ways to further enhance service, and to that end, will soon be moving client data into the secure online portal CSC IncSpot so that clients can go into the online system and easily identify their independent directors at each of their entities. “This will give clients quick, easy and confidential access to information that may be needed for other transactions,” Peoples anticipates that this valuable service will be available early in 2007.

For more information on the CSC independent director services call 800-927-9800 extension 5466 or visit IncSpot.