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INFORMATION FOR OUR BUSINESS AND CORPORATE CLIENTS

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NEGOTIATING BETTER BANK LOANS: A BUYER'S MARKET

Today's banking environment has changed. The Federal Reserve Bank recently lowered the Federal Funds rate to one percent, and interest rates are as low as they have been in 45 years. That was the Fed's 13th rate cut since January, 2001, and many analysts predict interest rates will remain low for the foreseeable future. Banks have been consolidating and expanding at the same time, with new names showing up everywhere. They are sponsoring everything from sports arenas and events, to concerts and museum exhibits. Banks are competing aggressively for customers, so it is now a "buyer's market" in the loan business. As a result, loans are being negotiated and closed with lower rates and better terms than ever before. The refinance market is booming, and you should be very aggressive when negotiating your new business loans. Here is our Top Ten List for getting the best deals from commercial lenders.

1. Negotiate better interest rates

Don't just accept the rate offered! Ask for lower rates, longer periods of fixed rates, and better schedules for adjustable rates, so that you get the lowest possible rates for as long as possible. Also, try getting a LIBOR based rate (the London Inter-Bank Offered Rate, which is the floating rate some European banks charge each other for large loans or overnight funds), since it is generally a lower index for adjustable rate loans that is now offered by many US commercial banks.

2. Negotiate lower loan fees

In today's banking environment, there's no need to stop your negotiating with just the interest rates. Negotiate for lower fees as well. As banks compete for your business, to make your best deal, ask for lower application, appraisal, commitment and document preparation fees, as well as lower points, discount fees and even legal fees.

3. Negotiate longer amortization periods and loan terms

Amortization is the calculated method for how the principal is paid back and the interest is charged for your loan over a fixed period of time, assuring that the principal is completely repaid at the end of the loan term. Each installment payment is a calculated combination of principal and interest. Your goal should be to analyze and obtain the right payment amount for you - the longer the amortization period, the lower the installment payment. If the loan term is shorter than the amortization period, a balloon principal payment will be due at the end of the loan term. You may want to take advantage of today's low interest rates by getting a fixed rate loan for as long a term as possible, with the longest amortization period available.

4. Negotiate for no prepayment penalties

Lenders often impose prepayment penalties to discourage loan payoffs and refinancings, and assure a favorable interest income flow. These penalties are imposed by a lender on a borrower who wants to pay-off all or a significant part of a loan earlier than its due date. Such penalties are often significant in the early years of a loan, and then reduce gradually as the loan matures. Since today's interest rates are so low, lenders will often waive any prepayment penalties, if you ask, to encourage you to refinance at a later time when they anticipate interest rates will be higher. This will allow you to keep your borrowing options flexible for the future.

5. Negotiate for no "confession of judgment" default remedy

A confession of judgment is a powerful legal remedy for lenders to use against borrowers who are in default under a loan. It allows the entry of a judgment of record against a borrower without the formality or protection of a regular lawsuit and judicial proceeding. The borrower does not receive advance notice and does not have the opportunity for a trial or hearing before the judgment is entered. This procedure has been ruled unconstitutional (as a denial of the right to due

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TAKE ADVANTAGE OF THE NEW TAX ACT NOW

The 2003 Act passed in May is intended to boost the economy by providing tax breaks to married taxpayers with children, investors, taxpayers with high-income and small businesses. The good news is that some of the more favorable provisions are retroactive to January 1, 2003. The bad news is that all of the changes set forth in the 2003 Act are scheduled to expire at some point in the future.

INDIVIDUAL TAX BREAKS

First, the 2003 Tax Act reduces the current Income Tax Rate. The 2003 Act accelerates the new rates which were slated to become effective in 2004 and 2006. These rates are scheduled to be repealed after 2010 unless Congress acts otherwise.

The new rates are as follows:

10% and 15% rates remain unchanged

27% rate is reduced to 25%

30% rate is reduced to 28%

35% rate is reduced to 33%

38.6% rate is reduced to 35%

The 2003 Act expands the 10% bracket for all filers, except heads of household. Specifically, the 10% bracket is expanded by $2,000 for joint filers and by $1,000 for singles and married individuals who file separately. The 15% bracket is expanded for joint filers and married taxpayers filing separate to exactly twice the amount of the 15% bracket for single filers. For joint filers, the 15% bracket includes all taxable income under $56,800. For married filing separate, the 15% bracket is now the same as for singles and includes all taxable income under $28,400.

The 2003 Act also increases the standard deduction for joint filers from $7,950 to $9,500. The standard deduction for married filing separate has been increased to $4,750 from $3,975.

These changes are scheduled to expire in 2004 unless Congress elects to renew them.

Child Tax Credit

For 2003, the child tax credit has been increased to $1,000 (from $600 in 2002). The child tax credit is available to taxpayers who have dependent children, stepchildren, foster children or grandchildren under the age of 17. The phase out amount for the child tax credit has remained unchanged at $75,000 for singles and $110,000 for joint filers. The credit amount is only effective for 2003 and 2004; it is scheduled to be reduced to $700 in 2005 unless Congress acts otherwise.

Long-Term Capital Gains Rate

Long-term capital gains from sales made on or before May 6, 2003 will be taxed at no more than 15% (a 5% decrease from the current rate of 20%). Taxpayers in the 10% or 15% bracket will pay only 5% on long term gains from sales after May 6, 2003 (those taxpayers will pay 0% in 2008). In 2008, the old rates become effective.

There are some limitations to the new rates:

1. The 25% maximum rate still applies to long-term real estate gains from unrecaptured Section 1250 gains (depreciation deductions claimed against the property);
2. The 28% maximum rate still applies to long-term gains from collectibles and certain small business stock.
3. Long-term capital gains from sales before May 6, 2003 will be taxed at the old rates of 20% maximum rate (10% maximum rate for those in the 10% and 15% tax brackets) and 8% maximum rate for five year gains for taxpayers in the 10% or 15% bracket.
4. The new rates do not apply to investments held in tax deferred retirement accounts such as traditional IRAs, 401(k) accounts, SEP accounts and Keogh accounts. Capital gains accumulated in these account will be taxed at current rates when withdrawn as cash distributions.

Reduction on tax rate for Dividends

For 2003 through 2008, qualified dividends from domestic corporations and qualified foreign corporations will be taxed at the same rates as capital gains. For taxpayers in the 10% and 15% brackets, qualified dividends will be taxed at only 5%. Qualified dividends are dividends from stock which have been held more than 60 days during the 120 day period that begins 60 days before the ex-dividend date. The ex-dividend date is the last date on which shareholders of record are entitled to receive the upcoming dividend. Additionally, the new rates do not apply to dividends received in tax-deferred retirement accounts such as traditional IRAs, 401(k) accounts, SEP and Keogh accounts, etc.

CORPORATE TAX BREAKS

Section 179 Depreciation Deduction

The 2003 Act increases the 179 first year depreciation allowance from $25,000 to $100,000 on the cost of most new and used business assets, excluding real estate. In addition, computer software is now included in the list of property eligible for the Section 179 allowance. This provision will expire in 2005 unless Congress acts otherwise.

Bonus Depreciation

The 2003 Act increases the first year depreciation deduction from 30% to 50% for the cost of qualifying assets purchased after May 6, 2003 and before January 1, 2005 to be written off as depreciation in the first year. The remaining half is written off under the "standard depreciation." Qualifying assets purchased prior to May 6, 2003 are eligible for the 30% first year depreciation bonus. This provision is scheduled to expire after 2004.

First Year Depreciation for Business Vehicles

For new autos acquired on or after May 6, 2003, the depreciation deduction has been increased to $10,710 from $7,660. Autos acquired before May 6, 2003 are subject to the depreciation deduction of $7,600. Used vehicles placed in service in 2003 are subject to the maximum deduction of $3,060. This provision is also scheduled to expire after 2004.

In light of the recent changes in the tax law, it is important that you revisit your income tax planning for this year and future years. You will want to ensure that you make the most of the planning opportunities presented by the 2003 Act.

For further information contact David White at 215-893-8742.

NEGOTIATING BETTER BANK LOANS

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process) in most states, and severely limited in those states where it is still allowed, such as Pennsylvania. However, for a confession of judgment to be used by the lender, the borrower must grant this power in the loan document at the time the debt is incurred. With competition for your loan business as intense as it is, many PA borrowers have been able to negotiate the confession of judgment remedy out of their loan documents. If you can do this, your legal rights will be better protected in the event of a default.

6. Negotiate for no "unlimited guaranties"

Banks try to get as much protection as possible for their loans. With commercial borrowers, lenders often demand unlimited guaranties by other affiliated business entities, by the individual principals of the business, and sometimes by the spouses of those principals. Lenders want these guaranties so that in the event of a default they have alternative sources of funds from which to recover payment of the debt. However, it is possible today to negotiate the elimination, or at least limitation, of such guaranties. In order to protect and shield your personal assets and the assets of your other non-borrower companies in the event of the borrower's default, do your best to avoid such unlimited guaranties.

7. Negotiate for "notice and right to cure" defaults

In every commercial loan, the borrower has both monetary and non-monetary obligations. Monetary obligations require the payment of money, usually monthly installment payments. Non-monetary obligations require the borrower to either do certain things (affirmative obligations), or not do certain things (negative obligations), such as maintaining insurance, maintaining the collateral, providing financial statements and not creating more debt. In the event of a default by the borrower for failing to make required payments or for breaching an affirmative or negative obligation, the lender has the right to immediately exercise its legal remedies under the loan documents. However, banks often agree to give the borrower advance written notice and the right to cure or fix (typically, 30 days) non-monetary defaults before seeking legal redress. They have generally refused to give such notice and the right to cure monetary defaults, arguing that the borrower should know when it has not made a payment on time. As we all know, that is not always true. Payments can get lost or delayed in the mail, errors can occur in sending or posting payments, and devastating financial consequences can result if a loan is defaulted for an innocent and unknowing mistake. Therefore, it is very important for borrowers to negotiate for notice and the right to cure

monetary defaults, even if only for a limited time period such as five days, or for a limited number of occurrences such as no more than two times in any 12-month period. With the competition for loans today, it is now possible to negotiate for the inclusion of such an important protective right.

8. Negotiate limitations on collateral

Lenders always want as much collateral as they can possibly get to protect their interests in a commercial loan. Collateral is the bank's security for repayment, and provides alternate sources of repayment funds in the event of default by a borrower. The loan documents usually give the lender a lien against the identified and pledged collateral, whether it is real estate, inventory, accounts receivable, fixtures, equipment, stock or other types of assets. While it is generally not possible to avoid the pledge of collateral for a commercial loan, today a savvy and strong borrower can negotiate certain rights with respect to the collateral that limit the lender's grip and offer flexibility to the borrower. For example, a borrower should try to limit the amount of the collateral, retain the right to substitute collateral, and retain the right to exercise rights as the beneficial owner of the pledged collateral (i.e. receive dividends, vote, sell in the ordinary course of business).

9. Negotiate for reduced loan covenants

Commercial loan documents always contain financial and other covenants, both affirmative and negative, requiring the borrower to do, or not do, certain things that if violated can constitute a loan default. Such covenants often include compensating balance and depository requirements, maintenance of financial ratios, keeping collateral property insured and in good repair, providing periodic financial statements and tax returns, providing copies of leases, not creating additional debts or borrowings, not changing management or ownership, etc. Now, some of these and other loan covenants are negotiable. A borrower should attempt to delete or limit those obligations that are most difficult and undesirable for its business.

10. Negotiate all of your loans as a package

Finally, as in any business, volume matters. For the best loan provisions and rates in today's banking environment, try negotiating a package deal with one lender for all of your loan requirements. With interest rates as low as they are, consider refinancing existing borrowings when applying for new loans. If you negotiate your lines of credit, commercial loans, mortgages and personal loans all at once with the same lender, you can often get the best terms.

Everything is now on the table for negotiation. Shop around for the best terms, and tell your prospective lenders that you are comparing loan offers from competing banks. Take advantage of today's banking environment to get the best deal available.

For further information, please contact Gary A. Krimstock at 215-893-8722.

PRENUPTIAL AGREEMENTS: WHY THEY ARE NEEDED

One of the least favorite discussion topics of couples heading for the altar is whether or not to enter into a prenuptial agreement. Prenuptial agreements are contracts executed by prospective spouses to define rights, duties and obligations of the parties during marriage and in the event of death or divorce.

Executing a prenuptial agreement is the most efficient way to reduce the financial and emotional costs of a divorce. The belief that only really wealthy individuals need a prenuptial agreement is simply incorrect. Although wealthy individuals or those entering into a second marriage may have an increased need for a properly drafted prenuptial agreement, it should be noted that any couple can save potential attorney fees and emotional stress by agreeing on a fair manner by which to divide assets and debt should they divorce.

Upon marriage, a spouse is granted rights to: the other spouse's estate; a pre-existing or future pension or profit sharing plan; equitable distribution of marital assets; and alimony and support and maintenance. A well drafted prenuptial agreement can alter and amend these rights in a manner that is carefully considered without the emotions that fuel a divorce.

A prenuptial agreement can also address the following concerns:

Avoiding/Minimizing Litigation Costs. Prenuptial agreements can eliminate litigation costs associated with contesting the will of a deceased spouse. They can be used to facilitate the divorce process and to provide assurance that the property will be distributed according to the couple's wishes;

Fears of Family Members. Second marriages can result in family problems caused by the fears of children over how family wealth is going to be divided. These fears can be eased by executing a prenuptial agreement that sets forth the details of property dispositions in the event of either divorce or death;

Family Assets. If one spouse has substantial interest in a family business, it is often the desire of that spouse, as well as the family members engaged in the business activity, to keep ownership within bloodlines;

Protecting Business Assets. In cases where a business is owned by a small number of parties, it is not uncommon for the owners to want to prevent a spouse from obtaining voting rights or claims against the business. In such cases, the owners can enter into an agreement that requires each, in the event that they marry, to execute a prenuptial agreement that provides for the prospective spouse to waive all rights to the owner-spouse's interest in the business in the event of divorce or death;

Disposition of Property. Frequently, disputes arise over how marital property should be allocated. Prenuptial agreements can be used to provide assurance that a couple's property will be disposed of according to their intentions; and

Determine Support Payments. Prenuptial agreements can also place a limit on alimony payments, address custody issues, and set a monthly child support payments, provided that the terms adequately provide for the well-being of the minor or minors at issue. A prenuptial agreement cannot, however, impose unconscionable limitations regarding child support and/or custody arrangements. Ultimately, the well being of the child will always control, as it is the duty of the Court to place the well being of the minor child first and foremost. Therefore, such provisions may in practice function more as a guide for the court than as a binding agreement among the parties. However, in many situations the directions previously determined by the parties and set forth in the prenuptial agreement can help resolve those custody and child support disputes likely to arise during the divorce.

In Pennsylvania, a party wishing to challenge the validity of a prenuptial agreement has the burden of proving its invalidity by "clear and convincing evidence," because such agreements are presumed to be valid and binding upon both parties. In order for a prenuptial agreement to be effective in Pennsylvania, it must meet the following basic requirements:

a. Acts of duress, fraud and/or misrepresentation cannot be perpetrated by either party during the negotiation and execution of the agreement;

b. The terms of the agreement cannot be unconscionable; and

c. Both parties must make a full and fair disclosure of his or her assets, liabilities, and sources of income.

A determination regarding the existence of duress, fraud, misrepresentation or unconscionablity is by nature a subjective inquiry. These subjective factors must be proven by clear and convincing evidence to invalidate the agreement. Whether or not there was full and fair financial disclosure is more objective, and can often be determined by reviewing the descriptions and values of the assets reported by each party on the disclosure schedule. Generally, Pennsylvania courts have found that, while the financial disclosure need not be exact, the parties must provide a sufficient description and statement of value, including each party's sources of income, such that the other party could have investigated further if he or she suspected that the assets and liabilities were not accurately described and valued on the disclosure tables.

Finally, it should be noted that a prenuptial agreement can protect parties from the unknown and undesirable results which could occur by operation of law. Most people are not familiar with the intestacy laws or the effect that a marriage can have on jointly held property. More often than not, the statutory default provisions do not coincide with the wishes of the parties. By executing a prenuptial agreement, the parameters are set and one can avoid potential problems.

For further information, contact Scott Mustin at 215-893-8741 or Carol Tino at 215-893-8744

REAL ESTATE TAX ASSESSMENT APPEALS

Real estate tax notices for 2004 were recently mailed to owners of property in Philadelphia. If you received a notice of tax increase for 2004 for your residential or commercial property and want to dispute your assessment, an appeal must be filed by the 1st Monday in October, which is October 6, 2003. Please contact us immediately to discuss this matter.

Call S. David Fineman, Esq. at 215-893-8701 or Gary A. Krimstock, Esq. at 215-893-8722.