



Negotiating Carry Guarantees in Modern Real Estate Financings: Strategies and Trends

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Lenders are increasingly requiring carry guarantees—sometimes framed as completion guarantees, operating shortfall guarantees, or carry cost guarantees—to ensure support for debt service and operating costs during distress. Unlike traditional [non-recourse carve-outs](#) or “bad boy” guarantees, carry guarantees can impose ongoing obligations on sponsors, effectively serving as a “catch-all” for deal-specific risks.

This article outlines the key features of carry guarantees, negotiation strategies, tender conditions, and distinctions between negotiating with mortgage versus mezzanine lenders.

What Is a Carry Guarantee?

A carry guarantee obligates a guarantor—often the sponsor or a creditworthy affiliate—to fund shortfalls in debt service, taxes, insurance, and sometimes operating expenses when project cash flow is insufficient. Unlike a bad-boy guaranty, the carry obligation is forward-looking and operational, requiring the guarantor to “carry” the project until resolution (sale, refinancing, lease-up, or other milestone).

Borrowers should carefully consider these obligations in tandem with other financing provisions such as [joint ventures & structured investments](#) and [real estate acquisitions & sales](#).

Key Negotiation Points

Scope of Obligations

- **Borrower Position:** Limit to debt service, taxes, and insurance only. Exclude discretionary operating costs, capital expenditures, or tenant improvement/leasing commission reserves.
- **Lender Trend:** Expanding scope to cover operating expenses, transfer costs, and reserves.
- **Negotiation Tip:** Define “Carry Costs” narrowly. Exclude capital expenditures, environmental costs, and litigation expenses.

Triggering Events

- **Borrower Position:** Carry obligations triggered only after defined shortfalls or defaults (e.g., failure to pay debt service).
- **Lender Trend:** Expanding to cover covenant breaches, construction delays, or adverse leasing performance.
- **Negotiation Tip:** Tie obligations to objective events (missed payments, uncured defaults) rather than subjective lender determinations.

Duration and Burn-Off

- **Borrower Position:** Terminate obligations upon achieving stabilization, construction completion, or a fixed period after loan closing.
- **Lender Trend:** Indefinite obligations until repayment in full or foreclosure.
- **Negotiation Tip:** Negotiate “sunset provisions” tied to debt yield, occupancy, or NOI benchmarks.

Funding Mechanics

- **Borrower Position:** Require written demand, cure periods, and right to contest amounts.
- **Lender Trend:** Immediate demand obligations, often requiring advance reserve funding.
- **Negotiation Tip:** Insist on detailed backup, notice, and the ability to offset incorrect calculations.

Cap on Liability

- **Borrower Position:** Request a hard cap (e.g., 6–12 months of debt service).
- **Lender Trend:** Resistance to hard caps, though some accept limited multiples tied to stabilization.
- **Negotiation Tip:** Frame caps around the lender’s foreclosure/stabilization horizon.

Tender Conditions and Current Trends

Tender conditions allow guarantors to extinguish carry guarantee obligations by tendering the

property or collateral (e.g., deed-in-lieu of foreclosure).

- **Historic Approach:** Lenders resisted, requiring obligations to survive until foreclosure.
- **Current Trends:** Transitional/construction lenders more open to tender options, provided environmental indemnities are satisfied and property is lien-free.
- **Transfer Taxes:** Borrowers should negotiate caps, cost-sharing, or lender responsibility—particularly in high-tax jurisdictions like [New York City's Real Property Transfer Tax \(RPTT\)](#) and the [New York State Real Estate Transfer Tax](#).

Borrowers should integrate these strategies with broader financing negotiations, including [commercial lending & leveraged finance](#) structures.

Mortgage Lenders vs. Mezzanine Lenders

Nature of Collateral

- **Mortgage Lenders:** Secured by property; remedies involve foreclosure.
- **Mezzanine Lenders:** Secured by equity; remedies involve UCC foreclosure—faster and less expensive.

Carry Guarantee Expectations

- **Mortgage Lenders:** Focus on debt service, taxes, insurance.
- **Mezzanine Lenders:** Broader demands including operating expenses, TI/LC reserves.

Tender Conditions

- **Mortgage Lenders:** Deed-in-lieu with title/lien focus.
- **Mezzanine Lenders:** Delivery of pledged equity, often requiring borrower to cover deficits through sale.

Caps and Sunsets

- **Mortgage Lenders:** More open to time/dollar caps.
- **Mezzanine Lenders:** Less willing; borrowers should push for partial caps tied to NOI or leasing.

Best Practices

- Involve guarantors early—carry liability impacts sponsor credit capacity.

- Model exposure under both mortgage and mezzanine scenarios.
- Negotiate caps, sunsets, and objective benchmarks.
- Address tender and transfer tax allocation explicitly.
- Recognize mezzanine lenders' more aggressive stance; push for proportionality.

Practical Takeaways

- Narrowly define "Carry Costs" and exclude discretionary/extraordinary items.
- Tie obligations to clear, objective triggers.
- Negotiate sunset provisions tied to stabilization or NOI metrics.
- Secure hard or partial caps on liability.
- Address tender conditions and transfer tax allocations upfront.
- Differentiate negotiation approach for mortgage vs. mezzanine lenders.

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