

Mortgage Assumptions: A Practical Guide to Taking Over a Commercial Loan

Date: August 06, 2025

Author: Robert Hawkins

In Ontario's dynamic commercial real estate market, where uncertain interest rates, increased development costs, and extended project timelines present significant challenges, buyers are increasingly exploring mortgage assumptions as an alternative to traditional refinancing. By assuming an existing mortgage, buyers can potentially avoid the costs and delays associated with paying out the vendor's mortgage and securing new financing. This strategy may allow buyers to benefit from existing loan terms, subject to lender approval and market conditions. A well-crafted mortgage assumption agreement is essential to navigate the legal and financial complexities of this process effectively. Below, the essential components of a typical assumption agreement are summarized, including an explanation detailing the importance to buyers and lenders, and detailing various practical tips based on recent real estate transactions.

1. Parties and Background

The assumption agreement starts by identifying the key players: the buyer (assignee), the lender, and the original borrower. It includes a brief history of the loan, from the initial commitment letter or loan agreement to the mortgage and related security documents, as well as the sale triggering the assumption. This section sets the stage, ensuring all parties understand the context and agree on the facts supporting the lender's consent.

Why it Matters: Clear and unambiguous terms minimize possible disputes by confirming the loan's history and the transaction's purpose.

2. Assumption Covenants

The core of the agreement is the buyer's commitment to take on the original borrower's obligations, and will include various fundamental terms including:

- Assuming full responsibility for the loan's principal, interest, fees, and expenses.
- Agreeing to comply with all terms in the mortgage and related documents as if the buyer were the original borrower.

- Paying an assumption fee (typically negotiable) covering the lender's legal and administrative costs incurred in connection with the assumption.

Why it Matters: These covenants legally bind the buyer to the terms of the original loan, confirming to the lender that the debt will be repaid by the entity assuming the loan. Buyers should carefully review these obligations to avoid surprises.

Practical Tip: Negotiate the assumption fee early to manage costs and ensure all payment obligations are clearly documented to prevent future disputes.

3. Lender Consent and Loan Status

This section confirms the lender's approval of the property title transfer, the loan assumption and any other elements of the transaction that require the consent of the lender under the loan documents. It often includes a clause prohibiting further transfers without additional lender consent. If the agreement states that the loan is "in good standing," buyers gain assurance that they are not inheriting undisclosed defaults.

Why it Matters: Lender consent is the linchpin of the deal, ensuring the transaction is valid and not a violation of the covenants under the loan documents. The "good standing" clause protects buyers from unexpected liabilities.

Practical Tip: Verify the loan's status before signing. Request documentation from the lender and original borrower to confirm no defaults exist.

4. Representations and Warranties

The lender may require the buyer to confirm certain facts, such as:

- The buyer's legal authority to enter the agreement.
- The enforceability of the agreement.
- Confirmation that the original borrower's representations (e.g., about the property or business) remain true for the buyer.

Why it Matters: These assurances protect the lender by verifying the buyer's ability to fulfill the loan terms.

Practical Tip: Review all representations carefully. If any do not apply to your situation, negotiate adjustments to avoid legal risks.

5. Confirmation of Security

This clause ensures that all existing loan documents (e.g., mortgage, security agreements) remain enforceable against the buyer. It also confirms that these documents will continue to secure the loan's obligations, with any amendments made to reflect the new borrower.

Why it Matters: This protects the lender's collateral, ensuring the loan remains secure even after the assumption.

Practical Tip: Buyers should review all loan documents to understand the full scope of obligations, including any restrictions on property use or additional collateral.

6. Optional Amendments and Releases

The assumption agreement may include changes to the loan terms, such as extending the maturity date, adjusting the interest rate, or updating covenants to reflect the buyer's circumstances. If the original borrower (or any guarantors) are to be released from liability, this must be explicitly stated; otherwise, the original borrower (and any guarantors) shall remain liable for repayment of the original loan.

Why it Matters: Amendments can align the loan with current market conditions or the buyer's needs. A release clarifies who remains liable for the debt.

Practical Tip: If you are the buyer, negotiate potential amendments with the lender early to secure better terms. If the seller seeks a release, ensure it is documented to avoid future disputes.

7. Conditions Precedent

Lenders often require buyers to meet specific conditions before approving the assumption, such as providing financial statements, proof of insurance, or additional loan documents. These requirements ensure any issues raised during the lender's due diligence are addressed, and any administrative matters necessary to process the transaction are addressed.

Why it Matters: Meeting these conditions is critical to securing lender consent and closing the deal.

Practical Tip: Prepare all required documents in advance to avoid delays. Confirm with the lender exactly what is needed to streamline the process. Refer back to the conditions frequently to ensure all matters have been addressed prior to closing.

Practical Takeaways for Business Owners

- **Conduct Thorough Due Diligence:** Review the mortgage and all related documents to understand the full scope of obligations. Missing a detail could lead to unexpected costs or restrictions.
- **Align Timing with Property Transfer:** The buyer cannot assume the loan or security until the buyer legally owns the property. Coordinate the deed transfer, lender consent, and document registration to avoid gaps.
- **Negotiate Seller Releases Early:** If the original borrower wants to be released from liability, raise this at the outset. Lenders may require additional due diligence on, or additional covenants from, the buyer to agree.
- **Watch for Priority Conflicts:** Amendments to the loan during an assumption could affect other lenders with claims on the property. If junior lenders are involved, secure an inter-creditor agreement to clarify priorities.

Conclusion

Mortgage assumptions can be a smart strategy for buyers looking to acquire commercial property without refinancing. By understanding the key components of an assumption agreement and following practical steps, buyers and lenders can navigate this process with confidence and achieve significant financial benefits. For tailored advice, consult with an experienced real estate lawyer.

The information contained in this article is intended to provide general guidance on recent developments in secured lending and should not be construed as legal advice. For specific questions or situations, please contact Kym Stasiuk or Rob Hawkins of the Real Estate & Business Group at Blaney McMurtry LLP.