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PUBLICATION

Start with Structure: Why Borrower Organization Is the First Step in Preparing Loan Documents for Ontario Real Estate Financing

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In secured real estate financing in Ontario, the borrower's organizational structure is not a minor detail to be sorted out later. Instead, it is the foundation on which the entire transaction is built. The structure dictates who signs, who guarantees, what security can be granted, how registrations are made under the Land Titles Act and Ontario PPSA, and the form of every document from the commitment letter through to the mortgage.

Despite its importance, organizational structure is often misunderstood or incompletely disclosed early in a deal. The result is predictable: loan documents with the wrong parties, security instruments referencing the wrong entities, registrations that must be corrected, and closings delayed while counsel repairs avoidable errors.

Common Structures and Their Implications

Practitioners regularly encounter several borrower structures in Ontario real estate transactions, each carrying distinct documentary and due diligence requirements:

- Single-purpose corporations incorporated under the OBCA or CBCA, requiring officer/director verification and corporate searches;
- Limited partnerships with a corporate general partner, requiring both partnership and corporate documentation;
- Bare trust or nominee arrangements, necessitating trust declarations and beneficial ownership verification;
- Joint ventures (contractual or entity-based), raising questions about authority, liability allocation, and the identity and scope of any guarantor and indemnitor chain; and
- Individuals, who may be borrowers or guarantors in Ontario real estate financings, particularly in private lending and smaller commercial transactions, carrying their own identification, verification, and capacity requirements.

Each structure determines signing authority, the form of security documents, the required corporate or partnership searches, and how beneficial ownership is disclosed. It also determines the guarantor and indemnitor chain, as in many Ontario financings, parent companies, principals, or related entities provide guarantees and indemnities. If the organizational chart is incomplete, those parties may be improperly identified or missed entirely, creating real credit and enforcement consequences for the lender. Errors can require fresh authorizations, updated searches, amended registrations, and may delay or complicate title insurance coverage when the borrower or title-holding structure is wrong in the documents or on title.

For example, a borrower may present as a single corporation, only for diligence to show that the property is held by a bare trustee for a limited partnership. If the loan documents, security registrations, and KYC forms were not prepared for that structure, the result can be weeks of delay and a complete redraft of the closing package.

The KYC/AML Dimension

Lenders subject to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and FINTRAC guidance must verify the identity of the borrower entity, its beneficial owners, and its controlling parties. The borrower’s structure determines exactly what KYC/AML documentation is required (e.g. articles of incorporation, partnership agreements, trust agreements, declarations of beneficial ownership, and individual identification). Multi-layered structures require substantially more documentation, and incomplete or piecemeal disclosure causes repeated requests, compliance delays, and frustration on all sides.

A Message to Borrowers

Borrowers should not treat organizational disclosure as something to provide later. Incomplete information leads to delayed funding, increased legal costs, repeated document revisions, and diminished lender confidence. Provide articles of incorporation, partnership agreements, trust declarations, organizational charts, beneficial ownership information, and personal identification as early as possible. Early transparency is the most effective way to keep the deal on track.

A Message to Lenders

Lenders and their counsel should consider making the borrower’s full organizational structure a gating item before drafting begins. Require a complete organizational chart as a condition of issuing the commitment letter, and send a standard checklist of formation documents by entity type (i.e. corporation, limited partnership, trust, joint venture, or individual) with the initial term sheet or letter of intent. The checklist should identify all title-holding parties, guarantors, and indemnitors so verification can proceed in parallel with document preparation rather than becoming a last-minute bottleneck.

The Bottom Line

In Ontario secured real estate financing, organizational structure is the starting point for the documentation, compliance, and closing process. Borrowers who are forthcoming empower their counsel and lenders to move efficiently. Lenders who prioritize this information at the outset avoid costly revision cycles and closing delays. For both sides, the message is the same: start with structure, and the rest of the deal will follow.