

# REAL ESTATE



**MICHAEL N. KOT**

999 THIRD AVENUE,  
SUITE 4600  
SEATTLE, WA 98104  
206-470-7621  
MIKE.KOT@HCMP.COM

**HCMP**  
Law Offices

Hillis  
Clark  
Martin &  
Peterson

**Q |** The loan documents prepared for a commercial real estate-secured loan provide that the guaranty and environmental indemnity agreement are not “loan documents” secured by the deed of trust. Why is this?

**A |** The lender is clarifying that the guaranty and environmental indemnity agreement are separate and distinct obligations from the requirement that the borrower repay the note, and not to be treated as direct obligations on the debt secured by the deed of trust. Despite the language in Washington’s Deed of Trust Act, there is a concern by lenders that if these obligations are deemed secured by the deed of trust, a non-judicial foreclosure would extinguish lender’s ability to pursue its remedies under such agreements after foreclosure. Guaranties and environmental indemnities are typically intended to survive a non-judicial foreclosure and provide lender remedies even after the obligations under the note are deemed satisfied by non-judicial foreclosure.