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The current trend for legal document drafting is to use templates. Templates are fixed documents that are edited manually for each transaction. While templates can be useful and certainly save time, there are risks to solely relying on templates that are often overlooked.

The Benefits of Commercial Lending Templates

Templates are common drafting tools; firms regularly have template libraries based on the type of document for their attorneys to use in drafting. The use of templates is not necessarily a bad practice.

Well-designed templates are valuable time-saving tools (compared to drafting documents from scratch). Drafters only need to update names, loan amounts, and certain provisions. They can also, when edited properly, turn out accurate lending documents using specific firm-consistent, tested, and approved language.

The Risks of Commercial Lending Templates

While template drafting is seemingly straightforward, in practice, the use of templates for highly specific loan transactions and manual editing result in significant opportunities for drafting errors.

Many of the common mistakes that result from template drafting go unnoticed and may have little to no legal consequences, but any mistakes, no matter how legally insignificant, can certainly impact client satisfaction. Some examples include failing to update the borrower's name in one of the hundreds of times the borrower is referenced, or updating the maturity date in the loan agreement but not in the promissory note. Attorneys who review commercial loan documents regularly encounter mistakes that result from the use of templates. However, most commercial loans perform as they were intended to, even when mistakes exist. The parties perform as intended (e.g., the lender extends the loans and the borrower makes all payments

timely), and no party examines the documentation closely enough to catch any issues.

The biggest risk of template drafting presents itself when the parties do not perform as intended, and the parties dispute the terms of the loan or the loan documentation otherwise becomes subject to review by the opposing party or court (e.g., one party files for bankruptcy). Again, in this scenario, small mistakes, such as the borrower's name being incorrect in a single place, may not impact the rights and obligations of your client.

However, consider the following potential drafting scenarios that have and could arise from the use of template drafting, each of which would likely have real legal consequences for your client:

- The drafter used an old documentation package as a template, and properly updated all principal amounts, except in the guarantee agreement. How much will the guaranty be liable for?
- In a loan transaction intended to be governed by Texas law, all loan documents — except for the loan agreement — were drafted from a template applying a different state's law and not updated to reflect Texas law. Which state's law will govern the promissory note, security agreement, guarantee agreement, and/or deed of trust?
- The drafter failed to update the collateral description in the loan agreement, so the collateral description refers to collateral from a prior deal. Will the court enforce a lender's right to the collateral that was supposed to secure the new loan?

There is another, more “invisible” cost to consider with template drafting. Even when the final loan documentation output is without mistakes, template drafting takes time. Attorneys must find appropriate templates to use as a starting point, manually edit the personal party information and specific provision, and carefully review, including checking all cross-references among documents. Depending on the complexity of the loan, template drafting can be as time-consuming as drafting loan documents from scratch.

The Alternative to Commercial Lending Templates

Documentation drafting systems are a newer alternative to template drafting. These systems not only speed up the drafting process, but they significantly also cut down on the human error associated with template drafting.

Clause-based drafting systems have libraries of provisions that are compiled together to create customized legal documents, rather than relying on overbroad or very basic templates (depending on your firm) and significant manual revisions. These platforms work by taking the user's responses to a series of questions and compiling a document

with the relevant personal information (e.g., party names, loan amounts, interest rates) as well as all relevant provisions based on the specific transaction (e.g., guarantee provision, fixed-interest rate language, provisions using governing state-specific law). As such, the document will not contain any irrelevant or inaccurate provisions.

BankDocs Pro, created by Farley Law using the Clause9 platform, is an example of such a system that is specifically designed to efficiently and accurately draft commercial lending documents. BankDocs Pro uses attorney-drafted provision libraries and conditional logic based on the user's responses to generate lending documents entirely customized to each specific transaction.

Templates certainly have their place in legal drafting and can be valuable tools for attorneys and firms when carefully maintained and reviewed. However, when a transaction involves complex lending, the risks associated with template drafting increase, as more manual editing and reviewing are required.
