


I'm not robot  reCAPTCHA

I'm not robot!

What is a negative pledge agreement in real estate

What is a negative pledge agreement.

The PLEDGE AND SECURITY AGREEMENT dated as of December 30, 1996 (the "Agreement") is a limited liability company, "RML," organized under the laws of the State of Georgia, having its principal office at 100 Peachtree Street, N.E., Atlanta, Georgia 30309, and having its principal place of business at 100 Peachtree Street, N.E., Atlanta, Georgia 30309.

SECTION 1. DEFINED TERMS.

SECTION 2. PLEDGE.

SECTION 3. SECURED CLAIMS.

What is a negative pledge on real estate.

EXHIBIT 10.32.14

**Equity Funding Pledge Agreement
(P1)**

Dated as of December 30, 1996

between

ROCKY MOUNTAIN LEASING CORPORATION,
as Pledgor
and
SUNTRUST BANK, ATLANTA,
as Pledgee

ROCKY MOUNTAIN
PUMPED STORAGE HYDROELECTRIC FACILITY

TABLE OF CONTENTS

	Page
SECTION 1. DEFINED TERMS.....	1
SECTION 2. PLEDGE.....	1
SECTION 3. SECURED CLAIMS.....	2

[More at Agreements.org](#)

Negative agreement meaning. What is a negative pledge clause.

A negative pledge is simply an agreement between the owner of a charged asset and a lender stating that the owner will not create further security without the agreement of that lender. In commercial property investment and development loans, that agreement is often, but not exclusively, contained in a loan agreement or charge deed. Irrespective of in which finance document this agreement is found, it is common that such a pledge applies not only to a limited number of assets but often to all assets of the borrower, including assets acquired in the future. It is this latter point that is extremely important for all commercial borrowers to appreciate. What are the practical implications? When it comes to commercial real estate (including residential development sites being financed or refinanced), it is usual for a negative pledge restricting further security over any asset it owns to be given by a commercial borrower, even when a commercial borrower believes that a first lender is only really concerned with being granted security over just one property and no other asset.

The effect is that if a commercial borrower subsequently decides to grant future security over another property or any other asset in which an unpaid first lender isn't really interested, including a property or other asset acquired later, consent of that first lender will often be required prior to the creation of this additional, standalone security. In addition, new lenders will then typically require that commercial and development borrowers and their other secured lenders enter into a contract called a deed of priority, which sets out which of those lenders should be paid first on the sale of an asset and which lender will have the right to take enforcement action against a commercial borrower should the need arise. All of this can lead to additional costs and delays that perhaps are not foreseen at the outset. What if new security requires consent but that consent is not obtained? Notwithstanding the presence of a negative pledge, a commercial borrower sometimes grants security to a new lender without consent in respect of an asset in which that commercial borrower believes an unpaid original lender has no concern. However, by virtue of an earlier negative pledge, that unpaid first lender is often entitled to be consulted prior to the new security being put in place. The commercial borrower's actions are often innocent, but nonetheless, they constitute a breach of the commercial borrower agreed with the unpaid lender that it would do something (i.e. obtain consent to a new charge of something) that it subsequently does not. Therefore, what can be the ramifications for a commercial borrower in this instance? The actions of the commercial borrower are likely to be an "event of default" under the terms of the loan. The precise sanctions that the unpaid lender can impose following such an occurrence will depend upon the terms of the unpaid lender's loan. Still, it is usual that in such circumstances, the unpaid lender could enforce its security or seek immediate and full repayment of the outstanding loan balance (including unpaid interest together with any other sum for which the borrower is liable). An aggrieved unpaid lender may also be able to cancel undrawn amounts, including ceasing to provide a "rolling credit facility" and/or apply a default interest rate to existing borrowings which will inevitably be higher than the interest rate previously attributable to the loan. Events of default under commercial agreements can trigger events of default or termination rights under other agreements, for example, other loan agreements or key supplier contracts entered into by the borrower. Further, if the event of default results in an unpaid lender demanding full and immediate repayment of the outstanding loan balance, this could mean that the commercial borrower has no choice but to enter some kind of insolvency process. Conclusion The process of obtaining consent to security in which an unpaid first lender is not interested is usually straightforward, although it is not always swift. It is, however, advisable to make an early approach to a lender with the benefit of a negative pledge if delays are not to become troublesome. A well-advised commercial borrower will, of course, be aware of the consequences of breaching its banking agreements and ensure that it does not break them. Ignoring the covenants isn't an option. Need advice? Our Real Estate team has extensive expertise in commercial property finance transactions, often advising on refinancings as well as acquisitions and redevelopment matters. If you would like advice on negative pledges or any other real estate finance matter, please contact our team at online.enquiries@LA-law.com or contact David on the details above. A negative pledge clause is a type of negative covenant that prevents a borrower from pledging any assets if doing so would jeopardize the lender's security. This type of clause may be part of bond indentures and traditional loan structures. A negative pledge clause is a part of a loan contract that prevents the borrower from pledging their assets to another lender. Negative pledge clauses are also referred to as "covenants of equal coverage." Negative pledge clauses may stipulate that if the bond issuer grants liens against any assets in the future, an equal lien must also be granted to the issuer's investors. A negative pledge clause ensures that the original lender will maintain priority if the borrower defaults and their assets are seized. Negative pledge clauses are sometimes included in mortgages to prevent the borrower from using their home as collateral for other lenders.

The effect is that if a commercial borrower subsequently decides to grant future security over another property or any other asset in which an unpaid first lender isn't really interested, including a property or other asset acquired later, consent of that first lender will often be required prior to the creation of this additional, standalone security. In addition, new lenders will then typically require that commercial and development borrowers and their other secured lenders enter into a contract called a deed of priority, which sets out which of those lenders should be paid first on the sale of an asset and which lender will have the right to take enforcement action against a commercial borrower should the need arise. All of this can lead to additional costs and delays that perhaps are not foreseen at the outset. What if new security requires consent but that consent is not obtained? Notwithstanding the presence of a negative pledge, a commercial borrower sometimes grants security to a new lender without consent in respect of an asset in which that commercial borrower believes an unpaid original lender has no concern. However, by virtue of an earlier negative pledge, that unpaid first lender is often entitled to be consulted prior to the new security being put in place. The commercial borrower's actions are often innocent, but nonetheless, they constitute a breach of the commercial borrower agreed with the unpaid lender that it would do something (i.e. obtain consent to a new charge of something) that it subsequently does not. Therefore, what can be the ramifications for a commercial borrower in this instance? The actions of the commercial borrower are likely to be an "event of default" under the terms of the loan. The precise sanctions that the unpaid lender can impose following such an occurrence will depend upon the terms of the unpaid lender's loan. Still, it is usual that in such circumstances, the unpaid lender could enforce its security or seek immediate and full repayment of the outstanding loan balance (including unpaid interest together with any other sum for which the borrower is liable). An aggrieved unpaid lender may also be able to cancel undrawn amounts, including ceasing to provide a "rolling credit facility" and/or apply a default interest rate to existing borrowings which will inevitably be higher than the interest rate previously attributable to the loan. Events of default under commercial agreements can trigger events of default or termination rights under other agreements, for example, other loan agreements or key supplier contracts entered into by the borrower. Further, if the event of default results in an unpaid lender demanding full and immediate repayment of the outstanding loan balance, this could mean that the commercial borrower has no choice but to enter some kind of insolvency process. Conclusion The process of obtaining consent to security in which an unpaid first lender is not interested is usually straightforward, although it is not always swift. It is, however, advisable to make an early approach to a lender with the benefit of a negative pledge if delays are not to become troublesome. A well-advised commercial borrower will, of course, be aware of the consequences of breaching its banking agreements and ensure that it does not break them. Ignoring the covenants isn't an option. Need advice? Our Real Estate team has extensive expertise in commercial property finance transactions, often advising on refinancings as well as acquisitions and redevelopment matters. If you would like advice on negative pledges or any other real estate finance matter, please contact our team at online.enquiries@LA-law.com or contact David on the details above. A negative pledge clause is a type of negative covenant that prevents a borrower from pledging any assets if doing so would jeopardize the lender's security. This type of clause may be part of bond indentures and traditional loan structures. A negative pledge clause is a part of a loan contract that prevents the borrower from pledging their assets to another lender. Negative pledge clauses are also referred to as "covenants of equal coverage." Negative pledge clauses may stipulate that if the bond issuer grants liens against any assets in the future, an equal lien must also be granted to the issuer's investors. A negative pledge clause ensures that the original lender will maintain priority if the borrower defaults and their assets are seized. Negative pledge clauses are sometimes included in mortgages to prevent the borrower from using their home as collateral for other lenders.

The effect is that if a commercial borrower subsequently decides to grant future security over another property or any other asset in which an unpaid first lender isn't really interested, including a property or other asset acquired later, consent of that first lender will often be required prior to the creation of this additional, standalone security. In addition, new lenders will then typically require that commercial and development borrowers and their other secured lenders enter into a contract called a deed of priority, which sets out which of those lenders should be paid first on the sale of an asset and which lender will have the right to take enforcement action against a commercial borrower should the need arise. All of this can lead to additional costs and delays that perhaps are not foreseen at the outset. What if new security requires consent but that consent is not obtained? Notwithstanding the presence of a negative pledge, a commercial borrower sometimes grants security to a new lender without consent in respect of an asset in which that commercial borrower believes an unpaid original lender has no concern. However, by virtue of an earlier negative pledge, that unpaid first lender is often entitled to be consulted prior to the new security being put in place. The commercial borrower's actions are often innocent, but nonetheless, they constitute a breach of the commercial borrower agreed with the unpaid lender that it would do something (i.e. obtain consent to a new charge of something) that it subsequently does not. Therefore, what can be the ramifications for a commercial borrower in this instance? The actions of the commercial borrower are likely to be an "event of default" under the terms of the loan. The precise sanctions that the unpaid lender can impose following such an occurrence will depend upon the terms of the unpaid lender's loan. Still, it is usual that in such circumstances, the unpaid lender could enforce its security or seek immediate and full repayment of the outstanding loan balance (including unpaid interest together with any other sum for which the borrower is liable). An aggrieved unpaid lender may also be able to cancel undrawn amounts, including ceasing to provide a "rolling credit facility" and/or apply a default interest rate to existing borrowings which will inevitably be higher than the interest rate previously attributable to the loan. Events of default under commercial agreements can trigger events of default or termination rights under other agreements, for example, other loan agreements or key supplier contracts entered into by the borrower. Further, if the event of default results in an unpaid lender demanding full and immediate repayment of the outstanding loan balance, this could mean that the commercial borrower has no choice but to enter some kind of insolvency process. Conclusion The process of obtaining consent to security in which an unpaid first lender is not interested is usually straightforward, although it is not always swift. It is, however, advisable to make an early approach to a lender with the benefit of a negative pledge if delays are not to become troublesome. A well-advised commercial borrower will, of course, be aware of the consequences of breaching its banking agreements and ensure that it does not break them. Ignoring the covenants isn't an option. Need advice? Our Real Estate team has extensive expertise in commercial property finance transactions, often advising on refinancings as well as acquisitions and redevelopment matters. If you would like advice on negative pledges or any other real estate finance matter, please contact our team at online.enquiries@LA-law.com or contact David on the details above. A negative pledge clause is a type of negative covenant that prevents a borrower from pledging any assets if doing so would jeopardize the lender's security. This type of clause may be part of bond indentures and traditional loan structures. A negative pledge clause is a part of a loan contract that prevents the borrower from pledging their assets to another lender. Negative pledge clauses are also referred to as "covenants of equal coverage." Negative pledge clauses may stipulate that if the bond issuer grants liens against any assets in the future, an equal lien must also be granted to the issuer's investors. A negative pledge clause ensures that the original lender will maintain priority if the borrower defaults and their assets are seized. Negative pledge clauses are sometimes included in mortgages to prevent the borrower from using their home as collateral for other lenders.

The effect is that if a commercial borrower subsequently decides to grant future security over another property or any other asset in which an unpaid first lender isn't really interested, including a property or other asset acquired later, consent of that first lender will often be required prior to the creation of this additional, standalone security. In addition, new lenders will then typically require that commercial and development borrowers and their other secured lenders enter into a contract called a deed of priority, which sets out which of those lenders should be paid first on the sale of an asset and which lender will have the right to take enforcement action against a commercial borrower should the need arise. All of this can lead to additional costs and delays that perhaps are not foreseen at the outset. What if new security requires consent but that consent is not obtained? Notwithstanding the presence of a negative pledge, a commercial borrower sometimes grants security to a new lender without consent in respect of an asset in which that commercial borrower believes an unpaid original lender has no concern. However, by virtue of an earlier negative pledge, that unpaid first lender is often entitled to be consulted prior to the new security being put in place. The commercial borrower's actions are often innocent, but nonetheless, they constitute a breach of the commercial borrower agreed with the unpaid lender that it would do something (i.e. obtain consent to a new charge of something) that it subsequently does not. Therefore, what can be the ramifications for a commercial borrower in this instance? The actions of the commercial borrower are likely to be an "event of default" under the terms of the loan. The precise sanctions that the unpaid lender can impose following such an occurrence will depend upon the terms of the unpaid lender's loan. Still, it is usual that in such circumstances, the unpaid lender could enforce its security or seek immediate and full repayment of the outstanding loan balance (including unpaid interest together with any other sum for which the borrower is liable). An aggrieved unpaid lender may also be able to cancel undrawn amounts, including ceasing to provide a "rolling credit facility" and/or apply a default interest rate to existing borrowings which will inevitably be higher than the interest rate previously attributable to the loan. Events of default under commercial agreements can trigger events of default or termination rights under other agreements, for example, other loan agreements or key supplier contracts entered into by the borrower. Further, if the event of default results in an unpaid lender demanding full and immediate repayment of the outstanding loan balance, this could mean that the commercial borrower has no choice but to enter some kind of insolvency process. Conclusion The process of obtaining consent to security in which an unpaid first lender is not interested is usually straightforward, although it is not always swift. It is, however, advisable to make an early approach to a lender with the benefit of a negative pledge if delays are not to become troublesome. A well-advised commercial borrower will, of course, be aware of the consequences of breaching its banking agreements and ensure that it does not break them. Ignoring the covenants isn't an option. Need advice? Our Real Estate team has extensive expertise in commercial property finance transactions, often advising on refinancings as well as acquisitions and redevelopment matters. If you would like advice on negative pledges or any other real estate finance matter, please contact our team at online.enquiries@LA-law.com or contact David on the details above. A negative pledge clause is a type of negative covenant that prevents a borrower from pledging any assets if doing so would jeopardize the lender's security. This type of clause may be part of bond indentures and traditional loan structures. A negative pledge clause is a part of a loan contract that prevents the borrower from pledging their assets to another lender. Negative pledge clauses are also referred to as "covenants of equal coverage." Negative pledge clauses may stipulate that if the bond issuer grants liens against any assets in the future, an equal lien must also be granted to the issuer's investors. A negative pledge clause ensures that the original lender will maintain priority if the borrower defaults and their assets are seized. Negative pledge clauses are sometimes included in mortgages to prevent the borrower from using their home as collateral for other lenders.



This creates a win-win situation that benefits both the lender and borrower. The negative pledge clause mitigates risks to bondholders by restricting the activities in which the issuer can participate. Most often, this means preventing the issuer from using the same assets to secure another debt obligation. On the downside, violating a negative pledge clause can trigger a default on the loan, albeit a technical default.

Lenders generally give an allotted amount of time, such as 30 days, to remedy a covenant break before moving ahead with default procedures. Pros Lowers risk for the lender Lower interest rates for the borrower Ensures that lenders will have recourse if the borrower declares bankruptcy Cons Limits the borrower's ability to sell or borrow against their assets in the future. May cause borrower to default if they inadvertently break the covenant. They are difficult to enforce for lenders. When a financial institution provides an unsecured loan to an individual or entity, it may include a negative pledge clause in the contract in order to protect itself. In this case, the clause prevents the borrower from using its own assets to secure other sources of financing. If the borrower secures other loans, the original loan by the first institution becomes less secure, because the borrower now has a greater amount of debt obligations, and the original institution may not have priority status for repayment. In the case of home mortgages, many loan agreements include terminology that restricts the borrower from using the mortgaged property as collateral against any new loan, except in the case of refinancing.

A negative covenant is a contractual agreement that binds prevents one party from taking a certain action. In other words, it is an agreement not to do something. Negative covenants might prohibit a person or company from selling certain assets or taking on more than a certain amount of debt, for example. A double negative pledge is a promise not to enter into negative covenants with any third party. In other words, it is a negative covenant that prohibits other negative covenants. This type of agreement is frequently used by banks or other lenders to ensure that they have a priority claim to a borrower's assets if they declare bankruptcy. The loan agreement will specify the type of recourse that is available to a lender if the borrower sells or otherwise encumbers property protected by a negative pledge clause. This will usually allow the lender to sue the borrower, or accelerate the loan's repayment schedule. However, the lender cannot pursue action against any third party, only the borrower. A negative pledge clause is a covenant that warns you against using the same collateral with multiple lenders. This type of clause is often used in loan agreements and bond indentures. If you're borrowing money and are presented with a negative pledge clause, you want to thoroughly understand the actions a lender can take against you if you fail to meet your obligations or violate the agreement. In a negative pledge clause, you agree not to add a lien or security interest, or offer up the same asset as collateral. A negative pledge clause is typically used for a loan or bond agreement. Alternate names: Covenant of equal coverage, negative pledge agreement In particular, this type of covenant is often included if you're applying for an unsecured loan. Lenders will often include a negative pledge clause designed to inform you that they don't want you to use the asset for any other purpose than as collateral for the loan they are providing. If you grant a lien or security interest to another creditor, it could minimize the amount available to the lender. The clause legally establishes your acknowledgment of their terms and is designed to give them cause to file a lawsuit for damages or breach of contract. A negative pledge clause can be used in a mortgage, bond agreement, unsecured loan, or large-scale real estate transaction. A negative pledge agreement has multiple sections and generally covers any circumstances regarding the asset(s).

A clause may include: An initial statement: A statement of who the lender and borrower are Terms: The agreement's terms, such as the effective and termination dates of the agreement, fees, expenses, or charges. Representations and warranties: Includes definitions of who the borrower is as a legal entity, and states that the lender has authorized the borrower to use collateral; states that the lender has reviewed all financial evidence and decided the collateral is of sufficient value Negative pledge/covenant: Defines the pledge Rights of setoff: Defines the lender's ability to deduct from the borrower's accounts or other claims with the lender Miscellaneous provisions: Includes other agreements such as litigation methods, waivers, notices, and debt succession Definitions: Defines any terms that may need to be explained, such as "grantor," "guarantor," "collateral," or "security interest" The legal language used in a negative pledge clause doesn't create a security interest or lien on the collateral—instead, it gives the lender a cause to take legal action. For example, say a company takes out a \$2 million loan from a bank. As collateral for the loan, the company pledges inventory that equals the loan value. The loan agreement includes a negative pledge clause stating the company can't use that inventory as collateral to obtain another loan. If that company violates the negative pledge clause, the lender has cause to file for a breach of contract. However, if the company files for bankruptcy, the lender has no priority over other creditors until the court establishes priorities. If you agree to a negative pledge clause, there can be consequences for violating that agreement.

Violating a negative pledge clause could lead to a technical default—or defaulting on the loan because you didn't uphold the terms. A flexible covenant that's easy to include in a financial agreement Provides a small amount of protection for the lender Establishes cause for the lender to initiate legal actions A negative pledge clause isn't a security interest These negative covenants are difficult for lenders to enforce May not stand up in litigation against third parties Flexible covenant: A negative pledge clause is flexible and easy to include in a financial agreement. There are no requirements to comply with local laws. Protects the lender: A negative pledge clause gives the lender a certain amount of control over the borrower and warns them against creating security interest on assets listed in the agreement. This is especially important with unsecured debt, where the lender doesn't have collateral to fall back on. Establishes cause: A negative pledge clause gives the lender a reason to file for breach of contract if you default, file for bankruptcy, or violate the agreement. Not a security interest: A negative pledge clause is not a security interest, and including one in a contract doesn't always guarantee the lender will have priority over third parties. Hard to enforce: Negative pledge clauses can be difficult to implement, and a court may not be willing to enforce the covenant. May not stand up in court: If a third-party lender wasn't aware of the negative pledge clause, the lender might not have an advantage over them in court. A negative pledge clause attempts to prevent you from using the same collateral to obtain multiple loans. This clause is often included in bond indentures, unsecured loans, mortgages, and large-scale real estate transactions. A negative pledge clause protects a lender's interest if you violate the loan terms. A negative pledge clause is not a security interest or lien, so these covenants can be difficult to enforce. Thanks for your feedback!