

# Dual Collateral Loans and Clogging the Equity of Redemption

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**PRACTICES** Commercial Real Estate Leasing, Real Estate

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Since the market downturn in 2008, dual collateral loans have become more common in real estate financing. By taking two forms of collateral – a mortgage lien on real property and a pledge of the equity interests in the borrower – real estate lenders ostensibly have a choice in pursuing remedies in the event of a default, and can proceed by a judicial foreclosure on the mortgage or a UCC foreclosure on the equity interests.

Despite the increasing prevalence of dual collateral loans, many practitioners questioned whether such arrangements could be enforced under New York law. Specifically, practitioners were concerned that dual collateral loans were void because they clogged (or impaired) a borrower's equitable right of redemption, *i.e.* a borrower's right to redeem the mortgaged property by paying off the outstanding debt. No court (in New York or nationwide) had ruled on the issue and, indeed, there was a general dearth of case law applying the centuries old anti-clogging doctrine in the modern commercial real estate financing context.

However, in June 2018, a New York court held – for the first time in a written decision – that a borrower's right of redemption was not clogged where a lender holding both a mortgage lien and a pledge of the equity interests sought to sell the equity interests in a UCC foreclosure sale. While many have heralded the decision as a conclusive determination that lenders are not at risk by taking both forms of collateral as security for a loan, as set forth below, there are a number of reasons to be more circumspect about the implications of the decision.

**To read the full publication, click on the PDF linked below.**

[Dual-Collateral-Loans-and-Clogging-the-Equity-of-Redemption.PDF](#)