



Where Do the Lender Protection Provisions Go?

By Eugene Lerman

In renewable energy project development, leases and easements frequently pass through multiple hands before a project reaches financing. Early-stage developers create forms. Landowners negotiate revisions. Successive buyers modify documents to fit their own portfolio structures. Over time, documents evolve.

In our practice, we regularly review hundreds of lease and easement forms across the market. One pattern appears again and again: critical lender protection provisions slowly disappear or erode.

Sometimes they are removed intentionally during negotiations with landowners who view them as unfamiliar or burdensome. Sometimes they are partially revised by developers who are not yet focused on project financing requirements. In other cases, provisions simply degrade over time as forms are revised without a clear understanding of how lender protections function in financing transactions.

The result is often the same: by the time a project reaches financing, essential lender protections are incomplete or missing entirely. Fixing those issues at the financing stage can be difficult, and in some cases can delay a transaction or create significant financing friction.



Why Lender Protection Provisions Exist

Lenders rely heavily on the project's leasehold interest as part of their collateral package. For wind, solar, and storage projects, the leasehold estate is often the primary real estate interest securing the financing. Because of that, lenders need assurances that the lease cannot be terminated without their involvement, cannot be materially modified in ways that impair their collateral, and can remain in place even if the project owner defaults or becomes insolvent.

Without these protections, lenders face the risk that their collateral could disappear or become materially impaired without their knowledge or consent. As a result, lenders require a standard set of leasehold lender protections that ensure the lease, and the project rights associated with it, can survive throughout the life of the financing.

How These Provisions Disappear

Despite their importance, lender protections frequently erode as lease forms circulate through the market.

A common scenario looks like this: a developer begins with a well-structured lease form containing full lender protections; during negotiations, a landowner pushes back on provisions that appear unfamiliar or onerous; without financing counsel involved, portions of the lender provisions are removed or revised; and the modified form becomes the developer's "new standard" form going forward.

Over time, the document may still contain pieces of the lender protection framework, but key components are missing. We often see forms that contain partial lender provisions but omit critical elements that lenders require for financing. Common examples include restrictions on modification or termination of the lease while a mortgage is in place without lender consent, and replacement lease rights requiring the landowner to enter into a new lease with the lender or its designee if the original lease is terminated in bankruptcy. Without these provisions, the lender's collateral protections are materially weaker than lenders require.

We encounter these issues regularly. In some cases, the original form did not include a complete lender protection framework. In others, provisions were revised or removed over time as forms evolved through negotiations, project transfers, or repeated modifications. In other cases, developers are aware that additional lender protections may ultimately be required, but plan to address those issues later in the development process. As discussed below, that approach can create its own set of financing and negotiation risks.

The Core Lender Protections

Although the details can vary slightly across transactions, most lender protection frameworks include a consistent set of provisions designed to protect the lender's leasehold collateral. The provisions include the concepts described below.

1. Notice and Cure Rights

Before a landowner can pursue remedies or terminate the lease due to tenant default, lenders must receive notice and the opportunity to cure, within an extended cure timeframe. This ensures that a lender can step in to preserve the project if the borrower encounters financial distress.

2. The Right to Step In or Foreclose

Lenders must be able to enforce their security interest in the leasehold estate, foreclose on the leasehold interest, take possession of the project, and transfer the lease to a successor operator. Without these rights, the lender cannot effectively realize on its collateral.

3. Restrictions on Modification or Termination

Another core protection prohibits the landlord and tenant from modifying or terminating the lease while a lender's mortgage remains in place without the lender's consent. Absent this provision, the borrower and landowner could amend the lease in ways that impair the lender's collateral, or could terminate the lease and eliminate the collateral entirely.

4. Bankruptcy Protections and Replacement Lease Rights

In insolvency scenarios, lenders require the right to obtain a replacement lease if the original lease is rejected in bankruptcy. These provisions ensure that a lender can preserve the project's site control even if the borrower becomes insolvent.

5. Non-Merger Protections

Many leases also include provisions preventing the merger of the leasehold estate with the fee estate,



which could otherwise extinguish the leasehold interest that secures the financing. Taken together, these provisions form a framework designed to ensure that the lender's collateral remains intact even if the borrower defaults or becomes insolvent.

The “We’ll Fix It Later” Problem

Developers sometimes take the view that lender protections can always be added later by amendment once a project reaches financing. In some cases, that is true. In practice, however, waiting until financing can create significant risk.

If the original lease omitted lender protections because a landowner pushed back on them, that same landowner may continue to resist adding them later. At that stage, the developer may have less negotiating leverage, and the financing timeline may leave little room for protracted negotiations. What might have been a manageable conversation early in the development process can become a material issue when the financing closing date is approaching.

Bridging the Gap with Landowners

When lender protection provisions become a sticking point, much of the challenge lies in explaining their purpose. To landowners, these provisions can appear complex, unnecessary, or one-sided. In reality, most of them simply ensure that a project lender can maintain its collateral throughout the life of its loan.

In our experience, once landowners and their counsel understand that the provisions are standard in project financing, and they primarily protect the continuity of the project rather than expanding tenant rights, many concerns can be resolved. Although the substance of these provisions typically cannot change in ways that affect financeability, targeted revisions and clarifications can sometimes help bridge the gap between landowner concerns and lender requirements.

Why Early Attention Matters

Renewable energy projects often move through development stages over many years. Lease forms negotiated early in the process can persist into financing and project sale transactions. When lender



protections have been eroded along the way, those issues often surface during financing diligence, when lenders and their counsel review the project's site control documents in detail. At that point, missing protections can trigger additional negotiations, documentation revisions, and closing delays.

Ensuring that lender protection provisions are included, and preserved, early in the process can avoid those issues and help keep financing transactions on track.

Experience Matters

Lender protection provisions sit at the intersection of real estate and project finance. They are often poorly understood outside of financing transactions, which is why they tend to disappear from lease forms over time.

In our practice, we regularly work with both lenders and borrowers in renewable energy project financing transactions, which provides a clear understanding of the provisions lenders expect to see and how they function in practice. That perspective often becomes particularly valuable when reviewing legacy lease forms or explaining these provisions to landowners and their counsel.

Conclusion

Lender protection provisions are a core component of financeable renewable energy project leases and easements. Ensuring that these provisions are included in initial agreement forms, and preserved throughout the development process, helps maintain the integrity and financeability of the project's site control.

If you are reviewing lease forms, evaluating financeability issues, or working through lender protection provisions in connection with project financing, acquisitions, or development transactions, [we would be happy to discuss.](#)

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