

MORTGAGE LOAN WORKOUT AGREEMENTS

Effective First Steps for Borrowers

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May 23, 2011

1. Borrower's Basic Options if Default is Inevitable

- (a) Conserve Cash:
 - (i) consider stopping mortgage payments
 - (ii) consider stopping payment of property taxes
 - (iii) examine joint venture documents to confirm, or to acquire, control of cash
- (b) Confirm Lender's Recourse:
 - (i) due diligence on collateral, title, property condition, valuation, cash flow, other liens
 - (ii) due diligence on personal guarantors
 - analysis of nature of guarantor's assets – “lowest hanging fruit”
 - schedule of contingent liabilities (see example on Exhibit “A”)
 - rights of contribution and indemnity among co-guarantors
 - (iii) confirm whether there are any loan reserves or available loan proceeds
 - (iv) receiverships for income producing property
 - (v) other collateral (pledges, security interests, letters of credit, etc.)
 - (vi) multiple loans
 - (vii) multiple guarantees
 - (viii) multiple lenders
 - (ix) existence of cross defaults
 - (x) existence of cross collateralization
 - (xi) terms of any “standstill” or subordination agreements

- (c) Develop Restructuring Proposal:
 - (i) extension of term of loan
 - (ii) establishment or expansion of interest reserve
 - (iii) “write-down” of amount of loan
 - (iv) release or “cap” on guaranty
 - (v) additional collateral or guarantees
 - (vi) additional equity
 - (vii) voluntary foreclosure
 - (viii) deed-in-lieu of foreclosure
 - (ix) revise amortization or convert loan to interest only (temporarily or permanently)
 - (x) consider income tax effects
 - (xi) include cross-defaults
 - (xii) include cross collateralization

2. Pre-Negotiation Strategies

- (a) Need Credibility With Lender
- (b) Confirm Good Faith Intent to Maximize Lender’s Return – Proposal is Better for Lender than Foreclosure/Forced Liquidation
- (c) Express to Lender a Proposed Framework for Restructuring
- (d) Demonstrate to Lender the Limitations that May Exist on Lender’s Recourse

3. How Do You Negotiate With the Lender?

- (a) Seek to Maintain Cordial, Collaborative Approach
- (b) Be Sensitive to Lender’s Business Interests
- (c) Maintain High Credibility – Give Accurate Information and Do What You Say You Are Going To Do
- (d) Consider Appropriate Role for Attorney or Consultant in Active Negotiations

CASE STUDY

Situation

- Real estate developer is a 50/50 partner with “ JV Partner” in four different joint ventures that are SPEs and that each have significant equity in office/warehouse projects that have little vacancy and that generate significant net cash flow.
- Real estate developer independently invested in four different residential land development projects, each with a development loan held by a different lender, with each loan personally guaranteed by the real estate developer, and all eight of the residential development projects are non-performing.

Key Assumptions

- Joint venture documents on performing projects permit JV Partner to “lock up” cash by refusing to consent to distributions, sales or refinancings.

Due Diligence

- Ascertain level of equity in performing joint venture projects.
- Review organizational documents of performing joint ventures to confirm developer’s right of access to cash.
- Prepare schedule of contingent liabilities and review loan documents on non-performing residential loans to confirm maturity dates, balance of interest reserves, etc.

Outcome

- Negotiate with JV Partner to allow real estate developer to sell its interests in a few of the performing joint ventures to a new partner preferred by JV Partner, which generates cash for developer for use in workout negotiations.
- Negotiate with JV Partner for certain mandatory cash distributions from, and/or “put” and “call” rights in the event of potential sales or refinancings of one or more of the remaining joint ventures, so that developer has legal access to additional cash for use in workout discussions.
- Use cash from, and equity in, performing joint venture projects to structure extensions, and limitations on recourse under the developer’s guaranty with lenders on non-performing residential loans.

Exhibit "A"

John Doe
 Schedule of Contingent Liabilities
 May 23, 2011

Borrower	Project / Collateral	Lender	Current Loan Amount	Status Of Loan	Current Value of Collateral	Current Projected Deficiency
Newco I, LLC	Black Acre	First Bank	\$1,300,000	Default	\$800,000	\$500,000
Newco II, LLC	Blue Acre	Second Bank	\$3,500,000	Foreclosure	\$2,000,000	\$1,500,000
Newco III, LLC	Red Acre	Third Bank	\$2,400,000	Current	\$1,500,000	\$900,000
Newco IV, LLC	Green Acre	Fourth Bank	\$750,000	Default	\$700,000	\$50,000
Newco V, LLC	Yellow Acre	Fifth Bank	\$1,250,000	Current	\$800,000	\$450,000
			\$9,200,000		\$4,000,000	\$5,200,000