REPRESENTING A SECURED CREDITOR IN A REAL ESTATE WORKOUT: OPTIONS AND ALTERNATIVES[1]

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INTRODUCTION

As much as one trillion dollars of U.S. commercial real estate debt is set to mature by the end of 2012. Much of this debt is secured by property worth less than the mortgage. As a result, many bankruptcy practitioners expect a wave of real estate related bankruptcies in the coming years. However, bankruptcy is not the only option when dealing with distressed real estate debt. Many troubled loan situations can be worked out without resort to bankruptcy. When representing a secured creditor, practitioners who recognize and deal with problems early can strengthen the position of their client if a bankruptcy case is eventually filed. Practitioners who represent secured creditors should consider the following options and alternatives when dealing with distressed real estate.

I. THE BASICS: RECOGNIZE AREAS OF RISK, UNDERSTAND YOUR CLIENT'S GOALS AND FORMULATE A PLAN.

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II. TAKE THE COLLATERAL BACK PART 1: REAL PROPERTY COLLATERAL AND DEEDS IN LIEU OF FORECLOSURE.

A. Potential Pitfalls.

1. Fraudulent Conveyances.

a. Uniform Fraudulent Transfer Act. Minn. Stat. § 513.41, et seq.

b. Section 548 of the Bankruptcy Code.

2. Equitable Mortgages. Courts do not favor the debtor's surrender of the equity of redemption. As a result, some deed in lieu of foreclosure arrangements have been construed to create an "equitable mortgage,"

under which the lender may realize its interest only by statutory foreclosure. This is particularly true if the lender has given the borrower an option to repurchase the property, has agreed to a long term lease or right of first refusal, or has given back a contract for deed to the borrower. For similar reasons, deeds that are held in "escrow" have been criticized as being either equitable mortgages or unenforceable. If a court so concludes, the lender could take possession of the subject property after a default in rental payments or a failure to exercise the repurchase right only in accordance with the statutory provisions for foreclosure of mortgages. Moreover, if a court were to conclude that a transaction needs to be recharacterized as an equitable mortgage, then a risk also exists that the court would find that the proper mortgage registration tax has not been paid, potentially making the transaction avoidable in bankruptcy. The danger that a deed in lieu of foreclosure will be considered an equitable mortgage can be reduced, but not eliminated, by taking these steps:

a. Sign an agreement of the type described below. This is evidence that the deed is intended to be absolute.

b. Obtain an appraisal to ensure that the debtor receives fair consideration for the property.

c. Require the debtor to obtain legal assistance. This minimizes the debtor's ability to argue later that the bank's conduct was onerous or overreaching.

There are a number of Minnesota cases in which an apparently absolute conveyance, occurring after a previously incurred debt became delinquent, was claimed to be an equitable mortgage. Peterson v. Johnson, 720 N.W. 2d 833 (Minn. App. 2006); Fraser v. Fraser, 702 N.W. 2d 283 (Minn. App. 2005); Mitteness v. Dahl, 351 N.W. 2d 685 (Minn. App. 1984); Ministers Life and Casualty Union v. Franklin Park Towers Corporation, 239 N.W. 2d 207 (Minn. 1976); Gagne v. Hoban, 159 N.W. 2d 896 (Minn. 1968); Twenty Associates, Inc. v. First Nat. Bank & Trust Co. of Minneapolis, 273 N.W. 696 (Minn. 1937); O'Connor v. Schwan, 251 N.W. 180 (Minn. 1933); McKinley v. State ex rel. Sageng, 247 N.W. 389 (Minn. 1933); Roehrs v. Thompson, 228 N.W. 340 (Minn. 1929); Citizens' Bank of Morris v. Meyer, 182 N.W. 913 (Minn. 1921); Oertel v. Pierce, 133 N.W. 797 (Minn. 1911). See also Westberg v. Wilson, 241 N.W. 736 (Minn. 1932); Buse v. Page, 19 N.W. 736 (Minn. 1884). In all but three of those cases, the Minnesota Supreme Court or Court of Appeals upheld a trial court finding that the conveyance was in fact absolute. In Gagne v. Hoban and Oertal v. Pierce, the Supreme Court upheld trial court findings that apparently absolute conveyances accompanied by repurchase options were in fact intended as security devices. In Ministers Life and Casualty Union v. Franklin Park Towers Corporation, the Supreme Court reversed a

trial court finding that the disputed conveyance was an equitable mortgage.

In Oertel v. Pierce, the court treated a post-foreclosure agreement to sell the land to the mortgagor's agent for the amount of the debt as an attempt to extend the redemption period. The court held that the extension rendered the foreclosure void, apparently entitling the mortgagor to a new redemption period after failing to repurchase the land within the three-year option period. "[S]ince the relation of the parties continued that of mortgagor and mortgagee, … the provisions of the written contract, limiting the time within which payment might be made, have no greater force than similar provisions in all mortgages. The contract did not, at the expiration of the time so fixed for payment, expire absolutely as contended. The legal effect of the transaction was the annulment of the foreclosure, and it was not reinstated by failure to make the payment within the time prescribed." 133 N.W. at 800.

In Gagne v. Hoban, the mortgagee bank foreclosed and no redemption was made. Approximately one month after the redemption period expired, however, the bank sold the subject property for the amount of the mortgagor's debt to the mortgagor's brother, who in turn entered into an "Option Contract" with the mortgagor. That contract provided a one-year period in which the mortgagor could purchase the land from his brother for a price ($8,700-9,200) slightly greater than the brother's purchase price ($7,753.17) but less than the fair market value of the land ($11,000-12,000). The contract also permitted the mortgagor to remain on the land rent-free during the option period.

The court's decision in Gagne reads less like a holding that an equitable mortgage was created than like an expression of deference to the trial court. "In the final analysis, the question of whether the parties to a conveyance really intended it to be absolute or security for indebtedness is for the triers of fact." 159 N.W. 2d at 900. Nonetheless, the court makes several distinctions that point to the factors militating in favor of finding an equitable mortgage, including:

a. The mortgagor's failure to relinquish possession of the premises.

b. Continued payment of real estate taxes by the mortgagor.

c. An option price based on the mortgagor's debt rather than the value of the property.

d. The existence of a debt between the mortgagor and the purchaser (although the absence of a debt was not found controlling in Gagne). See Ministers Life and Casualty Union v. Franklin Park

Towers Corporation, supra, at 210; Citizens' Bank of Morris v. Meyer, supra, at 914.

e. The mortgagor's lack of business experience and failure to be represented by an attorney. Ministers Life and Casualty Union v. Franklin Park Towers Corporation, supra, at 210; Westberg v. Wilson, supra, at 317.

Cases decided after Gagne v Hoban suggest that the courts will be inclined to give increasing deference to the language in which parties couch their transactions. In Ministers Life and Casualty Union v. Franklin Park Towers Corporation, supra, the court upheld the plaintiff's right to an unlawful detainer judgment against the defendant lessee. The defendant had paid off a second mortgage by entering into a transaction with the plaintiff whereby the plaintiff paid a purchase price and received a warranty deed to the property and leased the property back to the defendant under a 50-year lease. Three years after entering into the lease, the lease was amended to give the defendant a purchase option. Nonetheless, the court found that the sale and leaseback did not constitute an equitable mortgage.

The Ministers Life decision is arguably based on the absence of any prior debt between the plaintiff and the defendant and on the legal and business experience of the defendant's president. The only case decided by the Court of Appeals, however, emphasized the Ministers Life opinion's reliance on the language used by the contracting parties. Mitteness v. Dahl, supra, involved a father who bought land from his son, enabling the son to pay off a mortgage debt, and executed a contract for deed permitting the son to repurchase the land. The son farmed the land for eleven years, paying his father one half of his annual crop, but defaulted under the contract for deed. The court's opinion stresses that the documents were not in terms of "debt", "security" or "mortgage" but rather in the language of an absolute conveyance. The court also noted the father's exercise of rights more consistent with the rights of ownership, including his own pledge of the land as security, lease of the land to a third party, payment of property taxes, and conveyance of the land to his daughter.

In Fraser v. Fraser, the district court granted summary judgment to a wife who brought an action against her husband and his father asserting equitable defenses to a contract for deed cancellation by the father. The wife claimed that the father's interest in the house was an equitable mortgage and not a contract for deed. Supplemental language in the contract for deed stated that "[the] [c]ontract shall not be construed and interpreted as a title transaction and shall not be construed and interpreted as an 'equitable mortgage[.]'" The district court concluded, despite that language, that the value of the property conveyed by the father exceeded

the amount of money transferred to the husband from the father, "favoring a finding of an equitable mortgage." The father appealed. The Court of Appeals, in affirming the district court, held that the record contained adequate evidence to support the district court's conclusion that the parties intended to enter into an equitable mortgage. The court noted that title to the property in question first passed from the original seller to the borrower and subsequently passed from the borrower to the lender as security on a contract for deed, thereby raising the possibility that an equitable mortgage had been created. The facts supported that the parties intended an equitable mortgage.

In Peterson v. Johnson, the district court determined, on summary judgment, that a conveyance and agreement between the parties was an equitable mortgage. Relying on Ministers and Fraser, the Court of Appeals began its inquiry by indicating that the key determination of an equitable mortgage is the intention of the parties at the time they entered into the conveyance. To determine the intention the court will look to the writings, but also the facts and circumstances surrounding the writings. The Court of Appeals determined that the statute of limitations in Minn. Stat. § 541.03 applies to a conveyance that is absolute on its face, and declared that the agreement between the parties to the case was an equitable mortgage.

B. Statutory Protection for Mortgagee.

1. Minn Stat. § 559.18 provides: No conveyance absolute in form between parties sustaining the relation of mortgagor and mortgagee, whereby the mortgagor or the mortgagor's successor in interest conveys any right, title or interest in real property theretofore mortgaged, shall be presumed to have been given as further security, or as a new form of security, for the payment of any existing mortgage indebtedness, or any other indebtedness, or as security for any purpose. *See also* Minn Stat. § 559.19-20.

C. Documenting the Transaction.

1. Title Insurance. Because the bank takes the property subject to existing encumbrances, the status of the title must be reviewed. The lender's existing loan policy is not sufficient to protect the lender in a deed in lieu transaction. Title insurance only protects the lender's lien at the time the lien was given, and does not provide any protection for subsequent occurrences.

2. A Written "Agreement for Deed in Lieu of Foreclosure." Because every deed in lieu agreement is unique, an actual form is not reproduced here. The agreement should, however, be drafted by counsel and the following factors should be considered and included, where applicable:

a. A recital of all loan documentation, including notes, security agreements, and mortgages.

b. An acknowledgement of the amount and validity of the indebtedness, subject to no setoffs, counterclaims, or defenses.

c. An acknowledgement that the debt is in default.

d. A recitation of the desires of the parties to the agreement and of all documents being taken to effect the transfer of title.

e. An agreement to cancel debt in an amount based on the appraisal (or perhaps a covenant not to sue the mortgagor so as to leave debt in place and permit the mortgagee to bid in the debt at the foreclosure sale, if necessary to extinguish junior liens).

f. An agreement that the cancellation of indebtedness (or agreement not to sue) by the lender constitutes fair consideration for the transfer of title.

g. An agreement that the transfer of title does not effect a merger of the lender's mortgage lien with the fee interest. This may permit elimination of subsequently discovered junior liens by foreclosure if necessary. In addition, some lenders require that title be transferred to a subsidiary of the lender, so there is no unity of the fee and the lien holder. In such circumstances, the lender might leave the indebtedness in place so that it can later foreclose, but provide the borrower with a covenant not to sue.

h. A statement that a bona fide sale is intended. This diminishes the argument that an equitable mortgage is intended.

i. A release by the debtor of any and all liability that the lender might have incurred in connection with the financing resulting in the debt.

j. Statement that debtor has its own tax advice.

III. TAKE THE COLLATERAL BACK PART 2: VOLUNTARY FORECLOSURES.

A. Introduction. In 1992, the Minnesota Legislature first enacted legislation that permitted a mortgagor and mortgagee to enter into an agreement for the voluntary foreclosure of a mortgage. The requirements of the voluntary foreclosure agreement are set forth in Minn. Stat. § 582.32. In essence, the mortgagee can foreclose the mortgage with only four weeks' published notice, rather than six weeks, and the redemption period is reduced from six months (or twelve, depending upon the circumstances) to two months unless there are federal tax liens of record, in which case the redemption period is 120 days. The process is

not applicable to all mortgages and can only be implemented after a default. Further, the statute imposes very particular procedural obligations that must be followed.

B. When Is Voluntary Foreclosure Available. The voluntary foreclosure agreement procedure is not available in all circumstances.

1. Minn. Stat. § 582.32, Subd. 1. provides as follows:

   Subdivision 1. **Application.** This section applies to mortgages executed on or after August 1, 1993, under which there is a default and the mortgagor and mortgagee enter into an agreement for voluntary foreclosure of the mortgage under this section. This section applies only to mortgages on real estate no part of which is classified as a homestead under section 273.124 or in agricultural use as defined in section 40A.02, subdivision 3, as of the date of agreement.

2. As a result, the applicability provisions of Subdivision 1 impose the following requirements:

   a. The mortgage must be executed on or after August 1, 1993.

   b. There must be a default under the mortgage and, as Minn. Stat. § 582.32, Subd. 3(b)(5) clarifies, the default must be in existence for at least one month.

   c. No part of the real property secured by mortgage can be classified as a homestead under Minn. Stat. § 273.124 or in agricultural use under Minn. Stat. § 40A.02, Subd. 3.

   d. The parties must have entered into a voluntary foreclosure agreement that complies with the statute.

C. Requirements for Agreement to Foreclosure.

1. To proceed with a voluntary foreclosure, mortgagee and the mortgagor must enter into a written agreement which can only be entered into during the occurrence of an event of default, and that default must have been in existence for at least one month. Pursuant to Minn. Stat. § 582.32, Subd. 3(b), the following items must be in the agreement:

   a. **Recording Information**. The agreement must identify the mortgage by "recording data" (presumably document number and date of filing).

   b. **Legal Description**. The agreement must identify the real property by legal description.

c. **Agreement to Foreclose by Voluntary Agreement**. The agreement must state that the parties have agreed that the mortgage shall be foreclosed voluntarily reducing the redemption period to two months.

d. **Waiver of Deficiency**. The agreement must provide that the mortgagee will waive any right to a deficiency.

i. This does not preclude, however, an agreement between the mortgagor and mortgagee as to a payment to the mortgagee as part of the voluntary foreclosure or collection from a guarantor.

e. **Waiver of Surplus, Possession or Right to Contest**.

i. The statute provides:

"The mortgagor waives its right to surplus sale proceeds, to contest foreclosure, and to rents and occupancy during the period from the date of agreement through the redemption period." Minn. Stat. § 582.32, Subd. 3(b)(3).

f. **Consent to Appointment of Receiver or Possession by Mortgagee**.

i. The statute provides:

"The mortgagor consents to the appointment of a receiver for, or grants mortgagee possession of, the real estate and all rights of possession of the real estate, including, but not limited to operating, maintaining, and protecting the real estate, and the making of any additions or betterments to the real estate." Minn. Stat. § 582.32, Subd. 3(b)(4).

g. **Default in Existence for One Month**.

i. The agreement must state that the mortgage is in default and at least one event constituting such default has been in existence for at least one month. Minn. Stat. § 582.32, Subd. 3(b)(5).

D. Recording of Agreement.

1. Agreement Recorded within Seven Days of "Date of Agreement."

a. The agreement must be recorded or filed within seven days of the "Date of Agreement." Minn. Stat. § 582.32, Subd. 3(c).

b. "Date of Agreement" is defined in the statute as follows:

""Date of agreement" means the effective date of the agreement which shall not be sooner than the date on which the agreement is executed and acknowledged by both the mortgagor and mortgagee." Minn. Stat. § 582.32, Subd. 2(c).

2. Filing of Short Form Foreclosure Agreement.

a. Rather than filing the complete foreclosure agreement which may contain more information than the parties care to have made public, the parties can also execute and file a short form agreement which must contain the following:

i. Identity and mailing address of mortgagee and mortgagor.

ii. Legal description of real estate.

iii. Mortgage identified by recording data.

iv. A statement that an event of default under the mortgage has existed for at least one month as of the date of agreement and foreclosure under this section has been agreed to by the parties.

v. Date of Agreement (see definition above).

Minn. Stat. § 582.32, Subd. (3)(c)(1)-(5)

E. Foreclosure Process.

1. Except as provided in the voluntary foreclosure statute (Minn. Stat. § 582.31), the foreclosing mortgagee will follow the requirements of a foreclosure by advertisement under Chapter 580. Minn. Stat. § 582.32, Subd. 5(a)(2).[2]

2. Time for commencement.

a. The mortgagee may proceed with the voluntary foreclosure after the date of agreement.

3. Notice of Sale.

a. The Notice of Sale must provide:

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[2] Minn. Stat. § 582.32, Subd. 5(a) provides: "After the date of agreement, the mortgagee may proceed to foreclose the mortgage in accordance with the laws generally applicable to foreclosure by advertisement including this chapter and chapter 580, except as otherwise provided in this section."

i. The information required under Section 580.04 (a)(1) through (6).[3] See also Section 580.04(b) for owner-occupied, single family real estate.

ii. Date of Agreement (defined term); and

iii. That each holder of a junior lien may redeem in the order and manner provided in Minn. Stat. § 582.32, Subd. 9, beginning after the expiration of the mortgagor's redemption period under Section 582.

4. Service of Notice.

a. At least fourteen days prior to the date of the sale, notice of the sale must be served on parties in possession in the same manner as provided in Minn. Stat. § 580.03.

i. Minn. Stat. § 580.03 requires service "in like manner as a summons in a civil action in the district court."

b. At least fourteen days prior to the sale, the mortgagee must mail notice to all parties requesting notice as provided in Minn. Stat. § 582.032.

5. Publication of Notice.

a. Notice must be published for four consecutive weeks prior to the scheduled sale. Again, the requirements of Minn. Stat. § 580.03 apply.

6. Special Rules Pending the Foreclosure Sale.

a. Additional Information to Junior Lien Holders Upon Request. Within ten days of receipt of a written request for information from a holder of a junior lien, the mortgagee, without charge, shall

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[3] Minn. Stat. § 580.04 (a)(1) through (6) provides as follows:

"(a) Each notice shall specify or contain:

(1) the name of the mortgagor, the mortgagee, each assignee of the mortgage, if any, and the original or maximum principal amount secured by the mortgage;
(2) the date of the mortgage, and when and where recorded, except where the mortgage is upon registered land, in which case the notice shall state that fact, and when and where registered;
(3) the amount claimed to be due on the mortgage on the date of the notice;
(4) a description of the mortgaged premises, conforming substantially to that contained in the mortgage;
(5) the time and place of sale;
(6) the time allowed by law for redemption by the mortgagor, the mortgagor's personal representatives or assigns; and . . . ."

deliver or mail by first class mail postage prepaid, to the address of the holder set forth in the request, either the agreement or a written statement of the amount of money and the value or a detailed description of any property paid or transferred, or to be paid or transferred, by the parties to the agreement under the terms of the agreement.

i. Failure to provide this information does not invalidate the foreclosure.

b. No Right to Reinstatement. After the date of agreement, the mortgagee has no right of reinstatement.

F. Conduct of Sale Pursuant.

1. Except as provided in the statute, sale conducted in accordance with Section 580.

2. Special Requirements for Sheriff's Certificate of Sale.

a. Sheriff's Certificate of Sale must state the applicable redemption period, two months or 120 days (discussed below).

3. Five Days to File Foreclosure Record.

a. The certificate of sale and all affidavits must be filed or recorded within five days of the foreclosure sale.

4. Certificates Regarding Status of Property.

a. At the same time that the sheriff's certificate of sale is filed, the mortgagee must also file a certificate signed by the county or city assessor stating that:

i. The property in not in agricultural use pursuant to Minn. Stat. § 40A.02, Subd.3; and

ii. The property was not a homestead for property tax purposes pursuant to Minn. Stat. § 273.124.

G. Redemption Periods.

1. Two Months or 120 Days.

a. The mortgagor's redemption period is two months from the date of sale, except that if the real estate is subject to a federal tax lien under which the United States is entitled to a 120-day redemption period under Section 7425(d)(1) of the Internal Revenue Code, as

amended, the mortgagor's redemption period is 120 days from the date of sale.

2. Redemption by Creditor.

a. Junior lien holders can redeem in the same manner as provided in Minn. Stat. §§ 580.24 and 580.25.

b. Before the end of mortgagor's redemption period, the redeeming party must file a notice of intent to redeem.

IV. PERMIT THE DEBTOR TIME TO RIGHT THE SHIP: FORBEARANCE OR MORATORIUM AGREEMENTS.

A. Importance of Reducing to Written Format.

B. Nonwaiver of Defaults or Other Terms and Conditions.

C. Triggers to Permit Enforcement.

1. Debtor Defaults.

2. Third Party Actions.

D. Consideration to Lender for the Moratorium.

1. Releases of Liability.

2. New Collateral.

3. Preference Protection.

4. Equity Infusion.

5. Improvement in Position or Avoidance of Deterioration.

6. Cash Control and Uses by Debtor.

7. Opportunity for Debtor to Refinance.

8. Agreement by Debtor to Market Property.

V. RESTRUCTURE THE DEBT: OPTIONS AND CONSIDERATIONS.

A. Options to Consider in a Restructuring Agreement.

1. Payment Restructuring.

2. Principal and Interest Forgiveness.

3. Interest Rate Reduction.

4. Formula for Release of Personal Guaranties.

5. New Guaranties.

6. Additional Collateral.

7. Equity Kickers.

8. Stock or Ownership in Borrower.

9. Loss of Priority.

10. Management Change.

11. Third Party Turnaround Professional.

12. Assignment of Rents.

13. Correction of Documentation Defects.

14. Transfers of Collateral.

15. Waiver of Defaults.

16. New Covenants and Terms.

17. Form of Restructuring Agreement.

Because every workout agreement is unique, and is usually cut from whole cloth, an actual form of debt restructuring agreement is not reproduced here. However, the following factors should be considered and included, where applicable, in such agreements:

a. Recitals of debt, security interests and mortgages and current outstanding balances.

b. Agreement that the debt is in default and related instruments are valid and binding obligations of debtor subject to no setoffs, counterclaims, or defenses.

c. Statement the debtor is in default and the obligations are past due.

d. Statement of desires of parties to agreement.

e. The agreement of parties as to conveyances or sales of property and cancellation of debt and the mechanism for executing

agreement. Have all conveyance documents as exhibits to agreement.

f. Representation of value of collateral and state agreement that fair consideration is being paid for conveyance of assets to the lender.

g. Representations and agreement as to intended effect of transaction: absolute sale or security arrangement.

h. Conditions precedent to lender's obligations under the agreement.

i. Warranties of debtor; negative and affirmative covenants; reporting rules.

j. Terms of any new advances and renewal of existing notes by lender.

k. Release of lender from any liability.

l. Non-merger of liens with documents conveying title to property.

m. Agreement to execute all necessary documentation.

n. Events of default under the agreement and rights and remedies of lender.

o. Waiver or modification by writing only.

p. Binding upon heirs and assigns.

q. Agreement can be executed in counterparts.

r. Statement as to controlling law and severability.

B. The Difficulty of Negotiating Acceptable Workout Agreement.

1. One Step at a Time.

2. Moving to Other Alternatives.

VI. BE PREPARED FOR A BANKRUPTCY FILING.

A. Understand the Differences Between the Chapters.

1. Chapter 7 – Liquidation.

2. Chapter 11 – Reorganization.

3. Chapter 12 – Family Farmer or Family Fisherman Bankruptcy.

4. Chapter 13 – Reorganization.

B. Know the Basics.

1. Property of the Bankruptcy Estate.
2. Automatic Stay.
3. Perfection Mechanic's Liens.
4. Priority Issues.
5. Proofs of Claim.
6. Cash Collateral.
7. Adequate Protection.
8. Credit Bidding.
9. Plan of Reorganization and Disclosure Statement.
10. Actions against 3rd Party Guarantors.
11. §1111(B) Elections.
12. Avoidance Issues.

C. Real Estate Specific Issues.

1. Single Asset Real Estate (SARE) Cases. *See* 11 U.S.C § 101(51B) and 11 U.S.C. § 362(d)(3).
2. Payment of Stub Rent. 11 U.S.C. § 365(d)(3).
3. Limitation on Time to Assume or Reject Leases. 11 U.S.C. § 365(d)(4).
4. Curing Lease Defaults Upon Assumption. 11 U.S.C. § 365(b)(1)(A).
5. Cap on Lease Rejection Damages. 11 U.S.C. § 502(b)(6).
6. Abandonment of Property. 11 U.S.C. § 554.
7. Sales Free and Clear. 11 U.S.C. § 363(f).
8. Effect of Filing of Sheriff's Sale.
9. Lien Avoidance and Lien Stripping.

VII. BANKRUPTCY ALTERNATIVES.

A. Receivership.

B. Composition Agreement.

C. Assignment for the Benefit of Creditors.