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Presenting a live 90-minute webinar with interactive Q&A

Distressed Real Estate Loan Acquisitions: Due Diligence Strategies and Contract Considerations

Best Practices For Buyers and Sellers of Commercial Mortgage and Mezzanine Loans

TUESDAY, AUGUST 30, 2011

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Daniel B. Guggenheim, Pircher Nichols & Meeks, Los Angeles
Bruce E. Prigoff, Partner, Cox, Castle & Nicholson, San Francisco

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“SO YOU WANT TO BUY DISTRESSED DEBT...”

THINGS TO CONSIDER BEFORE MAKING A DEAL

Strafford Webinar:
“Distressed Real Estate Loan Acquisitions:
Due Diligence Strategies and Contract Considerations”

August 30, 2011

Daniel B. Guggenheim, Esq.

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Pircher, Nichols & Meeks

The Real Estate Law Firm

WHAT IS BEING SOLD, AND BY WHOM?

- ◆ Loan Portfolios vs. Individual Loans
- ◆ Bids vs. Negotiated Deals
- ◆ Commercial Loans vs. Residential Loans
- ◆ Construction Loans vs. Permanent Loans
- ◆ Whole Loans vs. A/B Notes or Participations
- ◆ Senior Loans vs. Junior/Mezzanine Loans
- ◆ Healthy Sellers vs. Failing Banks or FDIC

PUT ON YOUR LENDER HAT (NOW), AND KEEP YOUR OPTIONS OPEN

- ◆ Don't talk to the Borrower without a Pre-Negotiation Letter and the Lender's consent.
- ◆ Consider a property purchase or equity investment (*and negotiate the term sheet or confidentiality agreement accordingly*).

DUE DILIGENCE CATEGORIES

- ◆ Property Characteristics and Operations
- ◆ Loan Documents
- ◆ Servicing History
- ◆ Third Party Agreements
- ◆ Borrower Parties
- ◆ Junior Lienholders
- ◆ Unsecured Creditors

LOOK FOR HIDDEN VALUE

- ◆ Guaranties, letters of credit or other credit enhancements?
- ◆ CFD reimbursement claims, tax refunds or a tax increment financing scheme?
- ◆ Claims for fraudulent distributions to a creditworthy borrower affiliate?
- ◆ Upcoming extension, exit or other loan fees?
- ◆ Reserve accounts?

KNOWN AND UNKNOWN RISKS

- ◆ Actual or potential problems with the loan documents or the property (*property access?*).
- ◆ Obligations that run with the land.
- ◆ Unusual or complicated local laws.
- ◆ Enforcement, completion and carrying costs.
- ◆ Maintaining priority and usury exemption in connection with modifications.
- ◆ Licensing compliance (*broker? finance lender?*).

CONSTRUCTION LOANS

GET SPECIAL ATTENTION

- ◆ Future funding obligations?
- ◆ Potential lender liability for previous failures to fund, approve or release?
- ◆ Enforcement of Completion Guaranties may require additional advances and raise complicated measure of damages issues.

WHAT'S THE EXIT PLAN?

- ◆ Consider foreclosure options and workout scenarios, and related tax issues.
- ◆ Too good to be true? Beware claims of fraudulent transfer.

For additional information, see, Guggenheim and Lahammer, "Important Issues in Purchasing and Resolving Distressed Real Estate Debt," BNA Inc. Real Estate Industry & Law Report (March 2009), available at: http://www.pircher.com/data/BNA-DGuggenheim_DLahammer.pdf.

An Insider's Guide to the Purchase of B Notes, Mezzanine Loans and Other Distressed Debt

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During Mr. Prigoff's presentation, please refer to the outline that was provided with the handout materials, entitled
"An Insider's Guide to the Purchase of B Notes, Mezzanine Loans and Other Distressed Debt."

The outline is located in the **"Program Materials"** box at the top right corner of the page at this link,
<http://www.straffordpub.com/products/distressed-real-estate-loan-acquisitions-due-diligence-strategies-and-contract-considerations-2011-08-30>.

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