

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

Mezzanine Loan Foreclosure in Real Estate Transactions

Protecting Borrowers' and Lenders' Interests Under UCC Article 9

THURSDAY, OCTOBER 25, 2012

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

Today's faculty features:

Gary Zimmerman, Senior VP UCC Division, **Fidelity National Financial**, Chicago

Stephen Bobo, Partner, **Reed Smith**, Chicago

James Cochran, Partner, **O'Connor Cochran**, Los Angeles

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Mezzanine Loan Foreclosure in Real Estate Transactions

Protecting Borrowers' and Lenders' Interests Under UCC Article 9

- Stephen T. Bobo, *Partner*, Reed Smith LLP, Chicago
- James S. Cochran, *Partner*, O'Connor Cochran LLP, Los Angeles
- Gary M. Zimmerman, *Senior Vice President and Chief Underwriting Counsel*, Fidelity National Financial, Chicago

Mezzanine Finance – Business and Legal Considerations

- Overview of Basic Mezzanine Finance
 - Basic Structure of Mezzanine Deal
 - Parties to a Typical Deal
- What we are currently seeing in Mezz Financing

Mezzanine Finance – Business and Legal Considerations

- Business Review
 - Value
 - Cash Flow
 - Deficiency Coverage

Mezzanine Finance – Business and Legal Considerations

- Real Estate Due Diligence
 - Key Areas of Investigation
 - Quality of Information

Mezzanine Finance – Business and Legal Considerations

- Legal Review
 - Organizational Documents
 - Applicable State, Corporate, Partnership and LLC Law
 - UCC Collateral Classification
 - Mezzanine Loan Documents
 - Senior Loan Documents
 - Intercreditor Agreement
 - Rights Against Guarantors and Third-Party Pledgors

Foreclosure By Sale

- Basic Rules for UCC Foreclosure
 - Commercial Reasonableness
 - Other UCC Rules
 - Agreements by the Parties/Default Provisions
- UCC and Securities Law Sale Issues

Foreclosure By Sale

- Mechanics of Foreclosure Process
 - Preparation
 - Notification and Advertising
 - Auction and Sale
 - Post-sale Matters

Foreclosure By Sale

- Traps for the Unwary
 - “Qualified Transferee” Issue
 - Removal and Replacement of Personnel
 - Federal and State Tax Liens
 - Burdens of Ownership

Foreclosure By Sale

- Borrower and Guarantor Responses to Foreclosure
 - Borrower and Guarantor Goals
 - Pre-sale Challenges
 - Post-sale Attacks

Strict Foreclosure

- Nature of Remedy
 - Comparison to Foreclosure by Sale
 - Contrast with Deed-In-Lieu of Real Property
- Strict Foreclosure Mechanics
 - Proposal
 - Notification
 - Consent and Non-objection
 - Post-sale Matters
- Potential Problems

Bankruptcy Issues

- Timing of Filing
- Is Bankruptcy Filing Strategic or Tactical?
- Impact on Pending Sale
- Potential Impact on Completed Sale
- Lender's Responses
 - Dismissal as Bad Faith Filing
 - Relief from the Automatic Stay

Bankruptcy Issues (continued)

- Need to be Prepared for Potential Bankruptcy
Valuation
Testimony as to Marketing and Sale Process
- Use of Chapter 11 to Complete Sale
- Multiple Related Entities as Debtors
Joint Administration
Substantive Consolidation
- Other Bankruptcy Issues
- Wrap Up / Questions

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