

Table of Contents

Volume 1

CHAPTER 1. REACTING TO REAL ESTATE DEFAULTS

- § 1:1 Real estate cycles
- § 1:2 Real estate financing
- § 1:3 Mortgage default
- § 1:4 Causes of default
- § 1:5 Recent real estate recession
- § 1:6 Owner's reaction to default
- § 1:7 The Bureau of Consumer Financial Protection
- § 1:8 Lender's reaction to default
- § 1:9 Lender's counsel's avoidance of liability
- § 1:10 Dealing with excess rental real estate
- § 1:11 Exclusive brokerage agreement to sublease, assign, recast a lease and locate replacement space
- § 1:12 Notice of default and reservation of rights-Sample form
- § 1:13 Mutual confidentiality agreement-Sample form
- § 1:14 Loan Modification-Sample form

CHAPTER 2. ANALYZING THE PROPERTY: LENDER'S DUE DILIGENCE

- § 2:1 Introduction
- § 2:2 Due diligence checklist

I. GENERAL INVESTIGATION

- § 2:3 Property description report
- § 2:4 Appraisal
 - § 2:5 —Replacement cost approach
 - § 2:6 —Market data approach
 - § 2:7 —Income approach to value
- § 2:8 Environmental due diligence
- § 2:9 Environmental due diligence agreement
- § 2:10 Environmental due diligence—Asbestos
 - § 2:11 —Lead-based paint
- § 2:12 Asbestos abatement agreement
- § 2:13 Environmental due diligence—Mold
- § 2:14 Americans with Disabilities Act
- § 2:15 Fair housing
- § 2:16 Local demographics

- § 2:17 Insurance
- § 2:18 Municipal search
- § 2:19 Title report and lien search
- § 2:20 Corporate Transparency Act

II. GROUND LEASE

- § 2:21 Introduction
- § 2:22 Term
- § 2:23 Rent
- § 2:24 Use
- § 2:25 Casualty and condemnation
- § 2:26 Leasehold financing
- § 2:27 Right of first refusal
- § 2:28 Subordination
- § 2:29 Construction obligations
- § 2:30 Assignment and subletting
- § 2:31 Recording

III. OPERATING LEASES

- § 2:32 Introduction
- § 2:33 Term
- § 2:34 Rent and additional rent—Generally
- § 2:35 Rent concessions
- § 2:36 Rent escalations
- § 2:37 Loss factors
- § 2:38 —Additional rent
- § 2:39 Real estate taxes
- § 2:40 Water and sewer charges
- § 2:41 Insurance contribution
- § 2:42 Percentage rent
- § 2:43 Common area maintenance
- § 2:44 Rent offsets
- § 2:45 Repairs and maintenance
- § 2:46 Tenant alterations
- § 2:47 Construction of improvements
- § 2:48 Work letter
- § 2:49 Tenant options to expand or purchase property
- § 2:50 Casualty to the premises
- § 2:51 Rent abatement
- § 2:52 Condemnation
- § 2:53 Use of the property
- § 2:54 Sublease, assignment, and leasehold financing
- § 2:55 Limitations on fee mortgages
- § 2:56 Reciprocal easement and operating agreements
- § 2:57 Termination of lease agreement

IV. EXISTING FINANCING

- § 2:58 Introduction

TABLE OF CONTENTS

§ 2:59	Acquisition financing
§ 2:60	Option to purchase
§ 2:61	Purchase money financing
§ 2:62	Installment land contracts
§ 2:63	Third-party financing
§ 2:64	Leasehold mortgages
§ 2:65	Wraparound mortgages
§ 2:66	Promissory notes
§ 2:67	Mortgage or deed of trust
§ 2:68	—Default provisions
§ 2:69	—Real estate tax provisions
§ 2:70	—Casualty provisions
§ 2:71	—Condemnation provisions
§ 2:72	—Maintenance and repairs
§ 2:73	Assignment of rents and leases
§ 2:74	Security agreements
§ 2:75	Guaranties
§ 2:76	Equity participation provisions
§ 2:77	Junior mortgages
§ 2:78	Terrorism
§ 2:79	Lender's right to consent
§ 2:80	Subtenant recognition and attornment agreement

CHAPTER 3. COMMERCIAL LOAN WORKOUTS

§ 3:1	Introduction
§ 3:2	Lender's risks in a workout
§ 3:3	Prewriteout due diligence
§ 3:4	Lender's default checklist
§ 3:5	Considering whether to replace the owner
§ 3:6	Determining the viability of the property
§ 3:7	—Extent of the default
§ 3:8	—Has the loan been properly documented?
§ 3:9	—Physical condition of the property
§ 3:10	—The amount and nature of claims to which the property is subject
§ 3:11	—Who has an interest in the property?
§ 3:12	—Has the borrower performed under agreements that affect the property?
§ 3:13	—What assets are available to the lender as part of the workout?
§ 3:14	—Controls over the borrower
§ 3:15	—Determining the cost of the workout
§ 3:16	—Risks of lender liability
§ 3:17	—Effect of borrower's bankruptcy
§ 3:18	—What happens if the workout is successful?
§ 3:19	Structuring the workout
§ 3:20	Alternative uses for the property

- § 3:21 Limitations on the lender
- § 3:22 Participants in the workout negotiations
- § 3:23 Role of guaranties
- § 3:24 Documenting the workout
- § 3:25 Pre-workout letter or pre-workout agreements
- § 3:26 Workout agreements
- § 3:27 Pre-negotiation letter
- § 3:28 Closing of the workout
- § 3:29 Maintaining lien priority
- § 3:30 Implementing the workout
- § 3:31 Continuing unlimited guaranty
- § 3:32 Pre-workout letter-Sample form
- § 3:33 Pre-workout agreement
- § 3:34 Pre-negotiation agreement
- § 3:35 Default forbearance agreement
- § 3:36 Workout agreement
- § 3:37 Cash management agreement
- § 3:38 Subordination agreement
- § 3:39 Pledge and security agreement
- § 3:40 Security agreement supplement
- § 3:41 Tenant estoppel certificate
- § 3:42 Certificate of company resolutions
- § 3:43 Secretary's certificate
- § 3:44 Standstill agreement
- § 3:45 Pre-negotiation agreement
- § 3:46 Amended and restated promissory note
- § 3:47 Modification to deed of trust and other loan documents
- § 3:48 Reaffirmation and estoppel
- § 3:49 Opinion of counsel
- § 3:50 Cross-default, cross-collateralization and contribution agreement
- § 3:51 Good guy guaranty
- § 3:52 Parent company guaranty
- § 3:53 Restructuring agreement
- § 3:54 Loan payment forbearance agreement
- § 3:55 Amendment and extension of workout agreement
- § 3:56 Restructuring support agreement
- § 3:57 Forbearance agreement
- § 3:58 Loan modification agreement
- § 3:59 Joint venture equity investment agreement
- § 3:60 Notice of default and reservation of rights-Sample form
- § 3:61 Amendment to multifamily loan and security agreement
- § 3:62 Nonsuit, mediation and tolling agreement

CHAPTER 4. CONSTRUCTION LOAN WORKOUTS

- § 4:1 Introduction
- § 4:2 Causes of construction loan default

TABLE OF CONTENTS

§ 4:3	Development pre-workout letter
§ 4:4	Warning signs of default
§ 4:5	Development financing
§ 4:6	Construction financing
§ 4:7	Construction loan agreement
§ 4:8	Construction loan notes and mortgages
§ 4:9	Construction loan take-outs
§ 4:10	Buy-sell agreements
§ 4:11	Construction projects
§ 4:12	Protecting lenders in condominium constructions
§ 4:13	Construction professionals
§ 4:14	Bidding procedure
§ 4:15	Construction contracts
§ 4:16	—Kinds of construction contracts
§ 4:17	—Payment provisions
§ 4:18	—Scope of work
§ 4:19	—Timing
§ 4:20	—Termination and damages
§ 4:21	—Indemnification
§ 4:22	—Construction delays
§ 4:23	Insurance
§ 4:24	—Comprehensive general liability insurance
§ 4:25	—Workers' compensation insurance
§ 4:26	—Builder's risk insurance
§ 4:27	Construction bonds and guaranties
§ 4:28	Mechanics' liens
§ 4:29	Lender's reaction to borrower's default
§ 4:30	Construction loan workouts
§ 4:31	Guaranty of completion
§ 4:32	Completion guaranty agreement
§ 4:33	Performance and completion guaranty
§ 4:34	Owner controlled insurance program-Sample form
§ 4:35	First amendment to construction loan and security agreement
§ 4:36	Second amendment to pre-development and leasing services agreement
§ 4:37	Deposit payment guaranty
§ 4:38	Limited guaranty
§ 4:39	First amendment to building loan agreement
§ 4:40	Construction note modification agreement
§ 4:41	Project Note Modification Agreement
§ 4:42	Building loan modification agreement
§ 4:43	Construction loan workout agreement
§ 4:44	Checklist for purchasing a construction loan
§ 4:45	Consent and subordination of development agreement and subordination of fees
§ 4:46	Notice of future advances-Sample form
§ 4:47	Completion costs guaranty
§ 4:48	Cost overrun and completion guaranty

- § 4:49 Omnibus ratification and confirmation agreement
- § 4:50 Amendment of construction contract and reaffirmation of construction contract guaranty
- § 4:51 Assignment of construction and architectural documents
- § 4:52 Workout inducement agreement
- § 4:53 Completion and completion costs guaranty
- § 4:54 Subordination and intercreditor agreement
- § 4:55 Notice of default to guarantors-Sample form
- § 4:56 Construction loan modification agreement
- § 4:57 Forbearance agreement with additional security

CHAPTER 5. WORKOUTS OF SECURITIZED LOANS

- § 5:1 Introduction
- § 5:2 Real estate mortgage investment conduits
- § 5:3 Securitized loan provisions
- § 5:4 Pooling and servicing agreements
- § 5:5 Role of the servicer
- § 5:6 Special servicing
- § 5:7 Properties with environmental problems
- § 5:8 Due on sale/due on encumbrance issues
- § 5:9 Servicer's workout authority
- § 5:10 Servicers' fees
- § 5:11 Limitations on servicers powers
- § 5:12 Foreclosure
- § 5:13 Residential mortgage backed securities
- § 5:14 Workout structures
- § 5:15 Non-performing loan purchase agreement
- § 5:16 Forbearance agreement
- § 5:17 Modification of notes and loan documents-Sample form
- § 5:18 Side letter regarding modification of loan documents
- § 5:19 Intercreditor and lien subordination agreement
- § 5:20 Securitization opinion
- § 5:21 Authorization for securitized loan workout
- § 5:22 Master restructuring and debt exchange agreement
- § 5:23 Special servicer property management agreement
- § 5:24 Pledge and security agreement
- § 5:25 Backup servicing agreement
- § 5:26 Amendment to operating agreement providing protection for lender
- § 5:27 Residential special servicing agreement
- § 5:28 Special servicing agreement
- § 5:29 Guaranty of recourse obligations
- § 5:30 Co-lender agreement
- § 5:31 Postponement agreement

Volume 2

CHAPTER 6. WORKOUTS OF MEZZANINE DEBT

§ 6:1	Introduction
§ 6:2	Mezzanine loan term sheet
§ 6:3	Loan structure
§ 6:4	Mezzanine loan letter of intent
§ 6:5	Ownership structure
§ 6:6	Security interests
§ 6:7	Subordinate loans
§ 6:8	Participation agreement
§ 6:9	Default
§ 6:10	Mezzanine default notice-Sample form
§ 6:11	Title insurance
§ 6:12	Intercreditor agreement
§ 6:13	Resolving disputes among lenders
§ 6:14	Clogging the equity of redemption
§ 6:15	Workouts among mezzanine lenders
§ 6:16	Nonrecourse carveouts and guaranties
§ 6:17	Non-recourse carve out guaranty
§ 6:18	Forbearance agreements
§ 6:19	Preferred equity investor
§ 6:20	Preferred equity and Mezzanine debt proposal
§ 6:21	Lockbox consent
§ 6:22	Cash management-Sample provision
§ 6:23	Mezzanine loan foreclosures
§ 6:24	Asset management agreement
§ 6:25	Pledge and security agreement
§ 6:26	Mezzanine guaranty of borrower recourse obligation
§ 6:27	Consent, forbearance and reaffirmation agreement
§ 6:28	Forbearance agreement
§ 6:29	Mezzanine loan cooperation agreement
§ 6:30	Mezzanine loan term sheet
§ 6:31	Lockbox agreement
§ 6:32	Mezzanine promissory note
§ 6:33	Completion guaranty
§ 6:34	Loan purchase agreement
§ 6:35	Mezzanine loan and security agreement
§ 6:36	First amendment to Mezzanine loan agreement
§ 6:37	Lender counteroffer to borrower's proposal-Sample form
§ 6:38	Preferred equity limited liability company agreement
§ 6:39	Preferred Equity Term Loan Agreement
§ 6:40	Preferred equity loan agreement
§ 6:41	Preferred Equity Note
§ 6:42	Non-recourse carveout and real estate taxes guaranty agreement

- § 6:43 Mezzanine guaranty of recourse obligations
- § 6:44 Mezzanine guaranty of carry costs
- § 6:45 Senior debt/mezzanine debt intercreditor agreement
- § 6:46 Memorandum of intercreditor agreement
- § 6:47 Mezzanine loan guaranty
- § 6:48 Transaction authorization for mezzanine loan workout
- § 6:49 Intercreditor and subordination agreement
- § 6:50 Subordination of affiliate agreements-Sample form
- § 6:51 Mezzanine loan opinion
- § 6:52 Mezzanine indemnity and guaranty agreement
- § 6:53 Irrevocable proxy agreement
- § 6:54 Preferred equity term sheet

CHAPTER 7. REFINANCING A DISCOUNTED INDEBTEDNESS

- § 7:1 Introduction
- § 7:2 Lender's agreement
- § 7:3 Permanent financing source
- § 7:4 Mortgage brokers and bankers
- § 7:5 Collateral assignment of interest rate protection agreement
- § 7:6 Fair Credit Reporting Act
- § 7:7 Mortgage commitments
- § 7:8 Promissory notes
- § 7:9 Second amended and restated promissory note
- § 7:10 Guaranties
- § 7:11 Mortgages
 - Representations and warranties
 - Real property taxes
 - Insurance
 - Casualty
 - Condemnation
 - Events of default
 - Restrictions on sale or financing
 - Prepayment
 - Maintenance and repairs
- § 7:21 Modification agreement
- § 7:22 Assignments of lease and rent
- § 7:23 Assignment of Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing
- § 7:24 Security agreements and financing statements
- § 7:25 Closing the refinancing
 - Closing checklist
 - Corporate borrower
 - Partnership borrower
 - Limited liability company borrower
 - Tenant estoppel letters
 - Affidavit of title
 - Closing agenda

TABLE OF CONTENTS

§ 7:33	—Escrow real estate taxes
§ 7:34	—Tenant notification letters
§ 7:35	—Documents to be delivered
§ 7:36	Architect's certification and consent (Mezzanine Loan)
§ 7:37	Special purpose entities
§ 7:38	Consolidation issues
§ 7:39	Post-closing escrows
§ 7:40	Foreclosure settlement agreement and release of claims
§ 7:41	Loan purchase agreement
§ 7:42	Guaranty of recourse obligations
§ 7:43	Assignment of leases and rents
§ 7:44	Intercreditor and subordination agreement
§ 7:45	Replacement reserve agreement
§ 7:46	Repair escrow agreement
§ 7:47	Holdback escrow agreement
§ 7:48	Conditional guaranty
§ 7:49	Limited payment guaranty
§ 7:50	Loan purchase agreement
§ 7:51	Assignment of indebtedness
§ 7:52	Assignment of Mortgage
§ 7:53	Consolidated, Amended and Restated Promissory Note
§ 7:54	Amended and restated agreement to maintain liquid assets
§ 7:55	Enforceability opinion
§ 7:56	Refinancing subordination non-disturbance and attornment agreement
§ 7:57	Non-consolidation opinion
§ 7:58	Springing guaranties
§ 7:59	Refinancing opinion of counsel
§ 7:60	Violations escrow agreement
§ 7:61	Forebearance agreement-Change in operation
§ 7:62	Secured promissory note—Revolving loans

CHAPTER 8. COOPERATIVE, CONDOMINIUM, TIMESHARE, HOA AND SPONSOR DEFAULTS

§ 8:1	Introduction
§ 8:2	Cooperative corporations—Generally
§ 8:3	—Shareholder defaults
§ 8:4	Condominiums—Generally
§ 8:5	Homeowners associations
§ 8:6	Condominiums—Unit owner defaults
§ 8:7	Financing a cooperative or condominium building
§ 8:8	Risks to owners
§ 8:9	Financing a unit
§ 8:10	Effect of mortgage default
§ 8:11	Cause of sponsor defaults
§ 8:12	Analyzing the default
§ 8:13	Lender's response to defaults
§ 8:14	Dealing with sponsor defaults

- § 8:15 Solving sponsor defaults
- § 8:16 Offering the units for sale
- § 8:17 Shareholders' taking control of the property
- § 8:18 Condominium defaults
- § 8:19 Documenting the workout
- § 8:20 Special considerations in cooperative/condominium workouts
- § 8:21 Restructuring mortgages
- § 8:22 Standstill agreement
- § 8:23 Developer settlement agreement
- § 8:24 Pledge and security agreement for mezzanine loan to
condominium sponsor
- § 8:25 Sponsor settlement agreement
- § 8:26 Terms of sale and bidding instructions-Sample form

CHAPTER 9. ENVIRONMENTAL CONSIDERATIONS

- § 9:1 Introduction
- § 9:2 Environmental due diligence checklist
- § 9:3 Federal legislation
- § 9:4 Brownfields
- § 9:5 Lender's liability
- § 9:6 Lender's permissible preforeclosure activities
- § 9:7 Lender's permissible postforeclosure activities
- § 9:8 Actions the lender can take
- § 9:9 Recovery of cleanup costs
- § 9:10 Innocent purchaser defense
- § 9:11 Piercing the corporate veil
- § 9:12 Limiting liability
- § 9:13 Environmental due diligence agreement
- § 9:14 Superliens
- § 9:15 Protecting the lender
- § 9:16 Effect of owner's bankruptcy
- § 9:17 Tax deductibility of cleanup costs
- § 9:18 Reporting requirements
- § 9:19 Indoor air quality
- § 9:20 Asbestos remediation
- § 9:21 Mold remediation
- § 9:22 Environmental protection insurance
- § 9:23 Pollution insurance lease provision
- § 9:24 Environment insurance lease provision
- § 9:25 Operations and maintenance agreement
- § 9:26 Environmental indemnity agreement
- § 9:27 Environmental management and indemnity agreement
- § 9:28 Environmental opinion
- § 9:29 Lead dust
- § 9:30 Hazardous substances indemnity agreement

TABLE OF CONTENTS

CHAPTER 10. TITLE INSURANCE AND ISSUES

§ 10:1	Introduction
§ 10:2	Understanding the title report
§ 10:3	Objections to title
§ 10:4	Title insurance coverage
§ 10:5	Endorsements
§ 10:6	Title insurance exclusions—Generally
§ 10:7	—Creditors' rights exclusions
§ 10:8	Title insurance claims
§ 10:9	Assignment of title insurance proceeds
§ 10:10	Title certificate
§ 10:11	Property description
§ 10:12	Liens
§ 10:13	Restrictive covenants, easements, and licenses
§ 10:14	Encroachments
§ 10:15	Lis pendens, judgments, and federal tax liens
§ 10:16	Reversions
§ 10:17	Mortgage or lien foreclosure
§ 10:18	Partitions
§ 10:19	Eminent domain
§ 10:20	Adverse possession
§ 10:21	Land under water
§ 10:22	Land in streets and highways
§ 10:23	Title to minerals
§ 10:24	Air rights
§ 10:25	Clogging the equity of redemption
§ 10:26	Errors & omissions affidavit
§ 10:27	Board resolution
§ 10:28	Certificate of joint venture

CHAPTER 11. FORECLOSURE AND OTHER LENDER REMEDIES

§ 11:1	Introduction
§ 11:2	Historical background of mortgages
§ 11:3	Mortgage provisions
§ 11:4	Rent collection: an intermediate remedy
§ 11:5	Receivers
§ 11:6	Deciding whether to foreclose
§ 11:7	Possession of the property
§ 11:8	Waiver
§ 11:9	Statutes of limitation
§ 11:10	Methods of foreclosure
§ 11:11	Foreclosure
§ 11:12	Notice under power of sale-Sample form
§ 11:13	Priorities
§ 11:14	Foreclosure defenses

- § 11:15 —Statute of limitations
- § 11:16 —Ambiguities
- § 11:17 —Partial payment
- § 11:18 —Laches
- § 11:19 —Usury
- § 11:20 —Fraud or misrepresentation
- § 11:21 —Breach of duty
- § 11:22 —Duress
- § 11:23 —Question of legality
- § 11:24 —Unconscionable conduct
- § 11:25 —Payment
- § 11:26 —Failure of consideration
- § 11:27 —Estoppel
- § 11:28 —Waiver
- § 11:29 —Relationship
- § 11:30 Enjoining the lender and other borrower relief
- § 11:31 Foreclosure answer
- § 11:32 Equity of redemption
- § 11:33 Deficiency judgments
- § 11:34 Auction
- § 11:35 Foreclosure summons
- § 11:36 Foreclosure complaint
- § 11:37 Answer to foreclosure complaint
- § 11:38 Foreclosure verified complaint
- § 11:39 Order appointing receiver
- § 11:40 Terms of UCC virtual sale-Sample form
- § 11:41 Agreement to toll and/or waive the statute of limitations
and related defenses
- § 11:42 Judgment with foreclosure and sale
- § 11:43 Checklist for purchasing a note to acquire the property
- § 11:44 Agreement for sale and purchase of loan
- § 11:45 Judgment of foreclosure and sale
- § 11:46 Strict foreclosure agreement
- § 11:47 Global settlement agreement
- § 11:48 Foreclosure deed

Volume 3

CHAPTER 12. DEEDS IN LIEU OF FORECLOSURE

- § 12:1 Introduction
- § 12:2 Mortgagee's advantages and disadvantages
- § 12:3 Mortgagor's advantages and disadvantages
- § 12:4 Consideration
- § 12:5 Friendly foreclosure
- § 12:6 Preparation
- § 12:7 Bankruptcy concerns

TABLE OF CONTENTS

§ 12:8	Environmental considerations
§ 12:9	Due diligence
§ 12:10	Hold harmless agreement
§ 12:11	Antimerger provisions
§ 12:12	Takeback agreement
§ 12:13	Deed in escrow
§ 12:14	Tax deferred exchanges
§ 12:15	Title insurance issues
§ 12:16	Deed-in-lieu of Foreclosure—Compromise and settlement agreement
§ 12:17	Deed in lieu of foreclosure agreement
§ 12:18	Opinion of counsel (deed in lieu of foreclosure)
§ 12:19	Deed in lieu of foreclosure—Escrow agreement
§ 12:20	Unanimous Consent for Deed in Lieu-Sample form
§ 12:21	Deed in lieu of foreclosure certificate
§ 12:22	Affidavit of grantor
§ 12:23	Affidavit of grantor giving deed in lieu of foreclosure
§ 12:24	Transfer agreement
§ 12:25	Special warranty deed in lieu of foreclosure
§ 12:26	Deed-in-lieu of foreclosure—Compromise and settlement agreement

CHAPTER 13. LENDER LIABILITY

§ 13:1	Introduction
§ 13:2	Lender's prevention of lender liability claims
§ 13:3	Instrumentality theory of lender liability
§ 13:4	Agency
§ 13:5	Lender's bad faith
§ 13:6	Deceit, duress, and fraudulent misrepresentation
§ 13:7	Lender liability for failure to issue loan commitment
§ 13:8	Lender's liability for unpaid taxes
§ 13:9	Liability arising from participation agreements
§ 13:10	Lender liability arising under environmental laws
§ 13:11	Effect of lender insolvency on lender liability
§ 13:12	Lender liability arising from a failed workout
§ 13:13	Liability arising from a preworkout agreement
§ 13:14	Lender's failure to close
§ 13:15	Participation agreement
§ 13:16	Lender performing too many roles
§ 13:17	Lender liability questionnaire
§ 13:18	Settlement agreement opinion letter

CHAPTER 14. BORROWER'S INAPPROPRIATE BEHAVIOR

§ 14:1	Introduction
§ 14:2	Fraudulent conveyance
§ 14:3	Waste
§ 14:4	Violation of due on sale provision

- § 14:5 Collecting rent in advance or extending lease term
- § 14:6 Failure to pay real estate taxes and insurance
- § 14:7 Nonrecourse carveouts
- § 14:8 Recourse provisions
- § 14:9 Notice of maturity default and reservation of rights-
Sample form
- § 14:10 Pre-Negotiation Letter

CHAPTER 15. SELLING THE PROBLEM PROJECT

- § 15:1 Introduction
- § 15:2 Real estate brokers
- § 15:3 Letters of intent
- § 15:4 Option agreements
- § 15:5 Purchaser's due diligence
- § 15:6 Contracts of sale
- § 15:7 Purchase price
- § 15:8 Representations and warranties
- § 15:9 Operation of the property between contract and closing
- § 15:10 Environmental inspection
- § 15:11 Date and place of closing
- § 15:12 Permitted title exceptions
- § 15:13 Preconditions to closing
- § 15:14 Purchase money financing
- § 15:15 Closing documents
- § 15:16 Closing procedure
- § 15:17 Closing adjustments
- § 15:18 —Rent adjustment
- § 15:19 —Security deposits
- § 15:20 —Real estate taxes
- § 15:21 —Water charges
- § 15:22 —Insurance
- § 15:23 —Payroll and related expenses
- § 15:24 Defaults
- § 15:25 Employee notice
- § 15:26 Letter of intent multiple payments
- § 15:27 Option agreement
- § 15:28 Memorandum of option agreement
- § 15:29 Purchase and sale agreement by debtor in possession in
chapter 11
- § 15:30 Purchase and sale agreement from bankruptcy trustee
- § 15:31 Confidentiality agreement
- § 15:32 Partnership interest purchase agreement
- § 15:33 Bidding procedures
- § 15:34 Loan participation agreement
- § 15:35 Surrender agreement
- § 15:36 Purchase and sale agreement with stalking horse
provisions

TABLE OF CONTENTS

- § 15:37 Agreement of purchase and sale of stalking horse bid
- § 15:38 Membership interest purchase agreement
- § 15:39 Order approving trustee's sale
- § 15:40 Credit agreement
- § 15:41 Agreement of purchase and sale of business assets and joint escrow instructions
- § 15:42 Tolling, standstill, and cooperation agreement
- § 15:43 Operations transfer agreement for nursing facility

CHAPTER 16. OVERVIEW OF THE BANKRUPTCY LAWS

I. INTRODUCTION

- § 16:1 Introduction
- § 16:2 Federal bankruptcy law
- § 16:3 The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
- § 16:4 Bankruptcy code and covid related amendments
- § 16:5 Terminology
- § 16:6 Concepts and definitions
- § 16:7 Bankruptcy court jurisdiction
- § 16:8 Commencing a case
- § 16:9 Motion to dismiss filing

II. PROTECTING THE ASSETS

- § 16:10 Adequate protection
- § 16:11 Automatic stay
- § 16:12 Use, sale, or lease of property
- § 16:13 Obtaining credit
- § 16:14 Executory contracts and unexpired leases
- § 16:15 Acceptance or rejection of executory contracts and leases
- § 16:16 Effect of tenant bankruptcy

III. CREDITORS, THE DEBTOR, AND THE ESTATE

- § 16:17 Creditors and claims
- § 16:18 Secured creditors
- § 16:19 Equitable subordination
- § 16:20 Priorities
- § 16:21 Discharges
- § 16:22 Property of the estate
- § 16:23 Assignments of rents
- § 16:24 Sale/leaseback transactions
- § 16:25 Partnership bankruptcy
- § 16:26 Voidable preferences
- § 16:27 Fraudulent transfers
- § 16:28 Setoff

IV. LIQUIDATION

- § 16:29 Trustee
- § 16:30 Distribution
- § 16:31 Abandonment of property

V. REORGANIZATION

- § 16:32 Administration
- § 16:33 Plans of reorganization
- § 16:34 Impairment
- § 16:35 Solicitation of acceptance of plan of reorganization
- § 16:36 Acceptance of the plan
- § 16:37 Confirmation of the plan
- § 16:38 Cram down
- § 16:39 Postconfirmation
- § 16:40 Make whole provisions
- § 16:41 Excerpts from Bankruptcy Code
- § 16:42 Senior secured superpriority, debtor-in-possession revolving credit and security agreement
- § 16:43 Chapter 11 plan of reorganization
- § 16:44 Plan of reorganization
- § 16:45 Order approving and confirming reorganization plan
- § 16:46 Purchase and sale agreement by bankruptcy trustee
- § 16:47 Asset Purchase Agreement in Bankruptcy
- § 16:48 Operating a business in Chapter 11
- § 16:49 Motion to lift automatic stay to permit foreclosure-Sample form
- § 16:50 Secured creditor motion for relief-Sample form
- § 16:51 Restructuring support agreement
- § 16:52 Global restructuring support agreement
- § 16:53 Pre-packaged plan of reorganization
- § 16:54 Term sheet for Section 363 sale
- § 16:55 The Small Business Reorganization Act of 2019: Subchapter V
- § 16:56 Interim order for debtor-in-possession financing
- § 16:57 Notice of stalking horse bidders-Sample form
- § 16:58 Amended and restated debtor-in-possession loan and security agreement
- § 16:59 Super-priority intercreditor agreement
- § 16:60 Motion to designate-Sample form
- § 16:61 Pre-negotiation agreement
- § 16:62 Landlord objection to plan of reorganization
- § 16:63 Contribution agreement and plan of reorganization

CHAPTER 17. FEDERAL INCOME TAX IMPLICATIONS OF LOAN DEFAULT

- § 17:1 Introduction
- § 17:2 Overview of the federal income tax law

TABLE OF CONTENTS

§ 17:3	Fiscal year
§ 17:4	Organizational and start-up expenses
§ 17:5	Accounting methods
§ 17:6	Classification of property
§ 17:7	Passive activity limitations
§ 17:8	Income and deductions
§ 17:9	Basis
§ 17:10	Depreciation
§ 17:11	Depreciation recapture
§ 17:12	Tax credits
§ 17:13	Dealer or investor issues
§ 17:14	Construction and development expenses
§ 17:15	Financing
§ 17:16	Operating expenses
§ 17:17	Tax issues in amending commercial leases
§ 17:18	Disposition of property
§ 17:19	Capital gains
§ 17:20	Installment sales
§ 17:21	Tax-deferred exchanges
§ 17:22	Foreclosure overview
§ 17:23	Foreclosure of purchase money mortgages
§ 17:24	Foreclosure of nonpurchase money mortgages
§ 17:25	Deed in lieu of foreclosure
§ 17:26	Abandonment
§ 17:27	Cancellation of indebtedness
§ 17:28	Tax effect of loan modifications
§ 17:29	Original issue discount considerations
§ 17:30	Partnership tax considerations
§ 17:31	Partner's withdrawal from a partnership
§ 17:32	Partnership default
§ 17:33	General rules of taxation and bankruptcy
§ 17:34	Tax effect of partnership bankruptcy
§ 17:35	Tax effect of a partner's bankruptcy
§ 17:36	Tax effect of nonpartnership bankruptcy
§ 17:37	Bankruptcy trustee tax determination
§ 17:38	Internal Revenue Code § 108
§ 17:39	COVID-19 Related Federal Income Tax Real Estate Issues

Table of Laws and Rules

Table of Cases

Index