Loan Resolution Advisors, LLC

REBNY – Strategies For Dealing With Properties In Distress

PRESENTED BY: JACK M. ROSENFIELD & ROBERT S. MATHES

- **Robert Mathes – Loan Resolution Advisors**

  Senior Real Estate Banking Executive with over twenty years of experience specializing in marketing, originations, structuring, syndication and management; most recently as an SVP at HSH Nordbank and VP at Calyon Credit Agricole CIB. He has a demonstrated track record of forging strong relationships with developers, investors, brokers, and other lenders. Proven success in business development and deal closings. Expertise in managing a team, developing new businesses, strategic planning, financial modeling, data analysis and portfolio management. Recent clients include Bridge Funding, Flushing Savings Bank where he formed the Loan Workout Group and The Carlton Group. He is a licensed NYS Real Estate Broker.

- **Jack Rosenfield - Loan Resolution Advisors**
- Most recently has been advising Community Banks on workouts & restructuring of over $200 MM of distressed CRE debt. He was SVP and Director of Asset Manager at The Athena Group and previously a Senior RTC Executive; substantial experience in directing and managing workouts on behalf of lenders and investors with extensive background in Asset and Portfolio Management, Experienced in Development and Operations of multifamily residential, condominium and retail properties. Particular knowledge of debt and equity financing of shopping centers, multifamily rentals, condominiums and office properties. He is an attorney licensed to practice in NYS and the federal courts and is a licensed NYS Real Estate Broker.

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1. **Strength: Who Has It and Why?**
   - A. What Is Going On Behind The Scenes For Your Adversary
     - i. What Are The Likely Goals Of And Pressures On Senior Management.
     - ii. What Constitutes Success For The Negotiator.
   - B. Who Benefits From Delay? Who Is Harmed?
   - C. Lender Liability Issues
   - D. Conflicts Of Interest Between Members Of The Capital Stack
   - E. Unforeseen/Unintended Consequences Of Default Notices
     - i. Effect On Condo Sales
     - ii. Effect On Lender Control
   - F. How To Use This Information To Your Client's Greatest Benefit.

2. **Consequences Of Actions**
   - A. Keeping Reputations Intact
   - B. Avoiding Negative Publicity For The Participants And The Property
   - C. Defaults Can Cause Cancellation Of Contracts.

3. **Differences In Attitudes/Strategies In Negotiating Workouts:**
   Adversarial versus Non-Adversarial in the Context of Negotiating With Loan Originators versus Workout Groups.

- **Create a list of all necessary parties with their contact information:**
  - Borrower
  - Lenders
  - Guarantors
  - Contractors
  - Accountants
  - Lawyers
  - Title Company
  - Management & Leasing Companies

- **Maintain working copies of Loan Documents including:**
  - Note
  - Mortgage
  - Intercreditor agreements
  - Any amendments or side agreements
  - Letter of Credit
  - Interest Rate Hedge Agreements
  - Pre-Workout Agreements
  - Default Notices
  - Borrower and Guarantor Financial Statements

- **Maintain working copies of Third Party Reports:**
  - **Environmental Condition Report**
    - Phase I
    - Phase II or III, if necessary
    - Remediation Plan, if any
  - **Property Condition/Inspection Report**
  - **Title Report**
    - UCC Search
    - Lien Search
    - Litigation Report
  - **Market Study/Appraisals**

- **Owner Responsibilities:**
  - Maintain the Property
  - Maintain Communications with Tenants
  - Lease the Property
  - Pay all Bills
  - Insure the Property
  - Provide Lender with Periodic Reports
  - Maintain Accurate and Complete Records

- **Lender Responsibilities:**
  - Collect Debt Service and Distribute if Applicable
  - Maintain Communications with Borrower/Guarantors
  - Monitor Borrower Performance
  - Meet with Borrower
  - Periodically Inspect Property
  - Keep Other Lenders in the Lending Group Informed
  - Anticipate Changes In Property Cash Flow
  - Anticipate Changes In The Condition Of The Property
  - Anticipate And Address Regulator Concerns

1. Strength: Who Has It and Why?

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2. Consequences Of Actions

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Strength: Who Has It and Why?

- New York City developer Harry Macklowe has teamed up with a private-equity firm to regain control of 432 Park Avenue, the former Drake Hotel site and a high-profile Manhattan development site by agreeing to pay off its creditors, according to people familiar with the matter.

- Macklowe Properties Inc., in partnership with CIM Group of Los Angeles, has signed a deal to pay off about 10 investors who bought the $510 million loan the developer took out to build on the former site of the Drake Hotel on Park Avenue between 56th and 57th streets. Deutsche Bank AG, which made the loan, sliced it into four tranches and then syndicated it to these investors, including iStar Financial Inc. and Sorin Capital Management, which hold the senior-most slice, and Realty Finance Corp., which owns the junior-most piece.

- Depending on the seniority of their holdings, the investors are getting paid as much as 90 cents on the dollar and as little as zero.

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Keeping Reputations Intact

- Murray Hill Properties and The Carlyle Group purchased 1180 Sixth Ave, a 400,000-square-foot building for $300 million near the peak of the market in 2007. Shorenstein Properties filed a UCC foreclosure against 1180 Sixth Ave. because the owners failed to make mortgage payments.
- Shorenstein held the mezzanine debt on the 23-story, 400,000-square-foot property. It is unclear how much the partners owe Shorenstein but Murray Hill was trying to search for $245M.
- The situation was resolved in April of this year when The Carlton Group completed a $270 million recapitalization for Murray Hill by bringing in $100 million in passive limited partner equity from a Chinese firm with Morgan Stanley providing a new $160 million first mortgage loan.
- The UCC sale was canceled, and Murray Hill continues to own the property along with its Chinese investor and just as importantly, will continue to manage the property.

Conflicts Of Interest Among Members Of The Capital Stack

The Lenders At The Bottom Of The Capital Stack -- Those Who Have Lower Priority In Structured Deals -- Are Often Fighting To Keep From Being Wiped Out By Creditors That Are More Senior.

In 2009 Five Mile Capital began waging battle against Banco Inbursa S.A. and Lev Leviev's Africa Israel over the former New York Times building at 229 West 43rd Street.

In a lawsuit filed in New York State Supreme Court, Five Mile alleged that Africa Israel and Mexico City-based lender Banco Inbursa conspired to foreclose on the property through a technical default and wipe out the interest of the junior lenders -- including Five Mile, which had a $79 million mezzanine loan.

Keeping Reputations Intact

- Subsequently in 2009, Africa Israel USA (AFI USA) came to a settlement with all of its lenders on its building at 229 West 43rd Street and completed the recapitalization and restructuring of the debt on the property. Sponsors completed a five-year refinancing of the property for approximately $267 million, plus got access to a revolving line of credit from Banco Inbursa SA. This enabled the owners to execute their repurposing and revitalization of the property. Five Mile Capital Partners converted its existing debt to equity to become a 50% equity partner in the property.
- In April of this year private equity firm Blackstone Group paid $160 million for the top 12 floors of property. The exact size of the condo was not released, but public records indicate it is about 600,000 square feet of the 745,000-square-foot building, which would amount to a price of $267 per square foot.
- All the funds from the sale were used to pay down a portion of mortgage as well as an additional revolving credit line, both held by Banco Inbursa. A mortgage of $180 million remains on the 245,000-square-foot retail portion, comprised of floors 1 through 4, and two lower level floors. That would yield a debt of $735 per square foot on the retail portion, which is about 80 percent leased.

Conflicts Of Interest Among Members Of The Capital Stack

The August 2009 sale of developer Kent Swig's former condo project, Sheffield57, is a prime example of this type of infighting.

Wells Fargo and Guggenheim Structured Real Estate sold the $32 million (senior) mortgage loan balance and a $72 million senior mezzanine loan to Fortress Investment Group at a discount.

Fortress Investment Group then acquired the troubled project for a mere $20 million during at the senior mezzanine foreclosure sale. Fortress planned to foreclose on the first mortgage loan and then buy the condo project during an auction sale. However, the junior mezzanine lenders and Swig's investment partners fought the plan because they would be wiped out by the sale.

Just two days before the planned sale, Gramercy Warehouse Funding, one of Swig's junior mezzanine lenders, filed suit, alleging that Fortress had conspired with Swig and the project's senior lenders to buy the property at a rigged auction.

Not to be deterred, the Fortress Investment Group got the suit dismissed and won the bidding for Sheffield57, paying less than 40 cents on the dollar to take control of the project. Fortress was the only bidder for the property located at 322 West 57th St. It invested additional funds to complete the 58-story apartment tower.

Keeping Reputations Intact - Avoiding Negative Publicity

- Harry Macklowe, the New York developer, was flying high in 2007 when he decided to buy a portfolio of prime Midtown Manhattan office towers for nearly $7 billion, using only $50 million of his own money. This is after he bought the General Motors Building in 2003 for $1.4 billion.
- Subsequently he lost almost all of the properties including his bellowed GM Building. Billionaire Sam Zell — who once bragged that people called him the "grave dancer" for "dancing on the skeletons of other people's mistakes," purchased two of developer Harry Macklowe's New York properties for $475 million, a 50 percent discount on what Macklowe paid for them back in 2007.

However, because he maintained his reputation for fair dealing…

- Macklowe closed in June of this year on the $70 million acquisition of a 34-unit rental apartment building at 150 East 72nd Street that he will convert to condominiums. Macklowe financed the Lenox Hill purchase and anticipated rehabilitation of the 72,000-square-foot, pre-war building through a total of $120 million in equity and debt. A New York-based balance sheet lender provided a $90 million first mortgage, and Macklowe and a high net worth family provided $30 million in equity.
- In August he closed on his purchase of 737 Park Ave., one of the city's legendary rental apartment addresses, in a $360 million transaction. The 21-story building at East 71st Street with 103 apartments has long been coveted by condo converters. The actual sale price was approximately $250 million but capitalization, financing and associated costs swelled the total value of the deal.

CONCLUSIONS

While a workout is like a game of chess, it is also like a game of football.

1) Participants must think ahead in order to be successful.
2) Each side has different goals and those goals can vary at different points over the workout
3) By being aware of the opponents' goals so you can anticipate your best move.
4) Be flexible as unforeseen events may intervene.
5) Avoid unnecessary conflicts and don't take hard position unless it is really needed.
6) Don't make threats.
7) Try to stay out of the newspapers.
8) Keep your reputation intact if you expect to be in this business a long time; people have long memories.

Loan Resolution Advisors, LLC

Objectively Evaluates All Aspects Of Your Real Estate Loans And Provide You With The Strategic Advice Necessary To Maximize The Value Of Your Loan Portfolio.

Engaging LRA for Asset Resolution will:

- Provide senior management with strategies for timely resolution of distressed and disputed loans;
- Create a uniform framework for the asset resolution function;
- Provide management with a review and analysis of “at risk” assets;
  1. Risk mitigation & disposition strategies for underperforming & OREO assets.
  2. An Analysis to address re-underwriting guidelines and pricing of all asset classes.
  3. Provide strategies for maximizing loan yields, while meeting the desired risk-return objectives of the institution.
- Enable the bank officer to efficiently manage the resolution process; and

LRA will implement an Action Plan that is designed to resolve distressed debt situations that will result in the most cost effective outcome for its clients.

LRA team members have extensive backgrounds in real estate, lending, and loan workouts:

- The team brings a broad range of skills to loan workouts including
  - portfolio management,
  - underwriting and investment analysis,
  - loan syndication,
  - asset management,
  - loan administration,
  - real estate legal expertise,
  - and third party vendor management.
- Team members successfully navigated through previous down real estate cycles;
- Restructured both corporate and asset-based real estate debt;
- Bring a unique perspective gained from acting on behalf of owners, investors and lenders in all levels of the capital structure; and

By harnessing these skills and expertise LRA empowers its clients to make informed decisions for asset resolutions.