



BUSINESS LENDING UPDATES AND REMINDERS

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DISCLAIMER

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- If you have any questions, or require further information on these materials, please do not hesitate to call our office at: (818) 241-0103.



AGENDA

- **UPDATES**
 - Default Rates after *Honchariw v. FJM Priv. Mortg. Fund, LLC*.
 - Interagency Policy Statement on Prudent CRE Loan Accommodations and Workouts
- **REMINDERS**
 - Business Lending Mistakes to Avoid



UPDATES



DEFAULT RATE

- *Honchariw v. FJM Priv. Mortg. Fund, LLC.*
 - Cannot impose a default rate on the entire principal balance if there's a payment default
 - Case does not restrict imposing default rates on maturity defaults and after loan is accelerated.
- Does default rate verbiage in Promissory Note need to change?
- Critical warning on LaserPro should be addressed
- Federal CU's may be exempt due to federal preemption on interest they can charge.



INTERAGENCY POLICY STATEMENT ON PRUDENT CRE LOAN ACCOMMODATIONS AND WORKOUTS

- Issued in June 2023, first major update since 2009
 - Adds new section on short-term loan accommodations
 - Provides information about changes in accounting principles since 2009, such as CECL
 - Makes revisions and additions to examples of CRE loan workouts



INTERAGENCY POLICY STATEMENT ON PRUDENT CRE LOAN ACCOMMODATIONS AND WORKOUTS

- General approach to all loan accommodations and workouts
 - Determine whether it warrants a short-term accommodation or a long-term accommodation
 - Must have a well-conceived plan for long-term modifications:
 - Updated financials from borrowers and guarantors
 - Current valuations of the collateral
 - What's the appropriate loan structure (e.g., term, amortization schedule, etc.)?
 - Appropriate legal analysis and agreements

REMINDERS



REMINDER #1 - READ LEASES

- For CRE Loans:
 - Not only important for calculating debt service coverage
 - Early termination clauses
 - Option to purchase
 - Material incomplete construction obligations by landlord
 - Tenant consent required for landlord's financing
- For C&I Loans:
 - Borrower's continuity of operations on site interrupted by lease maturity
 - Material rent increase at lease extension or renewal
 - Landlord's lien over same personal property and equipment



REMINDER #1 - READ LEASES

- Ground Lease secured financing
 - Must read and fully understand Ground Lease and ensure lessee has ability to finance Ground Lease and other lender protection provisions are in Ground Lease.
 - Many ways Ground Lease as collateral may be lost:
 - Termination by ground lessor due to ground lessee's default
 - Termination due to foreclosure of ground lessor's own lenders for ground lessor's default
 - Inaccurate appraisals
 - Valuation based on projection of cash flows based on lease term, lease rate, escalation schedule, and termination value, which is then discounted to present value. Slight changes in any of these metrics can cause big swings in valuation.
 - Avoid Ground Leases with limited sources of repayment (i.e., subleases)
 - Ground lease borrower default is compounded by lender's need to pay landlord the Ground Lease payments until leasehold interest is foreclosed and passed onto someone else.



REMINDER #2 - GET SNDAS & ESTOPPELS

- Should get SNDAs & Estoppels from every important tenant
- Estoppels often reveal problems with the landlord-tenant relationship that impacts credit
- SNDAs ensure continuity of landlord-tenant relationship post-foreclosure and provide important protections for subsequent owner:
 - Limits liability of new owner for prior owner's acts and omissions
 - Tenant agrees not to prepay lease for more than 30 days
 - Tenant agrees to give notice to lender for landlord's breach of lease
- Get full Subordination instead of SNDA for tenants affiliated with landlord



REMINDER #3 - ASK FOR AND EVALUATE TRUST INFORMATION

- Guarantors sometimes conveniently fail to disclose they hold their assets through trusts.
- If revocable trust holds assets and individual guarantor passes, all the assets in the trust pass to the beneficiaries, unless Trust provided a guaranty.
- If trust is irrevocable, beneficiaries already have a vested interest in assets and can challenge any guaranty provided by the trust.
- For testamentary trusts, the trust becomes operational as irrevocable trust upon death of settlor.



REMINDER #4 - BE CAREFUL WHEN ENFORCING NON-MONETARY DEFAULTS

- Non-monetary defaults should be material
- Discuss situation with attorney before invoking the default rate, loan acceleration or commencing foreclosure



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