



## 10 Must-Do's in Loan Workouts

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Los Angeles, California

1. Detect the problem early
  - a. Obvious signs
  - b. Non-obvious signs
2. Identify the cause of the problem
  - a. Nature of default
  - b. Curable v. non-curable
  - c. Hopeful v. hopeless
3. Understand borrower's options
  - a. Skim cash
  - b. Short sale
  - c. Workout
  - d. New equity
  - e. New debt
  - f. Bankruptcy
  - g. Litigation
4. Understand lender's options
  - a. Sell the loan
  - b. Seek provisional remedy
  - c. Judicial foreclosure
  - d. Trustee's sale
  - e. Deed in lieu
  - f. Workout



5. Diagnose the collateral (due diligence)
  - a. Valuation
  - b. Core concerns
  - c. Turnaround prospects
  - d. Competing liens and priority issues
  - e. Ancillary issues (e.g., zoning, environmental, etc.)
  
6. Investigate financial condition of borrower and guarantor
  - a. Assets and liabilities
  - b. Liquidity
  - c. Contingent exposure
  - d. Lawsuits
  - e. Ability and likelihood of bankruptcy filing
  
7. Understand the loan documents
  - a. Securitization status
  - b. Recourse v. non-recourse
  - c. Bankruptcy implications (SARE, SPE, etc.)
  - d. Provisional remedy options
  - e. Litigation risk per defects
  
8. Fix loan document problems
  - a. Correct defects
  - b. Address anti-deficiency implications
  
9. Examine avenues to fortify the loan
  - a. New guarantors
  - b. New collateral
  - c. Lock box



10. Document the workout deal accurately
  - a. Default letter
  - b. Pre-negotiation letter
  - c. Forbearance agreement
  - d. Loan modification agreement
    - i. Economic terms
    - ii. Covenants
    - iii. Security instruments
    - iv. Perfection
    - v. Consents of guarantors and other third parties
    - vi. Title insurance



## **... And What Happens If Workout Fails**

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April 22, 2010  
Los Angeles, California

1. Enforcement outside of bankruptcy
  - a. Non-Judicial Foreclosure
    - i. Mixed collateral
    - ii. Anti-deficiency statute
    - iii. Recovery of deficiency from guarantors
  - b. Judicial Foreclosure
    - i. Fair value hearing
    - ii. Right of redemption
  - c. Appointment of receiver
2. Bankruptcy
  - a. Automatic stay
    - i. Freezes collection activities
    - ii. Stops foreclosures
  - b. Adequate protection
    - i. Cash payment(s), replacement lien, or other relief
    - ii. Bankruptcy Code §§ 362, 363 and 364
  - c. Relief from stay
    - i. For cause, including lack of adequate protection
    - ii. With respect to stay of an act against property of estate
      1. debtor does not have equity; and
      2. property not necessary to effective reorganization
    - iii. Special rule in single asset real estate (SARE) cases
    - iv. In rem relief from stay

- d. Cash collateral
- e. Bankruptcy sale free and clear
  - i. Lender's consent;
  - ii. Bona fide dispute; or
  - iii. Sale price is greater than all liens on property
- f. Statutory priming liens
- g. Avoidable transfers and obligations
  - i. Preferential transfers
  - ii. Fraudulent transfers and obligations
- h. Plan of reorganization and plan confirmation
  - i. Payment(s) with present value not less than value of lender's interest in collateral