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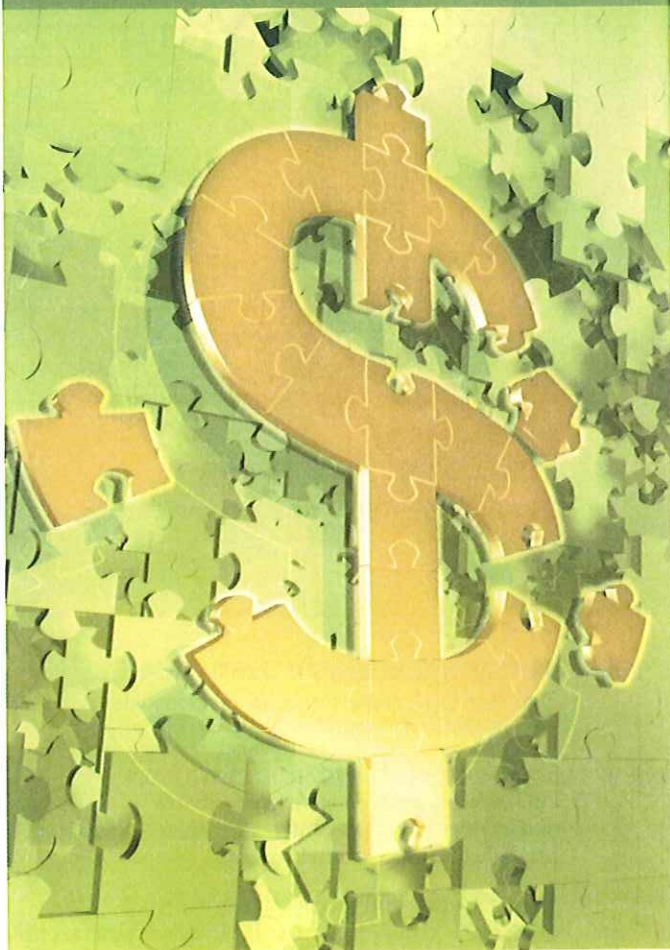
Solving the Distressed Asset Puzzle

In Lending, It's All About the "How"

Let's Toss Around Some New Ideas About
Estate Planning

Solving the Distressed Asset Puzzle

BY MIKE SMALLEY



IN TIMES OF ECONOMIC PROSPERITY, THE WORLD OF SECURED FINANCE SEEMS LIKE AN INVITING PLACE TO SET UP SHOP. IN A PERFECT WORLD, BORROWERS ARE IN FANTASTIC FINANCIAL HEALTH AND ASSETS USED BY BORROWERS AS COLLATERAL FOR

financing perform well in excess of expectations. Unfortunately, we are not in ideal economic times. The financial sector has been inundated with distressed borrowers and distressed assets, leaving lenders searching for solutions to increasingly complex issues.

Rather than looking at all distressed loans as a whole, lenders should analyze each distressed loan along with the assets securing such loan, and devise a solution based on the

unique characteristics of each situation. A "one size fits all" approach to evaluation of distressed loans only complicates matters, and could result in missed opportunities for lenders holding such loans. By taking each distressed loan and applying a set of established analysis criteria, the lender can evaluate each situation and establish a loan hierarchy based on potential value, which will shape the strategy of the lender moving forward.

The challenge in this is the design of the analysis criteria and assembling a team of individuals possessing the range of legal and financial knowledge necessary to apply it in a productive manner. The analysis criteria would encompass five categories, including Transactional and Securitization Issues, Litigation Issues, Asset Valuation, Default Remedies and Property Operation Issues.

The Transactional and Securitization Issue category would include an analysis of all loan documentation and classification of the overall loan structure, including standard A/A and A/B structures along with any relevant participations, mezzanine financing or intercreditor agreements. In addition to an analysis of potential work-out options, taking into account intercreditor issues, valuation of the underlying assets, and any securitization issues.

Litigation would include an analysis of liability issues that could arise between the lender and borrower or other creditors pursuant to a work-out strategy or upon exercise by the lender of its remedies under the loan documents.

Asset Valuation encompasses all due diligence necessary to evaluate the underlying asset, including title, lien and UCC searches, entitlement analysis, inspection of books and records, cash flow analysis and environmental assessments.

Default Remedies addresses the feasibility of remedy options including deed in lieu of foreclosure and judicial and non-judicial foreclosure, along with any intercreditor rights associated with each remedy.

Finally, Property Operation addresses any issues that may arise after exercise of the default remedies, which would include operation and marketing of the underlying asset, intercreditor management issues, securitization issues and REMIC tax issues.

By applying the analysis criteria described above to each distressed loan and underlying assets, the distressed loan team can develop strategies that will add substantial value by identifying opportunities in certain assets and avoiding legal and practical pitfalls in others. ▀



Mike Smalley is a partner and head of the transactional department at Rose Law Group, pc, a full service real estate and business law firm. RLG has a team of professionals from work out attorneys to project /construction managers who apply and implement the above described analysis criteria for lending institutions. Mr. Smalley or Ms. Jordan Rose, President of Rose Law Group, can be reached at 480-505-3939.