

**BLOCKING AND TACKLING BORROWER'S DEFENSES
AND
SECURING BORROWER'S COOPERATION**

Thursday, October 20, 2011 3:45 - 5:00

I. Introduction

II. Philosophy of Structured, Secured Financing

- A. Borrower Sponsor Works Hard to Make Project Successful
- B. If Project Fails, Borrower Sponsor Cooperates in a Friendly Transition

III. Current State of the Market; Do Borrower's Really Fight?

IV. Preventative Measures

- A. Complete and Accurate Set of Closing Documents
- B. Pre-Negotiation Letter Agreement
- C. Confidentiality Agreement
- D. Title Company
- E. Receivership

V. Recognizing Issues; Developing Resolutions and Strategies

- A. General Issues
 - 1. Type of Default (Covenant, Monetary or Maturity)
 - 2. Cost of Resolution versus Recoverability
 - 3. Carve-Out Violation: Proximate Cause Analysis
 - 4. Carve-Out Violation: Tax Implications of Non-Recourse versus Recourse
 - 5. State Court versus Federal Court (Guarantor Action and/or Receivership)
- B. Developing Resolutions
- C. Borrower Attack
 - 1. Ripley's (or Panelists') "Believe It Or Not" Real Life Stories
 - 2. More Incredible Stories
 - a. "The Master Servicer Told Me to Default"
 - b. "The Previous Asset Manager Promised Me a Modification"
 - c. "Noteholder's Delay Caused the Default"
 - d. "The Receiver Caused All the Problems"
 - e. "The Noteholder is Acting in Bad Faith"
 - f. "I'll Just Tell the Judge that I Oppose the Receiver's Sale"
 - g. "I'll Just File Bankruptcy"
 - i) Top Six (6) List
 - ii) Guarantor Solvency

VI. Amazing (and True) Stories

- a. I just need a six (6) month forbearance to give President Obama time to help me- he said he would last night in his State of the Union speech ...

- b. I live in the apartment that is your collateral, so the entire apartment complex is my homestead ...
- c. I'll get more CMBS loans and default on those deals just to make your life horrible ...
- d. I never read my loan documents ...
- e. I lost my loan documents ...
- f. The loan documents were too complicated to understand ...
- g. I didn't know foreclosure meant you could take my property from me ...
- h. These defaults are causing me anxiety attacks, so make a protective advance and fix my health issues ...
- i. You should let me keep all the NOI while you are foreclosing because the property is mine ...
- j. The receiver is being mean to me ...