



11TH ANNUAL TRIGILD LENDER CONFERENCE

# EXITING THE STORM

LEADING EDGE STRATEGIES FOR  
LENDERS AND DISTRESSED LOAN BUYERS

2011

 TRIGILD LENDER CONFERENCE

# Uncovering Fraud and Searching for Perpetrators

**Keynote Speaker:**  
*Juval Aviv, Interfor Inc.*



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# Changing Times, Changing Tactics

**Moderator:** Ed Foster, *Akerman Senterfitt*

**Panelists:** Kay Kress, *Pepper Hamilton LLP*

Mike O'Hanlon, *Berkadia*

Keith Honig, *AIG*

Jack Jacob, *Aurora Bank*

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# Bankruptcy and arguments on standing of special servicers

- Bankruptcy issues:
  - Credit bidding issues
  - Venue shopping – S.D.N.Y.
  - Jurisdiction – *Stern v. Marshall*
- Servicer registration issues
  - commercial collection agencies
  - mortgage servicers

# New litigation issues

- Increased advertising by foreclosure defense bar
- Heightened scrutiny by Courts in commercial foreclosure cases as fall-out from robo-signing in residential foreclosures
- Increase in federal foreclosures
- Use of federal receiverships to effect sales free and clear of liens

# Loan Sales

- See whole separate presentation on this later in the Conference
- Happening more often now

# Workouts

- More focus on creative workouts
  - looking 2-3 years down the road
  - borrowers putting skin in the game
- Extend and pretend subsidizing?
- Volume of modifications decreasing?
- More realistic borrowers?
- Deeds in lieu
- Short sales to borrowers

# Receiver sales

- Separate panel will touch on this
- Title insurance issues in some states

# Small Balance CRE Loans

- Commercial Real Estate Loans Made to Owner/Users of Small Balance Loans are challenging.
- Commercial Owner/Users have Dry Cleaners and Auto Repair Shops – Ongoing Environmental Issues
- Receiverships on Owner/User Properties are more difficult to obtain.
- Owner/User Borrowers are less willing to walk from their businesses, and create Foreclosure obstacles.
- Courts are more lenient on Owner/Users of Commercial Property.

# SBA Loans

- SBA 7(a) Guaranteed Loan Program “*Battle Cry*” *Preserve The Guaranty*
- SOP 50 51 3 (“SOP”) – Provides SBA personnel, Lenders and CDCs with standard operating policies for handling 7(a) and 504 Loans that are in default.
- Generally, SBA requires *in liquidation* classification if a loan is:
  - More than 60 days delinquent OR
  - Subject to an adverse event such as
    - Bankruptcy OR
    - Business closure OR
    - Collateral abandonment
- Good faith effort must be made to negotiate a workout on an SBA Loan.

# SBA Loans

- Site Visits are Mandatory when loan is 60 days due. If loan is *In Liquidation* classification then site visit is Mandatory within 15 days.
- For loans made on or after May 14, 2007, lenders must liquidate business personal property collateral PRIOR to requesting that SBA honor its guaranty.
- Four Possible Outcomes of SBA Guaranty:
  - Guaranty honored in full;
  - Guaranty amount reduced (*repair*);
  - Guaranty not honored (*denial*); and
  - Lender request that SBA guaranty be withdrawn.

# SBA Loans

- 10-Tab Process
  - Mandatory format for submitting purchase requests on regular 7(a) loans.
- Charge Off a Loan:
  - You must evaluate the status of all collateral and each obligor, which includes debtor, guarantor, and cosigner, before you can charge off a loan. You must also document the file that a compromise offer was solicited if applicable and that any further collection costs would likely exceed recovery. If so, you may then prepare a Wrap-up and Charge-Off summary for submission to SBA.



Please join us tonight on the  
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