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Structuring Commercial Real Estate Workouts: Alternatives to Bankruptcy and Foreclosure, 2nd Edition

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STRUCTURING COMMERCIAL REAL ESTATE WORKOUTS

Alternatives to Bankruptcy and Foreclosure

Second Edition

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2014-1 Supplement prepared by
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PREFACE

Coming on the heels of a time in the late 1980s when property values were suspect and high vacancy rates were all too common, the most recent years have witnessed a renewed interest and reinvigoration of the finance and construction of commercial real estate development. Unfortunately, experience predicts that to every boom there is eventually a downturn. Indeed, the economic boom of the 1990s has led some to believe that prosperity can endure forever and others to predict cataclysmic upheavals of financial markets. As a result of the market cycle, the savvy party can anticipate that there will be an increase in the number of troubled real estate loans.

This book presents a concise introduction to the legal and business considerations involved in real estate loan workouts. It is designed to aid lenders, borrowers and their legal counsel in confronting the variety of issues encountered in working out an acceptable solution to the dilemma posed by a loan in default. The parties associated with a defaulting loan face a number of potential pitfalls, ranging from imminent insolvency of the borrower (and the diminution in value or loss of a lender's security interest) to draconian penalties incurred through liability for environmental hazards present on the property. Our intent is to introduce the varied issues, discuss the limitations and advantages of foreclosure and other remedies, and present suggestions for guiding potential alternative courses of action.

Our overriding concern in presenting these materials has been to make them readily comprehensible to the layperson but useful to the specialist. Many of the subjects touched upon here are jurisdiction-specific and deserve considerably more treatment than we can give them in a one volume treatise; some in fact could be the subjects of stand-alone works. We have sacrificed comprehensiveness for the sake of brevity, and we have endeavored in every instance to offer the reader practical insights and directions for further research. For example, the forms in the appendices are examples designed to focus issues to be addressed during negotiation and offer potential resolutions for specific problems.

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