

For: LeClairRyan, New York, N.Y.
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WORKOUTS TAKE CENTER STAGE AMID HISTORIC REAL ESTATE COLLAPSE
-LeClairRyan attorney Jeffrey Marley Zalkin highlights bankruptcy-related strategies in seminar for negotiators and risk managers of real estate loans

NEW YORK, N.Y. (2/8/10) – The collapse of the U.S. housing and mortgage-backed securities markets has raised the stakes in real estate workouts and loan negotiations as never before—and both investors and legal professionals must retool their strategies to reflect these new realities, advised veteran bankruptcy and construction attorney Jeffrey M. Zalkin, a partner in LeClairRyan, based in the firm’s New York office.

During “Negotiating Real Estate Loan Terms & Workout Options,” a Feb. 3 legal seminar organized by the National Business Institute, Zalkin described the gamut of bankruptcy implications in this environment before an audience of attorneys, in-house counsel, loan officers and paralegals. His presentation at the event, held in Melville, N.Y., included key issues related to automatic stay, letters of credit, noteworthy foreclosure litigation, treatment of secured claims, and more.

Given the increasing prevalence and complexity of workouts amid the real estate collapse, the onus is now on investors, real estate loan negotiators and risk managers to adopt the savviest-possible strategies, said Zalkin, who has been heavily involved in the sub-prime crisis since it emerged in 2006 while working on one of the largest residential real property-oriented fraud cases ever filed in U.S. Bankruptcy Court in New Jersey.

While many commercial real estate professionals hope in earnest for a revival of the CMBS markets in 2011, he noted, their proper focus today ought to be on salvaging their earlier investments. “Extreme caution and the utmost planning and cash-flow analysis must precede revival of the real estate market,” he commented. Indeed, an avalanche of forced sales of distressed shopping centers, office buildings and other commercial properties is likely to occur in coming quarters, putting further pressure on existing assets.

In his presentation, Zalkin gave lenders’ counsel concrete advice on a host of issues related to winning relief from the “automatic stay” protections often enjoyed by debtors under the Bankruptcy Code. He also discussed similar issues related to letters of credit, both commercial and standby, and offered a detailed look at the dynamics related to preferences in situations where a workout or modification occurred within the bankruptcy preference period. In addition, his presentation put a spotlight on key issues associated with the treatment of secured claims, sale of assets, proof of claims and plan objections, and noteworthy foreclosure litigation.

Commenting on the real estate investment outlook, Zalkin noted the manifold challenges, both psychological and financial, now facing investors. “This recession has instilled overpowering fear in the ‘long-term’ investors—the life blood of real estate projects,” he said. “Moreover, no one believes that the full measure of losses from the real estate investment frenzy of 2006 to 2008 has arrived yet. Indeed, those investors who challenged the downturn in 2008 ended up being losers, and the investment community is now, for the most part, shying away due to lack of stability in most cash flows and a worldwide lack of stable short- or long-term credit.”

In many instances, Zalkin noted, the prior business models that were predicated upon the unending spending spree by American consumers now have become unreliable. “Overall, there is a need to cure the credit markets’ incredible contraction,” he said. “Real estate fundamentals are weak, including prior growth projections which are being scrapped. Tenants, meanwhile, are becoming scarce.”

Without exception, the contraction has eroded the once-“reliable” position that real estate investment held for more than a decade—a position that enticed new investors in droves. “Today’s bond market demands scrutiny at all three levels: new issuances, pricing and performance of both old and new issuances,” Zalkin said. “We do hear rumors that private-sector investors may materially supplant many institutional lenders. Reorganization of operations to keep real estate interests, whether a fee-simple or a leasehold interest, has fallen to immediate liquidation in a host of large-scale retail space scenarios. More than once, the salvage step of ‘auction sale’ by mortgagor-debtors has received very cool or no response nor serious inquiry for acquisition. Without availability in the credit markets, good acquisition opportunities are languishing.”

Yet the attorney believes an eventual re-tooling of the old paradigm of investment structures should restore basic reliability to real estate investment. All of these dynamics, he underscores, will likely have major implications for attorneys involved in negotiating real estate loan terms at acquisition and workouts to avoid bankruptcy.

About LeClairRyan

A business-minded law firm, LeClairRyan specializes in developing legal solutions to its clients' business challenges. Founded in 1988, LeClairRyan provides business counsel and client representation in corporate law and high-stakes litigation. With offices in California, Connecticut, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Virginia and Washington, D.C., the firm has more than 300 attorneys representing a wide variety of clients throughout the nation. For more information about LeClairRyan, visit www.leclairryan.com.

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