



Buying Distressed Commercial Loans and Property

Pre-Summit Workshop ♦ September 3, 2008

Workshop Agenda

- 8:50 – 9:00 Introduction by the Workshop Chair
Brian Davis, *Partner*, Kirkland & Ellis LLP
- 9:00 – 10:00 **The Distressed Debt Market: General Overview**
- Bank debt, notes, private and public issues
 - Bankruptcy, including impact of recent changes to bankruptcy law
 - Inter-creditor issues
 - Receivers
 - Brokers
 - Bank agents
 - Discounted payoff
 - Dispositions, e.g. sealed auction bids, outcall, traditional sale (bulk or individual loan)
 - Securitized vs. balance sheet lenders' loans
 - Assumption vs. participation
- Jay Rollins**, *Principal*, JCR Capital, LLC
- 10:00 – 10:30 *Morning Networking Break*
- 10:30 – 11:30 **Best Practices in Due Diligence for Distressed Loan Purchases**
- Loan, borrower and property level issues
 - Origination/ underwriting/monitoring process
 - Review of
 - Collateral
 - Legal file
 - Cash flow—historical and forecasts
 - Correspondence

- Pay history
- Prior sales of purchased loans
- Communications with borrower
- Development status, where applicable
- Collateral status, including condition, other encumbrances and market prospects
- Additional funding obligations or requirements
- Current and future property condition valuation
- Other liabilities: e.g. taxes, environmental, litigation, other debt
- Borrower status and likely actions/defenses
 - Lender liability claim
 - Bankruptcy recoveries (preference, fraudulent transfer)
 - Complications of related properties and/or debt
- Link to warranties

Prassana Mahadeva, *Member*, MAHADEVA, PLLC

11:30 – 1:00 *Group Luncheon*

1:00 – 2:00 **How to Make Money in a Down Market**

This course focuses on how to create opportunity in the current real estate credit market dislocation. The course starts by asking the important question, “Where were you in 1992?” This was the last time the real estate markets had a material dislocation and many of the people active today never experienced a market dislocation, let alone developed strategies on how to profit from one. This course will change that, and will empower the attendees with the ability to develop specific business development strategies in a time of uncertainty.

- The current environment: What is going on with the real estate capital markets
- The “real driver” of property values today
- The current challenges facing property owners, lenders and investors
- The challenges you and the market will face over the next 12-24 months
- **How to turn market challenges into your opportunities** by “Changing the Conversation”
- The top ten specific strategies you can implement now and make more money in 2008
- The top two questions you must ask every client today
- Once you have become the trusted advisor: How to qualify the business at the “asset level”
- Open discussion and exchange of thoughts, ideas and possibilities
- Closing remarks

Jay Rollins, *Principal*, JCR Capital, LLC

2:00 – 3:00 **Strategic Approaches to Distressed Property**

- Strategies for obtaining control of distressed property
- Foreclosure process (mezz vs. mortgage)
- Dealing with the special servicer in CMBS transactions
- Dealing with independent directors in SPEs
- Dealing with inter-creditor issues
- Innovative use of the Bankruptcy Code
 - Use of Bankruptcy Code to leverage negotiations
 - Effective use of automatic stay and avoidance powers
 - Rejection of leases
 - Assignment of leases
 - Are designation rights still viable?
 - Sale of property free and clear of liens
- Obtaining DIP financing or interim financing
- Auction process—bidding and stalking horse protections

Brian Davis, *Partner*, Kirkland & Ellis LLP

3:00 – 3:30 *Afternoon Networking Break*

3:30 – 4:30 **Valuing and Pricing Distressed Property**

- Many issues consistent with underwriting the collateral for loan purchase
- Traditional approaches—cost, market, income
- Recognize additional risk factors associated with defective financial or legal conditions
- Cash flow models
 - Argus, Pro-Ject, etc.
 - Home-made?
- Additional risk considerations
- Lender who may not otherwise have been marketing the loan
- Acquire with intent to foreclose (with or without borrower knowledge/agreement)
- Identify borrower or property issues (and resolutions) to incentivize lender to sell

Richard Marchitelli, MAI, CRE, FRICS, *Managing Director, National Practice Leader, Dispute Analysis & Litigation Support*, Cushman & Wakefield, Inc.