

FOLEY EXECUTIVE BRIEFING SERIES



WELCOME

New Reality: Strategies for Today's Real Estate Market



©2009 Foley & Lardner LLP • Attorney Advertising • Prior results do not guarantee a similar outcome • Models used are not clients but may be representative of clients • 321 N. Clark Street, Suite 2800, Chicago, IL 60654 • 312.832.4500



FOLEY EXECUTIVE BRIEFING SERIES

Accessing Capital

■ Panelists

- John Clifford, CBRE Capital Markets
- Brian Gordon, The Magellan Group
- Michael Mounts, CRI, CMB
- Perry Pakravan, CitiGroup

■ Moderator

- Beth Corey, Foley & Lardner LLP



©2009 Foley & Lardner LLP



Understanding Bankruptcy and Finance Restructuring Options

■ Panelists

- William J. McKenna, Foley & Lardner LLP
- Wayne F. Osoba, Foley & Lardner LLP

■ Moderator

- Michael J. Small, Foley & Lardner LLP



Recent Homebuilder Bankruptcies

- Tousa
- Kara Homes
- Neumann Homes
- WCI Communities
- Kimball Hill
- Empire Land LLC
- Fulton Homes Corporation
- Tarragon Corporation
- WL Homes LLC



Mortgage Lender Turmoil

- Bankruptcies
 - People's Choice Home Loan Inc.
 - Ownit Mortgage Solutions LLC
 - Mortgage Lenders Network USA Inc.
 - ResMae Mortgage Corp

- Larger Receiverships
 - Fannie Mae & Freddie Mac
 - IndyMac
 - Pinnacle Bank of Beaverton, Oregon
 - Suburban Federal Savings Bank of Crofton, Maryland
 - Douglass National Bank of Kansas City, Missouri
 - Downey Savings & Loan Association
 - PFF Bank & Trust Co.
 - Community Bank of Loganville



Mortgage Lender Turmoil *continued*

- Regulatory Consolidations
 - Washington Mutual Bank
 - Wachovia National Bank

- Consolidations
 - Countrywide/Bank of America
 - National City/PNC



Distressed Real Estate Deed in Lieu Workout Hypothetical

■ BACKGROUND

- Multiple subdivision projects under development by a homebuilder
- Multiple lenders, each with a first lien on one or more subdivisions
- Various stages of development; raw land still being farmed, entitlements in process, infrastructure improvements
- Projects located in various municipalities, some with unreimbursed obligations under development and annexation agreements
- Farm leases and other developer obligations outstanding from land assemblage (agreement to pay farm rent to seller of land)
- Limited guaranty from homebuilder principals but unable to cover all obligations
- Mechanics liens from infrastructure development
- Uncertain market values and usefulness of appraisals in declining market without recent sales



Distressed Real Estate Deed in Lieu Workout Hypothetical *continued*

■ Deed in Lieu of Foreclosure Workout

- Analysis of options (weigh timing of foreclosures, uncontested foreclosures, deed in lieu settlement, guaranty collection actions)
- Consensual transfer of collateral in exchange for release of guarantor
- Preserve mortgage foreclosure rights as potential title clearance for mechanics liens and other title claims
- Due diligence review to establish rights and obligations under leases, entitlements, municipal agreement – what runs with land?
- Due diligence review on Guarantor financials and surviving liability for fraud, breach of representations, tax indemnity obligations



Distressed Real Estate Deed in Lieu Workout Hypothetical *continued*

- Third party management/consultation regarding entitlements, hold/sell strategy, property tax assessment work
- Obtain assignment of intangible rights (development plans, blueprints, utility deposits, insurance cancellation refunds, recapture rights, tax refunds)



Distressed Real Estate State Court Foreclosure Hypothetical

■ BACKGROUND

- 100 unit condominium project
- 85% built
- No unit closings
- Approximately \$10 million in mechanics liens filed
- Work stopped
- \$25 million participated first mortgage/fully disbursed
- Developer/Guarantors uncollectible but cooperative



Distressed Real Estate State Court Foreclosure Hypothetical

- NON-BANKRUPTCY JUDICIAL WORK OUT
 - Mortgage foreclosure counterclaim commenced as part of pending consolidated mechanics lien case
 - Receiver appointed
 - Borrower assigned power to convey to receiver
 - Receiver completed building through receiver's certificate borrowing (DIP Analogy)
 - Receiver sold units free and clear pursuant to agreed court order (363 analogy)
 - Units insured over by title company
 - Liens adjudicated by title company/secured during process by cash
 - Complete sell out/cash sufficient to repay principal



Distressed Real Estate Chapter 11 Hypothetical

- Voluntary petitions filed in developer entities' state of formation
 - Each project owned by a separate L.L.C.
 - Single management company coordinates
 - Secured debt on all projects but each project is a "silo"
 - One project is raw land
 - One project is partially completed single family home development
 - One project is hotel condo conversion



Thank You for Joining Us Today!