

The image features a background of architectural blueprints with various technical drawings and measurements. Overlaid on the bottom left of the blueprints are several US dollar bills, including a \$100 bill and a \$20 bill, which are slightly out of focus. The text is positioned on the right side of the image, overlaid on the blueprints.

Redeveloping Distressed Properties: Looking Forward to the Post-Crisis Era

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William C. Guthrie
Martin J. Bishop



Panelists

- Allen G. Ten Broek
 - Co-founder, CEO, and President of The Mariner Group
- William C. Guthrie
 - Partner, Foley & Lardner LLP
- Martin J. Bishop
 - Partner, Foley & Lardner LLP



Fact Pattern

- High end development project
 - \$2-3 million homes, condominiums
- One of the condominium towers was to be operated as a condo/hotel
- Existing mortgage close to default
- Prior to and as a condition of closing its construction loan, Developer had binding contracts on 60% of the units in the condominium towers
- Vacant property available
- Zoned single family residential, multifamily, and transient lodging



How to Get Started

- Make a Plan
- Communicate
- Be Receptive to the Feedback
- Work the Plan



Required Steps

- What parties are involved and what are their roles?
 - Developer/Owner
 - Lender
 - Manager
 - Workout consultant
 - Potential acquirer
 - Purchasers/ Association
 - Partners
 - Contractor
 - Bonding Co.
 - Title Co.
- Evaluate business plan/development strategy and develop appropriate product for location and current economy
 - What is the problem-Property, Strategy, Development Team, External
 - Inventory resources available to solve problem
 - Is the existing team appropriate



Required Steps

- Project Analysis
 - Condition of the Property
 - Status of construction
 - Check zoning and density approvals
- Document Analysis
 - Review existing restrictions/ documentation on property
 - Subdivision restrictions
 - Condominium restrictions
 - CDD provisions
 - Declarant rights



Required Steps

- Check existing loan covenants
 - Use restrictions
 - Defaults
 - Releases
 - Maturity date
 - Multiple tranche financings- differing levels



Required Steps

- Determine Method of Access to Amenities
 - Club
 - Easement
 - Declaration
 - License/Lease
 - Protected?
- Financial Analysis
 - What capital sources to pay debt or fund workout
 - Cash flow (rentals, management contracts, operations)
 - Equity
 - Mezzanine loan
 - Consumer Financing \$\$
 - Available
 - Self-financed



Required Steps

- Budget Allocations
 - CDD
 - Master Property
 - Between club property and lots/condominiums
 - Between commercial and residential
 - Subsidies
- Previous Misrepresentations in Budget



Required Steps

- Developer Obligations
 - Contractor
 - Purchasers
 - Budget subsidies/ guarantees
 - Warranties
 - Promised future improvements
 - Lender
 - Assumed liabilities-
 - Completion of construction issues
- Sales and Marketing Input



Required Steps

- Communicate with Existing Parties in Interest
 - Lender
 - Purchasers
 - Tenants
 - Employees
 - Partners
 - Contractor



Required Steps

- Comprehensive Solution
 - Diminished expectations
- Forbearance/Standstill
- Pre-workout Agreements
- Renegotiate/workout
 - Discounted acquisition or payoff of debt
 - Asset divestiture
 - Restructuring debt
 - Restructuring partial releases
- Deed-in-lieu
- Bankruptcy



Condo Hotels The Next Pets.com??



Additional Facts

- Incentive Program
- Lease Back Arrangement
- Economic Forecasts
- Close Working Relationships
- Use of Phones and Mails to Conduct Business



Who Is Suing?

- Single Plaintiff
- Multi-Plaintiff Class Actions
- Multi-Plaintiff Non- Class Actions



Who Is Being Sued?

- Everyone!
- Theories:
 - Piercing the Corporate Veil
 - Civil Conspiracy
 - Vicarious Liability



Incentive Programs

- Securities Acts of 1933 & 1934
- Rental Pools
- Profit Sharing



Limited Remedies Provisions

- The Interstate Land Sales Act (“ILSA”)
- “Improved Lot” or “Two Year” Exemption



Economic Forecasts

- Fraud
 - Common Law Fraud
 - State Consumer Fraud Acts
 - State Securities Statutes



Contract Claims

- Breach of Contract
- Breach of Implied Covenant of Good Faith & Fair Dealing
- Adhesion, Unconscionability, Illegality

- Actual/ Compensatory Damages
- Statutory Damages
- Recission