

## **SPECIAL ASSETS: Identification, Mitigation & Liquidation**

### **“Best Practices and Regulatory Expectations”**

1. The Importance of Special Asset Identification, Mitigation and Liquidation
2. Protect the Vault and Shareholders: Message has to come from Top of the House
  - Management and ultimate disposition of existing and soon-to-become special assets has to be a primary focus of all Leasing Companies for the foreseeable future.
  - This mandates a cultural change from “Sales mentality” to “Credit ‘T’-Crossing and ‘I’-Dotting”
  - Back to basics and fundamentals.
  - Identification, Monitoring, Measurement and Control of Risk in Special Assets is key to Survival
3. Policies, Procedures and Processes: Does Your Leasing Company Have Them? Are they Being Followed Uniformly and Consistently?
  - Special Asset/TDR Policy?
  - Appropriate Procedures to Ensure and Evidence Independent Oversight and Control?
  - Processes/Uniform Guidelines?
  - Uniform Forms, Checklists and Templates?
  - Incorporation in Strategic Plan?
4. Appropriate Resources Dedicated to Ensure Policy and Procedures are Being Followed?
  - Timely and Early Detection, Identification and Mitigation: Incentive, Identification, Recognition and Accountability
  - Review: Legal Counsel should be involved to identify documentation issues or concerns and document restructuring.
  - Are designated Work-Out or Special Assets groups established? Are they properly staffed and authorized?
  - Experience/Staffing/Training
  - Legal Resources: In-House and Outside Local Counsel
  - Experience/Staffing/Training
5. Two Categories: Pass Watch/Special Mention vs. Non-Performing Leases
6. Why Create a Work-Out File
  - Creation is Critical: Lays foundations and identifies information critical for initial and ultimate analysis, work-out, restructuring or enforcement.
  - Enables Development of Intelligent, Informed and Supportable Strategy and Angle of Approach.
  - Required for Regulatory Oversight and Examination
  - Supports Management, File Transition, Reporting
  - Early Legal Involvement: Review and Strategy
    - Check List Items (e.g. Lien Searches/Lien Priority)
    - Creditors Rights (or Lack Thereof)
    - Identify Relationships

- Cross Default, Cross Collateralization
- Subordinate Debt, Loans to Shareholders, etc.
- Prepare for Meeting/Default Notice
- Smoking Guns
- Attorney-Client Privilege Attachés

## 7. Default Notice

- Preservation and reservation of rights
- Identifies Specific Defaults as of a Point in Time
- Sets Stage and Tenure for Modification/Enforcement: Leverage Compels Meeting with Borrowers and Guarantors
- Financial Information: Notice an Examination of Books and Records
- Craft Initial Angle of Approach Armed with Necessary Critical Information

## 8. Penultimate Question: Hold 'em or Fold 'em

Are We IN or Are we OUT and WHY?

Fact Bearing Preliminary Questions on Classifications and Strategy

- DSC/GDSC/Business Specifics
- Market Demographics by Lease Segment
- Exit Strategy/Collateral and Integrity of Collateral
- Additional Collateral and/or Equity
- Guarantors and Relationships
- Restrictions on Distributions/salaries/Loans to Shareholders
- Documentation Strengths and Weaknesses (Legal Involvement serves to demonstrate what terms and provisions forbearance agreement would have: e.g., Confession of Judgment for Money or Possession)
- Establish Conditions Precedent and Subsequent
- Non-Monetary Factors (e.g., Seasoned Borrowers; Pillars of Community; Reputational Issues; Fire trucks; Churches)
- Multiple Creditors and Inter-Creditor Agreement Issues

## 9. IN: Modify, Forbear or TDR (Waivers/Proper Documentation)

- Conditions Precedent
- Conditions Subsequent
- Monitoring, Tracking, MIS Architecture to Capture Significant Events and Issues
- Perfection and Maintaining Perfection

## 10. OUT: Enforcement of Creditor's Rights

- Seizure, Sale of Borrower's Assets, Article 9 or 2A Sale or Judicial Sale
- Other Creditor's Rights
- Assignment of Underlying Lease

# Special Assets:

## Identification, Mitigation and Liquidation

“Best Practices and Regulatory Expectations”

Presented by:

LAMM GROUP

# **The Importance of Special Asset Identification, Mitigation and Liquidation**

# Protect the Vault: Message has to come from Top of the House

- Suggesting to Special Assets to bring Legal Counsel as soon as possible

# Policies, Procedures and Processes

- Special Asset/TDR Policy
- Procedure
- Processes
- Strategic Plan—works together with Legal Plan



# Procedure

- Timely and Early Detection, Identification and Mitigation: Accountability
- Review: Legal Counsel should be involved and will identify documentation issues or concerns
- Work-Out or Special Assets Group: Legal restructuring by Counsel
- Experience/Staffing/Training

**Pass Watch/Special Mention**  
**VS.**  
**Non-Performing Loans**



# Work-Out File (Why)

- Creation is Critical: Identifies documents that will be critical for workout, restructuring or litigation
- Regulatory
- Management
- Legal Involvement (Both Collateral and Credit Files): Why Now?
  - Check List Items (e.g. Lien Searches/Lien Priority)
  - Creditors Rights (or Lack Thereof)
  - Identify Relationships
  - Cross Default, Cross Collateralization
  - Subordinate Debt, Loans to Shareholders, etc.
  - Prepare for Meeting/Default Notice
  - Smoking Guns
  - Attorney-Client Privilege Attaches

# Default Notice

- Preservation of Rights
- Sets State for Modification/Enforcement
- Compels Meeting
- Financial Information: Notice an Examination of Books and Records

# Penultimate Question: Hold 'em for Fold 'em?

- Are We IN or Are we OUT and *WHY*?
  - Is there enough *equity* to pay off Bank's loans?
- Fact Bearing Questions
  - DSC/GDSC/Business Specifics
  - Market Demographics by Loan Segment
  - Exit Strategy/Collateral and Integrity of Collateral (Real Estate vs. Business Assets)
  - Additional Collateral and/or Equity
  - Restrictions on Distributions/salaries/Loans to Shareholders
  - Documentation Strengths and Weaknesses (Legal Involvement serves to demonstrate what terms and provisions forbearance agreement would have: e.g., Confession of Judgment for Money or Possession)
  - Non-Monetary factors (e.g., Seasoned Borrowers; Pillars of Community; Reputational Issues; Fire trucks; Churches)
  - Multiple Creditors—Inter-Creditor Agreement
  - Lender Liability (Resurgence/New Theories: e.g., Substantive Foreclosure/Protective Advances)

# IN: Modify, Forbear or TDR (Waivers/Proper Documentation)

- Conditions Precedent
- Conditions Subsequent
- Monitoring
- Perfection

## OUT: Foreclose

- Sale of Borrower's assets, Article 9 Sale or Judicial Sale

# Troubled Loan Action Report: Document, Document, Document

- Memorializes All of the Above
- Critical From Regulatory and Risk Management Perspectives
- Reporting
- Transition
- Compels Regular Monitoring
- Not a Static Process but Strategy Can Change Instantly Upon Happening of Certain Events or Failure to Meet Well-Defined Conditions
- Guidance/Training/Appropriate Oversight and QC
- Beware of eMail or “Jail Mail”: Meet, Write a Letter or Call

# Strategy/Chronology/Implementation/ Oversight/Senior Management and Board Reporting



**Bulge/Hemorrhage Factor:  
Beware/Warning**