

Borrower Workout Considerations

When posed with the representation of a Borrower in a loan workout situation, there are a number of issues I address with the client in addition to the careful review of their loan documentation. Most of the time the client simply insists that it must get the loan revised for financial reasons; however, there are also a number of other factors that need to be addressed, such as:

1. Identification of weaknesses in the lender's loan documentation such as failure to properly perfect etc..
2. Borrower's need/desire to avoid personal liability.
3. Should the Borrower stop payments and , if so, will it continue to be able to collect rents?
4. Are there Guarantors and where will they end up in the mix?
5. Will the Borrower realize debt forgiveness income and thereby incur significant tax issues?
6. How will workout affect project operation?
7. Will the Borrower need to file/threaten bankruptcy?
8. Review Lender's prior course of conduct and whether the Lender has waived a significant number of defaults to establish course of conduct defense/counterclaim, if necessary.
9. Monitor and document Borrower's oral communications with the Lender. Borrower needs to know that emails (external and internal) are discoverable.
10. Review Borrower's file to determine if there are documents/correspondence that is discoverable and may be damaging to your client.
11. Encourage Borrower to comply with Lender's policies and procedures.
12. Provide clear and concise financial history and projections to Lender to justify workout. Contrary to popular belief, the Lender is typically under state or federal workout restrictions and must document it's file to proceed.

While there are numerous other considerations that should be addressed, these are the main issues I bring to the attention of the Borrower. In addition, and most importantly, I always advise the Borrower to "take the high road" and act professionally and cordially with the Lender and try and treat the workout as a "win-win" for both parties. The Borrower needs to realize that the Lender is in a tough position as well and sincere consideration needs to be paid to the regulations, restrictions and, not to mention, the pressure the Lender is under in these transactions.