

Troubled Loan Workouts: Qualified Professionals Can Help Maximize Recovery for All Parties

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The workout of a financially troubled loan requires the participants—typically the lender, the borrower and the guarantors—to be well versed in legal and business principals, coupled with an ability to understand the emotional aspects of the situation. The primary goal of a troubled loan workout is to maximize the recovery to all parties involved. That end result is best achieved when each party is represented by qualified professionals, including a loan officer who is familiar with the situation, as well as experienced attorneys and workout consultants. Collectively, these resources offer a vast network of appraisers, real estate and business brokers, buyers, prospective lenders and other contacts—all of whom are familiar with financially troubled business matters.

From the lender's side, a loan workout officer will bring to the table a thorough understanding of the loan documents and know what collateral has been pledged, as well as the extent of the perfection of the security interests granted to the lender. The loan officer will be able to communicate with the borrower and the guarantors with respect to the existing defaults under the loan documents. This individual will also know the lender's rights in light of the default and whether the lender is choosing to presently exercise its rights under the loan documents or reserve exercising them until a future date.

From a legal prospective, it is essential that all parties involved in a troubled loan workout be represented by attorneys experienced in handling financial distress matters. The lender's attorney will review the loan documents, examine collateral perfection issues and assist in providing updated UCC, tax lien and judgment lien searches. This attorney will also be able to advise the lender as to the various remedies available in the exercise of its rights against the borrower and the guarantors, including in-court and out-of-court options.

The other parties should also turn to legal counsel for advice regarding their rights, remedies and obligations under the operative documents. Attorneys for the borrower and guarantors will advise their clients how best to cooperate with the lender in a consensual workout scenario or what defenses might be available in an adversarial situation. This advice will also cover in-court and out-of-court options, including the availability of bankruptcy relief as part of a consensual loan workout.

Assuming the lender does not need to take immediate action to get control over or liquidate its collateral, most troubled loan workouts involve some period of forbearance that affords the borrower additional time to resolve its financial problems. Under a limited forbearance arrangement, the lender

gives up little, while both the borrower and the lender have an opportunity to pursue various benefits. At this stage, the parties should involve experienced workout consultants who, for example, will help analyze the borrower's business and provide advice regarding the profitability and viability of the enterprise. They often help prepare short-term and long-term cash flow projections and budgets or test such projections and budgets when they are prepared by the borrower. Additionally, they typically play a role in determining the best way to maximize the recovery to all parties, whether it be a reorganization of the borrower, a sale or an orderly liquidation of the borrower's assets. If a restructure or reorganization is the chosen solution, workout consultants will help determine what additional funds might be necessary to accomplish the desired result.

The workout of a financially troubled loan involves complex legal and business issues, as well as the emotions of the business owners or the guarantors of the borrower's indebtedness. Partnering with experienced attorneys and other workout professionals is an essential step towards navigating these difficult waters and ensuring a successful outcome for all of the parties involved.

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