

What to do When Faced with a Failing Lender/Investor

Lessons from the New Century, MLN and Other Recent Bankruptcies

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I. HOW TO IDENTIFY

- A. Press
- B. Loan volume
- C. Repayment rate
- D. Requests for concessions
- E. Monitor covenants
- F. EPD's

- A. Ability to make advances
- B. Forwarding payments to correct successor owners
- C. If servicing purchased at discount, Bankruptcy court can treat as fraudulent conveyance and force additional payment or transfer to higher bidder
- D. Debtor's ability to reject as executory contract

III. LICENSING ISSUES; ORIGINATOR, COLLECTOR (OF SPECIAL CONCERN TO PURCHASER OF COMPANY ASSETS)

- A. Net worth
- B. Surety bonds
- C. Bankruptcy court power vs. state licensing authorities
- D. Timing for obtaining new licenses
- E. Servicer/collector licenses

- A. Examine repurchase and indemnification clauses
 - Knowledge required?
- B. Special treatment by the Bankruptcy Code
- C. Is MI available?
- D. Title insurance?

TREATMENT BY THE BANKRUPTCY CODE

VI. WHAT IF IT'S YOUR COMPANY THAT IS IN DIFFICULTY?

- A. The IRS
- B. Sufficient working capital
- C. Maximize servicing income
- D. Pursue originator breaches
- E. Pension plans
- F. Keeping licenses current
- G. Discussions with funding sources
- H. Guarantors
- I. Sale vs. bankruptcy
- J. Employee relations
- K. Regulator relations
- L. GSE, GNMA issues
- M. Bankruptcy/restructuring team