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Gainer Donnelly, & Desroches – “Successful Real Estate Workouts – Do They Exist?”

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GAINER DONNELLY & DESROCHES

(L to R) Patrick Hayes, Shareholder at Andrew Myers, David Donnelly, Partner/Leader of Real Estate Services at Gainer, Donnelly & Desroches, Bob Vestewig, Senior Managing Director, CBRE Capital Markets, Inc., and Ed Rothberg, Partner at Hoover Slovacsek.

Today Gainer, Donnelly & Desroches hosted a luncheon at Tony's for a group of their clients. The luncheon included a presentation by a group of panelists discussing “Real Estate Workout Plans – Do they Exist?”.

The panel consisted of Bob Vestewig – Senior Managing Director, CBRE Capital Markets, Inc, Patrick Hayes – Shareholder at Andrews Myers, Ed Rothberg – Partner at Hoover Slovacsek, and David Donnelly – Partner/Leader of Real Estate Services at Gainer, Donnelly & Desroches.

A few takeaways from today:

Patrick Hayes discussed Chapter 64 of the Texas Property code that was passed June 17th, 2011. The new law allows for each of the following:

- ▶ Lenders can collect rent from existing tenants without foreclosing on the commercial property – thus the rents being considered as some of loan's collateral.
- ▶ After the borrower defaults on a loan and notice has been given by the lender to the borrower and each tenant, the lender may then collect rent from the tenants.
- ▶ If the borrower does not comply with the rules of Chapter 64 (and continues to collect rent from the tenants, etc.) it could be the basis for borrower to incur personal liability.

Patrick Hayes also gave tips to avoid foreclosure (excerpt from his presentation notes):

- ▶ Set a goal – figure out what you want to accomplish from the workout.
- ▶ Openly communicate – Bob Vestewig and Patrick Hayes both agreed there is no need to burn

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bridges (in case you may want to borrow from the lender in the future”

- ▶ Figure the costs and property’s cash needs for the workout
- ▶ Get an appraisal
- ▶ Familiarize yourself with the loan documents
- ▶ Put yourself in the lender’s shoes
- ▶ Have a plan – not a prayer!” joked Patrick Hayes. Establish a workout plan to show the lender foreclosure or bankruptcy are defective solutions.

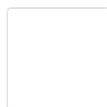
Ed Rothberg discussed bankruptcy in terms of real estate (taken from Ed Rothberg’s summary).

- ▶ Bankruptcy can be used to stop a foreclosure in order to sell property.
- ▶ Bankruptcy can be used to restructure a matured or defaulted debt. The bankruptcy court can extend maturity, adjust the interest rate, and adjust the payments.
- ▶ Bankruptcy can be used to inject new equity into a debtor under favorable terms.
- ▶ Bankruptcy can convert a non-recourse debt to a recourse debt, so the documents must be carefully reviewed to avoid personal exposure.

David Donnelly discussed the taxation of the cancellation of debt and how COD differs from forgiveness of debt (excerpted from David Donnelly’s presentation notes).

- ▶ Cancellation of debt allows the debtor deferral or relief from tax
- ▶ Forgiveness of debt is treated as a sale of the property which will create gain or loss depending on the basis.
- ▶ Cancellation of debt does not create current income if:
 - ▶ Debtor is in bankruptcy or is insolvent.
 - ▶ For S corporations, bankruptcy is at the S corporation level.
 - ▶ For partnerships, bankruptcy is at the partnership level.
 - ▶ The debt is a purchase money mortgage.
 - ▶ The debtor has other real property and can reduce the basis of the other property.
 - ▶ Other provisions for farm loans and principal residences.
- ▶ You only get COD for recourse debt; the COD income is the difference between the debt and the FMV of the property; the difference between the FMV and the basis is taxable gain/loss.
- ▶ UNLESS it is a reduction in NONRECOURSE debt when you retain the property, e.g., a workout:
 - ▶ In a workout, where the taxpayer retains the property, the basis of the property can be reduced
 - ▶ Differs according to the specific situation
 - ▶ It is a complex law, obviously consult your tax advisor.

Blog



About the author

The author didnt add any Information to his profile yet

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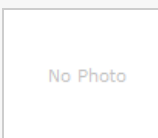


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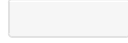


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Houston, TX

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