

# DISTRESSED DEBT/INVESTMENT TRAINING

Winstead PC

## Winstead is poised to assist you with your in-house training.

As a service to our clients and industry contacts, articles, presentations and other materials prepared by Winstead lawyers on distressed investments are available on the Winstead extranet website. Some of the topics covered by these materials are listed below. If you have an interest in accessing the website for these (and future) materials, please contact [vmacalik@winstead.com](mailto:vmacalik@winstead.com) for log in credentials.

Winstead attorneys are available to assist you with your next in-house training event. We will come to your site or conduct a session remotely via telephone or teleconference; and you can access these materials on our extranet website. The following is a list of relevant topics and materials for financial services professionals and in-house attorneys.

### Insolvency & Bankruptcy

- Bankruptcy Presentation (General Overview)
- Understanding The Basics of Bankruptcy and Bankruptcy Terminology
- Bankruptcy 101
- Bankruptcy Materials for The Construction Loan "Gone Bad" (Bankruptcy Basics; First-Day Motions)
- Bankruptcy: Equipping The Secured Lender for Bankruptcy
- Bankruptcy: Free and Clear, or Not? Section 363 Sales Get Murkier: *Clear Channel Outdoors, Inc. v. Nancy Knupfer, Chapter 11 Trustee*
- Bankruptcy: Not All Section 363 Sales Are Equal: An Overview of Cases Regarding Plan Sales Versus Stand Alone Sales
- Distressed Asset Sales in Bankruptcy: A Primer on Section 363
- Bankruptcy for Real Estate Lawyers (Single Asset Real Estate 363 Sale)
- Bankruptcy: Understanding Transactions in Chapter 11 in Order to Issue Title Insurance
- Claims Trading Update (*Enron Cor. v. Springfield Associates*); Update on Deepening Insolvency and The Zone of Insolvency; Attorneys' Fees for All? (*Travelers v. PG&E*); Repo Agreements
- Leases + Bankruptcy: The Top 10 Things Landlords Should Know When a Client Files Bankruptcy
- Debtor-In-Possession Financing (DIP)

### General Topics

- **Book:** Texas Foreclosure: *Law and Practice*, Mike Baggett, co-author (Texas Practice Series, Vol. 15), (Thomson/West Group, 2nd Edition, 2001, updated annually)
- **Book:** *Lender Liability Law and Litigation*, Mike Baggett, Special Contributing Editor (Matthew Bender, 1993)
- **Book:** *Texas Real Estate Litigation Practice Guide*, Mike Baggett and Brian Morris, co-authors (West Group, 3 volume set, updated annually)
- Workout Issues for Banks in Insurance Receiverships
- Don't Get Sued for More Than Your Debt: A Lender Liability Refresher
- Insurance Company Insolvency and Workout Issues
- Loan Documents & Remedies: You Found What Where? More Than 10 Reasons to Stay Awake For The Boilerplate
- Credit Agreements: Top 5 Things to Consider (Generally)
- Troubled Times: Equipping The Secured Creditor and The CMBS Special Servicer for Workout, Foreclosure and Bankruptcy
- What Is So Special About CMBS Special Servicing?
- Assets in Distress: Understanding The Issues When The Client Calls and What Steps to Take Immediately
- Assets in Distress: Restructuring & Workouts
- Mortgage Foreclosure Documents and Stopping Foreclosure (From A-Z)
- Builder Finance Workout Presentation
- Texas Real Property Foreclosure Law for Non-Judicial Sales of Property Secured by a Deed of Trust: Outline of Significant Issues

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- Changes in Foreclosure Laws Give Residential Tenants at Least 90 Days to Vacate (Under the Federal "Protecting Tenants at Foreclosure Act of 2009")
- Insurance Company Insolvency and Workout Issues
- Fraud on Financial Statements
- Leasing Issues in a Contracting Market
- Designing Written Discovery
- Letters of Credit: The Basics, Types and Structures
- Client Emergency! Injunctions and TROs
- Default, Forbearance and Pre-Foreclosure Matters
- Leasing: Leasing Issues & Documentation in a Contracting Market
- Fraud: A Growing Industry: Financial Statement Fraud
- Fraud: A Growing Industry: Embezzlement and Bribery
- The Good, The Bad & The Ugly: The 10 Pitfalls of E-Discovery
- Foreclosure, The Old and The New: 25 Things You Ought to Know About Foreclosure
- Summary Judgment Appellate Issues In Texas
- Co-Lender Product: Structures: Initial Due Diligence
- How Did My Loan Go Into Default?
- Investing in Distressed Assets: General Overview;
- Finding Distressed Assets; Valuation and Financing; Buying Debt; Buying Real Estate; Investing in Distressed Businesses; Tax Issues Revisited
- Lender Liability in Changing Business Environment and Depressed Economic Times
- Lender Liability: So You Have a Problem Loan. How Do You Protect The Bank? (Getting Paid While Avoiding Lender Liability)
- Life of a Claim: Loan Fraud. Are You (the Title Company) The Gate Keeper?
- Local Law Questionnaire Covering Foreclosure Law and Related Remedies
- Pre-Foreclosure Matters
- Principals of Writing Good Discovery
- Questionnaire Template for Information on State Foreclosure Laws and Related Remedies
- Real Property Foreclosures – Title Issues in Foreclosure and Repossession in Texas
- Today's Environment: Things to Know, Tips and Trends for Lenders in the Credit Crisis
- Use of Specialists or Experts: Loan Workouts, Exercise of Remedies, Litigation and Bankruptcy
- Voluntary and Involuntary Liens on Real Property
- Workouts: From Default to Resolution
- Troubled Times: Comments on the CMBS Market; Focus on CMBS Special Servicing
- Electronic Discovery: Litigation Opponent's Access to Winstead's Client's Computer Hard Drives Restricted by Texas Supreme Court
- Top 10 Issues for Distressed Real Estate Assets
- CMBS Master, Primary and Special Servicers: An Overview
- Lease Workouts: Is This a Marriage Worth Saving?
- Investing in Distressed Assets
- CMBS Special Servicing and Workout 1.01
- Rescuing the Distressed Debt Situation
- Lender Liability Tort Theories of Liability - Dividing Line Between Contract and Tort Contract
- Winstead University: Unique Issues for Medical Office Leasing
- Guaranties and Credit Enhancements
- Making the Pen Mightier than the Sword: Arbitration Clauses
- Making the Pen Mightier than the Sword: Forum-Selection, Venue and Choice of Law Provisions
- Making the Pen Mightier than the Sword: Indemnity Clauses
- Making the Pen Mightier than the Sword: Remedies Clauses
- Making the Pen Mightier than the Sword: Jury Waiver
- Making the Pen Mightier than the Sword: Merger Clauses
- Retail Workouts: Can Even the Strong Survive?
- Report Parses Commercial Loan Issues
- REO Purchase and Sale Agreements

## Year In Review

- Year in Review: 2004 Trends and Events as They Impact 2005
- Year in Review: 2005 Trends and Events as They Impact 2006
- Year in Review: 2006 Trends and Events as They Impact 2007
- Year in Review: 2007 Trends and Events as They Impact 2008
- Year in Review: 2008 Trends and Events as They Impact 2009
- Year in Review: 2009 Trends and Events as They Impact 2010

In these turbulent times, our clients want quick access to a fresh insight into creative solutions. Winstead meets that need with its troubled asset workout blog: [www.ToughTimesForLenders.com](http://www.ToughTimesForLenders.com).

You can also follow us on Twitter: [@workoutsolution](https://twitter.com/workoutsolution).

## Defaults:

- Stay in Banker's Good Graces by Coming Clean When Money's Tight
- Pre-Judgment Tools to Reduce Need for Repairs Later
- Future Risk of Maturity Defaults
- Key Differences Between CMBS Loans and Portfolio Loans in The Loan Default Scenario
- Should a Borrower Intentionally Default on a CMBS Loan?
- Loan Defaults - Monetary vs. Non-Monetary
- Evaluating Material Adverse Change (MAC) Clauses in the Loan Default Context
- Regulators Issue Major Regulatory Announcement: A Prudent Peace Pipe?
- Challenges in Commercial Leases During Workouts - First Steps FAQ
- Challenges in Commercial Leases During Workouts - Default Notice FAQ
- Challenges in Commercial Leases During Workouts - Defaults & Lease Termination FAQ
- Interesting Data on CMBS Hotel Defaults, CMBS Delinquencies, Overall CRE Delinquencies & CRE Investors

## Guaranty Issues:

- Recourse Carve-Outs
- The Collection Plate: When can I stop being nice?

## Insurance and Environmental Risks:

- LandAmerica Financial Group in Bankruptcy; an Update on Insurance Coverage and Escrow Issues
- Insurance Pitfalls in ADR Clauses
- More on That Ticking Sound: Selling Environmental Problem Property
- More on That Ticking Sound: Environmental Risks and Lender Safe Harbor Under CERCLA
- More on That Ticking Sound: ADR Clauses and Liability Insurance
- More on That Ticking Sound: Don't Forget to Obtain or Verify Insurance Coverage
- More on That Ticking Sound: Vacant Collateral or REO = New Insurance Problem - Suggestions on Continuing The Property Insurance Coverage

## Lender Liability:

- Say What? Tips on Oral Communication – When It Becomes Personal
- Lender Liability Returns
- Stop, Look and Listen: What Are The Risks? What is The Exit Strategy?
- Lender Liability: Lender Suing Lender - The "New" Reality?
- Lender Liability Returns: Sample Cases and Situations

## Market Trends:

- The Shadow World: Liabilities of Credit Default Swaps; Which Regulator Wants The Ball?
- From Across The Pond: The European View
- Future Risk of Maturity Defaults
- Covered Bonds – A Little Heat for The Frozen Credit Markets
- Watch for Change at The State House: New State Taxes on Life Company Commercial Mortgage Loans & Servicing
- Into The Looking Glass: Arriving in San Diego For The 2009 MBA-CREF Convention
- Into The Looking Glass (Sunday Committee Meetings): 2009 MBA-CREF Convention – Topics of Interest
- Into The Looking Glass: Reports on Market Trends From The 2009 MBA-CREF Convention

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- Into The Looking Glass (Day Two): MBA-CREF Opening General Session With Paul Begala (of CNN) and Tucker Carlson (of MSNBC)
- Into The Looking Glass (Day Three): 2009 MBA-CREF – Workouts, Special Servicing and Back to The Basics
- Into The Looking Glass: 2009 MBA-CREF Convention Post Mortem
- Treasury's Legacy Loan and Legacy Securities Programs
- The G20 Meeting Last Week; Global Recession Requires Global Solutions
- Change in The State House: New Foreclosure Posting Fees?
- General Growth Properties Files for Bankruptcy: Simply an Impossible Situation?
- Banks and The Texas Economy: Will Texas Remain The Lone Star?
- Into The Looking Glass: Reports From The 2009 MBA Commercial\Multifamily Servicing & Technology Conference
- Watch for Change at The State House: Note Registration Before Foreclosure?
- Watch For Change in The "Big House:" The End of Rating Agency Freedom and Liability Exemption?
- Release of The "Stress Test": Will it Relieve The Stress?
- The Treasury's Public-Private Investment Programs: So Where Are The Deals?
- Into The Looking Glass: Will The Next Dagger Be Loss Rates at Regional and Local Banks?
- Investing in Distressed Assets - Webinar
- Into the Looking Glass: What are the lawyers focusing on at the ACMA meeting?
- Explosive Lease Provisions: The Co-Tenancy Flu Can Kill
- Uncertain Waters: Scorecard on the CMBS Market
- Steering Through CMBS Waters: A Primer for Troubled Loans
- Calming Uncertain Waters: FDIC Board Issues a Transitional "Safe Harbor" For Sale Treatment Covering Participations and Securitizations
- Capital Market Scorecard: Financial Services Committee hearing - Covered Bonds testimony
- Who Are Those Guys? (It's the FDIC with Civil Demand Letters)
- Capital Market Scorecard: CMSA January Conference Will Be Interesting; Tips On Using Wi-fi In the Air
- Capital Market Scorecard: Day 1 Summary from the CMSA January Conference
- Capital Market Scorecard: Day 2 Summary (Part 1 of 2) from the CMSA January Conference (Bonus: Tech Tip - pins & passwords)
- Capital Market Scoreboard: Selected Topics from the CMSA January Conference
- Covered Bonds: Still on the Agenda
- Your Top 10 Posts Tell the Story For 2009
- Capital Market Scorecard: 2010 Outlook for Corporate Credit? Commercial Mortgages?
- Capital Markets Scorecard: Committee & Council Meetings at MBA-CREF Convention - Spring Is In The Air!!
- MBA-CREF Convention (Day 2): Three Perspectives; Wish List Points to a Slow 2010
- MBA-CREF Convention (Day 3): Special Servicing TIPS; Life Co. Allocation TARGETS; and Real Money For Real People
- Congressional Oversight Panel Weighs In: "Treasury and bank supervisors must address . . . the threats" facing CRE
- Shared Message From The CMSA, MBA-CREF & ULI Meetings: Rough Times Ahead for Commercial Real Estate
- CMBS 2.0 & Financial Reform: Industry Comments on FDIC 'Safe Harbor' Provisions For Securitization
- CMSA & Key Industry Groups Push Congress To Avoid "Looming Commercial Real Estate Crisis"
- Information & Tips On Selling Commercial REO Using CRE Auctions & Online Due Diligence Tools (a series)
- Senate Banking Committee Releases Financial Reform Legislation (Restoring American Financial Stability Act of 2010): CMSA Summary
- Senate Banking Committee Amends and Passes Reform Bill; CMSA Updates Its Summary and MBA Sees Risk Retention Problems
- Financial Reform: Major Industry Groups Ask Senate Banking Committee to Carefully Consider Securitization Reform
- CRE Financial Reform And Market Trends: Opportunity For New Lending But More Extend & Pretend As Defaults Grow
- Listing of Key Aspects of REO Sales Contracts - the Seller's Perspective
- 5 Books & 4 Questions Give Perspective on the Credit Crisis
- Housing Finance Reform: Obama Administration Takes Two Moves, Supports Fannie & Freddie, and Plans a Road Show
- CRE Finance Council Announces Topics for June Convention

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- Investment Grade Bondholders Have Tough Questions for CMBS 2.0 (Including Proposed SEC Disclosure Rule)
- Rating Agency Mistakes? Conflicts of Interest? (Court Ruling & Panel Testimony Point to Challenges for CMBS 2.0)

### **Remedies:**

- Foreclosure and Residential Tenant: Some Helpful Tips
- Real Property Foreclosure and Deed-in-Lieu: A Brief Description and Comparison
- Real Estate Foreclosure vs. UCC Personal Property Commercially Reasonable Disposition
- Foreclosure Consequences – Title Transfer and Effect on Other Liens
- "Absolute" Assignment of Leases and Rents
- Common Workout Tools
- Owner and Holder Issues – Various Sources of Repayment
- What is Your Lender Doing With Your Receivables? (Establishing a Security Interest in Receivables)
- What is Your Lender Doing With Your Receivables? (Funds in Deposit Accounts and The Account Control Agreement)
- What is Your Lender Doing With Your Receivables? (Lockbox Accounts, Full Notification and Dominion of Funds)
- The Borrower screams: "Help! What Happens to My Loan When My FDIC Lender Fails?"
- Change: New Federal Foreclosure Law Gives Residential Tenants 90 Days to Vacate
- Assignments of Rents: Now You've Got It, Now You Don't
- Preparing for Conflict: Negotiating, Drafting & Litigating Loan or Workout Documents - Seminar on February 25
- Challenges in Commercial Leases During Workouts - Must a Landlord Exercise Remedies and/or Mitigate Damages FAQ
- Non-Recourse Loan: How About Some Recourse In A Deed In Lieu?

### **Single Purpose Entity:**

- Special Purpose Properties; The Headaches Are Just Beginning
- SARE Cases Causing Big Stir in Bankruptcy Courts

### **Tax Issues:**

- Capital Gain Tax and Ordinary Income Debt Forgiveness As Tools for The Real Estate Workout

### **Technology:**

- Technology: When and How Will Tech Tools (Finally) Help?
- Valuable Surveillance at Your Finger Tips with Google Reader

### **Training:**

- Say What? Tips on Oral Communication – When It Becomes Personal
- Up Close and Personal: Video of Winstead's Home Builder Finance Workout Seminar
- Experience, Experience, Experience (or "Where Have All The Experienced People Gone?")
- Special Servicing 101
- Lease Issues Unique to Medical Uses: A Trap For the Unwary
- The Tax Man Cometh: Webinar on Federal Tax Treatment of Debt in Workouts

### **Workout Issues:**

- The Very Dark Side: Evicting Tenants From Foreclosed Apartments
- LandAmerica Financial Group in Bankruptcy; What Happens to The Existing Title Insurance Policy?
- Up Close and Personal: Video of Winstead's Home Builder Finance Workout Seminar
- That Construction Loan Ticking Sound: Where is The Title Insurance?
- Stay in Banker's Good Graces by Coming Clean When Money's Tight
- The Real Estate Workout: Watch Out For Parties Related to The Borrower
- Owner and Holder Issues – Various Sources of Repayment
- Falling Markets Require Borrowing Base Reductions

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- Watch For Change at The Court House: Impossibility of Performance
- More Than a Local Speed Bump – Wisconsin’s Wage Lien Law Points to Change
- Into The Looking Glass (Day Three - part 2): 2009 MBA-CREF – CMBS Special (Workout) Servicing Myths? Fact or Fiction
- The Insolvency Exclusion to Cancellation of Debt (COD) Income; The Effect of Exempt Assets Under The Carlson Rule
- Co-Lender Mortgage Loan Structures: Understanding The Lender Structure is Critical
- Rating Agency Surveillance of Existing RMBS and CMBS Mortgage Securities: Legitimate “Surveillance,” or Changing The Rules of The Game?
- Understanding The Primary Duties of CMBS Loan Servicers to B-Note Holders Under a Co-Lender Agreement
- Watch for Change in Your City: New Construction + Green Building Laws = Trouble?
- Ticking Sound: Review Your Title Insurance - A Quick Checklist
- The Collection Plate: A new series about how to get your loans and bills paid
- Dealing With a Distressed CBMS Loan? New Guidance from the Feds
- U.S. Treasury Department Issues Guidance on Modification of Commercial Mortgages Held By Real Estate Mortgage Investment Conduits (REMICs): Will the Floodgates Open?
- Changes in REMIC rules to help CMBS loan workouts? CMSA Weighs In
- Bank Regulators Adopt Guidance on Prudent Commercial Real Estate Loan Workouts
- Year End Grab Bag: 2010 Events Calendar; and Another Ticking Sound - Taking Control of Building Operating Systems
- Ticking Sound: Will the Current Tax Valuation Drag You Down?
- Understanding Differences Between a Syndicated Loan & Participated Loan is Crucial When It Turns Bad
- Challenges in Commercial Leases During Workouts - Risks in Delaying Remedies FAQ
- Tip On E-Mail Communications: Always Refer To Your Discussion Agreement
- Free Information On Hot Topics; But What Is Missing?

### **Other Topics:**

- Protecting the Interest of Bondholders as the “Controlling Class” in CMBS Investment Pools
- A Continuing Dilemma: The Insurance Industry Wrestles with Risk-Based Capital Requirements
- The Collection Plate: My Dog Ate My Homework
- The Ox and The Ditch: Frequently Asked Questions About Under Performing Commercial Real Estate Loans
- The Ox and The Ditch: FAQ - Understand the Borrower; Lender Liability
- The Ox and The Ditch: FAQ - What Can I say to Borrower?
- CMBS Scorecard: Financial Reform Bill - Only A Band Aid For Now; Covered Bonds Later?
- Title Insurance Ticking Sound Blows UP: ALTA 21 Creditors’ Rights Coverage Ends
- ALTA 21 Creditors Rights Endorsement: List Grows of Companies NOT Issuing It
- FAQ For Loans in Default: Discussions With 3rd Parties; Forbearance & Deed in Lieu Discussions
- FAQ - Advantages and Disadvantages of a Real Property Foreclosure
- FAQ - Advantages and Disadvantages of a Real Property Deed In Lieu of Foreclosure
- FAQ - Tips on Short Sales, Partial Payments and Partial Releases During a Commercial Mortgage Loan Default

## Materials Prepared During the Last Economic Downturn

*Although these materials are dated, they remain valuable resources.*

- Loan Documents & Remedies: Waiver and The Quest for Lender Protection
- Outline of Significant Foreclosure Issues – Texas Real Property Foreclosure Law for Non-Judicial Sales of Property Secured by Deed of Trust
- Foreclosure In Texas
- Foreclosure Issues (Non-Judicial Foreclosure; Capacity & Status of The Borrower; Lien Priorities; Home Equity)
- Foreclosure, The Old and The New: 25 Things You Ought To Know About Foreclosure
- Real Property Foreclosures – Title Issues, Foreclosure and Repossession in Texas
- Bankruptcy: Transactions in Chapter 11
- The Life Of A Claim – Loan Fraud: Are You The Gate Keeper?
- Voluntary and Involuntary Liens
- Problem Loan Presentation
- Lender Liability: A Sleeping Giant
- Lender Liability, A Sleeping Giant: Drafting Principles to Avoid Lender Liability
- Loan Documents & Remedies: What The Real Estate Professional Should Know About Money Laundering
- Drafting Principles to Avoid Lender Liability
- Due Diligence Considerations and Drafting of Loan Documentation to Avoid Lender Liability
- Lender Liability Update (With Emphasis on Texas Law)
- A Failed or Failing Institution’s Perspective: Dealing with The Borrower and The Regulatory Agency
- The Tort of Bad Faith (or The Duty of Good Faith and Fair Dealing)
- Borrower’s Strategies in Foreclosure
- Lender’s Remedies (and Other Provisions in Loan Documents): What Worked and What Didn’t
- Relationship Among Co-Lenders: Identifying The Different Policies and Approaches of Co-Lenders Before a Deal Goes Bad
- So You Have a Problem Loan. How Do You Protect The Bank?
- How Did My Loan Go Into Default?
- Loan Workout Specialists
- Workouts: From Default to Resolution
- Due Diligence and Drafting Loan Documentation to Avoid Lender Liability
- Questionnaire: Template for Information on State Foreclosure Process
- Texas Real Property Foreclosure Law For Non-Judicial Sales of Property Secured By a Deed of Trust; Outline of Significant Issues