

Foreclosure and Workout of Commercial Mortgage Loans in New York

**IMPORTANT LEGAL UPDATE
FOR 2010**

**Learn About the
Latest Foreclosure
Issues in New York!**

Audio Conference • December 9, 2010 • 1:00 PM – 2:30 PM EST

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Presented by:

Raymond N. Hannigan, Esq.

Herrick, Feinstein LLP

Ross L. Hirsch

Herrick, Feinstein LLP

Raymond N. Hannigan, Esq.

- Partner in Herrick, Feinstein LLP
- More than 20 years of experience in representing domestic and international clients in complex real estate litigation in New York City
- Practice focuses on real estate litigation, foreclosure, workout and transactional real estate
- Represented Japanese billionaire in *Nihon Sangyo Kabushiki Kaisha v. Nakahara*, the celebrated battle for control of the Empire State Building
- J.D. degree, New York Law School

Ross L. Hirsch

- Concentrates his practice on complex commercial disputes, as well as real estate and employment-related litigation
- Coordinates a project through which Herrick provides representation to homeless families
- Prior to joining Herrick, he was an associate at Dechert LLP where he focused on investment-related disputes with a specific emphasis on proceedings against foreign governments and their instrumentalities
- J.D. degree, New York University School of Law
- B.A. degree, Amherst College

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While legal business is down in some areas, one practice area which is booming is New York's foreclosure and workout of commercial mortgage loans. New York foreclosures are becoming more complex and hard fought. From the massive foreclosure of Stuyvesant Town, to the highly-publicized foreclosure of One Madison Park, to the complex foreclosure of the Manhattan property where a crane fell, in March of 2008, understanding how to proceed in this challenging area is a critical skill for any commercial professional in New York today. This audio conference will take you through the steps of foreclosing a commercial loan in New York and discuss real world issues and problems that often arise. A special section will address some emerging trends, such as the enforcement of so called "bad boy guaranties," and will conclude with a discussion of workout, addressing various strategies that may be utilized when restructuring the non-performing commercial mortgage loan in New York.

AGENDA

Foreclosure Proceedings in New York

- Initial Considerations
 - Changing the Team
 - Initial Due Diligence Review
 - Due Diligence Before Deciding on a Course of Action
 - Choosing Which Path to Take: Workout or Enforcement Foreclosure
 - Some General Caveats: Email and Tone of Communications With the Borrower
- The Foreclosure Action
 - Commencing the Action
 - The "One Action Rule" Under RPAPL § 1301
 - Necessary Elements of the Foreclosure Complaint
 - Service of the Summons and Foreclosure Complaint
 - Appointment of Receiver
 - The Answer, Affirmative Defenses and Counterclaims
 - Two Motions Are Made in Every Foreclosure Action in New York
 - The Report of the Referee: Prepared by Lender's Counsel
 - The "Final Judgment of Foreclosure and Sale"
 - Notice and Advertising of Foreclosure Sale
 - The Foreclosure Auction
 - The Closing: Delivery of the Referee's Deed to the Successful Bidder

- Post-Foreclosure Proceedings
- The Receiver's Final Accounting and Discharge of the Receiver
- Seeking a Deficiency Judgment
- When Pigs Fly: The Surplus Money Proceeding

Special Foreclosure Topics

- Out of State Foreclosures
 - "One Action Rule"
 - Proceeding in Federal Court
 - Proceeding in State Court
 - Survey of Timing and Experiences
- Bad Boy Guaranties
 - Public Policy
 - Liquidated Damages
 - Heller Financial

The Workout Path

- Workout Negotiations: The Importance of a Clear Pre-Negotiation Letter
 - "Non-Economic" Goals of the Workout
 - Lender Liability Concerns: Avoid Sudden Moves
 - Borrower May Be Motivated by Tax Issues, "Recapture"
 - Key Elements of the Forbearance Agreement
 - "Deed in Lieu" vs. Consensual Foreclosure: Cleaning up Title

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