



AMERICAN
ASSOCIATION
of PRIVATE LENDERS

2020 RECAP

**FROM LENDER TO ASSET MANAGER, SPECIAL SERVICER,
AND FUND RAISER**



SPEAKER

Anthony F. Geraci, Esq.

CEO, Geraci LLP

a.geraci@geracillp.com



AGENDA: YOU WILL LEARN



1. Part I:

- Best practices to manage loan defaults
- How to navigate special servicing as COVID specific forbearances and modifications come to term

2. Part II:

- Best practices in investor relations and raising capital
- Effective capital strategies to raise effective and reliable capital sources
- Gain independence from Wall Street capital sources
- Best practices to avoid investor lawsuits, regulatory action, and securities fraud accusations

WHEN A BORROWER DEFAULTS – MAINTAIN FORMALITIES

1. **Formality is King**

- Great Recession Lawsuits (Oral Misrepresentation)

2. **Memorialize all calls in writing**

- E-mail immediately
- Send to Notice Address (Certified preferred)

3. **Enter into formal agreements ONLY which are signed by both sides**

DEMAND LETTER

- Loan documents will state whether notice is necessary
- Always a best practice even if no notice is required
- Sets the record for litigation

TYPICALLY 10 DAY DEMAND REQUIREMENT FORBEARANCE VS. MODIFICATION VS. DIL

1. **Forbearance = Waiver of Waive payments**

- Permit maturity lapse
- AAPL's position: if someone can demonstrate a hardship, you should help. AAPL has provided extensive guidance and forbearance request forms to send to your borrowers to help facilitate forbearance applications and when to provide them.

2. **Modification = Change of Loan Terms**

- More money/principal reduction
- Lower/increase interest rate
- Extend maturity date

3. **Deed in Lieu**

- Borrower is walking away and wants to give you keys to the property

ALL WORKOUT AGREEMENTS KEY PROVISIONS 1

1. Recitals

- Tell your story (Knight in Shining Armor)
- Can a judge quickly understand how you got here?

2. Reaffirmations of:

- Amounts Due
 - Itemize all amounts (principal, interest, charges, default interest, etc)
- Business Purpose of Loan / Use of Funds
- Occupancy
- Borrower's Authority to sign the agreement
 - Obtain Proper Resolutions and/or Consent
- That all other provisions remain in force





ALL WORKOUT AGREEMENTS KEY PROVISIONS 2

1. **Release of Claims**
2. **Define Future Defaults**
 - Other defaults under the loan documents (e.g. transfer of property)
 - Other creditors take adverse action
 - Seizure, repossession, or other adverse property action
 - Fraud or other misrepresentation
3. **Conditions Precedent to the Effectiveness of the Agreement**
 - Payment required (legal, processing, other charges)
 - Evidence of maintenance of taxes/insurance
4. **Obtain a title policy date down to determine whether other defects now exist**
 - Impermissible junior liens/mechanics liens
 - Unknown change of ownership

WHAT HAPPENS WHEN THESE OPTIONS DON'T WORK?

Look to foreclosure, breach of guaranty lawsuits, and other extraordinary relief to bridge the gap

“

FORECLOSURE

1. **Generally requires a monetary default and other loss mitigation options don't work**

2. **Judicial vs. Nonjudicial**

- Depends on the state you are in. Generally Deed of Trust vs. Mortgage, but some mortgage states also permit non-judicial foreclosures
- Might be strategic in states where you can do both (for example California with one-action rule)

NOTE: some states (like CA) have recently enacted new legislation that may affect both how you foreclose and your foreclosure strategy. Make sure you connect with counsel prior to starting a foreclosure action in any state to make sure you proceed correctly and with the right game plan in mind.

BREACH OF GUARANTY LAWSUIT

- Deficiency established at time of sale
- May seek a breach of guaranty suit against guarantor even if trustee sale
- Retain private investigator to conduct asset sale



EXTRAORDINARY RELIEF

1. **Seek receivership if economics make sense**
 - Generally do not
 - Courts reticent to provide
 - May be unavailable right now
2. **Pre-judgment attachment of assets**
 - Freeze bank accounts of borrower/guarantor

CAPITAL STRATEGIES

1. **2018-2019: Lenders raising money from their own capital sources decreased significantly.**
 - Wall Street capital became a more attractive solution.
2. **2020 shows us the need for independent capital sources from high net worth investors.**
 - Mortgage Funds & REITs
 - Whole & Fractional Notes / Co-Lender
 - Other Investment Products
3. **WHY?**
 - Independence
 - Better economics



SECURITIES COMPLIANCE IS A MUST

1. REGULATION D Rule 506(b) and 506(c) are still the PRIMARY regulations used to raise capital in Private Lending

- New SEC Rules have relaxed the definition on the accredited investor
 - Knowledgable Employees of the Fund (Includes Fund Managers)
 - Series 7/65/82 Holders
 - Spousal Equivalents
- SEC plans to refine/revise
 - Existing Securities Exemptions
 - Finders Fees Rules for Accredited Investors
 - SECURITIES EXEMPTION SLIDE

	Rule 506(b)	Rule 506(c)	Reg A+ Tier 1	Reg A+ Tier 2
Limits on Total Amount of Capital	• None	• None	• \$20M Per Year	• \$50M Per Year
State Law Preemption	• Preempted	• Preempted	• State Law Compliance Required	• Preempted, but the issuer must file state notices where required
Restricted Securities & Transfer Restrictions	• No Transfer & Minimum 1-Year Lock In	• No Transfer & Minimum 1-Year Lock In	• None	• None
Accredited Investor Verification	• Self Certification	• Accredited Investor Verification	• None	• Self-Certification
Offering Document Approval	• None	• None	• SEC Approval Required	• SEC Approval Required
Investor Limit	• 2000* Max 35 Non-Accredited Investors	• 2000*	• 2000* Accredited Investors • 500 Non-Accredited Investors	• None - but offering equity may become subject to '34 Act reporting requirements after a certain point
Ongoing Reporting	• Form D	• Form D	• Exit Report and Annual Approval Required	• Annual/Semi-Annual/Current Event Reporting; Audited Financials

**For Equity Based Investments*

INVESTOR / ASSET MANAGEMENT

Funds have concentrated on asset management and investor relations

- Clear and consistent investor communications
- Ensuring collateral management and borrower management is a priority
- Improving quality of borrower base



	Interest Rate	# of Records	Avg Loan Amount
Utah	13.60%	5	\$501,800
Michigan	12.11%	4	\$1,384,750
Colorado	12.00%	19	\$250,592
Kansas	11.99%	1	\$170,000
Missouri	11.99%	1	\$960,000
Texas	11.75%	79	\$341,939
Arizona	11.73%	29	\$415,133
Washington	11.00%	6	\$243,993
Maryland	10.93%	3	\$96,606
Ohio	10.68%	3	\$107,767
Virginia	10.65%	2	\$127,958
Georgia	10.52%	6	\$280,488
District of Columbia	10.50%	1	\$1,825,000
Montana	10.45%	2	\$195,000
Arkansas	10.10%	1	\$62,685
California	9.87%	114	\$1,038,906
Pennsylvania	9.79%	8	\$147,177
Illinois	9.51%	59	\$167,384
Massachusetts	9.50%	1	\$231,300
Idaho	9.50%	2	\$6,004,951
Delaware	9.45%	1	\$53,950
North Carolina	9.38%	3	\$73,172
Tennessee	9.25%	1	\$159,600
Indiana	8.90%	6	\$125,911

NATIONAL DATA Q1 2020

	Interest Rate	# of Reco	Avg Loan Amount
Tennessee	13.00%	1	\$3,000,000
Ohio	12.25%	2	\$480,000
Utah	12.00%	1	\$325,000
New Jersey	12.00%	1	\$475,000
Louisiana	12.00%	2	\$208,800
Texas	12.00%	44	\$198,374
Arizona	11.74%	20	\$494,525
Colorado	11.30%	10	\$409,507
Illinois	11.25%	4	\$949,238
Washington	11.12%	6	\$323,633
Oregon	11.00%	3	\$221,667
Georgia	10.96%	3	\$131,667
Iowa	10.50%	1	\$86,125
Florida	10.50%	6	\$416,333
South Carolina	9.94%	4	\$193,409
California	9.81%	133	\$1,066,849
New York	9.15%	2	\$499,400
Nevada	9.12%	3	\$1,975,000
Hawaii	9.00%	1	\$550,000
Maine	8.50%	1	\$510,000
Alabama	3.00%	2	\$5,000,001

NATIONAL DATA Q2 2020

	Interest Rate	# of Records	Avg Loan Amount
Michigan	15.13%	4	\$3,927,500
Pennsylvania	12.75%	1	\$170,345
Utah	12.67%	3	\$753,667
Colorado	12.07%	14	\$376,696
Arizona	12.03%	30	\$356,447
South Carolina	12.00%	4	\$180,425
Texas	11.97%	110	\$230,226
Arkansas	11.58%	2	\$1,151,500
Georgia	11.50%	2	\$243,750
Missouri	11.25%	1	\$380,000
Tennessee	11.12%	4	\$645,356
Connecticut	11.00%	3	\$244,567
Florida	10.97%	10	\$650,003
Indiana	10.88%	2	\$525,650
Oregon	10.75%	4	\$647,500
Nevada	10.50%	2	\$2,325,000
Washington	10.44%	9	\$1,185,526
Ohio	10.43%	4	\$66,950
Alabama	10.00%	4	\$1,026,167
Idaho	9.99%	1	\$1,050,000
Louisiana	9.99%	1	\$2,600,000
California	9.63%	268	\$921,624
Hawaii	9.50%	1	\$401,500
North Carolina	8.87%	6	\$1,337,452
New Jersey	8.60%	4	\$631,750
Illinois	8.27%	5	\$182,450
Massachusetts	8.25%	1	\$900,000
New York	6.50%	2	\$154,000

NATIONAL DATA Q3 2020

	Interest Rate	# of Records	Avg Loan Amount
Washington	16.99%	2	\$310,500
Texas	12.00%	9	\$191,982
Tennessee	12.00%	1	\$230,000
Colorado	12.00%	4	\$251,875
Utah	12.00%	1	\$314,500
Arizona	12.00%	1	\$216,742
Georgia	12.00%	2	\$146,050
Arkansas	10.00%	1	\$243,750
Florida	9.99%	1	\$249,250
California	9.82%	23	\$776,576
Hawaii	9.25%	2	\$900,000
Nevada	8.99%	1	\$763,750

NATIONAL DATA Q4 2020

	Interest Rate	# of Records	Avg Loan Amount
Michigan	13.62%	8	\$2,656,125
Utah	13.00%	10	\$540,950
Texas	11.90%	242	\$259,481
Colorado	11.87%	47	\$322,076
Arizona	11.85%	80	\$410,494
Washington	11.33%	23	\$638,978
Louisiana	11.33%	3	\$1,005,867
Tennessee	11.25%	7	\$853,004
Georgia	11.00%	13	\$219,810
Connecticut	11.00%	3	\$244,567
Maryland	10.93%	3	\$96,606
Ohio	10.92%	9	\$172,344
Arkansas	10.81%	4	\$652,359
South Carolina	10.64%	9	\$197,482
Oregon	10.42%	9	\$460,917
Pennsylvania	10.12%	9	\$149,751
California	9.73%	538	\$976,176
Idaho	9.66%	3	\$4,353,300
Illinois	9.52%	68	\$214,483
Nevada	9.41%	7	\$1,626,964
Indiana	9.39%	8	\$225,846
Hawaii	9.25%	4	\$687,875
Florida	9.16%	43	\$1,257,469
North Carolina	9.04%	9	\$916,025
New Jersey	8.98%	17	\$302,541
New York	8.37%	13	\$283,438
Alabama	7.67%	6	\$2,350,778

NATIONAL DATA ALL 2020

	Interest Rate	# of Records	Avg Loan Amount
Colorado	13.62%	53	\$893,601
Arizona	11.61%	63	\$457,902
Texas	11.54%	124	\$658,749
South Carolina	10.74%	12	\$182,501
Minnesota	10.52%	12	\$2,093,521
Virginia	10.47%	13	\$228,603
Utah	10.36%	17	\$2,684,382
Louisiana	10.30%	11	\$415,945
Georgia	10.09%	26	\$1,308,486
North Carolina	10.07%	12	\$2,033,875
Missouri	10.02%	14	\$1,710,054
California	10.00%	774	\$920,320
Indiana	9.78%	32	\$887,832
Michigan	9.77%	20	\$1,007,175
Pennsylvania	9.77%	28	\$417,389
Maryland	9.67%	22	\$382,905
Illinois	9.56%	237	\$248,566
Ohio	9.50%	46	\$753,649
Washington	9.48%	32	\$2,032,629
Nevada	9.35%	19	\$1,488,500
Florida	9.32%	94	\$455,590
Oregon	9.13%	18	\$1,916,311
New Jersey	9.05%	52	\$302,915
Connecticut	9.04%	13	\$2,995,373
New York	8.39%	27	\$7,600,404

NATIONAL DATA ALL 2019



2019

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Arizona	11.61%	63	\$457,902
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South Carolina	10.74%	12	\$182,501
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Colorado	11.87%	47	\$322,076
Arizona	11.85%	80	\$410,494
Washington	11.33%	23	\$638,978
Louisiana	11.33%	3	\$1,005,867
Tennessee	11.25%	7	\$853,004
Georgia	11.00%	13	\$219,810
Connecticut	11.00%	3	\$244,567
Maryland	10.93%	3	\$96,606
Ohio	10.92%	9	\$172,344
Arkansas	10.81%	4	\$652,359
South Carolina	10.64%	9	\$197,482
Oregon	10.42%	9	\$460,917
Pennsylvania	10.12%	9	\$149,751
California	%	538	\$5
Idaho	9.66%	3	\$4,353,300
Illinois	9.52%	68	\$214,483
Nevada	9.41%	7	\$1,626,964
Indiana	9.39%	8	\$225,846
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NATIONAL DATA
ALL 2019 VS 2020



QUESTIONS?

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