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Distressed Real Estate:

Legal, Business, and Tax Strategies for a Challenging Market

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Matthew is primarily known for his work on complex deals involving advanced tax considerations, such as Section 1031 Exchanges, the Qualified Opportunity Zone Program, Freeze Partnerships, Private Equity Mergers & Acquisitions, and Qualified Small Business Stock.

He has served as a trusted advisor for prominent real estate funds, executives of multinational corporations, venture capitalists, successful startup businesses, ultra-high net worth families, and clients seeking creative solutions to seemingly intractable problems requiring tax-focused analysis.

Areas of Concentration:

- Asset Protection
- Estate & Trust Administration
- Estate Planning & Structuring
- Family Business Planning & Succession
- International Taxation
- Tax Controversy & Litigation
- Tax Planning, Structuring & Compliance



Richard E. Weltman

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Richard E. Weltman is an experienced business and bankruptcy attorney with more than 47 years of practice, known for his strategic litigation, skilled negotiation, and practical problem-solving. He represents businesses, lenders, creditors, debtors, and entrepreneurs in matters involving financial distress, asset protection, restructuring, bankruptcy, and complex commercial disputes across a wide range of industries. Richard combines his extensive legal experience with a strong background in communications to deliver creative, results-driven solutions for his clients.

Areas of Concentration:

- Chapter 7
- Business Bankruptcy
- Personal Bankruptcy
- Adversary Proceeding Litigation
- Banks, Credit Unions and Other Lenders
- Business, Corporate & Commercial Law
- Business Divorce
- Litigation
- Real Property Transactions



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Ariel Holzer is Co-Chair of FRB's Real Estate Practice Group, where he advises clients on all aspects of commercial real estate, including acquisitions, development, financing, litigation, zoning, land use, and administrative law. Drawing on experience at leading law firms and as in-house general counsel, Ariel has worked on high-profile real estate transactions and developments, providing practical, strategic guidance on complex real estate matters.

Areas of Concentration:

- Commercial Real Estate
- Real Estate Development
- Zoning & Land Use
- Commercial Leasing
- Real Estate Litigation
- Real Estate Administrative Law



- Understanding today's distressed real estate market
- Loan defaults, workouts and restructurings
- Foreclosure, litigation and bankruptcy considerations
- Tax implications throughout the lifecycle
- Practical strategies for owners, lenders and investors
- Q&A

- Higher interest rates continue to pressure refinancing
- Loan maturities are creating liquidity challenges
- Office and certain retail sectors remain under stress
- Property values have shifted dramatically
- Distress creates both risks and opportunities for owners, lenders and investors



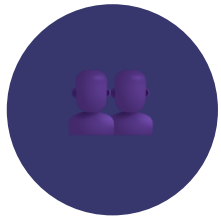
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Setting the Stage: The Distressed Real Estate Landscape

What Makes a Property “Distressed”?

- Inability to meet debt service obligations
- Loan maturity without viable refinancing options
- Covenant or other nonmonetary defaults
- Declining occupancy or operating cash flow
- Reduced property value
- Deferred maintenance or capital expenditure shortfalls

Different Stakeholders, Different Objectives



Property Owner

- Preserve ownership
- Improve liquidity
- Avoid enforcement



Lender

- Protect collateral
- Recover principal
- Minimize losses



Investor or Buyer

- Acquire the property or debt at a discount
- Reposition or recapitalize the asset
- Manage acquisition risk



Guarantor

- Limit personal exposure
- Resolve guaranty obligations
- Avoid triggering carve-outs

Key takeaway: Every distressed transaction involves competing objectives.

- Financial stress
- Loan default
- Workout or restructuring
- Foreclosure, deed-in-lieu or receivership
- Litigation or bankruptcy
- Sale, recapitalization or recovery

- Loan modifications
- Debt forgiveness
- Foreclosure
- Deed-in-lieu transactions
- Bankruptcy
- Distressed asset sales
- Partnership or ownership restructurings

Tax planning should begin before the parties select a legal or business strategy.



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Loan Defaults, Workouts & Restructurings

- Payment defaults
- Maturity defaults
- Financial covenant breaches
- Nonmonetary defaults
- Cross-default provisions
- Notice and cure rights

- Enter into a forbearance agreement
- Extend or modify the loan
- Require a partial paydown or additional collateral
- Sell the claim or lender position
- Seek appointment of a receiver
- Commence foreclosure, receivership, or litigation

Key question: Which path best preserves value and maximizes recovery?

- Maturity extensions
- Interest-rate modifications
- Temporary interest-only periods
- Partial principal paydowns
- Additional collateral or guarantees
- Equity participation or “equity kickers”
- Discounted loan payoffs

Negotiating Before Litigation

Pre-Negotiation Agreements

- Establish ground rules
- Preserve existing rights and remedies
- Prevent unintended modifications
- Encourage truth and transparency

Standstill Agreements

- Temporarily pause enforcement (forbearance)
- Create space for due diligence and negotiations
- Establish milestones and reporting requirements
- Preserve the lender's ability to enforce

- Special servicers operate under servicing standards and contractual constraints
- Pooling and Servicing Agreements may limit flexibility
- Borrowers may face additional approval requirements
- Negotiations may take longer than balance-sheet loan workouts
- Proposed modifications must satisfy servicing and investor requirements — optics matter

- UCC Article 9 foreclosure
- Receivership
- Enforcement against guarantors
- Cash-management and lockbox rights
- “Bad boy” guaranty carve-outs
- Litigation to preserve or recover collateral

- Tax consequences could be unintended
- Do changes constitute a “significant modification”?
- Deemed exchange of original debt for new debt
- Original issue discount considerations
- Gain or loss recognition
- Cancellation of debt income



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Foreclosure, Deed-in-Lieu and Real Estate Litigation

- Judicial and nonjudicial processes vary by state
- Loan documents and applicable law determine available remedies
- Notice, cure and procedural requirements must be followed
- Timelines may be affected by borrower defenses or litigation
- Deficiency and redemption rights vary by jurisdiction
- Existing leases, liens and title issues must be evaluated

Deed-in-Lieu of Foreclosure

Potential Advantages

- Faster resolution
- Reduced legal expense
- Greater certainty
- Avoidance of a prolonged foreclosure process

Key Negotiation Points

- Release of borrower and guarantor liability
- Treatment of junior liens
- Environmental indemnities
- Property condition and operating obligations
- Transfer taxes and closing costs
- Tax consequences of the transfer

- Take control of the property
- Collect rents and other income
- Pay operating expenses
- Preserve and maintain the asset
- Address urgent repairs
- Negotiate or administer leases
- Prepare the property for sale or foreclosure

A receiver may be authorized to perform these functions.

- Lender liability claims
- Partnership or joint venture disputes
- Ownership or management deadlocks
- Mechanic's liens
- Construction disputes / lis pendens
- Lease defaults
- Tenant claims and landlord-tenant disputes
- Claims priority disputes among creditors

Core Bankruptcy Issues

- Automatic stay may halt foreclosure and litigation
- Secured lenders may seek relief from stay
- Cash collateral use can become a central dispute
- Single Asset Real Estate cases are subject to special rules
- Debtors may seek to sell property under Section 363
- Buyers may acquire assets free and clear of liens by court order

Section 363 Sale Considerations

- Stalking horse bidder may establish initial purchase terms
- Risk of competing bidders submitting higher or better offers
- Stalking horse faces the risk of being outbid
- Bid protections may include break-up fees and expense reimbursement
- Sale order should address liens, claims, good-faith valuation and successor-liability risks

- A foreclosure or deed-in-lieu may be treated as a taxable disposition
- Recognition of gain or loss
- Cancellation of debt income
- Basis adjustments
- Different treatment for recourse and nonrecourse debt
- State and local transfer tax considerations



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Tax Implications Across the Distress Lifecycle

Cancellation of Debt Income

General Rule

- Debt that is forgiven or discharged may generate taxable income under IRC Section 61(a)(12)

Common Triggers

- Principal forgiveness
- Discounted loan payoffs
- Short sales
- Loan settlements
- Foreclosure
- Deed-in-lieu transactions
- Certain loan modifications

Key COD Exclusions and Planning Provisions

IRC Section 108 May Apply To

- Discharge in bankruptcy
- Discharge while the taxpayer is insolvent
- Qualified real property business indebtedness
- Certain qualified farm indebtedness

Important Tradeoff

- Excluded COD income may require reduction of tax attributes, including net operating losses, tax credits, capital loss carryovers and asset basis

Foreclosure and Deed-in-Lieu Tax Mechanics

Recourse Debt

- Gain or loss based on the property fair market value
- Separate COD income for discharged debt exceeding fair market value

Nonrecourse Debt

- The full outstanding debt is generally included in the amount realized
- Generally produces gain or loss rather than separate COD income

Calculation inputs: adjusted tax basis · fair market value · outstanding debt · transaction costs

Relevant Changes

- Interest-rate reductions
- Maturity extensions
- Changes in payment timing
- Changes in collateral or guarantees
- Changes in obligor or recourse status

Potential Consequences

- Deemed exchange of the old debt for new debt
- Gain or loss recognition
- Original issue discount
- COD income

Changes to debt terms may constitute a significant modification under Treasury Regulation Section 1.1001-3.

- Allocation of COD income among partners
- Partner-level insolvency analysis
- Capital account maintenance
- Minimum gain chargebacks
- Debt allocation under IRC Section 752
- Reduction in partner basis
- Shifts in ownership economics during a workout

- Evaluate tax consequences before finalizing the business structure
- Consider the timing of dispositions and debt relief
- Analyze installment-sale treatment
- Explore entity or ownership restructuring
- Evaluate Section 1031 exchange eligibility
- Consider Opportunity Zone planning when applicable
- Coordinate federal, state and local tax consequences

Distress Lifecycle: Tax Events and Planning Levers

Stage	Potential Tax Event	Planning Lever
Loan workout	Significant debt modification	Structure terms to manage deemed-exchange consequences
Debt reduction	COD income	Evaluate IRC Section 108 exclusions
Foreclosure	Gain, loss or COD income	Analyze recourse versus nonrecourse treatment
Deed-in-lieu	Taxable disposition	Model tax consequences before transfer
Bankruptcy	Debt discharge	Coordinate exclusions and attribute reduction
Asset sale	Gain recognition	Evaluate installment sale or Section 1031 planning
Partnership restructuring	Basis and allocation changes	Model partner-level consequences



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Practical Strategies & Risk Management

- Monitor debt-service coverage, occupancy and maturity dates
- Review loan documents before communicating with the lender
- Identify notice and cure rights
- Preserve accurate financial and property records
- Evaluate refinancing, sale and recapitalization options early
- Engage legal, financial and tax advisors before default
- Model the tax consequences of each alternative

Checklist for Lenders and Distressed Investors

- Review loan documents, collateral and guarantees
- Confirm lien priority and title
- Analyze leases, tenant defaults and SNDAs
- Evaluate environmental and property-condition risks
- Review pending litigation and mechanic's liens
- Assess bankruptcy and foreclosure risks
- Model acquisition and enforcement costs
- Address tax consequences before acquiring the property or debt

Why Cross-Disciplinary Planning Matters

- Real estate counsel
- Creditors' rights and bankruptcy counsel
- Tax counsel
- Financial advisors
- Property managers
- Owners, lenders and investors

Key takeaway: Legal, business and tax analysis should occur together — not sequentially.



Distress can create both risk and opportunity



Early action preserves negotiating leverage and strategic options



Loan enforcement, property rights and tax consequences are interconnected



The structure of a workout or disposition can materially affect the outcome



Cross-disciplinary planning helps preserve value and reduce risk



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Question & Answer

Contact Me Anytime

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