

AMERICAN BAR ASSOCIATION
SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW
13TH ANNUAL SYMPOSIUM, APRIL 26-28, 2002
SAN FRANCISCO, CALIFORNIA

REPRESENTING JOINT VENTURES IN MORTGAGE
FINANCING TRANSACTIONS

DISCUSSION OUTLINE
(PRESENTER: EVERETT S. WARD)

I. Identifying the Client: The Importance of a Proper Engagement Letter

- A. Cover the Scope of Representation.
- B. Define counsel's role in the event a dispute arises between the joint venture partners.

II. Understanding the Client's Business Objectives: The Key to Effective Representation

- A. Counsel must understand the business purposes of the joint venture and the business objectives of each of the joint venture partners. In particular, counsel should review and understand the provisions of the joint venture organizational documents, including buy-sell and change of control provisions.
- B. Counsel should ascertain whether the borrower's organizational documents contain single-asset entity and bankruptcy remoteness provisions sufficient to satisfy the lender's underwriting requirements.

III. Managing the Due Diligence Process: Herding Cattle or Herding Cats?

- A. Counsel must take a proactive role in managing the due diligence process. Counsel's role will include providing information and facilitating the due diligence process. Counsel also should hold regular conference calls to monitor status.
- B. Counsel should prepare proper authorizing resolutions.

IV. Negotiating the Loan Documents—Key Considerations

- A. Counsel must pay particular attention to the following issues in negotiating the terms and provisions of the loan documents:
 - i) recourse liability;
 - ii) limitations on transfers of property or entity ownership interests;
 - iii) restrictions on entity change in control;
 - iv) financial reporting covenants;
 - v) notice and cure periods;
 - vi) collateral substitution rights;
 - vii) defeasance provisions;
 - viii) notice provisions.
- B. Counsel must obtain all information necessary to prepare the opinion letter(s) for the transaction.