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Legal Precision Meets Opportunistic Investing: How Savvy Real-Estate Investors Can Maximize Returns in Today's Distressed Market

For forward-thinking real-estate investors, mortgage-default litigation can unlock off-market assets, compress deal timelines, and capture risk-adjusted alpha. Indeed, investors can convert distressed credit into dependable, non-correlated returns. The mechanism for unlocking this value often includes the "hammer" that is foreclosure litigation. But it is not that easy.

BY CHRIS ZONA
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In today's climate of rising interest rates, stretched borrower balance sheets, and starkly uneven recovery across asset classes, defaulted loans have emerged as a prime hunting ground for investors with legal acumen. According to the Mortgage Bankers Association, nearly $1 trillion in outstanding commercial mortgages will mature in 2025 — a number that is expected to rise in 2026 — and, at the same time, delinquencies are climbing far above historical norms. This has created a significant refinancing challenge and is increasing the divide between trophy assets and distressed properties.

Capturing this opportunity requires more than a blunt foreclosure "hammer" — it demands a surgical enforcement playbook that begins with pinpointing enforceable covenants, moves through a layered notice campaign, ensures lien perfection via UCC-1 filings, and remains open to value-preserving workouts such as deeds-in-lieu, short sales, and forbearance agreements with equity kickers. In an era of uneven recovery and rising delinquencies, investors who marry legal precision with creative workout options will unlock off-market opportunities and maximize risk-adjusted returns.

For forward-thinking real-estate investors, mortgage-default litigation can unlock off-market assets, compress deal timelines, and capture risk-adjusted alpha. Indeed, investors can convert distressed credit into dependable, non-correlated returns. The mechanism for unlocking this value often includes the "hammer" that is foreclosure litigation. But it is not that easy. And there are steps that

need to be taken leading up to any final action to ensure the process is as streamlined and efficient as possible.

The foundation of an enforcement playbook lies in first identifying the covenants that an investor wishes to lean on to accelerate cures, compel workouts, or trigger foreclosure. In most loan documents there are covenants relating to mortgage and interest payments, tax and insurance payments, minimum debt service coverage ratio (relative to net operating income), maximum loan-to-value ratio, operating and maintenance requirements, and certain reporting obligations, any of which can offer an avenue to advance a strategy that a distressed investor wishes to employ.

After identifying the covenants, the next step is a layered notice campaign. First, this involves a formal Notice of Default (NOD) to the borrower through formal, verifiable service (*i.e.*, no emails or phone calls). It will generally include: 1) the specific default — the specific covenant(s) in the loan documents and nature of the breach; 2) the relevant cure period and method; 3) a specified service method that matches the loan documents and has verifiable proof; and 4) any supporting documentation. As the cure period is nearing its end, it is wise to send a follow-up notice reminding the borrower of the deadline and what is required to cure.

Once the cure period lapses, the next step is to accelerate the debt. So long as allowed by the loan documents (it likely is), this entails formal service of a Notice of Acceleration (NOA). Therein, you will want to: 1) reference the NOD and any follow-up notices or reminders; 2) reference the cure period and confirm the borrower's failure to cure; 3) recite the acceleration date and the total amount due (including principal, interest, and relevant fees and expenses); 4) state clearly that the entire amount is "immediately due and payable"; and 5) provide payment instructions. At or around the same time as the NOA, you also want to consider filing a UCC-1 continuation and amendments (if allowed to expand collateral).

At this point, you are ready to provide formal Notice of Intent to Foreclose (or Sell). The timing and structure of this will depend on the jurisdiction in which the property is located. In a judicial foreclosure state (like New York), this notice should (or must) be filed with sufficient time before the complaint to accommodate any statutory requirements. In a non-judicial state, this notice — as well as a specific notice period — is mandated.

Now that your notices have been provided and all relevant cure windows have closed, it is time to proceed to the "hammer": either foreclosure litigation (with *lis pendens* filed simultaneously) or a sale (with whatever requisite sale notices).

That said, along the way in this process, there are opportunities to engage the borrower to potentially avoid having to use the "hammer." For example, a deed-in-lieu of foreclosure—or "friendly foreclosure" — transfers a clean title to the lender in exchange for a blanket waiver of deficiency

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claims. Another example is a short-sale or broker-led auction. Because this path can unlock premium bids, there is potential residual upside that can be used to incentivize cooperation from the borrower.

If your investment strategy does necessitate a "takeover" of the property, there are additional options whereby you can structure a long-term solution with the borrower. One avenue is entering into a forbearance agreement wherein you structure some sort of debt reduction — whether that be adjusting the payoff period, changing the interest rate, or deferring a portion of payments. In return, the investor has myriad options that can include taking an equity position in the property, creating profit-participation rights based on net-income or cash-flow targets, or agreeing to convert existing or future debt into equity based on the occurrence of future events. Of course, these options should always be coupled with stringent enforcement mechanisms.

In an investment landscape defined by narrowing spreads and heightened credit risk, a comprehensive enforcement playbook is the differentiator for real-estate investors looking to turn conflict into capital. By starting with covenant identification, deploying meticulous notice campaigns, perfecting security interests and being prepared to litigate, creditors build an unassailable path to control. This is even more effective when paired with negotiated exits and strategic workouts through friendly foreclosures, short-sales or broker-led auctions, or equity-enhanced forbearance agreements. Whether you wield the foreclosure hammer or the restructuring scalpel, this integrated playbook can transform borrower distress into dependable, non-correlated returns that safeguards capital and unlocks future appreciation.

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Chris Zona is a Partner in the Litigation Department of Mandelbaum Barrett PC in New York. Contact him at czona@mblawfirm.com.

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