



FARELLA BRAUN + MARTEL LLP

Buying Hotels Out of Bankruptcy

(Or Other Real Estate Assets)

Opportunities and Pitfalls

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Program Outline

- The Bankruptcy Process: An Overview
- The Bankruptcy Tool Box: What's Possible
- Bankruptcy Asset Sales
- Tactics: Chapter 11 Plan vs. Asset Sale
- What's Next



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Setting the Table

- Bankruptcy Basics
- The Bankruptcy Process

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Bankruptcy Basics

- Chapter 7 vs. Chapter 11 Reorganization
- Key Bankruptcy Powers
 - Automatic Stay and Breathing Room
 - Debt Payment Moratorium
 - Debt Restructuring
 - Unique Bankruptcy Powers
- Legal Process with Tools to Implement Business Solutions

The Bankruptcy Process

- Beginning with the End in Mind
- First Aid
- Stabilization
- Recovery

Prebankruptcy Planning

- Can this Patient be Saved?
- Is the Opportunity Worth the Transaction Costs?
(The Expense to Go Broke)
- Is There Enough Cash to Get Through Bankruptcy?
- What Are the Alternatives?

Getting Through

- Bankruptcy Automatic Stay Stops Foreclosure, Litigation, Collection Action
- Use of Cash Collateral
- New Borrowing: “DIP” Finance
- Debt Payment Moratorium
- Rejecting Contracts
- Setting Aside Unperfected Liens and Recovering Pre-Bankruptcy Transfers

Getting Out

- Relief from the Automatic Stay and Foreclosure
- Selling the Assets: 363
- Confirming Chapter 11 Plan
- Converting to Liquidation

Bankruptcy Debt Relief

- Waive Defaults
- Extend Maturity
- Modify Interest Rate, Payment Terms
- Eliminate Due on Sale Provisions and Other Property Transfer Restrictions
- Pay Junior Secured or Unsecured Debt at Deep Discounts or Convert to Equity

Special Bankruptcy Powers

- Selling Assets Free of Undersecured Debt
- Selling Assets Under a Plan Without Paying Transfer Taxes
- Rejecting Management Agreements and Other Executory Contracts and Leases
- Transferring “Non-Transferable” Rights
- Using Existing Secured Debt as Involuntary Purchase Financing

Bankruptcy Asset Sales: 363

- Sale Free and Clear of Liens and Interests
- “Good Faith” Purchaser Gets Clean Title
- “Stalking Horse Bidder”
- Limited Representations and Warranties
- Bid Procedures Order and Auction
- “Highest and Best” Offer Wins: Apples vs. Oranges

Key Issues in Asset Sales

- Confidentiality Agreement as Lock Out
- Due Diligence Critical in View of Sales with Limited Reps & Warranties
- Bidder Qualification
- Break Up Fees and Overbids
- Clean Offers vs. Contingencies
- What's "Highest," What's "Best"
- Reducing Uncertainty

Tactics: Plan vs. Asset Sale

- Certainty of Buyer vs. Overbid Risk
- Default Cure and Debt Reinstatement
- Vagaries of Chapter 11 Plan Voting
- Plan Confirmation Requirements
- Transfer Taxes
- Modifications of Secured Debt
- Sales Free of Undersecured Debts
- “Pre-Negotiated” Plans

Future Webinars

- March 31, Guaranties of Debt in Default: What to do Now (for Guarantors and Creditors)
- April 14, Working Out Problem Hotel (and Other Commercial Real Estate) Loans
- April 28, Understanding Tax Impacts of Foreclosure and Debt Restructuring: Better Deals (with Uncle Sam's Money)

Webinar Presenters

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