BENJAMIN S.
CROCKER
SYMPOSIUM 2009

ADVANCED WORKOUTS:
SURVIVING TRANCHE WARFARE

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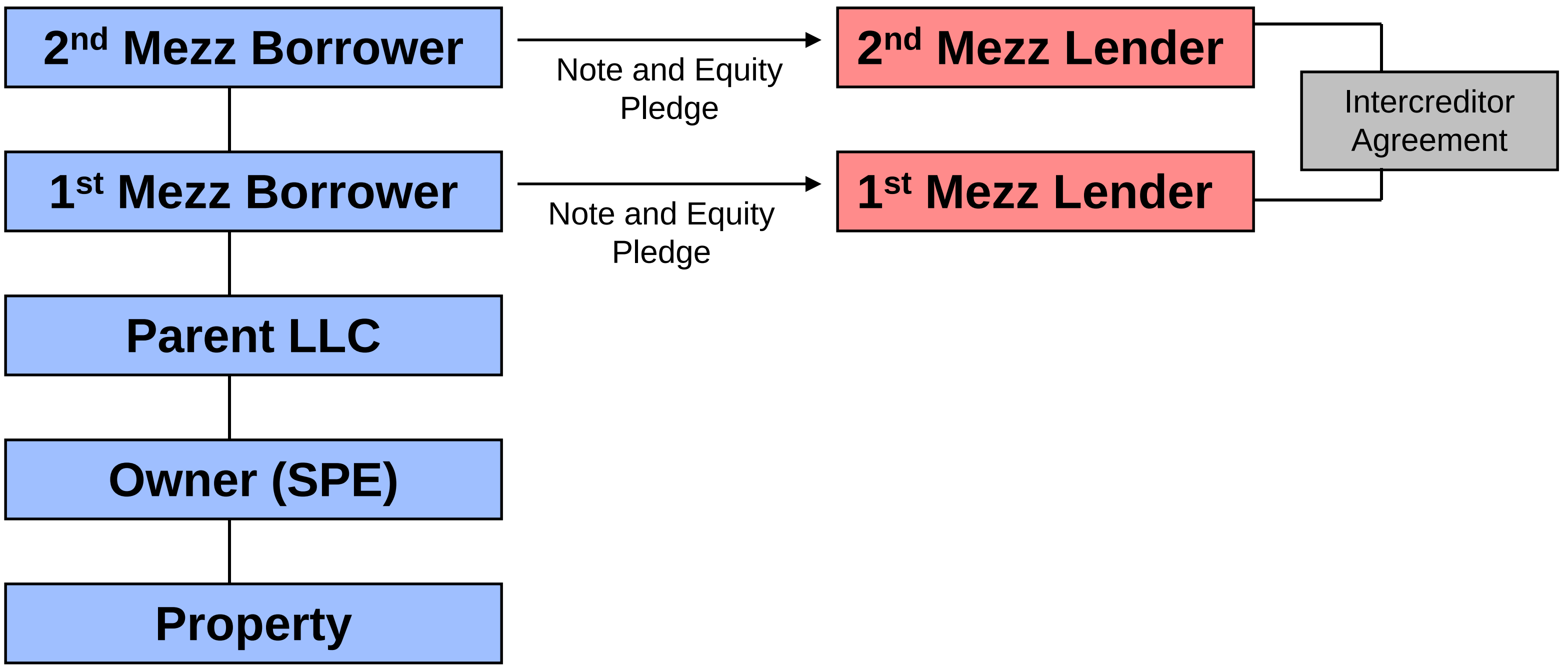
SIMPLE MEZZANINE LOAN STRUCTURE



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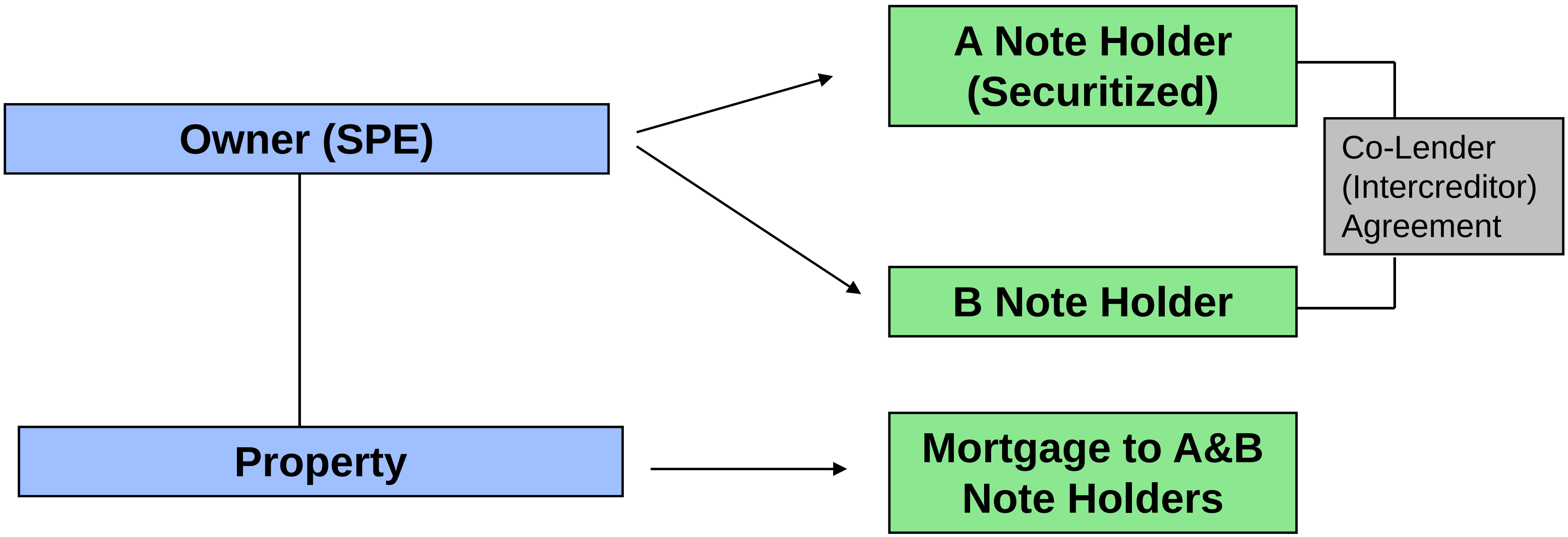
SIMPLE A/B LOAN STRUCTURE



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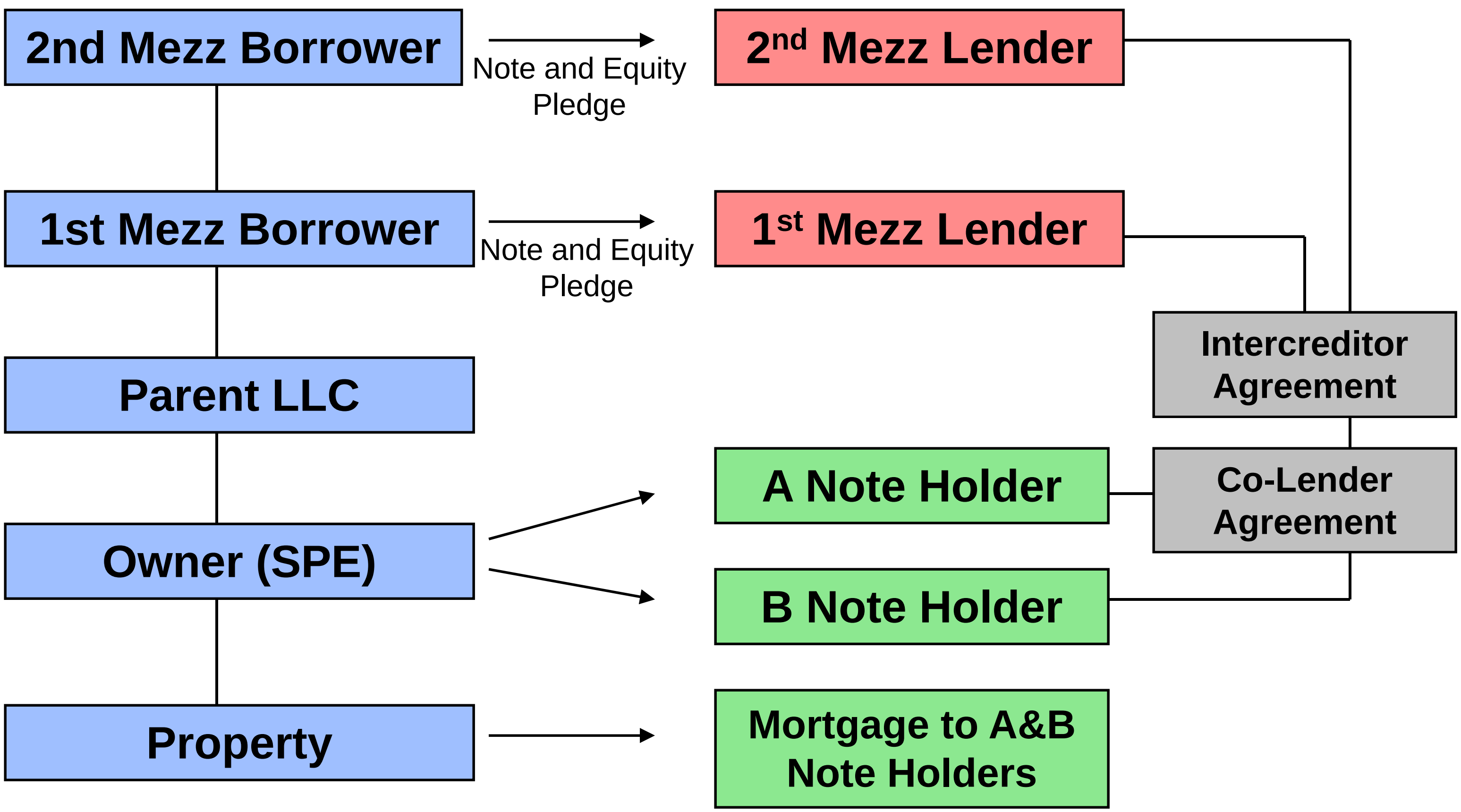
COMBINED A/B AND MEZZANINE LOAN STRUCTURE



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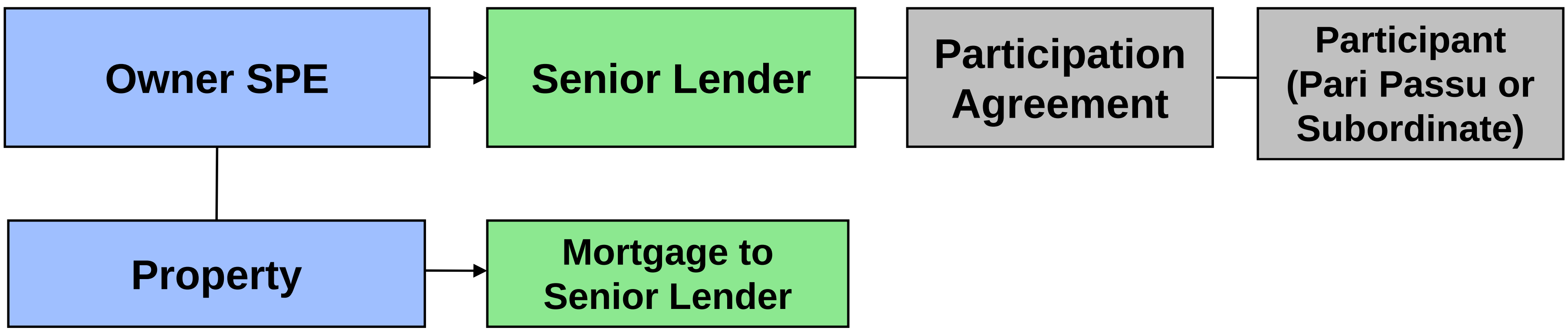
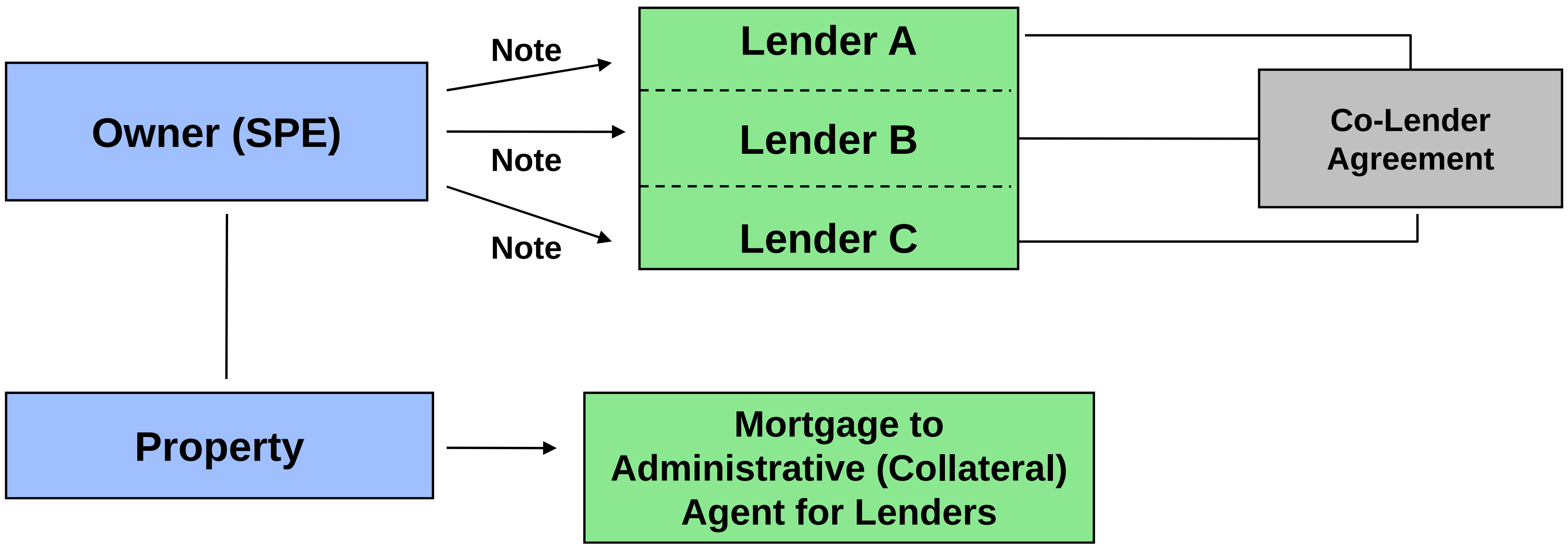
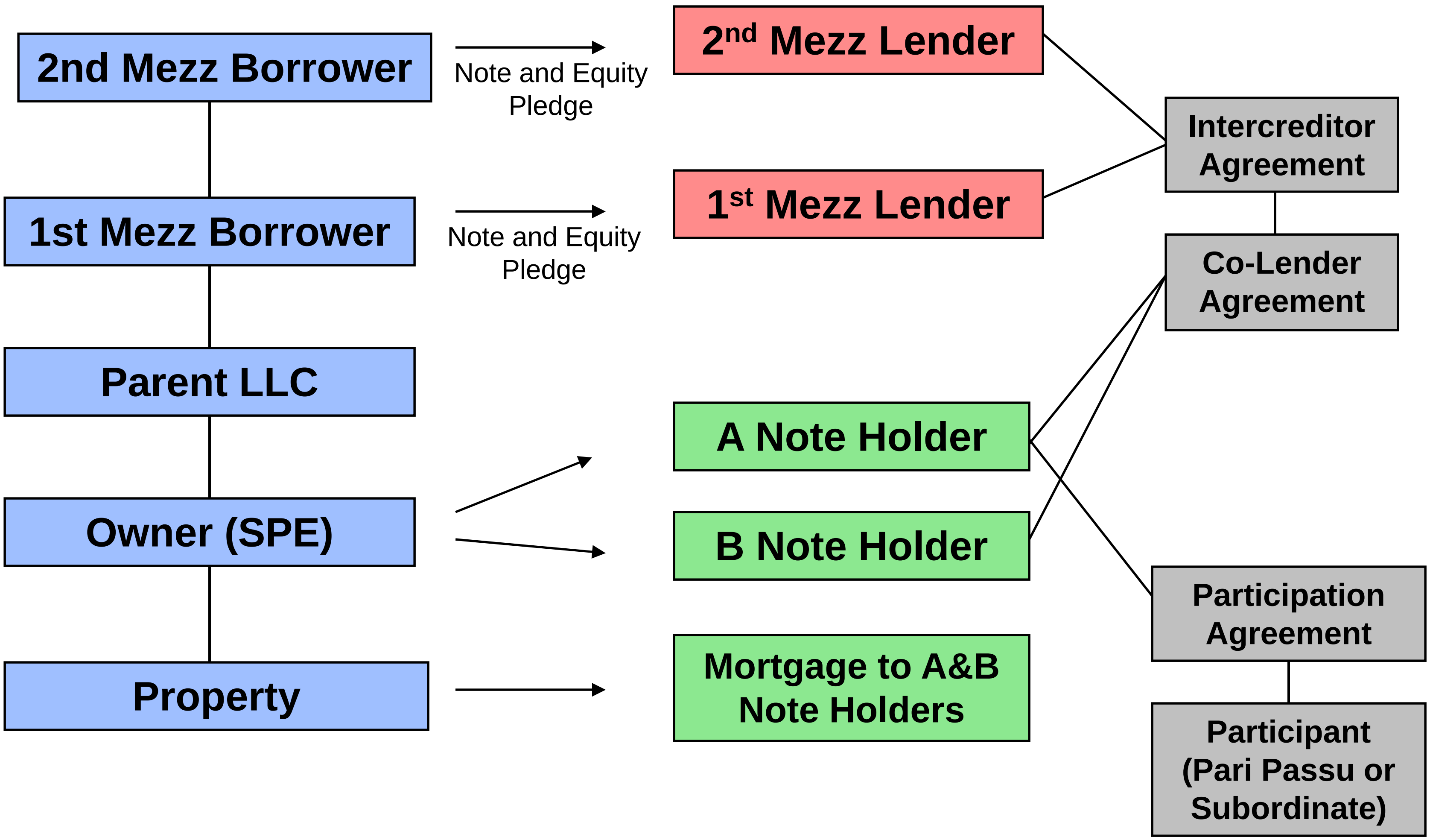
PARTICIPATION STRUCTURE



SYNDICATED LOAN STRUCTURE



COMBINED A/B, MEZZANINE LOAN AND PARTICIPATION STRUCTURE



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Who is Your Lender?

- The lender in a CMBS is split between the bondholders, who have the beneficial interest in the A note cash flow, and a “servicer” who services the loan – thus, one must determine who “services” an A/B Note.
  - Co-Lender Agreement (most provide that the A-Note holder will service prior to securitization on behalf of both the A and B piece)
  - Once securitized, the servicer under the pooling and servicing agreement (the “PSA”) will service the A/B notes. This servicer is referred to as the “master servicer.”
- If an event of default occurs that materially effects the A/B loan (or if the master servicer determines that such a default is imminent), the servicing is handed over to a “special servicer”.
  - The PSA typically says who will act as SS with respect to loans in the pool.
  - In most large A/B loans, the SS may be replaced by the B note holder.

Key Considerations

- Diligence is key:
  - Know the players. If you are the lender, know the borrower and any other obligors, guarantors, etc. If you are a lender or the borrower, know the lender(s), and their appetite to own assets and ability to invest new cash
  - Reputation and relationships
  - Ability to properly manage the asset
  - Net worth and liquidity
- Know the asset.
  - Property in question
  - Asset class
  - General market (demographics, supply demand dynamics, cap rates, terms of material leases, rental rates, vacancies, growth, absorption, etc.)

Key Considerations

- Know the documents – are they complete? You must have a very clear understanding of all of the relevant terms.
  - In many deals you may have missing documents, incomplete documents or discrepancies in the documents
  - Important to flush that our early. There may be hidden leverage as a result.
- What are the likely investor expected returns and what leverage is available? How would a new buyer finance a purchase? What terms are available and what is the total likely cost of capital?
- The three most important components:
  - Find a means to have real confidence in any valuation. Otherwise you will not be able to work with other creditors or devise a solid plan.
  - Determine and factor-in the relative bargaining powers (leverage) of the various participants.
  - Establish a realistic "goal" and "be sure that you are clear in your objectives" (and bring in talent where needed).

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Keeping the Right Perspective

- Be subjective, forward looking, and "first, do no harm" (dual track every approach, with the impact on your own position and those of other parties).
- Are there specific steps that need to be take to preserve the asset (condition of property, retaining leases, etc.)?
- Is more capital required? Where will it come from?
- If it becomes REO, who will manage the asset?
- Don't hesitate to declare an event of default (its good way to get the borrower's attention) – but be sure you have the advice of counsel at every step (especially in California to avoid losing collateral or deficiency claims)

What Are Your Options?

- Sell the Loan to an opportunistic investor
- Forbearance
- Workout
- Restructuring
- Deed in Lieu
- Foreclosure
- Receivership (or get control as a non-equity manager)
- Bankruptcy – are there “cram down” risks?