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**GUIDE TO REAL ESTATE WORKOUTS WITH KEY FORMS**

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## BACKGROUND, EDUCATION AND PRACTICE

John M. Nolan is a shareholder in the Real Estate Development and Investments Practice Group of the Dallas office of Winstead PC. He is the former head of the Real Estate Section and a current member of the Firm's Executive Committee. His practice involves representation of all facets of commercial real estate including extensive representation of financial institutions, private and institutional equity funding and structure, acquisitions and sales, development and construction, loan restructures and workouts.

John is a graduate of The University of Texas at Austin, receiving his B.A. in 1970, graduating cum laude, and his J.D. in 1973. He earned his L.L.M. in taxation in 1976 from George Washington University. He is a member of both the State Bar of Texas and the Bar of the District of Columbia as well as The American College of Real Estate Lawyers, The Real Estate Council, Texas College of Real Estate Attorneys and the College of the State Bar of Texas (Fellow). He is a Life Fellow of both the Texas Bar Foundation and Dallas Bar Foundation. John was Chairman of the 2003 Mortgage Lending Institute.

John has authored numerous articles on real property, finance and development matters, and is a frequent speaker at numerous seminars including the Mortgage Lending Institute, the Advanced Real Estate Course, the Advanced Real Estate Strategies Course, CLE International, Dallas Bar, and the Annual Real Estate Law Seminar of South Texas College of Law on a variety of real estate, lending, developmental, environmental and transactional topics. John is a former member of the Board of Directors and Executive Committee of the American Lung Association. He has served on the Board of Directors of The Real Estate Council, the Dallas 60 and is both a Keeton Fellow and a Chancellor's Council (Dean's Roundtable) member through the University of Texas. He is a member of the Salesmanship Club of Dallas and its Golf Board Board of Directors, and was the 2008 Byron Nelson Golf Championship Chairman. He has been named in "Best Lawyers in America" and "Texas Super Lawyers" and Lawdragon 500 Dealmakers.

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Brian T. Morris is a shareholder in the Dallas office of Winstead PC where he has practiced since 1987. Brian is the past Practice Group Leader for the Firm's Dallas Commercial Litigation Practice Group. Brian's practice focuses primarily on real estate litigation and financial services litigation. Brian has tried numerous cases in state and federal court and tried numerous arbitrations. His experience includes the representation of lenders, servicers, owners, developers, title companies, sellers, purchasers, and landlords, and includes the defense of class actions, including consumer class actions, general contract and business disputes, the representation of lenders in connection with real and personal property foreclosures, workouts, the defense of usury claims and lender liability claims including claims for fraud, statutory fraud, breach of fiduciary duty, breach of duty of good faith and fair dealing, tortious interference and wrongful foreclosure.

Brian is a co-author (with Mike Baggett) of a three volume Texas Practice Guide: Real Estate Litigation, published by West in 2002 and updated annually. Brian also co-authored several sections of Mike Baggett's Texas Foreclosure Law & Practice. Brian was a contributing author for the Texas Foreclosure Manual, 3d Edition (2014) published by the State Bar of Texas. Brian is a frequent speaker on several topics involving financial services litigation, real estate litigation and loan workouts. Brian has been named a Texas Super Lawyer and is AV rated.

Brian obtained a BA from Vanderbilt University in 1984. Brian obtained a JD from the Cecil C. Humphrey's School of Law at the University of Memphis where he was a member of the Law Review.

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## **GUIDE TO REAL ESTATE WORKOUTS WITH KEY FORMS**

### **I. INTRODUCTION**

This presentation is a collaborative effort of Winstead, not just the authors.<sup>1</sup> It is our hope and intent to provide a broad overview of the workout process with focus on both the drafting of key provisions and the workout and litigation strategies employed at each step of the process. At Winstead, our approach is always to involve transactional, litigation and bankruptcy attorneys in workouts from the outset. Counsel has to always understand from the outset that the process is fluid, and at times, unpredictable. It cannot be reduced to a single presentation or set of forms. Planning, understanding the personalities involved, the property and the collateral, the loan documents and the loan file and history are each critical. Counsel cannot properly represent a client or develop a strategy piecemeal, and although the business goal may be to settle and resolve through a "business solution," that goal may not be achievable, or if achievable, achievable only through the litigation or bankruptcy process. To effectively undertake and complete a workout, you have to constantly keep each front in focus. This presentation is from the perspective of the Lender, but we hope that the presentation, which is in outline form and the attached forms and materials are relevant and useful to any party in a workout whether, Lender, Borrower or Equity Source.

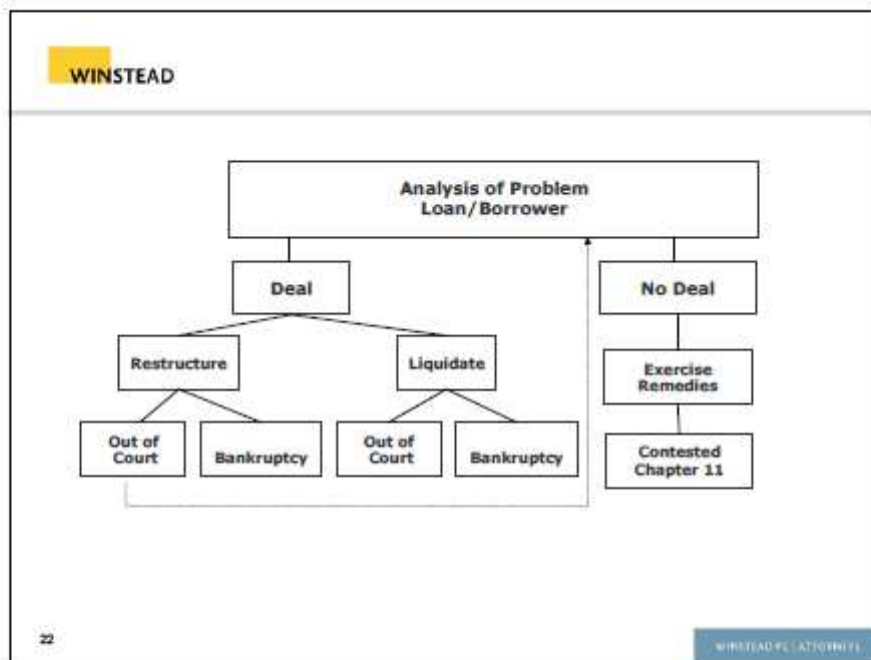
### **II. PROCESS**

1. It's imperative to start the process with an analysis of the various options available to your client and to develop an approach for resolution. Whether Lender or Borrower, each

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<sup>1</sup> The authors would like to especially thank Phil Lamberson and Tom Helfand for their invaluable assistance.

party must understand the other side's perspective and "hot buttons." As a Lender, there is also the overriding analysis of Lender Liability concerns. Set forth below is the initial analysis which should be undertaken at the same time as counsel is undertaking a review of the loan documents, loan file and collateral. There is no substitute for appropriate and thorough due diligence and no "theory" for resolution is a substitute for a clear understanding of (i) the contractual relationship established by the loan documents (and potentially the course of conduct of the parties) and (ii) the specific issues relating to the collateral. It is a fact intensive process.



Also available as part of the eCourse

[Bankruptcy, Workouts and Restructurings in the Real Estate Sector](#)

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