

# Buchalter

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## DOCUMENTATION **AND COLLECTION** OF A LOAN SECURED *BY MULTIPLE PROPERTIES*

John L. Hosack, Esq., Jason E. Goldstein, Esq. Mr. Joffrey Long and Mr. Rick Rodriguez

Buchalter  
12:00 Noon PST  
May 23, 2017  
Los Angeles, California

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# I. INTRODUCTION

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**For purposes of this webinar, it is presumed that: (1) all loans are commercial / business purpose loans; (2) the borrower and the guarantor are California residents; and, (3) the lender is receiving a first-priority lien Deed of Trust on all properties. This webinar does not cover the personal property aspects of multiple property loans.**

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## II. PRINCIPAL ADVANTAGES

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- 1. Business Background**
- 2. Additional Security**
- 3. Greater Flexibility**
- 4. Spreads The Risk**

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### III. PRINCIPAL **DIS**ADVANTAGES

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- 1. Complicates The Structuring**
- 2. Increases The Cost**
- 3. Complicates Any Loan Workout, Foreclosure, Litigation Or Bankruptcy**

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*Save The Date!*

**BORROWERS, GUARANTORS AND  
SURETIES: *DEALING WITH MULTIPLE  
PARTIES TO A LOAN***

John L. Hosack, Esq., Jason E. Goldstein, Esq., Mr. Joffrey Long and Mr. Rick Rodriguez

12:00 Noon PST

June 20, 2017

Webinar

Buchalter Nemer

1000 Wilshire Boulevard, Suite 1500

Los Angeles, California 90017

## IV. LOAN ORIGINATION ISSUES (1 of 2)

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1. **What Is The Borrower's Business Purpose**
2. **Loan-To-Value Ratios**
3. **Lender's Objectives**
4. **Lender's Determination Of Value**
5. **Property Type Or Types**
6. **Partial Reconveyances**
7. **Do The Benefits Outweigh The Costs**
8. **Defaults And Exit Strategies**
9. **Additional Collateral Acquired After Closing (Workouts, Modifications, Other Negotiated Changes)**

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## IV. LOAN ORIGINATION ISSUES (2 of 2)

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### 10. Who Owns The Encumbered Property

A. How Do You Know The Borrower Owns All Of The Properties? See, *Insurance Code* Section 12038.10 and 12340.11

B. If A Third Person Hypothecates Its Properties – The Third Person Is A Guarantor And Entitled To Certain Surety Defenses. See, *California Civil Code* Sections 2787 et seq.

### 11. Adequate Consideration For Guarantor/Property Owner

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## V. LOAN DOCUMENTATION ISSUES (1 of 3)

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1. **Alternative Structures**
2. **Promissory Note and Deed of Trust**
3. **Promissory Notes and Deeds Of Trust**
4. **Guarantors\***
5. **Cross-Collateralization (Record For Public Notice)**
6. **Cross-Default (Record For Public Notice)**

**\*Please refer to Buchalter’s webinar on loan guarantees which was presented on October 20, 2016, and entitled, “**Making Guarantees Work: Improving Documentation And Practices.**”**

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## V. LOAN DOCUMENTATION ISSUES (2 of 3)

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### 7. Events Of Default

- A. Payment Default**
- B. Reporting Defaults**
- C. Litigation & Lien Defaults**
- D. Real Property Tax Defaults**
- E. Cross-Default Provisions**
- F. Due On Sale Provisions**
- G. Due On Encumbrance Provisions**
- H. Maturity Date(s)**
- I. Further Advances**

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## V. LOAN DOCUMENTATION ISSUES (3 of 3)

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- 8. Doctrine Of Merger**
  - A. What Is It?**
  - B. Issue Of Intent**
  - C. Anti-Merger Endorsements**
- 9. Partial Reconveyances**
  - A. Privilege Or Entitlement**
  - B. Prerequisites**
  - C. Consent**
  - D. Endorsement To Title Insurance Policy**
  - E. Current Appraisal**
  - F. Risks**

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## VI. PROPERTY LOCATIONS (1 of 2)

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- 1. Multiple Properties In One County**
  - A. Single Note and Deed of Trust**
  - B. Multiple Notes and Deeds of Trust**
- 2. Multiple Properties In Two or More Counties**
  - A. Loan Agreement With Multiple Notes & Deeds Of Trust**
- 3. Multiple Properties In Several States**
  - A. Loan Agreement With Multiple Notes & Deeds Of Trust**
- 4. Loan Agreement & Matching Notes And Deeds Of Trust**

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## VI. PROPERTY LOCATIONS (2 of 2)

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### 5. One Property In Two Counties

#### A. Multiple Notes and Deeds of Trust

### 6. One Property In Two States

#### A. Multiple Notes and Deeds of Trust

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## VII. UNIQUE ISSUES FOR THE CONSTRUCTION LENDER

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- 1. High Risk / High Reward Due To Declining Value Until Completed, Sold And/Or Occupied**
- 2. Liability To Borrower For Wrongful Termination Of Loan Disbursements**
- 3. Does The Lender's Termination Of Disbursements "create" mechanic's liens within the meaning of title insurance policy Exclusion 3 (a). See, *B&B Syndication Services, Inc. v. First American Title Insurance Co.* (7<sup>th</sup> Cir. 2015) 780 F.3d 825**
- 4. Stop Notices: Are They Covered By The Lender's Loan Policy Of Title Insurance?**

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## VIII. DEFAULTS, WORKOUTS, RECEIVERSHIPS, FORECLOSURES, BANKRUPTCY AND LITIGATION (1 of 2)

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1. **Person With Industry Knowledge To Review All Loan Documents Before Declaring a Default**
2. **Option, Not Requirement, To Give Pre-Default Notice**
3. **No Substantive Discussions Without A Protocol Agreement**
4. **Tolling Agreement**
5. **Consider Concurrent Judicial And Non-Judicial Foreclosures**
  - A. **Rewards**
  - B. **Risks**
6. **Debt Restructure (“Workout Agreements”)**

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## VIII. DEFAULTS, WORKOUTS, RECEIVERSHIPS, FORECLOSURES, BANKRUPTCY AND LITIGATION (2 of 2)

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### **7. Borrower Or Guarantor's Bankruptcy**

### **8. Marshalling Of Assets**

### **9. Foreclosure Bids**

#### **A. Opening Bids**

#### **B. Redemption Considerations**

#### **C. Documentation Which Negates A Borrower's Ability To Direct The Order Of Sale**

### **10. Loan Documentation**

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## IX. CONCLUSION

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**1. Underwriting**

**2. Documentation**

**3. Loan Administration/Workout**

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## John L. Hosack—*Presenter*

John L. Hosack is a Shareholder in the firm's Litigation Practice Group in Los Angeles and a member of the firm's Mortgage Banking Group. Mr. Hosack represents mortgage brokers, secured lenders and property owners at trial and on appeal in real property disputes including, broker liability, lender liability, fraud, breaches of contract, mechanic's liens, stop notices, judicial foreclosures, receiverships, escrow claims and title insurance claims. His transactional practice includes commercial real property loan documentation, loan workouts, REO sales and foreclosures. He is an Affiliate Member of the California Mortgage Association and a member of the Los Angeles Mortgage Association, a Fellow of the American College of Real Estate Lawyers and a Fellow of the American College of Mortgage Attorneys. He is the author of "California Title Insurance Practice (First Ed., Calif. Cont. Ed. Bar), the first book on title insurance, and is a past Chair of the ABA's Title Insurance Litigation Committee.



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## Jason E. Goldstein—*Presenter*

Jason Goldstein is a Shareholder in the Firm's Litigation Practice Group in Irvine and Chairman of the Firm's Mortgage Banking Group. Mr. Goldstein specializes in prosecuting title insurance and escrow claims and defending lenders and brokers in court (negligence, fraud, TILA, RESPA, HBOR, wrongful foreclosure, lender liability, etc.) and before government agencies. Mr. Goldstein also regularly prosecutes misappropriation of trade secret claims, judicial foreclosures and conducts general civil litigation. He is a fellow of the American College of Mortgage Attorneys and an affiliate member of the California Mortgage Association.



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## Joffrey Long

Joffrey Long is President of Southwest Mortgage, a lender/broker that makes, arranges, and services non-consumer and consumer loans real estate loans including both private money and institutional loans. He has been licensed as a real estate broker and active in real estate lending since 1979.

He is a member of the California Mortgage Association (CMA) Education Committee, a Past CMA Education Chair and Past CMA President. He has been a member of CMA's Board of Directors since 2001.

Joffrey frequently serves as an expert witness, providing mortgage expert witness reports, declarations and expert testimony. He has testified in numerous depositions, arbitrations and trials relating to real estate lending, loan servicing, loan brokerage and trust deed investment matters.

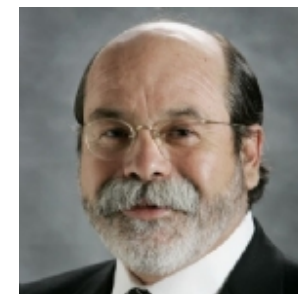


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## Rick Rodriguez

Mr. Rodriguez is the founder and principal of Rodriguez and Associates Advisory Group ("R&A"), a Los Angeles based consultancy firm that has provided a unique array of services to its clients since 1992. For the past 24 years, R&A has successfully formulated creative workout and loan restructure resolutions to complex multi-party debtor-creditor transactions in judicial and non-judicial settings.

Having spent approximately 20 years as a banker, primarily with Security Pacific National Bank, Mr. Rodriguez has personal experience in due diligence, loan administration and workout of all types of loans, from consumer credit to large commercial complex syndicated credits. Mr. Rodriguez is a seasoned expert witness in banking, finance and real estate matters who testifies at jury trials, bench trials, arbitration proceedings, and mediation sessions; both by deposition and declaration. Mr. Rodriguez has testified equally for plaintiffs and defendants.



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