

We have been asked by many Lenders to make comment on the recent responses to our analysis of L2L/FDH/LLC contracts we were provided by various Loan Captains. First, let's look at our goals in providing the analysis:

- Point out deficiencies in the contracts that should be changed or clarified.
- Stimulate a response that would provide you with more transparency and additional information.
- Encourage Lenders to get involved in the solution – not sit back and let someone else make your decisions.

Judging by the responses we have received from individual Lenders, we were successful in all three areas.

For a number of reasons, the outcome of the June 20th hearing was highly advantageous to the concept of having individual LLCs hold our loan positions. The slick ruling by an astute judge will be explained too many duplicate email messages by each loan captain – we won't elaborate here, except to point out that the effect of the ruling provides a sixty-day window (until August 20th) to clarify, improve and complete the LLCs contracts. The 60 day window also provides time to clarify, improve and complete the contracts with the supporting companies' (L2L and FDH).

We were initially disappointed that the L2L/FDH/LLC response suggested an unwillingness to consider changes. However since their initial responses to our analysis many of us have received communication that suggested a willingness to make corrections in the contracts – however these changes (and others that are needed) have not yet made it into the contracts we're being asked to sign. This needs to be accomplished without any more delay.

Let's review some of the strengths of the scheme (used in the British sense, not in a derogatory sense – perhaps “initial plan” or “draft plan” would have been a better choice).

The advantage of exchanging loan positions for shares in a Limited Liability Company:

- Allows the members to speak with one voice to the manager (if any), loan servicer (if required), borrowers and legal representatives.
- Should reduce the per Lender cost of litigation.
- May provide a funding mechanism to avoid or reduce the likelihood of cash calls.
- May minimize your personal exposure.

We also realize the need to allow approval of interest deferrals, adjustments of principal, extensions, advances and the like with less than 100% of us in agreement.

- Of the thirty-three Lenders in the 5055 Collwood loan, four Lenders voted against a settlement arrangement that was clearly in the best interests of everyone.

- Six of thirty-six Lenders (less than 20%) in the Clear Creek Plantation loan refused a settlement that would return the investors' principal (without interest).
- Although the number declining the Fiesta Murrieta agreement was (as rumor has it) considerably higher, at least two-thirds of Lenders voted for approval. Should this agreement have been approved? Yes, two-thirds were in favor.

While acceptance was in the best interests of the majority in each of these loans, the end recovery will, unless their course is changed, be far less. Whether their position was taken from the standpoint of greed, arrogance, inability to comprehend the loan status, or as a way of expressing their anger, one thing is clear: these dissenting individuals failed to understand the cost of foreclosure the Lenders (including themselves) may ultimately pay – they also failed to understand the plight of so many of their desperate compatriot Lenders. The actions (or rather inactions) of these individuals point out the necessity of reducing the required approval percentage. While it might be that the number should be higher than 51%, it should definitely be less than 100%.

In the ideal setting, everyone would join an LLC and there would be no vote except by the Board of Members; their vote would be represented as one voice. But like the four members of the 5055 Collwood loan, not everyone will join the LLC – one reason making a change in the Loan Servicing Agreements is necessary.

The servicing battle will move to Federal Court in Reno where, if Compass does not prevail, we will have a new loan servicer. It is also likely that along the way, most, if not all of these LLC's will acquire their 51% subscription.

We encourage consideration be given to extending the LLC subscription period until the change in servicers is adjudicated in Reno – the foreclosures have been stopped, taking off the immediate pressure for action. This period would allow time for the circulation of the final corrected contracts and the establishment of a proper LLC bylaw template.

As this process comes about it is necessary that each of you get involved and insist in some contractual changes and improvements.

First and foremost the Board of Members must be autonomous – they *must* be made up of members only – whether by popular vote or vote weighted by shares (like any other company), you must vote for Members with the greatest potential of business acumen. Why should a representative of the management company not be on the Board of Members?

- Including two (or for that matter any) manager/servicer representatives on the Board of Members will create an immediate conflict of interest.
- A few (repeat few) of these loans will not require the services of a manager and may not require a loan servicer in the standard sense – just the services of a title company and/or a trust bank (for distributions).
- The concept that a manager must be on the Board of Managers in order that the LLC borrow money is ridiculous – various of us have borrowed hundreds of

millions of dollars in business and *never* been asked by the lender to put *anyone* on our Board.

- With five on the Board, were a conflict between the Manager Board Members and the elected Board Members arise, the conflict decision would be made by only *one* elected Board Member. One Board Member can hardly represent the interests of all Lender Investors.
- The only way to be assured that the *investors* are in control is to have the *investors* select the Board Members.

Donna's communication of June 17th seems to address and correct this issue. *Now it needs to make its way into the contract you sign or signed.*

Our earlier analysis failed to bring up another area that needs to be covered in the final LLC Operating Agreement: the agreement needs to have an indemnity clause covering both the management company (assume FDH) and/or the managing Member and the Board of Members. *The absence of such a clause would expose both parties to possible lawsuits.*

The bylaws governing the operation of the Company and the Boards must be put in place as soon as possible. In the "real" world, you shouldn't "invest" in a company without bylaws. Amongst other things the Bylaws should set up the Board, the election and re-election of Members, the removal of Board Members and Board duties and responsibilities. The Board of Managers should decide if a manager is necessary, select and direct that manager and the manager's duties. The same is true of the loan servicer. It would also appear that Donna's communication of June 17th partially addresses this point. *Again these changes need to make their way into the contract you sign or signed.*

We believe that one of the first duties of the Board of Members should be to re-affirm the appointments of both L2L and FDH, elect another manager and/or another loan servicer.

At the same time we believe there should be a few changes in the fee basis assessed for loan servicing. While it may necessitate a change in the basic servicing fee and/or disposition fee, we believe a termination fee is not appropriate.

- If a loan is in the process of being resolved to the Board of Members approval, the disposition fee is being earned.
- If the Board of Members is not happy with the resolution progress then there shouldn't be a fee for them to change to someone who can move resolution forward.
- We do recognize that there needs to be some protection for the servicer that their agreement isn't terminated just before resolution when the disposition fee is earned. This protection would be a trade-off for the ability to make a change without numerous pre-conditions (default, breach, etc.) and court actions.
- We also suggest a real success fee: assuming the loan was resolved in a set period; say a year, or perhaps by the end of the year.

Assuming that each Board of Members is autonomous, slightly different Loan Management Agreements probably should be put in place recognizing the different situations of each loan.

Lastly we again request that Donna and/or the principals of L2L/FDH provide complete résumés. All the Lenders and the eventual Boards of Members would be considerably more confident if armed with specific, rather than vague, business qualifications. Similarly we need to be updated on the status of L2L's application for licensure by the Nevada MLD.

Throughout the commentary over the past week we have attempted to provide all Direct Lenders with a myriad of questions and herein some necessary changes. The success of the resolution of these loans will not rely solely on Donna, L2L or FDH; they rely first and foremost on you:

- *Insist* on improvements in the LLC structure and the final contracts.
- *Insist* that the contract you sign represents your complete understanding of the agreement. If you signed an earlier version make sure you are provided with and sign a new and corrected set of contracts.
- Take your selection of members of the Board of Members seriously, *select the best people you can* – and don't pass off the decision to others.
- Once the Board is selected, *don't second guess* their every decision – the chatroom, especially if it were not censored, can be brutal.
- *Have patience* – USA lied to us, Mesirov didn't communicate, and it's taken Compass a very long time (too long) to provide their style of one way communication.

With these changes we've highlighted in place, properly memorialized in the contracts and covered by the individual LLC bylaws, we will have the confidence not only to support the plan, but join.