

Commercial Real Estate Lending **in Today's Economy**

Presented by: Osburn & Associates, LLC

Author/Lecturer

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David Osburn is the founder of Osburn & Associates, LLC that specializes in providing seminars, webinars, and keynote speeches to bankers, CPAs, attorneys, and credit managers on topics such as Banking/Finance/Credit, Negotiation Skills, Marketing, and Management.

David also functions as a Contract CFO and works with financial institutions, CPA firms, construction companies, and real estate developers. He is also an adjunct faculty member at College of Southern Nevada with over 30 years of teaching experience.

David's extensive professional background encompasses over 22 years as both a Business Trainer and Contract CFO and 16 years in banking (commercial lending) including the position of Vice President & Senior Banking Officer.

David has an MBA in Finance/Marketing from Utah State University and a BS degree in Finance from Brigham Young University. He is also a graduate of the ABA National Commercial Lending School held at the University of Oklahoma.

David also holds the professional designation of Certified Credit and Risk Analyst (CCRA) as granted by the National Association of Credit Management (NACM).

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Commercial Real Estate Lending in Today's Economy

I. Introduction: Commercial Real Estate (CRE) Lending

II. "Real Estate" Commercial Loans (Non A/R, Inventory, Equipment):

A. "Construction" Commercial Real Estate Loans

B. "Mini-Perm" Commercial Real Estate Loans

C. "Permanent" Commercial Real Estate Loans

D. "One-Off" Deals!



III. Types of Commercial Properties: “Current Market” Conditions

Demand/ Supply

Vacancy

A. Office

B. Warehouse

C. Retail

D. Multi-Family

E. Other



IV. Commercial Real Estate Loan Solicitation

A. Marketing to the Commercial Real Estate Market(s)

The Target Market:

The Four Ps:

1. Product

2. Place

3. Price

**4. Promotion
(Advertising &
Personal Selling)**



Polling Question # 1:

The four (4) Ps of Marketing consist of:

- a) Product, Place, Price, and Promotion**
- b) Product, Place, Price, and Promotional**
- c) Product, Place, Price, and Preliminary**
- d) Product, Place, Price, and Projections**

V. Underwriting A Commercial Real Estate Loan

A. The Borrower: Basic “Business” Structure:

| | <u>Entity</u> | <u>Tax</u> | <u>Legal</u> |
|-----------------------------------|----------------------|-------------------|---------------------|
| 1. Sole Proprietorship | | | |
| 2. Partnership | | | |
| 3. C Corporation | | | |
| 4. S Corporation | | | |
| 5. LLC | | | |
| 6. Other: Series LLC, REIT | | | |

B. Six (6) Elements of a Proper Loan Structure (Continued)

Const. CRE Loan Perm. CRE Loan

1. Loan Purpose: (A = L + O/E)

2. Sources of Repayment

3. Adequate Amount

4. Appropriate Term

5. Appropriate Pricing

6. Framework for Monitoring

C. Four (4) Aspects of Adequate Loan Support (Continued)

Const. CRE Loan

Perm. CRE Loan

1. Collateral

2. Guaranties

3. Business Loan Agreement

4. Subordination Agreements

Other: Abundance of Caution

D. Cash Flow Analysis



1. “Traditional” Cash Flow Analysis:

| | |
|-------------------------------|----------------------|
| <u>NOI</u> | <u>\$181M</u> |
| Debt Service (P&I) | \$135M |

| | |
|------------|--------------|
| DCR | 1.34X |
|------------|--------------|

Note: Most lenders require a minimum DCR of 1.20X.

| | |
|-------------------------------------|--------------------|
| Gross Rental Income | \$200M |
| Less: Vacancy Factor (5%) | <u>10M</u> |
| | \$190M |
| Less: Management Factor (5%) | <u>\$9M</u> |
| Net Operating Income (NOI) | \$181M |

2. Customer's Cash Flow Models

3. Underwriting the Tenant(s):

a. Rent Rolls

b. Obtaining and Analyzing Financial Statements

c. Other Means of Tenant “Risk Assessment”

1. D&B

2. CMA (Anscers.com)

3. Intelius.com

4. Professional Credentials



VI. Commercial Real Estate Loan Write-Ups/ Loan Committee Presentation:

A. Standard Loan “Write Up” or Credit Memorandum

1. Many and Varied!

2. Format:

a. Front Page

b. The Request (Structure-Terms, Pricing, Conditions, etc.)

**c. Financial Analysis: Key Ratios, Cash Flows, Collateral
Assessment**

d. Management Assessment

e. Risk Assessment (Mitigation of Risk)

B. Loan Committee Dynamics:

Clear, Concise, and Motivating Loan Presentations

1. What are the Components of the Presentation

Technical versus Management

2. Length of Presentation

3. Style of Presentation

4. Motivating the Audience



VII. Commercial Real Estate Loan Documentation:

A. Promissory Notes

Contract (Components):

1. Genuine mutual assent (Offer & Acceptance)
2. Legal contractual capacity
 - a. Minors
 - b. Drunken/drugged individuals
 - c. Insane persons
3. Consideration (exchange of value) (20% rule!)
4. Must be legal (ex. marijuana)
5. Must be in writing (sale of land, guarantee other's debts, more than one year, over \$500)

| <i>Promissory note</i> | |
|---|---|
| For value received, the undersigned promises to pay to the order of BancZone, Inc. | |
| the sum of: | *****Ten-Thousand and no/100 Dollars***** |
| Along with annual interest of 8% on the unpaid balance. This note shall mature and be payable, along with accrued interest, on June 30, 20X8. | |
| <u>January 1, 20X8</u> Issue Date | <u>Olivia Zavala</u> Maker signature |

B. Business Loan Agreements:

1. Everything including the “Kitchen Sink”
2. Affirmative and Negative Covenants

C. Mortgage/Deeds of Trust:

1. Fee Simple
2. Land Lease

D. Mortgage/Deed of Trust Modifications

E. Assignment of Rents:

1. Actually Collecting the Rents
2. Costs

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed, this 3 day of March, 2011, effective as of the 3rd day of March, 2008.

Signed in the presence of: _____ MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

ATTEST: _____ BY: PRINT NAME: CHERYL SAMONS
TITLE: ASSISTANT SECRETARY

WITNESS: _____
Print Name: Carolina Portigao
STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state on this the 3 day of March, 2011 within my jurisdiction, the within named Cheryl Samons who is personally known to me and who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 3 day of March, 2011.

NOTARY PUBLIC - STATE OF FLORIDA
Zoraida Rodriguez
Commission # DD856189
Expires FEB. 03, 2011
KING OF THE ATLANTIC BONDING CO., INC.

www.4closureFraud.org

F. Hazardous Substance Certificates

1. Environmental Survey/Questionnaire

2. Phase I, II, III, IV

G. Lien Perfection

H. Subordination Agreements

I. Landlord Waivers

1. Gaining Access to the Property

2. Multiple Properties

J. Insurance Requirements

K. Flood Insurance Notices



L. Title Endorsements

M. Guarantees:

- 1. General and Continuing**
- 2. Limited**
- 3. Secured vs. Unsecured**

N. Regulation B Notices

Prohibited Basis:



Polling Question # 2:

One of the “prohibited basis” under Regulation B, is “race.”

- a) True**
- b) False**

VIII. Commercial Real Estate Lending: Closing & Monitoring

A. Closing the Loan

B. Monitoring:

1. Insurance Certificates

2. Tax Payments



IX. “Problem” Commercial Real Estate Loan

What Happens When a “Good” CRE Loan Turns into a “Bad” One?

A. The Scenario:

- 1. The Market Turns Down**
- 2. The Tenants Have Left**
- 3. The Payments are Delinquent**



B. Initial Assessment i.e. Where Are We At?

How Delinquent are the Payments?

30, 60, 90 days

C. What is the Condition of Our Collateral?

1. Liquidity

2. Marketability

3. Dependability of Value

4. Controllability

D. Collections (How Hard Can You Push?):

Fair Debt Collection Practices Act

- 1. Postcard**
- 2. Represented by an attorney**
- 3. Time: 8am-9pm**
- 4. Place of Employment**
- 5. Not communicate with other parties**
- 6. Refuses to pay, cease to communicate**
- 7. No harassment**



Polling Question # 3:

Under the Fair Debt Collection Practices Act, “no harassment” includes:

- a) Profanity and threat of jail time**
- b) Profanity and threat of probation**
- c) Profanity and threat of bodily harm**
- d) Profanity and threat of abduction**

E. The Restructure Process (when “regular” payments cannot be made)

Const. CRE Loan

Perm. CRE Loan

Orig.

New

Orig.

New

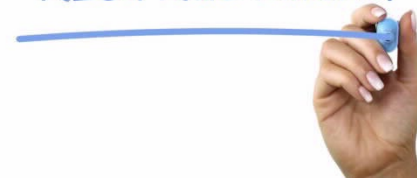
1. Loan Terms:

2. Loan Pricing:

3. Collateral:

4. Additional Support:

DEBT
RESTRUCTURING



F. The Bank's Strategy When Collections and Restructuring Fail!

- 1. What is the bank's strategy now? Should we foreclose on the property?**
- 2. Is our strategy realistic in today's market?**
- 3. Will the law assist or hurt us?**
- 4. What are the political ramifications?**

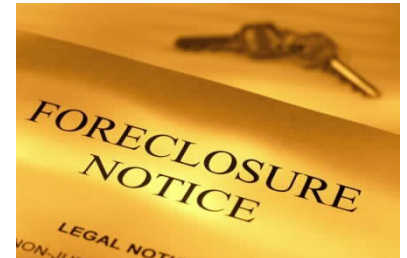
G. Foreclosures:

1. Fee Simple Foreclosure:

- a. Logistics (including timing)**
- b. Legal Rights**
- c. Costs**
- d. Marketability**

2. Judicial Foreclosure (Single Form of Action)

H. Short-Sale; Deed in Lieu of Foreclosure



XI. Commercial Real Estate Lending in Today's Economy: Conclusion

A. Determine where you are at with your CRE Lending portfolio

B. Create a “game plan” to address expanding and managing the CRE portfolio

C. Cover your “bases” in all aspects of CRE Lending i.e. marketing, underwriting, approving, documenting, closing, monitoring, collecting, etc.

D. Keep your eyes “wide open” for continuous change in the CRE market!

