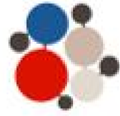
THE REAL ESTATE WORKOUT

COURSE HOURS: 2

COURSE MATERIALS



Real Estate Workout
Est. Time: 2hrs

COURSE DESCRIPTION
This course is an overview of a Real Estate Workout. This course will define the real estate workout and how it should be utilized as well as the process, when the need for a workout arises, tax implications, potential pitfalls and lenders responses.

INSTRUCTOR

- Daniel Ceniceros

INDUSTRY EXPERTS

- Gary Bechtel, Chief Executive Officer, Red Oak Capital
- Richard DeSilva, Managing Partner, Lateral Investment Management LLC
- Nick Duren, President, Crescent Securities Group Inc
- Ann Hambly, Founder and CEO, 1st Service Solutions
- Tom Lorenzini, Vice President, Tremont Realty Capital
- Bryan S. Mick, Chairman, Mick Law PC
- Ron Murmur, President Peachtree Hotel Group
- Gary M. Tenzer, Principal and Co – Founder, George Smith Partners Inc.

COURSE Lessons

Lesson 1: Real Estate Workout Defined

Lesson 2: The Real Estate Workout Process

Lesson 3: Where Real Estate Workout is Happening

Lesson 4: Distressed Real Estate Workouts

Lesson 5: Potential Pitfalls of Real Estate Workout

Lesson 6: Red Flag Trends and Proactive Responses

Lesson 7: Benefit of Being an Operator

Lesson 8: The Homeowner and the Real Estate Workout

Lesson 9: The Pre-Negotiation Letter

Lesson 10: The Workout in Summation

COURSE LESSONS

Lesson 1: Real Estate Workout Defined **TIME: _10 min__**

Images: Unsplash and Pexels Collection

Lesson Description: In a post-COVID world, real estate lenders have become helpful creatives to borrowers by utilizing real estate workouts when borrowers are at risk of defaulting on loans.

In this lesson, *Real Estate Workout Defined*, you will learn the definition of a real estate workout and will gain knowledge of what a real estate workout is and what it is not.

Lesson Learning Objectives

By the end of this lesson, you will be able to define a real estate workout and the various types

Topic 1: What is a Real Estate Workout?

Video

Topic 1 Content: In a post-COVID world, it's more important than ever for real estate lenders to get creative when borrowers are in danger of defaulting on loans.

Enter the real estate workout, a mutually beneficial agreement between a lender and a borrower to renegotiate terms on a loan that is in default.

"We are at the point in the cycle where all the COVID relief has run out," says Ann Hambly, founder and CEO at 1st Service Solutions, a commercial real estate advisory firm with a focus on owners/borrowers. "The only solution is for the borrower to either fund it themselves, sell their property, get an outside investor or get a workout."

Hambly added that she has worked on solutions for around 800 properties requesting COVID relief in the past year and said that prior to COVID, workouts were a much rarer occurrence in the industry.

Interactivity Strategy: Drag and Drop

Time/Timer Set: 5 minutes

There are two bins. Drag and Drop word phrases associated with **real estate workout** into the first bin and unrelated phrases into the second bin.

Drag and Drop into the bin all word phrases associated with a **real estate workout**.

Topic 2: What a Real Estate Workout is Not

Video Presentation

Topic 2 Content: Real estate workouts are not a repayment of real estate secured loans on originally agreed upon terms. They are also not resolutions achieved by foreclosure remedies.

A workout is a negotiated settlement that falls somewhere between the two aforementioned scenarios and outside the loan documents. Since the onset of COVID-19, the workout has become a popular tool for borrowers and lenders to avoid defaulting on loans.

When a loan is in or nearing default, it's an adverse state of affairs for the borrower and lender alike. There is significant loss for both when foreclosure ensues. However, working on a mutually beneficial solution via the workout can, in most cases, circumvent foreclosure and provide some gainful outcome for both.

Topic 3: Workout Agreement Categories
Image: Unsplash Signature (Lewis Keegan)

Topic 3 Content: Workouts can be employed for several kinds of loans. However, the agreements cannot be expended for student loans that are financed by the United States government. Below are a few of several distinguishable workout types:

Conversion: Modifying an amortizing loan to an interest-only loan.

Deed Change: Awarding a deed to a creditor rather than a foreclosure.

Forbearance: Terminating legal action in exchange for the mutually agreed upon borrower action.

"Friendly" Foreclosure: Selling an asset back to the debtor or an interested participant with a clean title after foreclosure (e.g., no financial lien).

Modification: Generally, with provision, modifying the terms of an active mortgage.

Short Refinance: Refinancing a property for less than the original loan amount.

Short Sale: A third party sale of an asset in exchange for debt forgiveness.

Lesson 2: The Real Estate Workout Process **TIME: __10 min_**
Images: Unsplash Collection

Lesson Description: In this lesson, *Understanding the Process*, methodology and progression of the workout is explored.

Lesson Objective: By the end of this lesson, you will be able to comprehend the process, methodology and progression of the real estate workout.

Topic 1: Due Diligence and Methodology

Topic 1 Content: Before negotiating a workout, both the lender and the sponsor must conduct a complete due diligence around the distressed loan.

"Navigating the challenges workouts presents, requires an experienced team who clearly understands both the lending perspective, as well as the sponsor's strategy surrounding a particular asset," said Red Oak Capital's Gary Bechtel, who has survived eight market cycles.

After selecting parties to commence negotiations during the discussion stage of a workout, a lender will take action to notify a borrower that their delinquent mortgage payments have violated the contractual limit detailed in the mortgage in the form of a default/acceleration notice. Both parties then sit down together to discuss the viability as well as the terms of a potential workout agreement.

Interactivity Strategy: Drag and Drop
Time/Timer Set: **5 minutes**

There are two bins. Drag and Drop word phrases associated with **due diligence and methodology** into the first bin and unrelated phrases into the second bin.

Topic 2: Communication
Video Presentation

Topic 2 Content: "Communication is key," said Tom Lorenzini, vice president at Tremont Realty Capital. "Borrowers should proactively engage with their counsel and communicate with lenders and propose a reasonable solution, rather than waiting for an actual default to occur. Often a lender, especially a balance sheet lender vs. a CMBS lender, is more likely to consider a workout solution when a borrower has demonstrated the acknowledgement of a potential problem and has proposed a reasonable solution."

Lesson 3: Where Real Estate Workout is Happening **TIME: _10 min__**

Images: **Unsplash Collection**

Lesson Description: Predictably, many real estate asset classes were negatively impacted by the Covid-19 pandemic. The following lesson will give you some insight into the catalysts that made Real Estate Workouts particularly necessary for retail and hospitality property (owners/borrowers). Additionally, hear why the Covid-distressed multifamily sector is an interesting case study to monitor.

Lesson Objective: By the end of this lesson, you will be able to identify the initiating catalysts of workout necessities

Topic 1: Retail and Hospitality Properties
Video Presentation

Topic 1 Content: The two most affected property types when it comes to workout loans are unsurprisingly retail and hospitality, the two hardest hit property types from the ongoing COVID pandemic.

Red Oak's Bechtel says, "Overall, the pre-Covid market was healthy, robust, and fueled with strong consumer/investor demand. There were already warning signs though of challenges ahead for hospitality, and some larger retail properties. Even office buildings in core markets were starting to soften a little, all of which was clearly exacerbated by Covid.
The pandemic really 'hammered' the hotel and retail sectors, mainly because of lockdowns, reduced business travel and literally no leisure travel. The CBD office sector was hurt as people worked from home or in satellite offices, which has fundamentally changed that asset class."

Interactivity Strategy: Matching
Time/Timer Set: **5 minutes**

Match the following phrases to form the correct sentences.

Topic 2: Retail Properties

Topic 2 Content: On the retail side, changing buying habits, which were accelerated by COVID, were causing tenants to go out of business. In addition, large shopping centers and malls need a large amount of capital investment to stay relevant pandemic or no pandemic.

Topic 3: Hospitality Properties

Topic 3 Content: In hospitality, most borrowers have been forced into default after getting virtually no income since the onset of the pandemic.

Complicating matters, experts don't expect the hospitality industry to fully recover until 2023 or 2024.

One of the hardest hit segments in hospitality has been conference center-centric hotels, which saw almost no activity for more than a year and are still struggling, according to 1st Service Solutions' Hambly.

"These owners had, in some cases virtually no income for an entire year. From April 2020 to April 2021," she says. "Their payments got deferred, which is good, but now in May of 2021, they had to not only start payments again but they had to make another monthly payment to start paying back the loans that were deferred. So, they were paying two full payments and the income they are getting now can't support that. There is no choice but to get a workout or find another capital source."

Topic 4: The Multifamily Sector – An Interesting Case Study to Monitor
Image: Unsplash (Brandon Griggs)

Topic 4 Content: Bechtel advises the multifamily sector is an interesting case study to monitor for distress, since it remains to be seen how the eviction moratoriums and rent abatements will play out. "The big question is what will happen when moratoriums are lifted? Will tenants be evicted, and will landlords be able to recover rent due?" Bechtel asks. "Once the restrictions are over, the general consensus is that it is unlikely landlords will be able to recover all of their deferred rent."

The other consideration Bechtel points out is that in some states like California, where some cities implemented rent restrictions, the value of the underlying assets will ultimately be impacted. "In New York, the thinking is that multifamily values were impacted 10-15% overnight by rent restrictions that were imposed in 2019," he says. "The market will be watching to see how those factors play out on property values and revenue streams. It has already translated to the lending side, especially in value-add transactions where future rents are essentially capped."

Lesson 4: Distressed Real Estate Workouts and Taxes **TIME: _10 min__**

Images: Pexels Collection

Lesson Description: The COVID-19 pandemic has been wreaking havoc on the economy generally and with respect to many asset classes of real estate. The general consensus now is this unfortunate situation will not abate for some time. Not surprisingly, with businesses closed, employees furloughed, and revenue streams severely challenged, many real estate owners and their tenants are simply not making rent and debt service payments. When that happens, the value of the real estate is reset, leaving the equity and possibly some of the debt impaired.

Lesson Objective: By the end of this lesson, you will be able to link the significance of tax consequences to distressed real estate workouts.

Topic 1: Tax Consequences
Images: Unsplash (Recha Oktaviani), Anders Holm-Jenson

Topic 1 Content: During times of economic hardship, tax responsibilities and the implications of defaulting on those responsibilities, are often an afterthought. Unpaid tax obligations have serious implications including overall property/investment value loss, modifications of real estate loans, foreclosures, debt-for-equity exchanges, purchases of distressed debt or real estate, and the like. These potential consequences are some of the major drivers of the ultimate decisions taken by the various stakeholders.

In this lesson, distressed real estate workouts and taxes will be explored.

(Article: Distressed Real Estate Workouts, Trades and Loan Purchases: Tax Consequences Matter cited from www.proskauer.com)

Topic 2: Attempting to Keep the Real Estate Asset

Topic 2 Content: *As financial distress from rent defaults, (or in the case of hotels, almost non-existent occupancy), is felt by real property owners, the lenders feel it as well (senior, mezzanine, et al).*

For example: An Owner of a distressed asset might cease payment of interest due on a debt.

With respect to current-cash-pay-interest, the Lender (having not received her payments) might make the case that she doesn't recognize any income on that interest.

This case may work by Federal tax law standards, assuming the Lender provides reasonable doubt that that interest will ever be collected.

The IRS however would insist that the Lender continue to accrue OID, at its standard rate.

- The Original Issue Discount is a discount in price from a bond's face value at the time a bond, or other debt instrument, is first issued**.** Bonds can be issued at a price lower than their face value—known as a discount.

The IRS would have the Lender continue to accrue OID even if the owner is threatening to never pay, or if the owner is bankruptcy proceedings that limit its ability to pay.

Rather than default on interest payments), the Owner and Lender could discuss modifications or forbearances with respect to the in-place loan. The significances of such adjustments, or forbearances, depend on several aspects including the size of the tranche of the loan in question, whether the loans are "publicly traded," the nature of the modification, and other factors.

Interactivity Strategy: Drag and Drop
Time/Timer Set: **5 minutes**

There are two bins. Drag and Drop word phrases associated with **tax consequences** into the first bin and unrelated phrases into the second bin.

Topic 3: Modifications and Taxes
Image: Pexels (Expect Best)

Topic 3 Content: If the agreed to loan modifications are "significant" that loan is now viewed differently with respect to Federal Tax Law. With significant modifications in place, the Owner/Borrower is now considered to have paid-off the "original", unmodified loan, in exchange for a "new" loan that includes the modified terms.

Under such an exchange, the lender may recognize her gain or loss. For example, if the total outstanding loan tranche in question is $100 million or less, the gain or loss might be zero. This assumes that the face amount of the loan was not changed during the modification, that there is no OID on the original loan, and that the lender hasn't written the loan off for federal tax purposes already (either entirely or any part of it). In these situations, for Federal Tax purposes, the "value" of the loan is often treated as equal to the face amount of the loan

In another example, if the total amount outstanding on the loan is greater than $100 million, and if the loan is "publicly traded", then the "new" loan must be valued at fair market value. For a distressed loan, this likely means the loan will have a value that will be less than its face amount. Here, the lender might recognize a tax loss, based on the difference between the value of the loan and the lender's tax basis. The borrower might recognize cancellation of debt income (or, "CODI"). The difference in value between the face amount of the loan and the fair market value of the loan is now considered income from as a result of the loan being "forgiven".

It should be noted that the definition for "publicly traded" is defined very broadly in the relevant tax regulation documents. It may be enough for one or more brokers to provide an indicative quote to purchase or sell the debt to qualify the loan as "publicly traded".

Modifying a loan significantly and exchanging the original loan for a "new" loan with respect to tax law can have additional consequences as well.

The assigned issue price of the "new" loan is equal to its fair market value on the date of the modification. The face value might be significantly higher, however. Here, the "new" loan could have significant OID (original issue discount), triggering substantial additional interest inclusion for the lenders. The loan may have so much OID that special tax rules that are applicable to high-yield, high-OID notes are triggered and force the borrower to defer (or possibly completely lose) any interest deductions on a portion of the interest paid, or accrued, on the note.
(Article: Distressed Real Estate Workouts, Trades and Loan Purchases: Tax Consequences Matter cited from www.proskauer.com)

Lesson 5: Potential Pitfalls of the Real Estate Workout **TIME: _10 min__**

Images: Pexels Collection

Lesson Description: In this lesson, you will look the considerations for lenders and borrowers contemplating a real estate workout, when a workout is a good option, and other situations where a workout is not always the right solution. We will hear from industry leaders on potential workout pitfalls and additional considerations from the acquisition side of the real estate industry.

Lesson Objective: By the end of this lesson, you will be able to make sense of real estate workout potential pitfalls.

Topic 1: The Lender Perspective
Image: Pexels (Adrien Olichon)

Topic 1 Content: With hotels struggling to fill rooms and retail centers fighting to keep tenants afloat, a workout loan seems like the best possible scenario for owners and borrowers. But are there any drawbacks?

Gary M. Tenzer, Principal and Co-Founder at capital market services provider George Smith Partners Inc. says, "I don't think there's a drawback. I think it's just the right thing for a lender to do. Look at the losses that lenders suffered with the resolution trust process and the S&L Crisis, and the foreclosures and bankruptcies that resulted from the CMBS 1.0 meltdown. As subsequent market disruptions occurred, lenders learned that, for the most part, the sponsor understands the property better than they ever will. If it's a market issue like COVID, it's not the manager, so if they take it over, they're going to have the same problems getting people to fill the hotel rooms."

Topic 2: The Real Estate Workout Isn't Always a Golden Parachute
Video Presentation

Topic 2 Content: There are still some reasons to take a property back from a sponsor, including if there's been fraud, if there's been gross mismanagement or if there's a maturity default as well as certain tax reasons.

Topic 3: Advice to Borrowers
Image: Pexels (Anna Tarazevich)

Topic 3 Content: For borrowers facing upcoming maturities or a distressed situation, it is recommended to plan for a refinance early as well as seek advice from a firm that can help strategize through the refinance. Professional guidance should definitely be sought on refinancing and understanding what options are available.

Borrowers facing upcoming maturities or that are in a distressed situation should investigate refinance and other options as early as possible and seek advice from a firm that can navigate them through the refinance process.

Interactivity Strategy: Matching
Time/Timer Set: **5 minutes**

Match the following phrases to form the correct sentences.

Topic 4: Additional Workout Considerations for Both Parties
Image: Unsplash (Glen Carrie)

Topic 4 Content: There are also additional considerations to keep in mind for both parties when it comes to a workout. Tremont Realty's Tom Lorenzini says that workouts can in some cases have drawbacks for all parties involved.

"For example," he says. "Under a discounted payoff scenario, a lender may lose debt income and also have to take a further than anticipated write down if a borrower negotiates paying less than mortgage face value. In turn, a borrower may have a tax liability for paying off the loan at a discount, the difference may be treated as income. Furthermore, depending on what is negotiated, the borrower may remain liable under the recourse provisions of their loan especially in the case of full repayment guarantees, even if they have repaid the lender."

Topic 5: The Acquisition Side
Image: Pexels (Tara Winstead)

Topic 5 Content: Red Oak Capital's Bechtel notes that on the acquisition side, "It almost seems as though investors are throwing money at deals. There are opportunities to acquire or rehabilitate properties at attractive levels given the amount of capital in system." Last year, Red Oak pursued lending opportunities involving high quality transactions needing to be stabilized in core markets. Now Bechtel points out, "those transactions are now getting snapped up by other capital providers at rates well inside of us because of the amount of capital now in the system. In some ways, it's a race to the bottom."

Lesson 6: Warning Signs of Distress & Proactive Responses **TIME: _8 min___**

Images: Pexels Collection

Lesson Description: In this lesson, trends or characteristics seen as red flags, tell-tale signs that a workout is needed and lenders approaches when having a problem asset will be explored.

Lesson Objective: By the end of this lesson, you will be able to examine loan red flags and lenders' approaches to problem assets.

Topic 1: Warning Signs of Distressed Assets

Topic 1 Content: In ordinary conditions, a lender would recognize a trend of late or partial payments by borrowers as an indication that may be a problem with the asset, the sponsor or with their borrower's business plan. With respect to the defaults and distress caused by Covid, however, the environment changed so quickly that the warning signs were different.

In many industries, the first sign that there might be issues ahead was when the uncertainty surrounding Covid, and the related lockdowns began. Relatively quickly thereafter, borrowers began making late payments, partial payments, or no payments at all. During Covid, some borrowers who maintained some

cashflow have been able to continue payments. Though, for many others, (with or without cashflow), the natural reaction was to retrench and stop making payments altogether. Whereas a trend of late/missed payments might have grown over time in ordinary conditions, when Covid hit, many payments stopped abruptly.

Interactivity Strategy: Drag and Drop
Time/Timer Set: **5 minutes**

There are two bins. Drag and Drop word phrases associated with **red flags** into the first bin and unrelated phrases into the second bin.

Topic 2: Proactive Responses to Signs of Distress
Image: Unsplash (Scott Graham)

Topic 2 Content: When a lender notices red flags in a borrowers' payment habits (late or missed payments for example), she has several options at her disposal to be proactive and work to get the borrower current again.

The first and the easiest is to forebear. Typically, this is a 90-day forbearance period to give everyone a little breathing space. Generally, those 3 months of payments are tacked to the back of the loan. This is a strategy that most lenders utilized during the onset of COVID. There was a lot of "kick the can" of putting in a forbearance period, getting a handle on what was going on with the asset, again communicating with the sponsor on the asset, as part of that forbearance. Borrowers had to request the forbearance which was generally granted.

As part of that forbearance granting borrowers were also asked to provide up to date financials even though the lender had the information within the loan documents. Lenders wanted to get them on a monthly basis versus a quarterly or semi-annual basis.

After the forbearance period was over, utilizing other remedies became a reality. Would the loan be extended, modified, rewritten or foreclosed upon? The last thing lenders wanted to do was an asset foreclosure so they focused on exhausting all of the other remedies first (loan extension, modification, rewriting).

Lesson 7: Red Flag Trends: The Benefit of Being an Operator **TIME: _8 min__**

Images: **Unsplash Collection**
Vimeo Video: **Ron Murmur,** President Peachtree Hotel Group

Lesson Description: Some Lenders are also Operators. As a result, they are in a unique position to provide solutions to borrowers quicker than if they were only Lenders. Insight into this unique position is shared within this lesson.

Lesson Objective: By the end of this lesson, you will be able to identify several benefits an Operator-Lender provides.

Topic 1: Vimeo Video – *How the Operator-Lender Function Assists Borrowers,* Ron Murmur, President Peachtree Hotel Group

Topic 1 Content: Operator-Lenders, because they are involved in or have more visibility into the day-to-day operations of a property, can identify red flag issues early and thus try to provide solutions to borrowers before severe issues arise. The biggest remedy is their ability to foreclose. But they don't want to do that as a first course. They want to try and work with the borrower and get them current and through the issues they may be having.

Operator-Lenders have a lot of remedies at their disposal within the loan documents. The first and the easiest is to forebear. They'll typically do a 90-day forbearance period to give everyone a little breathing space. Borrowers had to request the forbearance which was generally granted. But as part of that forbearance granting borrowers were also asked to provide up to date financials even though the lender had the information within the loan documents. Operator-Lenders wanted to get them on a monthly basis versus a quarterly or semi-annual basis. After the forbearance period was over, utilizing other remedies became a reality. Would the loan be extended, modified, rewritten or foreclosed upon? The last thing lenders wanted to do was an asset foreclosure so they focused on exhausting all of the other remedies first (loan extension, modification, rewriting).

Interactivity Strategy: Matching
Time/Timer Set: 5 minutes

Match the following phrases to form the correct sentences.

Lesson 8: The Homeowner and the Real Estate Workout **TIME: __8 min__**

Images: Unsplash (Johnson Johnson)
Video Presentation

Lesson Description: Throughout this course, you have learned that a loan workout is a plan of how to reorganize debt when an investor is challenged with foreclosure on a real estate asset. The process is similar when it involves a home owner. In this lesson, you will receive an overview of the homeowner's experience with the loan workout.

Lesson Objective: By the end of this lesson, you will be able to understand the significance of a real estate workout to a home owner.

Topic 1: What the Lender Seeks and Ways the Homeowner Can Be Assisted

Topic 1 Content: In respect to the homeowner, the workout is also called loan modification or mortgage modification. In loan workouts, the home owner meets with the lender to talk about modification of conditions to the loan in order to provide monthly payment minimums and avoid foreclosure. Both the home owner and lender must mutually agree on modified loan terms for the loan workout to be successful.

What the Lender Seeks

The lender will investigate why the homeowner is incapable of paying the loan and the probability that the homeowner will be able to pay if the terms and conditions are modified. Particularly, the lender will look at aspects involving:

- the type of adversity or hardship that has caused the homeowner's incapability to pay
- the total balance that remains owed on the loan
- the total amount of equity earned on the property
- if the homeowner has forthcoming financial/monetary possibilities
- if foreclosure or a loan workout is best for the lender.

Ways the Homeowner Can Be Assisted

- Missed payments can be tacked on to the current loan balance.
- The lender approving the change of an interest rate, (e.g., changing an adjustable rate into a fixed rate).
- An extension on the total number of years designated to repay the loan.
- Reinstatement - the lender accepting the total amount due to them in a lump sum by a determined deadline. The lender will usually combine this opportunity with a forbearance.

Lesson 9: The Pre-Negotiation Letter

TIME: _8 min____

Images: Unsplash (Pedro Lasta)
Video Presentation

Lesson Description: Most lenders usually now necessitate pre-negotiation agreements. In this lesson, you will review the basics of the pre-negotiation letter.

Lesson Objective: By the end of this lesson, you will be able to explain the significance of the pre-negotiation letter.

***Lesson is excerpt information retrieved from article Commercial Real Estate Workouts and Foreclosure Issues (*Schifani, M., Ruth and Lewis Meister, Margaret of Modrall, Sperling, Roehl, Harris & Sisk, P.A.)**

Topic 1: The Pre-Negotiation Letter

Topic 1 Content: When a project runs into trouble, it is in the best interest of the borrower and the lender to begin discussions on what should happen next. Lenders are

motivated to talk to borrowers before a default occurs to try to address the problems and perhaps restructure the contractual arrangements to avoid a default on the loan while the borrower deals with the problems encountered by the project.

Once a default occurs, the lender will undoubtedly initiate a discussion with the borrower. The lender would much rather have the default cured than to have to initiate collection procedures. If something can be worked out, both the lender and the borrower are money ahead. Even where the lender and the borrower are unable to work something out, the lender benefits by having the discussions; if nothing else it can help demonstrate in a subsequent lender liability action that the lender acted reasonably under the circumstances.

Most lenders routinely now require pre-negotiation agreements. Until the most recent economic down turn, pre-negotiation letters were used primarily when the lender anticipated that the discussions about resolving a default or a problem with the loan would be prolonged or when the lender did not have faith in its borrower. The purpose of the pre-negotiation agreement is to avoid having a borrower misunderstand what, if any, promises the lender is making.

The simplest pre-negotiation agreement is a letter that merely acknowledges the parties are in discussion and until both parties have signed a written agreement, there is no agreement. A more formal pre-negotiation agreement would identify the parties and the nature of the default. It would recognize that the parties are agreeing to negotiate in good faith. It would contain a provision indicating that the loan documents have not been changed, that no defaults have been waived and that both parties are reserving all their rights. Other matters appropriately placed in a pre-negotiation agreement include a description of the defaults, a description of the proposed resolutions being discussed, a statement of the intention to maintain the status quo, the identity of the persons authorized to negotiate on behalf of the borrower and the lender and the ability of either party to terminate the discussions at any time.

The pre-negotiation agreement could contain a provision that the communications and negotiations that will take place are being undertaken to achieve a compromise and settlement and are therefore confidential (in which case the lender needs to retain the right to disclose to loan servicers and participating lenders) and not subject to discovery if there is subsequent litigation. Lenders will require reimbursement of expenses and may charge a fee or a deposit on those expenses. Waiver of jury trial provisions are common. Finally, the lender may require that the borrower include a provision acknowledging lender's performance and releasing any claims against the lender.

The negotiations over the exact provisions of the pre-negotiation letter, especially with regard to releasing of claims, will come down to the relative bargaining positions of the parties. A borrower will need to consider whether they are aware of any claims against a lender before agreeing to waive them. It may be that a lender will allow the borrower to carveout known claims, but will want the borrower to waive any other claims it may have.

A form of pre-negotiation agreement may be found in Ann Ramsey's article Real Estate Workouts from a Lender's Perspective, Appendix A The Practical Real Estate Lawyer, Vol. 27, No. 4, July 2011.

Lesson 10: Red Flag Trends: Summary of the Real Estate Workout **TIME: __8 min_**

Images: Unsplash Collection
Vimeo Video: **Gary Bechtel,** Chief Executive Officer, Red Oak Capital

Lesson Description: The Workout is not a bad word. It's a process of getting an asset from nonperforming to performing. In this brief lesson, you will review a summation of the real estate workout as provided by lenders.

Lesson Objective: By the end of this lesson, you will be able to explain the significance of a real estate workout.

Topic 1: Video – *Red Flag Trends/Workout is Not a Bad Word* Gary Bechtel, Chief Executive Officer, Red Oak Capital
Topic 2: Workout is Not a Bad Word

Topic 1 Content: Workout is not a bad word. It's a process of getting an asset from nonperforming to performing. There are many forms of impairment (e.g., 30 days late, 60 days late, 90 days late etc.). In detail, a workout is the process by which a lender looks at what's going on with the property, talks with the borrower, gets a handle on what the current situation is and what it is likely to be like in the future and then develops a plan. The workout is working through or working out an issue an asset is currently experiencing and trying to get it back to performing status. It's very benign.

Interactivity Strategy: Fill-in-the-blank
Time/Timer Set: **5 minutes**
Select from the word bank to complete the paragraph correctly.

FINAL EXAM **Time: 30 min**

Before starting the exam, you will need to Identify yourself by entering your State Recognized ID number. The instructions will be as follows:

Identity Verification:

You have successfully completed all the lessons in this course. Please verify your identity by entering in your State Recognized ID number to take the final exam.

Click "Identity Verification – Quiz" and then enter your information in the text field. Click "Finish Quiz" to submit the identity check.

Please complete the following exam to receive full continuing education credit. You will be able to take the exam twice and must have a 70% score to pass.

While taking this exam, please ensure that you are in a private room to avoid distraction with a stable wi-fi connection. Once you begin the exam you will be unable to pause it or restart it. If you do not pass within 2 attempts, the course will need to be retaken.

Once you have successfully passed the course exam, you will be directed click a button to continue on to receive your certificate.

Before the learner can download their certificate, they must verify the following information:

I, NAME, certify and ensure that by written statement signed under penalty of perjury that the participant enrolled is the person completing the course.

First Name:

Last Name:

State Recognized ID:

Professional License Number:

If any of this information is missing or incorrect – STOP NOW! – and click the "**Update Information**" button.

This is important as it'll be used on your certificate!

A pop-up dialog box will give the learner an opportunity to correct erroneous information or add in missing information. When all of the information has been updated, click "**Update**" button. Finally click the "**I Confirm My Details Are Correct**" button to return to the Course home page. The course certification will be available to download from the top of the page.

Thank you for completing the Real Estate Workout Course!

FINAL EXAM – TEST BANK: 18 Questions Pulled from a Question Bank of 30 Questions

18 questions, 1 minute each question = 18 minutes to complete