

Financing Estates and Trusts During Administration

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Bar Estate Planning and Probate Section



This presentation will cover

- What's Available
- Use of Funds
- Best Practices
- Points & Authorities
- Resources



Mortgage Markets - Brief Review

- QM –Qualified Mortgages
- Hard Money (Traditional Fix & Flip)
- Specialty Direct Lenders – Fiduciary Mortgages

Primary Challenges for Lenders

1. Small market niche with few skilled providers
2. Federal and State lender Compliance
3. Loans must fit CA's "Business Purpose Loan" category to avoid mis-categorization.
4. Lender's risk is in the difficulty in collection or require involuntary liquidation

Loan Requirements & Limits

- 1.50% LTV (loan-to-value ratio)**
- 2.Letters issued (and bond, if applicable)**
- 3.Authority (via statutory Notice, Consent or Order)**
- 4.FEIN + Death Cert**



Insight – Fiduciary
Loans are driven by
EQUITY and TITLE

What your client needs to know about Fiduciary Mortgages

- 1. Does not compete with nor resemble consumer bank loans**
- 2. Higher Interest rates (4-5% premium on average = 9-12% I/O)**
- 3. Shorter terms (1-5 years)**
- 4. Fiduciary signs Business Purpose Loan to entity**

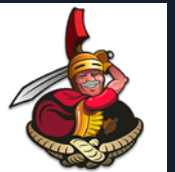
What your client needs to know about Fiduciary Mortgages – Cont'd

Collateral driven!

- **Estate can usually borrow up to half of collateral value**
- **Estate loans are driven by EQUITY and TITLE.**
- **The RATE PREMIUM is what private lenders require to compete with other investment types.**
- **The TERMS reflect the *RISK OF DRAMA Index***
- **The CLOSING COSTS reflect low-touch & high-touch effort required to close, AKA “*Is the JUICE worth the SQUEEZE?*” Factor.**

Insight:

“Cost is only a factor when value is not present”



Application and Use of Loan Funds

- Threats
- Barriers
- Obstacles
- Opportunities



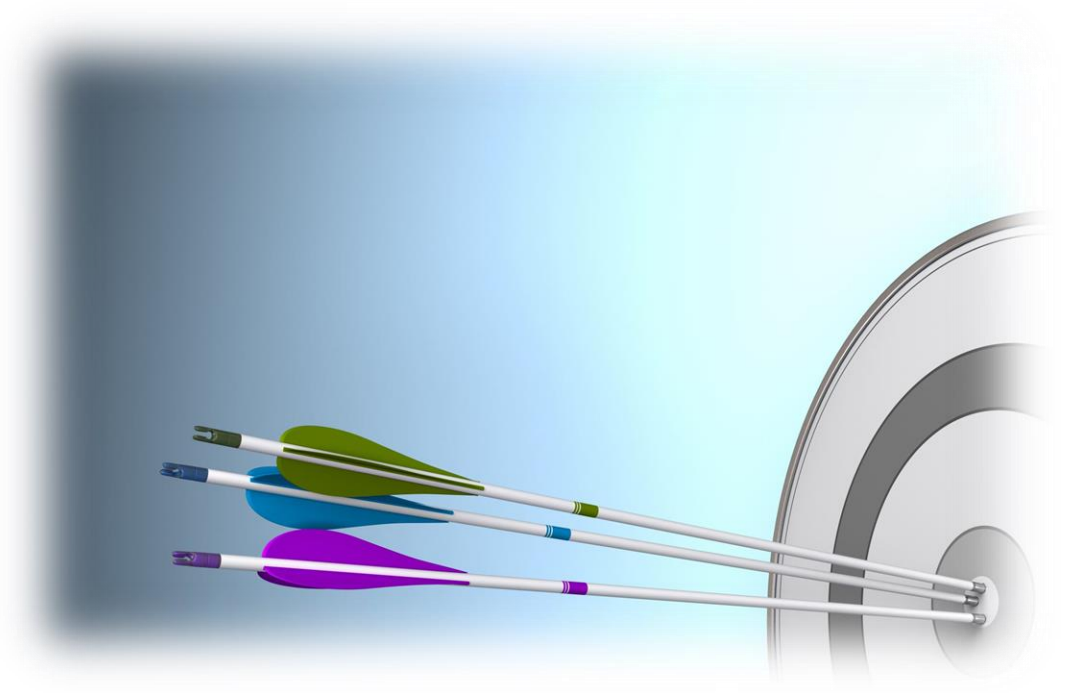
Tension Reducing



Tension Reducing...

1. Exigent (Foreclosure, tax sale, litigation workouts)
2. Reverse mortgage balloon payments
3. Creditors: (secured – liens)
4. Creditors: (unsecured – DHCS/Medi-Cal)
5. Relocation > eviction > squatters,
6. Administration expenses (Attorney & PR Stat & X/O fees)

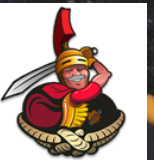
Goal Improving



Goal Improving...


- **Buyouts - Balance Equity & Benefits**
- **Waterfall (serial) estates**
- **Multiple Entities**
- **Reallocation of Equity (non-pro-rata distribution)**
- **Property remediation, preservation & restoration**

Client Roadmap



Successful Financing Plans...

- **Establish Goal #1:**
- **Timeline: (10) Days plus time for Court Order, if applicable**
- **Parties in agreement**
- **Exit Plan**
 1. Fiduciary Loan > Distribute > Bank Refinance or Reverse Mortgage
 2. Fiduciary Loan > Distribute > Loan Remains (extend?)
 3. Fiduciary Loan > Renovate > Sell



Insight – A Fiduciary is a
Distributable, Non-recourse
Secured Debt



Insight – Ability of PR to Tap Equity
and Distribute Real Estate to
beneficiary's subject-to Fiduciary
Mortgage without exposure to
beneficiary's debt payment habits

Financing Estates & Trusts

- Best Practices



Is the Juice Worth the Squeeze?



Best Practices

A. *“Pay the Attorneys!”*

B. Preferably structure as 1st DOT

C. Lender terms to confirm:

1. Fiduciary capacity
2. Distributable without acceleration
3. Non-recourse
4. Complies with Revenue & Taxation Code (if applicable)

Best Practices – Cont'd

D. Distribution

- 1. Obtain fiduciary mortgage financing**
- 2. Distribute fractional real estate interest(s) or Life Estate subject-to loan**
- 3. Fiduciary obligation ceases upon discharge of duties**
- 4. Any Carry-back Notes should be recorded in junior lien position**

Points & Authorities

Points & Authority – just a few...

- 1. Trust law - Trust's powers to encumber trust property [PC 16228]**
- 2. Borrowing, Refinancing and encumbering Property [PC 9800 – 9807]**
- 3. Public Administrator [PC 7600 et seq]**
- 4. Under Independent Administration of Estate Act [PC 10514]**
- 5. Exemplar language for NoPA & Order: see attached**



RESOURCES

Resources

Please feel free to contact me to discuss your legal matter, especially title, foreclosure, even non-transactional situations. I'm happy to connect you directly to resources and timely back line contacts

NOTE: "I am NOT an attorney"

WATCH: [CloseProbate.com/YouTube](https://www.closeprobate.com)

SUBSCRIBE: [RickHarmon.com](https://www.rickharmon.com) – weekly "Rick's Rants" e-Letter, tips, insights, war stories

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