November 2009

A Loan Enforcement Client Advisory:

FIL-61-2009: Policy Statement on Prudent CRE Loan Workouts

In our Creditors Rights, Loan Enforcement and Creditor Bankruptcy Representation practice group:

Michael A. Campbell
Practice Area Co-Chair
314.552.6805
mcampbell@polsinelli.com

Brett D. Anders
Practice Area Co-Chair
816.360.4267
banders@polsinelli.com

To learn more about this group, click here

www.polsinelli.com

On October 30, 2009, the FDIC issued a Policy Statement on Prudent Commercial Real Estate Loan Workouts. The Policy Statement is very helpful in giving bank management and loan workout staff guidance on how the FDIC will treat various loan restructurings in the face of declining appraised values of commercial real estate.

For example, the FDIC recognizes that it is difficult for many borrowers to obtain refinancing when their loans mature in the midst of an economic crisis. The FDIC makes it clear that renewals or restructurings of loans to those borrowers who have demonstrated an ability to pay their debts will not be adversely classified (but may still warrant close monitoring).

One of the most interesting statements in these guidelines appears on page 10, where the FDIC states that "(d)ecisions related to loan workout arrangements may affect regulatory reporting, particularly interest accruals, troubled debt restructuring treatment, and credit loss estimates." The FDIC states that management should ensure that loan workout staff communicate with accounting and regulatory reporting staff to accurately report restructurings in regulatory reports. This may help financial institutions to predict whether regulators will scrutinize a particular restructuring to determine whether a restructure was effectively an attempt to manipulate classification of the loan. The Policy Statement indicates that the FDIC will focus on the accurate reporting of a particular restructuring and of its consequences.

This Policy Statement also provides guidance to lenders on how to use simple loan modifications and other forms of restructure to help avoid adverse classification of a loan. One example provided by FDIC is the restructure of a troubled loan into two separate notes - one that is reasonably assured of repayment (and is therefore performing), and the other that is not (and is therefore adversely classified). In appropriate circumstances, this will permit a lender to adversely classify only a portion of the debt (the portion that is not reasonably assured of repayment).

Of course, the Policy Statement addresses only the FDIC's guidelines for the review and classification of CRE loans, and these guidelines may not necessarily be followed by all other regulators. As always, care should be taken by bank management to carefully follow all available guidelines and proper accounting practices when making decisions on loan restructurings and classifications.

We are on the forefront of these issues in our loan workout practices, workout agreements and restructuring documentation. Please feel free to contact us if you have any questions about this Policy Statement.

The Policy Statement can be found at http://www.fdic.gov/news/news/financial/2009/fil09061a1.pdf.

Additional information on this Policy Statement can be found at http://www.fdic.gov/news/news/financial/2009/fil09061.html.

For More Information:

For more information, or if you have any questions regarding creditors rights, loan enforcement or creditor bankruptcy representation, please contact:

- Michael A. Campbell - 314.552.6805 | mcampbell@polsinelli.com
- Brett D. Anders - 816.360.4267 | banders@polsinelli.com
- Jerry Switzer, Jr. - 312.873.3626 | jswitzer@polsinelli.com

---

About Polsinelli Shughart PC

With more than 480 attorneys, Polsinelli Shughart PC is a national law firm that is a recognized leader in the areas of business litigation, financial services, bankruptcy, real estate, business law, labor and employment, construction, life sciences and health care. Serving corporate, institutional and individual clients regionally, nationally and worldwide, Polsinelli Shughart is known for successfully applying forward-thinking strategies for both straightforward and complex legal matters. The firm can be found online at www.polsinelli.com.

Kansas City St. Louis Chicago Denver Phoenix Washington D.C. New York
Wilmington DE Overland Park St. Joseph Springfield Topeka Edwardsville