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Quirks of Financing & Re-financing MH Parks

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I. INTRODUCTION: OVERVIEW OF CURRENT LENDING CLIMATE FOR MHP'S

Everyone knows that interest rates in recent years – in the wake of the financial meltdown that occurred in the mid-2008 to mid-2009 timeframe – have been at historic lows. While in the past few quarters of 2013 rates have crept up slightly, interest rates are still favorable from a historical perspective. Clearly, none of us have crystal balls as to how long rates will remain at these relatively attractive rates. So no guarantees on the duration of this favorable market for interest rates can be made.

Nevertheless, if you either own a mobile home park ("MHP") and you're considering a refinance, or you are contemplating acquiring one, at least commercial lenders with savvy in the MHP arena appreciate the diversification to their portfolios which having loans to MHP owners provides.

This has been especially true in the wake of the crisis ensuing from the high default rate on Commercial Mortgage Backed Securities. Thus, while an oversimplification, the financial debacle of 2008-2009 was largely precipitated by many securitized loans going "south" due to credit being overextended primarily on residential mortgages.

In contrast, MHP's are viewed by lenders as attractive to finance precisely because housing opportunities that MHP's offer are monetarily more feasible for many for whom single family homes are economically out of reach. Because MHP's also comprise a different kind of housing than condominiums, apartments, or single-family homes, and are available to various income levels, they inherently provide a level of diversification for Lenders' portfolios.

With this as introduction to the current lender climate vis-à-vis providing loans with MHP's as collateral, we turn now to address a particular quirk specific to such loans.

II. BORROWING ENTITY

One unique issue that arises in the context of loans secured by a MHP is that frequently a MHP owner also owns, or perhaps through foreclosure acquires, mobile homes located on various spaces throughout the park.

If these homes are titled in the borrowing entity, then these homes will end up as collateral for the loan, in addition to the MHP itself, including all amenities (usually at least one clubhouse and a pool area) located at the park.

We recommend that an entity separate and apart from the Borrower should be established to take title to such homes. While there are inevitable expenses to set up and maintain another entity, such costs are trivial in light of the potential liability exposure and/or hassles entailed in having title to both mobile homes and the park itself being vested in the same borrowing entity.

The primary concern as to liability exposure is illustrated by a thankfully rare example that occurred within the last few years in Texas. Tragically, a park-owned home caught fire, burned down, and an occupant of the home died in the blaze. In our unfortunately litigious society, where plaintiff's attorneys target deep pockets, this scenario creates the possibility whereby all assets of the Borrower could be at risk. With a single entity owning both the MHP and homes, the "pockets" of the owner of the mobile home run as deep as the pockets of the park owner, since in this scenario these pockets are one and the same.

There are also hassles entailed in having the same borrowing entity hold title to the park as holds title to homes located at the park. A prime example of such hassles pertains to the limits on the Borrower/Owner's flexibility in dealing with their park-owned homes. Because these homes will be additional collateral for any loan to the Borrower/Owner, the homes will not be easily saleable if the Owner wants to sell or otherwise dispose of them. Generally, these homes will be encumbered due to the UCC filings any commercial lender will insist on as part of standard lending practices.

Frankly, the liability exposure issue exists even for a park owner who eventually pays off their loan and owns their park and homes free and clear. Using one entity to own both the MHP and homes for rent at the park (along with the underlying spaces) inherently deepens the Owner's pockets in the eyes of any plaintiff's attorney representing a resident who is injured due to some claimed defect of the home itself. This assumes, of course, that the resident's attorney could demonstrate that, for instance the Owner had been negligent in creating or allowing some unsafe condition to exist.

If you were going to refinance a MHP that you already own, and you currently own some homes in the same entity that will be the refinancing entity, then during the loan negotiations is the time to raise the issue with the lender as to transferring those homes to another entity which will not be the borrowing entity, such that the homes will not become a part of the collateral in the refinance.

Our experience in negotiating this kind of "carve out" for the homes not to comprise part of the collateral has been very favorable. Frankly, most lenders experienced with making loans to MHP's prefer not to have mobile homes serve as part of their collateral, due to the increased liability exposure issues, discussed briefly above. This is contra the general principle that lenders want to have as much collateral as possible.

Another issue worth touching on in the parameters of this discussion on financing or refinancing MHP's is that, similarly to apartment complexes or shopping centers, the lender is going to want to evaluate the quality and condition of the infrastructure. This means that before even contacting a lender, you would be well served to realistically assess the condition of the existing amenities, whether repairs or refurbishing or upgrades should be undertaken, etc.

Clearly, any commercial lender is going to require certain reserve funds be set aside in order to accomplish routine maintenance, as well as deferred maintenance and periodic upgrading of the existing amenities. So it behooves a prospective borrower to realistically assess what is likely to be needed and/or required by a lender, and to budget for these items and perhaps undertake to perform some maintenance prior to undertaking a refinance. (With an acquisition, of course one would be negotiating with the seller to provide either funds to be withheld from the sales price, or to undertake certain repairs or upgrades prior to the acquisition being completed.)

III. CONCLUSION

While commercial interest rates have started creeping up, they are still relatively favorable from a historical perspective. Because of the diversification which MHP financing offers for lenders' portfolios (as well as for investors' holdings), acquisition loans or refinancing of MHP's are still far more readily available than they were a decade or more ago.

As discussed above, due care should be taken to have any homes at the park which the park owner intends to own (or that the park owner acquires through foreclosures) have title taken in a separate entity to avoid increasing the liability exposure for the park owner, as well as to facilitate an owner's right to more easily dispose of such homes, at their discretion.

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