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FEBRUARY 10th - 12th, 2014

A BRIEF VIEW OF STICKY ISSUES IN HOSPITALITY TRANSACTIONS

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- Strong emphasis on representing international lodging brands

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A BRIEF VIEW OF STICKY ISSUES IN HOSPITALITY TRANSACTIONS

Subordination,
Non-Disturbance
and
Attornment
Agreements,
Cash
Management
Agreements,
Comfort
Letters,
Sanctioned
Persons and
Entities and
Impact in
Mixed Use
Developments

I. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

- **Purpose of SNDA**
 - **Subordination**
 - **Non-Disturbance**
 - **Attornment**
 - **What to Subordinate**

I. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

- **Obligations of Mortgagee and Subsequent Owners**
 - Owner in default
 - Receiver appointed
 - During foreclosure period
 - Post-foreclosure

I. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

- **Mortgagee Cure Rights**
 - How long should cure period be
 - What must be cured
 - Impact on failure to cure

I. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

- **Receiverships**
 - **Working with a receiver**

I. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

- **Amendments to Management Agreement**
 - **Waiver/Subordination of Manager Fees**
 - **Limitations on Manager's Rights**

I. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

- **Transfer of Licenses and Permits**
 - **Liquor Licenses**
 - **Understanding local laws**
 - **Risks**

I. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

- **Casualty and Condemnation Considerations**
 - **What document governs – loan agreement or management agreement**
 - **Use of proceeds – loan pay-down or hotel restoration**
 - **Who controls the insurance proceeds**

I. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

- **SNDA's with Mezzanine Lenders**

I. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENTS

- **Should SNDA extend to Residential Marketing and License Agreements**

II. CASH MANAGEMENT AGREEMENTS

- Purpose of Cash Management Agreement – Controlling the Cash

II. CASH MANAGEMENT AGREEMENTS

- **Granting of Security Interests in Accounts**
 - **Operating Account**
 - **FF&E Reserve**
 - **Owner's Distribution**
 - **Payroll Accounts**
 - **Insurance Accounts**

III. COMFORT LETTERS

- **Subordinating Franchise Agreement**

III. COMFORT LETTERS

- **Lender Cure Periods**

III. COMFORT LETTERS

- **Extending Comfort Letters to Successors and Assigns**

IV. SANCTIONED PERSONS AND ENTITIES

- **U.S. Embargoes and Economic Sanctions – Background**
 - **U.S. embargoes and economic sanctions**
 - **Support U.S. foreign policy, national security, and economic policy goals**
 - **Administered by the U.S. Departments of Treasury (OFAC) or Commerce (BIS)**

IV. SANCTIONED PERSONS AND ENTITIES

- **U.S. Embargoes and Economic Sanctions – Background**
 - **Types of sanctions programs:**
 - **Comprehensive sanctions programs apply to Cuba, Iran, North Korea, Sudan, and Syria**
 - **More limited sanctions on Myanmar (Burma)**

IV. SANCTIONED PERSONS AND ENTITIES

- **U.S. Embargoes and Economic Sanctions – Background**
 - **Types of sanctions programs:**
 - **List-based sanctions programs apply to designated persons associated with targeted countries, regimes, or activities (such as terrorists, narcotics traffickers, proliferators of weapons of mass destruction, or certain persons associated with formerly embargoed countries)**
 - **Persons designated under list-based sanctions programs are identified on the U.S. Specially Designated Nationals List (SDN List)**

IV. SANCTIONED PERSONS AND ENTITIES

- **U.S. Embargoes and Economic Sanctions – Prohibitions**
 - **U.S. Persons are generally prohibited from engaging in the following activities:**
 - Most commercial and financial transactions
 - Exporting, re-exporting or selling goods or services
 - Importing goods or services
 - Wire transfers through designated financial institutions
 - “*Facilitation*” of another person’s transaction (*i.e.*, non-U.S. Person), if such a transaction would be impermissible if carried out by a U.S. Person

IV. SANCTIONED PERSONS AND ENTITIES

- **U.S. Embargoes and Economic Sanctions – Prohibitions**
 - **In the case of the sanctions programs against Cuba and Iran, the prohibitions extended to non-U.S. Persons owned or controlled by a U.S. Person (*i.e.*, foreign subsidiaries)**

IV. SANCTIONED PERSONS AND ENTITIES

- **U.S. Embargoes and Economic Sanctions – Prohibitions**
 - **Certain narrow exceptions may be available depending upon the sanctions program as each program is unique**
 - **Examples include the “travel exception” and “informational materials exception”**
 - **Significant civil and criminal penalties can be levied for violations**

IV. SANCTIONED PERSONS AND ENTITIES

- U.S. Embargoes and Economic Sanctions – Management Agreements
 - Generally prohibited from entering into a hotel management agreement with a national of or entity organized under the laws of a country subject to a comprehensive sanctions program (e.g., Cuba, Iran, North Korea, Sudan, and Syria), or an individual/entity listed on the SDN List

IV. SANCTIONED PERSONS AND ENTITIES

- **U.S. Embargoes and Economic Sanctions – Management Agreements**
 - For each new or modified agreement, the hotel manager’s compliance department should check all hotel owners (entities and senior management) to the countries with comprehensive sanctions as well as to the SDN List to determine if entering into the agreement is prohibited

IV. SANCTIONED PERSONS AND ENTITIES

- **U.S. Embargoes and Economic Sanctions – Management Agreements**
 - All hotel management agreements should contain *rep and warranty* clauses regarding U.S. sanctions
 - Agreement language might include -- hotel owner (a) is not in violation of U.S. sanctions laws and does not have assets that are subject to restrictions under U.S. sanctions and (b) will not cause the hotel manager to subject its assets or interests to liability under U.S. sanctions laws.

IV. SANCTIONED PERSONS AND ENTITIES

- **U.S. Embargoes and Economic Sanctions – Management Agreements**
 - Management agreement should be reviewed to consider what ancillary services provided by a U.S. parent or U.S. subsidiary to the hotel property might be impacted by a change in U.S. policy toward a particular country. The civil war in Syria provided a number of challenges for U.S. companies in adjusting services that could not be provided from the United States

V. IMPACT IN MIXED USE DEVELOPMENTS

- **Brand Identity**
- **Residential Components**
- **Guest Integrity**
- **Financing Impacts**
- **Insurance, Security and Control**
- **Allocation of Expenses**

VI. CONCLUSION

Questions and Comments