



ETHICAL ISSUES IN REAL ESTATE-BASED BANKRUPTCIES 2020

ABOUT THIS SERIES

It does not take a complex corporate chapter 11 bankruptcy to encounter serious ethical issues that must be confronted in a case. In fact, the relative simplicity of a real estate-based bankruptcy will shine the light on all of the main case details, bringing increased scrutiny to all of the debtor's actions and decisions.

Real estate-based bankruptcies are some of the most common matters filed. As an attorney, you are your client's advocate and need to navigate the waters to provide effective counsel while playing within rules.

In this series we tackle some common ethical scenarios that present themselves in real estate-focused bankruptcies frequently, including matters related to valuing assets, insider lease agreements, and a Single Asset Real Estate (SARE) cases. At the end you will be better equipped to answer questions like Is your client being astute or asinine? This this scheme clever or cagey? Under the rules of bankruptcy, is an inside arrangement shady or shrewd?

As with every Financial Poise webinar, each episode in this series is delivered in Plain English understandable to investors, business owners, and executives without much background in these areas, yet is also valuable to attorneys, accountants, and other seasoned professionals. And, as with every Financial Poise webinar, each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes, so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Episode Summaries

About Episode #1

Valuing Real Estate Assets

Tuesday, January 28, 2020 at 11:00 AM CST

As the expression goes, the value of real estate is in the eye of the beholder. Ultimately, the value is whatever the market is willing to pay. While income producing properties, particularly with credit



worthy tenants, may be fairly routine to value based on current rate of return demands in the market, non-income producing properties may be more speculative.

For example, even the most seasoned appraiser may struggle with finding comparative sales for a property. A landowner might see their property value go up exponentially “if only” the city council will allow for a zoning variance. Many an owner believes their property is in the “path of progress”, but when? Is it reasonable to value a property “as stabilized” if it is only forty percent leased? These are the types of questions we will consider.

About Episode #2

Insider Lease Agreements

Tuesday, February 18, 2020 at 11:00 AM CST

It is a common play in real estate to create a separate operating entity to serve as a tenant and execute a lease between the owner of the property and himself. Typically, this happens in assets which serve as a real estate-based business, such as a retail property. The structure enables the operator to reduce the taxable income of the business and also provide a liability shield for the property owner.

This arrangement can lead to some ethical issues should the property owner become distressed. For example, is the lease amount above market and therefore being used to inflate the property valuation? Is rent actually being paid? Is there a proper lease in place or just an internal handshake? Attorneys need to understand the set-up in order to know what is in bounds and what is outside the lines.

About Episode #3

Single Asset Real Estate (SARE) Cases

Tuesday, March 17, 2020 at 11:00 AM CST

Anyone involved in the field of creditors rights on a matter involving an LLC that exists solely to hold the principal asset has surely seen the play where, the night before property is scheduled to be sold at a foreclosure auction, the debtor files bankruptcy. For those not familiar with the process, doing so invokes the “Automatic Stay”, which prohibits the secured lender from foreclosing on the property. The debtor then attempts to make their case to the court for reorganization.



But is failing to pay your mortgage really something bankruptcy was meant to solve? If the bank was going to agree to a loan modification, wouldn't the parties have worked something out by the time the sheriff sale was set? The bankruptcy code recognizes this and therefore has a section devoted to dealing with this specific kind of bankruptcy—the Single Asset Real Estate (“SARE”) case. The goal of this episode is to look into ethical issues surrounding these matters.