AMERICAN BANKRUPTCY INSTITUTE

Distressed Real Estate Symposium

Property Valuation and Due Diligence

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Property Valuation and Due Diligence

VALUATION IN BANKRUPTCY COURT: LEGAL STANDARDS

I. Valuation in Bankruptcy

A. Valuation in bankruptcy cases can arise in multiple contexts:

i. Establishing adequate protection

1. A creditor's right to adequate protection is limited to the extent of its interest in collateral. This necessitates an analysis of the value of the collateral.

2. If the court determines that the value of the collateral exceeds the amount of the debt with sufficient equity cushion, the creditor is adequately protected.

ii. DIP financing

iii. 363 Sales

iv. Confirmation

1. Determination of whether a plan is reasonable.

2. Concept of feasibility depends on the valuation of the debtor's reorganized business enterprise and its likelihood to succeed in the current market.

3. Whether a plan is fair and equitable under the best interests of creditors test requires that impaired creditors must receive at least as much under the plan of reorganization as they would in a chapter 7 liquidation (perform liquidation analysis)

v. Avoidance actions (debtor's solvency is an element)

1. Preferential payments 11 U.S.C. § 547

2. Fraudulent transfers 11 U.S.C. § 548

B. Valuation is performed by the debtor's financial advisor or valuation expert retained by the debtor for that purpose.

C. "Value" is not explicitly defined in the bankruptcy code, although the term—and concept—is at the heart of many aspects of bankruptcy. *See* 11 U.S.C. § 506 ("value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."); 11 U.S.C. § 548 ("the trustee may avoid any transfer…if the debtor voluntarily or

involuntarily…received less than a reasonably equivalent value in exchange for such transfer or obligation."); and 11 U.S.C. § 1129 ("The court shall confirm a plan only if…each holder of a claim or interest of such class…will receive…value…that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7…")

II. Attacking the Ability to Testify as an Expert Witness (Qualification)

A. In order for a witness to testify regarding an opinion (such as an opinion on the value of an asset or a business), the witness must be qualified as an expert witness based on training, background, experience, and education, as required by the Federal Rules of Evidence. Challenges to a witness's qualification to testify as an expert are frequently referred to as a "Daubert" challenge, in reference to the U.S. Supreme Court case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 570 (1993), where the Court established the trial court's role in gatekeeping unreliable expert testimony.

B. Federal Rules of Evidence

   i. The Federal Rules of Evidence (FRE) are made applicable in bankruptcy cases pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 9017 and FRE 1101(b).

   ii. The FRE cover:

      1. General Provisions (FRE 101 to 106).
      2. Judicial Notice (FRE 201).
      3. Presumptions in Civil Cases (FRE 301, 302).
      4. Relevance and Its Limits (FRE 401 to 415).
      5. Privileges (FRE 501, 502).
      6. Witnesses (FRE 601 to 615).
      7. Opinions and Expert Testimony (FRE 701 to 706).
      8. Hearsay (FRE 801 to 807).
      9. Authentication and Identification (FRE 901 to 903).
      10. Contents of Writings, Recordings, and Photographs (FRE 1001 to 1008).
      11. Miscellaneous Rules (FRE 1101 to 1103).

C. Rules Applicable to Experts

i. Testimony by Expert Witnesses (FRE 702): A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion if:

    1. the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

    2. the testimony is based on sufficient facts or data;

    3. the testimony is the product of reliable principles and methods; and

    4. the expert has reliably applied the principles and methods to the facts of the case.

ii. Bases of an Expert's Opinion Testimony (FRE 703): An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

iii. Opinion on an Ultimate Issue (FRE 704)

    1. In General--Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.

    2. Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

iv. Disclosing the Facts or Data Underlying an Expert's Opinion (FRE 705): Unless the court orders otherwise, an expert may state an opinion--and give the reasons for it--without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

v. Disclosure of Expert Testimony (FRCP 26(a)(2), applicable in adversary proceedings pursuant to FRBP 7026):

    1. In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

2. Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

    a. a complete statement of all opinions the witness will express and the basis and reasons for them;

    b. the facts or data considered by the witness in forming them;

    c. any exhibits that will be used to summarize or support them;

    d. the witness's qualifications, including a list of all publications authored in the previous 10 years;

    e. a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

    f. a statement of the compensation to be paid for the study and testimony in the case.

3. Witnesses Who Do Not Provide a Written Report. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

    a. the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

    b. a summary of the facts and opinions to which the witness is expected to testify.

4. Time to Disclose Expert Testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

    a. at least 90 days before the date set for trial or for the case to be ready for trial; or

    b. if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

5. Supplementing the Disclosure. The parties must supplement these disclosures when required under Rule 26(e).

D. *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 570 (1993)

i. FRE 702 was amended in 2000 in response to *Daubert*, the U.S. Supreme Court case that charged trial judges with the responsibility of acting as gatekeepers to exclude unreliable expert testimony. In *Kumho Tire Co. v. Carmichael,* 119 S.Ct. 1167 (1999), the Supreme Court clarified that this gatekeeper function applies to all expert testimony, not just testimony based in science.

ii. *Daubert* sets forth a non-exclusive checklist for trial courts to use in assessing the reliability of scientific expert testimony. The non-exclusive factors set forth by the *Daubert* court are:

1. whether the expert's technique or theory can be or has been tested---that is, whether the expert's theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability;

2. whether the technique or theory has been subject to peer review and publication;

3. the known or potential rate of error of the technique or theory when applied;

4. the existence and maintenance of standards and controls; and

5. whether the technique or theory has been generally accepted in the scientific community.

iii. The Court in *Kumho* held that these factors might also be applicable in assessing the reliability of non-scientific expert testimony, depending upon "the particular circumstances of the particular case at issue." 119 S.Ct. at 1175. "We conclude that Daubert's general holding--setting forth the trial judge's general 'gatekeeping' obligation--applies not only to testimony based on 'scientific' knowledge, but also to testimony based on 'technical' and 'other specialized' knowledge." *Kumho*, 119 S.Ct. at 1171.

III. ***Attacking the Witness's Opinion***

A. *Valuation Methodology: Replacement Value versus Liquidation Value*

i. "An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such

creditor's interest in the estate's interest in such property, ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property....” 11 U.S.C. § 506(a).

ii. In *Assocs. Com. Corp. v. Rash*, 520 U.S. 953 (1997), the U.S. Supreme Court tackled the question of “how” to value collateral, “[a]s we comprehend § 506(a), the “proposed disposition or use” of the collateral is of paramount importance to the valuation question.” 520 U.S. 953, 962. In *Rash*, the Supreme Court differentiated between cases where a debtor chooses to surrender collateral to a creditor on the one hand, or cases where collateral will be retained and used by the debtor, a “cram-down.”

iii. Replacement Value

1. Where debtors propose to retain property, courts should use replacement value for determining its value. *See Rash*, 520 U.S. 953, 965. Although the United States Supreme Court in *Rash* left it open for other courts to determine what specific methodologies could be considered to determine replacement value, the Eighth Circuit has adopted retail value as the methodology for automobiles and similar equipment. *See In re Trimble*, 50 F.3d 530, 531–32 (8th Cir. 1995). “[T]he replacement value of an automobile lies in its retail value as of the date of confirmation.” *In re Mitchell*, 320 B.R. 687, 689 (Bankr. E.D. Mo. 2005); *see also In re Dunlap*, 215 B.R. 867, 870 (Bankr. E.D. Ark. 1997) (“First, if a creditor has a claim secured by a lien in a vehicle that is retained by the debtor, [the plan] must propose to pay the value of the vehicle calculated at the retail, not wholesale, market.”).

2. Bankruptcy Courts in the Seventh Circuit similarly adopt “replacement value” standard, describing the value determination as requiring the court to “ascertain the price this Debtor would pay for the same collateral in the available market.” *In re Castleton Plaza, LP,* No. 10-1444-BHL-11, 2011 WL 4621123, at *3 (Bankr. S.D. Ind. Sept. 30, 2011).

3. In the Sixth Circuit, Bankruptcy Courts also adopt the *Rash* “replacement value” standard in cram-downs. *In re Murray Metallurgical Coal Holdings, LLC,* 618 B.R. 220 (Bankr. S.D. Ohio, 2020).

4. Replacement, or Retail value is based on the price a willing buyer in the Debtor’s position would pay to purchase similar equipment from a willing seller. *See, e.g., In re Jones*, 219 B.R. 506, 508 (N.D. Ill. 1998); *In re Bryan*, 318 B.R. 708, 710 (Bankr. W.D. Mo.

2004) (The retail value is "the price a willing buyer is willing to pay for any [equipment].").

iv. Liquidation Value

1. Although some courts have considered various markets available to debtors to aid in determining replacement value*, see, e.g., In re McElroy*, 210 B.R. 833, 835 (Bankr. D. Or. 1997) ("In view of the *Rash* decision, I conclude that, in this case, valuation should be based on prices paid in the market that is accessible to the debtors, which includes, without limitation, sales by dealers to the public, auctions open to the public, and sales between private parties."), reliance on pure auction value of property is improper when the debtor intends to retain the property because it is typically synonymous with liquidation value. *See In re Neal*, 314 B.R. 198, 200 (Bankr. N.D. Iowa 2004) ("The liquidation value is what a secured creditor would expect to recover on repossession and sale by auction or other wholesale means."); *In re Bouzek*, 311 B.R. 239, 240 (Bankr. E.D. Wis. 2004) ("'Wholesale value,' used by most courts interchangeably with 'liquidation value,' is 'the secured creditor's expected recovery upon repossession and sale by auction or other wholesale means.'").

2. While a court may consider prices obtained in markets available to the debtor, pure auction values may not be suitable in every case. *See, e.g., McElroy,* 210 B.R. at 827 ("I did not give any weight to the price a dealer had offered to purchase the truck from debtors, because that is a wholesale price and, under *Rash*, should not be used in valuing a vehicle these debtors are going to retain.").

B. Timing of Valuation

i. The Plan must provide Lender "deferred cash payments totaling at least the allowed amount of such claim, of a value, *as of the effective date of the plan* . . . ." 11 U.S.C. § 1129 (emphasis added).

ii. "[T]he court must simply value the collateral as of the effective date of the debtor's plan in order to determine the allowed amount of the creditor's secured claim." *4 Collier on Bankruptcy P 506.03* (16th 2021); *see also In re Fulcher*, 15 B.R. 446, 448 (Bankr. D. Kan. 1981) ("[A]bsent a showing of bad faith by the debtor … the collateral should be valued as of the day the plan is confirmed, which is the effective date of the plan ….").

iii. An increase in the value of collateral does not alter the express language of the Bankruptcy Code. The United States Supreme Court has ruled, "[a]ny increase over the judicially determined valuation during bankruptcy rightly accrues to the benefit of the creditor, not to the benefit of the

debtor . . . ." *Dewsnup v. Timm*, 502 U.S. 410, 417, 112 S. Ct. 773, 778, 116 L. Ed. 2d 903 (1992). Courts have extended this determination to Chapter 11 cases, ruling that an increase in collateral value does not alter the requirement that collateral is valued as of the effective date of a plan:

1. Under § 1129(a)(7)(A)(ii), commonly referred to as the "best interest test," each holder of an impaired claim is entitled to "receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date." Since *Dewsnup* mandates that increases in the value of collateral accrue to the benefit of the secured creditor in chapter 7, the best interest test entitles the creditor in chapter 11 to at least the present value of its secured claim, as increased during the pendency of the case. Moreover, there is no apparent reason why increases in value should accrue to the creditor in chapter 7 cases but not in chapter 11 cases. Therefore, the debate over valuation timing has been decided by *Dewsnup* in favor of the effective date of confirmation. *In re Bloomingdale Partners*, 160 B.R. 93, 97 (Bankr. N.D. Ill. 1993).

C. Till Rate Issues

i. A debtor's plan may provide for interest to accrue on the secured portion of a lender's claim at a rate different (lower) than the pre-petition contract rate or amortized over a longer period of time. A creditor may object to the lower interest rate on the basis that it fails to adequately protect the creditor from the risk of loss and depreciation that would be incurred and realized in extending payments.

ii. According to *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (2004), the proper interest rate in a bankruptcy is the prime interest rate plus one (1) to three (3) percent, depending on the risk taken by the creditor.

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COMMERCIAL NEWS

What Is "*Market*" When There Is No Market?

BY DAVID M. ROSENTHAL, MAI PRESIDENT & CEO - CURTIS – ROSENTHAL, INC.

We all read the headlines, so we know the economy is a mess. It appears that the commercial real estate market is not far behind. Transactions are rare, many tenants are struggling, and financing is scarce. So what is "Market" for commercial properties in this environment? The answer is more than just a cap rate, as we also need to consider the quality and duration of the income stream.

What's the Cap Rate?

It seems clear that cap rates are rising, but how far and how fast? The cap rate question is particularly challenging since buyers and sellers have not yet come to terms with today's environment. Property operating fundamentals are challenged today, so the cap rate question must include questions about the stability of the cash flow to be capitalized. Just how secure is the income stream? Dramatic change in the capital markets has also put upward pressure on cap rates, as available debt is lower leverage, more expensive and less available than it was a short time ago.

So, where are cap rates today? They are in transition from lower to higher. How high they will go remains to be determined in the marketplace…and it will happen over time. A likely catalyst for movement may be the looming wave of distressed and REO properties that will likely hit the marketplace as more property owners find themselves in distress. Only when more transactions occur will the marketplace clarify the cap rate question.

How Solid Is The Income Stream?

When rents were rising rapidly, a tenant default could enhance a property's value by allowing an owner to increase rent to market. Those days are clearly gone, as today the risk of a vacant space is substantial. Many commercial tenants are cutting back on staff and thus on their space needs. Troubled retail tenants are in the news today, particularly boutique, specialty big box and mom-and-pop retailers. Office buildings that cater to softening industries also have tenancy challenges, as unemployment grows.

The need for manufacturing and warehousing space is declining as commerce is slowing down, resulting in reduced space demands. Even apartment properties are feeling the pinch as tenants are losing their jobs, while the inventory of units is increasing due to broken condo developments repositioning themselves as rentals. Lease rollover, traditionally an essential topic, has today taken on even greater importance. With many tenants struggling and more space becoming available, the risk of losing a tenant upon lease expiration continues to rise. Properties with a substantial proportion of leases rolling will present unique challenges to investors and lenders in today's uncertain environment.

Beware of Falling Market Rents

In light of reduced tenant demand, there is real evidence that market rents are softening in many property sectors. Distressed tenants are not shy about asking their landlords to share their economic pain. While rental rates in many sectors are falling, rental concessions are on the rise. Free rent or excessive TI allowances translate to lower effective market rents. Many commercial real estate lenders now underwrite to market not contract rents as they did not long ago. As a result, a stabilized property with above-market rents in place may find that loan availability would be based on declining market rents, not their existing leases. Lower market rents combined with tighter underwriting means less loan dollars available, which results in lower prices that investors can afford to pay for properties…much to the dismay of sellers.

What Financing Is Available?

In the go-go days, the presence of abundant, high-leverage, low-cost debt

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helped to fuel low cap rates and rising property values. Today the converse is true, as scarce, low-leverage, high-cost debt is helping to raise cap rates and depress property values. Tighter underwriting standards exacerbate the situation. It is no longer common for loans to be underwritten based on Pro-Forma NOI, which allowed property owners to monetize upcoming rental increases. Typically loans are underwritten today based on current income, and as noted above, many lenders currently underwrite based on the lower of market or contract rents. Lower loan-to-value ratios, higher debt-service-coverage ratios, and higher pricing are the order of the day. Interest-only loans seem to be a thing of the past.

The result of this tighter underwriting, lower leverage and higher pricing for commercial mortgage loans, is that buyers need more equity. Lower leverage means a lower achievable yield which puts upward pressure on cap rates and downward pressure on pricing.

Conclusion

So what is "Market" when there is no market? The answer remains elusive, but it will evolve as the markets themselves evolve. As long as sellers want to achieve yesterday's prices while buyers are constrained by today's capital availability, the markets will remain stalled, and "Market" will be difficult to pin down. Once sellers embrace the new market fundamentals, either willfully or through distress, and/or once the capital markets loosen up, then the bid-ask gap will close, we will see more transactions, and our sense of market clarity will return.

COMMERCIAL

What is the Highest and Best Use?

by
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Real estate development, whether ground up, value add or adaptive reuse, begins with an entrepreneur envisioning a Higher and Better Use for a property. The concept of Highest and Best Use forms the very foundation of property development, underwriting and valuation. But what does it really mean?

The Appraisal Institute defines **Highest and Best Use** as: *"The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity."*[1]

Breaking that down, the concept of Highest and Best Use works like a funnel which has four levels or tests.

A potential use must pass all four tests in order to be considered the Highest and Best Use of the property. This is an iterative process that begins with the broadest test, that of Legal Permissibility. Uses that pass the first test go on to the second test, and if they pass, then they go on to the third test, and so on. If the answer to any of the tests for a proposed use is No, then the potential use fails and is not the Highest and Best Use. Only the one use that passes all four tests can be considered the Highest and Best Use of a property.

TEST #1—IS THE USE LEGALLY PERMISSIBLE?

Suppose a developer wants to convert an older industrial building into a modern creative office use in order to achieve higher rents. While the higher income may look profitable, if the on-site parking does not meet the municipal parking requirement for creative office, then the proposed development cannot legally proceed. Zoning guidelines, specific plans, historical designations, Coastal Commission requirements, CC&R's, et.al. restrict what can be built on a site. Even a "by right" development within the zoning guidelines can stall if an active neighborhood group lobbies the municipality to hold up issuance of a building permit in order to prevent or limit the development. Often a Conditional Use Permit or a Zoning Change must be approved in order for a development to proceed. These approvals are discretionary, which can add risk, time and expense to a potential development.

TEST #2—IS THE USE PHYSICALLY POSSIBLE?

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Developing an industrial building in a steep hillside area with narrow roads would not be possible since cargo trucks could not navigate into and out of such a neighborhood. The second test evaluates which legally permissible uses could practically be built on the property. Questions to consider include: Do the size, shape and topography of the site support the proposed use? What is the surrounding terrain? Is there easy access to the site? What are the neighboring uses? Will the soil support the proposed use? What are subsurface conditions, such as the depth of the water table? Are there any environmental conditions such as potential for earthquakes or floods, which might hinder development? Potential uses must be both Legally Permissible and Physically Possible in order to proceed to the next test.

TEST #3—IS THE USE FINANCIALLY FEASIBLE?

Developers generally intend to make a financial profit on their development by building something that will be worth more than the cost to acquire the land and build the improvements. In order to be financially feasible, a development must yield at least a market rate of return in order to attract investment capital (equity and debt). Considerations in the analysis of financial feasibility include: Is there sufficient market demand for the potential use? What is the existing and proposed supply of competing properties? How much will the construction cost to build? Are costs projected to remain stable or to increase during the course of the development? How long will it take for the completed project to be absorbed? What will it cost to reach stabilization (e.g.- rent loss, tenant improvements and leasing commissions)? What is the direction of macro-economic trends? What is projected to be the state of the economy when the project is completed and ready for absorption and disposition? A property or site make have multiple potential uses that yield a market rate of return, so there may be more than one financially feasible potential use.

TEST #4—IS THE USE MAXIMALLY PRODUCTIVE?

Out of the potential uses of a property that are Legally Permissible, Physically Possible, and Financially Feasible, which use produces the highest overall return (yield or profit)? This is the most profitable or Maximally Productive use, and is considered to be the Highest and Best Use of the property.

This iterative analysis of Highest and Best Use can be performed on vacant land (or land as though vacant) and on improved properties based on their existing improvements. Comparing the results of both analyses for an improved property will indicate whether the existing improvements add value to the property, or if the improvements are obsolete and all of the value is in the land.

These two concepts are defined by The Appraisal Institute as follows:

Highest and Best Use, As Though Vacant

"Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements."[2]

Highest and Best Use, As Improved

"*The use that should be made of a property as it exists. An existing improvement should be renovated or retained as is so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one.*"[3]

Sometimes special situations occur in the analysis of Highest and Best Use such as:

- Legally Non-Conforming uses that do not meet zoning requirements but were built before adoption of the current zoning code
- Interim Uses which are temporary uses of a property while the Highest and Best Use of the property is changing
- Existing uses that are not the Highest and Best Use of the property
- Mixed uses that combine different property uses within the same property
- Special use properties that are purpose built for one particular use, but will need to be fully renovated in order to

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accommodate more conventional uses in the future

CONCLUSION

The four-tiered analysis of Highest and Best Use can provide important insights about whether a property owner should continue a current property use, modify or renovate existing improvements, or tear down current improvements in order to completely redevelop a property. Highest and Best Use analysis for a potential development will determine if the proposed improvements are Legally Permissible, Physically Possible, Financially Feasible and Maximally Productive. Developers, investors, lenders and appraisers rely on this foundational analysis to make important business decisions related to real property.

1 Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed. (Chicago: Appraisal Institute, 2010).
2 Ibid.
3 Ibid.

Faculty

Hon. Martin R. Barash is a U.S. Bankruptcy Judge for the Central District of California in Woodland Hills and Santa Barbara, sworn in on March 26, 2015. He brings more than 20 years of legal experience to the bench. Prior to his appointment, Judge Barash had been a partner at Klee, Tuchin, Bogdanoff & Stern LLP in Los Angeles since 2001, where he represented debtors and other parties in chapter 11 cases and bankruptcy litigation. He first joined the firm as an associate in 1999. Earlier in his career, Judge Barash worked as an associate of Stutman, Treister & Glatt P.C. in Los Angeles. He also has served as an adjunct professor of law at California State University, Northridge. Following law school, Judge Barash clerked for Hon. Procter R. Hug, Jr. of the U.S. Court of Appeals for the Ninth Circuit from 1992-93. He is a former ABI Board member, for which he served on its Education Committee and currently serves on its Committee for Diversity, Equity, and Inclusion, and he is a judicial advisor to ABI's annual Southwest Bankruptcy Conference and its Consumer Practice Extravaganza. Judge Barash is a former member of the Board of Governors of the Financial Lawyers Conference and currently serves a judicial director of the Los Angeles Bankruptcy Forum, where he is a member of its Committee on Diversity, Equity and Inclusion. He also is a volunteer for the Los Angeles chapter of Credit Abuse Resistance Education (CARE) and was recognized nationally as the CARE Volunteer of the Year for 2022. Judge Barash has served on numerous committees of the U.S. Bankruptcy Court for the Central District of California and currently serves as chair of its Education Committee, which is responsible for conducting educational programs for judges, law clerks and externs. He is a frequent panelist and lecturer on bankruptcy law and a co-author of the national edition of the *Rutter Group Practice Guide: Bankruptcy*. Judge Barash received his A.B. *magna cum laude* in 1989 from Princeton University and his J.D. in 1992 from the UCLA School of Law, where he served as member, editor, business manager and symposium editor of the *UCLA Law Review*.

Darren Cline is managing director of Investments at TerraCotta Group, LLC in Los Angeles, where he is responsible for managing the firm's key relationships with sponsors and the brokerage community. He has more than 20 years of experience in commercial real estate and credit. Before joining TerraCotta, Mr. Cline was a highly regarded real estate broker with Grubb & Ellis, and with Colliers, where he worked with many corporate clients and completed some of the largest real estate transactions in the San Fernando Valley/Ventura County of the Greater Los Angeles Area. Mr. Cline received his B.A. in political science from the University of California, Los Angeles.

David M. Rosenthal is the founding principal of Curtis-Rosenthal, Inc. in Los Angeles, a regional commercial real estate appraisal and consulting firm. He performs field appraisals and reviews appraisals for commercial mortgage lenders (banks, life insurance companies, CMBS and pension funds), public agencies (city governments, transit agencies), law firms (real estate litigation, estate and trust, lease negotiation), corporations (valuation for financial reporting) and accounting firms. Appraised properties include retail, office, industrial, apartments, condominiums, mixed-use, special purpose and vacant land. Mr. Rosenthal's areas of experience include Southern and Northern California, Arizona and Nevada. Prior to founding the firm, he was a corporate loan officer with Security Pacific National Bank, where he was responsible for portfolio of loans consisting primarily of real estate companies. Projects financed included construction and renovation of income properties and development of new residential tracts. Mr. rosenthal is accepted as an expert witness in the U.S.

Bankruptcy Court for the Central District of California, the Los Angeles Couty and Orange County Superior Courts and the Orange County Municipal Court. Mr. Rosenthal has taught at Loyola Marymount University, the Federal Reserve Bank of San Francisco and the University of California, Los Angeles. He is a member of the Appraisal Institute and the California Bankers Association, and he is a frequent writer and speaker. Mr. Rosenthal received his B.S. in business administration in 1978 from the University of Florida, Gainesville and his M.B.A. in 1980 with concentrations in finance and accounting from Northwestern University J.L. Kellogg Graduate School of Management.

Michael Watson, CPA is an associate director of National Accounts with SVN Vanguard in San Diego and is an experienced finance professional specializing in corporate development within the commercial real estate industry. He currently serves as president of SVN SLA, where he acts as the single point of contact for more than 50 large and mid-size investment entities across the U.S. and Europe. Mr. Watson's role involves overseeing initial due diligence and valuation processes, managing properties, developing value-add strategies, and coordinating dispositions of assets on behalf of his clients. Since joining SVN SLA in 2017, he has successfully compiled more than 1,000 broker price opinions and closed more than 100 transactions. His expertise extends to financial modeling, nonperforming loan workouts and subperforming loan resolutions. Before joining SVN SLA, Mr. Watson held several positions that honed his skills in financial analysis, reporting and investment portfolio management. As senior financial reporting analyst at Colony Northstar, he supported global investor relations by preparing financial statements, facilitating the external auditing process, and creating asset underwriting and pricing models for Level 3 assets. Prior to that, Mr. Watson worked as an alternative investments fund accountant at Bank of New York Mellon, where he managed an offshore accounting team and oversaw internal reporting. He also worked as a financial services assurance associate at Ernst & Young, providing financial review and assurance services for various asset-management and private-equity companies. He is a licensed California real estate agent. Mr. Watson received his B.S. *magna cum laude* in finance and accounting from The Ohio State University.

Erin A. West is a shareholder with Godfrey & Kahn, S.C. in Madison, Wis., and has more than 10 years of experience helping lenders, trade vendors, committees, debtors, buyers and other creditors navigate all facets of insolvency, bankruptcy and financial distress. This includes pre-bankruptcy advising and workouts, bankruptcy, and state court receivership proceedings. Prior to joining Godfrey & Kahn, Ms. West practiced bankruptcy and commercial litigation at a Madison law firm for five years, where she frequently appeared as counsel for a chapter 7 panel trustee. She is admitted to practice in Wisconsin and Minnesota, and before the Third and Seventh Circuit Courts of Appeals, and the U.S. District Courts for the Northern, Central and Southern Districts of Illinois, District of Minnesota, Eastern and Western Districts of Wisconsin and the Northern and Southern Districts of Indiana. Ms. West serves as the treasurer of the Western District Bankruptcy Bar Association and the IWIRC-Wisconsin Network. She also co-chairs ABI's Real Estate Committee and the TMA Milwaukee Committee, and she is a 2022 ABI "40 Under 40" honoree. Ms. West is listed in *Super Lawyers* as a Wisconsin Rising Star (2011-present) and is recognized in *The Best Lawyers in America* as one of its "Ones to Watch" for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law from 2021-present. She received her B.S. from the University of Wisconsin-Madison in 2006 and her J.D. *cum laude* from the University of Minnesota Law School in 2009.