



# Workouts Without Bankruptcy: *Legal Tools for Real Estate Recovery*

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# Assignment for the Benefit of Creditors

- **State law remedy that is a voluntary alternative to Bankruptcy**
  - Assignor (Debtor) assigns all of its assets to Assignee (sometimes a creditor, sometimes a third party)
  - Liquidation where the rules of priority among creditors apply
  - Real Estate sales by Assignee are possible but less protections than other remedies
  - Extra-territorial enforcement issues

# Receivership

- **Judicial Action where a court appoints a receiver over the debtor**
  - Often sought as part of an enforcement action but in some instances can be stand alone
  - May have a stay available but need to include the stay in the Order Appointing Receiver
  - Extra-territorial enforcement issues – State Court versus Federal Court receivership
- **Transactional Considerations**
  - Speed
  - Free & Clear Sales

# Foreclosure

- **Judicial versus Non-Judicial**
  - Mortgage versus Deed of Trust
  
- **Transactional Considerations**
  - Correct documents are key
  - Know your State – correct front-end documents help enforcement efforts

# Deed-in-Lieu of Foreclosure

- **Non-Judicial transaction**
  - Practical Issues – ownership versus possession
  - Consider holding Deed-in-Lieu in escrow
- **Transactional Considerations**
  - Clear title a must
  - No or limited deficiency
  - Benefits/Drawbacks

# Assignment of Rents

- **Lender steps in and receives rents**
  - Rents are identified as additional collateral
  - Directly from tenants or from borrower who holds it in trust for lender
  - Used in conjunction with other remedies (Foreclosure, Receivership)

# Upcoming Webinar

## Landlord Bankruptcy: Safeguarding Tenant Interests and Lease Rights

- Wednesday, March 11

Recordings of all webinars in the series can be found on  
[lathropgpm.com](https://lathropgpm.com)



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