

Multifamily and Seniors Housing Workouts – Obstacles and Issues

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Multifamily Workout Basics

- Non-Waiver Letter (Reservation of Rights)
- Acceleration
- Prenegotiation Letter
- Pre-Workout Due Diligence
- Workout Meeting

Multifamily Workout Obstacles and Issues

Identification of Parties and Notices

- Subordinate debt holders
- Mezzanine debt lender
- Tax credit investors
- Bond trustee

Debt/Equity

- Lender holds tax credits or other equity
- Risk of equitable subordination
- Possible need for 3rd party Special Servicer

Multifamily

Workout Obstacles and Issues

Control of Rents

- Direct rent payments to lender/servicer usually not practical
- Lock Box agreements
 - Typically overly complicated
 - Rights of senior lender may be limited
- Receivership
 - Maintains the status quo
 - Avoids ‘mortgagee-in-possession’ claims
 - Conducts lease audit and evictions for tenant defaults
 - Undertakes life/safety and code violation repairs
 - Lender’s protective advances under Receiver’s Certificates
 - May seek sale of the property to a 3rd party

Multifamily Workout Obstacles and Issues

Possible Limitations on Loan Modification

- Mortgage Backed Securities limitations
- Bond Trustee and Bond Indenture limitations
- Mezzanine financing lender
- FASB 114 accounting treatment
- Tax opinions

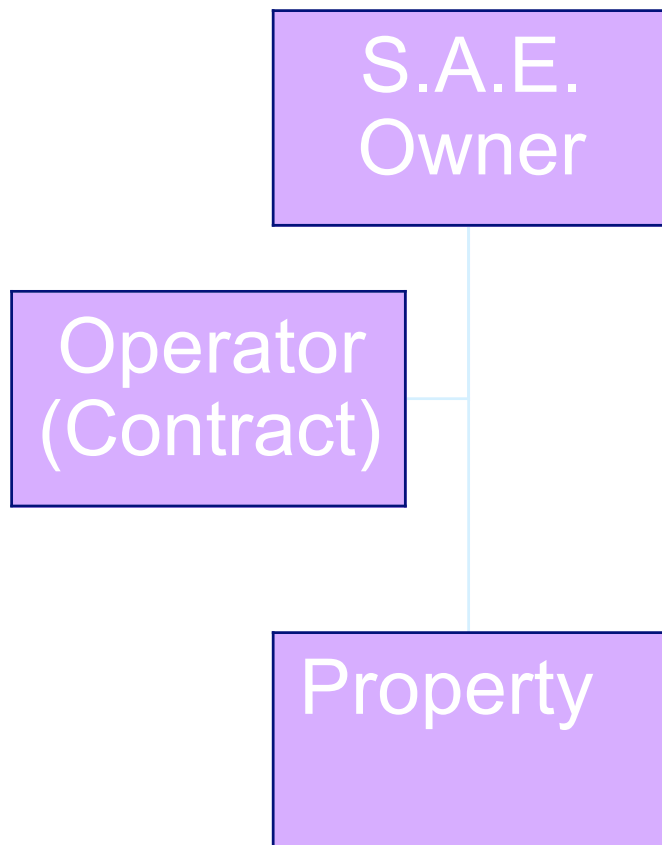
Multifamily Workout Obstacles and Issues

Ownership of REO

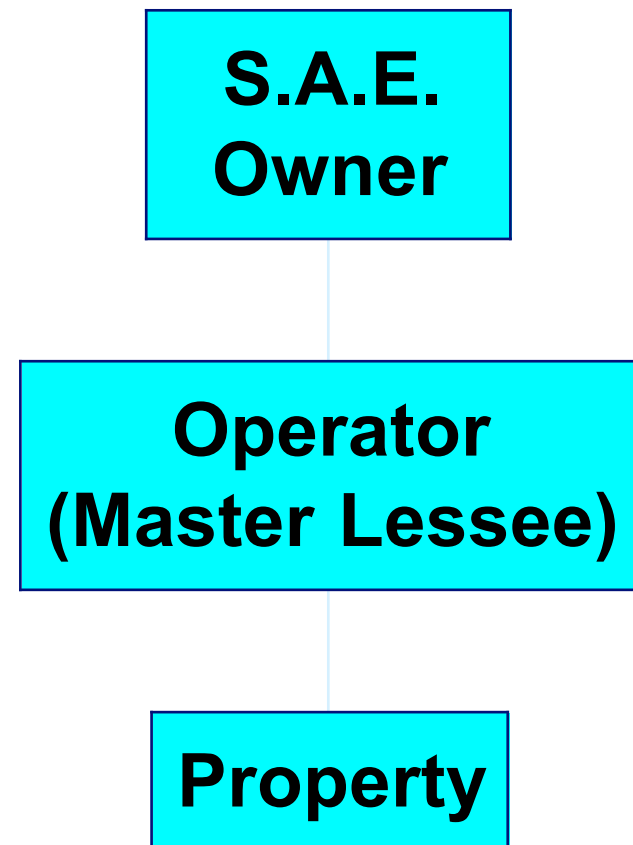
- Property physical / environmental condition
- Health/safety and building code violations
- Tenant suits / Fair Housing complaints
- Possible alternatives:
 - Note sale
 - Ownership of REO by affiliate

Seniors Housing Ownership / Operating Structures

Operating Agreement



Master Lease



Seniors Housing Licensed Operator Requirements

State Licensing Requirements

- Application, financial disclosures, annual fees and reporting requirements
- License is generally non-transferrable
- Need license BEFORE taking over property

Receivership Considerations

- Licensed Operator as the Receiver
- Receiver contracts with Licensed Operator

REO Consideration

- DO NOT rush to foreclosure without a Licensed Operator identified and under contract

Seniors Housing Collateral Pledge from Licensed Operator

Pledge of Operating Agreement

- Collateral Assignment of Operating Agreement or Master Lease
- Security Agreement and UCC filing
 - VERY IMPORTANT
 - Covers personalty owned by Licensed Operator