Key Points: Financing Leasehold Interests in Real Estate

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• Merely adding the word "leasehold" to your standard mortgage form does not create an effective leasehold mortgage.

• Scrutinize the underlying lease - often it is a ground lease. Does it:

• Check the title to the fee estate (landlord/owner) and not just the leasehold estate (tenant/mortgagor). Assure the lease or a memorandum has been recorded.

• If the landlord's/owner's interest is subject to a mortgage, obtain a non-disturbance agreement which specifically addresses the leasehold mortgage situation.

• The lease cannot be permitted to "disappear"! The lender must be able (under the lease or with the landlord's agreement) to:

• The potential responses to a bankruptcy filing by the tenant/borrower and by the landlord must be addressed - in the leasehold mortgage.

• Consider whether restrictive use provisions in the lease will diminish your collateral value (the lease) if you are forced to address a loan default.

• A leasehold mortgage can be enforced through foreclosurebut consider additional remedies: the granting of a new lease or the assignment of the lease to a new tenant. The lease should have a "no merger" clause.

• Address the lender's right to enforce the lease, consent to amendments, receive insurance proceeds, and obtain possession.

• Do you really want to take on the complexity of mortgaging a sublease?

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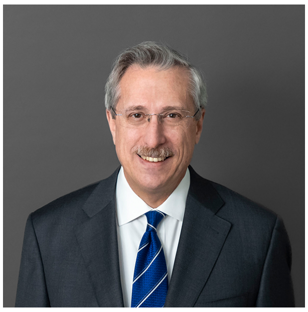

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