

Presenting a live 90-minute webinar with interactive Q&A

Real Estate Mezzanine Lending: Lessons From Recent Foreclosures for Documenting and Closing the Transaction

Avoiding Pitfalls With Duplicative and Lost Security Certificates, Qualified Transferee Issues, Art. 8 Opt-Ins, and More

THURSDAY, OCTOBER 2, 2014

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

James D. Prendergast, SVP, Legal Counsel-UCC Division,
First American Title Insurance Company, Santa Ana, Calif.

James Cochran, Partner, O'Connor Cochran, Los Angeles

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact Customer Service at 1-800-926-7926 ext. 10.

Tips for Optimal Quality

FOR LIVE EVENT ONLY

Sound Quality

If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, you may listen via the phone: dial 1-866-328-9525 and enter your PIN when prompted. Otherwise, please send us a chat or e-mail sound@straffordpub.com immediately so we can address the problem.

If you dialed in and have any difficulties during the call, press *0 for assistance.

Viewing Quality

To maximize your screen, press the F11 key on your keyboard. To exit full screen, press the F11 key again.

Continuing Education Credits

FOR LIVE EVENT ONLY

For CLE purposes, please let us know how many people are listening at your location by completing each of the following steps:

- In the chat box, type (1) your **company name** and (2) the **number of attendees at your location**
- Click the word balloon button to send



EAGLE 9[®] UCC Division

FIRST AMERICAN TITLE INSURANCE COMPANY



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.



First American
Title Insurance Company
UCC DIVISION



The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American is not a law firm and does not offer legal services of any kind. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.

First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Outline:

Mezz financing common pitfalls and best practices

Duplicative and lost original security certificates

Qualified transferee issues

Standard form of intercreditor agreement

Typical pledge agreement

Special UCC Article 8 and 9 considerations

Article 8 “protected purchaser”

Defective opt-in to UCC Article 8 by pledge equity issuer

UCC insurance

Post-disposition transfer procedures involving pledgor-related parties

Selecting the appropriate pledge agreement





UCC INSURANCE

First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.



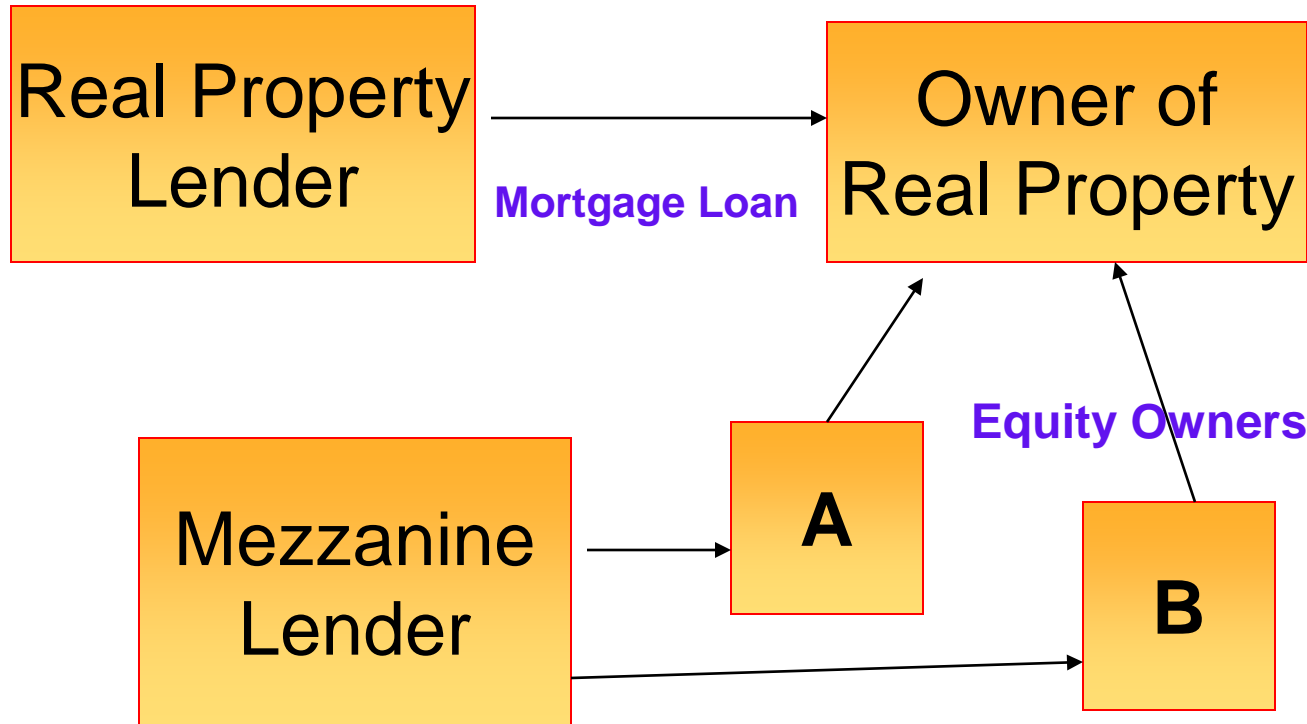


Notwithstanding the real estate collapse of 2008, the mezzanine structure is here to stay as a better financing structure than the alternatives in borrowing against the remaining equity in the underlying real estate after the mortgage tranche.





Mezzanine Lending



Equity Secured Loans

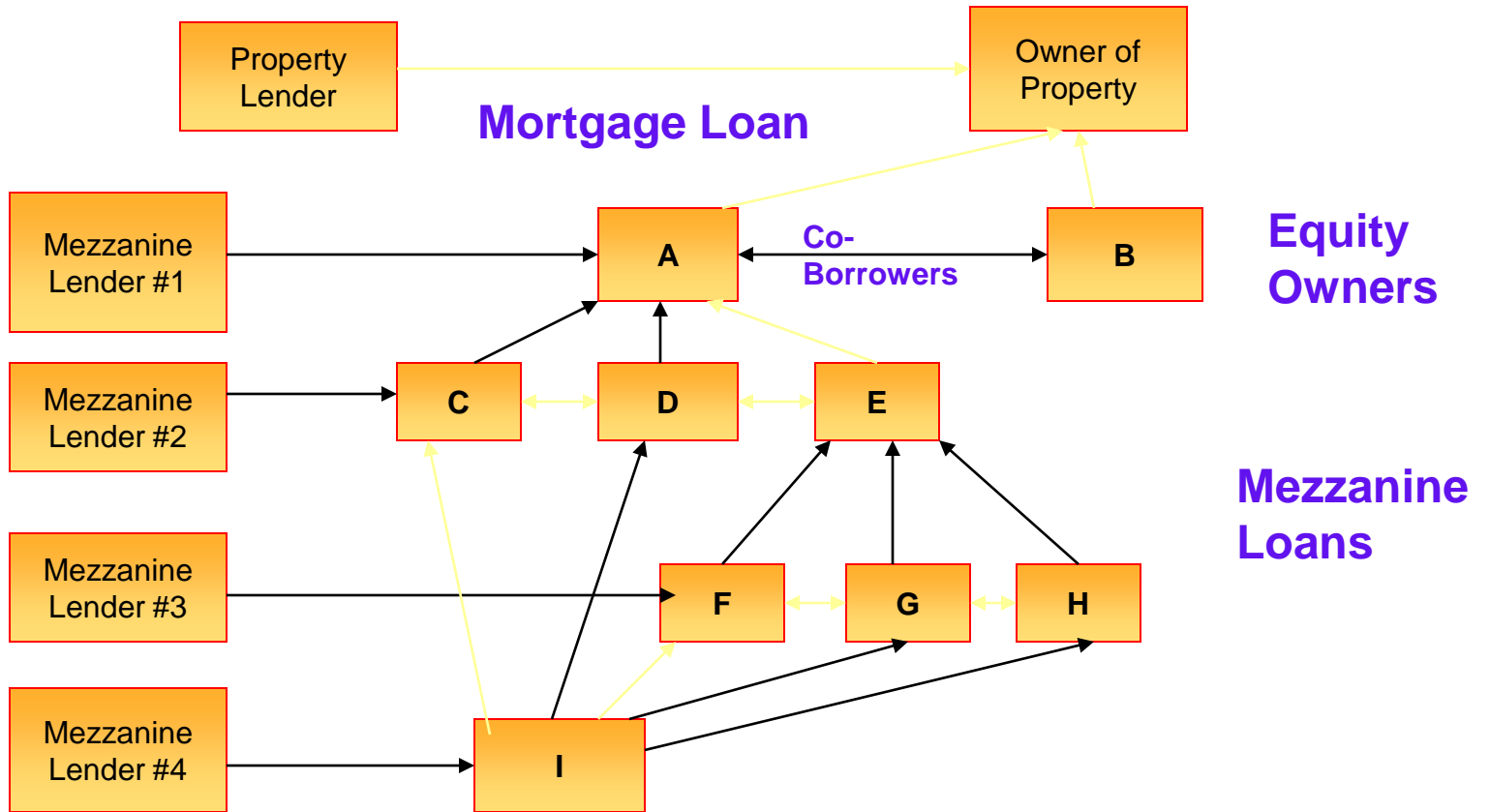
First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Mezzanine Lending



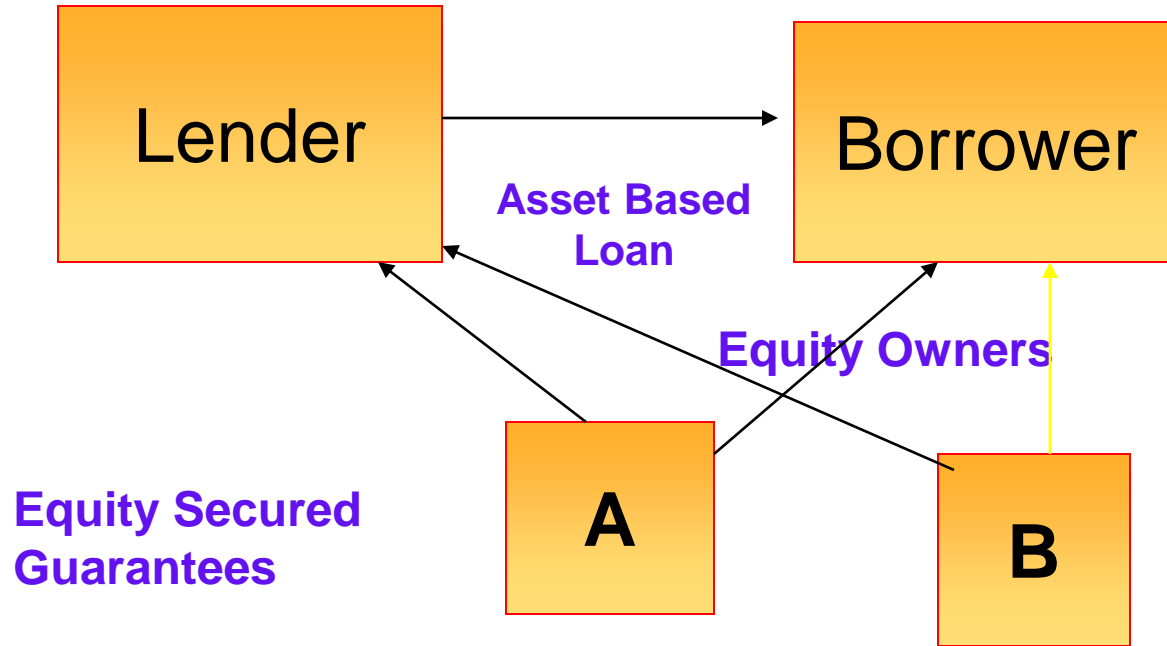
First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





PLEDGED EQUITY LENDING



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





A GUIDE TO THINKING ABOUT PERFECTION

- Step 1: Does Article 9 Apply?
- Step 2: Attachment
- Step 3: Categorize the Collateral
- Step 4: Perfection Step
 - Filing (§ 9-310)
 - Perfection under non-Article 9 law (§ 9-311(a))
 - Possession (§ 9-313)
 - Control (§ § 9-314, 9-104, 9-106, 8-106)
- Step 5: Priority Consequences





US CMBS and CRE CDO: Moody's Approach to Rating Commercial Real Estate Mezzanine Loans

- ❖ Pledge of 100% of the equity
- ❖ Opt In to Article 8
- ❖ Certificate the Equity
- ❖ File a Financing Statement
- ❖ Control the ability to Opt Out
– hardwire or proxy
- ❖ UCC Insurance



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





NEED TO CONSIDER NOT ONLY

- SECURED CREDITOR STATUS UNDER ARTICLE 9 OF THE UCC;
BUT ALSO

- PROTECTED PURCHASER STATUS UNDER ARTICLE 8 OF THE UCC





Protected Purchaser Status and Equity Ownership Coverage

LENDER'S
POLICY

Mezzanine Endorsement –
Primary Obligor

Pledged Equity
Endorsement –
Secondary Obligor

BUYER'S POLICY

Equity Ownership Endorsement





NEMO DAT
QUOD NON
HABET*



*“No man can give what he does not have”

First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





EXCEPTIONS TO NEMO DAT:

- Negotiable Promissory Notes
- Negotiable Bills of Lading
- Securities under Article 8 – if a Protected Purchaser





“In addition to acquiring the rights of a purchaser, a Protected Purchaser also acquires its interest in the security free of any adverse claim.”

§ 8-303(b)





FIRST STEP IS TO BE A SECURED CREDITOR BY CONTROL OF A SECURITY UNDER ARTICLE 8 and INVESTMENT PROPERTY UNDER ARTICLE 9

First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





NOTE: If entity subsequently opts-in to be a security under Article 8 (no way to prevent), then Protected Purchaser has priority in security over first lien-holder who perfected by filing!

Is it a security under Art. 8?



NO

YES

Perfection by Filing Financing Statement

WINS over filing!

Perfection by Possession + Endorsement Control

Certificated

Uncertificated

Perfection by Control Agreement

Is it certificated or uncertificated ?

First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





THEN BE A PROTECTED PURCHASER UNDER ARTICLE 8

First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Section 8303 of the U.C.C. defines a “Protected Purchaser” as a purchaser of a security or an interest who:

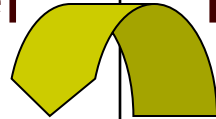
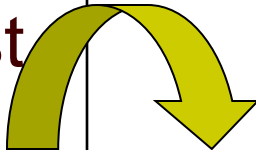
- i. Gives value.
- ii. Does not have notice of any adverse claim to the security.
- iii. Obtains control of the security.





ARTICLE 8 and ARTICLE 9 - INTERRELATIONSHIP

ARTICLE 8	ARTICLE 9
Opt-In to Article 8 – LLC or Partnership Interest a Security	Investment Property
Protected Purchaser	Perfection by Control



I WIN!!!!!!

First American Title Insurance Company, and the operating divisions thereof, are not licensed in all states. First American, the eagle logo, First American Title, and UCC Division are trademarks of First American Title Insurance Company, a First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





These efforts should do more than provide the lender with a valid and perfected security interest under Article 9 of the UCC; they should also put the lender in the position of a “protected purchaser” under Article 8 of the UCC.





RECENT PROBLEMS



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Duplicative Original Certificates



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Lost Certificates



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Qualified Transferee Issues With The Standard Form Of Intercreditor Agreement



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Qualified Transferee Issues With The Typical Pledge Agreement



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Defective Opt-In to Article 8



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Post-Disposition Transfer Procedures That Involve Pledgor-Related Parties



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Selecting The Appropriate Pledge Agreement



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





Perhaps the overarching theme is this: pay attention!



First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.





EAGLE 9[®] UCC Division



James D. Prendergast
jprendergast@firstam.com

James Cochran
jim@oconnorcochran.com

THANK YOU

First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. First American Title Insurance Company is not a law firm and does not offer legal services of any kind. No third-party entity may rely upon anything contained herein when making legal and/or other determinations regarding title practices. You should consult with an attorney prior to embarking upon any specific course of action.



First American
Title Insurance Company 35
UCC DIVISION