

Portfolio Loan Defaults: Issues Impacting Recovery Strategy

Nelwyn W. Inman

Shareholder

Chattanooga

423.752.4405

ninman@bakerdonelson.com

Jaime L. DeRensis

Associate

Nashville

615.726.5724

jderensis@bakerdonelson.com

Commercial Portfolio Loans

- Single loan secured by multiple properties
- Multiple cross-collateralized loans
- Single borrower or multiple, related borrowers

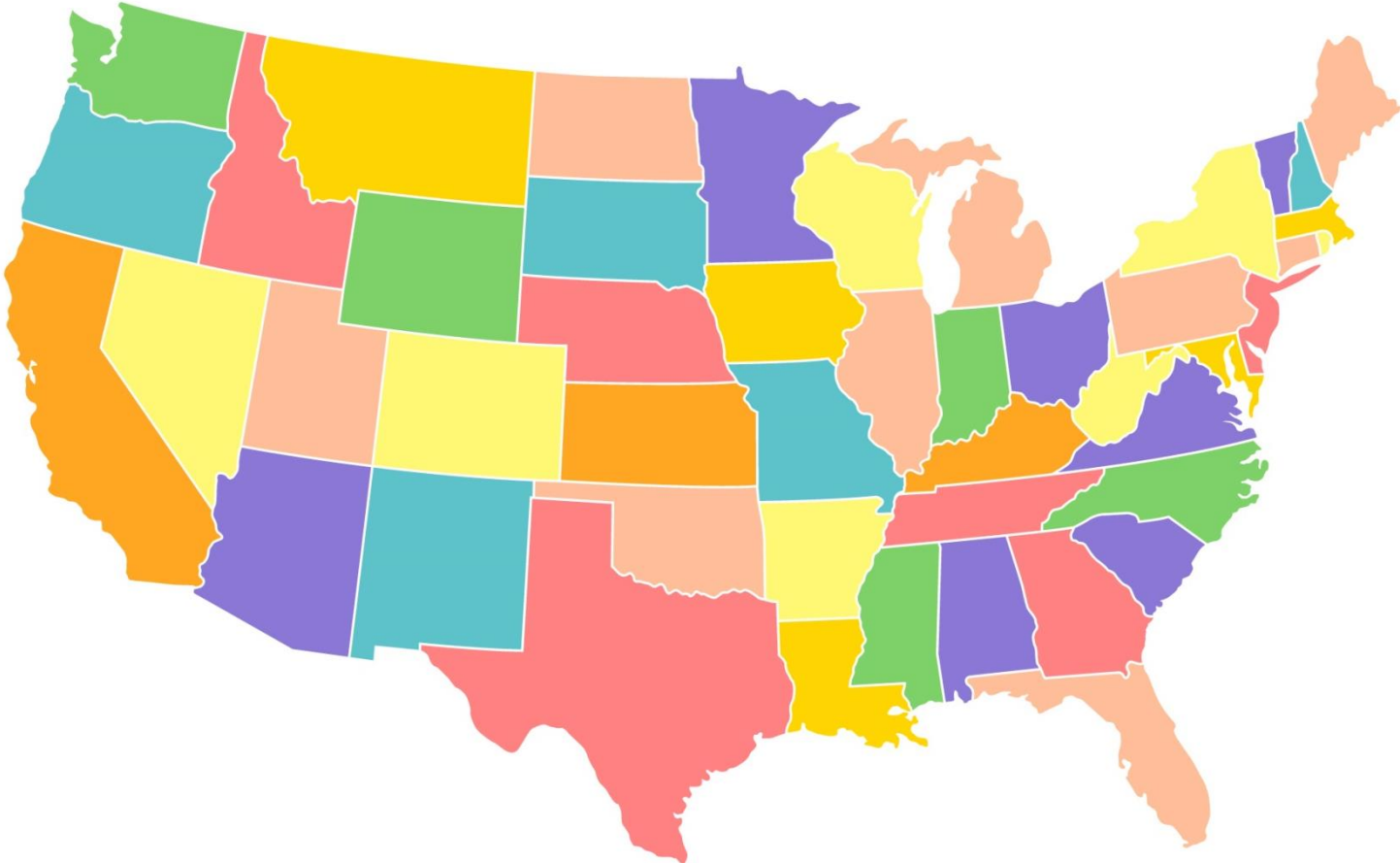


Portfolio Loans

- Similar property type
- Real and personal property collateral
- Multiple locations



Multi-Jurisdictional Loans



When a Portfolio Loan Defaults – What Rules Apply?

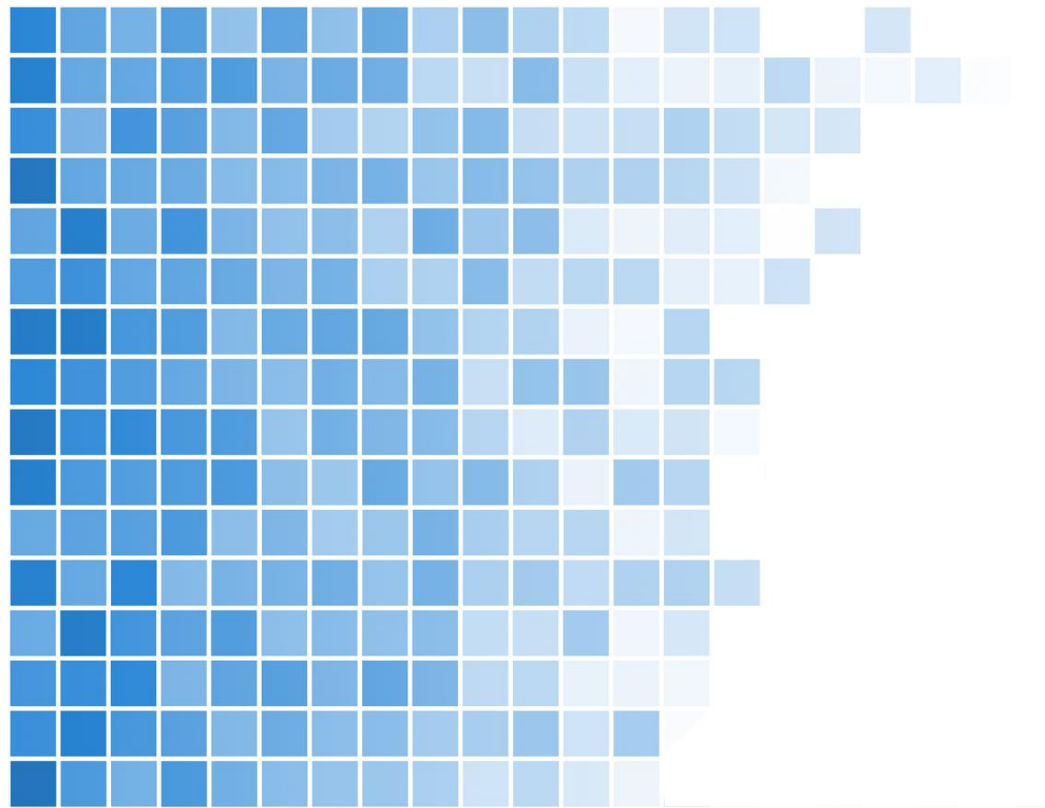


Contractual Choice of Law Provisions



Statutory Remedies for Each State Where Property Located

- May impose additional requirements



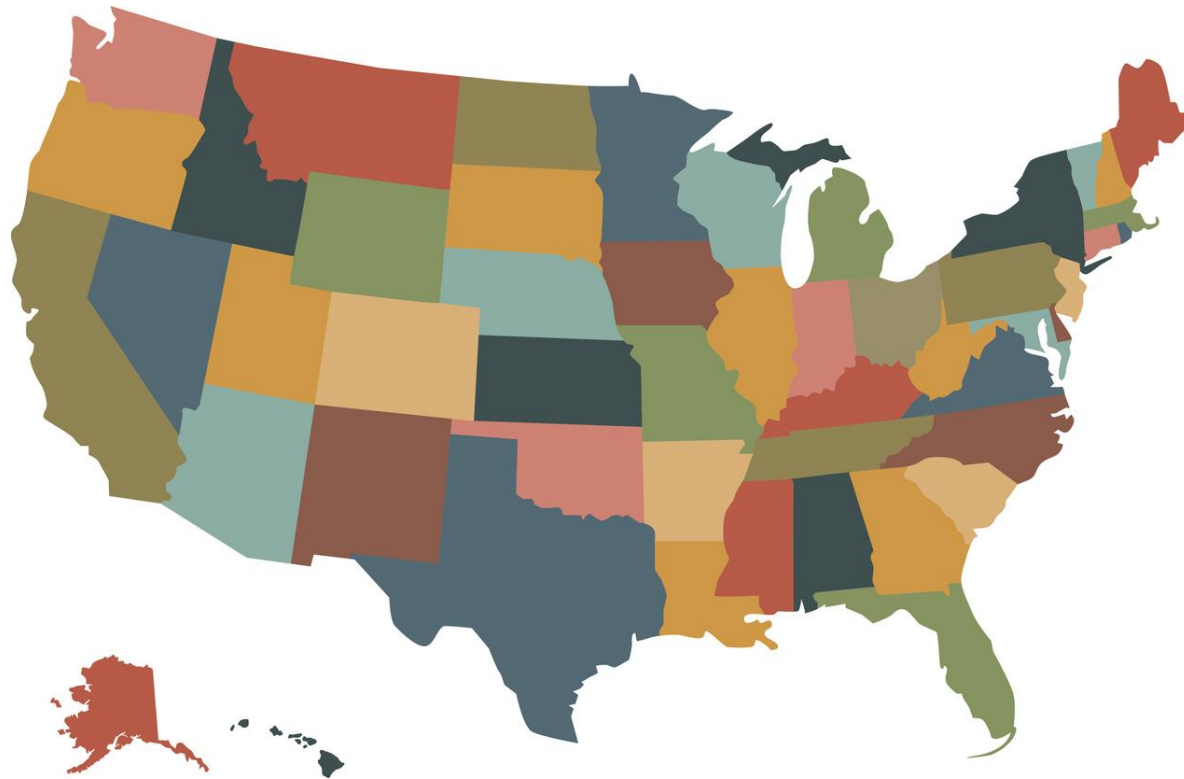
Receiverships for Multi-Jurisdictional Portfolios

- Federal court jurisdiction based on diversity of citizenship
- Amount in controversy > \$75,000



Federal Court Diversity Jurisdiction

- What is the “citizenship” of a party?



Federal Court Jurisdiction – Citizenship

- Individuals
- Corporations
- Limited Liability Companies



Federal Court Jurisdiction – Citizenship

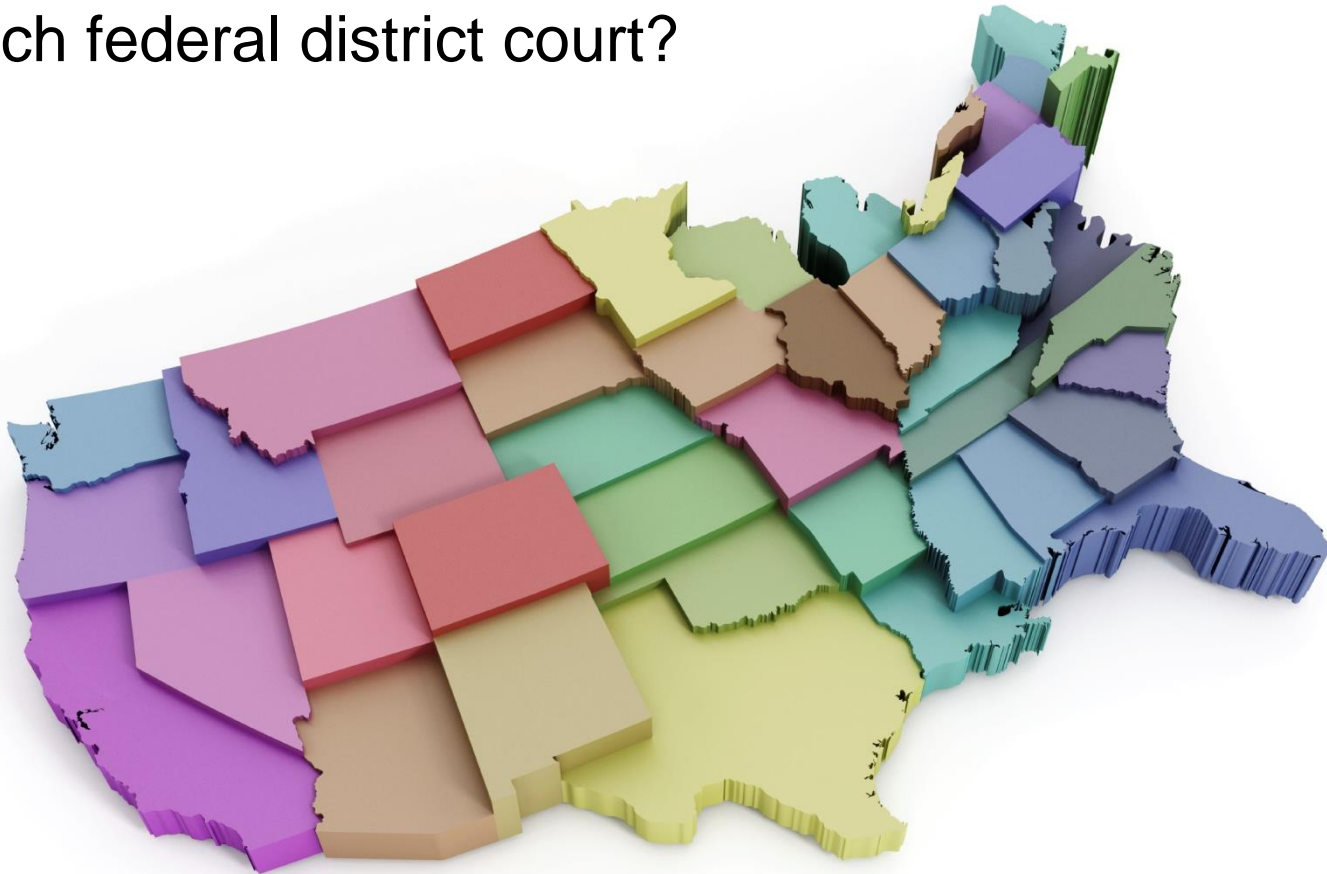
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- Partnerships
- National Banks
- Trusts
- REITs



Federal Courts – Forum Selection

- Which federal district court?



Order Appointing Receiver

- Receiver for Collateral vs. Receiver for Borrower
- Authority of receiver is defined in court order

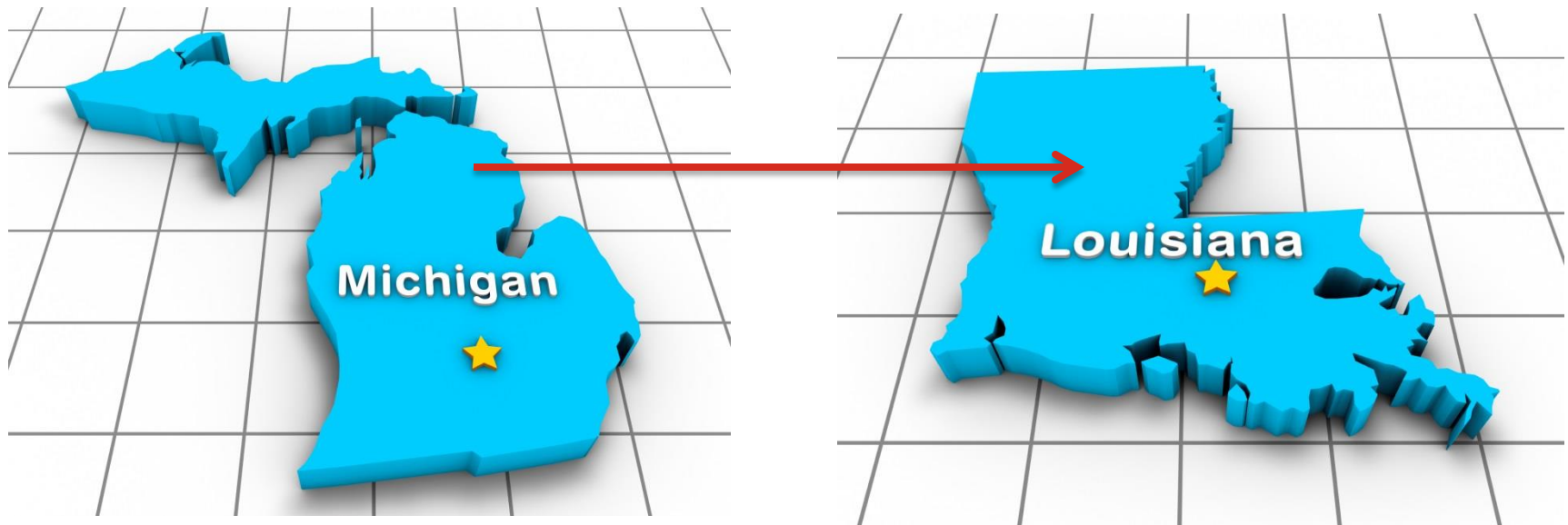


Order Appointing Receiver

- Rights of plaintiff creditor may be limited by order appointing receiver
 - Right to receive distributions of revenues
 - Limited approval of certain actions of receiver
 - Right to exercise foreclosure remedy

Federal Court Receivership

- Domesticate order in each federal district where collateral located



Disposition of Collateral in Defaulted Portfolio Loans

- Foreclosure vs. Receiver Sale



Foreclosures in Portfolio Loans

- Judicial foreclosure states (state vs. federal court)
- Non-judicial foreclosure states



Exercise of Foreclosure Remedies in Judicial Foreclosure States

- State courts versus federal court

ALABAMA
FLORIDA
TEXAS
TENNESSEE

U.S.

Exercise of Foreclosure Remedies in Judicial Foreclosure States **(continued)**

- Pleading the debt
- Hazards of estoppel arguments



Non-judicial (Power of Sale) Foreclosure States

- Special notice requirements
- Timing issues



Defaulted Portfolio Loans – Election of Remedies Laws

- If election of remedies laws are applicable, consider impact on timing of:
 - Pursuit of recourse liability/guarantor suits
 - Order of foreclosures



Defaulted Portfolio Loans – Sequence of Disposition

- Legal constraints vs. business considerations
- Redemption rights



Foreclosures of Collateral Securing Portfolio Loans

- Credit bid considerations
- Origination debt allocations
- Single loan versus multiple cross-collateralized loans



Defaulted Portfolio Loan Recovery

- Receiver sales
 - Options under federal law
 - Public sales versus private sales



Defaulted Portfolio Loan Recovery

(continued)

- Receiver sales
 - Disposition is to a single purchaser
 - Marketing flexibility



Defaulted Portfolio Loan Recovery

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- Use combination of state law foreclosures and receiver sales to expedite liquidation
 - Could be quicker option in some judicial foreclosure states
 - Consider if environmental issues

Defaulted Portfolio Loans

- Preservation of deficiency rights



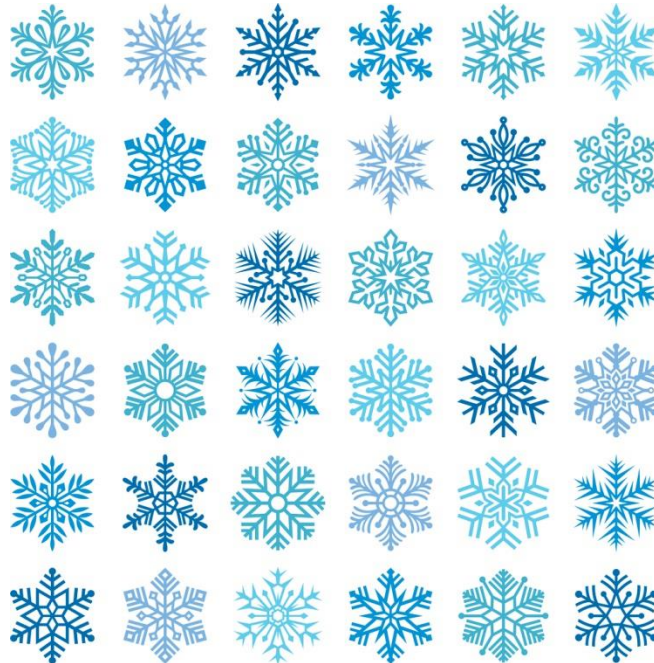
Defaulted Portfolio Loan Recovery

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- Lender liability issues
- Franchise rights

Defaulted Portfolio Loans

- Tools for maximizing recovery



Our Footprint – As of January 1, 2017

