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Welcome from the Chair

by **Chuck Morton**, Co-Chair, Mezzanine Finance Practice Group

Pricing is up. Warrants are back. Portfolio companies are struggling. It seems like every day is filled with another opportunity and another serious challenge.

This environment reinforces the importance of being in a position to respond quickly to these issues, as well as the need to ensure that you're structuring transactions and deals involving real estate subordinated finance appropriately. As you know, these transactions can become quite complicated; for instance, some may have as many as 20 layers of debt. There is nothing like going through the great recession to make us all appreciate the nuances of intercreditor provisions and, more generally, the importance of documenting deals correctly.

A continued focus is on the SBIC program, which we view as a proven way for the government to act as an economic catalyst. Our lawyers recently attended the SBIC regulation seminar held in DC, which presented a broad overview of the regulatory framework. Other lawyers have also attended various regional meetings of NASBIC, and we will be at the upcoming NASBIC annual meeting.

In this issue of the Sub-Debt Report we focus on three issues: Remedies; Warrants; and SBIC Regulations. These issues reflect the things we are working on today and which we expect you might be as well. We hope that you find the articles helpful.

Finally, a last word about our group. I am pleased to report that Mike Schiffer has become Co-Chair of the Group. His talents and energy will help us to continue to grow.

1. Foreclosure Remedies: Knowing Them is the First Step

by **Bryan Rakes** and **Robert Fraley**

The rate of loan defaults has been on the rise, and given the current state of the economy, this trend is likely to continue. Doubtful loans may only get worse, raising that subject that lenders never want to hear, much less discuss: Foreclosure. Senior lenders will almost certainly have a first priority lien on all of the general assets of the borrower, and to the extent a junior lender is even permitted a second priority lien on these assets, it will be subordinate to the senior lender's lien pursuant to a subordination agreement. So, why should a junior lender even care about foreclosure remedies?

2. Rights and Obligations of a Warranholder that Elects to Exercise its Warrant for Equity

by **Mike Schiffer** and **Kevin Loden**

In our [October](#) issue of the Sub-Debt Report, we discussed certain issues related to warrants, including dilution protection, put rights and change of control rights. As foreshadowed then, this article considers the rights and obligations of a warranholder once it has decided to convert its warrant to equity.

3. Looking for Increased Access to Leverage? A Guide to Obtaining Your Small Business Investment Company License

by **Lauren Wallace**

Each year the United States Small Business Association (the "SBA") grants a number of licenses to newly formed, privately owned and managed investment funds known as Small Business Investment Companies ("SBICs"). SBICs are qualified investment management firms with expertise in distinct industries acting as vehicles to deliver private capital and funding received from the SBA to small businesses throughout the United States.

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