

# Structured Transactions

## Legal Aspects



# Three Categories of Structured Transaction Agreements & Documents (Transaction-Specific)

1. Bid Documents
2. Transaction Documents
3. Transfer Documents



# Bid Documents

Provide Information about a Specific Structured Transaction, including:

- Statistics on the Assets.
- Transaction Terms and Structure.
- Transaction-Specific Qualification Process.
- Bid Submission to purchase Private Owner Interest.

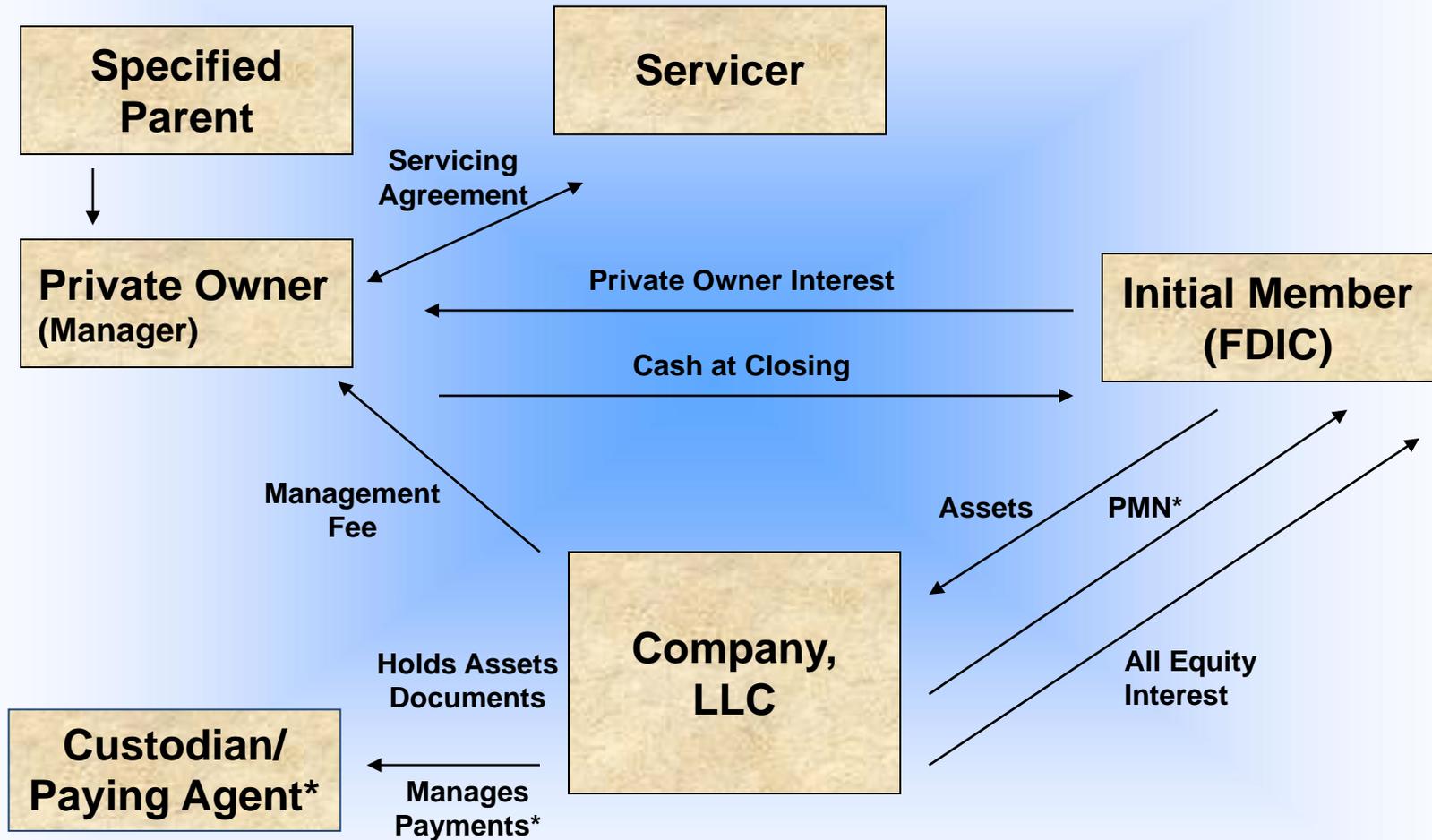


# Transaction Documents

- Spell out the rights and legal obligations of all parties to the Transaction.
- Provide the “Meat on the Bones” to the structure described in the Term Sheet.



# Transaction Documents (cont.)



\* Leveraged Transaction

## Transaction Documents (cont.)

- Collection Account – loan proceeds from all sources
  - Principal
  - Interest
  - Prepayment fees, extension fees, late fees, assumption fees, insurance proceeds, condemnation awards, REO net operating cash flow, recoveries on guarantees
  - Sales and refinancing proceeds



## Transaction Documents (cont.)

- Collection Account – use of proceeds:
  - Pre-approved Charges
  - Servicing Expenses
- Distribution Account – remaining proceeds go to waterfall
  - Single Waterfall – CRE and ADC transactions
  - Dual Waterfall (separates principal and interest proceeds) – SFR transactions
- Working Capital Account



## Transaction Documents (cont.)

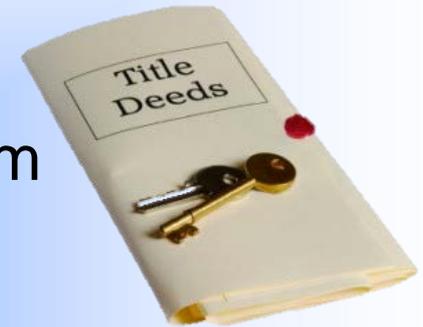
- Sample Waterfall (Priority of Payments)
  - Custodian Fee
  - Management Fee
  - Reimburse Excess Working Capital Advances
  - Replenish Working Capital Reserve Account
  - Possible Limited Distribution to Equity (“Leakage”)
  - Remainder to Defeasance Account until Purchase Money Note(s) paid in full
  - Distribution to Equity
- Discretionary Funding Advances – repayable from proceeds of specific Asset

# Miscellaneous Legal Issues

- Zero Coupon v. Interest-Bearing Notes
- Promote and Reverse Promote Features
- No Representations or Warranties (very limited put-back rights)
- Identity of Custodian – you select, paid from waterfall, must execute Custodial Agreement
- Identity of Servicer – you select, must be rated, paid from Management Fee, form Servicing Agreement
- MERS Loans
- No Affiliate Transactions
- No Use of FDIC Powers without consent

# Transfer Documents

- Used to Transfer ownership of the Assets from the FDIC as Receiver to the Company.
- Transfer Documents include:
  - the Endorsements or Allonges to Notes or Assignment and Lost Instrument Affidavits (if applicable).
  - Assignments of Mortgages/Deeds of Trust.
  - Deeds.
  - Assignment of Leases and Rents.
  - Other documents of assignment, conveyance or transfer.



# Transfer Documents (cont.)

- Typically, the Manager drafts and records, as applicable, the Transfer Documents based on FDIC forms.
- Typically, Limited Power of Attorney granted by the FDIC as Receiver to the Manager to execute Transfer Documents.
- Such work is considered a Pre-Approved Charge and payable out of Asset Proceeds (if completed within 6 months from the Closing Date).

# Tax Matters

- Private Owner is designated as the Tax Matters Member under the LLC Operating Agreement. Tax Matters Member prepares the annual tax returns for the LLC, including K-1s for the members.
- Investors are advised to seek legal and tax counsel regarding tax consequences of operations under the Structured Transaction Agreements.

Disclaimer

# Purpose of Oversight

- As an equity partner in each Structured Transaction the FDIC monitors asset level and entity level performance.
- Performance and projections are reported to FDIC Management and internal accounting departments.
- A Structured Transaction's return is compared to outright sale.
- The FDIC is required to resolve failed institution's assets with the least loss to the Deposit Insurance Fund.

# Managing Member Requirements

Reports & Oversight
Business Plan
Cash Flow Projection
Monthly Asset Level Data
LLC Financial Reporting
Compliance Monitoring Contractor (CMC) Visit
U.S. Government Accountability Office (GAO) Review
Office of Inspector General (OIG) Audit