



AMERICAN  
BANKRUPTCY  
INSTITUTE

# 2019 Alexander L. Paskay Memorial Bankruptcy Seminar

## *Crossover Business & Consumer Session*

## **Florida's Continuing Real Estate Problems**

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## FLORIDA REAL ESTATE: WHAT'S AROUND THE CORNER?

CYCLICAL CHANGES EXPECTED IN THE REAL ESTATE INDUSTRY

American Bankruptcy Institute  
43rd Annual Alexander L. Paskay Memorial Bankruptcy Seminar 2019



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## FACTORS IMPACTING REAL ESTATE IN FLORIDA

- Construction Costs & Development Cycle
- Consumer Spending
- Demographics — Population, Age & Wealth
- Government & Military Spending
- Natural Disasters
- Tourism
- U.S. Migration & Immigration from Foreign Countries

## RISK IS OFTEN UNFORESEEN



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## RISKS TO REAL ESTATE IN FLORIDA

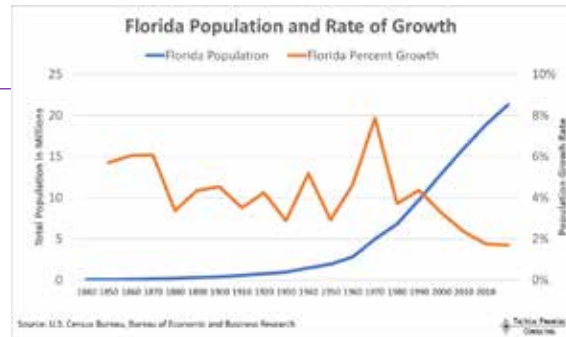
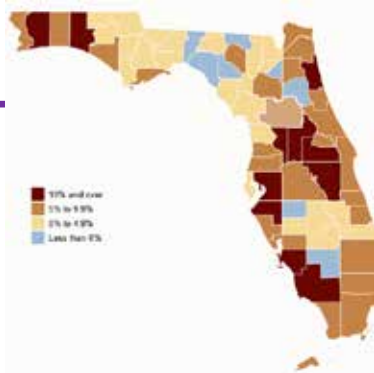
- Decline in / Reliance on Employment, Spending, Income or Production arising from:
  - General Recession
  - Home & ALF Sales
  - Travel and Tourism
  - Military Spending (not likely)
  - Changes in U.S. Migration
- Construction Costs & Development Cycle
- Rising Constructions Costs/Impact of Tariffs
- Commercial and Residential Overbuilding leading to Price Cutting
- Natural Disasters

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## REGIONAL ANALYSIS

Florida's real estate analysis begins with a consideration of how different factors impact various regions of the state, including South Florida, the Panhandle, North Florida, Central Florida, the Space Coast and the Southwest Florida areas.



## FLORIDA'S CHANGING POPULATION

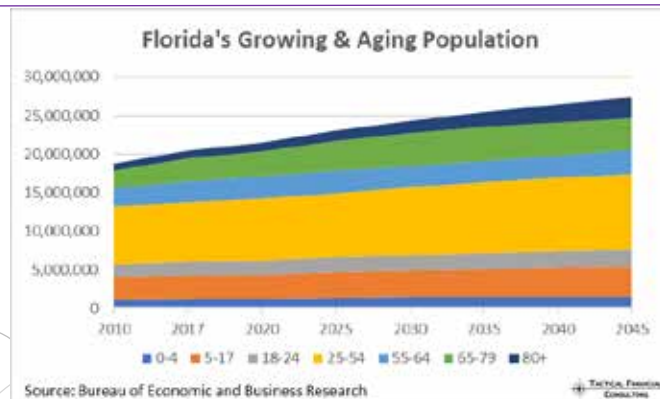
Decelerating Growth and Metropolitan Area Focused

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### FORECAST FOR CONTINUED GROWTH & GROWING NUMBER OF ELDERLY

Florida's projected population growth will require more:

- Educational Facilities
- Medical Facilities
- Lifestyle and Recreation Facilities
- Senior Housing



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## UPDATE ON LOAN DOCUMENTATION

Lite loan covenants  
Guaranty agreements  
Non-recourse lending  
Non-traditional lenders,  
including CMBS

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## THE CURRENT LENDING ENVIRONMENT

- WHERE ARE WE NOW?
  - Same players . . . Different debt allocations
  - Traditional v. non-traditional lenders
    - Debt funds will represent permanent competition
    - Loan volume

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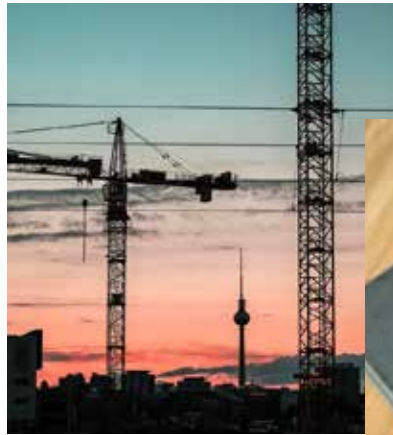
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## IS THERE A LOOMING REAL ESTATE “VALUE” BUBBLE?

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- Capitalization rates increasing
- Transactional sales volume decreasing
- Rising construction costs
  - Will create need for loan and bankruptcy workouts



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## THE CREDITORS WILL BE DIFFERENT THIS TIME.

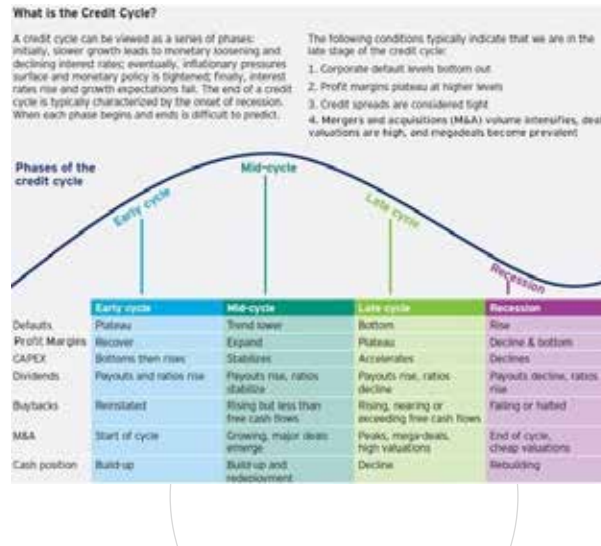
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How do the courts and law firms deal with the institutional, non-traditional lenders, such as debt funds?

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## THE CREDIT CYCLE



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## RISKS TO FUTURE DEMAND AND SUPPLY: **RESIDENTIAL**

- Changing Dynamics
  - Aging Population needs different product than single family residence
  - Millennials are renters, not buyers
  - Single family home leasing



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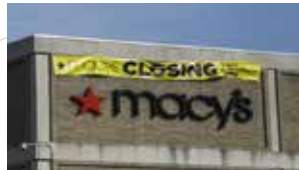
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## RISKS TO FUTURE DEMAND AND SUPPLY: RETAIL

- Changing Dynamics
  - Online purchasing
  - Big mall space dying
  - Cost of leases too high to sustain tenants
  - Big box space struggling and store closures



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## RISKS TO FUTURE DEMAND AND SUPPLY: OFFICE AND INDUSTRIAL

- Changing Dynamics
  - Reliance on corporate spending
  - Speed of development of office sector
  - Strength of economy



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## RISKS TO FUTURE DEMAND AND SUPPLY: HOTELS & TOURISM

- Changing Dynamics
  - Strength of international economy
  - Strength of national economy
  - Government restrictions on travel



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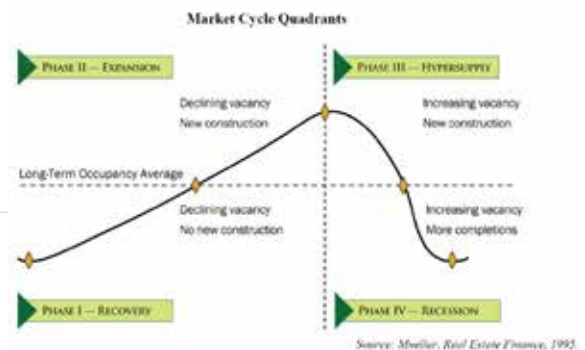
## REAL ESTATE CYCLE ANALYSIS

The One They Taught You in School...



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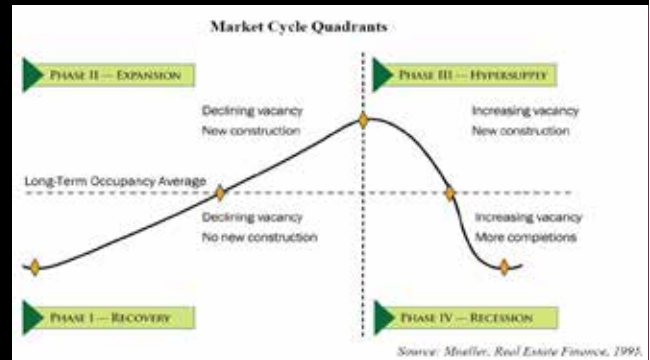
The Way it Really Happens



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HOW THEY SHOULD HAVE TAUGHT YOU!



## WHERE ARE WE IN THE CYCLE?

**Overbuilding**

**Development and construction lead time risk**

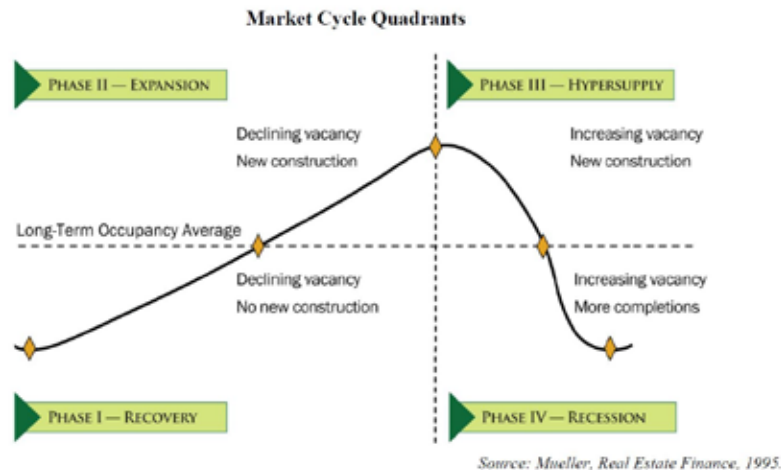
**Trapped in the cycle**

**Effect on values and rates of return**

**Building Permits**

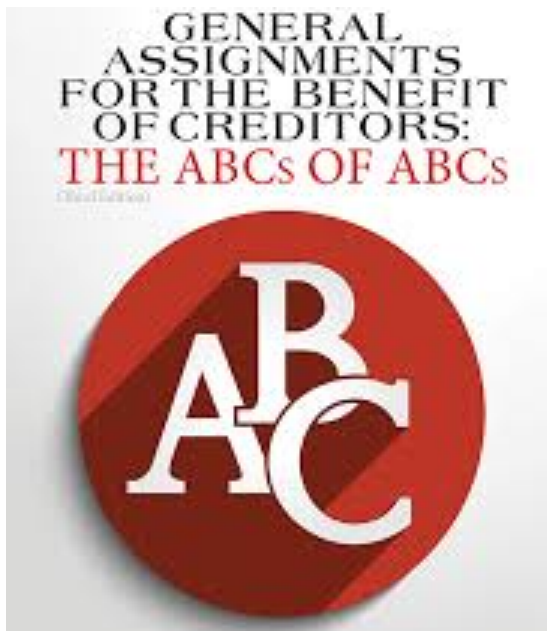
**Lending commitments**

**Surety bond company actions post-default**



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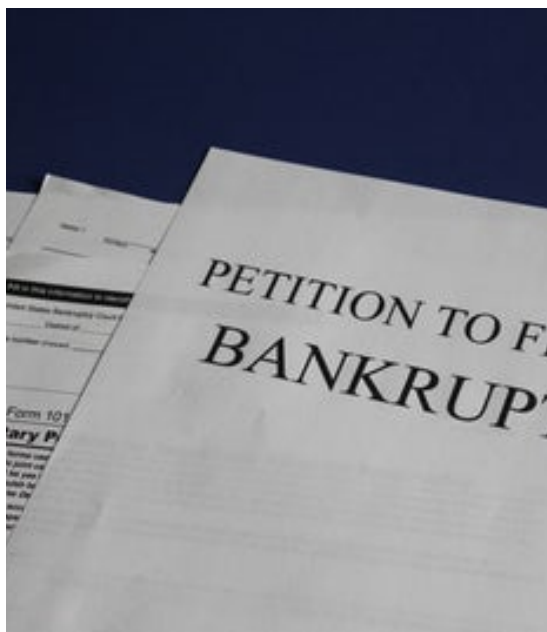
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## THE FUTURE OF WORKOUTS AND RESTRUCTURING IN REAL ESTATE: OPTIONS

### Assignments for the Benefit of Creditors:

- Assignee cannot file bankruptcy absent specific authorization in the assignment
- Proceedings against assignee are more limited than automatic stay provisions of the Bankruptcy Code
- Better alternative for an entity than chapter 7



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## THE FUTURE OF WORKOUTS AND RESTRUCTURING IN REAL ESTATE: OPTIONS

### Bankruptcy:

- Short time frame to assume or reject unexpired leases
- Rights of tenants under section 365(h)
- Impact of higher property values





# THE FUTURE OF WORKOUTS AND RESTRUCTURING IN REAL ESTATE: OPTIONS

## Friendly Foreclosures:

- These are common when the guaranties are only triggered by “bad acts”
- Contrast with a deed in lieu
- Structured foreclosure sales

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# THE FUTURE OF WORKOUTS AND RESTRUCTURING IN REAL ESTATE: OPTIONS

## Loan to Own:

- Must act in good faith
- Proving amounts due can be difficult
- Credit bid caps

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## THE FUTURE OF WORKOUTS AND RESTRUCTURING IN REAL ESTATE: OPTIONS

### Receiverships:

- Know your court; can movant's candidate be appointed?
- Must have grounds for appointment of receiver; "within sound discretion of the court"
- Receiver can sell property in certain circumstances

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## THANK YOU



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