

*This is your Release No. 1 (October 2009)*

# **Credit Market and Subprime Distress: Responding to Legal Issues**

**By Mayer Brown LLP**

The unprecedented crisis in the capital markets today, which many believe the crisis in the subprime mortgage financing space precipitated, has once again put the securitization industry on the defensive. It is not only on the defensive; it is also in need of reform and its practitioners are working earnestly now to put its house in order.

The recovery of the capital markets in general and securitization in particular are crucial to the recovery and prosperity of the American (and world) economy. *Credit Market and Subprime Distress: Responding to Legal Issues* helps to explain what has happened, why it has happened, what may yet happen and, with the benefit of such knowledge, attempts to recommend the manner in which the securitization industry can begin to recover. Highlights of this release include:

- **Expanded section 6:4.4, Challenging or Limiting the Search of a Computer**, discussing the recent decision in *United States v. Comprehensive Drug Testing, Inc.*, in which the Ninth Circuit provided guidance as to the protocol that should be followed in granting a search warrant for electronically stored records and the protocol for supervising the search once the warrant has been executed.
- **Expanded section 8:3, Legal Due Diligence**, discussing the impact of various government-sponsored mortgage modification programs on the value of mortgage servicing rights, as well as various new regulations that impact mortgage servicers and originators.
- **New section 8:4.6, FDIC Loss-Share Transactions**, discussing the rise in “loss-share” transactions in response to continuing bank failures; in these transactions, the FDIC assumes significant risk

*(continued on reverse)*

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for future losses on the acquired loans and other assets of a failed bank.

- **New section 9:4.8, Short Sales**, describing two methods of effecting a “short sale,” which occurs when indebtedness secured by real estate exceeds that real estate’s market value.
- **New section 10:4.4, Managing Investor Capital Constraints**, discussing ways in which a fund’s sponsors can accommodate investors who are unable to satisfy capital calls in the current economic environment.
- **New section 12:2.3[B], Deferral of Gain Through Application of the Installment Method**, explains how a debt holder may be able to apply the installment method rules, under section 453, to the gain such holder would otherwise be forced to recognize on the modification of debt deemed an exchange under the significant modification rules.
- **Chapter 14, United Kingdom**, has been significantly revised and expanded, including new coverage of: claims arising from the collapse of structured investment vehicles; the regulation of credit rating agencies; the U.K. mortgage market; the EU/U.K. structured finance markets; EU/U.K. derivatives regulation; bankruptcy law; and various government reviews of the causes of the economic crisis and possible changes in industry regulation and supervision. See the synopsis at the beginning of the chapter for a detailed list of its contents.
- **New Chapter 16, Over-the-Counter Derivatives Market and the Credit Crisis**, examines proposed legislative and regulatory developments involving OTC derivatives as well as industry efforts that are in progress. Topics include: the Over-the-Counter Derivatives Markets Act of 2009, the Derivatives Trading Integrity Act of 2009, the Derivatives Markets Transparency and Accountability Act of 2009, the Authorizing the Regulation of Swaps Act, the American Clean Energy and Security Act of 2009, Auction Supplements, Big Bang Protocol, and Restructuring Supplement and Small Bang Protocol.

Thank you for subscribing to *Credit Market and Subprime Distress: Responding to Legal Issues*. If you have questions or comments, please contact us (see “**Questions About This Book?**” on the page following the title page).

**FILING INSTRUCTIONS**

# **Credit Market and Subprime Distress**

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**REMOVE OLD PAGES  
NUMBERED:**

- Title page to 3-25
- 5-1 to 12-29
- 14-1 to App. 14A-2
- \_\_\_\_\_

**INSERT NEW PAGES  
NUMBERED:**

- Title page to 3-31
- 5-1 to 12-31
- 14-1 to App. 14A-2
- 16-1 to 16-31

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