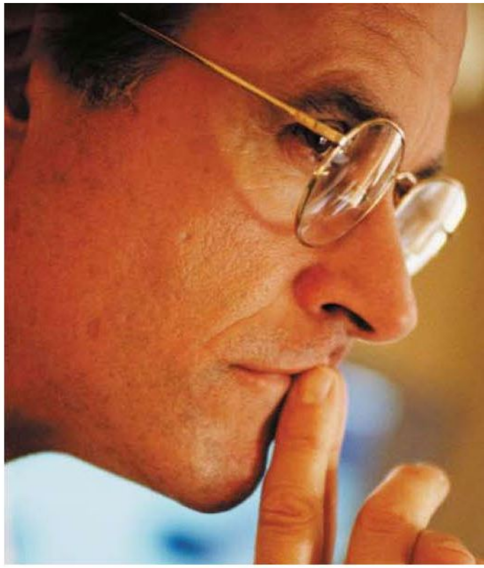
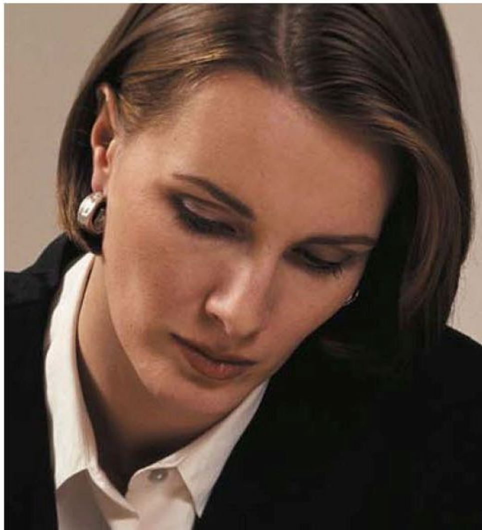
UCCPlus: An Important New Risk Management Tool for Secured Lenders

Fidelity National Financial Family of Companies

Presented to Federal Deposit Insurance Corporation

2nd Quarter, 2009





INDUSTRY LEADERSHIP

- Fidelity's UCC Division is member of the Fidelity National Title Group, which is a component of The Fidelity National Financial Family of Companies

- Leading Fortune 500 Provider of Specialty Insurance and Real Estate Origination and Closing Services with 50 Percent National Market Share

- Alamo Title, Chicago Title, Commonwealth Title, Fidelity National Title, Lawyers Title, Security Union and Ticor Title insurance brands

- An Investment Portfolio of Approximately 5.5 billion and Reserves For Claim Losses That Exceed 2.3 Billion


UCC Plus
RISK MANAGEMENT
Fidelity National Financial Family of Companies

INDIVIDUAL LEADERSHIP

- Edson N. Burton, Jr., a senior executive with Fidelity National Financial with over 35 years of experience in the Title Insurance Industry

- Gary M. Zimmerman, a seasoned commercial finance attorney, with over 27 years of practice in the lending industry, is Senior Vice President and Chief Underwriting Counsel of Fidelity's UCC Risk Management Program

- Theodore H. Sprink, with 30 years experience in the financial services industry, is Senior Vice President and National Sales Director of Fidelity's UCC Risk Management Program

- Underwriting staff consists solely of experienced commercial finance attorneys and paralegals

UCC Plus
RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCC INSURANCE NOW AVAILABLE AS A RISK MANAGEMENT TOOL

- UCC Insurance is a *New* Product Developed to Protect Commercial Lenders.

- UCC Insurance complements traditional real estate title insurance, historically benefiting lenders and investors. (See Moody's Rating Agency Report on Mezzanine Financing)

- UCC Insurance, is a Lender's Title Insurance Policy for Loans Secured by *Personal Property Collateral*.

- The Uniform Commercial Code - Article 9 governs commercial loans secured by personal property

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCC INSURANCE COVERS ALL TYPES OF COLLATERAL UNDER ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

- Accounts
- Chattel Paper
- Promissory Notes
- Inventory
- Goods
- Instruments
- Certificated and Uncertificated Securities
- Software
- Equipment
- Fixtures
- Deposit Accounts
- Securities Accounts
- Letter of Credit Rights
- General Intangibles

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCC INSURANCE
OVERVIEW OF COVERAGE

- The Policy Insures Attachment, Perfection and Priority of the Commercial Lender's Lien on Pledged Collateral
- Insures Validity and Enforceability of the Borrower's Pledge of Reliance Collateral
- Insures Against Fraud, Forgery
- Provides for Defense Costs and Indemnity

UCC Plus
RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCC INSURANCE
OVERVIEW OF COVERAGE

- **<u>Attachment</u>**-(9-203 of the UCC)
- Debtor has either ownership rights or "rights in collateral" sufficient to transfer it to the lender/secured party.
- The Lender has given value (loaned $ or committed to lend $) and Debtor has signed a security agreement granting a security interest in the collateral
- UCC Insurance policy protects Lender from errors, defects and omissions in the transaction documents

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCC INSURANCE
OVERVIEW OF COVERAGE

- **<u>Perfection</u>**-(9-308-9-316 of the UCC) Lender has taken all steps required by Article 9 to perfect
- Being properly secured protects the Lender from having it' s security interest set aside in Bankruptcy
- Shifts Risk from Lender to UCC Insurance for:
  – Financing Statement errors
  – Indexing Inconsistencies

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCC INSURANCE
OVERVIEW OF COVERAGE

- **Priority**-(9-317 to 9-342 of the UCC) UCC Insurance insures that the Lender' s security interest is in first place
- Search Company risk is limited to cost of search, by contract and case law
- Shifts risk from Lender to UCC for search office errors and omissions


UCC Plus
RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCC INSURANCE
OVERVIEW OF COVERAGE

Cases In Which the Security Interest of a Lender Has Been Challenged or Set Aside are generally in one of the Following Categories:

- Failure To File/Continue Financing Statement
- Incorrect/Ambiguous Financing Statement
- Defective Description of Collateral
- Incorrect Filing Jurisdiction

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

RISK MANAGEMENT ENVIRONMENT

- Bank Growth Via Merger and Acquisitions
- Lack of Consistency in Credit Underwriting Standards: Loosening and Subsequent Tightening
- Rising Risk & Defaults / Unmasked Challenges
- Lender Losses-Given-Default
- Legal Expenses Associated with Defense of Reliance Collateral

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

WHY A NEED FOR UCC INSURANCE?

- Economic Change, Uncertainty and Risk
- Loan Portfolio Audits/Surveys: 40% documentation Defect Rate
- Law Firm Focus Groups: Unanimous Support for National Insurance Coverage vs. Traditional Legal Opinion
- Sub-Prime/Alt A…Traditional Residential Real Estate…Commercial Real Estate…Commercial Finance/Corporate Lending
- UCC Insurance: Anticipate Change, Protect Collateral, Shift Risk

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

REGULATORY CONSIDERATIONS
Communicated by OCC, FDIC, OTS & Federal Reserve

- Beware Credit Cycles, Loan Concentration, Portfolio Risk and Capital/Liquidity
- Emphasis on Credit Quality, Reliance Collateral, Liquidity Plans
- Risk Managers Should Use *ALL* Tools Available Instead of relying only on Statistical Modeling


UCC Plus
RISK MANAGEMENT
Fidelity National Financial Family of Companies

BENEFITS OF UCC INSURANCE RISK MANAGEMENT FOR SECURED CREDITORS

- Insures Validity, Enforceability, Attachment, Perfection & Priority
- Protects Against Documentation Defects and Search Office Errors, Omissions and Indexing Issues
- Eliminates Financing Statement Inaccuracies
- Prevents Loss of Priority in the Event of Default
- Compliments the Traditional Legal Opinion
- Shifts Risk

UCC Plus
RISK MANAGEMENT
Fidelity National Financial Family of Companies

RECOMMENDED LOAN SEGMENTS FOR UCCPlus RISK MANAGEMENT

- Any Loan Secured by Article 9 Collateral
- Mezzanine Loans
- Working Capital Loans
- Work-Outs
- Project Finance/Heavy Equipment
- Loan Securitizations

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCCPlus RISK MANAGEMENT PRICING

- Targeting loans of $1 Million or greater
- Cost-Per-Thousand Coverage Generally .45 – .65 cents, generally paid by Borrower
- Portfolio Pricing Available
- Mixed Collateral Pricing Available

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

FORMER AND CURRENT CLIENTS REPRESENT A SPECIALIZATION IN MEZZANINE FINANCE

Banks/Financial Institutions:

Bank of America, Wells Fargo, Citigroup, Deutsche Bank, JP Morgan Chase, Goldman Sachs, Morgan Stanley, Bear Stearns, Greenwich Capital, Credit Suisse First Boston, Lehman Brothers, Merrill Lynch, GMAC, Wachovia, Key Capital, TIAA-CREFF, Countrywide, ARCS, MONY, Prudential, RAIT, Column Financial.

Law Firms representing Lenders and Borrowers:

Cadwalader Wickersham & Taft; Simpson Thatcher; Sidley Austin Brown; Windels Marx; Holland & Knight, Strook & Strook; Baker McKenzie, Weil Gotshal; Cravath Swaine; Thatcher Profitt; Pircher Nichols; Sullivan & Cromwell; Kaye Scholer; Jones Day; Morrison & Foerster; Dechert; Quarles Brady; Pillsbury Winthrop Shaw Pittman; DLA Piper Rudnick; Dewey Ballantine; Shearman & Sterling; Brown Raysman; Proskauer Rose; Skadden Arps; Bingham McCutchen; Sonnenschein; Goodwin Proctor; Buchanan Ingersoll; Jenkens & Gilchrist; Solomon Weinberg; Hogan & Hartson; Gibson Dunn & Crutcher; Schulte Roth; Lewis & Roca; Paul Hastings; Latham & Watkins; Katten Muchin; Kirkland & Ellis; Venable LLP, Debevoise & Plimpton and Mayer Brown Rowe & Maw.

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCCPlus RISK MANAGEMENT CONCLUSIONS

- Inform and Educate Regulatory Authorities
- Serve as A Resource for Regulators and Banks
- Provide Training and Materials
- Technical and Educational Presentations Are Available to Regulatory Staff and Bank Credit and Risk Management Executives

UCC Plus
RISK MANAGEMENT
Fidelity National Financial Family of Companies

UCCPlus RISK MANAGEMENT

- Theodore H. Sprink, Senior Vice President and National Director of Sales & Marketing tsprink@fnf.com 760-931-4731

- Gary M. Zimmerman, Senior Vice President and Chief Underwriting Counsel gary.zimmerman@fnf.com 312-223-2441

- www.uccplus.com and www.riskmanagement.fnf.com

UCC Plus RISK MANAGEMENT
Fidelity National Financial Family of Companies