



Commercial Real Estate/Multifamily Finance Board of Governors (COMBOG)
ASSET ADMINISTRATION COMMITTEE
Conference Committee Call
Tuesday, October 19, 2004
3:00 p.m. – 4:00 p.m., Eastern

CONFERENCE CALL NOTES

Chair: Jan Sternin, Midland Loan Services, Inc.

Vice Chairs: Marla Campagna, AIG Global Real Estate Investment Corp.
Keith Dunsmore, Esq., Akin, Gump, Strauss, Hauer & Feld, L.L.P.
Judith King, Teachers Insurance & Annuity Association of America
Audrey Riggs, NorthMarq Capital, Inc.

MBA Staff Representative: Katie Schwarting
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I. Welcome and Introductions

II. Outsourcing

- By definition we mean both domestic and offshore opportunities
- What can we potentially outsource?
 - Insurance, Inspections, Tax Services, Satisfactions, UCC's, Technology – generally or large projects, Call Centers, Financial Statements – spreading or analysis, Cash processing, Others?
- Do we want to outsource all or part of a function?
- What types of companies are available? How reliable are these companies – what type of assurances and product do you get?
 - Picking the right type of company to meet your corporate needs
- Will lenders accept outsourcing? Any negative responses from lenders?
 - Are lenders aware that servicers are outsourcing functions?
- Costs associated with outsourcing?
 - Hiring employees vs. outsourcing a function
 - Free up staff resources for other functions
 - Staff still required for oversight and review functions of the outsourced work
- Checks and balances - what are the benefits and what are the risks/problems?
- Due diligence concerns – who has control of the process?
 - Quality and control measures procedures
- Education and training important
- Technology issues – once the work is completed, how is information processed and transmitted back to the lender/servicer for their computer systems?
- International/Offshore issues – understanding other countries' laws/regulations, setting up a business, hiring staff, training, etc...

III. Insurance Issues

a. ACORD 28

- Background: MBA worked with ACORD to create a new insurance certificate form that was easier for the agents/brokers to complete and would offer the lenders/servicers more of the insurance policy information
- Feedback – ACORD 28 is a much better form detailing the policy information
- Concerns – still not getting all agents and brokers to use the form and some larger insurance companies have their own form (do not use ACORD)
- Realistic next steps?
 - Continue to ask for the form
 - Training and education of the brokers/agents on the forms existence
 - Push for insurance information transparency
 - Work with insurance trade associations to increase use
 - Make the form electronic – so the user can fill out form on the computer

b. Terrorism Risk Insurance Act (TRIA)

- MBA is in favor of a federal program to ensure the availability and affordability of terrorism insurance coverage.
- MBA helped achieve a significant victory earlier this year with the extension of the “make available” provision to December 2005.
- Next steps: MBA continues to work with other interested parties to request a two-year extension or reauthorization through December 2007.
- Extension is the best possible option for success, however due to the upcoming election and possible “lame duck” session, it is unlikely that an extension will occur prior to year-end
- Senator Richard Shelby (R–AL), Chairman of Banking, Housing & Urban Affairs, wants to hold hearings on the issues – which would not begin until early 2005
- Treasury has a study on the effects of TRIA, which is not expected until June 2005, which is considered late to finalize an extension. Treasury may feel some pressure to release their findings earlier. MBA will work with Treasury to provide them with any information and help they request.
- There are currently three bills proposed:
 - Two in the House of Representatives – HR 4634 (76 cosponsors) and HR 4772 (66 cosponsors).
 - One in the Senate – S2764 with 11 co-sponsors
- **Question:** I have heard that the insurance industry is also lobbying for additional concessions from Congress – for example, lower insurance contributions to cover losses – will this affect the renewal requests?
 - **Answer:** The insurance industry has made several requests for changes to TRIA, while Congress has agreed to some changes, others will probably be dismissed. The changes will probably not affect the extension effort, the bigger concern are the conservative Senate and House of Representatives members, who are generally opposed to expansion of any government programs.
- **MBA National Policy Conference in Washington, DC – May 17-19**
 - Meet and discuss top issues with your Congressional representatives

IV. Sarbanes-Oxley Compliance

- Internal and external audits – increased scrutiny of servicer policies and procedures, processes and training
- Creating more exceptions
- What can servicers do?
 - Proactive initiatives – assessment of risks and placement of new controls to mitigate risk
 - Monthly management and testing
 - Including hiring new people, if needed
 - Leverage off current expertise
 - Extensive training
 - Increase compliance measures for quarterly and annual reporting
- Some articles written state that external auditing, among all public companies, will see a rise in exception reports (of 10%-25% increase).

V. Reporting Requirements

- Increased burden of reporting – monthly, quarterly, annually
- Larger staff requirements – lots of time, often manual, expensive process
- Increased requirements from correspondents and primary servicers
 - Must know their portfolio better
 - Must offer information in a set format
- Once more information is requested by the investor or lender, the amount of information simply continues to increase, information never gets removed from the list, even when it becomes immaterial.

VI. MBA Updates

- a. SEC Proposed ABS Rule
 - SEC proposed new requirements for registration, disclosure and reporting of Asset-Backed Securities (ABS) - the defined terms in the new regulation do include real estate transactions and will affect the CMBS market; Fannie Mae and Freddie Mac are also expected to adopt the new rules as “best practice;” and the RMBS (residential mortgage backed securities).
 - The new regulation is expected to standardize and codify current industry practice, while expanding requirements in some areas to provide investors with additional information and comfort.
 - The rule will have a profound impact on the current procedures for closing a deal. Some examples of the changes:
 - Expanded definition of a “servicer” to recognize the role of master and primary servicer in a transaction
 - Increased disclosure requirements placed in the Prospectus
 - Implementation of a single “responsible party” in each transaction
 - Increased annual review requirements (replacing the current USAP)
 - To view the SEC rule, visit the MBA website at:
<http://www.mortgagebankers.org/industry/docs/04/SEC%20Proposes%20New%20ABS%20Rules%20Federal%20Registrar.pdf>
 - To view the MBA’s comment letter, visit the MBA website at:
<http://www.mortgagebankers.org/industry/docs/04/MBA%20Response%20to%20SEC%20Regulation%20FINAL.pdf>

- On September 23, MBA met in person with the SEC to discuss the MBA comment letter and answer any additional SEC questions

- b. Real Estate Mortgage Investment Conduit (REMIC) Legislation
 - MBA is in favor of adding REMIC reform language, which will revise the current REMIC laws that make real estate securitization (commercial mortgage-backed securities – CMBS) structures possible
 - Next steps: MBA continues to lobby Congress, on both the house and senate bills, for bi-partisan co-sponsors
 - MBA worked to include the REMIC reform language in the FSC/ETI bill (international tax bill); however, most additional amendments, including the REMIC provision, were not adopted (considered “outside the scope of the bill”).
 - Senator Craig Thomas (R-WY), Chairman of International Trade sub-committee of the Finance Committee, did make a public pronouncement that the REMIC reform was good public policy, showing his support of the concept and increasing the likelihood of the language being placed into a tax bill in 2005.
 - There are currently two bills proposed:
 - One in the House of Representatives – HR 4113 with 17 cosponsors
 - One in the Senate – S2422 “REMIC Modernization Act of 2004”
 - Copies of the REMIC bills are available on the MBA website

- c. Mold White Paper – Open Comment Period
 - MBA Mold Working Group is completing a draft White Paper on mold and information on the historical view, current industry perspectives, health, research, insurance, litigation, risk management, prevention and routine maintenance, detection, remediation, new technologies and the future.
 - The paper is anticipated to be open for comment by the CREF Convention.

- d. MISMO – Servicing Transfer Standards
 - Dan Szparaga spoke about the status of current projects.
 - Separate presentation materials will be made available on the MBA website

- e. Regional Servicing Forums
 - i. December – San Francisco, CA
 - ii. March – Overland Park, KS
 - iii. July – Washington, DC

- f. Asset Administration & Technology Conference
 - i. **May 4-6, 2005** – Chicago, Illinois

VI. Emerging Issues and Concerns

- None reported

VII. Other Business

- None reported