



Commercial Real Estate/Multifamily Finance Board of Governors (COMBOG)
SERVICING COMMITTEE

Committee Conference Call
Wednesday, November 1, 2006
3:00 p.m. – 4:00 p.m., Eastern

NOTES

Chair: David M. Croskery, Holliday Fenoglio Fowler, L.P.

Vice Chairs: Kathleen Dufraime, Global Realty Outsourcing, Inc
Doris Hughes, Guardian Life Insurance Company of America
Russell Richardson, Collateral Real Estate Capital, LLC
James P. Shevlin, American Capital Strategies
Alan K. Wallace, ARCap Servicing, Inc.

MBA Staff Representative: Katie Schwarting
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I. Welcome, Purpose, Market Overview

Croskery

Introduction of the Leadership and Purpose. The purpose of the fall committee meeting is: to introduce the new leadership, to have an open discussion on issues, to give updates on current initiatives and to offer an opportunity for members of the committee to share their insight and thoughts on issues they are facing in the market place.

Market Overview. We are experiencing record production numbers coupled with increased auditing and regulatory oversight (like Regulation AB). There is a record amount of capital – both debt and equity available. Lenders continue to create innovative and complex loan structures, construction loans and mezzanine financing are seen more often, which all leave Servicers with challenges and opportunities. Delinquencies continue to be incredibly low with life companies experiencing the lowest numbers in 7 years. Over the horizon we have maturity dates bubble, with lots of refinancing, coupled with a slowing housing market. We also are seeing the condo market slow down and some potential building projects will not get built, as the market adjusts itself. Retail still seems to be the favorite property type.

II. Insurance Issues – How are Servicers Handling the Renewal Process?

Dufraine

Catastrophes will always impact our business. They create:

- Availability and affordability issues for the borrowers
- Force borrowers and insurance producers to develop complex insurance solutions which are difficult, and quite frankly expensive, for us to analyze
- Premium financing always comes up when there are affordability issues
- Self insurance always comes up when there are availability issues
- Carriers get downgraded, or worse become insolvent
- And when an event happens there is always an urgent demand for insurance information relating to the loan

Nature can be unpredictable, as is a potential terrorist strike, so it's hard to plan for what is going to happen next. As servicers we can only be fully prepared to handle any situation and react in the most efficient manner.

As a note, servicers can not lose sight of the December 31, 2007 expiration of TRIA. The start of 2007 is now only two months away.

Another challenge that we face as servicers is that we share the borrower as a client if you will with the insurance side of the house. The most recent communication issues stem from the changes made to the ACORD 28. The MBA is actively working with some of the members in approaching the insurance industry to work out a solution where the insurance industry will offer actual evidence of the insurance available. As an example of those efforts, the MBA staff Gail Cardwell, Senior Vice President, and member members Dave Roberts from Collateral, Kathleen Dufraine, GRO, went to Montgomery, Alabama on Tuesday, November 7 to talk with Insurance Commissioner Bell who is the President-Elect of the National Association of Insurance Commissioners (NAIC).

But this is not our only challenge in working with the insurance industry, servicers also deal with:

- The fact that the insurance industry does not know our business
- The insurance industry is not always responsive in a timely manner
- Many times the insurance industry does not include all the information the real estate industry needs for our business transactions; and,
- There are sometimes inaccuracies in the information provided

To help address these issues and others that arise, MBA has created a working group called the Executive Insurance Council (EIC). The Executive Insurance Council started in March of 2006, and is made up of over 25 people from the servicing industry's insurance professionals from all product types (CMBS, Whole Loan, GSEs). The Council is planning several projects, including a possible 2007 educational "road show" to communicate out to the membership some of the challenges and opportunities for lenders and servicers concerning insurance.

III. Assumptions – Can Servicers Help Improve the Process?

Shevlin

Assumptions continue to create challenges and opportunities for increased information and streamline of processes to help with borrower satisfaction.

Several key points:

- Creating a borrower checklist
- A clear and concise process for approvals
- Security of borrower information
- Flexibility getting deals done to make assumptions beneficial to all parties

CMSA and MBA have established a joint working group to look at the assumption process. (Attached in the email is a copy of the CMSA/MBA Assumption Task Force Charter. For those viewing notes on the MBA website, please contact MBA staff, Katie Schwarting for a copy of the charter.)

Mike Lipson, Capmark Services, expressed some concern over the lack of clarity in the project objectives and the current drafting of the Charter. Mr. Lipson is concerned about the ability to standardize the process when any attempt to standardize the controlling loan and servicing (PSA) documents has met with industry resistance. Any process would have to ultimately conform to the controlling documents leading to significant exception processing resulting in potential additional borrow confusion and dissatisfaction. The working group is aware of this concern and will continue its discussions with Mr. Lipson's comments in mind. It is important not to create additional liability or create confusion in the marketplace.

IV. All Appropriate Inquiry / Revised ASTM Phase I Standard

Hughes

Are Servicers and Lenders Prepared for a New Inspection Standard for Contaminated Properties?

The transition period has ended. **Effective November 1, 2006, the Environmental Protection Agency's (EPA) standard for environmental due diligence, All Appropriate Inquires (AAI), requires full compliance.**

Background. In 2002, Congress amended Superfund to add two additional defenses (in addition to the innocent landowner defense) to liability: bona fide purchaser and contiguous landowner. The intent was to allow a purchaser to buy property with known contaminants, without making the new purchaser liable for the past behavior of a previous owner. In order to assert a defense to liability, the purchaser must conduct an environmental inspection regarding what hazardous substance releases or potential hazardous substance releases exist on the property in question and take necessary action toward remediation if any are discovered.

Congress directed the EPA to establish the inspection standards on how to conduct "all appropriate inquiry." AAI removes new owner liability for past bad

acts (no third party liability), but does not affect the requirements for clean up once a hazard has been discovered (potential future bad acts). The new owner will still be expected to use all due diligence to stop on-going contamination, clean up the contaminants and not contribute to future contamination.

For viewing information on all appropriate inquiry, please visit the EPA's website page on AAI, including the final rule and the comparison to the old ASTM Phase I process. The website link: <http://www.epa.gov/swerosps/bf/regneg.htm>.

After EPA developed AAI, ASTM underwent the task of revising their Phase I standard to reflect the AAI requirements. ASTM has now completed their revisions. For a brief review of the revised ASTM Phase I standard, E1527-05 Standard Practice for Environmental Site Assessments: PHASE I Environmental Site Assessment Process, now available for sale on the ASTM website at: http://www.astm.org/cgi-bin/SoftCart.exe/STORE/filtrexx40.cgi?U+mystore+uzcw2251+-L+PHASE:I+/usr6/htdocs/astm.org/DATABASE.CART/REDLINE_PAGES/E1527.htm

V. MBA Updates

a. Legislative Update

McKinnon

Election Day is next Tuesday, November 7. Congress remains out of session, but will return for a lame-duck session on November 13. It is anticipated that they will come back for about 1 month (30 days). The election outcome may affect current and future projects and initiatives that impact the commercial real estate finance industry.

b. MISMO – Servicing Standards

Szparaga

Not given on the call. Only written updates:

MISMO (the Mortgage Industry Standards Maintenance Organization) is a data standards body administered by MBA. MISMO data standards are simply the protocols used to exchange information between trading partners (Party A to Party B). MISMO publishes its standards in a computer language known as XML and in the case of eMortgages, MISMO also publishes process standards for the use and exchange of these electronic instruments. The goal of a MISMO message is to send and receive data in a manner so that a machine can talk to another machine.

For Example: Consider the case of e-mailing a PDF

- The PDF is sent electronically
- Its content must still be manually entered into a system
- MISMO is designed to correct this

MISMO creates true transactional seamlessness and reduces many of the costly manual processes involved in mortgage origination and

servicing. Their free accessibility to all participants in the industry removes any barrier to their adoption and provides for easier and faster systems implementations, trading partner connectivity, and data processing accuracy. MISMO's revolutionary impact is that it is focused on **data structure** instead of **data arrangement**.

MISMO's commercial standards are built on a single architecture, consistently applied across all business processes. The first standard completed by MISMO in February 2006, was the Commercial Servicing Transfer Standard. The Servicing Transfer Standard is designed to transmit loan boarding information from one party to another and can be used to transfer data when:

- There is an acquisition of a loan portfolio(s)
- There is an establishment of a third party servicing relationship
- There is the awarding of servicing in a CMBS transaction
- There is even loan boarding for just one loan

- c. Servicing Committee: Working Groups Schwartz
See attached worksheet of current working groups and task forces
- d. Asset Administration & Technology Conference Schwartz
May 16-18; San Antonio, TX

VI. Emerging Issues and Concerns Wallace

The Servicing Committee is contemplating two new working groups this year, slated to start in January 2007. Those two initiatives are:

- CMBS Master and Primary Servicer Communication. MBA will bring the members together to discuss the current issues and challenges facing the industry between Master and Primary servicers. This effort will be co-chaired by a Master and a Primary servicer.
- Errors and Omission Insurance for Correspondent Servicers. MBA will bring together the whole loan servicers to discuss minimum standards for E&O coverage amounts for the correspondent servicers. This effort will be co-chaired by a Lender and a Correspondent servicer.

MBA is open to other ideas and projects as they arise.

VII. Other Business Croskery
There is no other business at this time.