

# INTRODUCTION

## Draft PSA Article III Task Force

Pooling and Servicing Agreements (“Agreements”) related to CMBS issuance have evolved to reflect changes in the industry. This evolution has resulted from negotiations on a deal by deal basis among a number of parties (servicers, issuers, trustees, legal firms, rating agencies and certificateholders). Servicers (master, special and primary) often encounter inconsistent servicing provisions, lack of clarity with respect to obligations and conflicts between the terms of the information required to meet servicing requirements.

Additionally, Servicers (master, special and primary) involved in transaction across issuers, rating agencies, certificateholders and trustees, or master servicers, often encounter inconsistent servicing provisions unrelated to individually negotiated terms of the Agreement. In order to address these issues, the “Article III” task force (“task force”) was formed by the MBA under the umbrella of its Asset Administration Committee. The task force was open to read Master Servicers and Special Servicers and included representation by the subservicers, rating agencies and law firms.

During the last year or so, beginning in September 2001, the task force met regularly to review the servicing provisions of a form Agreement and to comment on inconsistencies, clarifications, required additions and deletions. These meetings and discussions resulted in the production of the following documents which are being presented in this **preliminary report** for comment.

- Confidentiality Agreement to standardize the method by which Certificate holders and prospective Certificateholders gain access to information related to the mortgage loans covered by an Agreement;
- “Best Practices” paper, containing suggested language to address typical inconsistencies, provide clarification and incorporate the work of the MBA/CMSA Loan Document Integrity Task Force; and,
- “White Paper” addressing issues subject to additional industry discussion and future inclusion in the Agreements.

Attorneys with the law firm of Akin, Gump, Strauss, Hauer & Field, L.L.P. drafted most of the document being distributed. Attorneys from other firms also assisted in drafting some of the materials.

The suggested language and other recommendations presented in the Confidentiality Agreement, the “Best Practices” paper and the “White Paper” supplement the Loan Document Integrity Task Force’s recommendation for establishment of industry-wide “Best Practices” which allow for individual negotiation of terms. Likewise, the intent of Article III Task Force as expressed in the Confidentiality Agreement, the “Best Practices” and “White Paper” is not to replace with absolute standards the terms and provisions of PSAs which are traditionally the subject of negotiation among the deal participants, but to serve as a starting

point for such negotiations. Readers are cautioned that the suggested language and recommendations included in the Confidentiality Agreement, the “Best Practices” paper and the “White Paper” may not be applicable to, or appropriate for, the particular factual and legal circumstances of your transaction or any transaction in particular. Furthermore, nothing contained in the Confidentiality Agreement, the “Best Practices” paper and the “White Paper” should be construed as legal advice, and readers are urged to consult with their legal, tax, accounting, and other advisors prior to relying upon or including any suggested language or recommendations presented herein or therein. **Please forward comments to Kathy Marquardt ([Kathy Marquardt@gmaccm.com](mailto:Kathy.Marquardt@gmaccm.com)) or Katie Schwarting ([katie.schwarting@mbaa.org](mailto:katie.schwarting@mbaa.org)) by Friday, April 18, 2003.**