

Creditors and Credités

February 9, 2009

“Special Servicing in the Year Ahead”

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Meet our Panel

- » Moderator
 - **William M. O'Connor**, Crowell & Moring LLP

- » State of the Market / CMBS Servicing Issues
 - **Peter Monroe**, Chairman and chief executive of National Real Estate Ventures, LLC (NREV); former Chairman of the Resolution Trust Corporation (RTC) Oversight Board; former Chief Operating Officer of the FHA
 - **Kevin C. Donahue**, Midland Loan Services / PNC Real Estate Finance
 - **Stacey M. Berger**, Midland Loan Services / PNC Real Estate Finance

- » Modification and Restructuring CMBS
 - **Mark Weibel**, Fulbright & Jaworski L.L.P.

- » Servicer's Concerns in Financial Services Litigations
 - **Matthew W. Cheney**, Crowell & Moring LLP

State of the Market

Bird's Eye View: The FDIC and the Commercial Market Going Forward

Peter Monroe, Chairman and Chief Executive Officer of National Real Estate Ventures, LLC (NREV); former Chairman of the Resolution Trust Corporation (RTC) Oversight Board; former Chief Operating Officer of the FHA

CMBS Special Servicing 2007-2008 Comparative Statistics

Kevin C. Donahue, Midland Loan Services / PNC
Real Estate Finance

Stacey M. Berger, Midland Loan Services / PNC
Real Estate Finance

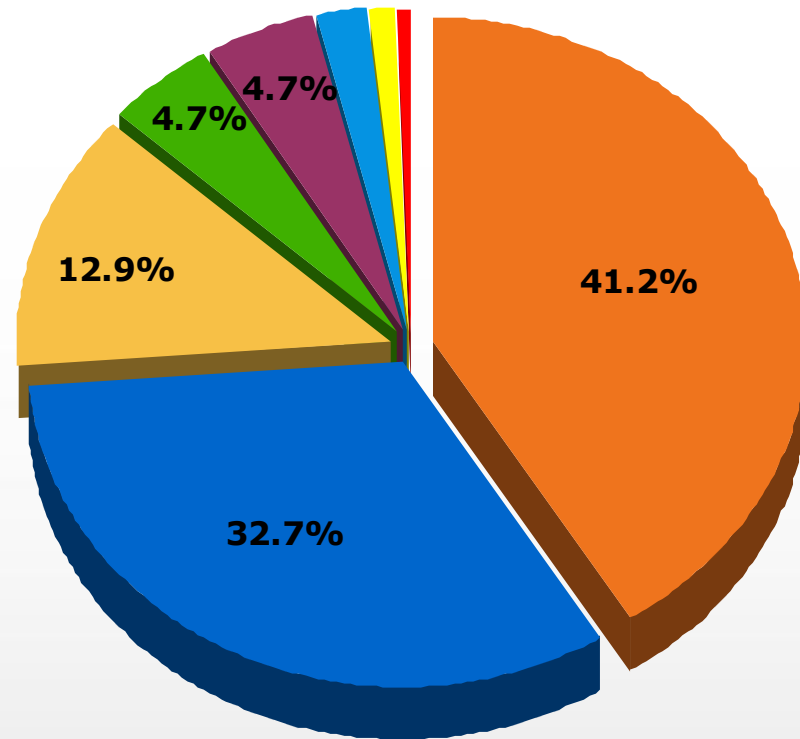
Special Servicing CMBS Portfolio

	YE 2007	YE 2008	% Change
Special Serviced Assets by Count and Balance	<ul style="list-style-type: none"> • 179 assets • \$573.2 mil. 	<ul style="list-style-type: none"> • 437 assets • \$2.574 bil. 	<ul style="list-style-type: none"> + 144% + 350%
Active Special Serviced Assets as Percentage of Total by Balance	<ul style="list-style-type: none"> • 0.55 % 	<ul style="list-style-type: none"> • 2.38% 	<ul style="list-style-type: none"> + 333%
Special Servicing Transfers	<ul style="list-style-type: none"> • 196 assets • \$527 mil. 	<ul style="list-style-type: none"> • 443 assets • \$2.619 bil. 	<ul style="list-style-type: none"> + 126% + 396%

Property Types

Note: the three primary product types account for 86.8% of total

- Multifamily
- Retail
- Office
- Ind/Whse
- Mixed Use
- Hospitality
- Mobile Home
- Self Storage

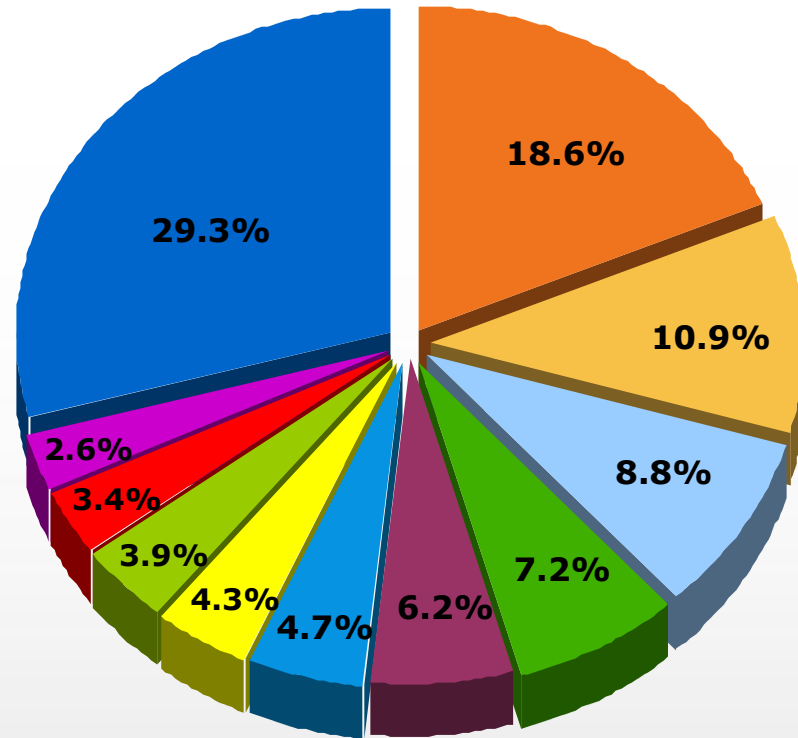


612 Total Assets

Geographic Distribution

Note: top ten states account for 70.3% of portfolio by property count

- California
- Texas
- Ohio
- Florida
- Michigan
- Arizona
- Illinois
- Nevada
- Georgia
- New York
- Other



612 Total Properties

Loan Maturity Comparative Analysis

2008 Loan Maturities

- 609 loans, combined UPB of \$4.57 bil.
- 42 matured loans in portfolio at year-end with combined UPB of \$563 million

2009 Scheduled Maturities

- 314 loans
- Combined UPB of \$3.346 bil.

* Based on total named SS portfolio

Issues in Transitioning CMBS from Master Servicer to Special Servicer

Kevin C. Donahue, Midland Loan Services / PNC
Real Estate Finance

Stacey M. Berger, Midland Loan Services / PNC
Real Estate Finance

Issues in Transitioning CMBS from Master Servicer to Special Servicer

- A. Master Servicer Responsibilities and Limitations**
- B. Special Servicer Responsibilities**
- C. Borrower Requests and Communications**
- D. Providing Information to Support Request**
- E. Timing, Fees and Expenses**

Modification and Restructuring CMBS

Mark Weibel, Fulbright & Jaworski L.L.P.

Introduction

- A. Loan Level Issues vs. Trust Level Issues**
- B. 1980s Trap Door**
- C. REMIC Tax Counsel**
- D. Not Addressing CDOs**

Issues

A. Statutory Restrictions

1. REMIC rules
 - a. prohibited transactions tax
 - b. loss of tax transparency

B. Contractual Restrictions

1. Pooling and Servicing Agreement
 - a. servicing standard

C. Owner of the Loan

1. REMIC
2. Grantor Trust
3. Whole Loan

Analysis

A. Current Status of Loan

1. Master serviced loan
 - a. no new loans ninety (90) days after start-up date
 - b. "material" modification
2. Specially-serviced loan
 - a. more flexibility

Analysis

B. Acceptable Modifications / Restructures

1. Master serviced loan
 - a. assumptions
2. Specially-serviced loan
 - a. contact REMIC tax counsel
 - b. servicing standard
 - c. maximize recovery for certificateholders on net present value basis
 - d. examples:
 - i. waiver of due on encumbrance
 - ii. waiver of due on sale
 - iii. waiver of yield maintenance
 - iv. forgiveness of default interest
 - v. forgiveness of collection costs
 - vi. reduce payment
 - vii. accept principal payments during lockout period
 - viii. forbearance
 - ix. extension of maturity date

Analysis

C. Unacceptable Modifications / Restructures

1. Master serviced loan

a. examples:

- i. forgiveness of principal
- ii. forgiveness of accrued contract interest
- iii. forgiveness of prepayment premiums

2. Specially-serviced loan

a. example:

- i. assumption of a-note after foreclosure of b-note

Current Strategies

- A. Alter "Pay" and "Accrual" Rate**
- B. Lockbox**
- C. Loan Sale to B-Piece Holder**
- D. Changes to REMIC Rules**

Servicer's Concerns in Financial Services Litigations

Matthew W. Cheney, Crowell & Moring LLP

Litigation increases during economic downturns

- A.** Litigation already on the rise
- B.** Servicers are also being sued

Risk Exposures of Servicers

- A. Risk of claims by investors**
- B. Risk of claims by borrowers**
- C. Bankruptcy**

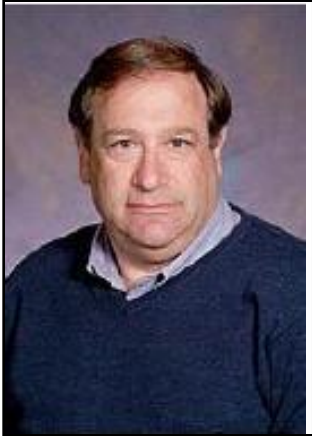
What is a Servicer to do?

- A. Maximize available protections**
- B. Working with Counsel**

Biographies

**In alphabetical order*

Stacey M. Berger



Stacey M. Berger is Executive Vice President of Midland Loan Services, Inc., responsible for business development, marketing and sales activities. Midland, a member of the PNC Financial Services Group (NYSE: PNC), is the leading provider of loan servicing, asset management and technology solutions for the commercial mortgage finance industry and U.S. Government agencies. The company is one of the nation's largest commercial loan servicers with over \$266 billion in outstanding balances. As special servicer, Midland has recovered over \$15 billion on behalf of its clients since 1991. Midland maintains the industry's highest ratings as a servicer and special servicer from Fitch Ratings and Standard & Poor's.

Prior to joining Midland in 1991, Mr. Berger was the senior executive responsible for the real estate asset management and investment advisory services for a subsidiary of Landmark Land Company, Inc.

Mr. Berger received a BA degree in Economics and an MBA degree from Tulane University. Mr. Berger is the past President of the Commercial Mortgage Securities Association, (CMSA), past Vice Chairman of the commercial / multifamily board of governors (COMBOG) of the Mortgage Bankers Association

Matthew W. Cheney



Matthew W. Cheney is a counsel in the firm's Washington, DC Office. With broad experience as a business bankruptcy and creditors' rights lawyer, Matt is a member of the firm's Bankruptcy and Financial Services groups.

Matt's practice includes bankruptcy, creditors' rights litigation, commercial transactions, loan and leasing workouts and other distressed debt situations. He has extensive experience representing financial institutions, hedge funds, individual creditors, and groups of creditors on a variety of insolvency-related matters across diverse industries sectors, such as automotive, energy, health care, manufacturing, real estate and retail. Whether representing secured or DIP lenders, committees, utilities, unsecured creditors, asset purchasers, or trade creditors, Matt works with clients' strategies for minimizing the credit risks inherent in doing business with and lending to troubled companies. He also has represented debtors-in-possession and trustees in bankruptcy cases.

In addition, Matt has significant experience assisting a variety of constituents in the energy industry impacted by energy bankruptcies, including utility companies and independent system operators.

Matt began his legal career by serving as a judicial law clerk for the Honorable E. Stephen Derby and the Honorable James F. Schneider in the U.S. Bankruptcy Court for the District of Maryland. Before starting his legal career, Matt served on the staff of former Congressman and Democratic Whip David E. Bonior (D-MI).

Matt earned his B.A. degree from Michigan State University in 1993, and obtained his law degree in 1997 from Ohio Northern University, where he was managing editor of the *Law Review*.

Kevin C. Donahue



Kevin C. Donahue joined Midland Loan Services in 2001 as Senior Vice President of Special Servicing and has responsibility for directing all special servicing and asset management activities of the group. In addition, Mr. Donahue leads the firm's efforts in the areas of due diligence, contract underwriting, asset valuation, risk analysis and all real estate advisory services offered to third party clients. During the past 25 years, Mr. Donahue has been actively involved in real estate acquisition, finance, contract underwriting, mortgage banking, portfolio analysis, loan workouts, asset management and property development. Prior to joining Midland in 2001, Mr. Donahue held senior management positions with Crown NorthCorp, Columbus Ohio, J.E. Robert Companies, McLean Virginia, DRS Realty Services, Chantilly Virginia, Jones & Company, Overland Park Kansas and SSRC Realty Corporation, New York New York. Clients have included major Wall Street investment banks, insurance companies, commercial banks, pension funds and various government agencies. Mr. Donahue holds a BS in Political Science/Urban Studies from Columbia University and has held real estate brokers licenses in New York, Georgia, Kansas and Missouri.

During his career Mr. Donahue has also been involved in commercial financing and credit analysis including corporate restructuring, inventory liquidation and bankruptcy reorganization. Specialty real estate experience has included land acquisition and disposition as well as rezoning and entitlement activities. He has overseen extensive construction activities, development completion and value added opportunities in all residential and commercial product types including single family, condominium, timeshare, hospitality, retail, office, industrial, healthcare and multi family.

Peter Monroe



Peter Monroe is the Chairman and Chief Executive Officer of a venture capital fund, National Real Estate Ventures, which specializes in the purchase and sale of commercial and residential "real estate owned" properties (REO). Monroe served as the former Chairman of the Resolution Trust Corporation (RTC) Oversight Board and Chief Operating Officer of the FHA. He has been drawing upon his 20 plus years of real estate development and sales experience to rollout this new initiative of buying up foreclosed homes in inner cities nationwide.

Monroe's participation in the sale of over \$500 million in commercial sales, and his development of 10 shopping center and office projects demonstrate his unique qualifications. Monroe has headed two major real estate-related federal agencies, and has extensive experience with property entitlements and government issues that often impede closings such as environmental or zoning problems. Additionally, he has special expertise in 1031 exchange and supermarket-anchored transactions.

Monroe is an attorney, Florida real estate broker, held a Florida general contractor's license for over 20 years and is ULI Certified in Real Estate Development Finance.

William M. O'Connor



William M. O'Connor is a partner and management board member of Crowell & Moring LLP and chairs the firm's Financial Services group. Bill leads a New York-based creditor's rights team that represents leading financial institutions, special servicers, hedge funds and real estate opportunity funds.

He concentrates his practice on creditor's rights litigation, loan workouts, loan portfolio sales and acquisitions, rescue financing, bankruptcies, restructurings, ICC arbitrations, international documentary credits, multinational insolvencies and restructurings, and Foreign Sovereign Immunity Act cases. Bill also has an active international practice involving infrastructure and project finance.

Bill is well known as past editor-in-chief of the Westchester Bar Journal. He is a member of the Creditor's Rights Committee of the New York State Bar Association's Commercial and Federal Litigation Section, and of the professional ethics committee of the Westchester Bar Association. He is an elected councilman of the Town of Pelham, NY. In 2006, he was selected as a New York Super Lawyer®.

Bill is admitted to practice before the United States District Courts for the Western, Eastern, Southern and Northern Districts of New York and the Districts of New Jersey and Connecticut. He also is admitted to practice before the United States Courts of Appeal for the Second and Third Circuits, and in New York and New Jersey.

Bill obtained his law degree in 1980 from Fordham University, where he was articles editor of the Fordham International Law Journal and a member of the Jessup International Moot Court Team. He received his bachelor of science degree in 1977 from Fordham.

Mark Weibel



Mark Weibel leads the Commercial Real Estate Practice Group in the Dallas location, and he leads Fulbright & Jaworski L.L.P.'s firm-wide Securitization Practice Group. As a partner in the Dallas location, Mark focuses on all phases of commercial real estate and business transactions.

Specifically, Mark represents financial institutions and private-equity groups, with a focus on special servicers in the CMBS market and other related loan workout environments. He also provides transactional support when defaulted commercial real estate projects transition into bankruptcy and litigation.

Mark also routinely counsels Fortune 100 companies with their commercial real estate needs (e.g. financing, acquisition, disposition, development and leasing). Finally, in collaboration with Fulbright's Public Law Section, Mark represents various cities throughout Texas with their public/private partnership commercial real estate developments.

Mark's clients benefit from his years of experience counseling clients on a variety of real estate finance matters. Having prior experience with a major Wall Street investment firm, his experience in the capital markets provides a unique benefit to his clients and their real estate and real estate finance transactions.

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About Crowell & Moring

Crowell & Moring LLP is an international law firm with more than 450 lawyers practicing in litigation, antitrust, government contracts, financial services, corporate, intellectual property and a variety of other practice areas. More than two-thirds of the firm's attorneys regularly litigate disputes on behalf of domestic and international corporations, start-up businesses, and individuals. Crowell & Moring's extensive client work ranges from advising on one of the world's largest telecommunications mergers to representing governments and corporations on international arbitration matters. Based in Washington, D.C., the firm also has offices in New York, London, Brussels, Los Angeles, and Irvine, CA.

www.crowell.com

About Midland Loan Services

Founded in 1991, Midland Loan Services is a leading third-party provider of servicing, asset management and technology solutions for the commercial real estate finance industry. One of the largest commercial loan servicers, Midland's portfolio totaled more than \$269 billion at September 30, 2008. Midland is the special servicer for over 351 CMBS transactions with balances in excess of \$151.8 billion. Midland is the only company with the highest U.S. primary, master and special servicer ratings from both Fitch Ratings and Standard & Poor's.

www.midlandls.com