

MBA's COMMERCIAL/MULTIFAMILY SERVICING and TECHNOLOGY CONFERENCE 2010

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Loan Document Triggers

Panelists:

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Moderated by:

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 - » Most common types encountered?
 - » Some unusual examples?

- How are loan document triggers relevant?

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- Where can loan document triggers be found in the loan documents?
- Do you employ dedicated personnel to track loan document triggers?

- How do servicers address loan document triggers at loan boarding?
 - » Disclosure
 - » Information capture
 - » Abstracts

- What differences do you see in loan document triggers among CMBS loans vs. agency loans vs. life company loans?

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- What differences do you see in loan document triggers among loans secured by different property types?

- How does your servicing operation manage loan document triggers on an ongoing basis?
 - » Computer systems
 - » Personnel

- What costs issues are raised by loan document triggers?

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 - » Can be labor-intensive to monitor and enforce
- Were the actual costs related to loan document triggers accurately priced when bidding on servicing rights?
- Do you now have a better sense of these actual costs for future business?

- Enforcement difficulties and disputes
 - » Vague or inconsistent documents
 - » Examples of disputes

- | | | |
|------------|----|--|
| Section # | A. | Key Dates in Agreement |
| Caption | | |
| § 1 (C) | 1. | Execution Date is April 15, 2010 |
| § 1 (A) | 2. | Effective Date is March 1, 2010 |
| § 1 (D)(3) | 3. | Extended Maturity Date is April 5, 2020 (Trigger) |
| § 1 (D)(4) | 4. | First Payment Date is May 5, 2010 (Trigger) |
| | 5. | Additional Principal Payment Date – May 5, 2014 and each succeeding May 5 th (Trigger) |
| | B. | Payments/Deposits due from Borrower to Lender prior to or upon Execution Date |
| § 1 (D)(2) | 1. | Lump Sum Payment of \$250,000 – to be applied as a principal reduction payment. |
| § 1 (D)(3) | 2. | Interest due from Effective Date through May 4, 2010 to be prepaid. |
| § 1 (F) | 3. | Deposit into the Tax Escrow in an amount equal to the estimated real estate taxes, assessments and other charges that shall become due and payable over the next 12 months following the deposit (Lender will calculate this amount)(Insurance Escrow is waived by side Letter) |
| | 4. | An initial Debt Service Escrow deposit of \$200,204.00 |
| | 5. | An initial Capital Expenditure Escrow Deposit in the amount of \$311,400 |
| § 1 (H) | 6. | Borrower to pay to Lender the Lender’s Reimbursable Expenses (as defined in Section 20) |
| § 1 (I) | | |
| § 6 (J) | 7. | Borrower to pay Lender a \$2,500 modification fee |
| § 6 (O) | | |
| § 1 (D) | C. | Loan may be prepaid in whole or in part at any time prior to Extended Maturity Date without any premium or penalty. A partial prepayment will affect amortization pursuant to Section 1(c)(5). (Trigger) |

- D. Calculation of interest
- § 1 (D)(2) 1. From Effective Date through April 4, 2014, interest rate is 3.25% (Trigger)
 - § 1 (D)(2) 2. From April 5, 2014 through April 4, 2015, interest rate is 3.35% (Trigger)
 - § 1 (D)(2) 3. From April 5, 2015 through April 4, 2016, interest rate is 5.95% (Trigger)
 - § 1 (D)(2) 4. On April 5, 2016 and thereafter on April 5th of each succeeding calendar year, the interest rate then in effect shall be increased by 1 tenth percent (10 Basis Points). For example on April 5, 2016 the interest rate through April 4, 2017 shall be 4.95% plus 10 Basis Points – total is 5.05%. From April 5, 2017 through April 4, 2018 the interest rate would be 5.05% plus 10 Basis Points – total is 5.15%. Adjust each year in similar manner. (Trigger)
- E. Monthly or Annual Payment Provisions
- § 1(D)(3)(b) 1. On May 5, 2010 through April 5, 2013, a monthly payment of interest only in the amount of \$8,350.38 is due (THIS PAYMENT WILL BE WITHDRAWN BY SERVICER FROM DEBT SERVICE ESC.PURSUANT TO SECTION F(2) HEREOF AND NOT MADE DIRECTLY BY BORROWER FOR FIRST YEAR STARTING MAY 5, 2010 AND POSSIBLY FOR 2ND YEAR STARTING MAY 5, 2011 PURSUANT TO SECTION F (2) HEREOF). (Trigger)
 - § 1(D)(3)(b) 2. Thereafter, commencing on May 5, 2013 and continuing for the next 83 months. Borrower to make a monthly payment of principal and interest initially calculated in accordance with Exhibit A to Loan Modification Agreement (attached hereto) as this amount may be adjusted pursuant to Section 1 (d)(5). (Trigger)
 - § 1(E)(4) 3. Commencing on April 5, 2014 and on April 5th of each succeeding year, Borrower is required to make an Additional Principal Payment in the amount of \$50,000 in the event that the DSCR for the immediately preceding 12 month period is equal to or greater than 2.0:1 as reasonably calculated by Lender. Method of calculating DSCR is defined in section 1 (d)(4). (Trigger)
 - § 1(E)(5) 4. The First Monthly Payment (interest only) and the Second Monthly Payment (P & I) shall be adjusted on an annual basis to account for any Additional Principal Payments under Section 1 (d)(4) and any prepayments made under Section 1 (D). Method of calculating adjustment is set out in Section 1 (d) (5). If adjustment is applicable to First Monthly Payments of interest only, payment in excess of actual interest then due (based on adjustment for prepayments) is applied to principal. (Trigger)

- F. Escrow Deposits
 - 1. Real Estate and Insurance Escrow
 - a. On the first anniversary of the Execution Date an amount equal to the estimated real estate taxes that will be payable over the 12 month period following such deposit. (Insurance Escrow is waived by side Letter) (Trigger)
 - b. From and after the second anniversary of the Execution Date, a monthly deposit as required under Section 17 of the Mortgage sufficient to accumulate over 12 months an amount sufficient to pay real estate taxes (Insurance Escrow is waived by side Letter). (Trigger)
 - 2. DSCR Escrow
 - a. Borrower is required to make initial DSCR deposit of \$250,000.58.
 - b. If property fails to achieve required NOI of at least \$375,000 for the 12 month period following the Effective Date, Borrower must deposit an additional \$100,204.58 into Debt Service Escrow prior to first anniversary of Effective Date (March 1, 2011) (Trigger)
 - c. If as of or after March 1, 2011, the NOI exceeds \$375,000, any funds remaining in Debt Service Escrow shall be released to Borrower. (Trigger)
 - d. Servicer will make monthly draws upon Debt Service Escrow to make monthly payments of interest in the amount of \$8,350.38. (See E (I) of this abstract) (Trigger)
 - 3. Capital Expenditure Escrow
 - a. Borrower is required to make initial Capital Expenditure Escrow deposit of \$222,400 (Trigger)
 - b. Capital Expenditure Escrow is first to be used for replacement of roof and after completion of roof repair for any other Capital Improvement
 - c. On the first anniversary of Effective Date (March 1, 2011), if the property has not generated Required NOI (\$375,000), Borrower must deposit an additional \$111,400 on or before April 5, 2011. (Trigger)
 - d. Commencing on April 5, 2012 and ending May 4, 2013, Borrower must make additional monthly deposits of \$8,282.33 into Capital Improvement Escrow (but if Borrower has achieved Required NOI of \$475,000 by March 1, 2011, then the required payment of \$8,282.33 shall commence on April 5, 2011 and end on April 4, 2012. (Trigger)
 - e. Commencing on April 5, 2013 (or April 5, 2012 if Borrower Commences making monthly Capital Expenditures Escrow Deposit on April 5, 2011 pursuant to subsection (d) above) and ending on April 4, 2015, Borrower must make a monthly Capital Expenditures deposit of \$7,283.33. (Trigger)
 - f. There is a slight overlap of Capital Improvement Escrow Deposits. First Monthly Capital Expenditure Escrow Deposits continues through May 4, 2012 (or May 4, 2012) and Second Monthly Capital Expenditures Deposit commences on April 5, 2011(or April 5, 2012). (Trigger)
 - g. If Roof Replacement is accomplished and all conditions in Section 1 (H)(i) of Loan Modification Agreement are satisfied, Borrower thereafter has no further obligation to make Monthly Capital Expenditure Escrow Deposits. (Trigger)

- § 1(I)(2) G. Miscellaneous Disbursements
1. Borrower must reimburse Lender for all out of pocket expenses incurred by Lender re Capital Expenditure Escrow Disbursement requests
 2. In addition, Borrower must pay up to \$200.00 for each Capital Expenditure Release Request.
 3. For any independent Inspection per Release Request, Borrower shall pay Lender \$500 (to be deducted from Capital Expenditure Escrow).
- § 1 (K) H. Lease Termination Fees
- Borrower may retain up to \$50,000 of any lease termination fees paid by any tenant for purposes of re-leasing the vacated portion, so long as no default exists under the Loan. (Trigger)
- § 2 (I) I. Property Management
- ABC Capital is the approved property manager and leasing agent
- § 4 J. Additional Obligations of Servicer
- § 4(A) 1. Servicer must collect current financial statements from Borrower (ABC Drive, LLC) and each New Guarantor (Mr. ABC and ABC Partners, LLC) annually commencing on or before April 5, 2011. (Trigger)
- § 4(B) 2. Commencing on July 1, 2010 and on the first day of each calendar quarter thereafter, Servicer must collect from ABC Partners quarterly updates detailing all leasing and sales activities for the preceding quarter. (Trigger)
- § 4(C) 3. Borrower must pay or settle all delinquent utility payments. If Borrower obtains reimbursement from the Original Borrower of any delinquent utility payments made by Borrower, Borrower must pay such reimbursement to Lender to be applied to reduce the outstanding principal balance. (Trigger)
4. Commencing on Second Anniversary of the Execution Date, Servicer must calculate real estate tax escrow. (Trigger)
 5. On or before April 5, 2011, Servicer must verify insurance policies have been renewed. (Trigger)

ISSUES AND QUESTIONS:

- All sums required to be paid by Borrower on or before the Execution Date are the responsibility of Lender.
- Lender calculates and collects interest payment due from Execution Date through April 4, 2010.
- Real Estate Tax Escrow for 2010 in the amount of \$203,270.28 may be insufficient – Section 2 of Modification Agreement says 2009 real estate taxes, payable in January 2010 were \$107,073.74.
- Servicer must obtain copy of insurance escrow waiver letter.
- Slight discrepancy in dates for First and Second Capital Expenditure deposits (see Section F(3)(f) of this Abstract.
- Under Section J(3) of this Abstract, Initial Interest payments and subsequent P&I payments could be adjusted by reason of reduction of outstanding principal balance.

DEED IN ESCROW AGREEMENT:

- Lender to deposit with Bellwether Quit Claim Deed executed by Borrower
- Pursuant to Section 34(a) of Deed in Escrow Agreement, Lender may, by written notice to Escrow Agent, require Escrow Agent to deliver Transfer Documents to Lender or its nominee
- Within one business day after Escrow Agent's receipt of such Transfer Instruction Letter, Escrow Agent must deliver the Transfer Documents to Lender or its designee
- Not earlier than 2 business days after, or later than 4 business days after Escrow Agent has delivered the Transfer Documents, Escrow Agent shall notify Owner that it has made such delivery
- Deed in Escrow Agreement terminates upon the earlier of December 11, 2012 or the date that the Property generates NOI of at least \$375,000.