



11TH ANNUAL TRIGILD LENDER CONFERENCE

EXITING THE STORM

LEADING EDGE STRATEGIES FOR
LENDERS AND DISTRESSED LOAN BUYERS



2011

 TRIGILD LENDER CONFERENCE

Issues Specific to Special Servicers

Moderator: *Bill O'Connor, Crowell & Moring LLP*

Panelists: *Tom Biafore, Kilpatrick Townsend*
Stacey Berger, Midland Loan Services
Tom Nolan, CW Capital
Pat Galvin, LNR
John Maute, Helios
Brian Olasov, McKenna Long



2011 Trigild Lender Conference

Exiting the Storm

Issues Specific to Special Servicicers



Issues Specific to Special Servicers

- Special Servicer's view of the current CMBS Market.
- As current portfolio of specially serviced assets are resolved and liquidated, how do Servicers adopt their business plan and redeploy staff?
- How does loan origination and servicing fit into your strategy?



Affiliate Transactions

- Supervening duty of special servicer to the Trust.
 - Borrower paid fees associated with loan modifications, extensions, forbearance and other asset management activities covered by the CREFC IRP Loan Modification Report
 - The use of and payments to affiliated parties for services related to specially serviced assets, such as brokerage, loan sales advisory, property management, leasing, and other services.

Potential Conflicts

- Is investment in distressed debt a major component of your business plan?
- With the Dodd Frank regulatory changes, is CMBS B-piece investment and special servicing a viable strategy?
- Is the acquisition of assets from your CMBS special servicing portfolio a part of your strategy? How do you mitigate the potential conflicts of interest with investors?

- The acquisition, refinancing, recapitalization, investment in or other financial transactions by affiliated parties related to specially serviced assets
- Effect of OA objections to affiliated transactions
- Effect of CMBS 2.0 on transfers of servicing to affiliates

- How do real estate services such as brokerage, leasing and advisory services fit? How do you mitigate the potential conflicts of interest with investors?



- Changes in Special Servicing Tools for Resolution

- A/B Note restructurings
- Assumptions
- Receiver Sales
- Introducing Rescue Lenders
- Remic Wrinkles



- The Nolan Rule (new equity)

CLOSING DISCUSSION

Future of servicing in loan transactions other than CMBS (Syndications, Whole Loan Portfolios, FDIC, SBA)



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How to get the Resolution that Lenders Want- Special Servicer Track

Moderator: *Maura O'Connor, O'Connor Cochran*

Panelists: *Scott Callahan, Roetzel & Andress*
Steven Altman, Torchlight
David Boswell, KeyBank
Toni Meyer-Walker, TriMont Real Estate Advisors
Kevin Semon, Midland Loan Services

Panel Sponsored By:

O'CONNOR COCHRAN LLP





How to get the Resolutions that Lenders Want

(Special Servicer Track)

Welcome & Panelist Introductions

- Moderator: Maura O'Connor, O'Connor Cochran LLP
- Steven Altman, Torchlight
- David Boswell, KeyBank
- Scott Callahan, Roetzel & Andress
- Toni Meyer-Walker, CWC Capital
- Kevin Semon, Midland Loan Services

What do servicers want?

- **Best return**
- **Lowest cost:**
 - avoiding advances
 - legal costs
 - personnel time
- **Bottom line** to borrowers:

Show me the money

What resolutions are servicers actually doing in the current market?

- **Depends on circumstances of specific loan/project:**
 - Value
 - Prospects for improvement
 - Third party claims including mechanics' liens, other creditors' claims
 - State where property is located & local enforcement challenges

Resolution options available

- Extensions
- Modifications
- Short Sales, including Sales Through Receiverships
- Restructures
- A/B Note Structures
- Discounted Payoffs
- Note Sales
- Foreclosures/REO sales
- Deeds in Lieu
- Bankruptcies, including Sales through Bankruptcies
- Others: lawsuits against sponsors, originators; cancellation of debt

Initial Assessment

Initial diligence key to determining leverage

- Assessment of alternatives, costs
- Who/what/when is your battle?
- Where's your leverage?

Challenges facing servicers

- **Keeping control of the cash from the property pending resolution:** Borrower? Receiver? Lockbox/Sweep?
- **Mezzanine lender/B piece buyer complications & conflicts**

Challenges facing servicers

- **Specific state issues**

- Florida: Mortgage tax
- California: Antideficiency and one-action rules, enforcement of guaranties
- New York: Obtaining receiver

Key Variables: Sophistication of Borrower & its counsel

- Sophisticated borrower with CMBS loan: will walk away if no restructure or discounted payoff
- Less sophisticated borrower with smaller loans: less to lose/less predictable outcomes
- Wide variation in competence of Borrowers' counsel; use of delay as a tactic

Key Variables

- *Is borrower capable of turning around property, or a lost cause?*
- *How far underwater is the asset?*
 - High value: negotiation of restructure most likely due to parties' motivation
 - Low value: foreclose, DPO, note sale

Key Variables: Servicer's Leverage

- *Are loan documents enforceable or faulty?*
- *Is there recourse against guarantor under carve-out guaranty?*
- *Pursuit of guarantor's assets: worth the cost and time? Required by lender?*
- *Use of guaranty to incentivize borrower/guarantor to "play nice"*

Key Variables

- *Presence/Behavior of other creditors*
- *Is mezzanine lender potential source of new money?*
- *Is a new sponsor a real possibility?*

Today's Market Discounts

- Depends on market, type of asset, location, condition (example: LA metro area industrial still strong, retail weak)
- Secondary/Tertiary Markets: 40 – 50% off expectations
- Worst markets: regional retail malls

Deeds in Lieu

- Part of tool kit
- Valuable in states where litigation is difficult
- Cash-in deed in lieu in exchange for release of guarantor liability

Note Sales

- Ends problems for servicer
- Purchaser will handle legal costs, time, possible bankruptcy
- Eliminates potential upside opportunity for benefits from improvement to the property
- Note sales: direct, through receiver, through bankruptcy

Restructures/Extensions

- Possible opportunity to stop advancing money
- Opportunity to get new money/collateral from borrower, guarantor, mezzanine lender or new sponsor
- Opportunity to structure for automatic resolution if borrower re-defaults
- Allows clean up of problems
- Careful review of intercreditor and other agreements needed
- Potential delays

Receiverships

- Control of property, money it generates
- Expense
- Challenges to obtain receiver and appropriate court orders
- Sales of property subject to loan through receivership

Bankruptcies

- Outcome depends on the court, facts
- Servicer goals:
 - Maximize estate
 - Keep debt alive to maximize value
 - Eliminate out-of-money claimants
 - *Practical tip:* Intercreditor agreements often require mezzanine lender to “put up [money] or shut up” – enforce through TRO before mezzanine lender moves to enforce

Bankruptcies: Benefits

- **Triggers carve-out guaranty**
- **Creates financial transparency** through borrower's reporting obligations about cash flow from property
- **May allow removal of borrower from control of property**
- **Focus on control of cash flow**

Bankruptcies: Cash Control

- **Understand your leverage:** value of property, ability of borrower's counsel, sources and uses of funds, administrative costs, budgeting, burn rate
- **Limit use of cash to approved budgets**
- **Block use of cash for borrower legal defense fund**
- *Practical tip:* **put operating expenses ahead of debt service**

Bankruptcies:

Use rules to increase leverage

- For underwater assets, use early stage creditors meeting to influence trustee's view of whether a restructure through bankruptcy will work
- Bring in own "stalking horse" bidder
- Shift waterfall: keep Borrower's note in waterfall
- File competing plans

Bankruptcies

- If no capital stack except senior lender, large portion of debt is unsecured, and asset is underwater, rare to do a deal
- When is a 363 sale advisable?
- Buying/selling claims in bankruptcy

Protective Advances

- Must preserve property, pay taxes and insurance
- “Good news” advances:
 - Tenant improvements
 - Lease commissions if lease adds to value

“Borrower Representatives”

- Wide variation in effectiveness, skill

Maturity Defaults

- **2012: a key year for maturity defaults?**
- **Challenges to obtaining financing:**
 - Trends in current rents, tenant creditworthiness
 - Loan to current value ratios
 - Trends in current new financing
- **Time: How long can a servicer extend?**



Final Thoughts from the Trenches

Thank you!

- Moderator: Maura O'Connor, O'Connor Cochran LLP
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- Toni Meyer-Walker, CWCcapital
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Networking Break

*Please join us in the Indigo Foyer for a
Networking Break sponsored by*



Break held from 3:15-3:45pm





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Rescue Finance, Buying Property while Preserving the Debt

Moderator: David Barksdale, *Ballard Spahr*

Panelists: Brett Anders, *Polsinelli Shughart*

Jeff Friedman, *Mesa*

David Nass, *UBS*

Jeff Reder, *Urdang Capital Management*

Mark Jacobs, *Oaktree Capital*





FRANCHISE

LENDER CONFERENCE

HOTELS, RESORTS, CONVENIENCE STORES AND
OTHER DISTRESSED FRANCHISE LOANS

SPRING 2012

DATE AND LOCATION
TO BE DETERMINED

Please join us tonight on the
Indigo Terrace for the

RED SKY AT NIGHT

- COCKTAIL RECEPTION -

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