

Welcome fellow Real Estate Professionals ...

**MYLES'TITLE'S 4TH QUARTER 2011
ADVISORY COUNCIL BREAKFAST & SEMINAR**

Solutions to Key Maryland Real Estate Issues

THE "NEW" REAL ESTATE PARADIGM:
KEY ISSUES FOR 2011 AND BEYOND

**THE FATE OF \$90+ BILLION IN
COMMERCIAL REAL ESTATE LOANS:**

WHO are "Special Servicers"? *WHAT* do they do? *WHERE* do they operate?
WHEN are the deals happening? *WHY*, most importantly, does it matter to you?

- ❖ **INVESTORS & DEVELOPERS:** *Learn about immediate opportunities that exist for Developers & Investors, and the impact on the Commercial Real Estate Market, at large.*
- ❖ **ATTORNEYS & LENDERS:** *Discover the nuances of how Special Servicers affect the market and the risks and opportunities that abound.*

TIMOTHY F. McCORMACK, ESQ.
Ballard Spahr LLP, Partner, Baltimore
Bankruptcy & Commercial Real Estate Recovery

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In association with and sponsored by:
MYLES L. LICHTENBERG, Esq. &
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Hayfields Country Club
November 10, 2011

Visit us online at:
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MarylandCommercialTitle.com's Blog*

**Excerpts from 2nd & 3rd Quarter 2011
Blog Entries**

Unchartered Territory: 29% of Homes, Underwater: We are in unchartered territory. A whopping 28.6 percent of homeowners with mortgages owe more on their loans than their homes could sell for, according to quarterly data released Tuesday by Zillow. That's up from 26.8 percent in the second quarter 2011. Home values declined only 0.2 percent from the second quarter but were down 4.4 percent [...]

Progress: CRE Loans, Highest Since 2007 Could this be progress in our midst. Is this a green shoot? U.S. commercial-property loan originations rose to the highest since 2007 in the third quarter 2011 as banks, insurers and government-backed finance companies increased lending, the Mortgage Bankers Association said last week. New loans for commercial and multifamily mortgages climbed 98 percent from a year [...]

Commercial Real Estate Prices Flat, October 2011 Commercial real estate values have risen substantially since the trough of 2009, but remained flat in October 2011. Properties such as office buildings, warehouses, apartment complexes and malls have increased in value by more than 45% from the bottom of the market in 2009. That means that three-quarters of the decline in values that occurred as the [...]

MD Ground Rent News This posted on the Maryland Department of Assessments and Taxation Website: The Maryland Court of Appeals has ruled that the extinguishment of ground rents for failure to register them with the State is unconstitutional. All ground rents that would have been extinguished for failure to register them are as valid as they were before the registration [...]

Renting's on the upswing Lets see into the future. Looks like RENTING is on the upswing. Check it out the full Housing-Joint-Report (PDF)

Yet Another Federal Housing Modification Program So, is this déjà vu, all over again? Not weighing in on the plans viability, with respect to solving the overall housing crisis issue, but today the federal government announced that it would overhaul a program that lets homeowners refinance mortgage loan at lower interest rates to [...]

Nearly 1 in 4 MD Homeowners, Underwater According to CoreLogic, as reported by the Baltimore Sun today, "[n]early one in four Marylanders with a mortgage owed more on those loans than their homes were worth this spring, worse than all but six other states — and a large number of homeowners who can't easily sell or refinance."

*Come and join your fellow Real Estate Professionals @
MarylandCommercialTitle.com's Blog For more information,
contact Myles Lichtenberg @ 410.458.8975*

Attorney Profiles

Practice Areas

- Litigation
- Bankruptcy, Reorganization and Capital Recovery
- Complex Commercial Litigation
- Commercial Real Estate Recovery
- Higher Education
- Labor and Employment

Education

- University of Michigan Law School J.D. 1983
- Central Michigan University B.A. 1979

Admitted To Practice

- U.S. Court of Appeals of Maryland 1983
- U.S. District Court for the District of Maryland 1984
- U.S. Court of Appeals for the District of Columbia 1984
- U.S. District Court for the District of Columbia 1985
- U.S. Court of Appeals for the District of Columbia Circuit 1997



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Partner

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601 13th Street, N.W.

Washington, DC 20005-3807

Timothy F. McCormack is a partner in the Litigation Department and a member of the Bankruptcy, Reorganization and Capital Recovery Group, the Labor and Employment Group, and the Commercial Real Estate Recovery Group. Mr. McCormack concentrates his practice on commercial creditors in insolvency actions, particularly those involving distressed real estate, and on private-sector employment law on behalf of management. His practice involves defense of private-sector employers in actions alleging violations of Title VII, including claims of discrimination based on race, sex, national origin, and religion. He also regularly defends claims brought under the ADA and ADEA.

He represents financial institutions and special servicers of securitized mortgage loans in disputes involving lender liability, fraud, breach of fiduciary duty, bad faith, foreclosure, collections, and regulatory issues. Mr. McCormack also handled claims involving virtually every aspect of banking operations, including check claims, wire fraud, account disputes, and state and federal regulatory compliance. He represents a major urban university in a breadth of disputes involving employment claims, premises liability, and campus security.

Mr. McCormack's extensive litigation experience includes state and federal jury and non-jury trials. He has argued cases before the U.S. Court of Appeals for the Fourth Circuit, the U.S. Court of Appeals for the District of Columbia, and the District of Columbia Court of Appeals. He has successfully prosecuted and defended cases involving a wide variety of subjects, including claims of lender liability, employment matters, civil rights claims, constitutional claims, and non-competition agreements.

Mr. McCormack is the author of "A Watchful Eye—Why You Should Monitor Employees' Technology Use," *Baltimore SmartCEO* magazine, October 2009.

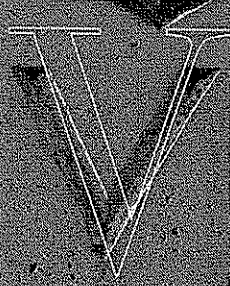
Mr. McCormack is an associate member of the National Association of College and University Attorneys and a member of the Maryland State Bar Association, the Bar Association of the District of Columbia, and the American Bar Association. In 2006, Mr. McCormack was named one of Maryland's Legal Elite by *Baltimore SmartCEO* magazine. He is admitted to practice in the Court of Appeals of Maryland (1983), the

Attorney Profiles

- U.S. Supreme Court
2000

U.S. District Court for the District of Maryland (1984), the Court of Appeals for the District of Columbia (1984), the U.S. District Court for the District of Columbia (1985), the U.S. Court of Appeals for the District of Columbia Circuit (1997), and the U.S. Supreme Court (2000).

Mr. McCormack is a graduate of Central Michigan University (B.A., *magna cum laude*, 1979) and the University of Michigan Law School (J.D. 1983).



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AREAS OF PRACTICE

Bankruptcy and Creditors' Rights

BAR ADMISSIONS

Maryland

COURT ADMISSIONS

U.S. Court of Appeals for the Fourth Circuit

U.S. District Court for the District of Maryland

EDUCATION

J.D., *with honors*, University of Maryland School of Law, 2003

B.S.B.A., *cum laude*, University of Richmond, 1999

JUDICIAL CLERKSHIPS

Honorable James F. Schneider, U.S. Bankruptcy Court for the District of Maryland, 2003 - 2005

MEMBERSHIPS

Maryland State Bar Association

American Bar Association

Bankruptcy Bar Association for the District of Maryland

Laura Bouyea is a member of the firm's Business Division and focuses on bankruptcy and creditors' rights and commercial litigation. Ms. Bouyea has represented debtors, commercial creditors, bankruptcy trustees, liquidating agents and individuals in a wide range of matters, including drafting, negotiating and objecting to plans of reorganization and liquidation, conducting contested Bankruptcy Code Section 363 sales, prosecuting and defending fraudulent conveyance actions, preference actions and contract disputes, and drafting, reconciling and objecting to proofs of claim. She also represents Special Servicers in all aspects of single asset real estate cases, including foreclosure sales, receivership actions and loan modifications. She appears regularly in state and federal court.

Prior to attending law school, Ms. Bouyea worked as an auditor for Arthur Andersen and obtained her Certified Public Accountant license.

HONORS

Recipient, William P. Cunningham Award in recognition of exceptional achievements and services to the University Of Maryland School Of Law.

ACTIVITIES

Ms. Bouyea is a member of the Maryland Bankruptcy Bar Association. She is also a member of the Executive Committee of the Lawyers' Campaign Against Hunger, an annual campaign supporting the Maryland and Capital Area Food Banks.

PUBLICATIONS

Ms. Bouyea is an Assistant Editor of *Norton Bankruptcy Law and Practice, Third Edition*.

SPEAKING ENGAGEMENTS

- June 24, 2010, "Legal and Tax Implications of Business Trusts" BNA Webinar

DEMYSTIFYING CMBS TRUSTS AND SPECIAL SERVICERS

I. MARKET OVERVIEW

II. UNDERSTANDING BASIC CMBS STRUCTURES – CMBS are structured finance vehicles comprised entirely of first mortgage loans backed by income-producing commercial real estate properties. Lower borrowing costs through pricing and diversification (loans vary by product type and geographic market), more loan proceeds (historically), improved liquidity with terms of 5-10 years, market standardization, first loss subordinate bond structure, bond ratings by Rating Agencies.

The loans are pooled and transferred into a trust (property level equity is held outside of the trust). The trust issues a series of bonds that vary in payment priority, risk and returns. Typically, at least two nationally recognized rating agencies assign credit ratings to the various bond classes (or tranches) ranging from investment grade (AAA through BBB-) to below investment grade (BB+ through B-) and a non-rated (NR) class.

Generally, the principal & interest (P&I) received from collateral loans is paid sequentially down the stack, from the highest rated bonds to the lowest.

On the other hand, losses arising from the non-performance of collateral loans, are taken up the stack, first from the non-rated tranches then from the lowest rated bonds to the highest. Importantly, any principal recovered from the resolution of such loans is used to repay the most senior bond tranche then-outstanding.

III. CMBS TRUST SET-UP

A. ORIGINATOR/LOAN SELLERS – There may be multiple loan sellers contributing loans to the pool. Each mortgage loan seller will make representations and warranties, provide documents and loan level data to the servicer, and ensure that critical documents are recorded or filed. Mortgage loan sellers often advocate the borrower position when assumptions, modifications and other borrower requests are processed.

B. DEPOSITOR/ISSUER - Party responsible for pooling the loans and conveying the loans to the Trust. The Trust will issue the bonds/certificates and receives the cash proceeds, which are then disbursed to any contributing originator/loan seller.

C. TRUSTEE – selected by the Depositor – responsible for providing remittance and reporting services to the investors in the trust and allocating collateral cash flows to the different tranches of the bonds. In CMBS the Trustee generally provides document custodian services and tracks original loan documents. Mortgagee of record

D. PRIMARY / SUBSERVICER – generally selected by loan seller/originator and it undertakes limited administrative duties and performance of onsite inspections on behalf of Master Servicer

E. CONTROLLING CLASS REPRESENTATIVE (ALSO KNOWN AS DIRECTING CERTIFICATE HOLDER)

- ❖ Typically known as the B-Piece investor that represents the interests of all subordinate bondholders and possesses approval rights over most major SS workout decisions (i.e. DPO's, Note Sales, waiver of monetary terms, foreclosures, sale of REO). Most PSA's require CCR to reject SS recommendation within 10 business days
- ❖ Right to appoint/direct/remove SS (usually entity of common interest with B Piece investor but not always)
- ❖ Directing Certificateholder position within a trust is not static and will change based on the value of the underlying collateral. Bondholders generally maintain their position as Directing Certificateholder only so long as the certificate balance of their class of bonds is at least 25 percent of the original balance as determined by valuing the underlying properties securing the loans. Each Pooling and Servicing Agreement includes appraisal procedures and many Master Servicers obtain appraisals annually. As real estate values have eroded, the value of CMBS bonds has deteriorated. Bondholders in the bottom tranches have lost their position as Directing Certificateholder as their certificate balances fell below the required threshold. As this occurs, the role of Directing Certificateholder then shifts to the next highest tranche with bondholders in that tranche gaining the power to approve loan resolution proposals, such as foreclosure or sales at a discount that may ultimately eliminate the interests of the subordinate tranches.

F. RATING AGENCIES

- ❖ Monitors performance of CMBS Trust loan portfolio and may issue new bond ratings / same entity that evaluated risk and provided bond investors (at CMBS Trust inception) with a standardized credit score that measures the likelihood of default for each established bond class. Review Asset status reports, closely evaluates loan watch lists and perform numerous coverage calculations to ensure ratings are accurate
- ❖ Review Borrower consent requests (generally limited to top 10 largest loans in CMBS Trust pool) and issues rating confirmation letters for loan assumptions, loan defeasances, changes in management, hotel flag changes, etc. provided subject loan is performing
- ❖ Borrower pays fees associated with any rating agency review

IV. CMBS TRUST MANAGEMENT

A. THE POOLING AND SERVICING AGREEMENT (“PSA”)

- ❖ PURPOSE: Core document that governs the servicing and administration of each loan during its term, outlines the responsibilities of each servicing entity and proscribes the “Servicing Standard” which governs the actions of the servicers.
- ❖ PARTIES: Depositor, Master Servicer, Special Servicer and Trustee.
- ❖ STANDARDIZED: Many PSAs are based upon the same or similar forms, *but* each deal is different and you must review the PSA for the specific deal.
- ❖ COMPLEX: Hundreds of pages; provides specific guidance and general standards.
- ❖ WATERFALL: Describes allocations of interest, principal, losses, etc.

B. COMMON CHARACTERISTICS OF THE SERVICING STANDARD

- ❖ The servicing standard is a convenient touchstone to govern and defend the actions of CMBS servicers.
- ❖ The servicing standard has evolved over time and there are many differences among certain pooling and servicing agreements.
- ❖ Common elements of the servicing standard include:
 - (1) Maximizing recovery for the benefit of all certificateholders; one class may not be put ahead of another. Practically speaking, the servicer will seek to collect as much as possible on a net present value basis for the trust at the loan level without regard to the position of an individual certificateholder;
 - (2) The servicer must manage and service loans at the higher of (a) the standard of care used in the servicing of loans held for its own portfolio and (b) the standard of care it applies to servicing loans held by third parties;
 - (3) Ensuring that the loan administration and servicing complies with all applicable laws, the terms of the subject loan documents and the terms of the PSA;
 - (4) The servicer’s actions will be guided by its obligation to all certificateholders without regard to conflicts such as:

- a. any relationship that the master servicer or special servicer, as applicable, or any of its affiliates, as the case may be, may have with the related borrower;
- b. the ownership of any certificate or, if applicable, a mezzanine loan or subordinate interest, by such master servicer or special servicer, as applicable, or any of its affiliates, as the case may be;
- c. such master servicer's obligation to make advances or such special servicer's obligation to direct the master servicer to make servicing advances;
- d. the right of such servicer to receive reimbursement of costs, or the sufficiency of any compensation payable to it, under the applicable PSA or with respect to any particular transaction; and
- e. any relationship that the master servicer or special servicer may have with the originator or seller of the loan.

C. DUTIES OF THE MASTER SERVICER

- ❖ Primary party responsible for the administration and servicing of performing loans.
- ❖ Oversees Primary Servicer/Subservicer, which may undertake administrative duties on behalf of the Master Servicer. E.g., financial statement review, on-site property inspections, and, occasionally, collecting mortgage payments.
- ❖ Analyze and approve Borrower requests for consent. E.g., Lease approvals, SNDAs, easements, transfers of ownership interests, assumptions, change in property managers, etc.
- ❖ Coordinates with the Special Servicer and CCR when borrower requests for consent require additional levels of approval.
- ❖ Remits payments to the Trustee.
- ❖ Insures REMIC compliance.
- ❖ Communicates as needed with the certificateholders/investors and the rating agencies.
- ❖ Provides liquidity (P&I advances) and property protective advances during a loan default (limited by the PSA).

- ❖ Conducts property inspections or contracts with third-parties, such as primary servicer.
- ❖ Collects and reviews property operating statements and other loan level data.
- ❖ Oversees the defeasance process.
- ❖ Insures compliance with cash management/lockbox provisions in the loan documents.
- ❖ Prepares and updates watch lists. A watch list loan is not currently in default, but as a result of an identified weakness or heightened risk posed to the trust merits additional attention.
- ❖ Prepares and provides information for the Trustee, so the Trustee can create the Investor Reporting Package.

D. SERVICING TRANSFER EVENTS (TRANSFER OF ASSET FROM MASTER SERVICER TO SPECIAL SERVICER)

- ❖ Upon the occurrence of one of the following events, the administration of the loan is transferred from the master servicer to the special servicer:
 - (1) Payment default. Sixty (60) day payment delinquency or failure to pay at maturity.
 - (2) Non-monetary default. A non-payment default that in the servicer's estimation will materially and adversely effect the interest of the certificateholders.
 - (3) Bankruptcy, Insolvency and Similar Events. The inability of the borrower to pay its debts as they come due, a borrower bankruptcy, or borrower consents to a receiver.
 - (4) Default or foreclosure on another loan. Default or foreclosure in the performance of other indebtedness relating to the mortgaged property.
 - (5) Likelihood of default. In the master servicer's judgment, a borrower default that will have a material and adverse effect on the certificateholders is imminent and is likely to remain uncured beyond any applicable grace periods.

E. SPECIAL SERVICER'S PRIMARY RESPONSIBILITIES

- (i) With respect to non-performing loans, the special servicer has broad power to restructure or liquidate loans, provided it demonstrates compliance with the servicing standard.
 - (ii) With respect to performing loans, the special servicer must also approve any proposed loan assumptions, changes in property management, major leases, or other items listed in the PSA requiring Special Servicer approval.
 - (iii) Under most situations the directing certificateholder appoints itself or an affiliate as the special servicer, although it is possible to have a special servicer that is not affiliated with the directing certificateholder.
- ❖ Analysis of alternative workout strategies, including foreclosure, discounted payoff, loan/note sale, deed in lieu of foreclosure, receivership and loan modification.
 - ❖ Evaluation of possible repurchase claims against the Depositor on behalf of the trust. These claims are typically grounded in violation of mortgage loan representations and warranties given by the Depositor when it deposits the loan into the trust.
 - ❖ Liquidation of REO property and the pursuit of deficiency actions against any guarantors. For the purposes of REMIC tax law, the trust must liquidate REO property by December 31 of the third year following acquisition.
 - ❖ Preparation of net present value analysis based upon certain probable recoveries to trust in defaulted loan situations.
 - ❖ Engagement of appraiser and review of appraisals (usually ordered 60-90 days after the servicing transfer event).
 - ❖ Review of environmental assessment reports (Phase I) prior to foreclosure.
 - ❖ Solicit approval from controlling class representatives with respect to loan level actions on defaulted loans. In the event of a dispute between the special servicer and the CCR regarding the correct course of action, the special servicer must continue to service the loan according the servicing standard and can override the decision of the CCR, however the CCR has the ability to replace the special servicer without cause.
 - ❖ Prepare and provide investor reporting packages to the master servicer and trustee, including asset management summaries describing enforcement actions.

- ❖ REMIC rules limit the ability of the special servicer to modify a loan that is not otherwise in default unless the default is “reasonably foreseeable” however to transfer a loan to the special servicer the PSAs generally require that a default is “imminent.” The two standards can create a conflict for the special servicer.

Demystifying CMBS Trusts and Special Servicers

Thursday, November 10, 2011

Welcome & Introduction

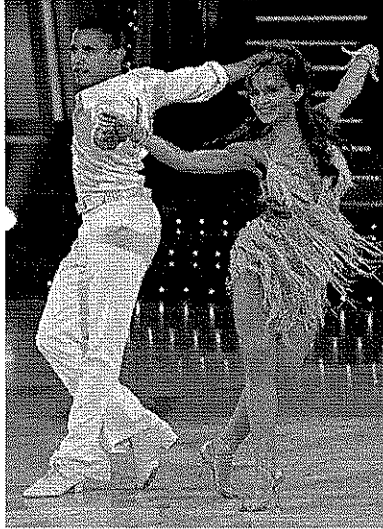
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Laura Skowronski Bouyea

Venable LLP

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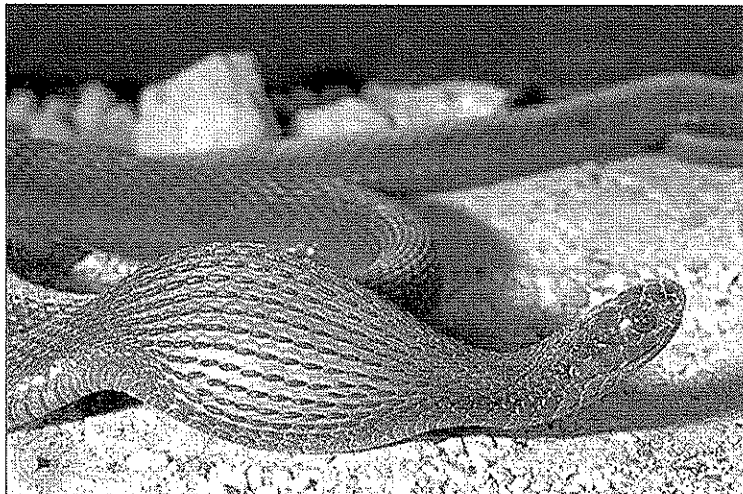
TSUNAMI – 2009 AND 2010



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2011 – HAS THE SNAKE FULLY DIGESTED THE RAT?

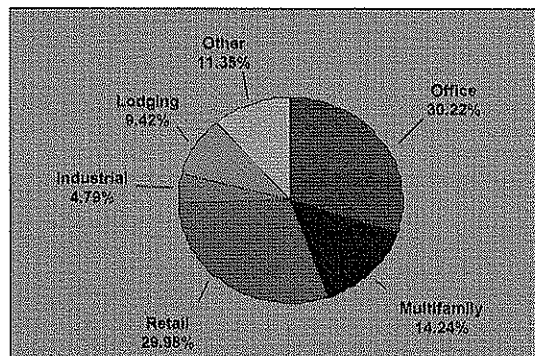


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CMBS Market Composition

As of September 2011, the total amount of outstanding CMBS loans was approximately **\$618 billion**.



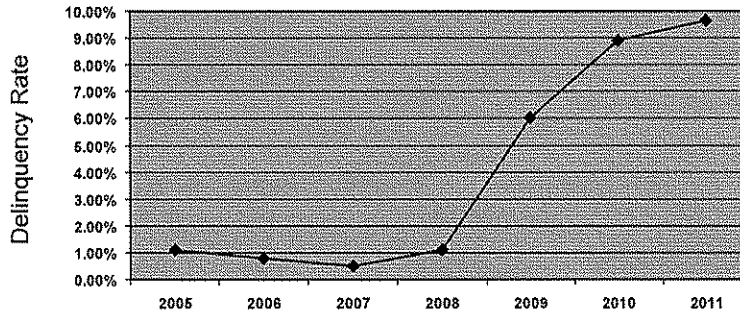
Source: TREPP LLC, Market Snapshot, October 24, 2011

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Commercial R/E Loan Delinquency Rates

There is currently a **9.63%** delinquency rate for CMBS real estate loans nationwide.



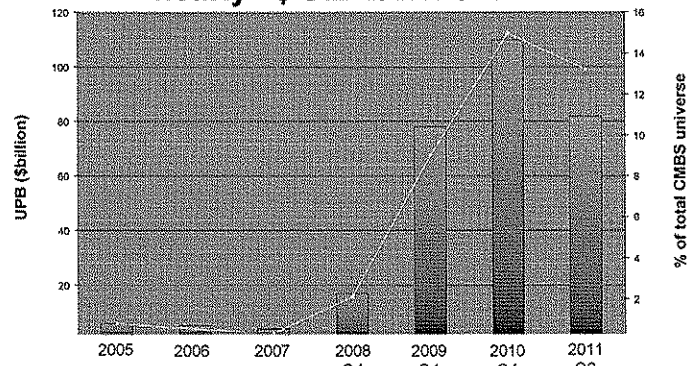
Source: TREPP LLC, Market Snapshot, October 24, 2011

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Loans in Special Servicing

Approximately **13%** or **4,400** of CMBS real estate loans are in Special Servicing, representing a total loan balance of nearly **\$82 billion**.



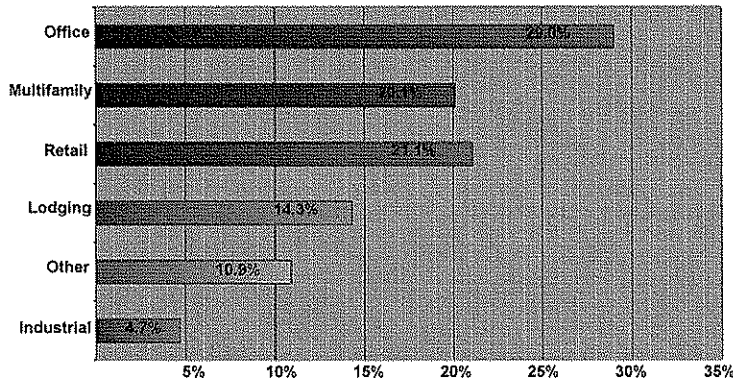
Source: Fitch Ratings, CMBS 2Q2010 Servicing Update, August 11, 2010; TREPP LLC, Market Snapshot, October 24, 2011

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Types of Collateral in Special Servicing

Office projects represent **29%** of current Special Servicing volume — up almost **17%** from year-end 2009.



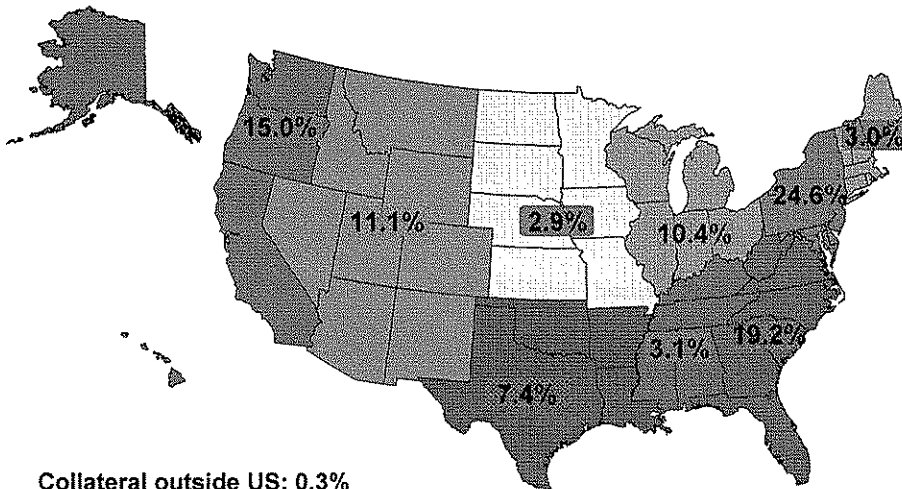
Source: TREPP LLC, Market Snapshot, October 24, 2011

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Underlying Collateral in Special Servicing: Geographic Distribution



Source: TREPP LLC, Market Snapshot, October 24, 2011

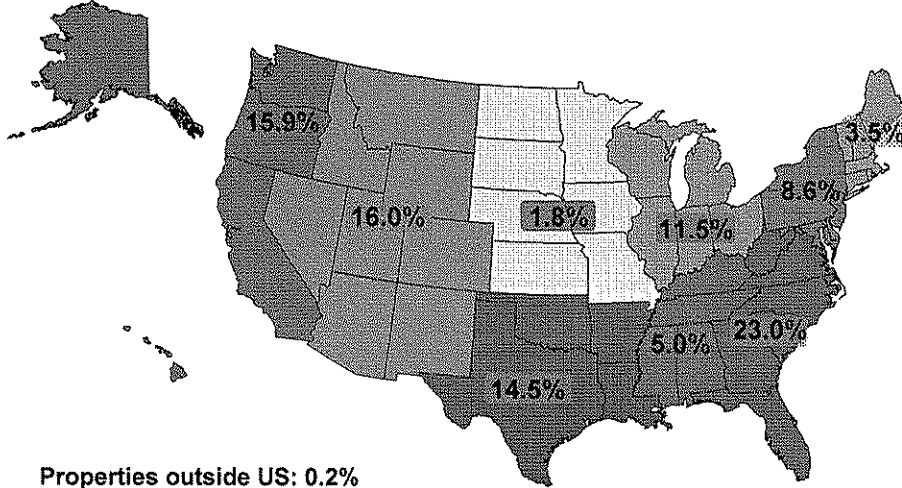
Collateral outside US: 0.3%

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REO Properties Held by Special Servicers: Geographic Distribution

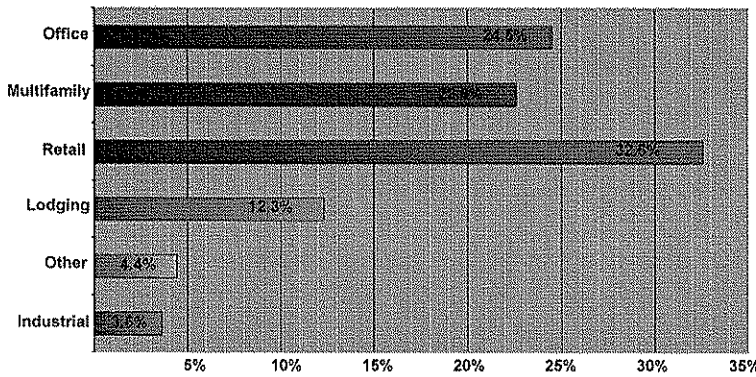


Properties outside US: 0.2%
Approx. Count: 980 REO
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Source: TREPP LLC, Market Snapshot, October 24, 2011

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Types of REO Properties in Special Servicing



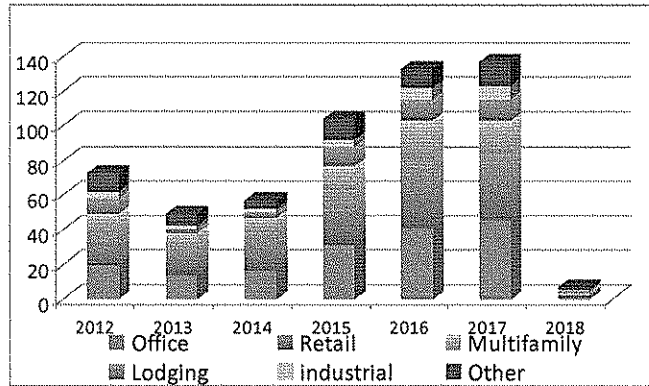
Source: TREPP LLC, Market Snapshot October 24, 2011

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CMBS Loan Maturity Timeline

Nearly **\$559 billion (91%)** of outstanding CMBS real estate loans will mature within the next **6 years**.



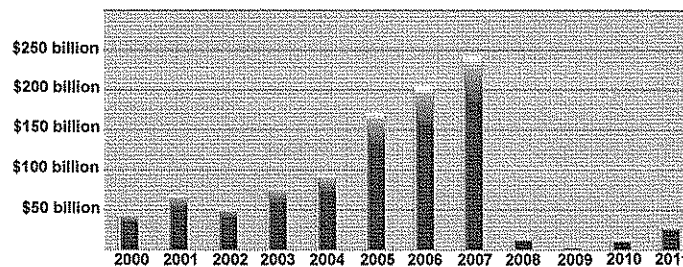
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Source: TREPP LLC, Market Snapshot, October 24, 2011

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CMBS New Issuance

In the first three quarters of 2011, there was **\$26.7 billion** of new CMBS issuance — more than double the 2010 total.



Source: TREPP LLC, Market Snapshot, October 24, 2011

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The Spectre of Long-Term Unemployment

Long-term unemployment (6 months+) has grown by almost **400%** — from **1.3 million** people in 2007 to **6.2 million** people in 2011.

There are **1.0 million** additional “discouraged workers” who have given up on looking for employment.

In August 2011, there are **4.7** workers for every available job in the U.S.; before the Great Recession (December 2007) there were **1.5**.

Source: U.S. Bureau of Labor Statistics, September 2011

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The Spectre of Long-Term Distressed Housing

About 16.2 million borrowers—or nearly 28% of all homeowners with a mortgage—have homes which are “underwater.”

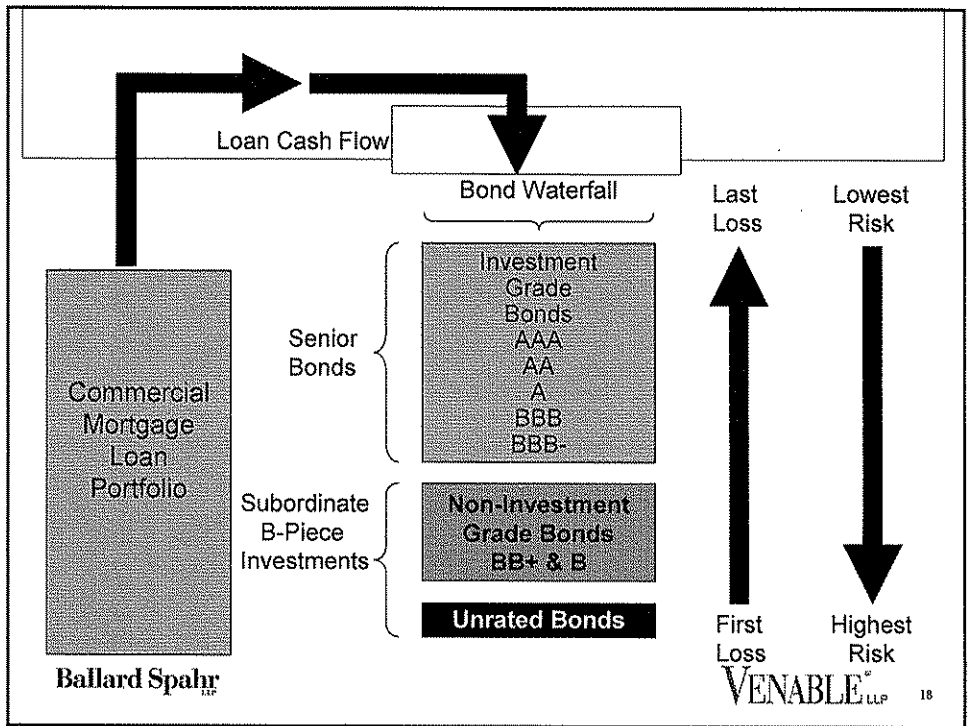
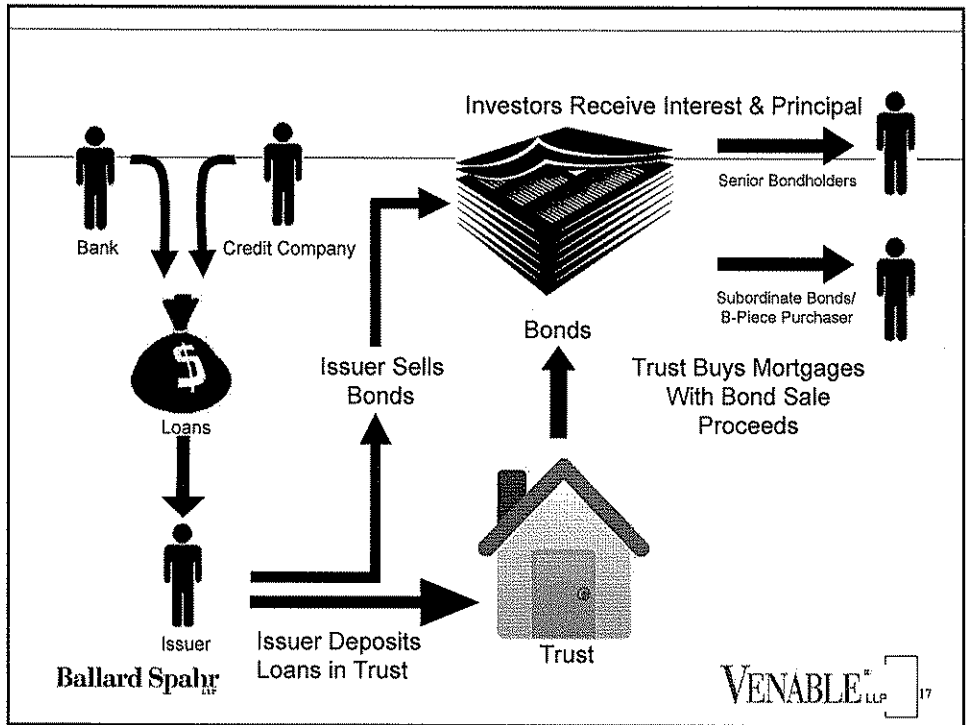
(Nevada, Arizona, Florida, Michigan, California)

The U.S. has 10 million vacant single family homes and an additional 18 million single family homes are now rented.

Sources: Zillow Inc., October 24, 2011; CoreLogic, October 24, 2011; Fannie Mae, January 26, 2011

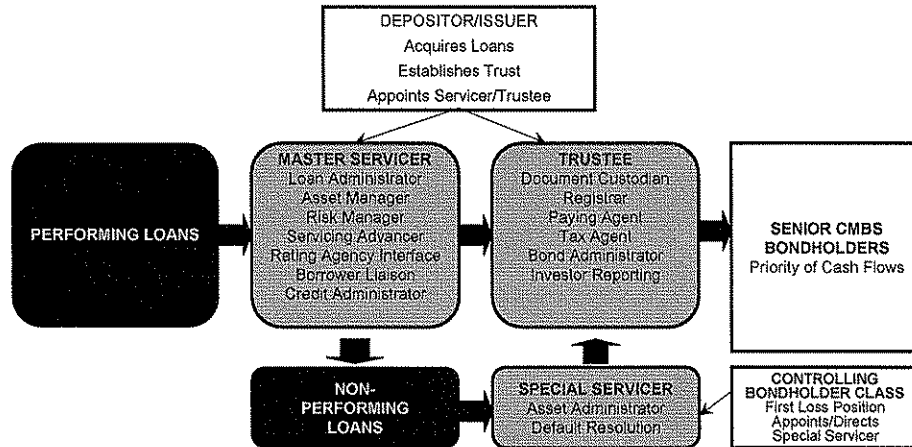
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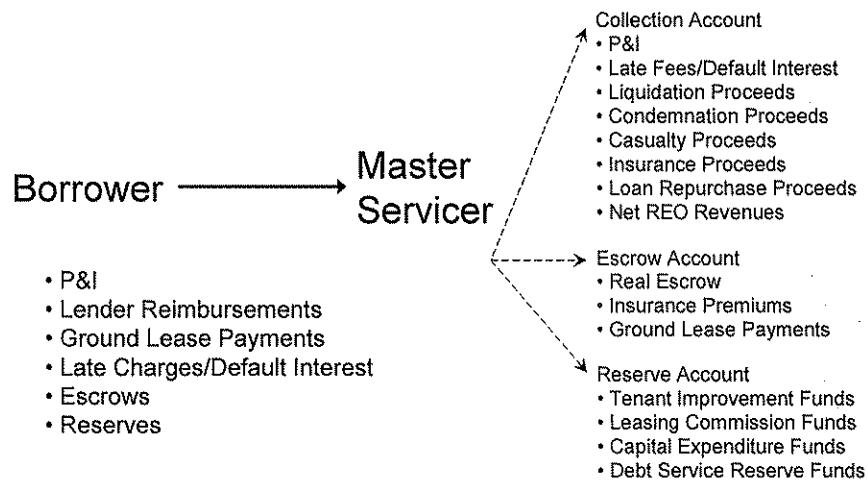


Overview of CMBS Players

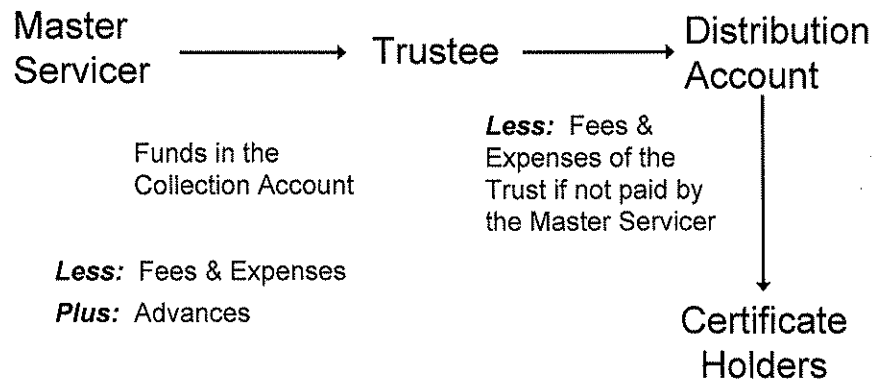
The Servicing Function in CMBS Transactions



Where the Money Goes



Where the Money Goes



When are Assets Transferred to Special Servicing?

- Payment default.
- Non-monetary default.
- Bankruptcy, insolvency or similar event.
- Default or foreclosure of a related loan.
- Likelihood of default.

Who Are the Special Servicers?

Rank	Company	Amount (\$ Millions)	Number of Loans	Avg. Loan Size (\$M)
1	LNR Partners, Inc. (U.S.)	\$ 192,304	14,616	\$ 13.2
2	CWCapital LLC & CWCapital Asset Management	\$ 158,949	12,874	\$ 12.3
3	C-III Asset Management, LLC	\$ 112,238	11,296	\$ 9.9
4	PNC Real Estate/Midland Loan Services	\$ 62,953	5,529	\$ 11.4
5	Berkadia Commercial Mortgage, LLC	\$ 28,176	5,396	\$ 5.2
6	Wells Fargo	\$ 25,016	983	\$ 25.4
7	Bank of America Merrill Lynch	\$ 16,755	134	\$ 125.0
8	KeyBank Real Estate Capital	\$ 13,400	2,356	\$ 5.7
9	ORIX Capital Markets, LLC	\$ 7,497	1,242	\$ 6.0
10	BNY Mellon	\$ 3,193	402	\$ 7.9
11	NCB, FSB	\$ 2,283	1,079	\$ 2.1
12	Pacific Life Insurance Company	\$ 2,011	285	\$ 7.1
13	TriMont Real Estate Advisors	\$ 1,505	27	\$ 55.7
14	The Situs Companies	\$ 1,410	41	\$ 34.4
15	Prudential Asset Resources	\$ 966	11	\$ 87.8
16	Protective Life Corporation	\$ 892	282	\$ 3.2
17	Principal Global Investors	\$ 121	42	\$ 2.9

Source: Mortgage Banker's Association Commercial/Multi-Family Mortgage Services Rankings

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The Pooling and Servicing Agreement

**The servicing and administration
of each loan is governed by the PSA.**

Parties to the PSA:

- Depositor
- Master Servicer
- Special Servicer
- Trustee

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PSA Structure

- Article I - Definitions
- Article II - Conveyance, Reps, Certificates
- Article III - Administration & Servicing
- Article IV - Payments to Certificateholders
- Article V - Certificates
- Article VI - Liability of PSA Parties
- Article VII - Default
- Article VIII - Trustee
- Article IX - Trust Termination
- Article X - REMIC Provisions
- Article XI - Miscellaneous

Loan Administration

Administration of the Mortgage

- “Each of the Master Servicer and the Special Servicer shall service and administer the Mortgage Loans that it is obligated to service and administer pursuant to this Agreement on behalf of the Trustee, and in the best interests and for the benefit of the Certificateholders, in accordance with any and all applicable laws, the terms of this Agreement, the terms of the respective Mortgage Loans . . .to the extent consistent with the foregoing, in accordance with the Servicing Standard.”

The Servicing Standard

- To service and administer the Mortgage Loans in the same manner in which, and with the same care, skill, prudence and diligence with which, the Master Servicer and Special Servicer, as the case may be, generally services and administers similar mortgage loans or assets, as applicable, for other third parties (giving due consideration to customary and usual standards of practice of prudent institutional commercial mortgage lenders) or generally services and administers similar mortgage loans or assets, as applicable, held in its own portfolio, whichever servicing procedure is of a higher standard.

Special Servicer Responsibilities

- With respect to non-performing loans, the special servicer has broad power to restructure or liquidate loans, provided it demonstrates compliance with the servicing standard.
- With respect to performing loans, the special servicer must also approve any proposed loan assumptions, changes in property management, major leases, or other items listed in the PSA requiring Special Servicer approval.
- Under most situations the directing certificateholder appoints itself or an affiliate as the special servicer, although it is possible to have a special servicer that is not affiliated with the directing certificateholder.

Common Courses of Action

- Foreclosure
- Deed in Lieu of Foreclosure
- Receivership
- Loan Modification
- Discounted Payoff
- Breach Claim
- Title Claim
- Guaranty Claim

Potential Issues

- Bankruptcy
- Lender Liability Claims

Potential Opportunities if the Trust has Purchased at Foreclosure

- > Purchase Contract of Sale from the Trust—A purchase at this stage avoids the payment of transferring and recordation taxes on two separate transfers.
- > Purchase of the Property from the Trust –A REMIC must dispose of foreclosure property by the end of the third calendar year after the year of foreclosure. For example, if a foreclosure occurred in 2011, the grace period would expire December 31, 2014.