

October 15, 2003

AGENDA
Asset Administration Committee
Conference Committee Call
Friday, October 10, 2003

3:00 p.m. - 4:00 p.m., Eastern

Chair: Shelley Hasskamp, Dwyer-Curlett & Co.

Vice Chairs: ♦ Keith Dunsmore, Esq., Akin, Gump, Strauss, Hauer & Feld, L.L.P.
♦ Christopher Gaas, GEMSA Loan Services, L.P.
♦ Jan Sternin, Midland Loan Services, Inc.

MBA Staff Representative: Katie Schwarting
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I. Welcome and Introductions

- a. MBA fiscal year runs from October 1st to September 30th. We have just begun a new year and this is the new committee's first official meeting.

II. PSA Article III & Sub-servicing Agreements Goals

- a. PSAs are now over 400 page documents - making it more difficult to know all the requirements
- b. Entire industry is currently looking for solutions - standardization of terms for compliance and industry agreement
- c. MBA has worked the past two years to standardize portions of Article III, the section dealing with servicing responsibilities
- d. Now looking to work on a standard Sub-servicing Agreement and any corresponding Sub-servicing language in the PSA.
- e. PSA committee will continue - working on other projects
 - 1. Once the backup certification language for Sarbanes-Oxley is agreed upon (see information on that committee below), then the PSA committee will draft appropriate language to place in the PSA.
 - 2. A standard Sub-servicing Agreement is another opportunity
 - a. Comment - for Mortgage Bankers, this has become extremely costly, no two are alike and there is heavy negotiating.

III. U.S. Patriot Act

- a. Requires financial institutions to create procedures to determine if a person is on the list of known or suspected terrorist or terrorist organizations.
 - 1. Requires a company to first figure out if they fit the definition of a "financial institution"
 - a. If yes - require an independent compliance agent/officer
 - 2. Must know your customer

- a. Looking for evidence of money laundering
 - b. Review the entity giving you the loan to service as well as any potential borrowers
 - c. Review the entity involved in the cash management or lockbox agreements
 - d. Review the major tenants
 - e. If you can't identify the principals - then you must walk away from the deal
 - f. Affects assumptions
- b. MBA website has a link to the Office of Foreign Assets Control (OFAC), which has the list of known or suspected terrorist or terrorist organizations. The website link - <http://www.mortgagebankers.org/cref/> (click on "Enforcing the U.S. Patriot Act - Useful Links to the U.S. Treasury Department" on the left side of the screen)
 - c. The depth of inquiry required by this new law is still being examined
 - d. Standardize language would be helpful to the borrowers
 - 1. Build a standard set of talking points - information to provide up front to borrowers
 - 2. The OFAC website has some information to help with "customer notice"

IV. Sarbanes-Oxley

- a. Bill Frazer, CFO, LJ Melody, brought the issue to MBA
- b. There was a growing concern about the relationship between the Sub-servicer and the Master servicer - the requirements specified in the backup certification, a document permitted by the SEC in the February guidance on Sarbanes-Oxley
- c. The backup certification had become heavily negotiated - based on the terms the Masters were requiring
 - 1. Increasing expenses for both Master and Sub-servicer to complete the transactions
- d. MBA brought together a group of industry leaders representing the Master servicer viewpoint and the Sub-servicer viewpoint
- e. The group decided to create a document to serve as an industry guideline - thereby decreasing legal negotiating costs and providing a standard to the industry
- f. Major Issues to resolve:
 - 1. Masters are requiring the Sub-servicer to sign a backup certification on an individual basis with individual liability, not company liability
 - a. This was never required by SEC guidance
 - 2. Masters asked Sub-servicers to review their accountant's reports for accuracy
 - a. Sub-servicers are willing to affirm that they have sent all necessary information to their accountant but not be responsible for the content of the auditor's report.
 - b. Again, not required by SEC guidance
- g. The working group is striving to blend two sample backup certificates and find the consensus for an acceptable backup certification for the Sub-servicer.
- h. It was determined that two types of backup certification are required for the Sub-

servicer: a) a cashiering version (those who collect monthly payment and maintain escrow funds) and b) a non-cashiering version (those with no monetary responsibilities)

- i. Masters expressed concern that the backup certification signed by the Sub-servicer match the requirements that the Master themselves must comply.
- j. The committee decided to expand the work to include a sample backup certification for the Master.
- k. The committee will also tackle a sample backup certification for the Trustees.
- l. Long term goal - in total there will be 4 certifications and a short document to accompany the work to explain the reasons for creating the standard guidance and their purpose.
 - 1. Sub-servicing cashiering
 - 2. Sub-servicing non-cashiering
 - 3. Master servicer
 - 4. Trustee

V. Insurance Issues

- a. **ACORD 28 - Insurance Certificate Working Group (under the Insurance Task Force)**
 - 1. ACORD Final Version (draft 4) available on the MBA website
 - 2. Comment Period for changes officially ended on October 15th
 - 3. Questions on the call arose as to the determination on the form of whether the insurance available was per occurrence
 - a. MBA researched the issue and is working with ACORD
 - 4. ACORD will roll out the new form on November 1st - effective for all loans closed or renewed in 2004 (companies will begin using the form in December to cover renewals rolling in January).
- b. **Mold - Mold Working Group (under the Insurance Task Force)**
 - 1. When a loan is the in warehouse or a whole loan - much easier problem. Analyze the extent of damage, negotiate with the borrower, take extra reserves and then remediate the problem. Worst case scenario, modify the loan terms to accelerate the loan amortization
 - 2. Not so when you have a securitization loan
 - 3. Other than the annual inspection, how are you going to know you have a problem?
 - a. ASTM is looking at changes to the standard inspection to include a test screen for mold
 - b. MBA is following ASTM efforts (next meeting is October 22nd)
 - 4. This is an emerging issue - need to focus on reducing confusion about mold
 - 5. Some are starting to require O&M Plans for Mold Mitigation
 - a. Requiring the plan to include: increased self inspection, log any water events and clean up processes
 - b. Looking for Moisture Management Plan
 - 6. Rep and Warranty to mold coverage? Not yet.

7. MBA is involved in several step process to inform the members on the issues surrounding mold in their commercial buildings
 8. The Working Group is looking to write a paper to explore many aspects of real estate and mold
 - a. The division between existing property - which may have known mold problems and new construction or substantially renovated properties.
 - b. Look at both litigation and structural damage
 - c. Since mold can continue to grow back, the importance is to fix the cause of the problem, not simply clean up the visual mold - focus on preventive measures
 - d. Mold websites - MBA has researched some of the best websites for mold information, MBA will place the website list out in the Asset Administration folder.
 9. MBA is currently working with National Institute of Building Sciences (NIBS) to work on an extended research project into several aspects of mold - NIBS has brought many parties together, including the Armed Forces, BOMA, HUD, Fannie Mae, Freddie Mac, Environmental Bankers, American Institute of Architects and Associated General Contractors of America.
- c. TRIA - Terrorism Insurance Working Group (under the Insurance Task Force)
1. Terrorism Risk Insurance Act of 2002 (TRIA)
 2. Congress has commissioned a third party consulting firm to execute two separate surveys in the industry to view the effects of TRIA
 - a. West Debt - Third party company
 - b. Questionnaire for Policy Holders (Insureds)
 - c. Questionnaire for Insurers
 3. Treasury is not inclined to renew TRIA once it ends on December 31, 2005
 4. Borrowers do continue to decline taking the coverage offered
 5. Coverage is getting cheaper in cost - mostly a de minimus additional cost
 6. Trophy properties are getting the coverage, but in separate policy (not as part of their blanket policy)

VI. MBA Updates

- a. Regional Servicing Forum - Postponed until March 2004 - Place: TBD
- b. cUSAP
 1. Continue to work on completing a commercial version of the USAP
 2. Working with the American Institute of CPAs (AICPA) and Servicer's CFOs, Compliance Officers and Auditors to come to a resolution
- c. Outsourcing
 1. Tabled, but on our radar screen for any upcoming issues & education/ training opportunities
- d. June Asset Administration & Technology Conference
 1. May 12-14, 2004 - Nashville, TN at Sheraton Music City

Emerging Issues and Concerns



VII.

None mentioned.

IX. Other Business

Mark Hill mentioned the importance of working together with the Education Committee (which he is the new Chair) to bring additional education opportunities to the commercial business.

X. Next Meeting - in person meeting at CREF Convention on Sunday, February 1, 2004

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