



PSA Article III Task Force INTRODUCTION

Pooling and Servicing Agreements (“PSAs”) related to CMBS issuance have evolved to reflect changes in the industry. This evolution has resulted from negotiations on a deal by deal basis among a number of parties (Servicers, Issuers, Trustees, legal firms, rating agencies and Certificateholders). Servicers (Master, Special and Primary) often encounter inconsistent servicing provisions, lack of clarity with respect to obligations and conflicts between the terms of the information required to meet servicing requirements.

Additionally, Servicers (Master, Special and Primary) involved in transactions across issuers, rating agencies, certificateholders and trustees, or master servicers, often encounter inconsistent servicing provisions unrelated to individually negotiated terms of the Agreement. In order to address these issues, the PSA Article III Task Force (“task force”) was formed under the Commercial Real Estate/Multifamily Finance Board of Governors (COMBOG) Asset Administration Committee. The task force was composed of rated Master Servicers and Special Servicers and included representation by the Primary Servicers, rating agencies and law firms.

The task force meetings and discussions resulted in the production of the following documents:

- A “Best Practices” paper, containing suggested language to address typical inconsistencies and providing clarification;
- A White Paper addressing issues subject to additional industry discussion and future inclusion in the PSAs; and,
- A Confidentiality Agreement to standardize the method by which Certificateholders and prospective Certificateholders gain access to information related to the mortgage loans covered by PSAs.

Once the draft documents were completed, the task force then distributed the documents to an industry-wide pool of MBA members for comments. The task force addressed all of the members’ comments and incorporated additional language and issues into the final set of the documents. The documents are living documents and shall be updated as market conditions require.

As a note, the intention of the suggested language and other recommendations presented in the “Best Practices” paper, the White Paper, and the Confidentiality Agreement is not to replace with absolute standards the terms and provisions of PSAs which are traditionally the subject of negotiation among the deal participants, but to serve as a starting point for such negotiations. Readers are cautioned that the suggested language and recommendations included in the “Best Practices” paper, the White Paper, and the Confidentiality Agreement may not be applicable to, or appropriate for, the particular factual and legal circumstances of your transaction or any transaction in particular. Furthermore, nothing contained in the “Best Practices” paper, the “White Paper,” and the Confidentiality Agreement should be construed as legal advice, and readers are urged to consult with their legal, tax, accounting, and other advisors prior to relying upon or including any suggested language or recommendations presented herein or therein.

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