

October 17 , 2003

**Commercial Real Estate/Multifamily Finance Board of Governors (COMBOG)
LOAN ORIGINATION COMMITTEE
Committee Meeting Notes
Thursday, October 09, 2003
3:00 p.m. – 4:00 p.m., Eastern**

Chair

Deborah Schiavo, Bear Stearns & Co., Inc.

Vice Chairs

Frank Fonda, CDC Mortgage Capital Inc.

Debra Hausser, Zurich North America

Charles Perry, Environmental Warranty, Inc.

Patrick Sargent, Andrews & Kurth L.L.P.

MBA Staff Representative

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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. E-Appraisals

- a. An effort started by the Appraisal Institute (AI) to improve on the capture and transmission of data electronically.
- b. Renamed - CARDS - Commercial Appraisal Report Data Standards
- c. MBA first began to work with AI through the MISMO effort, but realized they needed the input of the loan originators. The work has been moved over to the Loan Origination Committee for the phase one completion of a data dictionary and will then be transferred back to the MISMO Working Group for phase two technology initiatives.
- d. Deb Schiavo, Chair of Loan Origination and MBA Staff member Dan Szparaga, attended AI's September meeting in Chicago . They offered written comments to AI's work and questions as to next steps:
 - i. Concluded that there is an overall need to develop data standards before creating the look of the form.
 - ii. Affirmed that AI should continue to head the project
 - iii. MBA will continue to provide on-going feedback on the standards and the form
 - iv. Require acceptance by both the appraisal community and real estate lenders
 - v. Discussed the importance of web-based vs. desk top program software
 - vi. Agreed that there are many benefits to the project - including:
 - Delivery of information in a timely and accurate manner
 - Greater access to sales and market comps
 - Important to the appraisal reduction process
 - Goal to have the data standards completed by year end

III. Complexity of Loan Structures

- a. The complexity of a loan structure seems limitless - there are more and more components to a loan being offered with each deal.
 - i. A Note, B Note, Mezzanine Piece

- ii. IO strip, Junior IO Strip, Mezzanine IO
- b. This has led to confusion with how to service the loan - for the servicers and the trustees
- c. Committee is looking at creating a manual or guideline for servicers - for education and uniformity in process.
- d. Frequent questions that arise:
 - i. Who is the ultimate controlling holder?
 - ii. What should be done with advances?
 - iii. Cross-collateralized properties - how are they handled?
 - iv. How do all the parties to the loan work together? If there is a loan default?
- e. Look at the options and implications of different structures - give information on the types of things you can do right up front in the loan documents to help make things less complex down the road.
- f. Identify the key points in several structure types - submit different scenarios

IV. Mold

- a. MBA is involved in several step process to inform the members on the issues surrounding mold in their commercial buildings
- b. There is a division between existing property - which may have known mold problems and new construction or substantially renovated properties.
 - i. New buildings/renovations- can use new products to build the property and prevent mold
 - ii. Existing buildings - working on prevention in buildings without a mold problem and remediation where there already exists mold concerns - rehab that can include using mold resistant building products
- c. Follow other projects to develop a formal mold policy
 - i. EPA, HUD, Fannie/Freddie
- d. Collaborate with other group and contacts - pool resources
 - i. Work with residential groups - where our interests are similar
 - ii. 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 .
 - iii. MBA will continue to look for opportunities to work with other groups
- e. ASTM - MBA is following ASTM efforts to create a test screen during the property inspection for mold (next meeting is October 22 nd)
- f. Look at both litigation and structural damage
- g. 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
- h. Mold websites - MBA has researched some of the best websites for mold information, MBA will place the website list out in the Loan Origination folder. ([Good Web Links](#))

V. Seismic - PML vs. SL Standard

- a. ASTM formerly used Probable Maximum Loss (PML) as a calculation of the likelihood of seismic activity in property condition reports
- b. It has come to the attention of some lenders that ASTM has replaced PML with a Scenario Loss (SL) calculation.
- c. The change in calculation from SL to PML has not been disseminated to the marketplace - so some reports now show up with both standards.
 - i. Causes confusion as to which standard was used for calculation
 - ii. Opens up the Lender to possible future liability:

SL is a tougher standard and Lenders (and rating agencies) not aware of the change in standard continue to use PML.

Concern that disclosure by Lenders does not correspond to the new ASTM standard.
- d. Committee will look into differences between the two standards and possible changes in the standard used by Lenders
- e. Committee will work with ASTM to address concerns with SL calculation

VI.MERS

- a. Commercial MERS has been successfully launched - the system went live on July 28 th
- b. Focus this year on education and implementation
 - i. Information on the benefits of MERS
 - ii. Increase the participation
 - iii. Make necessary change to the loan and deal documents to incorporate MERSEducate on the language changes needed in the loan documents
- b. Provide standard language to add to the PSAs

VII.MBA Updates

- a. Brownfields - All Appropriate Inquiry
 - i. Congress has mandated to EPA that they create an "all appropriate inquiry" regulation for the innocent landowner defense to liability for hazardous substances on a property.
 - ii. The law will affect any bona fide purchaser, contiguous landowner or grantee under superfund
 - The reality is that the new regulation will affect all inspections on real estate and will remove the ability to use ASTM's standard Phase I
 - iii. MBA is participating, along with other interested parties, in drafting the new regulation. Abbi Cohen, Partner at Dechert, is our representative at the EPA table.
 - iv. Also, MBA has a working group following the progress of the regulation.
 - v. The EPA group is expected to complete the drafting process by December 1 st ; the regulation will then be vetted by the appropriate governmental parties and issued in Spring 2004.
- b. Environmental Paper
 - i. MBA Environmental Insurance Working Group is completing a paper on environmental insurance.
 - ii. The paper serves as a resource and information guide for all environmental insurance issues
 - iii. Topics include - coverage, product types, risk management, credit administration, workout scenarios, insurance vs. due diligence and routinely required information.
 - iv. Paper will be available at CREF Convention in February
- c. US Patriot Act
 - i. Requires financial institutions to create procedures to determine if a person is on the list of known or suspected terrorist or terrorist organizations.
 - ii. 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)
 - iii. The depth of inquiry required by this new law is still being examined
- d. MISMO - Mortgage Industry Standards Maintenance Organization
 - i. The development of data standards
 - ii. Currently the working group has created a draft data dictionary with 750 words (i.e., "mortgage," "property type," "guarantee")
 - iii. Electronic dissemination of information - "paperless" industry
 - iv. XML capability - computer systems synch up with each other - relationship of all data elements together
 - 1. Eliminates the duplication of efforts (i.e., data input 3 times)
 - 2. Easing data transfers between parties
 - v. Availability of XML capability increases every day - next version of Microsoft Office will automatically have XML --- Release date - TBD, anticipated in the next 9 months
 - vi. Eventually, all documents will be affected by MISMO
 - vii. MISMO takes existing documents and looks at their uses. It does not wait for new documents/products to be created to fit to MISMO

- viii. MISMO is focusing on education, marketing and the publicity messages - what are the real world tangible benefits that people will gain.



VIII. Emerging Issues and Concerns

None mentioned.

IX. Other Business

None mentioned.

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

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