

February 25, 2003

**Loan Origination Committee Meeting
Committee Meeting Minutes
CREF Convention
San Diego, CA
Sunday, February 2, 2003
11:30 a.m. – 12:30 p.m.**

Chair

Gary S. Smuckler, Esq.
Partner
Morgan, Lewis & Bockius LLP

Vice Chairs

Charles L. Perry, Jr.
President & Chief Executive Officer
Environmental Warranty, Inc.

Deborah A. Schiavo
Associate Director
Bear, Stearns & Co. Inc.

James J. Stolze
Assistant Vice President
Mortgage Loan & Real Estate Investment
Woodmen of the World Life Insurance Society

I. Welcome and Introductions

- a. Katie Schwarting will be joining the MBA as the staff representative to the Asset Administration Committee, effective February 18, 2003 . Katie can be reached at (202) 557-2742 or katie_schwarting@mbaa.org

II. Insurance Issues – Environmental

- a. The committee put together a packet of information to help educate the members on the mission and guidelines for the task force (the information was in the packet handed out at the CREF Convention)
- b. There are dramatic changes currently around environmental issues and the committee will look into creating a handbook as a reference to the opportunities in the market.
- c. This year the committee will explore standardizing forms and recommending standards in other areas of environmental issues.
- d. Issue: What are the best products and companies currently on the market? Answer: There are a multitude of insurance products currently available and the committee will look at the products available and then provide a list that helps members focus on their specific needs. The timeframe for completing that list is for the MBA Commercial and Multifamily Conference in June.

III. Insurance Issues - Insurance Task Force Update

- a. Discussed the purpose behind an insurance taskforce. The purpose is to study the various issues surrounding insurance, including but not limited to, terrorism insurance, mold insurance and the downward trend in rating of the insurance companies.
- b. It is expected that the COMBOG will renew the Task Force for another year to continue exploring solutions
- c. A survey of the market has shown a varied impact of terrorism insurance on the market. The new legislation on November 26, 2002 , the Terrorism Insurance Risk Act (the "Act") is new and things continue to change quickly for Servicers. The new legislation covers:

- i. Foreign acts of terrorism only (no domestic acts of terrorism)
 - ii. Losses must total over \$5 million dollars (although, the losses as defined do not just mean loss of property)
 - iii. The Act requires all insurance companies to automatically cover all insurers initially with terrorism insurance. Then, the companies must send notices to each insurer within 90 days of the passing of the Act stating their coverage and in order for an insurer to be excluded from coverage, that insurer must affirmatively state they do not wish to continue their policy.
 - iv. Servicers are not involved in the notice process to the insurers. We learned in San Diego that the regulation would not require the insurance companies to notice any third party beneficiary on the policies that an insurer had decided to terminate their terrorism insurance policy. This makes it more difficult for Servicers to keep track of the notice process and what Borrowers are electing to do about their terrorism policies.
 - v. There remain many questions surrounding terrorism insurance, even with the passing of the Act. Questions included the type of policy offered by each insurance company and the requirements for the policies.
 - vii. MBA will continue to work with the Treasury to get a greater understanding of the Act. The Insurance Task Force is looking for information from the members on whether the Act does in fact increase the availability of insurance coverage and provide policies at a reasonable price. Members can help gather this data on the impact of terrorism insurance, so the information can be relayed to Treasury.
- a. The task force did find out that GMAC has been successful requiring and receiving the completed insurance policies prior to closing a loan (and has even postponed a closing in order to ensure they have received the entire policy).
 - b. The accords are difficult to use and may need some modifications or the industry can work to simply require the entire policy at closing and renewal.

III. Mold

- a. In the past year the fear of litigation over mold issues has lessened.
 - i. The courts have reversed several verdicts for plaintiffs.
 - ii. Fannie Mae has calmed down and sees it as less of a threat for multifamily buildings. However, there are still concerns for residential, single family homes, so issues may continue to arise for multifamily properties on the commercial side.
 - iii. So far, it is difficult to prove a correlation between mold and any health incidents.

IV. MERS Update

- a. The purpose is to explore the possibility of electronic registration, therefore eliminating the need to prepare assignments to loan documents
- b. The issue of missing loan documents is a continual problem in the industry, as the consequences can lead to possible repurchase of the loan.
- c. Six (6) lenders have already put up capital to help with funding and MERS is looking for additional contributors to help with development and implementation. There are financial incentives for contributing.
- d. The system is currently in development now, with a scheduled rollout of the live system by the end of the summer.
- e. The system is currently running successfully for the residential business. The courts have upheld the electronic system.

V. MBA Updates

- a. Commercial Newslink
 - i. The MBA has launched the C Newslink – a weekly public distribution on Thursdays focusing on commercial and multifamily news.
 - ii. Commercial members currently receiving the daily email Newslink may opt out, as commercial items will no longer be covered in detail in that publication.
- b. Education Task Force
 - i. The task force is looking for volunteers to assist in undertaking course review and development, in order to offer relevant and timely material.
 - ii. In the packet provided at CREF was a list of the current courses available.
 - iii. If there are questions, please contact Dan Thoms by email at dan_thoms@mbaa.org or by phone – 202-557-2915.
- c. E-Mortgage Paper
 - i. The E-Mortgage working group, along with MISMO (Mortgage Industry Standards Maintenance Organization), is releasing a draft paper covering the feasibility of E-Mortgages in the Commercial Industry.
 - ii. The paper can be found on line at www.mismo.org

- iii. The committee strongly encourages people to submit any comments or thoughts to the group through the email address provided on the website or you can contact Dan Szparaga (the MBA representative) at 202-557-2805.

VI. Other Business

- a. Compliance with the Fair Labor Standards Act
 - i. Gary Smuckler, the Chair of the Loan Origination Committee, discussed recent concern in the mortgage banking industry with court interpretations of wage and hour provisions of the Fair Labor Standards Act. It was pointed out that the mere fact that a loan originator is compensated on a commission basis does not make that employee exempt from overtime pay.
 - ii. MBA is working with the Department of Labor to encourage clarifying regulations, but was not optimistic that we will see regulations soon.
 - iii. Members are encouraged to consult with attorneys familiar with the Fair Labor Standards Act and State laws governing wage and hour issues.
- b. Question and Answer

- i. **Issue:** What is the current trend in the cost of insurance – will the prices flatten or continue to increase?

Answer: Environmental insurance was already increasing in price prior to September 11th and has continued. Some companies have leveled off and so long as there is no “adverse selection” then other companies may continue to also level off. The insurance market was actually undercharging prior to September 11th and then overreacted to the event with huge increases, now there is the start of stabilizing prices. In the smaller loans the pricing is better. Still have huge increases in price with the larger, trophy property loans.

- ii. **Issue:** What is the claim experience been so far with environmental insurance issues?

Answer: Many products are sold for lenders protection. Claims are just starting to surface and the market is still waiting to see the final outcomes.

- iii. **Issue:** There seems to be an open risk right now that the lender will get the full environmental report from the property and then still need to get insurance, has this increased costs?

Answer: The insurers are only going to get the required amount of insurance, but nothing extra. The effort now by lenders is to include on one policy everything that might arise as an issue, including, but not limited to, residual value, roofing and structure, terrorism and environmental.

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