California
a publication of the California Mortgage Bankers Association
MORTGAGE FINANCE news
SUMMER 2014

CHAIRMAN'S CORNER

Strong Leadership to Carry CMBA, Industry Forward

BY CHRISTOPHER M. GEORGE, CMG FINANCIAL, CMBA CHAIRMAN

It is with a great deal of pride and privilege I take over the reins as the Chairman of the California Mortgage Bankers Association. I must first begin with thanking my predecessor Dennis Sidbury in leaving a vibrant and heathy association for me to step into. Dennis, your work is not finished yet and I am glad you are still on our board to help with the things we still need to do. Secondly I'd like to say thank you to our Board of Directors. We have a diverse and eclectic group of folks who all have a deep passion for this industry both on the residential and commercial sides. They will represent all of you, our membership, in a most profound way. Lastly, I'd like to say thank you to Susan Milazzo and her amazing staff. Susan must endure a new Chairman and the particular nuances of that person every 12 months. Believe me, this year's Chairman is a bit more "nuanced" than previous chairs have been. So let's get to that.

There is a renaissance of sorts going on in our industry. Sure most of the past 5 years have been about survive, implement and execute. Almost every review/audit, state or fed includes a discussion about how are you adapting to change? Some threw in the towel altogether while others have persevered and have learned how to thrive in a market that is constantly rumbling under foot. Agents of change. That's what we all have had to become and now we are experts at. Now, let's take what we learned and let's shape our future. Together.

You see across the country both the commercial and residential sectors coming together to work in tandem for the betterment of the client. You

CONTINUED ON PAGE 4

in this issue . . .

Contact: California Mortgage Bankers Association
(916) 446-7100 Phone
(916) 446-7105 Fax
info@cmba.com Email
555 Capitol Mall, Suite 440
Sacramento, CA 95814

California Mortgage Finance News is published four times per year: Spring, Summer, Fall and Winter.

California Mortgage Finance News is published by the California Mortgage Bankers Association.

EDITOR: Dustin Hobbs
PUBLISHER/LAYOUT: Wolfe Design Marketing

CMBA California Mortgage Bankers Association SINCE 1955
The Voice of Real Estate Finance

CHAIRMAN'S CORNER CONTINUED FROM PAGE 1

see consumer activist groups alongside trade associations working on a solution to help ease credit and create more opportunities for our young folks to join in the homeownership opportunity. And let's be clear about this. Owning a home, while a privilege, should be a privilege that is available to everyone. Not just the select few that fit into a very tight box. Homeownership is what has been the back bone of our local communities up and down our state and across our country for centuries. "OWNING IT" means you are taking responsibility for it and you are genuinely, purposefully, willingly making a commitment to be part of the community you are now going to call home. It will take a collective effort to make these changes, and as the change agents I am confident we are getting there. However, there is still more work to be done.

We MUST come to a permanent solution for Fannie and Freddie. Conservatorship is not a business plan. It is by definition is a temporary event. We have to settle on a common platform, establish an explicit federal backstop and bring back options for those low to moderate middle income families. By providing this certainty we can drag the private capital that is on the sidelines back into our marketplace and fling open the once nailed shut private securities market window. One that is global in nature.

Today we need creativity, and invocation. Not necessarily surrounding product, (we need that too by the way) but surrounding ideas about how we get things done. Politically, we have stalled and we need fresh ideas and perspective to un-freeze the status quo. To shake things up a little and to have the drive and the passion to see these things through regardless of how difficult they appear to be today. In other words, we need you.

If there has EVER been a time where we need your help it is now. We don't need your check, (although if you send them we will cash them thankfully!). What we need is your brain. Your spontaneity. Your enthusiasm. Your voice. This is the one time in the history of our industry that you will get a chance to put your hand on the wheel and steer us where you think we should be headed. Haven't you had enough of the reactive-backseat-passenger game? I know I have.

This is OUR time. If you have an idea or a product or a plan or whatever then reach out to me or Susan to share with us your thoughts. I promise you, you will be heard. If you want a little more than that, volunteer to be part of a committee or a conference so you can help with the education of our membership. For goodness sake, if you can't do any of that, then at least just attend a conference and be heard and learn about what is happening all around you. Be part of the game, rather than just a spectator.

None of us are stronger than ALL of us. What we need right now are the creators, the editors, the free thinkers that have shaped the face of our planet for centuries. I need a band of companions, so we can truly make this industry a symphony of sounds for everyone to enjoy. As you can see, music is a big deal to me, so let me end with what I am calling our 2014/2015 motto of the CMBA. It also happens to be one of my favorite Beatles songs.

Come together, right now.

Victory for CMBA with Passage of UST Legislation

BY SUSAN MILAZZO, CMBA EXECUTIVE DIRECTOR

The national MBA keeps a running tally of the states that have adopted the Uniform State Test (UST) for licensing of residential mortgage loan originators. As the state with the largest economy and population, we felt that California should definitely be among this group. The UST allows mortgage loan originators to take one test that will satisfy the licensing requirement for multiple states thus lower licensing costs for independent mortgage bankers and streamlining the process for multi-state lenders. For the past two years the California MBA has been advocating for the UST adoption for our state and 2014 is the year we accomplished our mission! SB 1459 (Senate Banking and Financial Institutions Committee) was signed into law this summer and becomes law January 1, 2015, thus allowing the Department of Business Oversight to recognize the UST. We are very proud of this accomplishment and pleased to be working with the regulator on implementing this measure.

The California MBA fosters a strong relationship between the industry regulators, California Department of Business Oversight and Bureau of Real Estate, to ensure the voice of real estate finance is heard in our state. This year the California MBA began a new partnership with the DBO and created the Mortgage Industry Roundtable. These semi-annual small group meetings are held at the DBO offices and allow the California MBA to develop an agenda of issues that are of top concern to the lending industry. The issues range from regulatory compliance to trends in examinations and offers both the industry and the regulator an opportunity to weigh in on specific issues. One of the main functions of this association is to facilitate legislative and regulatory advocacy and this opportunity has proven to be extremely valuable. If you are a DBO licensee and a member company of the California MBA, you will be receiving an invitation to send a representative to our next meeting which will be held at the Los Angeles offices of the DBO.

Legislative and regulatory advocacy is one aspect of representation; the other is political. The California MBA has a political action committee, CAMPAC, that raises money specifically for the purposes of supporting candidates to the California State Legislature that are business-minded and understand the significance of maintaining access to affordable credit for qualified borrower. While our PAC has been around for decades, it has not been as well funded as other PACs in our state. I have a goal this year to raise $100,000 for our PAC. You can't throw out a figure without putting into context to convey the full message. By comparison, in 2013, the California Association of Realtors (in and "off election year" mind you) raised over $4.1 million for their PAC, the trial lawyers, over $1.5 million, the nurses association, over $1 million. Our goal of $100,000 is very attainable and will set the pace for a stronger political program in future election years. Our PAC funds are completely separate from our association dues. Through CAMPAC, the California MBA is eager to increase our visibility on the California political scene by supporting more candidates who understand the significant role that the

CONTINUED ON PAGE 20

Elections, Budgets, Legislation Highlight Spring, Summer

BY PAT ZENZOLA, KP PUBLIC AFFAIRS, CMBA LEGISLATIVE COUNSEL

There have been several notable California political milestones to report on since our last article, starting with the June 3rd statewide primary election results. The day after the primary, voter turnout stood at an abysmal 18.3 percent but ultimately increased to approximately 25 percent when absentee and provisional ballots were counted. This is still an all-time record low level of voter participation, with the previous record at 28 percent turnout in 2008. There is no one easily identifiable cause for the voter apathy, but the absence of any interesting ballot measures and the lack of enthusiasm for the top of the ticket races are the most likely causes.

At the very top of the ticket, Governor Brown won with over 54 percent of the vote and Republican candidate Kashkari had over 19 percent. One of the more interesting statewide races was for Controller. Board of Equalization member Betty Yee (D) beat Assembly Speaker emeritus John Perez by 481 votes out of more than four million ballots cast, a winning margin of 1/100th of one percent. Yee will now face Republican Fresno Mayor Ashley Swearengin in November. One of the other notable outcomes of the June primary is with respect to the new "top two" vote getter rule where the two candidates with the most votes advance to the General Election, regardless of party affiliation. There are at least 15 state Senate and Assembly races where Democrat will face Democrat or Republican will face Republican in November. These are the races where moderate candidates may look for support not only from the candidate's party but from the other party to put them ahead in the General Election.

On the state budget front, the summer-long partisan stalemates of the last decade appear to be a distant memory. California lawmakers approved a $156.4 billion state budget less than six hours before the June 16th constitutional deadline. The recent on-time budget approvals are largely attributable to the 2010 reduction of the legislative vote requirement to pass a budget from two-thirds to a simple majority and to an electorate decree that legislators would lose their pay if they didn't pass a state budget by June 15. To be sure, the improving state fiscal outlook was also a key factor in the on-time budget and resulted in the ability of policy makers to put approximately $1.6 billion into a special rainy-day reserve account and pay down some state debt while still increasing CalWORKs welfare grants by 5 percent.

The Legislature returned from summer recess on August 4 for the final month-long effort to vote on the hundreds of remaining active measures prior to the final adjournment of session at midnight on August 31. CMBA has had some earlier successes this year, both with respect to measures supported and those opposed, but several more measures of interest remain to be acted on during the final weeks of session.

SB 1459—Mortgage Loan Originator Licensing

Chaptered by Secretary of State—Chapter 123, Statutes of 2014.

SB 1459 allows the Uniform State Test (UST) developed by the Nationwide Mortgage Licensing System & Registry to satisfy the California Mortgage Loan Originator (MLO) applicant testing requirements. It also requires additional California specific pre-licensing and continuing education. CMBA has aggressively promoted the adoption of the Uniform State Test usage in California. The UST can now replace California's state specific test. Passing the UST would satisfy the SAFE Act's state test

CONTINUED ON PAGE 23

8 Ways You Can Accelerate Trust in Your Mortgage Brand

BY JOHN SEROKA, PRINCIPAL, SEROKA BRAND DEVELOPMENT & STRATEGIC COMMUNICATIONS

No matter what business you're in, the only thing you're really selling is trust.

According to the 2013 Edelman Trust Barometer, the firm's 13th annual global exploration of trust by industry, "financial services" remains the least trusted industry globally with only 46% of respondents indicating they have trust. This is the fifth year running that financial services was the least trusted industry in the Edelman survey.

In the U.S., by comparison, only 43% of respondents indicated they trust financial service providers.

Your mortgage industry brand must evoke trust, which can be especially difficult given the boom and bust nature of the industry. When the sector is "booming," many new lenders jump in to capitalize on profits and do very little to try to establish a brand worthy of trust. They don't have to; they're making money and pushing their refinance deals through the system.

When the "bust" occurs, these same mortgage companies are out. They may try to hang on and form relationships with referrers, but operationally they're not set up for purchase transactions and have very little, if any, credibility with Realtors because they've ignored them.

According to Edelman, trust is a forward facing metric of stakeholder expectation, unlike reputation, which is based on past experiences with a brand.

Consumers want to know they can trust their lender to do the right thing, give them a fair deal and make it to closing—on time. Mortgage companies want to form business alliances with those they can trust to do the right thing by them. Those who are deemed trustworthy are the winners.

According to the same survey, the two leading factors for distrust, making up 50%, include:

- Corruption and fraud
- Wrong incentives driving business decisions

These are followed by such items as poor performance and transparency issues or simple incompetence.

Now, here are some not-so-surprising findings from the same survey. Key trust-building attributes in order of importance include:

- Listening to customer needs and feedback
- Taking responsible action to address issues
- Placing customers ahead of profits
- Transparent and open business practices
- High quality products or services
- Ethical business practices

So, how can you drive trust in your brand? Here are eight ideas…

1. **Acquire certifications, awards and participate in continuing education classes.** For example, through the Mortgage Bankers Association, you can earn your Certified Mortgage Banker® (CMB®) designation. The National Association of Mortgage Brokers (NAMB) offers 3 levels of certification tied to experience. Each level has continuing education requirements. There are certificates for underwriters as well.

   If you're a technology company, appraisal firm, title company or any other product or service provider, there are opportunities to acquire awards and certifications and make them known to your target audience. Examples could include the Mortgage Technology Awards, the Accredited Senior Appraiser (ASA) designation and others could be the BBB designation or an award for "best places to work" and more.
2. **Leverage social media.** Social media engagement is unique in that it works for small start-ups

CONTINUED ON PAGE 26

Foreign Capital Targets U.S. Real Estate

BY ANDREW TIGHE, SENIOR REAL ESTATE ANALYST, HFF, LP

As the domestic commercial real estate market continues to improve and global economic uncertainty prevails throughout Europe, Russia, Latin America and Asian markets it's impossible to avoid the significant level of foreign capital currently investing in the U.S. real estate markets. Most interestingly, according to a recent article in the Wall Street Journal, China has become the second-largest foreign investor in U.S. commercial real estate with an 8% share of the total cross-border investments, according to data compiled by Real Capital Analytics (RCA). Activity has picked up dramatically over the past several months as Chinese investors have made direct acquisitions of approximately $5.8 billion between January 2013 and March 2014. So how did we get here? And what impact will this have on our collective business as real estate professionals going forward?

First, it's important to understand how we got here in the first place. Looking back to 2009 amidst the depths of the global financial crisis, Switzerland had to come to grips with the fact that although their country has provided the world with solemn

CONTINUED ON PAGE 28

Commercial Real Estate Outlook

EDITOR'S NOTE—*This is the latest in a series dealing with the issues facing the real estate finance industry. Each issue we touch on a different topic, asking CMBA's experts for their thoughts on the issue at hand. In this issue of CMFN, we ask three experts about the commercial real estate market, and what lies ahead in the next year. The topic will be covered in detail at CMBA's 17th Annual Western States CREF Conference, September 17–19 in Las Vegas. We've gathered three of the panelists here to discuss some of the issues in advance.* ***Jeffrey Salladin*** *is Vice President, Relationship Manager, for Hudson Advisors, LLC.* ***David Moehring*** *is Vice President, Commercial Mortgage Operations at Union Bank, and* ***Jaime Zadra*** *is a Principal with Prudential Mortgage Capital Company.*

The views and opinions expressed are solely those of the authors.

Q: Are we likely to see the market for permanent loans improve or decline in the next 12 months? Why?

Salladin: Total volume is set to increase due to the high level of maturing real estate debt ($300+ billion per year through 2017) and increased acquisition activity. On the maturing debt front, much of the real estate debt coming due is overleveraged or under-collateralized from the 2004–2007 peak, so the entire capital stack (senior as well as the mezzanine space) will be active. On the acquisition side, activity will likely accelerate as investors who acquired properties at the bottom of the market cash out and new participants look to capitalize on increasing rents and declining vacancies.

Zadra: I expect the market for permanent loans to improve over the next 12 months as the economy continues on its path of recovery and growth. This should result in more capital in the market, which will encourage acquisitions. We also expect a fair amount of maturities in 2015, and strong property performance should facilitate making permanent loans.

Moehring: We don't see the growth in the CMBS market as much as was anticipated, however, the banks are flush with cash which means there will be an ongoing effort by banks and life companies to get their money out earning a return on good assets. I think we have a glut of money available for certain types of income property loans but not enough borrowers to support the demand by the banks. This will push earning spreads down as banks and life companies try to compete for the best deals.

Q: What product or geographic market should see the most growth in the next year?

Zadra: With the wave of maturities beginning in 2015, I expect CMBS to experience the most growth so long as the capital markets remain steady. Given where CMBS volume was in 2013 and is YTD 2014, CMBS is certainly the product with the most room for growth.

Moehring: Continued growth in the major CBD's for the main food groups which are apartments, industrial, Class A & Class B office and retail. There may be a growing opportunity for hotel projects that can be acquired at 70% or less of replacement cost. Markets like San Francisco, Atlanta, Dallas, Austin and Houston have seen the biggest gains in employment and that should equate to more dollars in those economies which drives development and rent growth.

Salladin: I think we will begin to see growth in secondary and tertiary markets. With cap rates compressing in the primary markets, capital will begin to compete in the smaller markets and ultimately drive cap rates down there as well.

Q: What is a bigger headache these days: compliance or risk management?

Moehring: As a regulated institution, you cannot really look at risk management and compliance as headaches as this is the playing field all banks and regulated firms play on. In terms of compliance, it is here to stay and it does not appear to be tailing off with so many more Dodd-Frank regulations still coming into play. From a pure business standpoint, risk management will be the driving force for our institution because if we manage the risk that is inherent in our overall portfolio, compliance issues will take care of themselves. Getting away from

CONTINUED ON PAGE 31

PRIMELENDING
EST.
1986

When You're Ready to Lay Down Your Roots...
COME HOME TO PRIMELENDING

WORKING TOGETHER TO HAVE A PROFOUND AND POSITIVE IMPACT ON THE LIVES OF ALL WE SERVE.

Owned by Hilltop Holdings (NYSE: HTH), PrimeLending is a national lender that is backed by strong support and long-term staying power. At the same time, loan officers are able to close loans more quickly due to our localized processing and underwriting.

PrimeLending has the best of both worlds – and we want you to be a part our team. If you're ready to lay down your roots with a company you can trust, PrimeLending can provide you with the tools you need to grow your career with us. Come join us!

Core Convictions

- Honesty and Integrity
- People Centric Culture
- Agile
- Service Beyond Expectations
- One Team, One Purpose

PrimeLending offers:

Agility
Close loans more quickly with localized processing and underwriting.

Stability
Count on us for long-term strength and staying power.

Technology
Capitalize on cutting-edge technology tools for CRM, processing and more.

Culture
Cultivate relationships through our compelling, people-centric culture.

Marketing
Create more business with professionally designed marketing tools.

Daniel Rawitch
Senior Vice President, Regional Manager

4153421694
drawitch@primelending.com
www.primelending.com/
4685 MacArthur Court #480
Newport Beach, CA 92660
NMLS: 365837

PrimeLending
A PlainsCapital Company

Exploring Your Options When A Commercial Borrower Defaults

A Case Study

BY DENNIS BARANOWSKI, GERACI LAW FIRM, CMBA FUTURE LEADERS CLASS OF 2014

When a borrower defaults on a loan secured by commercial property, lenders are aware of most, if not all, of the options that are available to them. The real dilemma lies in choosing the most appropriate course of action or combination of actions, to best protect the lender and to achieve its goals. The best course of action will depend on a multitude of factors.

It would be easier to pass a camel through the eye of a needle than it would be to explore a fraction of the possible combinations of factors which impact the optimal manner in which to approach a specific default scenario. Therefore, in the interest of time and maintaining sanity, the following is a summary of a typical scenario and some potential options:

- The borrower is a single purpose entity (SPE). This fact is important in the analysis as the borrower will not have additional sources of income or collateral to offer lender.
- The property is retail, occupied by a single tenant that has been performing pursuant to a lease that has ten years remaining. Since there is only one tenant, the placement of a receiver is not as complicated. A performing tenant will allow lender to mitigate losses by receiving rents.
- The loan matured 9 months ago and borrower has not been able to refinance and has not attempted to sell. Since maturity, borrower has not made any payments to lender. The value of the property is greater than the balance owing, but as a result of accruing interest and other default fees and costs, it is likely that within 6 to 9 months the loan will become under secured.
- Lender wants the loan paid-off, would prefer not to own the property, and does not want to take a loss.

Forbearance Agreements.

Typically a forbearance agreement is a short-term agreement between the borrower and lender whereby lender agrees to delay the enforcement of rights under the terms of the loan in exchange for borrower agreeing to cure a default within a specified period of time. Other than the temporary delay in proceeding with collection, the forbearance will not modify the terms of the loan. In this scenario, the loan has matured, so the only cure of the default is satisfaction of the loan by (i) sale of the property; (ii) refinance of the loan; (iii) modification/extension of the loan; or (iv) in rare occasions a cash pay-off by the borrower.

Lender wants to get paid-off, but has a limited window of time under the scenario to fully recoup its investment. A skillfully drafted forbearance agreement will help lender achieve this goal, or at a minimum help move things along and provide it additional protection. Ideally the forbearance agreement should include the following:

- If the borrower is seeking time to refinance, the forbearance should include a deadline for borrower to provide a commitment letter, to open escrow for the loan, and for the escrow to close. In addition, lender should require borrower to simultaneously list the property for sale, as discussed below.
- If borrower is seeking time to sell, the forbearance should require: (i) that the property be listed by a specified date, with a lender approved broker; (ii) that the initial listing price be set with a mechanism to reduce the price based on benchmarks in order to ensure that the borrower and broker do not collude to delay lender; and (iii) a “drop dead” date for the sale to occur. It is also advisable to set a “drop dead” date

CONTINUED ON PAGE 32

The Forged Deed of Trust

Does Title Insurance Cover the Lender's Loss?

BY DAVID B. EPSTEIN, EPSTEIN TURNER WEISS, P.C.

Industry figures estimate that forgery accounts for over 20 percent of all losses paid by title insurers.[1] Standard loan title insurance policies cover originators and loan purchasers for indemnification of losses resulting from a forgery of the deed of trust.[2] However, no reported California case addresses the measure of indemnity under a lender's title policy for such a forgery.

The title insurance policy is "a contract of indemnity against actual monetary loss or damage" caused by a defect in title that is not excepted by an exclusion or condition in the policy.[3] In a lender's policy, the recoverable loss is the "extent to which the insured debt is not repaid because the value of the security property is diminished or impaired by . . . defects covered by the title insurance."[4] However, the policy also limits recovery to "the least of (i) the amount of the insurance, (ii) the Indebtedness, or (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against…."[5] In the case of a forged first lien, this limits recovery to the value of the property. In a volatile market, the *date* on which the actual monetary loss is determined will have a substantial impact on the covered loss.

From the lender's perspective, the monetary loss from a forged deed of trust is immediate and total.[6] The law is clear that a forged document is "void *ab initio* and constitutes a nullity…."[7] However, title insurers contend that the loss should be determined as of the later date when the lender discovers the forgery. Where the market is still in decline, or not yet recovered, this reduces substantially the coverage available to the lender.

The insurers cite *Overholtzer v. Northern Counties Title Ins. Co.* (1953) 116 Cal.App.2d 113 as establishing a rule of law that there is no covered loss until the forgery is discovered by the lender. However, neither that case, nor any other authority, supports that contention.

Overholtzer involved an owner's policy insuring against "all loss or damage not exceeding [the stated amount of insurance]...which the insured shall sustain by reason of...any defect in, or lien or encumbrance on said title."[8] The loss claimed derived from an undisclosed easement for an underground water pipe across the property. The insured discovered the easement only after improving the property from farmland to an industrial lumber mill. The trial court limited the insured's recovery to the diminution in value of the property as farmland. *Overholtzer* held that "in such cases," the measure of damages was "diminution in the value of the property caused by the defect in title as of the date of the discovery of the defect, measured by the use to which the property is then being devoted."[9] "Any other rule would not give the insured the protection for which he bargained and for which he paid."[10]

Overholtzer is not controlling here because, under a lender's policy, the measure of loss is "fundamentally different" from an owner's policy and based on "different theories."[11] An owner's policy indemnifies for damages "based on the loss of value of the property as improved by the owner."[12] A lender's policy indemnifies only to the extent the defect causes the security to be insufficient to satisfy the indebtedness.[13] It does not include loss of profit from appreciation or improvement of the property.[14] On that basis, the court in *Karl v. Commonwealth Land Title Insurance Co.* rejected the insured's attempt to apply the "discovery" rule established in *Overholtzer*.[15]

The *Karl* "date of foreclosure" rule is based on the fact that, in the context of an unexcepted prior lien, monetary loss is certain only when the property is foreclosed.[16] However, *Karl* also acknowledged that "there

CONTINUED ON PAGE 34

$16.2 Million Verdict Against Servicer

Linza v. PHH Mortgage Corp, et. al.

BY IAN A. RAMBARRAN, SHAREHOLDER AND MICHAEL W. CARRUTH, ASSOCIATE, KLINEDINST PC

On Tuesday, July 22, 2014, a jury in Yuba County reached a verdict in a case brought by a homeowner against his loan servicer and awarded that plaintiff over $16.2 million in damages. This victory is one of the largest verdicts in California's history for a foreclosure case related to a single family home claim. Whether the verdict will actually remain in place is still an open issue for discussion; however, this case sends a strong message to lenders and servicers working in California.

Plaintiff Phillip Linza's History with PHH Mortgage Corp.

Plaintiff Phillip Linza and his wife purchased their home in the rural community of Plumas Lake, California, just north of Sacramento in July 2006. In March 2009, however, Mr. Linza stopped making his monthly mortgage payments and defaulted on his loan. Just prior to his home going into an October 2009 scheduled foreclosure sale, Mr. Linza filed for bankruptcy.

While Mr. Linza's bankruptcy was pending, he was able to reach a modification agreement with PHH. The modification lowered his monthly payment from around $2,100 per month to around $1,530 per month. This modification also added his payment arrearages to the unpaid

CONTINUED ON PAGE 35

TILA-RESPA Integrated Disclosure Rule

Part 1 in a Series (see www.AltandAssociates.com for further installments)

BY DAVID JEROME ALT, SENIOR AND MANAGING ATTORNEY, ALT & ASSOCIATES

In about one year, specifically on August 1, 2015, the Consumer Financial Protection Bureau's new TILA-RESPA Integrated Disclosure Rule ("Rule") will be become effective. This new rule will have major procedural impact on the way mortgage lenders do business.

The CFPB has begun a major education campaign to educate all of us, particularly us regulatory geeks, on how the rule works and the many details involved. They have published an excellent Small Entity Compliance Guide summarizing the Rule which, at about 90 pages, is much more pleasing than the actual Rule which, in my copy including commentary, etc., comprises over 1900 pages. In addition, this guide is being followed up with other explanatory publications and webinars. This includes a seminar being presented at several locations around the country sponsored by the MBA, joining industry experts and CFPB representatives as presenters at the cost of $1250 per enrollee.

We are aware that many of our readers are not specifically compliance persons and don't have the time nor the energy to do the extensive homework necessary to learn the intricacies of the Rule but would like to have a general knowledge of its makeup and effect on their business. Therefore, we thought it would be helpful to present, over the next couple of months, a series of articles starting today with a general summary of the Rule's provisions and then addressing specific areas of concern or interest.

Our goal is to present a mini-course on the Rule; one that is relatively painless and still helpful. So starting today, we will give you the background and general outline of what we are addressing. Then, on a regular basis, we will start to fill in the blanks with the specifics.

So to begin:

The Rule consolidates existing disclosures currently in use for closed-end loans secured by real property into two new disclosures; 1) the Loan Estimate given after receiving the borrower's application and 2) the Closing Disclosure given prior to consummation. Obviously, these replace the initial and final TILA disclosures and the Good Faith Estimate and HUD-1 Settlement Statement.

The new Rule applies, as we said, to closed-end loans secured by real property. It does not apply to the following:

- HELOCs,
- reverse mortgages,
- mortgages secured by a mobile home that is not attached to real property,
- construction only loans,
- loans secured by 25 acres or more of vacant land, and
- credit extended to certain tax or estate planning trusts.

Loans not covered by the new Rule will generally continue to use the disclosures currently required.

The Loan Estimate Disclosure

This new disclosure replaces the RESPA, Good Faith Estimate and the initial TIL. The lender must generally deliver this form to the borrower within 3-business days of the receipt of the application. (More on delivery requirements in the future.) The standard form provided by the CFPB with the Rule, must be used. Generally, the form will contain information on the loan terms, projected payments and costs at closing.

The form must provide a good faith estimate of credit costs and loan terms. Where information is not known, the disclosure must be based on the best information reasonably available at the time of delivery. Due diligence must be exercised. This form is the responsibility of the creditor. However, where a broker takes the application, either the creditor or the broker may provide the Loan Estimate.

When specific circumstances are met, creditors may provide revised Estimates. Technical errors are not sufficient to issue a revised document

CONTINUED ON PAGE 36

The Mortgage Banker's Football Glossary

BY GORDON GERSON, GERSON LAW FIRM APC

Mortgage banking is the sport of the possible characterized by taking a borrower's need to score a loan the size of a football and a mortgage banker stuffing it through a hole the size of the eyelet on a pair of football cleats. While football and mortgage banking are in leagues of their own, the cross over in terms is a study in linguistics.

Security
Similar to in the lending universe where it's the safety that a lender wants for the term of a loan, this is what you need lots of at a stadium.

LTV
The point spread on the Vegas betting line or known as the Line to Victory.

DSCR
Defensive Secondary's Cornerback Rating in your fantasy league. Sometimes mistakenly used by colleges in the SEC by those who cannot spell for when the Defensive Secondary's Coverage is Rong.

BIPS
Big Improvement Post Season and what every GM and coach says about his team after the NFL draft.

Waterfall
What happens at half time on the perimeter walls of old college stadiums with bad plumbing.

ARM
After Replay Madness that breaks out in the stands or sports bars after the instant replay on the big led stadium screen or screens at local sports bar..

Rate Lock
What Monday night football has enjoyed compared to other television offerings for several decades.

Wall Street
A place in New York where neither the Jets or the Giants play, but where more than half the college football players in the Ivy League will end up working.

Application
What the 98% of college football players complete when looking for jobs in the IFL (Italian Football League) where they can play for pizza and pasta after they do not get drafted by the NFL.

Secondary Market
Green Bay, Wisconsin and where Aaron Rodgers controls s more of the game than a B piece buyer. Also sometimes used to mean the number of defensive backs being traded in the off season.

B Piece Buyers
Teams in need running backs.

Agency (ies)
Most often referring to the places where sports agents work.

Execution Type
Pass, run, punt or kick. And sometimes meaning fumble or turnover.

Yield Maintenance
The amount of offensive yardage given up week after week.

Prepayment Penalty
When a penalty flag has been thrown before a running back hit pay dirt (i.e. end zone).

Delivery Channel
The clearest path to the end zone.

CMBS
Complicated Matchings for Bowl Series games.

Points
What it takes to win games.

Spreads
Are you kidding me? If you ever bet on a football game you know this one.

CONTINUED ON PAGE 37

The Age of Property Condition Assessments

BY JOHN P. HEFFERNAN III, PE, MANAGING DIRECTOR, VERISK COMMERCIAL REAL ESTATE

Until the latter half of the 1990s, virtually no standards existed for property condition assessments (PCA) inspector qualifications, and the service became largely a commodity. Deferred capital figures were reported largely in manners not accurate to the property itself but rather as a vehicle to meet a specific reserve amount to facilitate a loan closing. Obviously, that practice did not assist in the accuracy of forecasting risk in the commercial real estate lending and the investment banking market.

With the growth of Commercial Mortgage Backed Security (CMBS) lending transactions and required portfolio inspections, the practice of performing PCAs became routine. With the absence of a uniform standard for inspector qualifications and a business operating mode many inconsistencies perpetuated the practice. That absence has implications for both the financial projections in deferred capital reserve tables and the actual insurance and indemnification provided to the lenders and buyers of CMBS.

The commercial real estate industry openly recognized the need for a formalized PCA practice in response to the development of the Resolution Trust Corporation (RTC)[2]. A 1995 Standard & Poor's guide was the first to outline the process of administering assessments and, in 1999, the American Society for Testing and Materials (ASTM) released Standard 2018-99, which defined a standardized process for executing PCAs. It was also in the mid-1990s when the Environmental Bankers Association was formed as the recognized vehicle that investment banks draw upon to draft and complete environmental assessment practices referencing ASTM-defined standards. An ASTM-compliant PCA covers 10 major areas:

- building site (topography, drainage, retaining walls, paving, curbing, lighting)
- building envelope (windows and walls)
- structural (foundation and framing)
- interior elements (stairways, hallways, common areas)
- roofing systems
- mechanical (heating, ventilation, air conditioning)
- plumbing
- electrical
- vertical transportation (elevators and escalators)
- life safety, ADA, code-compliant air quality (fire codes, handicapped accessibility, water/mold)

It's important to discern, however, the difference between a PCA for the debt/CMBS market requirements and a PCA for equity markets, as the cost, methodology, detail, and value proposition vary tremendously. The PCA process generally consists of two phases (a site assessment and quantification of critical building systems), resulting in deferred capital projections for the defined term. The site assessment is a thorough and representative picture of the structure and above-mentioned building systems. However, until recently there has been no consolidated data source providing natural catastrophe and manmade risk analysis for physical and financial insight to the specific asset being evaluated. Experience has shown that those items have the direct potential to affect the value and profitability of the asset by adversely impacting the physical safety of occupants, structural integrity, protection in the event of natural catastrophe, and socio-economic conditions.

Commercial real estate owners, managers, and lenders should ask themselves a number of questions when assessing the risks associated with a property, including:

- How is the local crime rate affecting tenancy and profitability of businesses?

CONTINUED ON PAGE 38

Debt Maturity Through The Wave

Prepay and Lock Financing Today or Bet On Tomorrow?

BY MARK GRACE, VICE PRESIDENT, WALKER & DUNLOP, CMBA FUTURE LEADERS CLASS OF 2014

Philosopher Heraclitus of Ephesus is credited as the first to note that the only constant in this world is change. Thousands of years later, that adage rings true when it comes to the commercial real estate finance environment and the approaching wave of CMBS maturities. Although the lending environment is continually evolving, today's favorable low rates have borrowers paying attention and starting to weigh options for refinancing early, despite the prepayment penalty incurred. In today's commercial debt markets with a glut of maturities forthcoming and potential changes to either rates or capital markets capacity, there are many advantages to exploring early loan prepayment and recapitalization. The market is flush with capital and aggressive on nearly every product type with ever tightening underwriting standards, as we move further away from the debt crisis of 2008. CMBS, life insurance companies and banks are positioned to absorb the glut of maturities over the next three years, while Fannie Mae and Freddie Mac have the combined regulatory authority to lend approximately $56B annually, and are very aggressive on multifamily.

In the capital markets arena, 2015–2017 debt maturity numbers have shaped the competitive lending landscape that we see today. Businesses are geared up with personnel and capital, poised to get the most out of this massive maturity

CONTINUED ON PAGE 39

EXECUTIVE DIRECTOR CONTINUES FROM PAGE 5

real estate finance industry plays in our state's overall economy. CAMPAC needs your help to achieve this goal. Remember, the reason the MBA raises over $1 million each year is because they have champions from the industry encouraging financial support! That's what you will bring to the CAMPAC fundraising efforts because a peer request will always be more effective than a request coming from staff. A big thank you to Steve Weaver from First Priority Financial and Paul Chandler from Property Sciences for their efforts in helping us reach our PAC fundraising goals this year. If you can be a part of this landmark project, please call me today.

Being a part of our PAC activities is one way you can become involved with the California MBA but there are many other ways to participate. Each of our annual conferences is orchestrated by a committee that develops the agenda, chooses speakers, develops sponsorship opportunities and secures sponsors and exhibitors. We also have a Mortgage Quality and Compliance Committee that identifies topics and presenters for our monthly Mortgage Quality and Compliance free webinars for the residential lending industry. Our Legal Issues Committee and Membership Committee are being revitalized this year as well as the development of some new projects on which we'll be providing additional information in the months ahead.

Be an active member of the California MBA and work alongside your industry colleagues to strengthen and grow our association.

2014 Calendar

Mark your calendars now!

September 3, 2014

CMBA Networking Series Presents: Los Angeles After Hours

Offices of Allen Matkins, Los Angeles, CA

September 10, 2014

CMBA Networking Series Presents: Embarcadero After Hours

Offices of Allen Matkins, San Francisco, CA

September 17–19, 2014

17th Annual Western States CREF Conference

Encore Las Vegas, Las Vegas, NV

Register Now at www.CMBA.com!

Platinum Sponsors

Titanium Sponsors

Gold Sponsors

Allen Matkins; AmericanWest Bank; Arbor Commercial Mortgage; Avatar Financial Group; Barclays; BofI Federal Bank; Bolour; CBRE; Celtic Bank; Cherrywood Commercial Lending, LLC; Citi; CorAmerica; CoStar Group; Dougherty Funding, LLC; Fidelity Mortgage Lenders, Inc.; Goldman Sachs; GOT Appraisals; Greystone; Guggenheim Commercial Real Estate Finance; HFF; JCR Capital; Jeffries LoanCore; John Hancock Real Estate Finance; Karlin Real Estate; Lone Oak Fund; Luther Bubank Savings; Mesa West Capital; Morrison Street Capital; Nikols Mortgage Fund; NorthStar Realty Finance; Owens Financial Group; Prime Finance; Private Mortgage Fund, LLC; ReadyCap; Realty Mogul; Redwood Trust; Starwood Mortgage Capital; Streit Lending; Thorofare Capital; UBS; Union Bank; Verisk Commercial Real Estate; Wells Fargo; William Blair

Silver Sponsors

AEI Consultants; AES Due Diligence; CalComm Capital, Inc.; Curtis-Rosenthal, Inc.; EBI Consulting; EMG; Geraci Law Firm; Grandbridge Real Estate Capital; GRS Group; Johnson Capital; Koss REsource; LoanDocSolutions; Marcus & Millichap Capital Corp.; Newmark Real Estate Capital; Old Republic Title; Pacific Southwest Realty Services; Partner Engineering & Science, Inc.; Total Lender Solutions, Inc.

17th Annual Western States CREF Conference *(continued)*

Conference Lanyard Sponsor
HFF

Premier Golf Sponsors
CIBC World Markets
Property Sciences

Beverage Cart Sponsor
A10 Capital

Closest to the Pin Sponsor
KeyPoint Credit Union

Publication Sponsors
National Mortgage News; Commercial Mortgage Alert; GlobeSt.com; Mortgage Banking Magazine; Scotsman Guide; Western Real Estate Business

September 25, 2014

CMBA Networking Series Presents: Santa Monica After Hours

Offices of BuckleySandler, LLP, Santa Monica, CA

October 2, 2014

CMBA Networking Series Presents: Walnut Creek After Hours

Offices of Spiegel Accountancy Corp, Walnut Creek, CA

October 9, 2014

CMBA Networking Series Presents: Costa Mesa After Hours

Co-Hosted by Essent Guaranty and Geraci Law Firm
Center Club, Costa Mesa, CA

CMBA SINCE 1955 California Mortgage Bankers Association
The Voice of Real Estate Finance

Registration and **Sponsor-Exhibitor** information at **www.CMBA.com**

Wholesale Lending. Mini-Correspondent. Correspondent. Reverse Mortgage.

Correspondent lending is just easier when...

You partner with a company that understands what's at stake.

Your correspondent lending partner should understand your market, your business challenges and how important it is to have an easy, efficient process that you can rely on. At Plaza Home Mortgage, we know what you're up against and we offer a comprehensive support system designed to make it easier for you to be successful.

Our dedicated team of industry veterans works diligently to not only deliver superior customer service, but also to serve as trusted consultants throughout the entire loan sales process. Our hands-on approach means that you have immediate access to one-on-one, personal guidance, comprehensive training and a robust library of resources to ensure that each loan is properly underwritten, funded, and meets all regulatory compliance.

Catering to the Business Needs of Correspondent Partners

With a range of competitive products and strategic advice, Plaza offers correspondent partners support for their business, opportunities to grow their own platforms and the option of doing business their way. Plaza's full Correspondent program options include:

- Best effort
- Single loan mandatory
- Bulk mandatory
- Bulk bid tapes delivery also available
- Delegated underwriting

$1 million minimum net worth required. Mini-correspondent program also available.

www.plazahomemortgage.com

Welcome New Members

Welcome to the CMBA family!

ALIGHT PLANNING
Mark Burner
San Francisco, CA
Industry Technology Provider

ARCH MORTGAGE INSURANCE
Wendy Barnett
Walnut Creek, CA
Industry Product Provider

BUCHANAN STREET PARTNERS
Mark Reese
Newport Beach, CA
Commercial/Multi-Family Mortgage Banker

CAMINO REAL MORTGAGE BANKERS
Ruben A. Romero
San Fernando, CA
Residential Mortgage Banker

COMMERCIAL CAPITAL ACCESS
Marcy Olson
Roseville, CA
Commercial/Multi-Family Mortgage Banker

DYKEMA GOSSETT PLLC
Haydn J. Richards
Washington, DC
Industry Professional Advisor

EDGE MORTGAGE ADVISORY COMPANY, LLC
Robin Auerbach
Anaheim, CA
Industry Product Provider

GALTON CAPITAL MANAGEMENT
James Karr
New York, NY
Residential Mortgage Banker

GENERAL MORTGAGE CAPITAL CORPORATION
Charles Zhao
Burlingame, CA
Residential Mortgage Banker

MC FIVE MILE
Amanda Fuselli
New York, NY
Industry Product Provider

LUTHER BURBANK SAVINGS
Rosemary Hernandez
Santa Monica, CA
Residential Mortgage Banker

MOUNTAIN WEST FINANCIAL, INC.
Karen Hirsch
Redlands, CA
Residential Mortgage Banker

PRIMESOURCE MORTGAGE
Jeff Hemm
Murrieta, CA
Residential Mortgage Banker

PROSPECT MORTGAGE
Ron Bergum
Sherman Oaks, CA
Residential Mortgage Banker

SKUPIT, LLC
Michael Kiaman
Los Angeles, CA
Industry Technology Provider

THOROFARE CAPITAL
Kevin Miller
Los Angeles, CA
Commercial/Multi-Family Mortgage Banker

US REAL ESTATE SERVICES
Angela Hurst
Lake Forest, CA
Industry Product Provider

LEGISLATIVE REPORT CONTINUES FROM PAGE 7

component requirement. Thus, an MLO who passes both the national test and the UST could apply for a license in any state that has adopted the UST. According to the National Mortgage Licensing System, 39 state mortgage agencies have adopted the concept of uniform state testing as of January 1, 2014. The Department of Business Oversight was not among them, so SB 1459 will help move toward uniform state testing in California.

AB 1393—Pesonal Income Taxes: Mortgage Debt Forgiveness

Chaptered by Secretary of State—Chapter 152, Statutes of 2014.

CMBA supported AB 1393, and it has been signed into law with an immediate effective date. This bill extends the operation of the exclusion of the discharge of qualified principal residence indebtedness for state income tax purposes to debt that is discharged on or after January 1, 2013, and before January 1, 2014. The Personal Income Tax Law provides for modified conformity to specified provisions of federal income tax law relating to the exclusion of the discharge of qualified principal residence indebtedness from an individual's income if that debt is discharged after January 1, 2007, and before January 1, 2013. The federal American Taxpayer Relief Act of 2012 extended the operation of those provisions to qualified principal residence indebtedness that is discharged before January 1, 2014. AB 1393 conforms to the federal extension.

AB 1698—Voiding of False or Forged Real Property Documents

On the Floor of the Senate.

AB 1698 originally would have required that after a person is convicted of knowingly procuring or

CONTINUED ON PAGE 24

LEGISLATIVE REPORT CONTINUES FROM PAGE 23

offering any false or forged instrument to be filed, registered or recorded in any public office within the state under Penal Code Section 115 or a plea is entered whereby a charge alleging a violation of that law is dismissed and a waiver is obtained, the criminal court issue a written order that the false or forged instrument be adjudged void ab initio. The measure is designed to help a homeowner or business who has been victimized by false or forged deeds where the fraudsters are convicted in criminal court by providing an alternative to requiring the victim to go to civil court for a 'quiet title action' at their own expense. CMBA had concerns with the original version of the bill because it did not protect the rights of a good faith transferee or obligee relative to their interest in the real property and their ability to enforce any obligation incurred or secured by the underlying property. CMBA worked with the author of AB 1698 and the law enforcement sponsors of the measure to craft amendments resolving CMBA's concerns. Those changes, which have been amended into the bill, address CMBA's concerns by providing multiple notices to interested parties in the real property regarding the actions being taken by the criminal court and by providing the opportunity for those parties to argue their position in court.

AB 2416—Employee Wage Liens on Employer Property

In the Senate Appropriations Committee.

AB 2416 would allow an employee to have a lien for the full amount of any wages, other compensation, and related penalties and damages owed to the employee on the employers real and personal property including property upon which the employee bestowed labor. The amount of this lien includes unpaid wages, all other compensation required under California law, penalties and damages available under the Labor Code, interest at the same rate as for prejudgment interest in this state, and the costs of filing and service of the lien. The lien attaches to all real property owned by the employer at the time of the filing of the notice of lien, or that is subsequently acquired by the employer, that is located in any county in which the notice of lien is recorded, regardless of whether the property is identified in the notice of lien. The lien created by the proposal was originally a super-lien, which was a lightning rod for opposition, and the super-lien provision has been removed. The lien provisions, however, would still apply to unsecured loans and non-purchase mortgage loans made on or after January 1, 2016. In addition to removing the super-lien provision, the author exempted an employer's principal residence from coverage by the bill and included a mechanism to enable an employer to remove the wage lien in certain circumstances. CMBA has an oppose position on this measure.

SB 1021—Local Parcel Taxes Impacting Commercial Properties

Failed Passage in the Assembly Revenue and Taxation Committee.

CMBA had an oppose position on SB 1021, and it died in the Assembly Revenue and Taxation Committee. State law mandates that parcel taxes be levied equally on all property owners in a district, regardless of parcel size or number of living units. Some school districts have sought creative approaches to raise additional revenue from larger parcels, but a recent Court of Appeals ruling puts those approaches in jeopardy. Borikas v. Alameda Unified School District, pertains to a parcel tax that Alameda Unified passed in 2008, in which it assessed owners of many commercial properties a different and higher parcel tax than homeowners and small businesses had to pay. A Superior Court judge ruled it was a legal tax, but in December 2012, a three-judge panel of the First Circuit of the Court of Appeals invalidated it. SB 1021 would have allowed school districts to create a special tax imposed on a per parcel basis, according to the square footage of a parcel or the square footage of improvements on a parcel, according to the use of a parcel, and at a lower rate on unimproved property. It would also have authorized a school district to treat multiple parcels of real property as one parcel of real property for purposes of a qualified special tax, where the parcels are contiguous, under common ownership, and constitute one economic unit. School districts currently can create special taxes but they must be uniform, so this bill would have changed the

CONTINUED ON PAGE 25

definition of uniform to incorporate the scenarios described above.

AB 2372—Property Taxation: Change in Ownership

In the Assembly Appropriations Committee.

AB 2372 provides that when more than 90% or more of the direct or indirect ownership interests in a legal entity are cumulatively transferred in one or more transactions, the assessor should reassess the property owned by the legal entity as a change in ownership, regardless of whether a single individual acquires more than 50% of the ownership interest. The bill specifically excludes from its reassessment requirements publicly traded entity stock sales. It also specifies that multiple transfers of the same ownership interest shall be counted only once in determining whether cumulatively 90 percent or more of the ownership interests have transferred. AB 2372 applies to ownership interest sales made on or after January 1, 2015. Most business groups no longer oppose the bill, and some, like the California Chamber of Commerce support the bill as amended and narrowed.

AB 1770—Termination of Equity Lines of Credit

On Assembly Floor for Concurrence in Senate Amendments.

AB 1770 would create a statutory method for suspending and closing a home equity line of credit by way of a codified notice signed by the borrower(s) and transmitted by an entitled person (i.e. title company) to the beneficiary (lender). The final bill language reflects exhaustive negotiations between the lending community, title industry, policy makers and legislative staff. This legislation is intended to reduce litigation between lenders and title company's that has been occurring when lines of credit are not terminated when real property changes ownership. The final bill language also includes a July 1, 2015 delayed effective date, a July 1, 2019 sunset date for the statute, and a statement that the beneficiary may conclusively rely on the borrower's instruction to suspend and close the equity line of credit provided by the entitled person.

RESIDENTIAL NEWS CONTINUES FROM PAGE 8

and well-established behemoths alike. In a report from eMarketer, 82% of consumers trust a company more if the CEO is active with social media. One doesn't need to look far to see CEO's in the mortgage industry actively engaging. Also, 85% of customers expect businesses to be active in social media (source: Vocus). Social media gives your audience a look underneath the hood of your company and is therefore an important trust-building factor.

A plan for leveraging your social venues consistently is recommended.

3. **Make integrity your No. 1 priority.** The definition of trust is a "firm belief in the reliability, truth, ability, or strength of someone or something." If consumers don't feel like you're being truthful and honest, they won't trust you. So aside from the glaringly obvious of running an ethical business, do what you say you're going to do, when you say you're going to do it. In the mortgage industry, the consequences of poor performance can be far-reaching and have a domino effect.
4. **Establish a culture of transparency.** Similar to integrity, make sure your business practices are transparent and that you invite questions from your customers/loan applicants, rather than avoiding questions and being secretive. This only leaves the impression that you're not being completely up front. Don't hide behind the fine print in a contract, and don't make big promises or overstatements.
5. **Engage with your customers:** Whether it's a big screen TV, a mortgage technology platform, mortgage program, compliance software or any other product or service, we all know that feeling of being "sold,"—when we feel like the salesperson isn't genuinely listening to our needs and concerns.

   So, engage with your customers and concentrate more on being a knowledgeable resource rather than selling them. In addition, communicate with them openly and frequently. If for some reason you're not able to meet expectations, talking about it in advance will alleviate some frustration.
6. **Leverage your brand advocates.** According to a Forrester report, 70% of U.S. online adults trust brand or product recommendations from friends and family, and 46% trust consumer-written online reviews, while just 10% trust ads on websites. Positive reviews drive referrals.

   Don't allow the opportunity for positive online reviews to be left up to pure chance as there are many ways to drive them. Here are a few:
   - Use incentives. For example, you could conduct a monthly prize drawing for all who leave a comment about your company on any one of your social media venues.
   - Develop a quality control survey. Ask both multiple choice and open-ended questions. With permission, these could even be published in full or in part.
   - Have a plan and someone in place to react to both positive and negative reviews online. Pay attention to all, not just the positive. Negative reviews can give you an opportunity to shine if handled well. Turn to a communications professional if you have any doubt about how to handle something negative.
   - Use video testimonials from both the end user and business referrers.
   - Develop a case study and publish it to your website and share in social media.

   There are several more ways, but now you get the idea.
7. **Be consistent.** Consistency in your marketing materials shows your prospects that you have a unified voice and know what you stand for. If you appear disparate, it confuses people and sends a poor message.

   If you feel like your marketing materials and messages lack consistency, this is a problem that could speak to the internal understanding of your brand.

   If your brand is not understood internally, you can be sure it's not understood externally. This could

CONTINUED ON PAGE 27

RESIDENTIAL NEWS CONTINUES FROM PAGE 26

be a reason to conduct an internal brand assessment and then take appropriate action.

8. **Show passion for what you do.** Have you ever walked into a store and been underwhelmed by its appearance and/or somewhat surly store clerks who seem to purposely turn and walk the other way when they notice you might need help? On the other hand, isn't it so satisfying when you feel like your questions and concerns have been adequately addressed by someone who genuinely cares? Enthusiasm is contagious! Everyone wants to be taken care of by someone who seems to truly love his/her job. When you're enthusiastic about what you do, it sets the tone for all of your interactions and creates better relationships with clients, prospects and business referrers. Creating a culture of passion for your brand is part of "internal brand adoption," where all those in your employ understand why you're different and where you're going as a company. Having a plan in place for internal adoption of your brand is critical for your success and reduces turnover.

When trust has been lost, it's very difficult to earn it back. Somehow, faith must be restored. Whether you're a mortgage banker or a company that provides mortgage-related products or services, trustworthiness is the bedrock of your company and your brand.

COMMERCIAL NEWS CONTINUES FROM PAGE 9

neutrality, fancy watches, delicious chocolate, and controversially secretive banking regulations, it would need to make some adjustments to the latter now that the banking world was under intense fire for the plague of financial despair. The Swiss government acquiesced and ultimately conformed to the international standards of the Organization for Economic Cooperation and Development and agreed to make adjustments to eliminate the blurry lines between tax fraud and evasion for non-Swiss residents. At the same time, the U.S. Justice Dept. was in pursuit of the Zurich-based UBS AG for assisting with tax evasion. Times were bad back in 2009! Remember? Of course you don't, you're a real estate professional. The future is bright, values are high and growth projections are robust again. What's a cycle? Onward and upward!

The new Swiss regulations created a need for foreign capital to find a new place to invest (hide).

As such, the wealthy Chinese became eager to deploy capital into the US which they have found to be a relatively stable market to chase returns when compared against the rest of the world. The US commercial real estate market—both commercial and residential—has benefitted significantly. The surge in Chinese investment has accounted for approximately 24% of the US residential market for the year-ending March 2014 according to a recent report in the Wall Street Journal. China has also emerged as the second largest

CONTINUED ON PAGE 29

COMMERCIAL NEWS CONTINUES FROM PAGE 28

foreign investor in U.S. Commercial real estate as Chinese investors have ridden the wave of U.S. real estate security as an alternative to their own domestic instability. The froth has been significant with Chinese investors paying top dollar for both commercial and residential property—often times sight unseen—and with limited due-diligence or knowledge of the location and potential zoning implications for future development plans.

The interesting part of all this Chinese money flowing into the U.S. real estate market is the fact that under Chinese law, individual citizens are only allowed to take the equivalent of $50,000 out of the country each year—which is well above the down payment required on most of the residential and commercial property traded in the current market.

So how is this happening?

Recently, it was revealed that two of China's largest financial institutions have been helping Chinese citizens blatantly break the law. What may or may not be a surprise is that the Chinese banks have had the support—if not encouragement—of the state itself. Essentially, the Chinese government was speaking out of both sides of its mouth and using both hands to help manipulate the flow of capital under their control.

So now the question of why? Looking back again to the bleed out of the financial crisis, in 2011, China faced swelling tide of inflation risk as their own domestic economy was faltering and the country had trouble navigating the $4 trillion of deposits generated every year by its own domestic banking system.

The Chinese government implemented a pilot program to allow The Bank of China and China Citic Bank exclusively to exclusively test drive a foreign money transfer program with the goal of improving the management of the world's largest foreign exchange reserves (est. at $4T). The program was originally designed to alleviate the overabundance of domestic liquidity without squelching domestic lending, which would equally be a negative impact to the massive Chinese economic machine.

What' been recently uncovered,

CONTINUED ON PAGE 30

COMMERCIAL NEWS CONTINUES FROM PAGE 29

is the fact that virtually every Chinese domestic bank essentially enrolled themselves into this program over the past several years and has opened the flood gates of high net-worth Chinese citizens transferring funds to investment properties in the US and Europe. The Chinese government was essentially encouraging a dramatic shift away from their own policies.

The Chinese broadcasting channel—CCTV—unearthed their investigation into these activities, which unleashed a barrage of backlash from the bulk of China's non-high net worth residents who are not privy to this unique investment vehicle.

So what now? It's a bold assumption to think the Chinese government will make a full correction given the fact they were at the heart of the matter itself in the first place, but there will likely be some manner of regulation implemented to curtail the current mode of operations until another similar method can be slyly put into play. Assuming the Chinese banking system begins to enforce the $50K outflow limitation in some capacity, it could have a significant impact on the volume of real estate purchased by Chinese nationals here on U.S. soil. The bigger concern however would be the implications on Chinese inflation on the broader world economy. If the build-up of Chinese domestic cash is not alleviated somehow, we could all feel the effects.

ROUNDTABLE ARTICLE CONTINUES FROM PAGE 10

core risk management principles may boost your short term portfolio growth but in the long run, those compromises will crush your long term viability.

Salladin: My assumption is that compliance is a bigger headache, particularly for traditional lenders. Many financial institutions have significantly de-levered and rebuilt their capital bases, yet they still have to deal with the new regulations despite their stronger balance sheets. With that said, this new regulatory environment presents opportunities as well. Private equity firms with access to non-bank capital, such as ourselves, have the potential to fill a unique role as capital providers because private equity is not faced with the same strict regulations as traditional lenders. We have much more flexibility to provide borrowers with financing solutions that meet specific borrower needs.

Q: Are interest rates likely to rise in the next 12 months? If so, what will be the primary cause?

Zadra: I think interest rates will rise in the next 12 months. The increase will be driven by a continuing economic recovery and inflation.

Moehring: As unemployment continues to decline, the Fed will have to start making good on its promises that it will stop buying bonds and let markets determine the natural course of interest rates. Global issues will be with us forever and that will affect the interest rate markets but in the long run, the decreasing influence on the interest rate markets by the Fed will naturally allow and require interest rates to increase. A 4% 6-Month LIBOR in the next 4 years is not out of the question (today's 6-month LIBOR is 0.33%). The 10-year treasury should start moving towards 3% and once that rate has been tested the move to 4% and above is not that difficult of an assumption to make.

Salladin: Barring any shocks to the global markets, interest rates are likely to remain stable or slightly increase. The Fed will continue to reduce the pace of its monthly bond purchases as the economy and the unemployment picture improve; however, given persistent weakness in the labor and housing market, the Fed is likely to accommodate low interest rates as well.

COMMERCIAL BORROWER DEFAULTS CONTINUES FROM PAGE 13

for opening escrow, which will avoid the borrower's delay tactic of opening a long escrow at the eleventh hour to deter lender from foreclosing.

- Regardless of the purpose of the forbearance, lender must begin receiving rents. Although over 99.999% of commercial loans include an assignment of rents, it sometimes can be difficult to actually start receiving the rents; as well as inadvisable, since the rents are often used to pay the property manager, maintain the property, pay taxes, and to pay numerous other ownership expenses. Therefore, if lender is agreeable to maintaining the current management structure of the property, a "Lock Box" agreement can serve as an effective means to ensure that the expenses of the property are still being paid, borrower is no longer taking money from the property without servicing the loan, and lender can receive some type of debt service in order to keep the balance owing under control while the borrower tries to sell or refinance. The "Lock Box" provisions require the rents to be deposited into a bank account controlled by lender, and to be disbursed, in lender's sole and absolute discretion, to pay expenses associated with the property.
- The negotiation of a forbearance agreement is an excellent time to obtain from borrower a comprehensive release of lender from liability.

Loan Modification

A loan modification is similar to a forbearance agreement; however, there are a few crucial differences. First, a modification changes the terms of the loan rather than temporarily delaying enforcement by lender. Second, a modification will result in the cure of the default, requiring lender to initiate a new foreclosure action in the event of borrower's default after modification. In the instant scenario, modification of the loan does not meet the lender's goal of the outstanding balance being paid. Nevertheless, if an adequate forbearance agreement is not possible, a modification may be preferable to immediate foreclosure since lender does not want to own the property. The advisability of a modification would require the incorporation of the following:

- "Lock Box" provisions similar to those which would be incorporated into a forbearance.
- Provisions requiring the borrower to sell the property, with definite "drop dead" dates.
- Payment of an extension fee by borrower.
- Comprehensive release of lender from liability.

Deed In Lieu of Foreclosure

A deed in lieu of foreclosure can be an ideal solution for lender, assuming the circumstances are appropriate. By giving a deed in lieu of foreclosure, borrower is transferring the property to lender in exchange for lender not foreclosing against the property. Additionally, lender may pay a lump sum payment and release borrower and any guarantors. Since lender does not want to own the property, this may not be a feasible option; but when weighed against the prospect of foreclosing and ultimately still owning the property, a deed in lieu becomes much more appealing and economical. In accepting a deed in lieu, lender should take the following precautionary measures:

- Obtain a title report to ensure that lender will not be taking the property subject to any liens, voluntary or involuntary; defaulted taxes; litigation or any

CONTINUED ON PAGE 33

COMMERCIAL BORROWER DEFAULTS CONTINUES FROM PAGE 32

other encumbrance which will cloud lender's title to the property.

- Enter into a transfer agreement with borrower in order to ensure that there is no question concerning the nature of the deed in lieu. The transfer agreement should include borrower's comprehensive release of lender from any liability.
- Use an escrow and obtain an owner's policy.
- If for some reason lender takes the property subject to an existing first trust deed, there should be a Consent, Assignment and Assumption Agreement executed by the first lender, lender and borrower.

Foreclosure

Foreclosure can be accomplished by judicial (filing a lawsuit for foreclosure) or non-judicial (trustee sale) means. For the most immediate remedy, filing a judicial foreclosure in conjunction with an application for placement of a receiver on the property would be pragmatic. A receiver would manage the property under court authority, thereby ensuring that borrower will not abscond with the collected rent, that the property will be adequately maintained and managed, and that lender would receive debt service to slow the increasing outstanding balance. In addition to commencing a foreclosure lawsuit and seeking a receiver, lender should simultaneously start the non-judicial foreclosure process. In most instances, lender will opt to dismiss the judicial action and move forward with the trustee sale once it is required to make its election.

Lenders Have Options.

There are several tools at the disposal of lenders to address a borrower's default. Each one can be effective at helping the lender achieve its goals, either individually or in various combinations, as long as one keeps an open mind.

FORGED DEED OF TRUST CONTINUES FROM PAGE 14

could be other events which could trigger recognition of loss."[17] Where it is undisputed that the defect has rendered the lien "valueless," recovery has been permitted at the full value of the lien.[18] In the case of a forged lien, the lender has no secured indebtedness because the forged document is void *ab initio*. Since the debt will never be paid, deferring the determination of actual monetary loss serves no purpose.

In *Citicorp Savings of Illinois v. Stewart Title Guaranty Co.*, 840 F.2d 526 (7th Cir. 1988), the Seventh Circuit has addressed the determination of covered loss where the insured lien was void *ab initio*, there because the borrower was incompetent.[19] The Court recognized that, had it applied a deferred valuation, the "land may have been worth much less due to changes in market value."[20] Since the lien was unenforceable from its inception, "[t]he policy was breached [on the date of origination], and the loss became fixed at that time."[21]

While *Citicorp* may not be binding on a California court, its rationale, along with the arguments presented here, should be persuasive in lenders' cases involving forged deeds of trust.

1 See CLTA Title Reporter Series, Forgery... *A Cause for Alarm?*, http://www.clta.org/for-consumers/reporter-forgery.html

2 See ALTA Loan Policy 6-17-06, providing, "2. Continuation of Insurance" for any "Insured" who continues to hold an estate or interest in the Land or the obligation. For an unnamed insured, the 1992 policy requires ownership of the "Indebtedness" while the 2006 policy extends that to ownership as a "trustee or other beneficiary."

3 ALTA Loan Policy 6-17-06, Condition 8; ALTA Loan Policy 1992, Condition 7.

4 *Cale v. Transamerica Title Insurance* (1990) 225 Cal.App.3d 422, 426.

5 ALTA Loan Policy 6-17-06, Condition 8.

6 Delayed discovery of the forgery is often the result of "cover-up" payments made for a period of time by the forger. In such cases, the lender's recoverable loss would be reduced by the amount of those payments.

7 *Wutzke v. Bill Reid Painting Service, Inc.* (1984) 151 Cal.App.3d 36, 43.

8 *Overholtzer v. Northern Counties Title Ins.* Co. (1953) 116 Cal.App.2d 113, 117.

9 *Overholtzer, supra* at 130.

10 *Overholtzer, supra* at 130.

11 California Title Insurance Practice at §§8.42, 6.95 (2d ed Cal CEB).

12 Id.; *Overholtzer, supra* at 130.

13 *Cale, supra* at 426-27.

14 *Karl v. Commonwealth Land Title Ins. Co.* (1993) 20 Cal.App.4th 972, 982-83.

15 *Karl, supra* at 983 n.9.

16 *Karl, supra* at 983 n.10 describes many ways that that an unexcepted prior lien might still result in no insured loss until the actual foreclosure.

17 *Karl, supra* at 984 and n.11.

18 *Crain v. Security Title Ins. & Guarantee Co.* (1935) 6 Cal.App.2d 343, 344.

19 *Citicorp Sav. of Ill. v. Stewart Title Guar. Co.*, 840 F.2d 526, 528 (7th Cir. 1988).

20 *Citicorp, supra* at 530.

21 *Citicorp, supra* at 530.

CMBA California Mortgage Bankers Association
Since 1955
The Voice of Real Estate Finance

principal balance of the loan and then amortized the total amount. Mr. Linza's default was cured and the loan was reinstated to current status.

Shortly after Mr. Linza began making his new payment, PHH contacted him to advise that it had made a mistake with his escrow analysis. PHH told Mr. Linza that there was an escrow shortage for past due property taxes of $9,708. PHH informed Mr. Linza that his payments would be increasing from his newly modified payment of $1,530 per month to $2,300 per month (the past-due real property taxes were prorated over eighteen months and added to Mr. Linza's monthly payment).

PHH did in fact make a mistake with its escrow analysis. PHH had added escrow advances to Mr. Linza's monthly payment that it had already capitalized into his modified loan and then tried to collect them again through monthly payments. That was the basis for the approximately $800 increase in loan payments. Mr. Linza claimed to have negotiated with PHH for months on the issue with no success. Thereafter, he simply stopped paying anything towards the loan.

Mr. Linza's Suit against PHH Mortgage Corp.

In April 2012, PHH began foreclosure proceedings once again and in response, Mr. Linza threatened to file suit. Mr. Linza has stated in various interviews that PHH's response to this threat was to "stand in line" that PHH "was a multi-billion dollar company and had bus-loads of attorneys on retainer."

Mr. Linza retained counsel to file suit against PHH and other related entities. Mr. Linza alleged eleven causes of action, including fraud, breach of contract, and intentional infliction of emotional distress. Mr. Linza blocked the planned foreclosure of his home. However, the injunction was ultimately dissolved because Mr. Linza was unable to post a bond. Nevertheless, PHH never sold Mr. Linza's home. Mr. Linza is still in fact living in his Plumas Lake home.

At trial, PHH claimed that once it realized the escrow discrepancy, it attempted to right its previous wrong. However, the jury still felt Mr. Linza was harmed by PHH's handling of the modification, and rendered a verdict in his favor for negligence, intentional and negligent misrepresentation, intentional interference with contractual relations, breach of contract, breach of the implied covenant of good faith and fair dealing, and intentional infliction of emotional distress.

The jury awarded a total of $514,000 in compensatory damages as well as $15.7 million in punitive damages. The compensatory damages consisted of the following (rounded) figures: $300,000 for emotional distress, $158,000 for Mr. Linza's past economic loss, and $55,000 for his future economic loss.

With its award of punitive damages, the jury meant to punish PHH. In reaching this figure, it came to a ratio of punitive to compensatory damages of greater than 30 to 1. As a rule of thumb in California, the ratio of punitive damages should be between three and ten times the amount of compensatory damages. The United States Supreme Court has further limited this ratio in a recent maritime decision to a ratio of one to one.

Counsel for Linza indicated that PHH's arrogance, its continued mistakes and its lack of diligence were the major focuses for the jury in its award of punitive damages.

Conclusion and Prospects for the Future

At its core, this case is a breach of contract action. However, Linza's counsel was able to bootstrap emotional injuries and some tort claims into the case. Typically, claims for emotional and speculative injuries for future damages are not permitted in California.

It is clear that jurors are sympathetic to the mishandling of loans and modifications, even in a relatively rural or conservative county such as Yuba County. The sympathetic sentiment has resonated at the legislative level with the Homeowner Bill of Rights and other consumer oriented regulations from the Consumer Finance Protection Bureau. Further, the Courts have found support for pro-homeowner results in the modification arena through cases like *Alvarez v. Bank of America*, case no. A138443 from the First Appellate District, which recently held that lenders may be liable in negligence for the mishandling of modifications.

This case will certainly be subject to appellate review, though it may

CONTINUED ON PAGE 36

LINZA V. PHH MORTGAGE CORP, ET AL. CONTINUES FROM PAGE 35

not bode well for PHH at that level on all of the issues presented at trial. However, it is significant to note that PHH never sold Linza's home, Linza ultimately received the correction he previously sought, and he was put into a modification program he could afford.

With the jury's decision in the *Linza* case not demonstrative of California law, this case will be one to watch as it moves through the appellate process and its effects will be noted by lenders and servicers throughout the state. The lending and servicing industry should also take careful note of this plaintiff's ability to provoke the jury to the point of a substantial award of punitive damages.

TILA-RESPA CONTINUES FROM PAGE 16

but, as is presently the case, changed circumstances must exist.

Closing Disclosure

Creditors will now be required to provide one closing document to replace the final TIL and the HUD-1. The document is called, with a flair for originality, the Closing Disclosure. This document must be provided no later than three business days before consummation of the transaction. Again, creditors must, for federally related mortgage loans, (most loans), use the standard form provided by the CFPB in the Rule. Again, the contents of the disclosure contain general information, loan terms, projected payments and costs at closing.

The Closing Disclosure will contain the actual terms and costs of the loan. When an actual term or cost is not reasonably known/available, the creditor may use an estimate using the best information reasonably available. The Rule imposes on the creditor a duty of good faith and due diligence in trying to obtain the actual term or cost. The creditor may rely on the good faith representations of others, such as the settlement agent, in obtaining this information. Corrected disclosures with the actual terms must be provided to the borrower at or before consummation. If the actual terms or costs change prior to consummation, a new and accurate Disclosure must be provided. An additional three-day waiting period must be provided prior to consummation.

But, what is consummation?

As currently used, the term consummation occurs when the consumer becomes contractually bound to the creditor. This is determined by State law, that is, the state in which the loan is made. This concept could change on a state by state basis and should be verified by the lender and the settlement agent.

Special Information Booklet

In most cases, creditors must provide the "special information booklet" to borrowers who apply for consumer loans secured by real property. This, as before, is published by the CFPB to help consumers understand federally related mortgage loans. Creditors must deliver or place the booklet in the mail no later than three business days after receiving the borrower's application.

Well, there is the outline of the new Rule. Next issue, we will start to flesh out the details by examining the timing and delivery of the Loan Estimate and Closing Disclosure.

We hope this series will help in your further understanding of this long and complex new Rule.

We hope this series will help in your further understanding of this long and complex new Rule.

FOOTBALL GLOSSARY CONTINUES FROM PAGE 17

Bond

The relationship between a fan and his big screen at home. Also used to describe what next year's free agent does not have with his team.

Debt

What studies show most NFL pros have lots of within a few years of retirement.

Interest

What the Super Bowl generates across the world, but what fans of teams with losing records lack.

Equity

What cities with NFL teams who want new stadiums need the NFL to give them. Among reasons why Los Angeles does not have an NFL team. San Diego has problems of its own it cannot conquer (see Mortgage below). San Francisco—or I mean Santa Clara—solved it.

Collateral

In a trick play when players lateral the ball back and forth (as in combined laterals) and the defensive team is totally faked out (thus, there is collateral damage). Example: "The Play" in 1981 at the end of The Big Game between Cal and Stanford.

Closing Date

The date that football widows enjoy most: the last day of the football season.

Appraise

What NFL teams do each Winter at the NFL Scouting Combine.

HUD

A Hugely Underperforming Defense.

TILC

Touchdowns In Last Century. What people talk about when referring to Johnny Unitas, Jim Brown, Lance Alworth and Emmitt Smith.

Reserves

The third string quarterbacks or sometimes the practice team players who do not suit up for a game.

Capital Asset

What some think should be the name of the NFL's team in Washington DC should the Redskins name be dropped.

Title

Shorthand for Super Bowl.

Flood Zone

Similar to Waterfall. This can be the men's bathroom at half time.

Lien

What players do when needing a few more inches for a first down or touch down. Note: only Howard Cosell could correctly spell lean forward.

Assumption(s)

Part of the critical thinking process of every gambler and fantasy league owner. Owners, GMs and coaches also make them although only the owners do not lose their jobs when wrong.

Modification(s)

Actually, there are none in football. They call them "audibles" and the quarterback calls them when wanting to alter a play from the line of scrimmage.

Market Value

What sports agents may think but what an NFL owner is willing to pay for a player.

Mortgage

What cities have done on the backs of taxpayers to build "state of the art" football stadiums.

Commitment

What University of California, Berkeley fans have to a team that has not been to the Rose Bowl since 1958.

CMBA

Crashing, Mashing, Bashing Attempts. What football players have in common with mortgage bankers.

PROPERTY CONDITION ASSESSMENTS CONTINUES FROM PAGE 18

- What types of damage can I expect from natural events such as wind, seismic events, flooding, etc.?
- What are the capabilities of the local municipality regarding response to natural catastrophes and fire events?

There are a myriad of risks to commercial real estate assets that are not immediately visible upon inspection but have notable probability to drastically affect the profitability of the asset and tenants therein.

Since 2000, tremendous growth in commercial mortgage-backed securities has caused a spike in the demand of PCA reports because they are now required to complete a deal. That growth has led to a convergence of the scope, methodology, and, in some cases, the cost of PCA reports. However, the largest PCA assignments continue to be executed through a subcontractor practice known as the "CMBS subcontract model of providing due diligence services." That model, coupled with the lack of professional certifications and misunderstood liability protections, has in many ways resulted in a perfunctory exercise in many transactions.

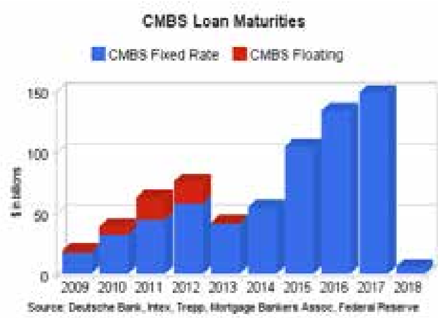
New Landscape of Data, Analytics, and Risk Management in Commercial Real Estate

The consumers of a PCA include every participating party in a commercial property sale—seller, potential buyer, lender, and investor—all of whom with a sizable interest in purchase price negotiations, capital or strategic planning, and loan approval. It's a high-stakes financial projection process that necessitates a better way to identify, benchmark, and mitigate physical risk. Unfortunately, the PCA subcontractor business model, which minimizes the subcontractor's liability, coupled with the banking industry's insatiable appetite for commercial mortgage-backed securities lending, may be leading to a meltdown in CMBS of a magnitude equal to the 2007 crash.

For that reason, the risk-mitigating data and analytics developed and consistently used by the commercial property insurance industry are now a necessary addition to the PCA process. The methodologies to enact this addition—thereby increasing the accuracy and ultimately raising the standard of quality of PCAs—include mandatory continuing education, augmented PCA reporting through additional data and appendices, cooperation with agency lenders (such as Fannie Mae, Freddie Mac, and HUD), and a platform to make these improvements available to the industry.

1. *The Resolution Trust Corporation (RTC) was a U.S. government-owned asset management company run by Lewis William Seidman and charged with liquidating assets, primarily real estate-related assets such as mortgage loans, that had been assets of savings and loan associations (S&Ls) declared insolvent by the Office of Thrift Supervision (OTS) as a consequence of the savings and loan crisis of the 1980s. It also took over the insurance functions of the former Federal Home Loan Bank Board (FHLBB).*

window. Of course, not all the CMBS that was issued from 2005–2007 is still outstanding at maturity. To that point, 2005 through 2007 saw $169B, $202B and $230B in CMBS originations, respectively and roughly 30–35 percent has been paid off for each year.



This is all very positive for borrowers looking to refinance maturing loans, as long as there is no disruption to the capital markets, or substantial change to rates. It is important to note that many deals in the forthcoming maturities are very dependent on the capital markets in their current state, with low rates and a strong supply of debt, as much of the lending between '05 and '07 was aggressively underwritten. If any disruption occurs, borrowers might find it difficult to recap their maturing loans, particularly those loans that are higher leverage. Even more conservative lower-leveraged borrowers will feel the pressure as the pricing will invariably go up across all tranches of debt.

Many borrowers are exploring the benefits of securing fixed rate refinances today, when they can lock in today's low rates and take advantage of the current borrower-friendly capital markets, resulting in maximum proceeds and favorable debt structure for their assets. This year, we have seen several examples of borrowers capitalizing on this strategy and while each borrower has different needs, the constant is their desire to transact while rates are low and terms are favorable. And while it is possible that rates remain flat over the next few years and underwriting standards remain favorable, the hedge against the potential of adverse change is very appealing to many borrowers. As illustrated in the example below, borrowing today and absorbing the prepayment penalty (which is often a tax write-off) is marginal and in many cases, the better option, if rates move by as little as 20bps. Clearly this example is not reflective of every transaction and does not factor in cash out options, but the intention is to illustrate that with a 12-month remaining term and a five percent rate, the borrower can recapitalize, pay the nearly five percent penalty and obtain new financing with a breakeven of only two years on the prepayment cost. Most borrowers get sticker shock by the large prepayment penalty and don't factor the savings both in potential tax write-off to the penalty incurred or the potential residual value in the defeasance.

	Current Loan	**Refinance**	**Delta**
UPB (as of 9/1/14)	$13,800,000	$13,800,000	
Int Rate	5.09%	3.95%	1.14%
Months Remaining:	12		
Assuming Pay-off on 9/1/14			
12 Months (Int Savings)		$157,320	
Prepayment (Defeasance or YM):		$357,000	
Based on 12 months (Int Savings)		$157,320	
Net prepayment penalty*:		**$199,680**	
Net PPP /9 yrs remaining		$22,187	
Equivalent bps:		0.16%	
Current Rate:		3.95%	
Breakeven Rate:		**4.11%**	
Payback Period:		**2.27 years**	
** prepay penalty includes write off on prepay and payment to borrower of residual on the defeasance. Check with your financial advisor or accountant.*			

Ultimately, borrowers need to consider the impact to their leveraged assets if rates rise, and take into account the coupon increase as well as the effect to loan proceeds, based on debt service ratio constraints and values increasing at a robust pace. Even a deal structured at 55 percent loan-to-value is constrained by

CONTINUED ON PAGE 40

DEBT MATURITYCONTINUES FROM PAGE 39

lender debt service limits and, as rates go up, borrowers will be positioned to lose proceeds and pay a higher rate at time of refinance. As an example, there is nearly half a percent in rate savings between the lowest leverage and maximum leverage loan with Fannie or Freddie for a well-qualified multifamily asset. Any rise in rates could precipitate a move from one tranche to another, even with a low leverage loan request.

It is undoubtedly an opportune time for borrowers to review maturities coming up in the next two to three years and explore recapitalization strategies. With that said, it is critical to consider all factors and determine whether it is advantageous to take the risk to wait until maturity and participate in what will surely be a huge feeding frenzy, or to transact now. As we continue to see a debt-laden, borrower-friendly market, it may be in a borrower's best interest to recall Heraclitus' observation and capitalize on the surplus and bite the bullet on prepayment, because we can only be certain that the only constant is change.

ADVERTISING OPPORTUNITIES

PRINT ADS

California Mortgage Finance

CMBA Legislative & Buyer's Guide

CMBA produces two unique print publications to promote your business.
All issues offer full color or black/white ads.

■ **Four** issues of ***California Mortgage Finance News*** are published annually: Winter, Spring, Summer and Fall. Beginning with the Summer 2013 issue, CMBA will incorporate the contents of Legal News into California Mortgage Finance News - making the publication twice the size and twice the value! Print circulation is 1,400, electronic distribution is 2,500 and a truncated version sent to 15,000 per issue!

** BONUS* Distribution included:

Winter: CMBA Annual Legislative Day (March 19th)

Spring: 42nd Annual Western Secondary Market Conf. (July 7-9) and 18th Annual Western States Loan Servicing Conf. (August 4-6)

Summer: 16th Annual Western States CREF Conf.

(September 25-27)

Fall: Annual Western States Legislative, Regulatory & Compliance Conf. (December 2013)

> **2014 VALUE ADDED— free ads!**
> Advertise in 4-issues over a 12 month period and receive one FREE ad in the CMBA electronic newsletter - value $500!

■ ***CMBA Legislative & Buyer's Guide*** This annual publication features a ***NEW*** Buyers' Guide section where members can include their logo (with their descriptions) and display ads. Publication is distributed to:

- All Legislative Day attendees - March 2014
- Hard copy mailed to all members
- Guide is included in all new Members Kits throughout the year

ADVERTISING OPPORTUNITIES - CONTINUED

ELECTRONIC ADS

E-News - Monthly electronic bulletin.
Timely industry news, member news and events. Published 12 times annually. *Banner ads link to your website.*

MECHANICAL REQUIREMENTS

Print Ads

Publication Trim Size 8-1/2 x 11

Dimensions .... Size (Width x Height)

Full page ....7 1/2″ x 9.875″
Full page with bleed *(add 0.125 on all edges to the following trim size)*...................8 1/2″ x 11″

½ horizontal ....7-1/2″ x 4-3/4″

½ vertical ....4.875″ x 9.875″

1/3 vertical ....2.375 x 9.875″

For LEGISLATIVE & BUYER'S Guide, please request more information

Electronic Ads

Dimensions .... Size (Width x Height)

E-News
Banner...400px x 150px

PRODUCTION REQUIREMENTS

- Artwork must match the dimensions shown.
- Print ads should be sent as a PDF file at 300dpi. All fonts and graphics should be embedded in the PDF.
- Screen ads should be submitted as static or animated GIFs or JPG files at 72dpi.
- If needed, please ask about other accepted formats.

2014 THEMES AND DEADLINES

LEGISLATIVE & BUYER'S GUIDE

Space reservation: February 12, 2014
Artwork deadline: February 28, 2014
Published: March 19, 2013

CALIFORNIA MORTGAGE FINANCE NEWS

***Winter 2014**
Theme: Residential Origination
Space reservation: January 29, 2014
Artwork deadline: February 8, 2014
Published: February 18 2014

***Spring 2014**
Theme: Residential Loan Servicing
Space reservation: April 18, 2014
Artwork deadline: May 5, 2014
Published: May 16, 2014

***Summer 2014**
Theme: Commercial / Multifamily
Space reservation: July 28, 2014
Artwork deadline: August 8, 2014
Published: August 18, 2014

***Fall 2014**
Theme: Legislative/Regulatory/Compliance
Space reservation: October 24, 2014
Artwork deadline: November 7, 2014
Published: November 17, 2014

**See bonus distribution on page 2*

ARTWORK SUBMISSION

All artwork should be e-mailed as described above to:

Diana Granger - granger@cwo.com
(530) 642-0111 • (530) 622-6033 FAX

JUNE 2, 2014, NEWPORT BEACH, CA

5th Annual Sales & Marketing Conference

One of the highlight panels at this year's conference was a discussion about the pros and cons of the broker and banker models, led by Matt Ostrander of Parkside Lending. Photo from left: Dan Rawitch, PrimeLending; Ostrander; Jim Dunkerley, First Funding; and Nick Pabarcus, Stearns Lending.

The conference wouldn't be possible without the support of great companies like Got Appraisals. Big thanks to the team, including (from left): Mary Anne Turner; Maddie Schubert; David Statham; and Nick Roberson.

Thanks to our friends at Residential Wholesale Mortgage for their support as well! From left: Valo Barajas; Juan Carlos Valiente; and Derek Bollman.

The keynote session was moderated by one of the nation's top mortgage coaches, Casey Cunnigham of XINNIX, The Mortgage Academy. The panel of all-stars included (from left): Tom Jarboe, Primary Residential Mortgage; Scott St. John, American Pacific Mortgage; Cunningham; Bryan Peck, Guild Mortgage Company; Mark Reeve, Plaza Home Mortgage; Dawn Peck, Guild Mortgage Company; and Kevin Budde, PrimeLending.

JUNE 19, 2014, OFFICES OF THE COMPLIANCE GROUP, CARLSBAD, CA

CMBA Regional Networking Series Presents: Carlsbad After Hours

On June 19th, CMBA held the latest in our regional networking series at the offices of The Compliance Group in Carlsbad. Big thanks to our hosts and company president Annemaria Allen for their hospitality! From left: Mark Wilson, CWDL Certified Public Accountants; Annemaria Allen, Susanne Livingston, Residential Wholesale Mortgage; and Ben Leavitt, CWDL Certified Public Accountants.

The events have been a great way to help local real estate finance professionals connect in a causal and intimate environment. Just refreshments and an opportunity to chat!

Special thanks to our President's Council sponsors, whose support makes the events possible: CMG Financial, Wells Fargo Home Mortgage, Got Appraisals and Bankers Insurance Service.

Make sure to check out www.CMBA.com to find out about our upcoming FREE networking events, including those in your local area! Additionally, if your company is a CMBA member and would like to host or sponsor an event, contact the office at (916) 446-7100.

JULY 14–16, 2014, SAN FRANCISCO, CA

42nd Annual Western Secondary Market Conference

Prior to the start of the conference, CMBA's Board of Directors held the first meeting of the 2014-2015 term, which kicked off with the installation of the board and its officers. Special thanks to Debra Still, Immediate Past Chair of the Mortgage Bankers Association and President & CEO of Pulte Mortgage, who administered the oath of office. Photo from left: Dennis Sidbury, 2013-2014 CMBA Chairman, Northmarq Capital; Still; Chris George, 2014-2015 CMBA Chairman, CMG Financial; Susan Milazzo, CMBA Executive Director.

Congratulations to our new chairman, Chris George of CMG Financial – we look forward to a great year ahead! Big thanks to our Immediate Past Chairman, Dennis Sidbury, Northmarq Capital, who ends his term as CMBA Chair after a very successful year!

CMBA's Future Leaders group was privileged to have the chance to have enjoy a breakfast with some of the top leaders in the industry, including David Stevens, President & CEO of the Mortgage Bankers Association; Mark Zandi, Chief Economist, Moody's Analytics; and Chris George, CMBA Chairman, CMG Financial.

The highlight of this year's conference was our keynote speakers, giving us a look into the future of mortgage banking and real estate finance. Photo from left: David Stevens, President & CEO of the Mortgage Bankers Association; Susanne Livingston, Conference Chair, Owner of Residential Wholesale Mortgage, Inc.; Mark Zandi, Chief Economist, Moody's Analytics ; Chris George, CMBA Chairman, CMG Financial.

JULY 14–16, 2014, SAN FRANCISCO, CA

42nd Annual Western Secondary Market Conference *(continued)*

The conference was a big success in no small part due to our great sponsors, including Maria Heller and Bankers Insurance Service!

Our top sponsors included industry leaders like LoanLogics! Photo from left: Drew Harris, Chris Howley, and Gary Catrambone.

Always wanted to know what the president of the company thinks? Our 'president's panel' provided just such an opportunity, with moderator Buck Hawkins, 2012-2013 CMBA Chairman. Photo from left: Hawkins; Bill Beckmann, MERSCORP; Kevin Parra, Plaza Home Mortgage; Jim Cutillo, Stonegate Mortgage; Chris George, CMG Financial.

CMBA SINCE 1955 California Mortgage Bankers Association
The Voice of Real Estate Finance

AUGUST 3–5, 2014, LAS VEGAS, CA

19th Annual Western States Loan Servicing Conference

This year, our keynote speaker was Richard Koss, Director of Economics, Fannie Mae, who gave attendees a detailed and informative economic outlook. Photo from left: Don Curtis, Conference Chairman, OSC / A Breckenridge Company; Koss.

Each year we are proud to welcome our sponsors, new and returning. Big thanks to one of our top sponsors, Safeguard Properties! Thanks to Robert Klein, Alan Jaffa and the entire team at Safeguard for their support! Photo: Tod Burkert, VP of Business Development.

The exhibit hall was full of activity during the reception, prompting great conversation and networking, including at the TenA Companies booth!

Our loyal sponsors and exhibitors included USFN-America's Mortgage Banking Attorneys. Thanks as always to Alberta Hultman (l) and Michele Champion (r).

AUGUST 3–5, 2014, LAS VEGAS, CA

19th Annual Western States Loan Servicing Conference *(continued)*

We were also proud to count UHS America as one of our sponsors – thanks to (from left): Deni Archer, Brian Maita, and Cammi Thomas!

Mortgage Contracting Services was once again one of our top sponsors, and their support has been invaluable over the years! Big thanks to Caroline Reaves (l), Jessica Prater (r), and the rest of the team for their participation!

CMBA's Future Leaders again got to spend some quality time with industry leaders at the Loan Servicing Conference. Photo from left: Cristina Anderson, Kimball, Tirey & St. John, LLP; Caroline Reaves, Mortgage Contracting Services; Sherry-Maria Safchuck, BuckleySandler; Jeremy Shulman, AFRCT; Travis Grant, CMG Financial; Susan Milazzo, CMBA Executive Director.

What are servicer executive thinking these days? Our servicers panel, led by Caroline Reave of Mortgage Contracting Services, attempted to get to those answers. Panel from left: Wes Iseley, Carrington Mortgage Services, LLC; Michael Griffith, FCI Lender Services, Inc.; Reaves; Teji Singh, Land/Home Financial Services; Steve Horne, Wingspan Portfolio Advisors.

CALIFORNIA MORTGAGE BANKERS ASSOCIATION

ROAD TRIP 2014

Building Stronger Partnerships

The CMBA Road Trip and Susan found their way to Irvine to visit the offices of Johnson Capital, one of CMBA's longest tenured and most supportive commercial mortgage banking members. Big thanks to former CMBA Chairman Guy Johnson and his team for their time and support! From left: Ryan Chapman, SVP (CMBA Board of Directors), Cliff Carnes (President), Johnson (CEO/Chairman), Susan Milazzo. For more information, go to www.JohnsonCapital.com or call the Irvine offices at (949) 660-1999.

Staying in Irvine, Susan checked in with Charles Halladay at HFF, one of the largest and most successful commercial real estate capital intermediaries in the country. In addition to his work as a Director at HFF, Charles serves on CMBA's Board of Directors. To find out more about HFF, call the Orange County offices at (949) 253-8800 or go to www.HFFLP.com.

Down the road in Newport Beach, Susan stopped off to see Don and Carrie Nikols of The Nikols Company, a commercial lender specializes in making short-term real estate bridge loans on properties in California. For more information, go to www.NikolsCo.com, or call (949) 474-7577.

In Newport Beach, Susan met with one of CMBA's residential mortgage banking firms, Citywide Home Loans. Thanks to Ted Glavas (l) and Tony Pinto (r) for their time and support! For more information about the company, call (949) 238-4250 or go to www.chl.cc.

Next, Susan headed to the central coast to visit the offices of Santa Cruz Home Finance, a residential mortgage banking firm. Thanks to company execs Mary Ann Kirch and Peter Boutell for their time and support! To find out more about the company, call (866) 425-1250, or visit www.SantaCruzHomeFinance.com.

In Central California, Susan met with executives at Golden Empire Mortgage, another one of CMBA's residential mortgage banking firms. Big thanks to (from left): Rick Roper, Robert Satnick, and David Chesney for their participation! To find out more about GEM, go to www.gemcorp.com or call the Bakersfield offices at (661) 328-1600.

Finally, Susan travelled to San Jose to chat with Rick Soukoulis, CEO of Western Bancorp, a residential mortgage company serving the wholesale lending community in the Western U.S. For more info, go to www.WesternBancorp.com or call the offices at (888) 398-8757.

CMBA
SINCE 1955
California Mortgage Bankers Association
The Voice of Real Estate Finance

CALIFORNIA MORTGAGE BANKERS ASSOCIATION
555 Capitol Mall, Suite 440
Sacramento, CA 95814

EPSTEIN TURNER WEISS
A PROFESSIONAL CORPORATION

California Law Firm Serving the Mortgage Lending Community

PARTNERS

David B. Epstein
Jonathan M. Turner
Michael R. Weiss

633 West Fifth Street
Suite 3330
Los Angeles, CA 90071

Phone: 213-861-7487
Fax: 213-861-7488
www.epsteinturnerweiss.com

We are proud to be a CMBA member.

CMBA member David Epstein is the partner heading the firm's practice in:

- **Lien priority and title resolution**
- **Insurance and title insurance coverage**
- **Mortgage repurchase and warehouse lending**
- **Loan fraud**
- **Real estate litigation**
- **Business and commercial law**

Epstein Turner Weiss is a minority owned, Los Angeles-based litigation firm concentrating in mortgage, real estate, FDIC, title insurance, business and employment defense.

We are experienced counsel in mortgage, title and real property litigation in state and federal court at the trial and appellate levels.

Contact David Epstein at
DBE@EpsteinTurnerWeiss.com