THE BENEFITS OF MODERN APPRAISAL TECHNOLOGY

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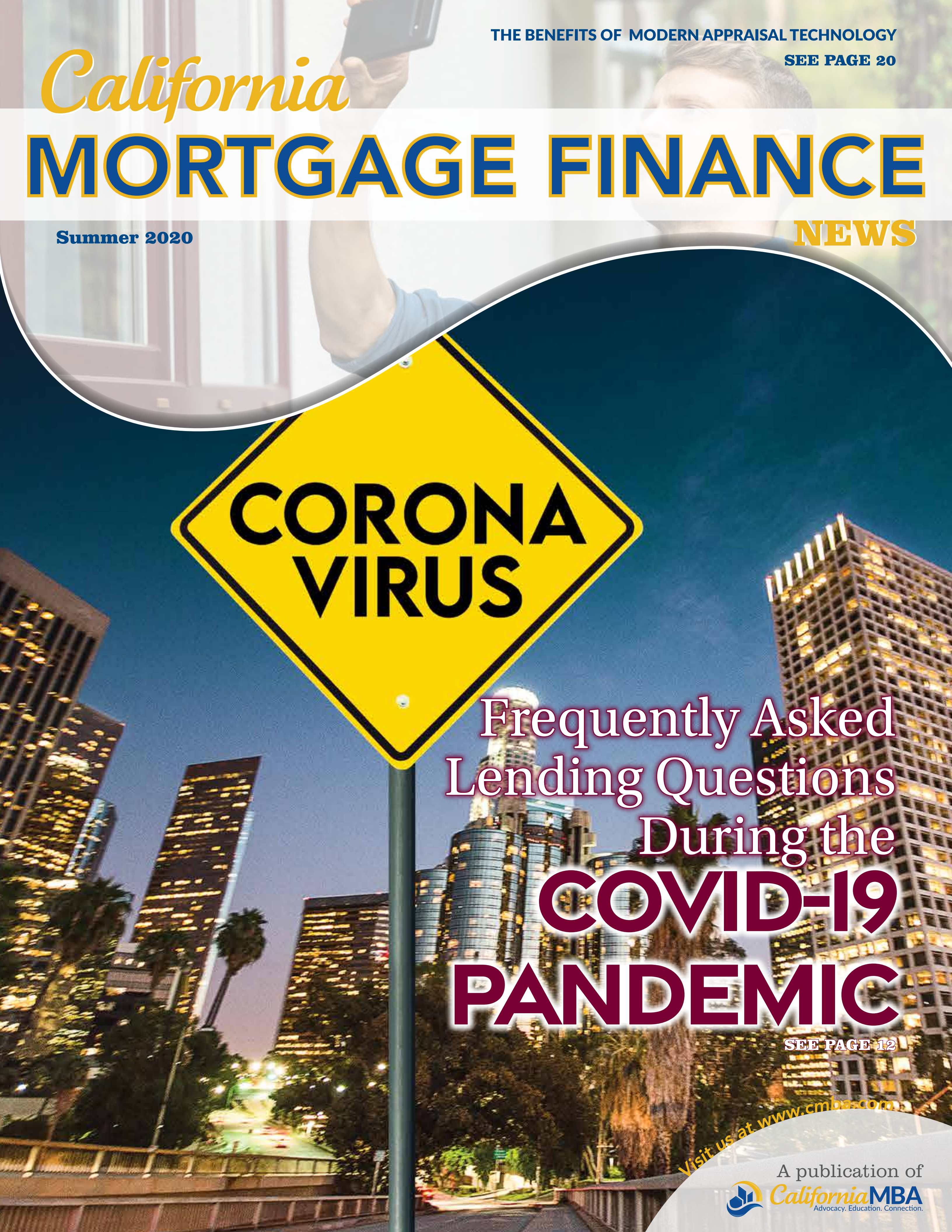
California MORTGAGE FINANCE NEWS

Summer 2020



Frequently Asked Lending Questions During the COVID-19 PANDEMIC

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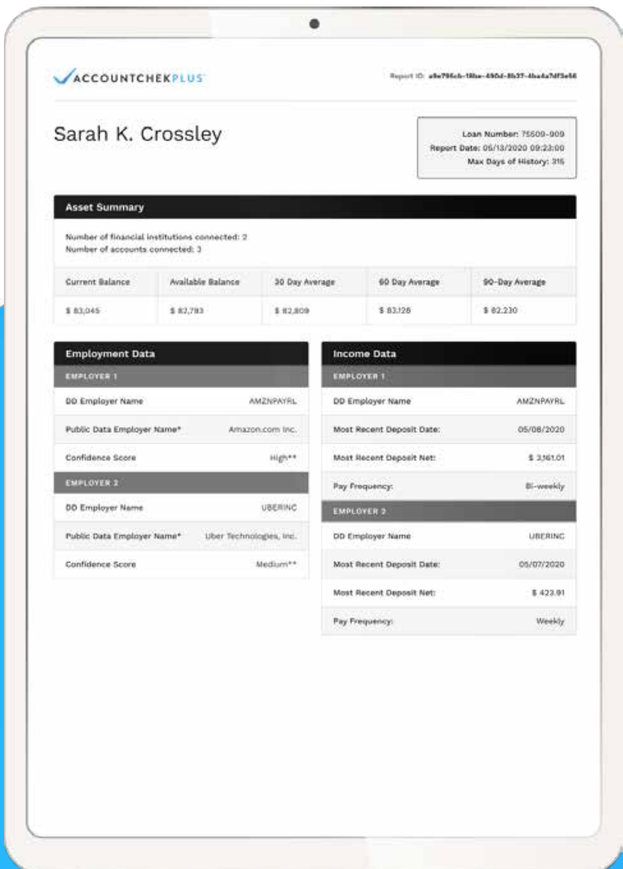

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In This Issue…

SUMMER 2020

California Mortgage Finance News is published by the California MBA three times each year: Spring, Summer, Fall/Winter.

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CHAIRMAN'S CORNER

Advocacy Efforts Yield Significant Victories Amidst Pandemic

by
BILL LOWMAN,
Chairman, California MBA, CEO/President, American Pacific Mortgage

What an honor it is to serve as Chairman of the California MBA this year. I want to wholeheartedly thank everyone who has offered me well wishes and support since I have been sworn in as Chairman. It's been truly humbling.

The impact of COVID-19 to our economy and our industry has been profound. At this pivotal time, the California MBA successfully defeated 2 bills that would have had severe consequences for all residential and commercial lenders doing business in California. AB 2501, if passed, would have enacted costly forbearance standards far beyond the federal CARES Act mandates. SB 939 would have enabled commercial tenants to unilaterally terminate leases, release any third party guarantees and limit to 3 months the tenants liability for unpaid rent after the termination of the lease. While these bills are currently dead, we must remain vigilant to any attempts to amend any current bills with similar provisions during the remaining months of the session.

Advocacy is the number 1 mission of the California MBA. I want to thank our CEO Susan Milazzo, our chief lobbyists Jon Ross and Pat Zenzola and our friends at the National MBA for their efforts. They delivered this mission in a big way!! It is during times like this that our association can deliver the most value for our industry. In order for the California MBA to continue to do, so I strongly encourage all our members to stay informed, participate with your time, energy and resources and commit to making a difference at a time where our industry and our association needs you most!

The other pillars of the California MBA are Education and Connection. One of the main ways we deliver Education and Connection are through our conferences. Due to the risks associated with any large gatherings during this pandemic, we must change our approach this year. The Mortgage Innovators, CREF and the Western Secondary Market Conference will be 100% virtual. While we are disappointed we won't be seeing each other in person, we are no less excited to deliver the conferences while bringing the same value you have grown to expect from the California MBA. We are eager to lead the "virtual" way for our industry and provide unique and innovative ways to bring Education and Connection to your businesses. I encourage your participation!! Go to www.CMBA.com and click on 'Events' to view the updated calendar for the year.

Someone recently said to me "it's too bad that all of this is going on during the year you are Chairman." My response to that is simply this: there has never been a better time for all of us to stand up and lead for our industry, our companies and our communities. We've got this!

CEO'S LETTER

Times Change, Yet Our Mission Remains the Same

by
SUSAN MILAZZO,
CEO, California MBA

Well here we are. It's amazing how things can change so dramatically in a short period of time. We're all feeling it this year. Not one of us could have predicted that we'd follow a first quarter of record level volume that would be immediately followed by a global pandemic that dramatically stalled our economy, forced everyone to "shelter in place" and "work from home", and will forever imprint on each of us alive during this era. When I wrote my last article (Spring 2020) when the market was humming along nicely, I wanted to share with everyone the importance of supporting our association by your membership and conference participation because those are the main sources of revenue for the California MBA. **We use those resources to fund our advocacy efforts.** So, what does that mean, why should you care, and what have we done for you lately?

Simply put, "advocacy" for the California MBA means representing the real estate finance industry before the California State Legislature and regulators. That's typically a very big job but this year, as with many things, the dynamics shifted quickly. Due to COVID-19, the California Legislature went into an unplanned recess for several weeks trying to figure out how to move forward in a virtual environment. They were trying to figure out everything you were also figuring out with your own companies. When they reconvened in early May, the legislative leadership signaled that all members should dramatically reduce the number of bills they'll move this year (down to 2 or 3 versus dozens for each legislator!) and asked that those bills focus on COVID-19 relief efforts. Two bills that came into focus quickly for us were AB 2501 and SB 939. Before I frighten you with the details, I'm happy to tell you that due (in part) to our advocacy efforts, both bills were recently defeated.

AB 2501 would have allowed everyone in California and automatic 180 days of forbearance with an automatic additional 180 days, if the borrower chose. Key words here being "automatic"! No fees or penalties could be assessed during this time and a servicer would have to provide loan modification and loss mitigation options to the borrower when they went into forbearance. You might think that's not possible, but it's true! The laundry list of servicer requirements was lengthy and among the severe penalties for a violation of any of the provisions of the bill included the loss of the right to foreclose on that property forever. Also noteworthy is the fact that this bill was introduced by the Chair of the Assembly Banking Committee, our main policy committee in that house.

SB 939 would have placed a moratorium on commercial property evictions during the

...CEO's Letter continued on page 34

LEGISLATIVE REPORT

Legislature Adapts to Changed Calendar/Process

by
PAT ZENZOLA,
California MBA Legislative Counsel, KP Public Affairs

There couldn't be a more stark contrast in the state-of-the-state than comparing the situation in January, when I wrote the first legislative update of the year, and the situation in June while completing the current addition. In January, prior to experiencing the impact of the COVID-19 pandemic, the California economy was booming. Unemployment was at a record low of 3.9% and the governor was proposing a record $222 billion budget because state coffers were overflowing. As of the writing of this article, the unemployment rate is 13.3%; the economy is only beginning to recover from a prolonged COVID-19 shutdown; and the governor is estimating a $54 billion budget deficit, causing legislative leaders and the governor to clash over the proposed deep cuts in the governor's revised budget plan.

Democratic legislators angled to avoid the roughly $14 billion in cuts proposed in the governor's May revised budget proposal that would be triggered July 1 if Congress does not send states more financial assistance. They called those proposed cuts draconian, arguing that deep cuts to programs that help low-income people will cause more Californians to rely on government assistance and become homeless in the future, ultimately costing the state more. On June 15, the Legislature passed their own budget plan, which attempts to avoid slashing education and health care funding by delaying cuts in anticipation of future economic relief. This is even as they admitted that they will need to make changes as budget negotiations continue through the year as the state's fiscal picture becomes more focused. Their plan contains about $7 billion in cuts that would be triggered in October.

The legislative process was also hit hard by the pandemic. In quick succession in mid-March the Legislature passed an emergency legislative package providing $500 million to help California fight COVID-19 and authorizing increases up to a total of $1 billion; the governor issued an executive order for Californians to stay at home unless they need access to essential services as well as shutting down businesses and other organizations not deemed essential; and the Legislature recessed initially until April 13. That recess was later extended into early May.

The legislative recess resulted in a contracted timeframe for bills to be heard in committees and on the respective Assembly and Senate floors. This forced a significant reduction in the volume of bills. By the bill introduction deadline in late February, there had been more than 2,200 proposed bills introduced, but legislative leadership asked members to greatly reduce the number of bills they intended to move to a handful of priority bills per member.

...Legislative Report continued on page 36

MEDIA & MARKETING

Ask the Right Questions Before Jumping into the Political Fray

by
DUSTIN HOBBS,
Communications Director,
California MBA

While the social upheaval and change that has roiled the nation over the past few months has dominated headlines, an underappreciated change is taking place in corporate America. Companies and industries are quickly becoming more open to taking public political positions on a number of extremely controversial issues. Some of the brands that have jumped into the fray seemed to be doing it in a considered fashion, while others seem to be reacting with a potentially rash move that can generate backlash. Whether the company is a business of 5 or 500 or 5,000, the decision to engage in a divisive issue is fraught with peril. Historically, it was considered axiomatic that businesses don't get political. They understood their audience (or desired audience) to generally be broad, and with no ability to micro-target audiences, nearly every business realized the danger in potentially limiting their clientele. Fast-forward to 2020, and following several years of brands dipping their toes in the political waters, seemingly every brand from Coca-Cola to Amazon to Dick's Sporting Goods, virtually every major professional sporting league, and countless industries have jumped in head-first into the deep end of the pool, particularly on social media.

The purpose of this article is not to debating the merits of whether or not individual instances of political advocacy are right or wrong; I think the more interesting conversation, from a marketing perspective, is to determine what are the right questions to ask before launching a politically-motivated campaign. Here are just a few of the considerations I think decision-makers need to bear in mind—two big questions that I'm not convinced everyone is taking the time to ask and answer:

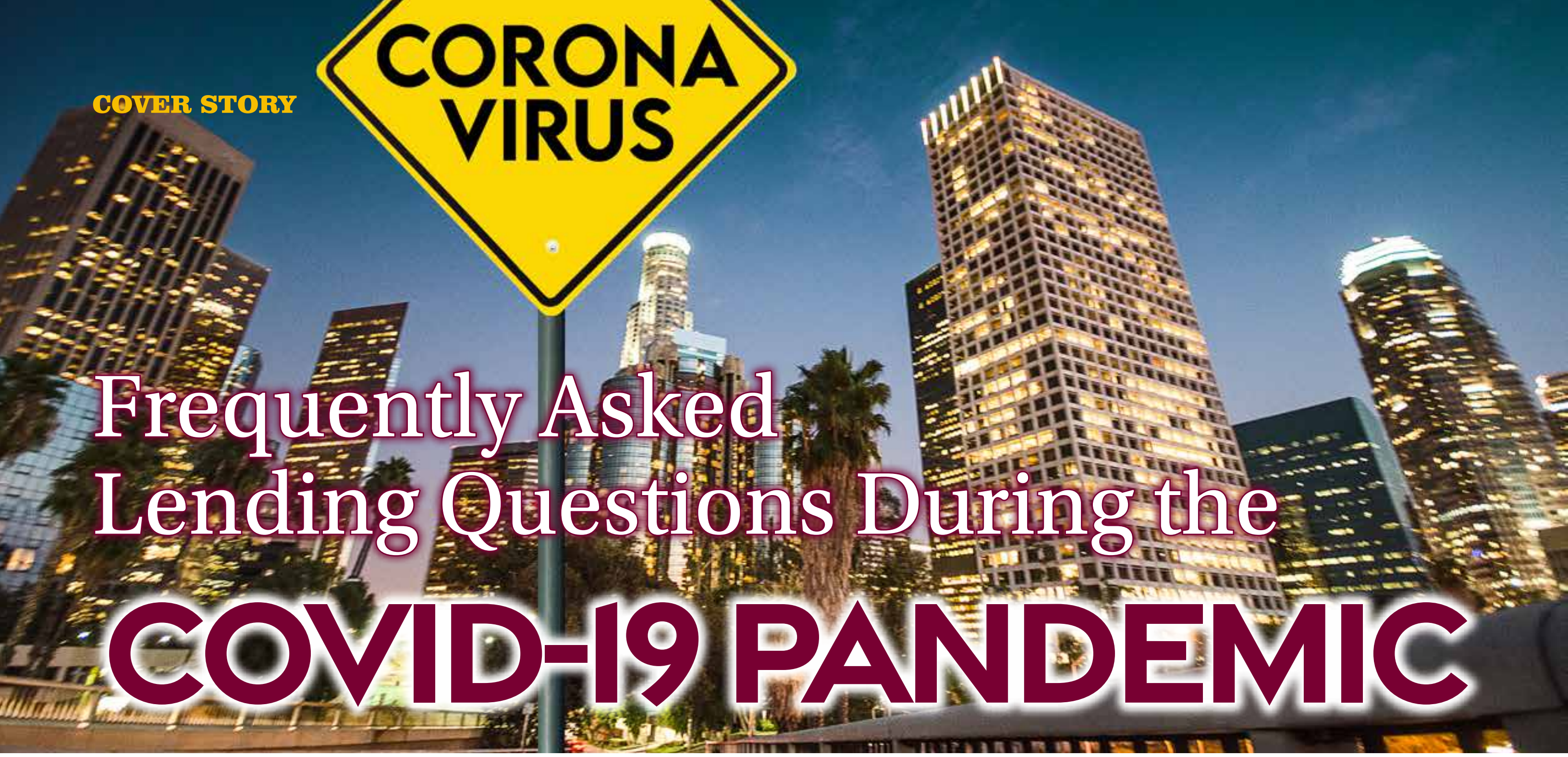
START WITH THE "WHY" QUESTIONS

Before determining the "when" and "what" of your foray into social/political activity, ask the most important question: why are we doing this? Why are we taking this controversial stand? Is this a cynical ploy to avoid harassment and/or juice sales, or is this a genuine, company-wide value that you're expressing in a corporate, public fashion? Be honest with yourself. Getting to the heart of this answer is key to navigating these potential treacherous waters.

Additionally, consider the cost/benefit of staying out of the fray. If this isn't clearly a deeply-held conviction (think Ben & Jerry's or Hobby Lobby), you might find your efforts backfire spectacularly. Witness the effort by Pepsi in 2017 to combine protest imagery with Kendall Jenner, in a campaign that only seemed to trivialize protestor demands and made the company seem tone-deaf. Clearly, they would have been better served to either

...Media & Marketing continued on page 39

COVER STORY



Frequently Asked Lending Questions During the COVID-19 PANDEMIC

by
DANIEL FRIEDEBERG,
CEO, Slatt Capital

These unprecedented times have many of Slatt Capital's clients asking questions to help them understand where things stand in the lending market. We have compiled some of the most common questions we've been hearing and wanted to share the answers here.

Is there any liquidity in the market for commercial real estate financing?

The short answer is YES! All major property types are financeable, although hospitality properties are the most challenging, followed by retail since these properties have been most impacted by COVID. Even so, our firm has funded 2 hotel loans in this COVID-19 environment, and we continue to have success closing and sourcing new retail loans. Lenders are being much more conservative in underwriting retail and have required verification that retail tenants are open for business and paying rent. Additionally, many lenders are choosier with any degree of cash-out requests, even on low or moderately leveraged loans.

Are all major categories of lenders actively lending?

Yes, all major lender types are active in the market, but at very different levels than existed pre-COVID. The market has shifted into a more lender-driven atmosphere, and there is a clear divergence in how the various capital sources compare and where they are most competitive.

Most insurance companies are actively lending. They are taking a conservative approach to underwriting, because they generally hold loans on their books as long-term investments. Ten-year fixed-rates range from 2.75% to 4.25%. Some insurance companies were a bit distracted with COVID-related loan relief requests in March and April, but most are now back looking for deals, as they still

...Cover Story continued on page 13

Cover Story continued from page 12...

have allocations that need to get out by year-end.

Many banks are still lending, but they are also using much more conservative underwriting requirements. We are fielding many calls from borrowers seeking help with financing, as their existing banking relationship either changed their program or no longer offers a reliable execution. Fewer banks are offering construction and bridge loans, as they carry a greater perceived risk than loans on stabilized assets.

The market for agency debt has remained liquid throughout the COVID-19 pandemic, with an added appetite for workforce housing. Many new agency loans have specific reserve holdbacks to deal with short-term collections due to COVID but have some of the most aggressive rates, ranging from 2.50% to 4.00%.

The CMBS market froze in early March as a result of the COVID-19–induced financial market meltdown. Since then, there have been several successful securitizations as CMBS lenders have started to creep back into the market. There are encouraging signs of this market picking up in the second half of 2020. Currently, 10-year fixed rate pricing for CMBS loans is in the 3.50-4.00% range for most deals.

Are all lenders taking funded reserves for tenant improvements, leasing commissions, taxes, insurance, and principal and interest payments?

No, not all lenders are taking reserves. The reserve structure in a loan really depends on the type of loan as well as the lender type. Many loans are being made without reserves at all, but many lenders are now using reserves, which are much more common than in the pre-COVID era. Every reserve structure, if required, is a deal-by-deal negotiation.

Where should I expect my rate to be?

Rates for most loans are in the 3.0–4.0% range.

With most people working remotely, is it taking longer to get quotes and close loans?

Yes, it is generally taking a bit longer to get quotes and close loans. Choosing the right lender to provide certainty of execution and handle the unexpected is critically important. Having an experienced closing team that can get out in front of problems and creatively solve issues also helps.

Our Slatt Capital platform is engaged with a diverse lender network and real-time market intelligence that is a critical advantage in this fast-changing COVID landscape. It is critically important for borrowers to work with a fiduciary who has a strong lender network and relationships to help solve any problems that arise. It is now a lender-driven market.

If you have borrowing/lending questions that are not covered in this shortlist, all of Slatt Capital's commercial mortgage bankers are available and working hard to assist you and meet your needs.

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ROUNDTABLE

Update on Commercial/ Multi-family Real Estate Finance

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 California MBA's experts for their thoughts on the issue at hand. In this issue of CMFN, we ask a pair of CRE experts for their take on the top trends/ issues of the day.* **Cody Charfauros** *is Principal/Managing Director (San Diego) at Slatt Capital and* **Jay Grenfell** *is National Client Manager, Principal at Partner Engineering & Science, Inc.*
The views and opinions expressed are solely those of the authors.

CALIFORNIA MBA: WHAT IS THE STATE OF THE CRE INDUSTRY RIGHT NOW? HOW HAS THE COVID-19 PANDEMIC IMPACTED MARKETS?

Charfauros: I'd say it's a mixed bag. On the one hand, the global shutdown has directly impacted nearly every business in the U.S., starting from December 2019 for importers from Asia and continuing through to every hotel, retail center, apartment tenant and industrial user. Continuous shut down and slow reopening have bifurcated the market into tenants that have reserves or other government support and those who are on their own. Many tenants are suffering and many businesses, especially lower margin service-oriented businesses, may not survive in the mid-term and it may be tougher to backfill such space for the foreseeable future. We have already seen the public REITs and some MAI appraisers make "COVID-19 valuation adjustments" to assets, largely without the benefit of actual transactional data to back them up.

Still, the other hand of CRE is always that where there is market disruption, there is market opportunity. Take delivery-oriented and last-mile services as a prime example; many thought leaders have pointed out that adoption of grocery and meal delivery has taken a 10-year leap forward with millions of brand-new users. Restaurants that have been able to reopen are adapting, some for example using no-touch digital menus on your phone that takes care of order, billing and tips which significantly cuts down in-person interactions and might make a business more efficient overall. As with anything, there are winners and losers and although we all lost overall, some will be innovative enough to pull through better off than pre-crisis.

Grenfell: The state of the CRE industry can be described as cautiously optimistic. Some are feeling the pain more than others, hospitality and retail quite obviously. Multi-family has weathered the pandemic better than expected in many markets and the impacts on long-term office leasing remain to be seen. The good news is that fundamentals were strong

...Roundtable continued on page 40

SPECIAL ARTICLE

Daniel F. Mulvihill

January 12, 1927 — July 1, 2020

EDITOR'S NOTE: *Dan Mulvihill was a beloved longtime member of the California MBA, and served on the Board of Directors for a number of years, including serving as chairman of the organization from 1982–1983. The following obituary was provided by the Mulvihill Family.*

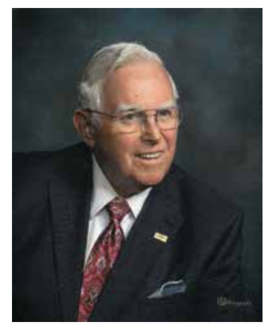
Daniel F. Mulvihill was from an Irish settlement in Cumming, Iowa. He was born on January 12, 1927, at Mercy Hospital in Des Moines, Iowa to proud parents, James and Katherine Mulvihill. He was the fourth of eight children.

Dan grew up on the Mulvihill Family Farm, where they grew corn, soybeans and raised Herford cattle and hogs. As a boy, Dan was educated at Lee #7, a one room schoolhouse, along with his seven siblings and neighbors. He attended Dowling High School, Des Moines. Dan graduated from Iowa State University, with a degree in Animal Husbandry in 1949.

After graduation, Dan served in the U. S. Army, as a PFC, attending boot camp at Ft. Carson, Colorado. Because of his farm background, he was given the charge of inspector of all foods of animal origin for all branches of the service, mainly inspecting and purchasing meat, pork, eggs, in the Midwest region.

After completing his time in the Army, Dan returned to assist on the family farm. He re-enrolled at Iowa State University in 1953 to take a course on animal nutrition. That was a life-changing decision, as he met Mary Collins, a senior at Iowa State University.

In July of 1953, Mary and her family relocated to La Jolla, CA . Dan kept in touch and soon followed Mary to La Jolla in February of 1954, and they were married in August of 1955. They continued their love affair and marriage for 64 years.



Dan is survived by his loving wife Mary and his six children and twelve grandchildren. They are: Dr. Mary M. Mulvihill, Dr. Daniel F. Mulvihill II (Kathleen), James J. Mulvihill, John C. Mulvihill, Julie Mayer (Robert), and Michael J. Mulvihill (Wendy). Dan's beloved grandchildren include Daniel F. Mulvihill III, Melanie Mulvihill Sizor (John), Kevin Mulvihill (Caitie), Michael Mulvihill, John Mulvihill II, Keely Mulvihill, Annie, Kate and Ella Mulvihill, and Faith and Bo Mayer, brother Robert Mulvihill (Josetta), sister in law Pat Mulvihill, sister in law Jeanine Mulvihill, brother in law Robert Collins (Alicia), brother in law Arthur Thomson, sister in law Ruth Kelly, sister in law Judy Collins, and sister in law Sandy Collins.

Dan began his career in 1954 making farm and ranch loans in California for the Percy H

...Mulvihill continued on page 43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STEPHEN ANTUNA

Reggora, an appraisal software company that is modernizing the residential real estate valuation experience for lenders, appraisers, and borrowers, announced recently that Stephen Antuna will join as Chief Revenue Officer. As CRO, Antuna will lead all sales and business development functions, reporting to the CEO & Co-Founder, Brian Zitin in the company's new Boston Seaport headquarters.

A seasoned software executive, Antuna brings to Reggora 20 years of experience and a proven track record of leading and motivating high-performing sales teams. He joins Reggora from LogMeIn (LOGM recently acquired for $4B), where he was Vice President of Sales for LogMeIn's Customer Engagement & Support business. In addition to heading the global sales efforts, he was responsible for leading the company's first AI driven product launch. Prior to LogMeIn, he held various leadership roles at Guidespark and Thomson Reuters. Antuna is also an active board member for Boston based non-profit, America SCORES Boston.

LORI BREWER

LBA Ware™, a leading provider of incentive compensation management (ICM) and business intelligence software solutions for the mortgage industry, today announced company Founder and CEO Lori Brewer has been named an honoree of NEXT Mortgage Events' (NEXT) 50 Over 50 awards program. In its inaugural year, NEXT 50 Over 50 honors influential female leaders in the mortgage sphere.

Brewer was recognized for her technological contributions to the mortgage industry and prominence as a thought leader, speaker and educator whose quarterly compensation reports and expert guidance on the topics of LO compensation and data-driven business optimization have positively impacted lenders of all stripes.

CARISSA OROZCO

ReverseVision, the leading technology provider for the Home Equity Conversion Mortgage (HECM) and private reverse lending program market, today announced the appointment of Carissa Orozco as director of business development, strategic partners. Orozco will spearhead strategic integration partnerships that allow traditional mortgage lenders to integrate HECM and private reverse mortgages into the loan qualifying, sales and origination process with ease.

Orozco brings 17 years' mortgage industry experience to ReverseVision, having acted in senior leadership positions at leading reverse mortgage lenders. Most recently, Orozco served as vice president of reverse sales at United Northern Mortgage Bankers, where she led the integration of reverse programs into forward sales and operational processes. Orozco also has held the position of director of learning and organizational development at Synergy One Lending and Retirement Funding Solutions, where she oversaw training initiatives for the companies' wholesale clients, retail loan originators and internal operational departments.

California MBA Members WHO'S WHO

JOSEPH OTTING

Black Knight, Inc. (NYSE:BKI) a leading provider of integrated software, data and analytics to the mortgage and real estate industries, announced today that Joseph M. Otting, former Comptroller of the Currency, has been elected to serve on the company's Board of Directors.

"We are extremely proud to have Joseph serve on the Black Knight Board of Directors," said Black Knight Chairman Bill Foley. "His extensive experience in both the financial services and government sectors will prove invaluable to Black Knight."

Otting was nominated for the position of Comptroller of the Currency in June 2017, confirmed by the U.S Senate, sworn in during November 2017, and served until May 29, 2020. From January 2020 through April 2020, Otting also served as Acting Director of the Federal Housing Finance Agency, which oversees the government-sponsored enterprises Freddie Mac and Fannie Mae.

BLACK KNIGHT®

DAVID SOBER

LRES Corporation, a real estate appraisal, valuations, and asset management company, has expanded the leadership role for David Sober as Vice President, National Sales Manager.

Mr. Sober plans to aggressively grow LRES' top line revenue and strategically expand their market presence in the mortgage origination, home equity, servicing, capital markets and commercial real estate industry. Mr. Sober is responsible for revenue growth as well as supporting strategic mergers and acquisitions.

"I am excited about the opportunities and challenges that lie ahead as we look to expand our operations and achieve tremendous growth targets. I'm fortunate to work alongside a talented and knowledgeable team poised to accomplish our goals," states Mr. Sober.

"For the past three years, David has shown us his innate drive for success. We are thrilled to have him take on this expanded role and lead the national sales team," states LRES President, Mark Johnson.

Mr. Sober has been in the mortgage industry for over eight years and has built relationships with federal agencies, GSEs, and top lenders, servicers, and investors.

Lres
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If you would like to submit an employee to be recognized in an upcoming issue, email dustin@cmba.com for more information.

Have you updated your Membership Directory LISTING?

One of the benefits of your California MBA membership is inclusion in our online Membership Directory! Make sure your company's info is up to date! Email dustin@cmba.com for more information!

FEATURED RESIDENTIAL

The Benefits of Modern Appraisal Technology

by
BRIAN ZITIN,
Co-Founder & CEO,
Reggora

It is no secret across the mortgage industry that appraisals are one of the most costly, prolonged, and frustrating parts of the lending process. In today's digital economy, both lenders and borrowers expect a seamless and accessible lending experience. But this expectation often falls short during the appraisal component of the lending/borrowing process.

The reason for this is straightforward: the appraisal process hasn't improved in over a decade, and the workflows are supported by outdated software providers. The combination of these two factors leads to a predominantly manual process that occurs during one of the most critical periods of the loan origination cycle.

Changing the workflows to address these inefficiencies is where modern technology can offer substantial benefits. New technology can provide the industry with logistics optimization, accessibility, and automation that streamline the manual processes of the appraisal. In a nutshell: the industry is ready for a technological transformation.

WHY APPRAISALS CAUSE PROBLEMS

It's no secret that the appraisal can cause a lot of headaches for everyone involved.

For the loan officer and the borrower, the valuation component can be very nerve racking. As the appraisal is one of the few areas of a mortgage that is completed by a third party, there isn't much transparency into the timelines, what is going on, who is doing the work, etc. Many lenders refer to this as the 'blackbox' of appraisal, and it contributes to the uncertainty of the process. Furthermore, if the appraisal is delayed or more complicated than originally thought, it can completely delay a closing. Or even worse, the borrower can lose the deal on an outstanding offer.

For the lender, the appraisal process can be a nightmare to manage across teams while staying 100% compliant. Loan officers are often escalating complaints, and processors spend countless hours chasing down statuses and payments.

The good news is that all of this stress and wasted time can be easily avoided.

HOW TECHNOLOGY CAN HELP

As more and more of the lending process is digitized, from point of sale systems to automated title companies, it is becoming increasingly clear that the current appraisal process is simply inadequate. The appraisal industry must evolve to solve the challenges of recent history and meet the heightened expectations of borrowers and lenders.

While there are some challenges that can't be solved with technology alone, modernizing the software can bring several serious benefits to the table.

...Feat. Residential continued on page 45

FEATURED COMMERCIAL

Defeasance is Effective Shark Repellent

by
STEVE MORUS,
Director,
Defeasance Services

Blood is in the water. Sharks are circling.

It is no secret that real estate owners feel intense pressure due to the pandemic. While real estate costs remain largely fixed or are increasing, global shelter-in-place orders have drastically reduced the timely collection of rents. This inevitable cash flow hemorrhage leaves many property owners desperate for relief. Stimulus programs launched simultaneously by the Federal Reserve, Congress, and the President, resulting in ultra-low short and long-term interest rates, are welcome lifeboats for property owners.

Unfortunately, massive uncertainty surrounding the speed and completeness of the economic recovery is keeping many traditional lenders on the sidelines; banks, insurance companies and non-bank lenders just cannot get comfortable lending while the waters remain choppy. Although those institutions are in much better shape than they were going into the 2008 financial crisis, painful lessons from those years are still fresh in their minds. For lenders, while chaos is in plain view, maintaining liquidity outweighs return.

Everyone is bruised and bleeding. So, sharks are circling, waiting for prey to weaken enough to be an easy meal.

What is Defeasance?

Defeasance enables a borrower to refinance or sell their property. Provisions in many Loan Agreements restrict borrowers from paying off their loan early to release them from their mortgage obligations. Defeasance substitutes a skillfully constructed basket of low-risk securities to replace the borrower's property as collateral for a mortgage.

Why Can't Borrowers Simply Pay Off Their Mortgages?

The problem is Securitization. That is a process in which commercial real estate lenders sell their loans to be transformed into investment grade securities. Securitization is an important source of funding for lenders that enables them to make new loans. Paying off commercial mortgages pooled into a security before they reach maturity can compromise the economics of these complex investments. Lenders insist on prepayment restrictions in loan agreements, so their assets remain eligible for securitization. Borrowers receive favorable rates to motivate them to accept prepayment restrictions.

Defeasance Empowers the Borrower

Because of securitization, mortgages need to live on to maturity. On the other hand, borrowers need to be free of their mortgages in order to refinance or sell their properties. The fundamental problem is that a borrower remains tied to a loan because their property

...Feat. Commercial continued on page 47

California MBA Members Latest Commercial Deals

Bellwether Enterprise Closes Nearly $98M Deal for Industrial Assets

Courtesy of GlobeSt.com

Enterprise Community Investment Inc.'s commercial mortgage banking subsidiary, Bellwether Enterprise Real Estate Capital LLC has closed a $97.7 million loan deal for five warehouse and distribution buildings.

BELLWETHER ENTERPRISE

Of the assets, four of the properties are located in Los Angeles County's South Bay submarket, and the fifth property is located in the Inland Empire West submarket.

Ranging in size from 60,000 square feet to more than 500,000 square feet, with clear heights ranging from a minimum of 18 to 36 feet, each of the warehouse and distribution buildings are of concrete tilt-up construction. With minimal office build-out, the properties' total leasable area comprises nearly 950,000 square feet. One of the buildings features refrigerator space.

The interest rate of the 25-year, fully amortizing loan was locked at application. The loan includes prepay flexibility, secondary financing, partial release and substitution of collateral.

Hunt Real Estate Capital Provides a $5.2 Million Freddie Mac Small Balance Loan to Refinance a Multifamily Property in El Cajon, California

Hunt Real Estate Capital announced recently that it has provided a Freddie Mac Small Balance Loan in the amount of $5.2 million to refinance a multifamily property located in El Cajon, California.

HUNT
HUNTREALESTATECAPITAL.COM

Lincoln Palms is a 48-unit, walk-up style apartment community that is comprised of three buildings that are currently 100% occupied. There are 53 parking spaces available onsite, as well as street parking located in the surrounding neighborhood. The property was built in 1967 and most units have been upgraded.

The unit mix includes 31 one-bedroom, one-bathroom units and 17 two-bedroom, one-bathroom apartments. Some of the units have private patios/balconies.

Single-Room Occupancy Hotel Asset in San Francisco Sold by Marcus & Millichap

Marcus & Millichap Capital Corporation

Marcus & Millichap (NYSE: MMI), a leading commercial real estate brokerage firm specializing in investment sales, financing, research and advisory services, announced recently the sale of the Abby Hotel, a 15,925-square-foot, 54-unit single-room occupancy building in San Francisco, California. The property sold for $8 million, which equates to $148,148 per room.

"The offering hit the market shortly before the shelter-in-place order and received a great deal of interest from local and regional hospitality and multifamily investors," said Jag Patel, senior associate in Marcus & Millichap's Oakland office. "Despite the challenges caused by COVID-19, we generated 15 offers and closed on time." Patel and Max Kandel exclusively listed the property on behalf of the seller. "The vast majority of the units, 52 of 54, were delivered vacant," noted David Nelson, regional manager of Marcus & Millichap's Oakland office. "Jag and Max created a strong market for the property and maximized its value despite changing economic times."

SPECIAL ARTICLE

William A. Millichap

EDITOR'S NOTE: *The following obituary is courtesy of the LA Business Journal*

William A. Millichap, co-chairman of the Calabasas, California-based commercial real estate firm Marcus & Millichap Inc., has died after a year-long battle with cancer. He was 76 years old.

"Bill was the truest of friends that one could ever have, and a real partner in good times and challenging ones," said Marcus & Millichap (NYSE: MMI) founder and Chairman George M. Marcus in a statement. "He was a unique and exceptional leader, coach and innovator. All who knew him would point to his intelligence, endless energy, enthusiasm, discipline, loyalty and competitiveness as main ingredients that made him the life force that he was."

Millichap joined G.M. Marcus Company as an investment broker shortly after the firm's founding in 1971. By mid-decade, he was regional manager of the company's Palo Alto location. He served as president and director from 1985 to 2000, and as co-chairman of the board until his death.

"The company's formative years benefited greatly from Bill's push for innovation, including our training programs, professionalization of the industry, and adaption of technology — key building blocks of the firm's market leadership," added Marcus, singling out the firm adopting "the industry's first centralized, electronic inventory system as early as 1978. He led countless evolutions of the company's brokerage tools and client services, which helped achieve exceptional growth."

Millichap is survived by his wife Sherrie; children Laura, Greg, Jeff and Stacy; and eight grandchildren.

Click here to view more,

California MBA Members
Latest Commercial Deals

NorthMarq finalizes $10 million refinance of Lambert Industrial in Fullerton, California

Daniel McCarthy, senior vice president, and Michael Elmore, managing director of NorthMarq's Newport Beach office worked together to arrange the $10 million refinance of Lambert Industrial in Fullerton, California. The two properties contain a combined 87,652 sq. ft.

The permanent-fixed loan was structured with a 10-year term on a 30-year amortization schedule. NorthMarq arranged financing for the borrower through its relationship with a national bank.

The 150 Lampert is 45,761 rentable sq. ft. and 110 Lampert is 41,891 rentable sq. ft., a total of 87,652 rentable. The property features a new state-of-the-art corporate headquarter buildings located in a business park.

"NorthMarq was able to get the deal rate locked at the beginning of the Covid Crisis and lender, because of the low leverage, was able to keep all other terms as quoted and closed on a very timely manner under the circumstances," said Elmore.

Thorofare Capital Funds $24M Acquisition Loan for Beverly Hills Portfolio

Courtesy of Connect Group Media, Inc.

Los Angeles-based Thorofare Capital funded a $23.8 million acquisition loan for a Beverly Hills, CA portfolio. The properties include 415 North Camden Dr., a 17,936-square-foot, two-story mixed-use retail, medical and office use building in the renowned Beverly Hills Golden Triangle. The second property includes a 10,884-square-foot medical office building, located at 152-160 South Lasky Dr., adjacent to the Lasky Hotel development across the street from the Peninsula Hotel.

JLL's Marc Schillinger and Eric Boucher advised the borrower, a local private real estate investor. Thorofare mobilized quickly to step in as a reliable financing source after another non-bank bridge lender was sidelined due to CLO dependence.

"JLL contacted us over the weekend after learning that a previous lender was unable to proceed. We mobilized to close this transaction in seven business days, based on the attractive location of the real estate, the experienced sponsorship and financing metrics," said Felix Gutnikov, Thorofare's head of originations.

RESIDENTIAL

Build Brand Equity with Social Media Advertising

by
LINN COOK,
VP of Sales, OptifiNow
and
DANIELLE WHETSTONE,
Senior Strategist, C Squared Social

Competition within the mortgage industry is fierce, and the race to be first to the borrower can be brutal. The good news for lenders is that gone are the days of being at the mercy of loan officers holding the reigns of connections to borrowers. Rather than waiting for relationships to come to you (often with strings attached), take advantage of getting direct access to homeowners and house hunters. And as a new generation of customers come to market—individuals that are habitually tethered to technology—now is the perfect time to advertise on platforms they're most familiar with: social media.

FACEBOOK CHANGED EVERYTHING

The way we connect with one another and stay informed has forever been changed since Facebook's inauguration in early 2004, and its use has steadily grown every year since. Recently topped only narrowly by YouTube, Facebook is still the second most used social platform with Instagram (owned by Facebook) coming in an increasingly close third. Advertising on social media is by no means a new phenomenon, and when you look at the demographics of users, you'll understand why. Around seven-in-ten Americans use some sort of social media with nearly 75% of them checking their platform of choice daily. While data does show that social media use decreases as age increases, put to rest the notion that social media is only for the young, as 70% of Americans age 50–64 use at least one type of social media. Not too far off from the 90% of 18–24-year-olds.

The above statistics should put to bed any misconception that your ideal mortgage customer isn't actively on social media. So why has the mortgage industry, by and large, fallen behind comparatively when it comes to taking advantage of these well-used platforms? Of course, traditional marketing avenues such as direct mail, and radio and TV ads continue to have value, but unlike that highway billboard, social media ads not only allow you to have tremendous reach across age, life stage, and socio-economic lines, but be able to tangibly measure your return on advertising investment. Any marketer worth their salt will encourage a variety of advertising tactics, but not tapping into social media platforms puts you at a huge disadvantage. And, to be sure, if your competition isn't yet advertising on social media, they're about to.

THE LEARNING CURVE

To clarify, we're not talking about getting more likes on a page or boosting posts, but the robust features available through paid advertising. Learning the ins and outs of platforms such as Facebook takes time, and it can be

...Brand continued on page 49

RESIDENTIAL

The California Loan Forbearance Law that Never Was, at Least Not Yet

by
JARLATH M. CURRAN, II,
Member, Severson & Werson

In the wake of the COVID-19 health crises, the Assembly Banking and Finance Committee passed Assembly Bill 2501 (the "Bill"). The stated purpose of the Bill was to assist individuals through the economic hardships that may befall them due to COVID-19.

After substantial push back from industry leaders, the Bill failed to pass the Assembly floor vote on June 15, 2020. The June 18, 2020 session also adjourned without the Bill being reconsidered. As June 18th was the last session before the deadline for bills to pass the Assembly, the Bill is all but defeated. Or is it?

The Bill was not urgency legislation. Therefore, as drafted the Bill would not have become effective until January 1, 2021, or ten months after Governor Newsom declared a state of emergency. You'd think that the Legislature would prefer to implement the Bill on an urgent basis so that borrowers would be in a position to quickly reap the benefits. But that was not the case.

One take away is that the Legislature believes the financial impact of COVID-19 will still be a major issue facing borrowers in 2021. With some individuals cautioning about the possibility of a resurgence of COVID-19 cases in the fall, it is conceivable that the Legislature will try to bring the Bill back to life as urgency legislation later this year, or in early 2021, if there is another shut down. For this reason, it is important to remain vigilant and understand what could be coming down the line. This article discusses the main aspects of the Bill as it relates to residential mortgage loans , as well as key problems with the legislation.

THE YEAR WITHOUT FORECLOSURE

For the twelve months following the Bill's operational date, the servicer cannot pursue either judicial or nonjudicial foreclosure, or take any eviction action. The only exception is if the property securing the loan is vacant or abandoned. In other words, this Bill would stop all foreclosure and eviction activity on occupied property **for an entire year** with no regard to the underlying loan's status or whether the borrower has any interest in foreclosure alternatives.

THE YEAR WITHOUT A PAYMENT

If a borrower cannot make the mortgage payment due to a financial hardship caused "directly or indirectly" by the COVID-19 emergency, the borrower can request, **either orally or in writing**, a forbearance from the mortgage obligations for an initial period of up to 180 days. This forbearance can be extended, at the borrower's request, for an additional 180 days. A borrower can also request that the forbearance period be shortened or discontinued.

There is no requirement that the borrower submit documentation to actually support the hardship. A servicer can request that the

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RESIDENTIAL

Advancing Lenders Forward: Secondary Marketing Success in a Post-Pandemic Environment

by
JIM GLENNON,
Director, Secondary Services, Optimal Blue

To date, 2020 has certainly proved to be an interesting challenge for most mortgage lenders. The first quarter ushered in a sea of change, including the worldwide COVID-19 pandemic, national and state stay-at-home orders, significant economic challenges, record unemployment, and more.

The pandemic temporarily "broke" the mortgage value chain, driving investor margins up and pushing capital capacity to the brink. Yet, despite market fluctuations and adjustments to "the new normal," today's lenders have still generated a record number of mortgage rate locks and hit production levels rarely experienced in our industry.

As of June 1, 2020, most lenders are back to a net positive gain on the year and continue to generate record volume at margins that are 20–40% higher than historical averages. MBS prices are exceptionally stable and investor prices are steadily improving. In this unique environment, lenders should remain cautious but also make the most of this unprecedented market situation.

This article will explore four of the current market factors, post-COVID recovery, and strategizing for success amid this new environment.

FACTOR 1: MARGIN CALLS & PRICE BASIS

In February, COVID-19 already weighed heavily on global economic activity—pushing bond yields to record lows while mortgage volumes continued to climb. As concerns surrounding the virus were mounting, nationwide business shutdowns put millions out of work and stoked uncertainty in many areas of the United States economy. Further, investment assets of all types sold off, signaling a possible financial meltdown. In response, the FED began buying MBS at a rapid pace.

Optimal Blue experts previously addressed this topic in a series of informative, timely blog posts. The FED drove prices upwards of ~600 bps by buying $220 Billion in MBS over the span of 6 business days (March 20–29, 2020). This action resulted in a significant amount of negative hedge values which then triggered margin calls from the top down, stressing capital for dealers and lenders alike.

The graph below displays which rates were being locked with borrowers during this historic 6-day rally.

Unfortunately, that 600 bps in bond price improvement did almost nothing to immediately drive rates lower. Why? Price basis. There is always a spread factored in between loan price and the price of the bonds into

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RESIDENTIAL

Financial Data Aggregation Is Enabling Faster, More Secure Mortgage Transactions

by
BRENT CHANDLER,
Founder & CEO,
FormFree

Financial data aggregation is already streamlining mortgage transactions and will play an increasingly influential role in assessing borrowers' ability to pay. Here's a rundown of ways direct-source financial data is currently used in the mortgage space and innovative applications that are just around the corner.

DATA AGGREGATION'S CURRENT ROLE IN THE MORTGAGE PROCESS

Data aggregation is the process of gathering data and presenting it in a summarized format for data analysis. Larger datasets generally yield more meaningful insights, but building those datasets manually is time-consuming and error prone. Data aggregators streamline the process of retrieving large amounts of data directly from one or more authoritative sources.

Data aggregation is already used in a number of mortgage lending contexts. Most notably, it plays a central role in the digitally driven credit decisioning process, where consumer bank, retirement and brokerage account data is used to verify applicants' assets, income and employment to provide a holistic view of overall cash flow and creditworthiness—in essence, their financial DNA.

When compared to manually collecting and reviewing information from physical bank statements (whether printed or digital), the combination of direct-source data aggregation and straight-through processing provides greater purchase certainty, yields a more accurate assessment of applicants' ability to pay and minimizes delays, opportunity for error and fraud risk.

Today's consumer is increasingly willing to allow lenders to extract their account transaction data directly from financial institutions. In fact, many consumers expect the organizations they entrust with their mortgage to offer the same advanced, technology-assisted service they receive from free apps such as Credit Karma.

DATA AGGREGATION'S FUTURE IN MORTGAGE

Financial data aggregation already is enabling faster, more fraud-resistant loan transactions. It streamlines the lending process for borrowers by extracting data at digital speed, altogether eliminating the traditional paper chase. Digitally sourced data also allows lenders to instantaneously refresh account data without burdening consumers if a second verification is needed between loan qualification and closing.

Yet even more exciting opportunities for

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RESIDENTIAL

How to Stay Visible in a Crisis

Using a Phased Approach Works Best

by
LINDA WAGNER,
Director of Marketing, CrossCheck Compliance LLC

How service providers handle marketing and business development during a crisis will have a long-term impact on our respective brands. When faced with an unexpected situation like COVID-19, how should B2B companies best communicate with clients, prospective clients, and partners? One of the lessons learned is that effective crisis communication involves a phased approach. What you do in the early stages of the crisis will position you for near-term and long-term growth.

STRIKING A BALANCE AND THE RIGHT TONE

In the first phase of the crisis you want to balance being visible with not coming across as insensitive to the challenges that your clients are facing both professionally and personally. There is a real risk of appearing to be tone-deaf by being too aggressive in your marketing and business development. Too aggressive could be interpreted as communicating too frequently, having too much of a sales message, or trying to create visibility without providing much value. The best approach is to strike a balance between an empathetic, caring message and providing meaningful information about how you have adjusted your business model and are continuing to serve your clients. First and foremost, clients want to know that you are continuing to operate effectively with a remote workforce and that their data is secure.

REINFORCING THE PARTNERSHIP BETWEEN MARKETING AND BUSINESS DEVELOPMENT

Early in the first phase, communication is best shared by marketing and business development. Initially, the marketing or corporate message about business continuity is typically delivered through an email marketing platform which will result in a consistent and timely message to the client database. Often this will come from the CEO. Depending on the size of the client base, it may be delivered via individualized calls or e-mails from either a senior operational officer or a relationship manager.

Business developers will want to stay on the radar of their clients and prospects but will be challenged because they are unable to go to conferences or have client meetings face-to-face. Early on in a crisis, targeted and direct client communications from business development managers to the individuals with whom they have relationships go a long way in positioning your brand as sensitive and caring. Business developers will want to reach out to clients and active prospects with a message of concern for the client's well-being. That call is probably not the right time to push for a deal to close.

The next step is for business developers to take their communication with clients to the next level. Marketing can provide well-crafted messages for business developers to share with clients through social media and/or individual e-mails. Through careful collaboration with marketing, business developers can continue to stay visible with their clients in a way that provides value and maintains alignment with the

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RESIDENTIAL

Recent Appellate Decisions Support Both Lenders and Borrowers in California

by
ELLIOT G. JOHNSON,
Associate, Organization?
and
IAN A. RAMBARRAN,
Shareholder, Organization

The first half of 2020 has provided two noteworthy opinions—one benefits lenders and the other benefits borrowers. Both opinions note the California Supreme Court has yet to weigh in on the particular issues addressed by those courts. So it is distinctly possible that both outcomes will change in the future; but for now, both lenders and borrowers have something to point to as a victory.

PREEMPTIVE WRONGFUL FORECLOSURE CLAIMS

In *Perez v. Mortg. Elec. Registration Sys*. (9th Cir. 2020) 959 F.3d 334 ("*Perez*"), the Ninth Circuit helped to harmonize the law on the issue of whether a borrower may challenge a lender's authority to foreclose *before* a foreclosure has occurred. While noting that the California Supreme Court had not ruled on the issue, the *Perez* court unequivocally ruled in favor of the lenders and rejected the borrowers' *pre-foreclosure* challenge.

The underlying suit involved two residential properties that were in the pre-foreclosure stage. The borrowers argued that because of alleged defects in the assignments of the deeds of trust, the lenders never received the "right to collect mortgage payments or to initiate foreclosure proceedings." In crafting their arguments, the borrowers relied on *Yvanova v. New Century Mortgage Corp*. ("*Yvanova*") (2016) 62 Cal.4th 919 wherein the California Supreme Court held that borrowers have standing to challenge defective assignments that could be classed as void. Though the holding was expressly limited to *post-foreclosure* actions, the borrowers sought to extend the principle. (*Id*. at 931.) The borrowers found support from the opinion in *Brown v. Deutsche Bank National Trust Co*. ("*Brown*") (2016) 247 Cal.App.4th 275, 281. The *Brown* court explained that *Yvanova* "raises the distinct possibility that our state Supreme Court would conclude that borrowers have a sufficient injury, even if less severe, to confer standing to bring similar allegations before the sale."

The *Perez* court was cognizant of the fact the California Supreme Court has not addressed the preemptive challenge issue. However, the *Perez* court noted several California intermediate state appellate courts have held that California's nonjudicial foreclosure scheme does not allow a borrower to bring a pre-foreclosure action to challenge whether the foreclosing entities are authorized to carry out the foreclosure. (*Gomes v. Countrywide Home Loans, Inc*. (2011) 192 Cal.App.4th 1149; *Jenkins v. JPMorgan Chase Bank, N.A*. (2013) 216 Cal.App.4th 497 [overruled in part]; *Saterbak v. JPMorgan Chase Bank, N.A*. (2016) 245 Cal.App.4th 808.)

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COMMERCIAL

How to Conduct Due Diligence in Today's Environment

by,

JULIE SORENSEN,
Senior Vice President, GRS Group

and

JEFF COYNE,
Senior Vice President, GRS Group

Several of GRS Group's multifamily investor and lender clients have approached me about how they can continue to do business during the COVID-19 pandemic. They are looking for ways GRS Group can provide them with the information they need to assess the physical risks of a property for a pending acquisition or loan while deferring to the needs of the transaction and concurrently deferring to the health-related concerns of the tenants.

Although our work is now a little different—business does not have to stop! GRS Group can provide our clients with the information they need to evaluate properties through planning, communication and creativity to ensure transactional due diligence needs are completed successfully while the COVID-related news seems to change and our understanding grows.

GRS will craft an approach based on our client's needs while factoring in property-specific characteristics, taking into account the following:

1. The sensitivities and concerns of the investors/lenders and tenants regarding the physical characteristics of the property.
2. **Property restrictions:** Will management or tenants restrict access by persons from certain COVID-19 hotspots? Will there be exterior and interior access restrictions? Are there state and/or local government restrictions on visiting the Property? Will additional personal protective equipment (PPE) be required for the inspector besides the now COVID-standard mask and gloves?
3. **Property occupancy and access:** For multifamily properties, how many vacant units are at the Property and how are they distributed across unit types, phases, and buildings? Will vacant units be able to be viewed in any way, even photos from the doorway/threashold? Or, in the case of some age-restricted and/or seniors housing transactions—will interior access at the entire community inaccessible?
4. **Due diligence requirements:** Are there certain lender or investor "standard requirements" that will not be met, such as the percentage of units to view? Will an advance waiver be required? Will sampling be needed, and can it be done? Will an agency-specific "Green" report be included and how will that effect access and data collection requirements?
5. **Property cooperation:** What is the availability of knowledgeable personnel for interviews? How much cooperation can we expect from ownership, management, maintenance staff and tenants? Will access be limited to certain areas due to COVID-related concerns? Will the tenants be willing and available to provide GRS

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COMMERCIAL

The Value of Correspondent Lending in a Crisis

by,
DAVID SARNOFF,
Vice President, PSRS

When we last convened in San Diego in February for the MBA's CREF/Multifamily Housing Convention & Expo, the message was very much one of growth and optimism. Most, if not all of the lenders that I heard from, were proud of their often record breaking 2019 origination figures and were challenging us to help them set new highs in 2020. Sentiment was positive and most folks felt that although we were late in the real estate cycle, the fundamentals were still there to maintain positive momentum for the foreseeable future. Little did we all know that roughly a month later we would all be dealing with a very different market filled with fear and marked by caution.

The sudden emergence of COVID-19 was a stark reminder of how fragile our global economy is and how events beyond our control can quickly change economic realities. In the weeks leading up to the crisis, we saw a perfect storm of record low treasuries combined with compressed spreads that had yet to price for the coming pandemic and accompanying recession. Lots of savvy borrowers rushed to take advantage of historically low rates, and they were able to routinely lock in long term fixed rates at or below 3%. But that party didn't last very long, and before we knew it, many life companies went to the sidelines. So too did the banks and credit unions, which to make matters worse were inundated with PPP loan requests, and in some cases had to reallocate resources from their commercial mortgage lending departments to deal with the avalanche of these inquiries. The appetite for CMBS bonds largely evaporated overnight in concert with a steep widening of corporate debt spreads, bringing that market to a screeching halt. Private lenders and debt funds (that didn't have to securitize or sell off their loans), seeing opportunity, have stayed somewhat active, but are of course charging for the additional risk they are taking with their capital.

Investors too have taken to the sidelines in large numbers as they wait to see how businesses will fare in a post-COVID world and what rents and property values should really look like. Rather than working on new deals, some owners are instead consumed with negotiating relief requests from tenants and forbearance requests with lenders. It is a volatile, difficult, and often nerve-racking time to be in commercial real estate lending, but like all market disruptions, this one too will bring with it tremendous opportunities.

As Mortgage Bankers, that opportunity lies in being of service to our borrowers and lenders. Being in the market every day gives us unique and valuable insight. We understand the appetites and objectives of our lenders, so

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Washington, DC

CEO's Letter continued from page 7…

COVID-19 state of emergency, which of course was designed to help small businesses experiencing revenue loss due to the pandemic. The bill would have abrogated contract law to benefit one company at the expense of another and the lack of rent payments could have pushed many into foreclosure. Further, since this measure was tied to the California state of emergency, there was no clear date at which property evictions could resume as we could be in even a low state of emergency for quite some time.

Imagine how these bills, if enacted, would have impacted both residential and commercial lending in our state.

These are clear and recent examples of how our advocacy efforts have protected our industry! The California MBA was a leader in the opposition on both of these measures and worked tirelessly along with our industry colleagues and the national MBA to convey the dramatic negative impact either of these measures would have had on our state. Knowing that the timing was short, and the dynamics of our State Capitol were shifting daily, we knew we needed to augment our lobbying efforts with some grassroots advocacy. That's where the Mortgage Action Alliance (MAA) comes in.

Powered by the national MBA, MAA is the free, non-partisan, grassroots advocacy platform that allows EVERYONE in the mortgage industry to participate in our advocacy efforts. We engaged MAA on both of these measures and were able to send thousands of messages to key members of the Legislature encouraging them to oppose these harmful measures. MAA itself is designed to be easy and effective but its useless without leadership from the industry. If C-level executives are not encouraging their employees to join MAA and respond to Calls to Action when asked to do so, it does not work. The good news is that we did have an extremely strong level of participation using the MAA network and were able to successfully kill each of these bills. A special thank you to all of the companies that sent messages to their employees about these measures but the company that that led the pack as far as numbers of MAA messages being sent was New American Funding led by the dynamic Rick and Patty Arvielo! Their passion for the industry and commitment to protect it is part of the fabric of their corporate culture and its shows!

Rick Arvielo says, "We want to make sure all 3,400 of our employees are exposed to advocacy for our industry. To be honest, I am shocked at how few companies and their employees participate in advocacy efforts of our industry. So much relies on our legislators really understanding the impact of their laws on our industry and the clients we try to serve. Being

…CEO's Letter continued on page 35

CEO's Letter continued from page 34...

part of the California MBA in California and MBA nationally are simple ways to make sure you understand what is happening legislatively that could affect our customers and our livelihood. At New American Funding I am very proud of the fact that our industry can count on us to participate in the various "Calls to Action". A great example was our ability through the California MBA to defeat the recent AB 2501 legislation that would have certainly made borrowing more expensive for California borrowers. I believe one third of all letters sent to legislators in California were from a New American Funding employee. While I am glad it was enough to get the job done I can't help but be curious as to why more lenders don't get involved since it has been made so easy and can add so much to your company's cultural."

Help strengthen our MAA impact by running a MAA campaign in your company to encourage absolutely everyone to sign up! The National MBA has a fantastic toolkit that will make the launching of your company campaign simple and successful.

While we've had legislative victories this year, our work is far from done. We must stay strong and vigilant to ensure we can continue to provide access to affordable credit to qualified borrowers.

California may only be one state but we're a big state with a global economy and account for a large percentage of the national origination volume. If you'd like to see our state's real estate economy continue to thrive, join us and make us stronger. When you are asked to support the California MBA through membership dues or conference sponsorship, what you're really being asked to do is invest in your industry, in your career and the careers of everyone in your company.

Legislative Report continued from page 8...

Simply put, budget related bills and only three other main categories of legislation will likely be left standing when the books are closed on 2020: COVID related response measures, efforts to address homelessness and wildfire prevention proposals.

When the Legislature returned from their COVID caused recess in May, several pandemic related bills where amended to provide mortgage borrowers with forbearance and foreclosure relief and to provide residential and commercial tenants with rent and eviction relief. These bills propose sweeping changes and are of significant interest to CA MBA's membership. They will be the primary focus of the bills discussed below:

AB 2501—MORTGAGE INTEREST DEDUCTIONS

On Assembly Floor

AB 2501 was amended on May 11 with provisions intended to provide borrowers with forbearance relief for mortgages, automobile loans, payday loans and PACE financing. Many of the amendments are based on the proposal at the federal level that the House Democrats put forward during the CARES Act discussions. With respect to mortgages, the proposal originally would have put in place a foreclosure moratorium during the state COVID-19 state of emergency and the 180-day period after. It would also have allowed a borrower experiencing financial hardship during the COVID crisis to ask for up to 360 days of forbearance on mortgage payments during the emergency or 180 days after. These provisions also have been automatically triggered after 60 days of delinquency.

The foreclosure and forbearance provisions were later amended to implement the foreclosure moratorium for all of 2021 and to allow for the borrower to obtain, at his or her discretion, up to 360 days of forbearance starting at any point in 2021. Language was also added stating that compliance with the relevant Federal CAREs Act forbearance provisions constitutes compliance with the bill's forbearance provisions for federally backed mortgage loans.

Additional provisions required notifying the borrower regarding available modification or loss mitigation options. If the borrower is unable to continue the normal payments after forbearance, the servicer is required to implement modification or loss mitigation options for which the borrower qualifiers without penalty or additional interest. The bill originally would have created significant penalties and remedies for violations, including forfeiting rights to commence foreclosure and express Business and Professions Code 17200 unfair and deceptive practice legal liability. These provisions were later removed, but problematic penalties and remedies remain in the bill including, establishing causes for a private right of action and allowing in a lopsided fashion a "prevailing borrower" (as opposed to a prevailing party) to recover attorney's fees and costs when the borrower obtains an injunction. At this early stage of the legal process, the borrower has not even prevailed on the merits.

AB 2501 failed to pass on the Assembly floor and should not continue to move. The first time the bill was voted on it received 35 Aye votes and 19 No votes, and it was put on reconsideration. After an extended period the author was able to obtain 39 votes, but when she could not obtain the 41 votes necessary to pass the bill, the vote started to drop. The final floor vote was 28 Aye to 25 No.

SB 939—COMMERCIAL LANDLORDS AND TENANTS

Senate Appropriations Committee

SB 939 was held in the Senate Appropriations Committee and should not continue to move. It would have made it unlawful to terminate the tenancy of or evict a tenant of a commercial real property during the COVID state of emergency declared by the Governor. If a tenant does not pay rent during any or all months occurring during the state of emergency, the sum total of that rent shall be due 12 months after the date the state of emergency ends, unless the tenant has reached an agreement with the landlord to pay the sum total of that rent at a date later than 12 months after the end of the state of emergency. The nonpayment of rent that would have been due during the state of emergency cannot be grounds for an unlawful detainer.

The bill would have also allowed a COVID impacted commercial tenant who wishes to modify his or her commercial lease, to engage in good faith negotiations with its landlord to modify any rent or economic require-

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ment regardless of the term remaining on the lease. If the tenant and the landlord do not reach a mutually satisfactory agreement within 30 days, a tenant would have been able to unilaterally terminate a commercial lease by serving a lease termination notice on the landlord.

AB 828—FORECLOSURE MORATORIUM

In the Senate Rules Committee

AB 828 was amended in the Senate to, among other things, prohibit a person from taking any action to foreclose on a residential real property while a state or locally declared state of emergency related to the COVID-19 virus is in effect and until 15 days after the state of emergency has ended. It would also prohibit a county recorder from recording any instrument, paper, or notice that constitutes a notice of default, a notice of sale, or a trustee's deed upon sale during the declared state of emergency relating to the COVID-19 virus and prohibit a court from accepting a complaint in an action to foreclose.

AB 828 would also impact residential landlord and tenant contracts. It originally would have required the court in an unlawful detainer case to reduce the rent by 25 percent for twelve months if the tenant shows increased costs for household necessities or reduced household earnings. This was a very controversial provision and has subsequently been deleted from the bill. It would still require the court, if it determines that the tenant's inability to stay current on the rent is the result of increased costs in household necessities or decreased household earnings attributable to the COVID-19 virus, to make an order for the tenant to remain in possession and make monthly payment to the landlord. It is an urgency measure so it would take effect immediately if it passes.

SB 1447—HOMEOWNER BILL OF RIGHTS

Passed Senate & the Assembly

SB 1447 amends California's Homeowner Bill of Rights (HBOR) to provide additional foreclosure protections to homeowners who rent their

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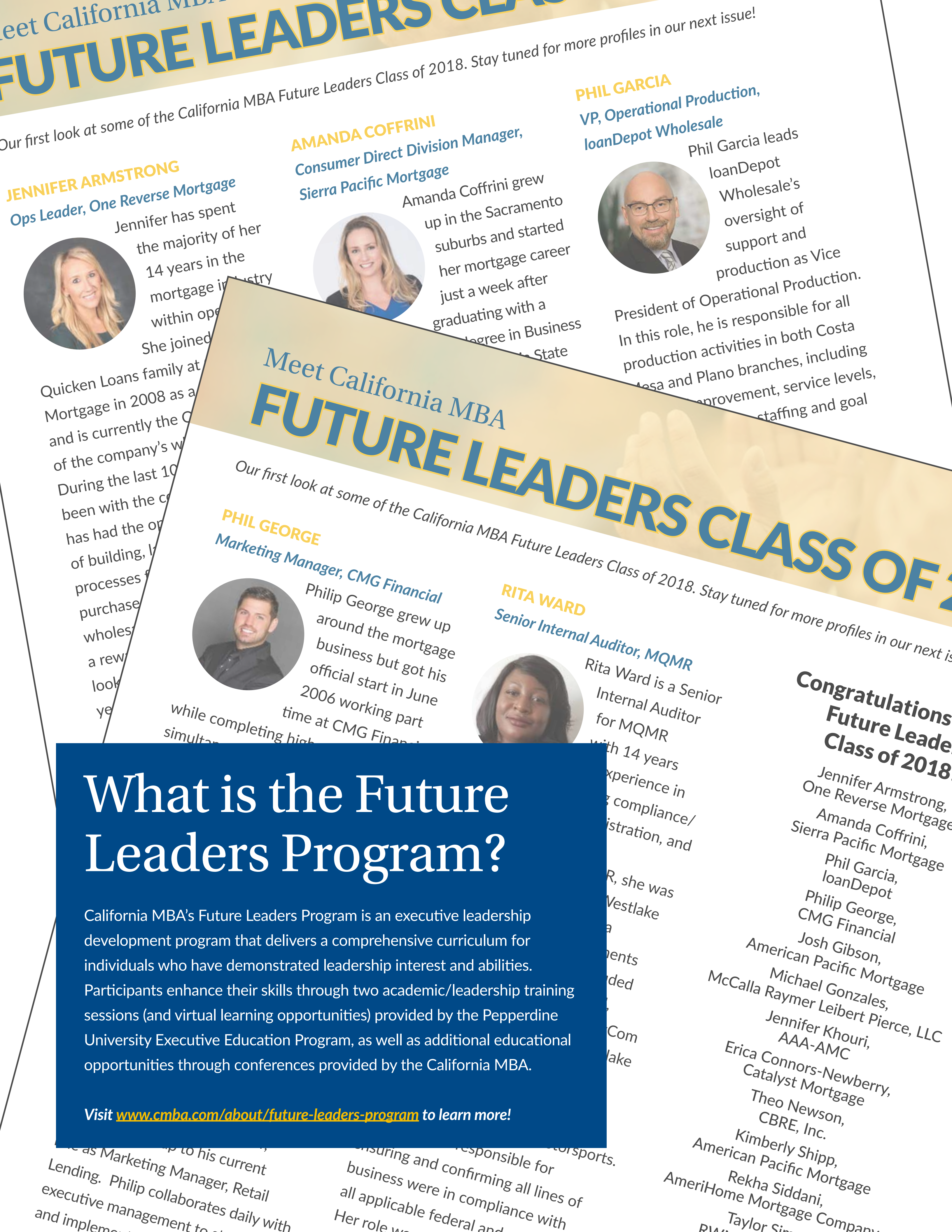

What is the Future Leaders Program?

California MBA's Future Leaders Program is an executive leadership development program that delivers a comprehensive curriculum for individuals who have demonstrated leadership interest and abilities. Participants enhance their skills through two academic/leadership training sessions (and virtual learning opportunities) provided by the Pepperdine University Executive Education Program, as well as additional educational opportunities through conferences provided by the California MBA.

Visit www.cmba.com/about/future-leaders-program to learn more!

Legislative Report continued from page 37…

properties out to tenants and tightens statutory requirements intended to combat fraudulent behavior by persons who charge money for helping borrowers avoid foreclosure. The author argues both provisions are a response to the disruption caused by the COVID-19 pandemic. The amendment extending HBOR protections to foreclosures of residential 1–4 rental properties is an expansion of that law that has been well received by policymakers given the heightened concerns regarding the impact of the COVID-19 crisis on landlords and tenants. The HBOR provisions sunset January 1, 2023.

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advocate with conviction or stay quiet on the issue.

ASK THE "WHO" QUESTIONS

Who is your audience? Do you know where they stand on the issue at hand? The answer to that shouldn't necessarily change your ultimate decision, but it will absolutely guide your process and strategy. Do some research, and ask questions. Additionally, consider who you want your audience to be in 5 years. Whether that audience is demographically different or just broader, consider how the current positions you take will impact those long term plans.

What about your own team? Are they on board? The last thing you want is either internal revolt or mixed messaging coming from the company on a sensitive topic. Discuss with your team whether or not you need to do outreach to your own employees, or educate them on the company's position. In part, this question revolves around the culture you've built (or not built) at your company. Does your culture value open communication, focus on employees, or is the bottom line the only consideration? Don't assume that your team will automatically fall in line if you haven't laid the groundwork first.

Bottom line—before you arrive at the details of the "when" and "what" of your politically-themed marketing, get the "why" and "who" questions answered. This will help you map out your execution, help you ensure

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you're not pushed or pulled into an issue you don't want any part of, and help you be prepared for the challenges you'll face—like finding the right medium, controlling your message, and withstanding any backlash you'll face. Political advocacy now seems to be part and parcel of corporate America—let's just make sure we do it right.

Roundtable continued from page 15...

going into the pandemic and plenty of capital is looking to deploy when the time is right. Some investors will go deal hunting with opportunistic plays on distressed assets while others may shift towards better-performing assets, like industrial or data centers.

Transaction volume is certainly down. Trying to value deals in these uncertain and unprecedented times leaves buyers and sellers at odds. As a result, many lenders and investors remain on the sidelines. However, we are seeing an uptick in activity. Having said that, we will certainly see the volume of loan workouts and foreclosures increase. Partner can provide custom solutions in terms of pre-foreclosure due diligence.

Partner is still supporting all kinds of transactions, using a number of creative approaches to overcome access limitations, including virtual site assessments. We've even provided video packages for virtual investor tours. We have also been helping our clients with pandemic risk mitigation services like CIH-certified cleaning plans and surface sampling to verify cleaning effectiveness. We're proud of how we've stepped up to these challenges, but like everyone, we're hopeful for the day we can put this behind us.

CALIFORNIA MBA: WHAT IS THE BIGGEST LONG-TERM TREND THAT WILL COME OUT OF THE COVID-19 CRISIS?

Grenfell: The way people interact with the built environment will definitely be different. It's hard to predict

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what is going to last but decreased office density and HVAC improvements for healthier indoor air are two things I expect to see in post-COVID-19 office products. Requirements from the public related not only to workplaces, but also hotels, shops, and restaurants will likely force lasting change.

Updated asset management strategies and investment in technology innovations to streamline operations and generate new revenue streams will be long-lasting. Considering its reach, whether related to remote workforces, tenant experiences, or increased efficiencies, technology will be an overall winner. At Partner, for example, we've seen a lot more interest in our SiteLynx report ordering and delivery platform over the last three months, which provides our clients an increased efficiency in the due diligence process. Owners are not just investing in physical improvements but are upgrading building technologies—improving WiFi coverage or securing 5G rooftop leases to increase NOI.

It's worthwhile to invest in improvements now, while things have slowed, that will pay dividends going forward.

Charfauros: If COVID-19 taught us anything, I believe it's that ever-greater densities of folks in the office, in the apartment complex, in retail, restaurants and gyms can no longer be the only emphasis in design and code implementation. Financial proforma, fire code and efficiency have been the primary determiners of density in these settings but building designs and even the building code itself may require updating given the new emphasis on air quality and spacing. Like the updates required of the "green" building revolution of the last two decades, this trend may translate into higher building costs and higher operating costs. Per-square-foot rents will have to compensate for these increases accordingly.

Municipalities that are most stringent with COVID-19 related guidelines may see greater increases in costs and rents, and it may become ever more difficult for developers to get certain deals to pencil. If such effects lead to a decrease in added supply, older stock assets might see demand rise over time, further driving rents and valuation. I would expect, for

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example, that garden-style apartments might be preferable to high-density downtown locations, as might older-stock law-office style non-Central Business District office properties against the open/creative office trend of the last few years. As experienced mortgage bankers, it's incumbent upon us members of the CMBA to help our local civic leaders understand any unintended consequences of additional regulation so they can make informed decisions on behalf of the public.

CALIFORNIA MBA: WHAT WILL BE THE MOST IMPORTANT THING TO KEEP AN EYE ON HEADING INTO 2021?

Charfauros: How will commercial real estate investors change their outlook on the market or on certain asset types? How might the changes in building operations and density requirements challenge Net Operating Incomes and therefore valuation? If the global recession continues, or if there are renewed concerns over COVID-19 outbreaks, what impact would a much larger segment of businesses being unable to continue in-person operations make? In an April post, the Mortgage Bankers Association published an interesting chart that illustrated the relationship between large movements in unemployment and the cap rate spread (that is, the measure of the premium an investor is willing to accept over a "risk free" 10yr US Treasury note). They claimed that, relative to the last two recessions in the Dot-com era and the global financial crisis of 2008, the cap rate spread begin the COVID-19 crisis "fat" when compared to the pre-recession spreads of the previous two economic cycles. And, they found that it takes at least 12 months after big swings in unemployment to show any significant changes in the cap rate spread. So, 2021 is the year of looking hard at valuation of CRE assets and general sentiment among investors, landlords, and tenants.

Grenfell: Our understanding of this pandemic seems to always be rapidly changing. Predicting recovery is difficult, but it seems quite possible that it won't occur until the latter half of 2021, maybe not even until 2022. Whether you're looking at new deals or potential workout situations, it will pay off to do a little extra due diligence during this time.

Buildings that have been neglected and/or vacated quickly due to COVID may have deferred maintenance issues or indoor air quality issues to address, which can be identified by a Property Condition Assessment and Building Hygiene assessment, respectively. For lenders looking at pre-foreclosures, a Phase I Environmental Site Assessment is essential to make the correct risk management decision.

For construction projects that stop and start due to COVID or the resulting economic fallout, a Construction Status Report or Cost to Complete Report can help lenders or potential investors ensure product delivery, and identify what needs to be done to either take it through completion or, in some cases, demolish it. For new construction projects, lenders can safeguard against execution risk by using SureBuild project completion insurance, which is a great credit enhancement tool for issues like a weak completion guarantee from sponsors.

Mulvihill continued from page 16...

Goodwin Company, becoming Vice President and Chairman of the Board. In 1972, Dan founded his own company, Pacific Southwest Mortgage, in association with Harry Collins and Willis Allen. The company continued making and servicing commercial and agricultural loans in Southern California and the Southwest . Over the years, the company moved into all facets of commercial real estate including development, asset management, property management and brokerage. The company was instrumental in the development, operation, and management of Kearny Mesa Complex, Mercy Medical Building and Scottsdale Conference Resort.

That company continues today under two separate umbrellas: Pacific Southwest Realty Services, owned and operated by Dan's son, James, and nephew, Daniel Phelan, which handles commercial loans in Southern California and the Southwest, and Pacific Southwest Mortgage, the family company, which owns and operates real estate assets, and is run by his son, John.

Dan gave to his community. He was at the forefront of giving to and serving in many organizations, including the American Ireland Fund, San Diego (Past President), University of San Diego School of Business Advisory Board, Chief Fundraiser of the Ernest W. Hahn Chair of Real Estate Finance at USD, a past Chairman of the President's Club at USD, and a long standing member of USD's Burnham Moore's Real Estate Center Advisory Board, being awarded emeritus status in 2019.

In 1985, Dan served as the organizing chairman of the Scripps Mercy Hospital Foundation at the insistence of Sister Mary Joanne DeVincenti. Dan's response: "Yes, Sister!". To date, more than $160 million in unrestricted funds have been raised to benefit Scripps Mercy. In 1986, he was appointed to the Board of Trustees at Scripps Health and served as a trustee of Scripps Health Foundation of Medicine and Science in 1996. Dan loved to help those in need, especially through health care and the Scripps Mercy Foundation. In 2006, in recognition of his decades of community service, he was honored as San

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Diego's "Nice Guy of the Year", by the San Diego Nice Guys Foundation.

In 2009, Dan was awarded an honorary doctorate in Philosophy from Pontifical University, Saint Patrick's College, Maynooth, Ireland, after over 25 years of support for the college and seminary. In addition, to honor his Irish heritage, he sat on the International Board of the American Ireland Fund, which raised money to promote peace, culture, and charity in Ireland. Dan loved being Irish, was an avid Nortre Dame football fan, had a great tenor voice, and never missed an opportunity to belt out his favorite song "Danny Boy"!

Gregarious and fun-loving, Dan had a keen interest in people. His compassion, generosity, and willingness to lend his expertise to others flowed through all he did. He loved to laugh, sing, and to be around children. A child at heart, he loved Irish jokes, lots of holiday lights, and was a notorious, creative prankster. As a fix-it tinkerer, gadget lover, admirer of trains and moving toys, his garages were a well-used play space for he and his grandchildren.

Dan was a man of action, one who got involved and was not afraid to ask others to help as well. He was committed to his loving wife Mary, his family, his faith, his company and all who worked with him there, and his community. Dan believed "one person could make a difference" and "together, we can help others in need". He led by example and challenges each of you to give back to someone or something important to you.

Dan was dedicated to his church, from his upbringing at Saint Patrick's parish in Cumming, Iowa, continuing with many years of service at All Hallows Church in La Jolla. Dan always made his faith a priority in life. He is now in the hands of God, smiling down upon us! '

To continue his legacy of giving, please consider making a donation in memory of Dan Mulvihill to St. Patrick's Catholic Church, Dan's boyhood parish in the Irish Settlement, host of the 1979 visit of Saint Pope John Paul II, or to Scripps Mercy Hospital.

Feat. Residential continued from page 20...

Reduced turn times

When looking at the overall mortgage loan process, it's obvious that faster is better. The faster you can make your loan process, the cheaper it will be to produce a loan; and the cheaper it is to produce a loan, the more you can pass that back to the customer in the form of savings.

Since the appraisal is one of the longest components of the overall process, it's a clear area to focus. When you can automate aspects of the appraisal process, such as scheduling, payment processing, underwriting, and notifications, you can decrease the amount of time spent on each loan file and reduce the overall turn time.

What does all of this time savings lead to? Lenders will see the ability to reallocate internal resources, put more money toward business development initiatives, and hopefully process more loans.

Streamlined operations

Capabilities such as automation, custom workflows, and major loan origination system (LOS) and point of sale (POS) integrations can help create substantial efficiencies across your appraisal process.

The loan process often involves a number of different systems, including the LOS, the POS, and other niche solutions. Treating each system separately slows down operations and leads to disparate sets of data. Integrating your appraisal management software into existing systems gets you a big step closer to running a well oiled machine.

In addition, when you eliminate manual tasks from the process, it allows you to allocate human resources more efficiently (potentially reducing your overhead), while also reducing the room for user error, leading to higher quality appraisals.

Enhanced user experience

We all know that creating an unmatched customer experience is key for staying competitive and growing your business. For lenders, you have internal customers (loan officers, processors, etc) and external customers (borrowers). Because the

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appraisal is such a central part of the loan process, requiring so many stakeholders to take part—borrower, loan officer, loan officer assistant, appraisal manager, underwriter, and of course the appraisal vendor—a streamlined experience is even more important.

Introducing new appraisal technology can give you a sleek modern interface and custom-branded communications, increased transparency for everyone involved, easy and secure payment processing, and more.

These seemingly modest improvements to your technology can go a long way to keeping your loan officers and buyers happy.

LOOKING FORWARD

With technological transformation imminent across the entire mortgage lending industry, there's no question that we'll see the appraisal process change shape in the very near future. Faster turn times, streamlined operations, and a modern user experience are not only attainable, they're vital to building a competitive and scalable mortgage lending business. Are you ready to transform?

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serves as loan collateral. Defeasance arranges for the borrower to pay for and substitute lower risk collateral for the property. This collateral is a carefully constructed portfolio of US Treasury and sometimes Agency securities. The portfolio produces the cash flow needed to make the remaining loan payments. A defeasance causes the transfer of the portfolio of collateral and responsibility for the loan to a new legal entity called a Substitute Borrower. Once all required legal opinions, accounting reports and other safeguards for the other stakeholders are complete the defeasance process releases the property from its collateral obligations and the former borrower is free to refinance or sell their property.

Who has been Defeasing Recently?

Among our clients, we observe owners of multi-family properties doing better than widely expected. Among many factors, massive stimulus programs have bolstered the ability of individual renters to meet their obligations, at least temporarily. Many of these owners have substantial equity to act as a buffer in difficult times. And they have longstanding, constructive relationships with lenders.

A Case Study

An example: a client recently closed on a refinance loan after successfully defeasing their prior loan with the help of Derivative Logic's Defeasance Services team. Their new loan reduced the credit spread by 55 basis points off their existing interest rate, which resulted in reduced monthly interest costs and increased their ability to borrow more than the original loan amount. As an extra bonus, the defeasance released several millions of dollars of interest reserves held in escrow by the Master Servicer. Reducing the credit spread in a refinance, in most cases, makes the case to defease all the easier.

A defeasance was needed to power these gains because the original borrowing was a conduit loan. Shortly after it was signed, their loan was incorporated into a CMBS (Commercial Mortgage Backed Securities) bond. The mortgage securing the loan now

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Feat. Commercial continued from page 47…

served as collateral for the CMBS. Consequently, their loan agreement forbade them from prepaying their loan to free their property of its mortgage obligation for about 36 months. The solution to unencumber the property was carefully constructing a portfolio of replacement collateral, namely Treasury and Agency securities. The multimillion-dollar securities portfolio, which our client purchased, precisely produced the cash needed to pay the remaining monthly principal and interest and cover the balloon payment due on the loan's maturity date.

The substantial equity our client held in their property allowed them to finance the cost of the defeasance portfolio and associated fees via a new loan. In other words, they borrowed the funds necessary to close their defeasance at their new, lower rate.

The result was effective shark repellent. While there is an upfront cost, our client is now much less likely to be forced to sell his property involuntarily. The new loan's lower monthly payments meaningfully offset the expected reduction in rents they face. The millions returned from escrow meant their immediate cash position dramatically improved. As a direct result of their defeasance transaction, and subsequent refinancing, they now have enough financial breathing room to keep their head comfortably above water and ride out the storm. Our client was delighted with these results. At the end of the day, the sharks swam away frustrated, looking for easier pickings.

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Feat. Commercial continued from page 48...

Don't Miss Out!

An important take away: Do not focus only on the prepayment premium. There is going to be a cost to replace the collateral, but one needs to do deeper analysis to determine if the cost to defease is compensated for in other ways. Let an experience Defeasance Consultant like Derivative Logic help you with your analysis so you can make an educated decision based on all the numbers and relevant variables. With term rates at historic lows, it makes sense to review all securitized loans. You will be pleasantly surprised that the cost to defease is not a big deal. What's problem if the cost to defease is $5 mm but the savings is $7 mm over the refinance term? And there might be other easily overlooked benefits to a refinance that a defeasance will unlock.

Clearer Sailing Ahead?

The strong seek to swallow the weak. That is the only rule in blood-red real estate waters. The secret to surviving is the same as it has always been. Use assets you control to avoid being forced to sell before the time you choose. Judging from our pipeline, if you have a multi-family property, now may be a good time to review refinance options to take full advantage of ultra-low interest rates. And a defeasance is likely the key to getting that done, especially if you are currently in a CMBS or other securitized loan.

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daunting to know where to start. That's where a partner with expertise in social media marketing—like C Squared Social—can be a worthy ally, using engaging ads and the right objective to deliver your message to the desired audience.

Paid advertising, on Facebook specifically, has proven to be highly effective within the mortgage industry, even in light of Facebook's newer policies pertaining to ads related to employment, housing, and credit. In an effort to prevent discrimination, demographic targeting is no longer an option for these types of special ads. Regardless, utilizing interest-based targeting, attractive graphics, well-crafted ad copy, and a well-chosen objective, these ads can still be a powerhouse in delivering impressive results.

CHOOSING THE RIGHT OBJECTIVE

Determining your objective is key in any marketing strategy. Do you want to have more people visit your webpage? Do you want users to download an app or a document? Are you wanting to generate leads to increase your customer base or just get people familiar with your brand? Where Facebook really shines with lead generation is the ease with which users are able to submit their information via auto-populated contact forms hosted directly within ads. Users never have to leave their Facebook feed or type in their contact info, resulting in much higher submission rates.

Another relatively new and savvy tool utilizes Facebook Messenger to either start conversations or generate leads. Using chatbot technology, users engage with a choose-your-own-adventure style workflow where they can be directed to gain more information about your business and services, provide their contact information, or message any questions directly to the business page. It creates a much more personal and engaging connection.

Facebook has other notable tools, among marketers' faves are Facebook's pixel technology and lookalike audiences. Do you have a great web presence with significant traffic or a substantial database of customers? You can leverage that data (while maintaining your customers' privacy) with Facebook's algorithms, enabling you to deliver your ads to other social users that are similar in online behaviors and drastically increase your reach.

LEADS! NOW WHAT?

Generating leads isn't the end goal, however, it's just one part of the equation. Converting them into lifelong customers, that is the holy grail. Unfortunately, this is where many businesses fall short. With our increasing consumption of technology, we've grown accustomed to the immediacy of information and communication. But lead nurturing—that process of walking with prospects through the transition of becoming customers and, even better, referrals—has not often kept up with customer expectations. Why have Rocket Mortgage and Quicken Loans become so successful and proliferous? Because the modern user expects a process that is as seamless and instantaneous as streaming

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their favorite movie or ordering their lunch. Your system of communication needs to be as varied, flexible, and immediate as your prospects are.

There are a multitude of CRMs available to aid in the automation of correspondence with leads, and many lenders have transitioned to call centers to handle the brunt of lead nurturing. While both are fruitful, they can be costly to implement and time consuming to learn. That's where partnering with companies like OptifiNow can be a huge resource in helping to manage those processes without taking on the execution of a call center or the implementation and training of a complicated CRM. They'll provide customized touch-point automation via email and text, and the added value of prospects being able to talk directly with a live representative.

THE FUTURE FOR MORTGAGE

Change is hard, but inevitable. And, unfortunately, it's almost certain that once you have a grasp on social media marketing, there will be a new game changer in town. But with innovation comes opportunity. The opportunity social media provides is to connect directly with borrowers that otherwise may have never known about your services and who prefer to consume products and services online. Take advantage of partnerships with vendors that are experts in their fields. They can do the heavy lifting for you, so you can focus on what's most important—growing your business and providing excellent service.

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borrower provide a written attestation that affirms the borrower's situation, but nothing more. The servicer also may not assess any fees, penalties or additional interest to the loan beyond the amounts that would have been incurred if the borrower maintained the loan payments. All the while the servicer is advancing property taxes and insurance payments on escrowed loans with no reimbursement.

WHAT HAPPENS POST FORBEARANCE?

At least 30 days before forbearance ends, or 30 days after a borrower terminates the forbearance, the servicer must provide written notice of options to either modify or reinstate the loan. These "options" **cannot** include a lump-sum reinstatement amount or an increase in the borrower's preforbearance principal and interest payments.

Within 30 days of sending the above notice, the servicer must provide another written notice that, among other things, describes any loan modification or reinstatement options, and states that the borrower has the option of paying the outstanding balance, or any portion thereof at any time, in a lump sum or otherwise. Although not clearly articulated in the Bill, it seems these "options" apply if the borrower can resume making the preforbearance loan payments once the forbearance ends.

If the borrower cannot resume the preforbearance payments, the servicer must evaluate the borrower for all loss mitigation options. If the borrower qualifies for an option, the servicer must implement the option with no penalties, late fees or modification fees charged to the borrower.

Finally, if investor guidelines prohibit the servicer from implementing the "options" set forth in the Bill, which would be a regular occurrence, the servicer must notify the borrower and Commissioner of Business Oversight ("Commissioner") of the restrictions **at the time the forbearance is offered** and provide documentation supporting the restriction. The Commissioner then issues a determination, that is subject to judicial review, as to whether the stated restriction is valid. A servicer's

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failure to give proper notification of any restriction is a designation by the servicer that it has the authority to implement the Bills stated "options."

POTENTIAL EXPOSURE TO THE BORROWER

The exposure for a violation is significant as the borrower can file a lawsuit seeking injunctive relief, damages, restitution, and "any other remedy to redress the violation," which is about as broad as it gets. A prevailing borrower can even seek reasonable attorney's fees and costs, including the fees to obtain a temporary restraining order. The Bill also does not preclude a borrower from seeking relief against the servicer for other, independent reasons.

PROBLEMS WITH THE BILL

The problems with the Bill were extensive. Notably, the Bill would have adverse economic consequences for servicers as revenues drop due to a substantial percentage of borrowers requesting forbearance. At the same time, the servicers' expenses remain as they continue to pay investors even when not receiving the borrower's payments, and continue to pay taxes, insurance, and homeowner association dues on escrowed loans.

There is also the administrative and practical problems. As a forbearance request can be made orally, it would be difficult for the servicer to prove that the borrower did not make an oral request unless the servicer records every telephone call and in-person conversation. Furthermore, servicers would be required to essentially audit their portfolio to determine what investors do not allow the "options" contemplated in the Bill and compile the documentation needed to show the Commissioner why those "options" are not available. This, of course, must be done before forbearances are offered.

The Bill risked benefiting a large number of borrowers in no need of assistance and possibly incentivized fraud. A recent LendingTree survey from May found that 70% of those in the survey that were approved for forbearance under the CARES Act were able to pay their mortgage and other bills, at least for that month. The results in California would likely be similar as borrowers who can make their payments will take advantage of the Bill's automatic year without foreclosure and low threshold to obtain a year-long forbearance.

Finally, there are constitutional concerns. For example, the Bill may violate the U.S. Constitution's ban on state laws impairing the obligation of contracts, and the Takings Clause of the 5th Amendment. Also, the Bill may be preempted, at least in part, by federal law as applied to some types of home loans, such as those originated by federal savings institutions, or held by Fannie Mae or Freddie Mac or insured by the FHA or VA.

LOOKING FORWARD

The Bill's failure to pass the Assembly floor is positive. But, we should keep a careful eye out for any attempts to breathe new life into the Bill if the COVID-19 crises gets worse. At the very least, the Bill is a good example what the Legislature is willing to do in the face of a pandemic.

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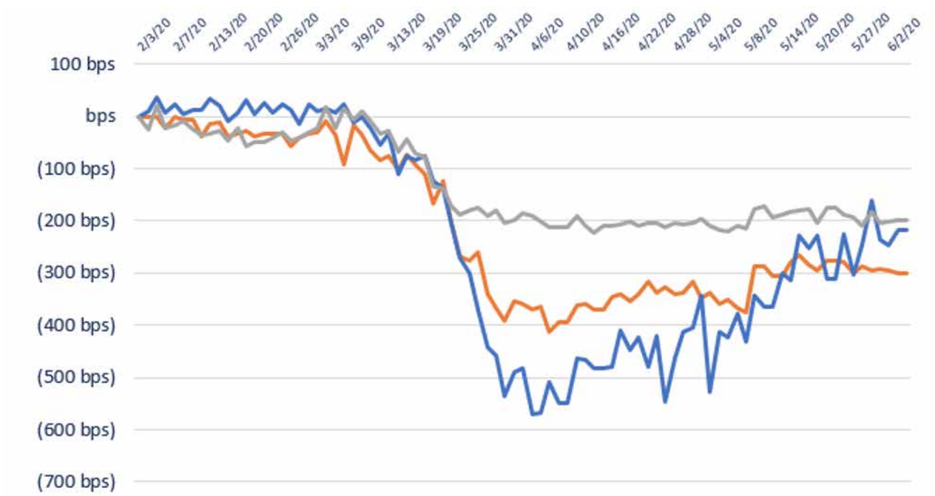
which these loans are delivered. This spread consists of servicing value, agency guarantee fees, applicable price adjustments based on borrower credit scores, etc., as well as margins that generate revenue for the purchaser of the loan. Those margins seemed to widen the most as industry volume spiked.

The graphs below measure the change in spreads between the average whole loan and cash window pricing, as well as underlying MBS prices since February 1, 2020.

Normally, this spread is consistent. Some deterioration is certainly expected in a rally, which is visible through February. This is driven mostly by a change in servicing value (MSR or SRP) and other cashflow factors which can deteriorate 5–20% (15–50 bps) as rates decline. Most hedge models are designed to account for this. However, the spread changes became much more erratic amid the COVID-19 crisis, with MSRs disappearing completely and all-in prices deteriorating an additional 200–400 bps across March 20–30, 2020.

Spreads hit a bottom quickly and decisively during the first week of April. They have since improved as lenders have maintained high margins and volume. Pay-ups for delivering mandatory versus best-efforts have also remained elevated. This confluence of positive factors quickly reversed the tide, helping lender gains return to above normal, as borrowers take advantage of rates that continue to edge lower each week.

* Source: Optimal Blue Mortgage Market Indices™ (OBMMI™)



Whole Loan vs. 30-YR TBA (All Spreads indexed to 0 on 2/3/2020)	Current Spread	1-Day Delta	7-Day Delta	4-Week Delta
Best Ex vs. UMBS 3.0	(301 bps)	(5 bps)	(1 bps)	58 bps
Best Ex vs. GNMA 3.0	(219 bps)	27 bps	84 bps	194 bps
Cash Window vs. UMBS 3.0	(200 bps)	2 bps	(5 bps)	18 bps

* Source: Optimal Blue Daily Market Briefing

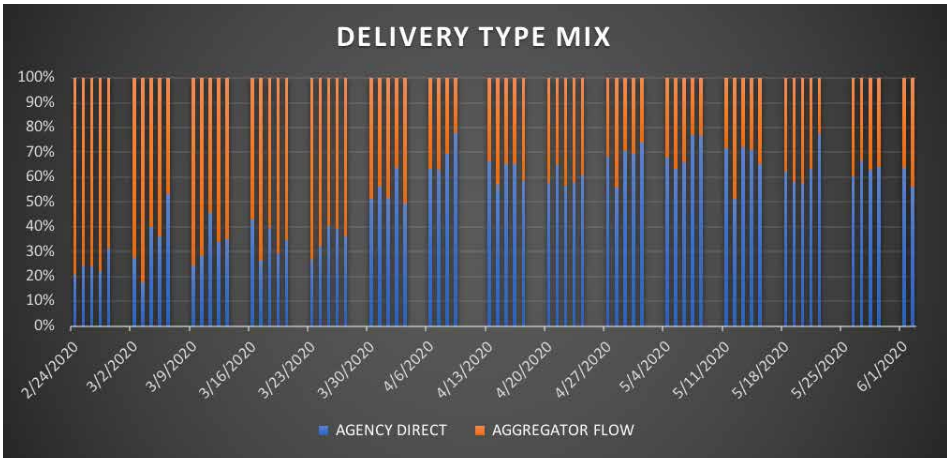
FACTOR 2: FORBEARANCE & INVESTOR OVERLAYS

One of the major concerns that triggered initial price basis deterioration and new guideline overlays was the spike in forbearance requests. Forbearance has undoubtedly been an issue, but to a lesser degree than what was initially feared. Further, the velocity at which loans are entering forbearance appears to have slowed significantly. Investor pricing, including co-issue pricing, has improved in light of this, and fears have abated that guideline restrictions and scenario-specific pricing (e.g. cash-out) will continue to worsen.

Borrower payment issues caused by the pandemic are certainly not over yet, so it remains prudent to maintain cash reserves in anticipation of increased servicing risk, EPD/EPO risks, possible repurchases, and/or scratch and dent loans that are related to forbearance.

…Lenders continued on page 54

Lenders continued from page 53…



* Source: Optimal Blue

FACTOR 3: AGENCY WIN RATES

While cash window and other agency-direct pricing executions weakened in March, they did not deteriorate as much as aggregator pricing. This phenomenon triggered a significant increase in agency win rates, as lenders who have the option to deliver direct to agencies made decisions on how to sell loans. While Optimal Blue client volume is typically split 70/30 in favor of aggregators, that split reversed during the COVID-19 crisis with agencies seeing 60–70% of overall volume.

Until very recently, lenders could sell direct to agencies and retain servicing for free. Additionally, raw cash prices were superior to the all-in servicing-released prices bid by aggregators in many cases. This paradigm seems to be shifting back toward normal as aggregator pricing improves steadily.

FACTOR 4: DEALER STRAINS

Dealers were among the many that felt the significant impact of the COVID-19 pandemic. Not only were they subject to negative MTM and margin calls, but the overall cost to carry trades during the crisis increased substantially. Besides covering MTM value on behalf of lender clients, dealers are also responsible for posting an additional buffer, called Value-at-Risk (VaR), to account for market volatility.

VaR is normally 1.25–2.5% ($12,500 to $25,000 per million) of the face value of all open trades. The cash required to satisfy this volatility buffer was increased to 4–5.5% ($40,000 to 55,000 per million) in March, which meant that when combined with negative MTM caused by the FED-induced rally, dealers were posting anywhere from $80,000 to $100,000+ per million on behalf of lenders.

With the industry experiencing record volume, this cash burden quickly erupted into the billions for dealers who would normally be responsible for just a fraction of that amount. Many in the industry predict that VaR will remain high for the foreseeable future since it is a calculation determined by a long history of market activity.

Another significant impact on the dealer community was default. It is not uncommon during volatile markets, that some lenders find themselves overextended and have difficulty meeting margin calls or position settlements. Unfortunately, some lenders end up not paying at all which puts even more strain on dealers.

Due to increased VaR costs and default risk, it is likely that dealer approvals may be harder to come by in the coming months, that trades may be more expensive for the foreseeable future, and we may see more dealers get out of the TBA business altogether. Lenders should also be prepared for dealers to seek more transparency, even asking how many others dealers the lender is working with.

SO, WHAT'S NEXT?

To conclude, managing a successful mortgage operation in today's environment is a unique challenge so it is imperative for lenders to remain vigilant. That said, the "theme" since April 1, 2020 has been recovery.

The team of mortgage experts at Optimal Blue will continue to focus on all relevant news and data that may affect our industry and clients. While it is not quite "business as usual," lenders are encouraged to sell aggressively and maximize gain on each loan that is produced and sold in the existing low rate/high margin environment!

Data continued from page 28...

mortgage lenders lie ahead. Here's a glimpse into what's just around the bend in the data aggregation space.

- **Bigger data sets that paint a fuller financial picture**
  Until recently, financial data repositories have largely only provided access to recent data, i.e. data transactions completed within the last 30 days. But now data aggregators and financial institutions are working collaboratively to access consumer account data that extends 12 months or more into the past. With years of transaction data at their fingertips, lenders will be able to more accurately assess borrower creditworthiness.
- **Global standards that bring stronger datasets**
  Organizations such as the Financial Data Exchange (FDX) are working to establish common, global standards that make it easy and secure for consumers to share, and businesses to access, consumer financial data. Global financial data standards would establish API data calls and payloads, which would in turn greatly improve the fidelity of aggregate data. Global standards would also facilitate more widespread use of technologies like federated identification, which allows a single electronic identity to be used across multiple financial institutions.
- **Greater consumer control**
  Although often done to protect consumer privacy, when financial institutions obstruct aggregators' access to consumer financial data, they undermine their own relationship with their customers. That's because banks serve consumers as custodians of their financial data, not as owners of it. Just as financial institutions are obligated to protect consumer data, they must also share that data with third parties upon a consumer's request. Consumers should be able to freely access their financial data and grant others access to it.

There's no doubt that our industry will find even more uses of data aggregation in the future. Innovative applications that leverage direct-source data and straight-through processing to drive greater purchase certainty will certainly yield the most exciting breakthroughs for mortgage lenders.

Visible continued from page 29...

company's overall marketing approach and branding.

You may need to review, refresh, and reinforce your social media policy and clarify for your employees the best practices for using LinkedIn, Twitter, and Facebook, and other platforms. Ideally you are doing this on a regular basis so that your policy is up to date when a pandemic or other unforeseen circumstance strikes. Think about not only who is posting and what is being posted, but also about "social listening." Monitoring how your company is being discussed on social media is an important part of reputational brand management, especially during a crisis.

DIFFERENTIATING YOUR BRAND THROUGH CONTENT MARKETING AND THOUGHT LEADERSHIP

After the initial communication has taken place, you will want to think about how you can provide valuable information to clients that will help them manage through the crisis. The financial services landscape has been a rapidly evolving one during the pandemic and the timely updates by many firms and associations have been very valuable during these difficult times. It also kept them visible. Keep in mind, in times like this, your clients are dealing with a lot of the same information, with inboxes full of emails from service providers competing for visibility. It is good to ask yourself whether you are adding a fresh, new perspective.

Webinars have been and continue to be offered by service providers and by many trade associations unable to hold in-person conferences, or as a complement to their existing webinar program. Some of these webinars focus on COVID-19 and some cover general business topics. Early on the most attended webinars related to the pandemic, but we also know that normal business problems do not go away during a pandemic. As the initial chaos of a crisis settles, there will still be a pent-up need for information about products, solutions and services. Consider asking how you can be of assistance to clients in helping them solve their current business problems. What topics will be of interest as we return to a new normal? Which business partners could you reach out to and develop joint webinars?

One of the best things you can do is to reach out to the associations to which you belong and ask them how you can partner with them by providing content and speakers for webinars and virtual conferences. Associations are very interested in staying in front of their members by providing valuable content. You will want to get in touch as soon as possible with the associations as their planning horizons, particularly for conferences, are months out into the future. You don't want to miss an opportunity to become a presenter or a speaker by failing to act early enough. Do not wait to find out if a conference will be in person or virtual—start the conversation.

Marketing can help build your team's skills in video presentations and the use of video technology. In addition to using video for webinars and virtual conference presentations, consider doing podcasts and other videos that can be shared. Business developers are also finding that using video for client meetings is becoming a new best practice. It is more effective than just a phone call, and more efficient than in person visits.

How else can you differentiate your brand? Another way is by effectively managing your content marketing strategy through media and public relations. Refresh your editorial calendar. What content can you share or repurpose that would have relevance to the crisis? Also, if you have media-trained spokespersons, consider developing a list of topics and subject matter experts who can be interviewed about the crisis and how your firm is handling it. Reach out to editors of industry publications, particularly if you have relationships with them already, and offer to write articles either about the crisis and its impact on business, or about other business topics. The deadlines for content vary widely by publication so it is best to work with individual editors to find out how much advance planning a specific publication requires. Be sure to think through what topics you can write about that will be of interest to the publication's audience and your clients in the months ahead. Thought leadership beyond the crisis is crucial to your long-term branding.

How will your brand to be remembered once the crisis has passed? Were you just visible? Or will you have established yourself as a trusted, go-to resource? If you have been effectively communicating, it is much more likely that you will have successfully reinforced your value as a long-term business partner.

Decisions continued from page 30...

The Ninth Circuit also reasoned that "[t]here is no convincing evidence the California Supreme Court would break with that precedent." Accordingly, the Ninth Circuit upheld the lower court dismissal with prejudice, even though the borrowers argued that the assignments of the deeds of trust in question were void.

The holding in *Perez* sends a strong message to borrowers at the federal level and leaves no room for equivocation across the U.S. District Courts. Though the California Supreme Court may take the issue up at a later date, for now, lenders and servicers have consistent favorable law in both the federal and state courts about challenges to their rights prior to foreclosure.

THE DUTY OF CARE FOR LOAN MODIFICATIONS

The Third District Court of Appeal weighed in, again, on the split in judicial districts as to whether a loan servicer has a duty sounding in negligence for mishandling loan modification applications. In *Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5th 341 ("*Weimer*"), the court ruled in favor of the borrowers on this point and held that when a servicer reviews a borrower's application for a modification, a special relationship is created between the two parties. Further, that relationship poses a duty of care on the servicer to conduct the loss mitigation process without error; otherwise, the servicer may be sued for negligence.

In their reasoning, the *Weimer* court evaluated factors provided by the California Supreme Court in *Biakanja v. Irving* (1958) 49 Cal.2d 647 ("*Biakanja*"). The *Biankanja* Court analyzed six factors to determine whether a general duty of care exists. The factors include:

The extent to which the transaction was intended to affect the plaintiff,

1. the foreseeability of harm to him,
2. the degree of certainty that the plaintiff suffered injury,
3. the closeness of the connection between the defendant's conduct and the injury suffered,
4. the moral blame attached to the defendant's conduct, and
5. the policy of preventing future harm.

The *Weimer* court evaluated each of those factors and generally concluded a duty of care should be created because the loss mitigation review process was clearly aimed at helping the borrowers keep their homes, and if a mistake happens, the foreseeable harm would be a loss of the home. The court attributed particular weight to what it considers unequal bargaining power between lenders and borrowers in the modification process. The court also emphasized that during the modification process a special relationship exists between the lender and borrower that did not exist at the origination of the loan.

The *Weimer* decision was essentially the same conclusion reached by the court in *Alvarez v. BAC Home Loans servicing, LP* (2014) 228 Cal.App.4th 941 ("*Alvarez*") and built on its prior reasoning in *Rossetta v. CitiMortgage, Inc*. (2017) 18 Cal. App. 5th 628. Interestingly, the *Weiner* and *Rossetta* decisions were departures from the Third District Court of Appeal's very short lived opinion in *Conroy v. Wells Fargo Bank, N.A.* (2017) 13 Cal.App.5th 1012, 1032 (vacated opinion) ("we decline to apply a test intended only for situations where there is no privity of contract.")

The *Weimer* court rejected the opinion of *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, which held that a lender "did not have a common law duty of care to offer, consider, or approve a loan modification." The *Weimer* court also rejected the opinion of its colleagues in *Sheen v. Wells Fargo Bank, N.A.* (2019) 38 Cal. App.5th 346, review granted,

Sheen v. Wells Fargo Bank, N.A. 2019 Cal. LEXIS 8364. ("*Sheen*"), which rejected the concept of a duty of care when there is purely economic harm. *See Southern California Gas Leak Cases* (2019) 7 Cal.5th 391.

While the *Weimer* court recognized that the court in *Sheen* looked to the recent California Supreme Court authority analyzing the *Biakanja* factors, the *Weimer* court opined the *Sheen* court's analysis fell short. Specifically, the *Weimer* court argued the *Sheen* holding lacked consideration of the special relationship between borrower and lender in the modification context. The *Weimer* court also opined that "our high court excludes from the no-tort-duty-for-economic-damages rule claims for economic damages arising from 'botched' financial transactions meant to benefit the plaintiff." It remains to be seen as to whether that holds true because the California Supreme Court has taken up the issue in its review of the *Sheen* case. *Sheen* is set to be fully briefed by the end of July 2020. However, until something different happens, the borrowers can claim a victory.

Diligence continued from page 31...

with photos, in lieu of our access, if we were to provide them with the needed pictures along with how to take them?

6. **State/Regional/County/Local limitations:** There are a handful of states that are placing various degrees of sanctions and quarantine measures on out-of-state travelers. At the time of this articles writing, New York and the tri-state area had imposed a "Joint Travel Advisory" requiring that all individuals traveling from states with significant community spread of COVID-19 quarantine for a 14-day period from the time of last contact within an identified state. This is one area where GRS shines. Because we have "local" assets in almost all 50 states, we are set up to provide our due diligence reporting while meeting the travel restrictions that some providers cannot offer. For instance, here is a direct excerpt from the Website of the Governor of NY—"*All travelers entering New York from a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven day rolling average, will be required to quarantine for a period of 14 days consistent with Department of Health regulations for quarantine*". Currently, this would require travelers from 8 states (**Alabama, Arizona, Arkansas, Florida, North Carolina, South Carolina, Texas and Utah**)—as well as New Yorkers returning from those states—to quarantine. Florida, Hawaii and Kansas had similar travel advisory's in place at the time of this article's writing. GRS Group is cognizant of these travel restrictions when staffing projects using "out-of-state" Field Professionals.

As the debt and equity markets find ways to gain momentum, COVID-19 related restrictions will remain in place for an unspecified period. These restrictions require creative responses and new resource collaboration in order to meet project challenges. **Clients expect us to understand, prepare and execute our services regardless of project hurdles.**

Once the "ground rules" of the transaction are established, **GRS will work with you to develop an investigation plan**. If enough in-person access cannot be accomplished to properly evaluate the property's physical condition, a hybrid approach can be created and implemented to appease all transaction parties from tenant to lender and buyer. The process will include a document review and in-person inspection with interviews supplemented with property-provided photos (we will provide a comprehensive list of those required along with guidance for taking the photos) to accomplish the hybrid "live-virtual" inspection. The live virtual inspection can be conducted using any of the technologies available today including Zoom, Skype, Microsoft Teams, and other methods.

Communication early in the process, more than ever, is the true key to success. By understanding the circumstances around each transaction and property at the outset, GRS Group is extremely effective at helping lenders and investors evaluate the property's physical risks and projected capital needs and keep the transactions moving forward during the pandemic.

We are getting deals done in this environment! And will continue to shift our methods to remain ahead of the changing needs of our clients with respect to restrictions in place as the COVID-related environment continues to evolve.

If you would like to discuss how we can assist you in purchasing, selling, developing, financing, or recapitalizing your commercial real estate transaction, please reach out to your GRS representative to discuss the myriad options available for us to assist you.

In the meantime, we hope this article finds you happy and healthy.

Value continued from page 32...

that when credit boxes are small and deals are tight, we keep the market efficient by matching the right deals and borrowers with the right sources of capital. For mortgage bankers, now is the time for us to showcase our value in a disjointed and fluid market where real time information and the strength of one's relationships can often make the difference in getting a deal done.

During dynamic times like these when policies, players, and programs can change from day to day, we act as gatekeepers and conduits of information. Staying engaged and informed for our clients is part of the service that we provide. Proactively reaching out to borrowers and making ourselves available to them to walk through every scenario is an opportunity to strengthen our borrower relationships and gain a more complete understanding of our client's objectives.

Lenders too have the opportunity to make their mark and forge deep and lasting relationships with borrowers. Those that have the confidence and foresight to take calculated risks, to provide favorable terms, or make a difficult loan now, can win the loyalty of a borrower who will be inundated with other options once credit eases. Now is the time to act in good faith and create the goodwill that can turn a transactional borrower into a programmatic one. Now is also the time for lenders that already enjoy those kinds of relationships with their borrowers to strengthen and protect them by continuing to demonstrate empathy, flexibility, and a willingness to make reasonable accommodations that serve the interests of all parties.

The Correspondent Lending model is an important one, and we Mortgage Bankers that serve as correspondents are in a unique dual agency position. We serve both the borrower and the lender. We must always seek the most efficient execution for our borrowers who hire us and pay our fees, but it is our relationship and commitment to the lenders that we represent that gives our clients access to some of the most stable and competitive programs in the market. Being able to identify the borrower that will benefit from a LifeCo relationship and pairing them with the lender whose interests are aligned with theirs is our core competency. Helping borrowers understand the value proposition is a service we provide to the lender as originators, but also to the borrower who often may overlook the tangible benefits of working with a relationship lender that doesn't ask for deposits.

Like with anything, there are trade-offs, and these programs are not for everyone. Some borrowers will always be transactional, and they are quite happy and successful operating that way. But for the long-term investor who can trade some leverage for peace of mind, cultivating strong lending relationships during a downturn, with the assistance of a knowledgeable and respected Mortgage Banker, is a strategy that is sure to pay dividends. And having that Mortgage Banker stay invested as the primary servicer ensures that the borrower will always have an advocate to help them work through unforeseen challenges, and creates a supportive framework for the life of the loan that borrowers can only truly appreciate during a crisis like this one.

As we move into an uncertain future, one that will undoubtedly be marked by volatility until we get control of the virus, it is important that we remember that we are all in this together. Let's seize these opportunities to work together, in service of the market and each other, and strive to build and fortify lasting relationships that will lay the foundation for commercial mortgage lending during the up leg of the next real estate cycle and beyond.

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