

COVID 19 **CRISIS** **MANAGEMENT** FOR HOTEL OWNERS

COALITION FOR CMBS RELIEF



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DEALING WITH THE BANKS

- Commercial Lenders vs CMBS Financing
- “There may be specific industries that are highly impacted by travel that have issues with lending hotels and cruise lines....[W]e are focused on helping those businesses that need liquidity.” -*Treasury Secretary Munchin*

COMMERCIAL BANKS

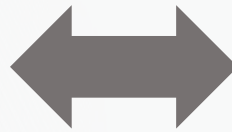
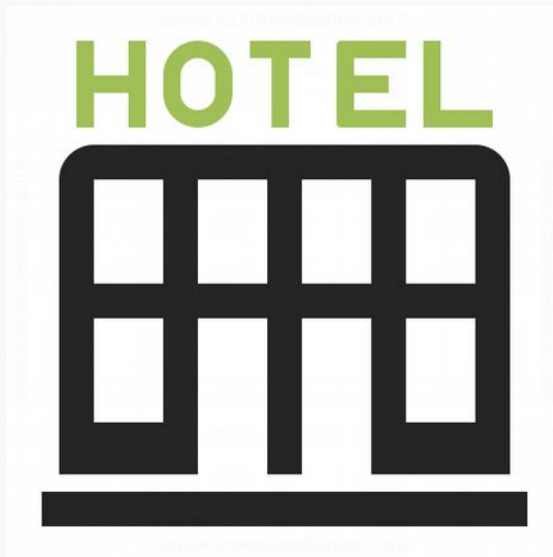
- Approaching your lender
- State mandated extensions
- Foreclosure and eviction restrictions
- Forbearance? Modification?
Extension?
- What the FDIC says

The FDIC has instructed financial institutions to “provide borrowers affected in a variety of ways by the COVID-19 outbreak with payment accommodations that facilitate their ability to work through the immediate impact of the virus... Financial institutions may want to consider addressing any deferred or skipped payments by either extending the original maturity date or by making those payments due in a balloon payment at the maturity date of the loan.”

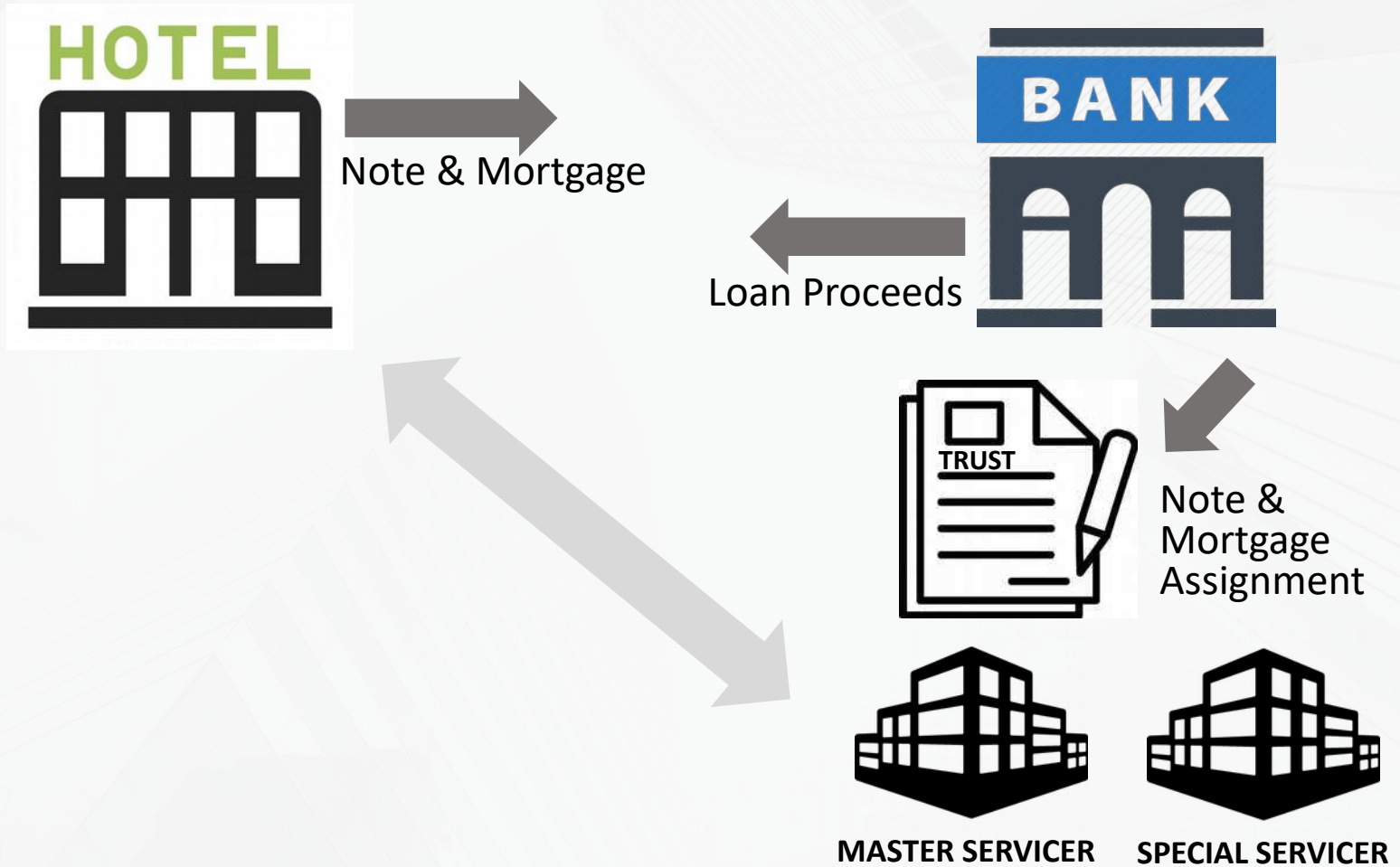
FDIC does not consider most extensions or modifications as Troubled Debt. That means the bank's risk scores and loan reserve requirements don't change.

CMBS 101

TRADITIONAL BANK RELATIONSHIP



CMBS RELATIONSHIP



MASTER SERVICER OVERVIEW

- Duties Set by Pooling and Servicing Agreement
- Primary point of communication with borrower
- Routine Loan Administration
- Collection of Monthly Payments (debt service, reserves)
- Ensures taxes and insurance are paid

MASTER SERVICER OVERVIEW

(Continued)

- Receives and reviews borrowers' financial statements
- Monitors compliance with other covenants
- Conducts required inspections
- Typically receives a flat monthly fee for its services
- Little or no authority to change loan terms

SPECIAL SERVICER OVERVIEW

- Special servicer's involvement triggered by PSA or Master Servicer
- Typically funded by charges and fees assessed on borrower
- Duties vary according to Pooling and Servicing Agreement

SPECIAL SERVICER OVERVIEW

(Continued)

- Typical triggering events include
 - Payment default
 - Insolvency events
 - Material changes in financial status of borrower
 - Litigation or liens
 - Loss of franchise (flag)

SPECIAL SERVICER OVERVIEW

(Continued)

- Possesses wide discretion to modify loan terms
- Has authority to take collection actions (cash sweeps, foreclosure, reallocate reserves)
- Unlike banks, not precluded from owning foreclosed real estate
- Duty to trust, not borrower
- Mostly unregulated
- Can execute documents on behalf of trust

REMEDIES AVAILABLE TO A SPECIAL SERVICER

Good

- Reduce principal (rare)
- Defer payments
- Reduce interest
- Extend maturity
- Allow reallocation of reserves

Bad

- Appointment of receiver
- Foreclosure
- Other collection remedies

SBA LOANS AND LOAN AGREEMENTS

Does acceptance of SBA PPP or EIDL Loans Violate Loan Covenants

(Payroll Protection Program and
Economic Injury Disaster Loan)

TIPS FOR DEALING WITH SPECIAL SERVICER

- Be transparent but careful
- Be able to articulate your turnaround plan
- Pre-Negotiation Agreements – PNAs (Borrower Beware!)

TYPICAL PNA AGREEMENT

“No statement made by any Party in connection with any discussions or this Agreement shall be relied upon by the other until an agreement reflecting the same is reduced to an express written agreement, approved and executed by all Parties in their sole discretion, and the Loan Documents are modified, if necessary. No agreements, representations or warranties shall be binding or effective unless agreed to in writing by the Parties.”

PNAs IN THE CMBS REAL WORLD

- Beware one sided confidentiality clauses
- BEWARE ADMISSIONS OF LIABILITY

FORBEARANCE AGREEMENTS

What to watch out for...

- Acknowledgment of default
- Waiver of liability
- Calculation of amounts owed (acknowledgment of penalties owed)
- Default interest and charges that aren't waived but instead accrued
- Demands for additional collateral and guaranties

TALF
TERM ASSET
BACKED
SECURITIES LOAN
FACILITY

**TALF – Hope for CMBS
Borrowers**

- **Allows banks to hold CMBS loans on balance sheets and pledge to FED for cash**
- **Currently available only for Freddie and Fannie CMBS loans**
- **Proposed for Private Label CMBS loans**

A low-angle, black and white photograph of several skyscrapers reaching towards the sky. The perspective is from the ground looking up, creating a sense of height and scale. The buildings are modern with many windows and structural lines.

PART TWO
BUSINESS
INTERRUPTION
INSURANCE

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- All Risk vs Specified Risk Policy
- Business Interruption Rider - Physical Loss Required?
- ISO 2006 Virus exclusion
- Public Authority / Government Authority Provisions
- State Legislative Activity

TYPICAL BUSINESS INTERRUPTION COVERAGE LANGUAGE

“This policy insures against loss resulting directly from necessary interruption of business caused by physical loss or damage by a peril not otherwise excluded herein to insured property of the Insured, all subject to the terms and conditions of this policy.”

2006
INSURANCE
SERVICE
OFFICE (ISO)
MODEL VIRUS
EXCLUSION

“We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.”

DEALING WITH YOUR INSURANCE COMPANY

- All communications should be in writing
- If coverage denied, demand the denial be in writing and include the reasons for denial
- Most states insureds are entitled to “prompt” determination on claim

A low-angle, black and white photograph of several skyscrapers reaching towards the sky. The perspective is from the ground looking up, creating a sense of height and scale. The buildings are partially obscured by a dark, semi-transparent rectangular overlay that contains the text.

PART THREE
RENEGOTIATING
CONTRACTS
AND
FORCE MAJEURE

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NEED HELP? WE ARE EASY TO REACH



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Coronavirus Resources
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