

The Standard Roles And Responsibilities Of The Master And Sub-Servicers In CMBS Transactions

Issue: The issue facing the industry is to define roles and to suggest allocated responsibilities for the master and sub-servicers in a CMBS transaction.

Commercial mortgage conduit lenders often source their loans through other originators such as mortgage bankers and correspondents. A common trend has been to allow the originators to retain the post-securitization primary servicing and to maintain their relationships with their borrowing clients in partial exchange for originating the loans for securitization. Since many of these originators are not rated master servicers, they can only retain the loan servicing by being a sub-servicer in the securitization transaction. However, once a master servicer is appointed to the transaction, the master servicer has contractual and fiduciary obligations to ensure that the loan servicing is done in accordance with the applicable pooling and servicing agreement and the REMIC rules and regulations. The originator/sub-servicer is equally bound by these servicing duties.

Until the roles and responsibilities for both the master and sub-servicer in a CMBS transaction are clearly defined, there will be confusion, duplication of activities, lack of ownership of functions, and inefficiencies in servicing CMBS transactions.

(See CMBS Function Guide)

Background

Historically, commercial mortgage loans have been serviced by mortgage banker loan correspondents, representatives or advisors that originated the loans for the lenders, and this remains true for the vast majority of commercial mortgage loans today made by life insurance companies, pension funds and GSE's. The services provided for those loans being serviced by the originator are well established in the portfolio lending industry. In general, the servicer provides all property and borrower level services on a non-discretionary basis subject to the approval of the lender, including services if the loan is in good standing and if the loan goes into default.

However, in CMBS transactions, loan servicing duties are divided among three types of servicers: the master servicer, sub-servicer and special servicer. For a variety of reasons confusion and disagreements have arisen among these servicers about which servicer is to perform which servicing duties. The reasons include the fact that servicers' fees have been tightening, responsibilities and liabilities increasing, and like before, originators want to retain the servicing of their originated loans. They do this in a securitized transaction by becoming a sub-servicer in the transaction. Typically, the originator or sub-servicer has the leverage to negotiate a fair servicing fee at the front end of the conduit, since an originator contributes loan product to the transaction. The master servicers, often with less leverage in the transaction, often accept a smaller fee, due to competition. Once the securitization closes, many master servicers delegate many direct servicing functions to the sub-servicer, often without the sub-servicer fully realizing the full scope and effect of the services which the sub-servicer is expected to provide post-securitization.

Another factor compounding this matter is that no standard master/sub-servicer agreement is used in the industry. While the functions required by the servicer are specifically delineated in the pooling and servicing agreement after being negotiated by all parties, the sub servicing agreement is negotiated between only two parties: the master servicer and the sub-servicer, and is often very general. This leaves room for certain servicing responsibilities to "fall between the cracks".

Servicing problems arise when responsibilities are not clearly defined in the sub-servicing agreements and the sub-servicer's responsibilities vary greatly from transaction to transaction, often leading to confusion or omissions. As a result, the borrower endures delays and additional expenses while the master and sub-servicer decide who performs what function, a debate compounded by tight servicing fees.

Purpose of developing guidelines

The task force's mission was to create detailed guidelines that reflect the generally accepted roles and responsibilities of master and sub-servicers in a CMBS transaction. In preparing these guidelines, task force members strove to (1) develop a detailed list of all the functions which are performed in the servicing of CMBS loans, and (2) assign each function to a party in the CMBS servicing structure, taking into account generally accepted understanding of the most likely party to perform each function and the party best able to perform each function. The guidelines can be used by the industry (1) as a checklist in new transactions to ensure that all functions are addressed and thus ultimately facilitate faster turnaround times for borrowers, (2) to educate new sub-servicers in the CMBS market on what is expected of them, (3) as a starting point for all negotiations between the master and sub-servicer and (4) to reduce the rating agencies' concerns arising from the absence of clearly defined servicing roles and responsibilities in CMBS transactions.

The guidelines do not represent standards the industry must follow, but rather are intended as generally accepted practices and a checklist for use by master and sub-servicers as they negotiate their specific arrangements on a transaction. Although the accountability checklist contains a detailed list of functions and the associated responsibilities, it is not meant to be exhaustive. While the information contained herein, may reflect industry practices, the contract requirements of any particular transaction may vary or differ as each agreement is a separately negotiated contract between the parties. A servicing agreement between the master and the sub-servicer details a methodology for classifying servicing tasks that arise, allocates responsibility for them, and details what process is followed to complete them. This checklist supports a methodological approach to divide and define the servicing roles, using the checklist or matrix as a complement allowing for individual contract negotiations between the parties.

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Note: The below is meant to be a guide and a beginning point for discussions only and shall not be construed as indicative of any purported "industry standard" (as "industry standards" are difficult to establish at any given time and may also fluctuate from time to time depending upon market conditions, the enactment of new laws, the relative bargaining positions of the parties, and other factors).

FUNCTION		MASTER SERVICER	SUB SERVICER	OTHER
ASSET MANAGEMENT				(1)
	INSPECTIONS		<input checked="" type="checkbox"/>	
	FINANCIAL STATEMENT/RENT ROLL COLLECTION		<input checked="" type="checkbox"/>	
	FINANCIAL STATEMENT REVIEW / ANALYSIS & NORMALIZATION		<input checked="" type="checkbox"/>	
	FINANCIAL STATEMENT FINAL REVIEW/ENSURE CONSISTENCY	<input checked="" type="checkbox"/>		
SPECIAL REQUESTS				
	LEASE REVIEW AND RECOMMENDATION		<input checked="" type="checkbox"/>	
	LEASE APPROVAL	<input checked="" type="checkbox"/>		
	ASSUMPTION PROCESSING AND RECOMMENDATION		<input checked="" type="checkbox"/>	
	ASSUMPTION APPROVAL	<input checked="" type="checkbox"/>		
	PARTIAL RELEASES OF COLLATERAL/PROCESSING RECOMMENDATION		<input checked="" type="checkbox"/>	
	PARTIAL RELEASES OF COLLATERAL APPROVAL	<input checked="" type="checkbox"/>		
	RESEARCH/PROCESSING CORRECTIVE DOCUMENTS (legal description of boundaries)		<input checked="" type="checkbox"/>	
	APPROVAL OF CORRECTION TO DOCUMENTS	<input checked="" type="checkbox"/>		
	EASEMENTS/PROCESSING RECOMMENDATION		<input checked="" type="checkbox"/>	
	EASEMENTS APPROVAL	<input checked="" type="checkbox"/>		
	CONDEMNATION PROCEEDS		<input checked="" type="checkbox"/>	
	MODIFICATION PROCESSING RECOMMENDATION		<input checked="" type="checkbox"/>	
	MODIFICATION APPROVAL	<input checked="" type="checkbox"/>		
	DEFAULT MODIFICATION			Special Servicer

FINANCIAL AND LEGAL COVENANT MONITORING	X
PROCESS OF DEBTOR ADDITIONAL BORROWING REQUESTS	X
APPROVAL OF DEBTOR ADDITIONAL BORROWER REQUESTS	X
PROCESSING OF TRANSFER OF EQUITY INTERESTS	X
APPROVAL OF TRANSFER OF EQUITY INTERESTS	X

DETERMINATION OF ADVERSE REMIC EVENTS	X
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RATING AGENCY APPROVALS	X
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REPORTING

CSMA

INITIAL SET UP FILE

Depositor

CSMA DATA REPORTING	X
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VALIDATION OF CSMA DATA AND REPORTING TO TRUST	X
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SURVEILLANCE REPORTS	X
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TAX REPORTING TO IRS

1098

Entity that processes cash

1099A / 1099C

Special servicing

1099 INTEREST	X
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8K FILING

Master Servicer provides information to Trustee and Trustee reports to Edgar

SERVICING

PAYMENTS PROCESSING/BILLING	X
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ESCROW / RESERVE ADMINISTRATION	X
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INSURANCE LOSS DRAFT PROCESSING	X
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MANAGEMENT OF PROCEEDS FOR CONSTRUCTION / LOSS		<input checked="" type="checkbox"/>	
PAY TAXES / INSURANCE		<input checked="" type="checkbox"/>	
RESERVE DISBURSEMENT PROCESSING		<input checked="" type="checkbox"/>	
CASH MANAGEMENT		<input checked="" type="checkbox"/>	
PAYOFF PROCESSING		<input checked="" type="checkbox"/>	
PAYOFF APPROVAL	<input checked="" type="checkbox"/>		
RECONVEYANCES		<input checked="" type="checkbox"/>	
YIELD MAINTENANCE CALCULATIONS		<input checked="" type="checkbox"/>	
YIELD MAINTENANCE CALCULATIONS APPROVAL	<input checked="" type="checkbox"/>		
DEFEASANCE CALCULATIONS	<input checked="" type="checkbox"/>		With legal involvement (2)
UCC MONITORING, CONTINUATIONS, RELEASES, ETC.		<input checked="" type="checkbox"/>	
LETTER OF CREDIT MONITORING / RENEWALS		<input checked="" type="checkbox"/>	
LETTERS OF CREDIT RELEASES	<input checked="" type="checkbox"/>		
GROUND LEASE MONITORING/ PAYMENTS		<input checked="" type="checkbox"/>	
APPROVAL OF TRANSFER OF LOAN TO SPECIAL SERVICING	<input checked="" type="checkbox"/>		
TRANSFER OF FILES TO SPECIAL SERVICER & HANDOFF	<input checked="" type="checkbox"/>		
MISCELLANEOUS			
MAINTAIN E&O POLICY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
FIDELITY BOND	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
USAP	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
ADVANCING (P&I / T&I / PROPERTY PROTECTION)	<input checked="" type="checkbox"/>		
OBTAIN ASSIGNMENTS OF UCC's AND LOAN DOCUMENTS AT CLOSING	<input checked="" type="checkbox"/>		