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An Investor's Guide to
**The Pooling
and Servicing
Agreement**

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I. INTRODUCTION

The commercial mortgage securitization market is a major source of financing for commercial mortgage lending. Commercial mortgage-backed securitizations provide a vehicle for mortgage lenders and loan aggregators to sell commercial mortgage loans to investors. A typical commercial mortgage securitization transaction involves a transfer of a single mortgage loan or a pool of mortgage loans to a trust that then issues certificates referred to as commercial mortgage-backed securities (“CMBS”). A single securitization typically issues several classes of certificates offering different yields, durations and payment priorities, and giving investors choices based on cash flow timing and risk tolerance.

CMBS is offered in both public and private securities offerings. Public transactions involve the delivery of a free writing prospectus to prospective investors and a prospectus supplement to investors after the securities price. Private transactions involve the delivery of an initial private placement memorandum to prospective investors and a final private placement memorandum to investors after the securities price. Many offerings involve both a public and a private component. Regardless of how the securities are offered, the underlying transaction documents that are material to investors include

one or more mortgage loan purchase agreements (or similarly named documents) pursuant to which the loan or loans are transferred from the loan seller to a depositor and a pooling and servicing agreement (“PSA”) or trust and servicing agreement (which is similar to the PSA, but used for single loan securitizations where no “pooling” occurs). The PSA governs the transfer of the loans into the trust, management of the trust, servicing of the loans, and issuance of securities to investors, and is thus the backbone of the transaction.

This guide provides a general overview of customary provisions found in a typical PSA. It does not address every provision or nuance of a PSA, and is not meant to be a summary of the actual terms and conditions for any particular CMBS transaction. A PSA for a particular CMBS transaction may contain provisions that differ, in some cases materially, from the general descriptions provided in this guide. Investors holding CMBS or considering an investment in CMBS should carefully review the actual PSA and offering documents for the relevant CMBS transaction, and should consult with appropriate legal, accounting, tax and other advisers to fully understand the terms, conditions and characteristics of the related CMBS.

II. HOW THE PSA IS ORGANIZED

The PSA is both a standardized document and a product of negotiations between the deal parties. Most CMBS programs tend to use PSAs that follow a similar organizational outline, although specific terms frequently vary. The most commonly used form of PSA is organized into 11 or 12 articles, with key provisions located in the same articles across programs. For example, definitions are typically located in Article I, provisions regarding the transfer and delivery of loans in Article II, provisions regarding the servicing of the loans in Article III, and provisions regarding distributions to certificate-holders in Article IV.

III. TRANSACTION PARTIES

An essential purpose of the PSA is to define the roles of the parties to the PSA as well as the rights of the investors (or certificateholders) in the transaction. This section focuses on the transaction participants that are most relevant to investors, which typically include the loan seller or sellers, the master servicer, the special servicer, the controlling class representative (sometimes referred to as a directing certificate-holder), the operating advisor (sometimes referred to as a trust advisor or a senior trust advisor), the trustee, and the certificate administrator.

A. The Loan Sellers

Each CMBS transaction has one or more loan sellers that sell collateral to the trust. Loan sellers that contribute a substantial amount of collateral to a deal may be referred to as deal sponsors. Each loan seller will be a party to a mortgage loan purchase agreement, pursuant to which the loan seller will make representations and warranties with respect to certain

aspects of the loans. While the loan sellers are not parties to the PSA, they are usually required, pursuant to the mortgage loan purchase agreements, to comply with certain provisions contained in the PSA (either by reference to the PSA or by the inclusion of substantially the same provisions in the mortgage loan purchase agreements). These include provisions regarding loan file delivery, cures of material breaches of representations and warranties, and cures of material document defects.

The failure by a loan seller to cure a material breach of representations and warranties, or a material document defect, may result in a repurchase or substitution of the related loan by the loan seller.

B. The Servicers

CMBS transactions use a dual-servicer structure. The master servicer is generally responsible for servicing performing loans. The special servicer, on the other hand, is responsible for specially servicing loans that are subject to a servicing transfer event and administering real estate owned ("REO") properties. REO properties are properties acquired by the trust as a result of a foreclosure or deed-in-lieu of foreclosure. Both the master servicer and the special servicer are required to act in the best interests of the certificateholders (as a collective whole) and are held to a servicing standard as further described in Section VI.A. of this guide.

1. THE MASTER SERVICER

The master servicer is charged with carrying out routine servicing duties for performing loans and, to a certain extent, loans transferred to special servicing. It is also the primary party responsible for making advances (which include principal and interest advances, and servicing advances) as described in Section VI.B. of this guide. Key functions performed by the master servicer include the following:

a. Collect and process payments. The master servicer is responsible for administering the collections account for the transaction. Payments received on the loans, including payments received from the special servicer, are held in this account until the funds are moved to the distribution account for payment to certificateholders. The master servicer may invest funds on deposit in the collections account in eligible investments and typically retains the interest earned on such funds as part of its compensation.

b. Compile loan level information. The master servicer operates as the loan level information clearinghouse for the CMBS transaction. Specifically, the master servicer is required to collect periodic operating statements and rent rolls from borrowers, perform certain property inspections and maintain loan payment records. Certain information regarding specially serviced loans and REO properties will be provided to the master servicer by the special servicer. The master servicer compiles the loan information obtained or received by it and prepares investor reports that are delivered to the certificate administrator for posting to investors.

c. Inspect properties. The master servicer is required to periodically inspect the underlying mortgaged properties, generally at least annually. However, for loans with balances below certain thresholds (e.g., \$2 million), the PSA may permit the related underlying mortgaged properties to be inspected less frequently, such as every two years. Properties securing specially serviced loans and REO properties are usually required to be inspected by the special servicer.

d. Oversee property taxes, other costs, escrows and insurance. The master servicer is required to maintain records reflecting the status of taxes, assessments, insurance premiums and applicable ground rents. The master servicer is also required to ensure that mortgaged properties

are adequately insured. To the extent escrows or reserves are maintained for such purposes, the master servicer is required to administer these escrows or reserves. The master servicer is typically permitted to invest escrow and reserve funds in eligible investments and retain the interest earned on such funds (to the extent the same is not required to be paid to the related borrower).

e. Handle certain consents, waivers and modifications. The master servicer is authorized to process routine loan level requests for non-default consents, waivers and modifications. However, as discussed in Section VI.D. of this guide, certain requests may be subject to the approval of the special servicer and the consent or consultation rights, if any, of the controlling class representative and the operating adviser. For specially serviced loans, waivers, amendments and consents are generally processed by the special servicer, subject to the consent or consultation rights, if any, of the controlling class representative and the operating advisor. Consent and consultation rights of the controlling class certificateholder and the operating advisor are discussed in more detail in Section V.B. of this guide.

The master servicer is compensated for its services in a variety of ways. The master servicer is paid a servicing fee that is assessed against the outstanding balance of each loan at a rate that varies on a loan-by-loan basis. In a sampling of recent CMBS deals the servicing fee rate for individual loans generally ranged from 1 basis point to 15 basis points per annum (with a few loans having servicing fee rates that were much higher). In addition, as previously mentioned, the master servicer is usually entitled to retain investment income earned from the investment of funds on deposit in the collections account, and escrow and reserve accounts. Furthermore, the master servicer is entitled, under certain circumstances, to retain other fees, such as default interest, penalty charges,

fees charged for insufficient funds (bounced checks), modification fees, assumption fees, transaction fees, net prepayment interest excess and other fees related to processing borrower requests. Some of these fees may be required to be shared with the special servicer if special servicer consent is required or may be wholly payable to the special servicer if they relate to a specially serviced loan. Default interest and penalty charges are usually required to be applied to reimburse interest payable on advances and other trust fund expenses incurred with respect to the related loan prior to being available as additional compensation to the master servicer or the special servicer, as applicable.

The master servicer is permitted to contract with third-party sub-servicers to perform its obligations under the PSA. Most PSAs place restrictions on the functions that may be performed by a sub-servicer. For instance, a sub-servicer is usually restricted from granting any modification, waiver or amendment to any loan without the approval of the master servicer or the special servicer. Any fees payable to a sub-servicer retained by the master servicer are generally the sole responsibility of the master servicer.

The master servicer's ability to resign is typically limited, such that resignation is only permitted if the master servicer determines that the further performance of its duties under the PSA is no longer permitted by law. Its ability to assign its rights may also be limited to assignments in connection with the sale and transfer of a substantial portion of its assets (in some deals, limited to assets related to its servicing business), or assignments to a qualified transferee subject to receipt of a rating agency confirmation. The master servicer may, however, be terminated by the trustee or a requisite percentage of certificateholders as described in Section V.D. upon the occurrence of a servicer termination event. Servicer termination events are essentially servicer events of default, and typically include failing to deposit amounts into appropriate accounts when required, ongoing covenant defaults (e.g., a continuing failure to

pay the premium for an insurance policy required to be force placed by the master servicer), ongoing breaches of representations or warranties that materially affect the interests of certificateholders, certain insolvency events, and failing to maintain certain ratings (or status) with any rating agency.

The master servicer (including any successor master servicer) is typically required to be an established banking, mortgage financing, or mortgage servicing institution that maintains certain ratings set forth in the PSA or is otherwise acceptable to each rating agency.

2. THE SPECIAL SERVICER

The special servicer is tasked with performing special servicing duties with respect to any loan for which a servicing transfer event exists and with administering REO properties. The special servicer may also have consent rights over certain decisions relating to performing loans. Servicing transfer events generally include the following:

a. Payment default at maturity. The failure to make a balloon payment at maturity will trigger a servicing transfer event. However, some CMBS deals provide for a grace period (e.g., 60 days) so long as the borrower continues to make monthly payments on the loan and diligently seeks a refinancing commitment. Some CMBS deals also provide for an additional period of time (e.g., for another 60 days) beyond the initial grace period if the related borrower delivers a written commitment from a lender to refinance the loan within the initial period. Any failure to satisfy these conditions will trigger a servicing transfer event.

b. Monthly payment delinquency. A delinquency in making any monthly payment beyond a specified period (e.g., 60 days) will trigger a servicing transfer event.

c. Imminent default. A servicing transfer event may also occur in anticipation of a default if the master servicer or the special servicer determines that a default is likely or reasonably foreseeable.

d. The bankruptcy or insolvency of the borrower. The insolvency, receivership, or bankruptcy of a borrower will trigger a servicing transfer event. In some CMBS deals, an involuntary bankruptcy proceeding will not result in a servicing transfer event unless it remains pending for a certain period of time (e.g., 60 days).

e. Other material nonmonetary defaults. Nonmonetary defaults that materially and adversely affect the certificateholders and remain uncured beyond applicable grace periods in the loan documents or a specified period (e.g., 60 days) will trigger a servicing transfer event.

The occurrence of a servicing transfer event sets into motion certain obligations of the special servicer. For example, the special servicer is generally required within a set period of time following the servicing transfer event to perform a property inspection and deliver an asset status report proposing a course of action for the loan. Once a loan is transferred to special servicing, resolving the default is the core responsibility of the special servicer. To this end the PSA vests it with broad authority and discretion. Realization on defaulted loans and REO properties is discussed more fully in Section VI.F. of this guide.

A loan's stay in special servicing is expected to be temporary unless the special servicer determines that a foreclosure or a sale of the loan is the better course of action. If the condition that triggered the servicing transfer event is "corrected" as a result of a cure by the borrower, a modification of the loan documents or a waiver of the default by the special servicer, the loan will be transferred out of special servicing back to the master servicer typically upon the borrower making

three consecutive full and timely payments of principal and interest under the loan.

Similar to a master servicer, the special servicer has various sources of compensation, such as special servicing fees, workout fees and liquidation fees. Unlike the servicing fee paid to the master servicer, which is structured into the deal, the special servicer's fees usually result in shortfalls and losses to certificateholders unless the special servicer is able to pass these costs to the borrower. These losses will be allocated first to the most subordinate class of outstanding principal balance certificates. The allocation of realized losses is described in more detail in Section IV.B. of this guide. Special servicing fees, typically set at a rate of 25 basis points per annum, are assessed against the outstanding principal balance of the specially serviced loans and are payable from general collections on all loans. Workout fees and liquidation fees are paid to the special servicer to incentivize the special servicer to obtain a successful workout or liquidation of defaulted loans, and liquidation of REO properties. Workout fees are assessed against each collection of interest and principal on each corrected loan (as long as it does not become a specially serviced loan). Liquidation fees are assessed against the proceeds of a sale or other disposition of a specially serviced loan or REO property, subject to certain exclusions (e.g., liquidations related purchase options under intercreditor agreements). Workout fees and liquidation fees are typically paid at a rate of 100 basis points of each related collection of principal or interest, or liquidation proceeds, but may be as low as 50 basis points for single loan CMBS transactions. In certain CMBS deals workout fee rates and liquidation fee rates may be lower for larger balance loans (e.g., 75 basis points for loans with principal balances exceeding \$25 million) or may be subject to minimum and/or maximum fee limitations. In addition, most CMBS issuances over the last few years further limit the collection of workout fees and liquidation fees by offsetting modification fees earned and collected from the underlying

borrower with respect to the same loan in connection with the workout or liquidation of such loan and any modification fees earned over a specified period (e.g., 12 to 18 months) prior to the workout or liquidation (even for unrelated matters). Finally, workout fees and liquidation fees are mutually exclusive—only one can apply to any specific collection on a loan.

In addition to special servicing fees, workout fees and liquidation fees, the special servicer may be entitled to retain, as additional compensation, investment income earned from permitted investments of certain funds held in connection with the operation of REO properties. Furthermore, the special servicer is entitled to certain other fees, such as default interest, penalty charges (but not fees charged for insufficient funds, which are at all times payable to the master servicer), modification fees, assumption fees, transaction fees, net prepayment interest excess, and other fees related to processing borrower requests. Certain of these fees are paid by underlying borrowers and are highly negotiated. Under certain circumstances these fees are either shared with the master servicer if special servicer consent is required or wholly payable to the master servicer if related to matters wholly handled by the master servicer. Default interest and penalty charges are typically required to be applied to reimburse interest payable on advances and other trust fund expenses incurred with respect to the related loan prior to being available to compensate the master servicer or the special servicer.

Starting in 2010, restrictions developed around special servicers and their affiliates receiving compensation in connection with a special servicer's performance of its duties, excluding certain permitted fees or as expressly provided in the PSA. These restrictions developed to address conflicts of interests that could result from a special servicer retaining affiliated companies to provide services for the benefit of the trust or being financially incentivized to retain specific service providers. Permitted fees vary slightly from program to program, but generally they include commercially reasonable treasury

management fees, banking fees and insurance commissions.

The special servicer is permitted to contract with third-party sub-servicers to perform some of its obligations under the PSA, however, this may be prohibited in some deals. To the extent such sub-servicing is permitted, any fees payable to a sub-servicer retained by the special servicer are generally the sole responsibility of the special servicer.

The special servicer's ability to resign is typically limited, such that resignation is only permitted if the special servicer determines that the further performance of its duties under the PSA is no longer permitted by law. Its ability to assign its rights is also limited to assignments in connection with the sale and transfer of a substantial portion of its assets (in some deals, limited to assets related to its servicing business). The special servicer may, however, be removed with or without cause at the direction of the controlling class representative as further discussed in Section V.B. of this guide. Further, the special servicer may be removed by the trustee or a requisite percentage of certificateholders as described in Section V.D. upon the occurrence of a servicer termination event. Servicer termination events for the special servicer are substantially similar to the servicer termination events for the master servicer.

The special servicer (including any successor special servicer) is typically required to be an established banking, mortgage financing, or mortgage servicing institution that maintains certain ratings set forth in the PSA or is otherwise acceptable to each rating agency.

C. The Controlling Class Representative

Most CMBS transactions involving a pool of fixed rate commercial mortgage loans have a controlling class structure. If a CMBS transaction has a controlling class structure, the controlling class is initially the most subordinate class of principal balance certificates. Since the controlling class is

first in line to bear losses, the holders of this class are granted consent and consultation rights with respect to certain servicing matters relating to the loans, and the right to replace the special servicer. Realized losses and, in deals closed starting in 2010, appraisal reductions, may cause control to shift to more senior classes of control eligible certificates as further described in Section V.A. of this guide. In pre-2010 CMBS deals, all classes of certificates were eligible to hold control rights, but starting in 2010, deals began to restrict control to only certain classes of subordinate certificates as described in Section V.A.

Controlling class rights are exercised by a controlling class representative selected by a majority of the investors representing the controlling class, or if no party is appointed, the controlling class representative is the investor holding the largest outstanding principal balance of the controlling class. The controlling class representative's rights are described in more detail in Section V.B. of this guide.

CMBS transactions involving a single commercial mortgage loan or pools of floating rate commercial mortgage loans typically do not use a controlling class structure and, in such cases, will not have a controlling class representative.

D. The Operating Advisor

The operating advisor's main purpose is to provide an objective review of the special servicer's actions and performance. The operating advisor function gained prominence in CMBS deals closed starting in 2010, mainly in response to demands from investors (particularly the investment-grade bond buyers) who became increasingly concerned about conflicts of interest between the special servicer (who is appointed by the controlling class and is sometimes an affiliate of investors in the controlling class) and the investment-grade certificateholders. CMBS transactions that do not use a controlling class structure often do not have an operating advisor.

Typically the operating advisor has no responsibilities or very limited responsibilities early in the deal, during the subordinate control period, as described in Section V.A. of this guide. In deals where the operating advisor has responsibilities during this period, the responsibilities are generally limited to reviewing certain reports that are made available to investors on the certificate administrator's website, but there is generally no requirement to provide (and, in some CMBS deals, the operating advisor is prohibited from providing) any feedback regarding such reports.

Starting with the collective consultation period (as described in Section V.A. of this guide), the operating advisor's mandate expands. Beginning with this period, the operating advisor is entitled to consult with the special servicer on a non-binding basis with respect to major decisions and the content of asset status reports. Also beginning with this period, the operating advisor is required to verify the special servicer's calculations of appraisal reduction amounts and net present values and to prepare an annual report assessing the performance of the special servicer. The operating advisor's report reviews the special servicer on a platform-level basis with respect to the resolution and liquidation of specially serviced loans, and the liquidation of REO properties.

Later, during the senior control period (as described in Section V.A. of this guide), in addition to the rights and obligations described above, the operating advisor is permitted to recommend the replacement of the special servicer.

The main source of compensation to the operating advisor is an annual fee expressed as a percentage, assessed against the outstanding balance of the loans. In a sampling of recent CMBS deals the operating advisor fees have amounted to approximately \$20,000 to \$25,000 per year at the start of the deal. In addition to this ongoing income stream, the operating advisor is typically entitled to collect a consulting fee when it exercises its consultation rights, provided such fee is paid by the related underlying borrower.

The operating advisor is typically permitted to resign, conditioned on the appointment of a successor operating advisor. The operating advisor may also be terminated for cause by the trustee, or with or without cause by a requisite percentage of certificateholders as described in Section V.D. In connection with any termination of the operating advisor, the trustee is typically required to appoint a successor operating advisor.

The operating advisor (including any successor operating advisor) is typically required to be an institution that is regularly engaged in the business of analyzing and advising clients in commercial mortgage-backed securities matters, and to have experience with collateral analysis, loss projections, commercial real estate asset management, and workout and management of distressed commercial real estate assets.

E. The Trustee and the Certificate Administrator

The trustee and the certificate administrator generally perform administrative functions related to the trust and the certificates. These functions are often performed by the same entity. The trustee functions generally entail holding the assets of the trust for the benefit of the certificateholders and exercising certain rights on behalf of the certificateholders (e.g., declaring servicer defaults and appointing replacements). The certificate administrator's role generally includes handling distributions to the certificateholders, facilitating transfers and exchanges of certificates, making reports, notices and other information available to investors via its website, conducting votes of certificateholders when necessary, and performing tax driven administrative functions.

In addition, the entity that acts as certificate administrator also typically performs the functions of custodian. As custodian, such entity takes physical custody of notes and other loan documents and is required to certify that it has reviewed the loan files in its possession to determine that certain

specified documents are in fact included in the loan files.

The main source of compensation to the trustee and the certificate administrator is an annual percentage fee assessed against the outstanding balance of the loans. In a sampling of recent CMBS deals the combined fees of the trustee and the certificate administrator have amounted to approximately \$40,000 to \$50,000 per year at the start of the deal.

The trustee and the certificate administrator are typically permitted to resign or may be terminated for cause by the depositor, or with or without cause by a requisite percentage of certificateholders as described in Section V.D. In connection with any resignation or termination of the trustee or the certificate administrator, the depositor is typically required to appoint a successor, or if it fails to do so within a specified period, the resigning or terminated trustee or certificate administrator may petition a court of competent jurisdiction to do so.

The trustee and the certificate administrator (including any successor to either of the foregoing) are typically required to, among other things, be a United States institution that is subject to supervision or examination by a federal or state authority, maintain a specified amount of capital and surplus, and maintain specified ratings.

IV. STRUCTURAL CONSIDERATIONS

A. The Collateral

CMBS certificates represent beneficial interests in an issuer entity whose primary assets are commercial mortgage loans that are transferred by the loan sellers to the depositor pursuant to one or more mortgage loan purchase agreements. The depositor in turn transfers the loans to the trustee, in trust for the benefit of the certificateholders, in accordance with the PSA. The collateral delivery requirements are usually found

in both the mortgage loan purchase agreements and in the PSA, typically in Article II.

The mortgage loan purchase agreements contain representations and warranties with respect to certain aspects of the loans. While representations and warranties vary from one conduit program to the next, most CMBS issuers generally track the substance of many of the model representations and warranties adopted by the CRE Finance Council (“CREFC”). The CREFC model representations and warranties can be found on CREFC’s website (www.crefc.org).

A material breach of the representations and warranties or of the collateral delivery requirements gives rise to cure, repurchase or substitution obligations of the related loan seller. Certain CMBS deals also provide that the loan seller may make a settlement payment to the trust in lieu of repurchasing or substituting an asset in connection with a material breach or material document defect. The cure period for a material breach or material document defect is typically 90 days, subject to extension for an additional 90 days if the applicable loan seller has commenced and is diligently proceeding with its cure obligation. If a material breach or material document defect is not cured within the cure period, the applicable loan seller is required to repurchase the related loan or, if such obligation arises within two years of the securitization closing date, the loan seller may choose to substitute another commercial mortgage loan meeting certain qualification requirements in place of the defective loan.

B. Certificate Structure and Subordination

Certificate structures will vary from CMBS deal to CMBS deal and, in some cases, can be quite complex and creative. Each CMBS deal will usually include several classes of certificates offering different yields, durations and payment priorities, while giving investors choices based on cash flow timing and risk tolerance. Discussing every possible type of certificate that can be issued is beyond the scope of this guide,

as certificate structures will be tailored to investor demand at the time of issuance. The concept of structural subordination, however, is worth noting.

In order to provide credit support to holders of the senior class or classes of certificates, structural subordination is accomplished in a number of ways, including the following:

a. Payment priority. The rights of holders of the certificate with lower payment priority designations to receive distributions of principal and interest with respect to the loans will be subordinated to that of the holders of the more senior certificates.

b. Loss allocation. Realized losses on the loans will be allocated in reverse sequential order (based on payment priority). Thus, outstanding certificates with the lowest payment priority will be the first to realize any losses. This allocation of realized losses will reduce the outstanding certificate balance of the applicable certificate class, which will impact how interest is calculated for such class and, with respect to control eligible classes, will impact control and consultation rights.

c. Allocation of liquidation proceeds. Interest collections from the loans are generally allocated to pay accrued interest on the certificates, and principal collections from the loans are generally allocated to reduce the outstanding principal balances of the certificates, with each class receiving its interest and principal entitlement in sequential order. While a sequential payment priority is the overarching rule, it is common for interest to be allocated on a pro rata basis among the senior-most classes. In the event that realized losses reach the senior-most classes, it is also the convention for principal payments to then be allocated on a pro rata basis. Liquidation proceeds received on a loan will be allocated, after the reimbursement of outstanding advances, to accrued and unpaid interest on that loan before they are allocated to outstanding

principal. However, for CMBS deals closed starting in 2010, liquidation proceeds are generally allocated to accrued and unpaid interest prior to principal on the related loan only to the extent such accrued and unpaid interest is not attributable to principal that has been notionally reduced by the application of appraisal reduction amounts (see Section V.C. of this guide). This limitation was introduced to reduce the possibility that subordinate classes of certificates would receive interest in a circumstance where there was a principal loss on the loan (which would erode the credit support of the more senior classes of certificates).

C. Prepayment Interest Shortfalls

Interest shortfalls and interest excesses may occur when any loan included in a CMBS transaction is prepaid on a date other than its due date because such prepayment could cause a mismatch between the periods during which the certificates accrue interest and during which interest is collected on the related loan. Prepayment interest shortfalls may result in losses to certificateholders. To avoid prepayment interest shortfalls, loans originated for inclusion in CMBS transactions typically require principal prepayments to be made only on payment due dates or to be accompanied with interest through the next payment date for such loan. However, involuntary principal prepayments resulting from events such as the application of insurance or condemnation proceeds may result in principal being paid down on other dates. The master servicer is often required to reimburse prepayment interest shortfalls that result from its failure to enforce the related loan documents.

Prepayment interest excesses are typically netted against prepayment interest shortfalls, with any positive amounts being paid to the master servicer as additional compensation and any negative amounts being allocated as an interest shortfall to the most subordinate class of certificates then outstanding.

V. CERTIFICATEHOLDER RIGHTS AND REPORTING

A. Control and Consultation Periods

Starting in 2010, CMBS deals involving pools of fixed rate commercial mortgage loans have generally had three distinct phases of control and consultation rights throughout the life of a deal.

Initially, a deal begins with a “subordinate control period.” During this period, the controlling class is the most subordinate class of control eligible certificates (for deals closed starting in 2010, typically only non-investment grade classes of certificates are control eligible) that has an outstanding certificate balance, as notionally reduced by appraisal reductions, of at least equal to 25% of its initial certificate balance. So long as the subordinate control period exists, the controlling class representative appointed by such controlling class has the right to exercise consent rights under the PSA (as described in Section V.B.) and also has the right to replace the special servicer with or without cause. In general, during this period, the operating advisor has no rights, except that the operating advisor may have an obligation to review certain reports and information provided by the special servicer.

The second period occurs after the most senior of the control eligible classes has an outstanding certificate balance, as notionally reduced by appraisal reductions, that is less than 25% of its initial certificate balance, but at least equal to 25% of its initial certificate balance (without adjusting for appraisal reductions). This period is sometimes referred to as a “collective consultation period.” So long as a collective consultation period exists, the controlling class representative and the operating advisor typically jointly have the right to exercise consultation rights with respect to certain major decisions and asset status reports. The controlling class representative generally has no consent rights during this period, nor does

it have the right to replace the special servicer. Also, during this period, the operating advisor's duties generally increase, as it is usually required to conduct a review of the special servicer's activities on a platform-level basis and to deliver an annual report to certificateholders.

The third period, sometimes referred to as the "senior control period," occurs after the most senior of the control eligible classes has an outstanding certificate balance that is less than 25% of its initial certificate balance, without adjusting for appraisal reductions. During this period, the operating advisor is the only party that has consultation rights. The operating advisor continues to perform a review of the special servicer on a platform-level basis and to deliver an annual report to certificateholders during his period, and may also recommend replacement of the special servicer.

For deals closed prior to 2010, generally all classes of certificates were control eligible. Control shifted from the most subordinate class of certificates outstanding to the next most subordinate class when the outstanding certificate balance of the most subordinate class of certificates then outstanding was reduced to less than 25% of its initial certificate balance. An important difference in how control is determined in pre-2010 CMBS deals is that the control test is calculated without regard to appraisal reductions.

Two primary reasons led to a change in the control structure. First, during the financial crisis of the last decade, certain investment grade investors in CMBS transactions expressed dissatisfaction with the former structure. Since defaulted loans were taking a long time to resolve, losses were not being realized even as the collateral securing the loans was diminishing in value. As a result, in some instances control continued to be vested in a controlling class that no longer had an economic stake in the deal. Then, in 2009, accounting changes took effect requiring that any investor with a controlling financial stake in a securitization record all the assets and liabilities of the securitization on its balance

sheet. Under these new accounting rules, the former structure exposes investors in investment grade certificates to adverse accounting treatment if realized losses result in control shifting to their class of certificates. These concerns resulted in quicker change of control within the subordinate debt stack and the elimination of control passing to investors in the investment grade classes of certificates.

B. Control and Consultation Rights

For CMBS deals closed starting in 2010, the control and consultation rights under the PSA vary depending on which control and consultation period is then in effect. During the subordinate control period, the controlling class representative's primary control rights under the PSA are (i) the ability to replace the special servicer with or without cause, (ii) the right to consent to major decisions involving the loans and (iii) the right to consent to asset status reports outlining the special servicer's plans in connection with specially serviced loans. During the collective consultation period, the controlling class representative and the operating advisor have joint non-binding consultation rights with respect to major decisions involving the loans and asset status reports in connection with specially serviced loans. During the senior control period, there is no controlling class representative, but the operating advisor has non-binding consultation rights with respect to major decisions involving the loans and asset status reports in connection with specially serviced loans.

The master servicer is typically not permitted to take any action that would constitute a major decision without the consent of the special servicer. The special servicer is then typically responsible for notifying the controlling class representative and the operating advisor in connection with any consent or consultation rights held by either of them.

The controlling class representative's consent with respect to major decisions and asset status reports is typically

deemed given if the controlling class representative fails to respond within a certain time period (e.g., 10 business days) after notice from the special servicer. In addition, if the controlling class representative disapproves of an asset status report proposed by the special servicer, the special servicer is typically required to revise the asset status report until the controlling class representative approves it, but if the controlling class representative fails to approve an asset status report within a certain time period (usually 60 business days) after the initial report proposed by the special servicer, the special servicer is permitted to act on the most recently submitted form of asset status report as long as such action is consistent with the servicing standard. Furthermore, the special servicer is typically permitted to act without waiting for the controlling class representative to consent, or without consulting with the controlling class representative or the operating advisor, when immediate action is necessary to avoid a material adverse affect on the certificateholders. Under no circumstances, however, will the special servicer be permitted or required to take any action, even at the direction of the controlling class representative or the operating advisor, if such action would cause the special servicer to violate the servicing standard, any applicable law, the underlying loan documents or the PSA, would expose the trust to certain taxes or expose the special servicer to liability, or would otherwise materially expand the special servicer's duties under the PSA.

Matters that constitute major decisions vary somewhat among PSAs, but they commonly include the following:

- commencing foreclosures and certain other enforcement actions or accepting deeds-in-lieu of foreclosure,
- modifications or waivers of monetary terms or material non-monetary terms of a loan or intercreditor agreement,
- sales of specially serviced loans or REO properties for less than their applicable repurchase price (i.e. par value plus expenses),

- releases or substitutions of collateral,
- loan assumptions,
- certain property management company changes or franchise changes, and
- releases of escrows, reserves or letters of credit held as security for performance of certain obligations by the related borrower.

C. Appraisals and Appraisal Reductions

Required appraisals can have a significant impact under the PSA. For example, the results of an appraisal may limit the amount of interest and principal that may be advanced by the master servicer as described in Section VI.B. of this guide, may reduce the amount of interest payable to certain classes out of liquidation proceeds as described in Section IV.B. of this guide or may result in the shifting of control and consultation rights as described in Section V.A. of this guide. In addition, appraisals are often used to determine a "fair price" in connection with a liquidation of a defaulted loan or an REO property.

Within a specified time (e.g., 30 to 60 days) after the occurrence of an appraisal reduction event (as described below) with respect to a loan, the master servicer or the special servicer is typically required to order and use commercially reasonable efforts to obtain a new or updated appraisal. The master servicer or the special servicer will use this appraisal to calculate any appraisal reduction amounts (as described below), which will notionally reduce the principal balance of a loan for several purposes, including for determining the holder of control and consultation rights under the PSA as described in Section V.A. of this guide. Thereafter, the special servicer is required to obtain a new or updated appraisal of every mortgaged property securing a specially serviced loan at specified intervals (e.g., every 9 or 12 months). For loans with lower principal balances (e.g., below \$2 million), the special servicer

may be permitted to use an internal good faith valuation in place of obtaining an appraisal.

The appraisal reduction amount for any loan as to which an appraisal reduction event has occurred is generally equal to the excess of the outstanding principal balance of the loan minus 90% of the adjusted appraised values of the mortgaged properties securing the loan. This calculation is adjusted in the first instance by the special servicer as it deems appropriate and then, the value is further adjusted to account for additional collateral and unpaid expenses, interest and advances. To the extent that the special servicer has not received an appraisal, updated appraisal or good faith valuation within a specified time (e.g., 30 to 60 days) after the occurrence of an appraisal reduction event, the appraisal reduction amount is typically deemed to be an amount equal to 25% of the current outstanding principal balance of the related loan until an appraisal, updated appraisal or good faith valuation is received and the appraisal reduction amount is recalculated.

The holders of the majority (by certificate balance) of any class of control eligible certificates whose aggregate certificate balance, as notionally reduced by appraisal reduction amounts, is less than 25% of the initial certificate principal balance of such class typically have the right, at their sole expense, to require the master servicer or the special servicer to obtain a second appraisal if they disagree with any previously obtained appraisal. In addition, many CMBS deals give such holders a right to require the special servicer to obtain a new or updated appraisal or good faith valuation of a mortgaged property securing a loan for which an appraisal reduction event exists upon the occurrence of an event at such property that would have a material effect on the property's appraised value.

Appraisal reduction events vary from deal-to-deal. Typical appraisal reductions events include the following:

- an uncured delinquency in monthly payments that continues for 60 to 90 days,
- a delinquency in making the required payment at

maturity, subject to extension to up to 120 days after such delinquency if a refinancing of the loan is anticipated during such period,

- certain borrower insolvency events,
- the modification of certain material economic terms of a loan or a release of a material portion of the collateral for such loan (other than a contemplated by the related loan documents and without a corresponding principal pay down), and
- the mortgaged property becoming REO property.

D. Other Certificateholder Rights

Certificateholders (with the exception of holders of non-economic residual classes of certificates) in CMBS transactions are granted certain voting, consent and direction rights. The most important of these rights are described below. Principal balance certificates are typically allocated most of the voting rights (e.g., 99%) and notional balance certificates (i.e., interest only certificates) are typically allocated the remaining voting rights (e.g., 1%). Such rights are further allocated among certificateholders based on the percentage of the principal balance or notional amount held by such certificateholders. CMBS deals differ on whether appraisal reduction amounts are applied to reduce the principal balances or notional amounts of classes of certificates in connection with the exercise of voting rights.

At any time that an event of default (commonly referred to as a termination event) exists with respect to the master servicer, the special servicer or the operating advisor, if the trustee does not terminate the applicable party, certificateholders representing, typically, a majority of the aggregate voting rights may direct the removal of such defaulting party. Certificateholders may also waive certain termination events with respect to the master servicer, the special servicer or the operating advisor by a vote of a supermajority (typically, 66 $\frac{2}{3}$ %) of the aggregate voting rights.

In addition, certificateholders representing a higher supermajority (typically, 75%) of the aggregate voting rights may direct the removal of the special servicer (only during a collective consultation period or a senior control period) or the operating advisor without cause. Further, certificateholders representing a specified percentage (typically, 50% or 75%) of the aggregate voting rights may remove the trustee or the certificate administrator with or without cause.

Certificateholders are typically restricted from instituting any action to enforce the terms of the PSA. However, if certificateholders representing at least a requisite percentage (e.g., 25%) of the aggregate voting rights of any affected class have made a request upon the trustee to institute such action (and offered reasonable indemnity to the trustee) and the trustee has failed or refused to institute such action, this disability goes away and certificateholders are permitted to enforce rights under the PSA.

E. Reporting

All certificateholders are entitled to receive certain reports under the PSA. Information is generally distributed to certificateholders via a website maintained by the certificate administrator or trustee. Distribution date statements that provide information regarding distributions on the certificates and pool level information are made available on a monthly basis. Distribution date statements for publicly registered transactions are made available to the general public. In addition, for deals closed starting in 2010, any certificateholder or prospective purchaser of certificates that certifies that it is not a borrower under any loan included in the securitization, a manager of a mortgaged property securing any such loan or an affiliate or agent of any of the foregoing, is generally given access to, among other things, a collection of pool-level and loan-level reports in the format prescribed by CREFC, transaction documents for the securitization, summaries of

final asset status reports, copies of appraisals used to calculate appraisal reduction amounts, environmental assessments, seismic reports and property conditions reports, notices of any waiver, modification or amendment of any terms of any loan, notices of termination or resignation of the master servicer, the special servicer, the operating advisor or the trustee, and the appointment of any successor thereto, notices of the occurrence of any servicer termination event, and notices of the occurrence of a control termination event or a consultation termination event.

In addition, for deals closed starting in 2010, certificateholders are typically given access to a question-and-answer forum where certificateholders are able to submit inquiries to (i) the certificate administrator relating to the distribution date statements, (ii) the master servicer or the special servicer relating to certain reports and certain collateral related matters and (iii) the operating advisor relating to its annual reports or actions by the master servicer or the special servicer as to which the operating advisor has consultation rights. The applicable party is required to respond to such certificateholder inquiries unless such party determines, in its respective sole discretion, that (1) the question is beyond the scope outlined above, (2) answering any inquiry would be in violation of applicable law, the servicing standard, the PSA or the applicable loan documents, (3) answering any inquiry would or is reasonably expected to result in a waiver of an attorney-client privilege or the disclosure of attorney work product, (4) answering any inquiry would materially increase the duties of, or result in significant additional cost or expense to such party, or (5) such party determines that the performance of such duties or the payment of such costs and expenses is beyond the scope of its duties under the PSA. Certificateholders are able to see questions posted by other certificateholders and answers posted by the relevant party.

VI. SERVICING

A. The Servicing Standard

The servicing standard is the governing standard of care that the master servicer and the special servicer are required to follow in performing their servicing and administration functions under the PSA. Although specific wording may differ, the servicing standard has largely become standardized across deals. The obligation to service and administer the loans in accordance with the servicing standard is typically found in the first section of Article III of a PSA and the standard itself is typically a defined term in Article I of a PSA.

The servicing standard generally provides that the master servicer and the special servicer must service and administer the loans and any REO properties in the best interests of the certificateholders as a collective whole, and in accordance with the PSA, the applicable loan documents and applicable law. In addition, and as long as consistent with the foregoing, the servicing standard requires each servicer to act with the higher of the same level of care and skill as it does in servicing and administering loans and REO properties on behalf of itself or on behalf of others, and giving consideration to standards of practice utilized by prudent institutional commercial mortgage loan lenders or servicers. The master servicer is required to service with a view toward the timely collection of scheduled payments of principal and interest and the full collection of prepayment premiums and yield maintenance charges. The special servicer is required to service with a view toward the maximization of recovery to certificateholders as a collective whole, on a net present value basis. The servicing standard requires each servicer to disregard any potential conflicts of interest resulting from any number of factors affecting such servicer and any of its affiliates, including among others, affiliations with borrowers, ownership of competing real property and compensation (or lack thereof) under the PSA.

Since the special servicer is charged with maximizing recovery on a net present value basis, the calculation of net present value is a pivotal point of many special servicer determinations. Prior to 2010, PSAs typically did not provide any specific guidance regarding how the special servicer should make net present value calculations or required the special servicer to use the interest rate of the loan at issue as the discount rate in the net present value calculation. However, starting in 2010, PSAs have generally adopted a standard that requires the special servicer to use a discount rate (i) for principal and interest payments equal to the higher of (x) the rate that approximates the market rate that would be obtainable by the related borrower on similar non-defaulted debt and (y) the interest rate of the loan at issue, and (ii) for all other cash flows, including property cash flow, the discount rate set forth in the most recent appraisal of the related mortgaged property.

B. Advancing

In order to create liquidity, CMBS deals typically provide for two types of advances—principal and interest advances, and servicing advances (sometimes referred to as protective advances). Principal and interest advances are made when less than the full amount of any monthly principal or interest payment on a loan (other than a balloon payment) is received. Servicing advances are made to pay reasonable and necessary out-of-pocket costs and expenses in connection with servicing the loans, protecting the trust's interest in the collateral for the loans, and administering any REO properties. Servicing advances are required to be made by the master servicer. The special servicer may also have the option to make servicing advances when a servicing advance is required on an emergency basis. In addition, the trustee is required to make any advance that the master servicer is required, but fails, to make.

Principal and interest advances make up shortfalls in required monthly payments. In deals closed starting in 2010, if there is an appraisal reduction amount associated with the related loan, the interest portion (but not the principal portion) of the proposed advance will be reduced by the amount of interest attributable to the appraisal reduction.

In addition, the making of any advance is subject to a determination that the amount advanced will be ultimately recoverable by the party making such advance from collections on the related loan or REO property. No party is required to make an advance if it (or one of the other relevant parties) determines that such advance will not be ultimately recoverable from collections on the related loan or REO property. The determination that an advance is, or would be if made, nonrecoverable is required to be evidenced by a certificate from the party making such determination with supporting information.

Advances are reimbursable to the party making the advance with interest, usually at the prime rate. Generally advances are required to be reimbursed from collections on the loan or REO property with respect to which such advances were made. However, any advance that is made and is later determined to be non-recoverable is usually reimbursable from general collections, first from collections that constitute principal, and then, from collections that constitute interest. Most PSAs permit the advancing party to limit reimbursement of advances to principal collections for a period of up to 12 months.

C. Insurance Requirements

The master servicer is tasked with enforcing the borrowers' obligation to maintain the insurance coverage required by the loan documents. To the extent any borrower fails to maintain required insurance, the master servicer is required to obtain such insurance to the extent consistent with the servicing

standard, the trustee has an insurance interest, and insurance is available at commercially reasonable rates. The special servicer is tasked with maintaining insurance for REO properties to the extent consistent with the servicing standard, the trustee has an insurable interest, and insurance is available at commercially reasonable rates.

Terrorism insurance has become a special case. If any borrower fails to maintain terrorism insurance as required by the related loan documents, the default may be waived if the special servicer determines, in accordance with the servicing standard, and, unless a control termination event has occurred, with the consent of the controlling class representative, that either (i) such insurance is not available at commercially reasonable rates and terrorism is not at the time commonly insured against for properties similar to the mortgaged property and located in or around the geographic region in which such mortgaged property is located, or (ii) such insurance is not available at any rate.

The master servicer and the special servicer may satisfy their obligations to maintain insurance by maintaining a blanket or a master force-placed insurance policy from a carrier satisfying the ratings requirements set forth in the PSA. In addition, the master servicer and the special servicer are each required to maintain a fidelity bond and an errors and omissions policy, each from a carrier satisfying the ratings requirements set forth in the PSA and in such form and amount as is consistent with the servicing standard.

D. Loan Modifications and Waiver Requests

The master servicer (subject to the approval of the special servicer, and the consent or consultation rights, if any, of the controlling class representative and the operating advisor) or, with respect to any specially serviced loan, the special servicer (subject to the approval of the special servicer, and the consent or consultation rights, if any, of the controlling

class representative and the operating advisor), is permitted to modify, waive or amend any terms of the loans included in the trust, subject to certain limitations, including the following:

- such action must be in accordance with the servicing standard,
- such action would not result in adverse tax consequences,
- restrictions on how long a loan may be extended (e.g., 2 or 3 years prior to the rated final distribution date on a pooled deal, and 5 or more years prior to the rated final distribution date for a single loan deal), and
- obtaining rating agency confirmations for additions or substitutions of collateral constituting real property.

The restriction on modifications that would have adverse tax consequences is significant, because the tax regulations applicable to a majority of CMBS deals generally restrict significant modifications unless a servicing transfer event exists.

With respect to any request for a waiver of a due-on-sale or due-on-encumbrance provision or in determining whether to enforce this provision to the extent it has been violated, the master servicer or the special servicer is permitted to grant a waiver or waive enforcement to the extent that it determines that (i) the provision is not enforceable or enforcement is reasonably likely to result in a meritorious legal action by the related borrower, or (ii) granting the waiver or waiving enforcement would result in a greater recovery, on a net present value basis, to certificateholders, or be in the best interest of the trust fund. Typically any such determination by the master servicer requires the approval of the special servicer. If any such determination relates to a loan that exceeds certain materiality criteria established by any rating agency that rates the certificates, a confirmation from such rating agency that the proposed action will not result in such rating agency qualifying or downgrading its rating of any class of certificates will be required.

E. Asset Status Reports

Upon a loan becoming a specially serviced loan, the special servicer is required to prepare, within the period specified in the PSA (typically 60 days from the loan becoming a specially serviced loan) an asset status report outlining the special servicer's recommended actions with respect to such defaulted loan and generally containing the following information, among other things: (i) a summary of the status of the loan, (ii) a summary of any negotiations with the related borrower, (iii) a discussion of the legal and environmental considerations reasonably known to the special servicer, consistent with the servicing standard, that are applicable to the exercise of remedies, (iv) the most current rent roll and income or operating statement available for the related mortgaged property, (v) the most recent appraised value of the related mortgaged property and a copy of the most recent appraisal, and (vi) the special servicer's analysis of whether or not taking the action recommended by the special servicer is reasonably likely to produce a greater recovery on a present value basis than not taking such action. The special servicer is permitted to modify any asset status report previously delivered.

As described in Section V.B., the controlling class representative has substantial input in connection with asset status reports, such as the right to approve or disapprove an asset status report during the subordinate control period. If the controlling class representative does not disapprove an asset status report delivered by the special servicer within the period set forth in the PSA (typically 10 business days), the special servicer is required to take its recommended action in accordance with the asset status report. If the controlling class representative disapproves of the asset status report during such period, the special servicer is required to revise the asset status report until the controlling class representative fails to disapprove its recommended action or until the special servicer determines, in accordance with the servicing standard, that

the controlling class representative's objection is not in the best interests of all certificateholders. If the controlling class representative does not approve an asset status report within the period specified in the PSA (typically 60 business days from the date of delivery of such initial asset status report), the special servicer is permitted to act upon the most recently submitted asset status report.

During any collective consultation period, the special servicer is required to consult with the controlling class representative and the operating advisor regarding any asset status report delivered by the special servicer to the extent such party proposes an alternative course of action, and the special servicer is required to consider the alternative course of action and determine whether any changes to its asset status report are warranted. During the senior control period, this consultation right is only given to the operating advisor and not the controlling class representative.

F. Realization on Defaulted Loans and REO Properties

With respect to any defaulted loan, the special servicer is required to evaluate whether the cause of the default can be addressed within a reasonable period and, to the extent consistent with the servicing standard and subject to the consent or consultation rights, if any, of the controlling class representative and the operating advisor, initiate corrective action, including negotiating a workout or a discounted payoff. To the extent the special servicer determines, in accordance with the servicing standard, that corrective action has been, or will be, unsuccessful, the special servicer may, subject to the consent or consultation rights, if any, of the controlling class representative and the operating advisor, accelerate the loan and pursue foreclosure proceedings.

For deals structured as real estate mortgage investment conduits ("REMICs"), the special servicer is required to

dispose of any REO property acquired by the trust fund within three years after it is acquired to satisfy certain regulatory requirements, unless the special servicer obtains an extension from the IRS or receives an opinion of counsel that the failure to dispose of the REO property will not cause the REO property to fail to qualify as "foreclosure property" within the meaning of the REMIC regulations.

In addition, if the special servicer determines, in accordance with the servicing standard, that it would be in the best interests of the certificateholders to sell a defaulted loan instead of pursuing a workout or foreclosure, it may sell the defaulted loan.

In connection with any sale of a defaulted loan or an REO property, the special servicer is required to use reasonable efforts to sell the defaulted loan or REO property in a manner that is reasonably likely to realize a fair price. The special servicer is required to accept the first, and if multiple offers are received, the highest, cash offer that constitutes a fair price. If the special servicer determines that it will be unable to realize the fair price determined by it for any REO property within the time constraints imposed on the sale of REO property, it is required to dispose of the REO property at any price with a view towards maximizing recovery. The determination that a cash offer constitutes a fair price is required to be made by the special servicer or, if the offer is made by certain interested parties (such as, the special servicer, any certificateholder, the related borrower, or property manager), the determination is required to be made by another party (usually the trustee). The trustee and its affiliates are restricted from purchasing any defaulted loan or REO property.

The special servicer is generally permitted to reject an offer, even if it is the highest cash offer received, if it determines that rejection of such highest offer and acceptance of a lower offer would be in the best interest of certificateholders. This provision effectively permits the special servicer to take into consideration the additional terms of any offer and

the ability of any counterparty to complete the transaction in accordance with its offer.

In CMBS deals closed between about 2004 and 2010, certain designated parties (typically including investors holding a majority of the controlling class and the special servicer) hold an assignable option to purchase any specially serviced loan at a fair price determined by the special servicer or, if certain interested parties are exercising the purchase option, another party (usually the trustee). This option was intended to address certain accounting concerns that are no longer applicable.

G. REO Properties

In order to limit exposure to environmental law liability, prior to taking title to any REO property or taking certain other actions to exercise control over a mortgaged property that could result in the trust fund incurring liability for environmental issues, the special servicer is required to have an environmental assessment performed. If any environmental assessment concludes that hazardous materials are present at the related mortgaged property, the special servicer is required to determine, subject to consent or consultation rights, if any, of the controlling class representative and the operating advisor, the course of action that is in the best interest of the trust fund.

Upon a mortgaged property becoming REO property, the special servicer is responsible for administering the REO properties in accordance with the servicing standard. The special servicer is generally required to manage, or cause to be managed, each REO property in a manner that eliminates or minimizes any taxes on net operating income pursuant to the applicable regulations. To that end, the special servicer is typically required to ensure that, within 90 days after foreclosure, each REO property is managed by an independent contractor. In addition, in deals structured as REMICs, in order to comply with REMIC regulations, the special servicer is restricted from permitting construction on any REO property

unless related to maintenance or repairs, or if related to completing a project that was more than 10% completed before default on the related loan became imminent. Other deal structures, such as grantor trusts, may also restrict the amount of construction permitted to take place at an REO property to address tax and other regulatory concerns.

VII. CONCLUSION

The terms of CMBS deals and PSAs have developed, and will continue to develop, in response to regulatory changes, investor demands, and market trends. While deals across CMBS platforms have much in common, there are variations in terms among CMBS programs and even among deals in the same CMBS program. The variations may be especially pronounced over extended periods of time, such as between deals closed prior to 2010 and deals closed since the start of 2010. So, while this guide provides a general overview of a typical PSA, investors that hold CMBS certificates or are considering an investment in CMBS should carefully review the actual PSA and offering documents for the relevant CMBS transaction, and should consult with appropriate legal, accounting, tax, and other advisers to fully understand the terms, conditions, and characteristics of the related CMBS securities.

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