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## Real estate financing shifts again

*Lawyers hot for a rise in mortgage-backed securities deals must readjust.*

By Jason W. Armstrong

In early June, real estate finance lawyers saw a glimmer of hope. The hammered commercial mortgage-backed securities market, which funded a quarter of U.S. commercial projects at the height of last decade's real estate boom, seemed to be turning a corner. Their deals started picking up again after the nation's bleak financial conditions pummeled CMBS as a funding tool for commercial projects.



But as quickly as the situation began looking up, the market crashed, again, in late July, victim of a number of factors, including investor jitters triggered by a major collapsed CMBS deal, along with increased volatility in the global credit markets.

While some law firms began redeploying their CMBS dealmaking teams earlier this year when it looked like the market was heating back up, they're now refocusing lawyers on other areas. They're shifting attorneys toward issues involving the dark side of commercial mortgage-backed securities - a continued wave of delinquent CMBS loans - including working with lenders to modify troubled loans and litigating bankruptcy and foreclosure disputes between borrowers and lenders.

Gregg J. Loubier, a partner with Allen Matkins Leck Gamble Mallory & Natsis LLP in Los Angeles who focuses on finance, business and real estate transactions, said the firm diverted members of its finance team to CMBS deals last winter when the market surged.

"When we had this increase in CMBS lending activity starting in January and February and ongoing into the summer, we had to rearrange our staffing in the finance practice," Loubier said. "When it seemed like we'd reached the right staffing formula firmwide, we had a falloff in lending activity."

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- Gregg J. Loubier

"We've continued to originate loans, but CMBS lending volume is a little lower."

Loubier said the firm's finance lawyers handle a range of work in the niche and have shifted toward other areas when they're not handling CMBS originations.

"If they're not working on loan originations, they're working on other matters related to finance, which could include distressed debt, which continues to be busy," Loubier said. "We also represent banks and other financial institutions that continue to make loans that will not be securitized, so that work has continued, as well."

After a bank or other entity grants a loan under the securitization process, it sells it to a special purpose entity, or "issuer." The loans get chopped up into various pieces or "tranches," packaged into bonds with different risk levels and sold to investors.

### SPECIAL REPORT

#### The New Lawyer

The New Lawyer



Friday, November 18, 2011

#### California Supreme Court Ruling granting standing in Prop. 8 case bolsters state's initiative process

A unanimous state Supreme Court held Thursday that the backers of Proposition 8 have the right to defend the same-sex marriage ban in federal court after government officials refused to do so.

#### Government Fledgling union got big boost from lobbyist

An influential labor lobbyist and partner in a small Sacramento law firm who donated more than \$1 million last year to a fledgling union, according to government records, says it was on behalf of a client.

#### Civil Rights Judge takes US to task over hiding records

A federal judge in Santa Ana sanctioned U.S. Department of Justice lawyers for lying to the court about deliberately withholding documents in a case about surveillance of Muslims.

#### Mergers & Acquisitions Newspaper changes hands

Deal teams from Cooley LLP and Latham & Watkins LLP announced Thursday that the San Diego Union-Tribune, the city's leading daily newspaper, will soon change hands.

#### Litigation Plaintiff wins website trade dress verdict

Litigation boutique Browne George Ross LLP scored a win in what may be the first website trade dress infringement case ever to go to trial.

#### Solo and Small Firms Colantuono Be Nimble

With dual offices in Los Angeles and Penn Valley, Colantuono & Levin PC is banking on small-firm flexibility and collaboration to help deliver results to cities, counties and special districts.

#### Business litigation boutique to split up Spillane Weingarten LLP will divide as one partner forms solo practice.

#### U.S. Supreme Court Breyer discusses difficulty in balancing president's wartime power

The U.S. Supreme Court built in some loopholes for President George W. Bush in 2004 even as it limited his wartime powers, Associate Justice Stephen G. Breyer said Wednesday in a talk at



In bullish economies, CMBS were a big draw to borrowers because they offered significantly lower interest rates than traditional financing sources. Such lending also appealed to banks and other lenders because they were able to get quick loan fees and then offload risk from their books by selling the loans. Investors got high yields, among other benefits.

Amid last decade's sizzling real estate market, national CMBS issuances reached a peak of \$234 billion in 2007. Two years later, though, as the slumping economy and ensuing credit crunch took their toll, activity nearly ground to a halt, with just \$3 billion in deals closing.

Spurred by renewed investor and lender optimism amid increased stability in the capital markets earlier this year, the financial tool began making a comeback. Analysts initially predicted loan originations would exceed \$40 billion by the end of 2011, nearly \$30 billion more than the amount of CMBS issuances in 2010.

But a big part of this summer's slowdown - which led financial experts to lower their deal projection to about \$26 billion by year's end - involved a \$1.48 billion transaction from Goldman Sachs Group Inc. and Citigroup Inc. that fell apart in July. Investors were uncomfortable with the risk levels, and Standard & Poor's refused to rate the deal, which contributed to its demise. Industry analysts said that introduced uncertainty to the market and deterred some investors from pursuing CMBS.

Another factor that could negatively affect such transactions, analysts said, is continuing uncertainty in the European financial sector, which has put downward pressure on U.S. equity markets.

"The markets have become so interconnected globally," said Adam R. Salis, a partner at Manatt, Phelps & Phillips LLP in Orange County whose practice includes commercial real estate financing issues.

Salis said his borrower clients are increasingly seeking financing through commercial banks rather than pursuing CMBS lending.

"Since CMBS interest rates were so much lower [than banks'], borrowers were willing to live with many other provisions that came with CMBS lending," he said. "But now that gap has disappeared. Banks are stepping into the breach, and CMBS originators are sitting on the sidelines."

Philip N. Feder, Los Angeles-based chairman of Paul Hastings LLP's global real estate practice, said recent "bumps in the road" in the CMBS market "are certainly painful in the short run."

"But in the long run, I think [they're] probably good for the market," he said. "CMBS shops aren't gearing up in a big way. They're looking at real deals and deal returns, and they're acting much more wisely. I'm confident the market will come back again."

[Previous](#)   [Next](#)



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#### Government

##### **Legal Services to take a hit while patent office flourishes**

Congress is on the verge of slashing spending on legal services for the poor even as it devotes a swell of new federal dollars to processing patents.

#### Law Practice

##### **Munger Tolles attorney heads to motion picture company**

A longtime attorney for Munger, Tolles & Olson LLP recently became the first general counsel of Burbank-based Legendary Entertainment, a popular Hollywood entertainment company.

#### Litigation

##### **Ford plans to appeal \$73 million jury verdict**

Plaintiffs who brought a car rollover lawsuit against Ford Motor Co. saw their high-stakes gamble pay off to the tune of \$73 million.

#### Judicial Profile

##### **Joni T. Hiramoto**

Superior Court Judge Contra Costa County (Richmond)

#### Corporate

##### **Value Index shuts down after only two years**

The Value Index, a controversial Yelp-like review service for attorneys which the Association of Corporate Counsel debuted in 2009, is closing down after just two years of operation.

#### Investments

##### **Yelp files to go public**

San Francisco-based Yelp Inc. filed for a highly-anticipated \$100 million IPO on Thursday, advised by a team of San Francisco-based lawyers from Cooley LLP.

#### Litigation

##### **Immigration detention class action likely to proceed**

A federal judge said he is inclined to certify a putative class action of immigrant detainees who sued the federal government for violating their due process rights by shackling them during court hearings.

#### Judges and Judiciary

##### **Northern District hires new magistrate**

The U.S. District Court for the Northern District announced Thursday it has selected a new magistrate judge.

#### Litigation

##### **Woman awarded \$67.5 million in sex abuse case**

A jury awarded \$67.5 million in damages Thursday to a woman who alleged that a male nursing assistant at a San Fernando Valley hospital sexually abused her.

#### Criminal

##### **Penn State outrages: the Good Samaritan's dilemma**

Going by way of the French - should we impose a Good Samaritan law that criminalizes a person