CHAIRMAN’S CORNER

President Obama–Mortgage Industry Friend or Foe?

With the new administration of President Barack Obama getting settled in, I’m sure you’ve heard opinions from friends, family and colleagues ranging from euphoric and over-the-top hopeful, to apocalyptic and downright pessimistic. As is the case with every new administration, there are things to look forward to, and things to watch out for. President Obama’s administration will be no different. With the nation soon to hit double-digit unemployment figures, and the banking sector bracing for another painful year, Mr. Obama has certainly got his work cut out for him. Particularly with regards to housing, Obama seems to have a degree of freedom as to which route he will take. Will he please so-called ‘consumer’ groups, who seem to want to grind the real estate and finance industries into the ground with foreclosure moratoriums and bankruptcy cramdown, or will he continue the Bush administration-launched TARP program and resist calls to further intervention in the markets? Or will he find a middle road that, while not fully satisfying either side, might prove to be the right tack? The recently announced plan to alleviate foreclosures through a complicated system of carrots and sticks (inclusion of bankruptcy ‘cramdown’) has drawn praise and fire. I’m sure everyone by now has seen the video of CNBC’s Rick Santelli airing frustrations on the floor of the Chicago market. While there is reason to be concerned about some of the provisions, I’m withholding judgement until we get more details on March 4th. The bottom line is it is too soon to tell right now – keep your eyes open and your Blackberrys on to find out…

We have already seen some good results since the inauguration. I think...
EXECUTIVE DIRECTOR’S LETTER

Your Professional Development Matters Now More Than Ever!

BY SUSAN DeMARS, CMBA EXECUTIVE DIRECTOR

As part of the Housing and Economic Recovery Act, last summer Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 or the S.A.F.E. Act as it’s become known in the industry. This measure requires every state to enact a licensing system for individual loan originators that are employed with state regulated entities. For those loan originators working for federally regulated institutions, there will be a required registration process. Shortly after the California State Legislature convened for the year, the Chairs of the respective Senate and Assembly Banking & Finance Committee already introduced measures to enact this new licensing system. AB 34 (Nava) and SB 36 (Calderon) are both in essentially in “spot” form, which means the language is currently rather broad and vague but amendments will be taken later to narrow the focus and possibly add to the original intent of these measures. Currently, the Legislature is working towards establishing the loan originator license within both the California Department of Real Estate (DRE) and the California Department of Corporations (DOC). In this way, everyone at this point should be consistent with their current licensing entity. However, Assembly Member Nava also introduced AB 33 which intends to ultimately consolidate the three separate lender licensing laws into one Department. According to this bill, the plan should be presented to the Legislature by 2012. In addition to DRE and DOC mentioned above, state chartered banks are registered with the California Department of Financial Institutions.

Included in the new licensing requirements are initial and continuing education units for all licensees. CMBA has partnered with Campus MBA, the educational arm of the national MBA, to bring our members a variety of industry and professional development courses. We will be working together to develop the education that will be required for licensure in the State of California.

We will notify everyone when more information is available but look to CMBA, your association, for all of your educational needs.

We kick off our new educational partnership with Campus MBA by offering essential FHA training. On March 23 and 24, at the First American offices in Santa Ana, we’re holding courses on FHA Essentials, including underwriting and operations. On April 2, at the offices of CMG Mortgage in San Ramon, we’re holding a course on loss mitigation. Thank you to CMBA member companies First American and CMG Mortgage for supporting our program by providing the classroom space. CMBA will be playing a key role in this process of developing a new licensing structure so please let me remind you that if there was ever a time in recent history to get involved with your industry trade association, it’s now! We need your feedback on this and many other proposals that will be circulated in the Legislature this year. We are the association that supports the mortgage banking industry in California and our successes are of direct benefit to everyone in the industry. Be an active part of the CMBA and help shape the future of the industry.

One of the strongest ways you can support the CMBA is through membership. The accomplishments of the CMBA benefit everyone in the mortgage banking industry in California. Don’t be a company that allows others to contribute while you reap the benefit! We want to be able to continue the work we do on behalf of the industry and we can only do that with your help!

If your company has not yet sent in your renewal dues, please do so as

CONTINUED ON PAGE 9
California’s Budget Passed – Now What?

BY PAT ZENZOLA, KP PUBLIC AFFAIRS, CMBA LEGISLATIVE COUNSEL

The 2009-2010 California legislative session has been ushered-in with policymakers facing an economic crisis of historic proportions. Now that the most immediate challenge facing policymakers, the California budget deficit (estimated to be nearly $42 billion over the next 18 months), has been dealt with, the beat goes on.

As state policymakers struggled to resolve the budget crisis, California also faces a weak economy with rising unemployment and declining home values. Both Democrat legislative leaders and the Governor have included loan modification and foreclosure moratorium plans in their proposals to jump-start the economy and/or to improve the housing marketplace. The plans would generally cover first mortgages/deeds of trusts where the borrower occupies the property as the borrower’s principal residence and would call for a 90 day foreclosure moratorium unless a mortgage servicer obtains an exemption order from the Commissioner (for California finance lender licensees, residential mortgage lender licensees and for other entities not described in the plans the Commissioner would be the Department of Corporations Commissioner). For Department of Real Estate licensees the Commissioner would be the Commissioner of the Department of Real Estate. The exemption order would be based on a finding that the mortgage servicer has met specified comprehensive loan modification program requirements.

As of the writing of this article, legislation including these loan modification and foreclosure moratorium proposals has not been introduced but if the legislation is introduced, policymakers will likely attempt to move it quickly through the legislative process.

The California Legislature has already introduced several bills on housing and mortgage-related issues this year, and the following is a summary of a few of those proposals.

**AB 33 (Nava) Financial Transactions**

This bill would call for the Secretary of Business, Transportation and Housing, in consultation with the Commissioner of Financial Institutions, the Real Estate Commissioner and the Commissioner of Corporations, to develop a consolidation plan for the state regulation of financial services to be submitted to the Legislature before Jan 1, 2012. The bill also describes the current division of mortgage lending regulation and states that the partition of regulation dilutes consumer protection.

**AB 34 (Nava) Residential Mortgage Lending**

This bill references the recently enacted federal H.R. 3221, Housing and Economic Recovery Act of 2008 and title V of that Act, the SAFE ACT. The bill states that activities related to mortgage lending have a direct impact on consumers and the California economy and that it is essential that reasonable standards for licensing and regulation of mortgage loan originators be imposed in California. It also states that it is the purpose of the SAFE ACT to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry operates without unfair, deceptive or fraudulent practices. It states that it is the intent of the Legislature to enact an effective system of supervision, regulation and enforcement of the mortgage lending industry, including the authority to issue licenses, revoke licenses and conduct enforcement actions to carry out the intended purposes of the Act. It is likely that this will be one of the bills that will fill in the details of how the new state individual loan originator licensing regulatory framework required by the SAFE ACT will be implemented.

CONTINUED ON PAGE 12
To say that secondary marketing, warehouse lending, and mortgage banking in general, are different now then it was a year or two ago would be an understatement. Old ways of doing business that no longer work have fallen by the wayside, only to be replaced by even older ways of doing business that are now effective. For years Fannie, Freddie, and the FHA set the standards for mortgage underwriting and credit practices, and those standards were adopted by the private and prime jumbo markets. But the private market (the Wall Street distribution model, rating agency criteria, and investors) loosened guidelines, and Fannie & Freddie followed to maintain market share.

In the past, those involved in secondary marketing and mortgage banking could be assured that few people knew what they did for a living, or really even cared. Now, one cannot pick up a newspaper without seeing some story about mortgages, mortgage banking, or the credit markets. Who in the business wants their mother asking them, “What is your exposure to subprime or Alt-A losses?” after she reads yet another headline story? So much has been written about the past, it is critical for participants to keep an eye on what developments will help the future of mortgage banking, and to orient their policies and procedures accordingly.

Although there continues to be daily news and changes about the industry, it appears that the focus will continue to be on both government-related enterprises, such as FHA, Fannie, and Freddie, along with private companies, such as Wells Fargo, Chase, GMAC, Countrywide (Bank of America), etc. It is important for secondary marketing personnel to understand given how they interacted in the past, but more importantly, what the new landscape might look like. For example, with the demise of the piggy-back mortgage and the stresses on mortgage insurance company capital, borrowers without substantial down payments are increasingly dependent on government insurance programs. Secondary managers should be acutely aware of this.

The Federal Government has made it clear that they are looking to stimulate mortgage lending and they have effectively told the market that they will be buying Fannie, Freddie and FHA loans to the tune of $500 billion between now and the end of June. And, as a result of this, a “target mortgage rate” in the mid-4% range has received publicity, for better or worse. Much of what is transpiring now, both in the origination and in the secondary market, is a result of that stance. Markets and participants do not like uncertainty and the government has tried to help alleviate that by providing a secondary market for loans after the collapse of the credit markets in 2008.

But unfortunately, mortgage rates at the mortgage banker level have not yet cooperated, and in fact have crept up. Investors wonder, “What will happen after the feds have finished buying loans? Will the normal capital markets step in?” The U.S. government needs to pay for the stimulus plans by selling an increased amount of Treasury securities, and the laws of supply and demand have moved prices lower, and rates higher. And could the various stimulus plans spark inflation? Although the mortgage industry has probably lost 50% of its staff and lenders, volumes are high, and many economists say that 2009 will easily rank in the top 10 for annual loan production.

Investors are finding that they need to focus on their top tier of originators, and in turn originators are focusing on their top tier of investors in the secondary markets. Investors are, in many cases, eliminating the “middle man” by either using their own branch network to fund loans, or relying on large correspondent sellers to buy bulk packages. Lenders, active in the secondary markets, are also eliminating the

CONTINUED ON PAGE 11
YOUR MOST VALUABLE ASSET IS YOUR EMPLOYEES.

http://careers.cmba.com

The California Mortgage Bankers Association understands you work hard to keep your employees, so we work hard to help you find them. Since we announced our partnership with the Mortgage Bankers Association and the National Association of Credit Management our page views have increased to over 100. That means each job posted in the CMBA Career Center is viewed at least 100 times. Now through August 15, 2008, conferences attendees can post jobs and save 20% just for trying out our improved service. Simply use promo code RSMC on the next job you post before AUGUST 15, 2008. Start saving today, visit the CMBA Career Center.

EMPLOYER RESOURCES

JOB ACTIVITY REPORTS
FEATURED EMPLOYER PROFILES
FULL RESUME ACCESS

JOB SEEKER TOOLS

EASY DOCUMENT MANAGEMENT
JOB AGENTS
CONFIDENTIAL RESUME POSTING

980 Ninth Street, Suite 2120, Sacramento, CA 95814  916-446-7100 P  916-446-7105 F

http://careers.cmba.com
What Is “Market” When There Is No Market?

BY DAVID M. ROSENTHAL, MAI PRESIDENT & CEO - CURTIS – ROSENTHAL, INC.

We all read the headlines, so we know the economy is a mess. It appears that the commercial real estate market is not far behind. Transactions are rare, many tenants are struggling, and financing is scarce. So what is “Market” for commercial properties in this environment? The answer is more than just a cap rate, as we also need to consider the quality and duration of the income stream.

What’s the Cap Rate?

It seems clear that cap rates are rising, but how far and how fast? The cap rate question is particularly challenging since buyers and sellers have not yet come to terms with today’s environment. Property operating fundamentals are challenged today, so the cap rate question must include questions about the stability of the cash flow to be capitalized. Just how secure is the income stream? Dramatic change in the capital markets has also put upward pressure on cap rates, as available debt is lower leverage, more expensive and less available than it was a short time ago.

So, where are cap rates today? They are in transition from lower to higher. How high they will go remains to be determined in the marketplace…and it will happen over time. A likely catalyst for movement may be the looming wave of distressed and REO properties that will likely hit the marketplace as more property owners find themselves in distress. Only when more transactions occur will the marketplace clarify the cap rate question.

How Solid Is The Income Stream?

When rents were rising rapidly, a tenant default could enhance a property’s value by allowing an owner to increase rent to market. Those days are clearly gone, as today the risk of a vacant space is substantial. Many commercial tenants are cutting back on staff and thus on their space needs. Troubled retail tenants are in the news today, particularly boutique, specialty big box and mom-and-pop retailers. Office buildings that cater to softening industries also have tenancy challenges, as unemployment grows.

The need for manufacturing and warehousing space is declining as commerce is slowing down, resulting in reduced space demands. Even apartment properties are feeling the pinch as tenants are losing their jobs, while the inventory of units is increasing due to broken condo developments repositioning themselves as rentals. Lease rollover, traditionally an essential topic, has today taken on even greater importance. With many tenants struggling and more space becoming available, the risk of losing a tenant upon lease expiration continues to rise. Properties with a substantial proportion of leases rolling will present unique challenges to investors and lenders in today’s uncertain environment.

Beware of Falling Market Rents

In light of reduced tenant demand, there is real evidence that market rents are softening in many property sectors. Distressed tenants are not shy about asking their landlords to share their economic pain. While rental rates in many sectors are falling, rental concessions are on the rise. Free rent or excessive TI allowances translate to lower effective market rents. Many commercial real estate lenders now underwrite to market not contract rents as they did not long ago. As a result, a stabilized property with above-market rents in place may find that loan availability would be based on declining market rents, not their existing leases. Lower market rents combined with tighter underwriting means less loan dollars available, which results in lower prices that investors can afford to pay for properties…much to the dismay of sellers.

What Financing Is Available?

In the go-go days, the presence of abundant, high-leverage, low-cost debt...
Pursuant to Fannie Mae’s or Freddie Mac’s standard Seller/Servicer Guides, or pursuant to an industry standard Pooling And Servicing Agreement, your Company is either servicing residential mortgage loans on behalf of Fannie Mae/Freddie Mac or other “investors” in those mortgage loans or loan pools. Because of the current environment, one of your borrowers in one of those pools defaults, you begin foreclosure proceedings, and this borrower files a Chapter 7 bankruptcy proceeding to attempt to stop the foreclosure proceeding. Consequently, you retain counsel and attempt to file a motion for relief from the automatic stay in order to continue the foreclosure proceeding. But, can you? It has traditionally been presumed that in bankruptcy, such a servicer had standing to bring such a motion. However, one Bankruptcy Court, in the Central of District California, has ruled otherwise, finding that it is necessary for the beneficial note holder to ratify or join in such a motion. The case at issue, entitled In re Kang Jim Hwang, Case Number LA08-15337-SB, involved IndyMac Bank FSB (“IndyMac”), who filed such a motion in a Chapter 7 bankruptcy proceeding initiated by a borrower/debtor under a residential mortgage loan being serviced by IndyMac (the “Note”). There was no question that the borrower/debtor had signed the Note, and had no equity in the subject property, and in fact, no opposition was filed by the debtor/borrower or the Chapter 7 Trustee. After IndyMac satisfied all of its procedural requirements, the Court found, through the testimony of a vice president of IndyMac, that it “no longer owned the note, but had sold it to investors through Freddie Mac”. However, upon further evidence provided by IndyMac, the Court found that although IndyMac had transferred the beneficial interest under the Note to Freddie Mac, it still held possession of the original Note.

The hearing was continued at various times in order for multiple briefs to be submitted.

After IndyMac indicated it believed it was the real party in interest and was entitled to bring the motion for relief in its own name, even without holding the beneficial interest in the Note, the Court disagreed, and denied the motion on the grounds that IndyMac was not the real party in interest pursuant to Rule 17 of the Federal Rules of Civil Procedure (“FRCP”), and that joinder of the beneficial owner of the Note (Freddie Mac) was required by Rule 19 of the FRCP.

In so ruling, the Court found that a motion for relief from the automatic stay must satisfy both substantive requirements (under 11 U.S.C. §362(d)) and procedural requirements (imposed by the U.S. Constitution and Federal Rules of Bankruptcy Procedure as incorporated by the FRCP).

As a result, the Court found that IndyMac must comply with Rule 17 of the FRCP that “An action must be prosecuted in the name of the real party in interest”. The Court further noted, that if a loan has been securitized, the real party in interest would be the trustee of the securitization trust, not the servicing agent. Citing, LaSalle Bank N.A. v. Nomura Asset Capital Corp., 180 F.Supp.2d 465, 469-471 (S.D.N.Y. 2001); accord, LaSalle Bank N.A. v. Lehman Bros. Holdings, Inc., 237 F.Supp. 2d 618, 631-634 (D.Md. 2002).

The Court further went on to note that it was not convinced by the holding in the case of In re: Tainan, 48 B.R. 250, 252 (Bankr. E.D. Pa. 1985) as cited by IndyMac, which held that a servicing agent is the real party in interest in seeking relief from the automatic stay. The Court explained that the right to enforce a note on behalf of a noteholder does not convert the noteholder’s agent into a real party in interest and that as a general rule a person who is an attorney-in-fact or an agent solely for the purposes of bringing suit, is viewed as a “nominal” rather than a “real” party in interest and will be required to litigate in the name of his principal rather than in his own name. Citing, Wright & Miller, 6A Federal
SACRAMENTO – California’s commercial loans are beginning to feel the strain of a weakened economy, as the latest Quarterly Commercial Loan Delinquency Survey, conducted by the California Mortgage Bankers Association, found that California’s 4Q 2008 delinquency rate increased to 0.15%, up from .08% in the third quarter of 2008, and triple the rate a year ago.

In all, 25 loans, out of 10,748 included in the survey, were found to be more than 30 days delinquent. By number, the 25 delinquent loans represent 0.23% of the loans included in the survey.

The loans total $141.5 million out of a combined total of over $92 billion. California’s multi-family properties are particularly affected, as the delinquency rate is now 0.23%, up from 0.18% three months ago. 14 multi-family loans, totaling $79.6 million (0.23%) of an outstanding total of $33.8 billion were reported delinquent, as were $13.4 million (0.08%) of a total of $16.1 billion of retail/shopping center loans. Once again, there were no warehouse/industrial loans two or more payments past due. The “other” category included a $18.5 million loan on a “mixed use” property and two loans of $8.7 million and $2.0 million, respectively on “health care” properties.

13 of the 17 companies participating in the survey reported zero loans more than 30 days delinquent.

The following table compares delinquencies by type of property.

For survey purposes, a loan is considered delinquent if it is two or more payments past due. Loans in the process of foreclosure are included, regardless of the number of payments past due.

Seventeen income property mortgage bankers participated in the CMBA survey. These companies originate and service loans on apartments, retail, industrial and other commercial properties for institutional investors such as life insurance companies and pension funds.

For more information, please contact Peter H. Ulrich, CMB, CMBA Commercial Real Estate Consultant at (949) 494-1254.

For media inquiries, or if you would like to receive CMBA’s quarterly commercial loan delinquency survey via e-mail, please contact Dustin Hobbs, CMBA Communications director at (916) 446-7100, or Dustin@CMBA.com.

### Delinquencies by Type of Property

#### December 31, 2008

(Dollar figures in millions)

<table>
<thead>
<tr>
<th>Type of Property</th>
<th>Total Servicing</th>
<th>Amount Delinquent</th>
<th>% Delinquent As of 6/30/08</th>
<th>% Delinquent As of 3/31/08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi-family</td>
<td>$ 33,817.9</td>
<td>$ 79.6</td>
<td>.23%</td>
<td>.18%</td>
</tr>
<tr>
<td>Office Buildings</td>
<td>21,291.4</td>
<td>8.4</td>
<td>*</td>
<td>.02%</td>
</tr>
<tr>
<td>Retail</td>
<td>16,088.9</td>
<td>13.4</td>
<td>.08%</td>
<td>.04%</td>
</tr>
<tr>
<td>Warehouse/Industrial</td>
<td>11,679.9</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>Hospitality</td>
<td>3,910.4</td>
<td>3.9</td>
<td>.10%</td>
<td>0.07%</td>
</tr>
<tr>
<td>Mobile Home Parks</td>
<td>895.9</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>R &amp; D Properties</td>
<td>384.0</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>Other Properties</td>
<td>4,408.1</td>
<td>36.2</td>
<td>0.82%</td>
<td>0.05%</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$ 92,476.5</strong></td>
<td><strong>$ 141.5</strong></td>
<td><strong>0.06%</strong></td>
<td><strong>0.08%</strong></td>
</tr>
</tbody>
</table>

* Less than .1%

The December 31, 2008 survey included $92.5 billion of California commercial mortgage loans being serviced by 17 mortgage banking firms.
we would all agree that the instability between the last few weeks of the Bush administration and the inauguration of President Obama were trying times for markets on Wall Street and in California. The unending speculation about what the next day would hold was a daily frustration that did severe damage to consumer confidence, despite aggressive action by the Fed and Treasury. Living day-to-day just isn’t conducive to a good business environment.

While the speculation has slowed a bit, serious questions remain as to whether the new president and Congress will be friend or foe to our industry in 2009. The first mortgage-related initiative we are seeing at the national level is the unfortunate revival of the so-called bankruptcy ‘cramdown’ legislation. Despite the near-certainty that such legislation will increase rates, limit access to capital, and have far-reaching unintended consequences, Congress seems intent on passing some version of cramdown. We can only hope now that sensible amendments are considered, such as protecting VA and FHA programs, and including a sunset date on the legislation, giving us a chance to review its success (or failure) after a few years.

Closer to home, we are facing another eventful year in the California Legislature, and we are going to need the help of everyone in the industry to make sure our voice is heard! On March 9, industry leaders will come together in Sacramento to meet face-to-face with the legislators that have our fate in their hands this year – if you can join us that day, go to www.CMBA.com to register now. Nothing we do in 2009 will be more important than our representation before California’s legislators and regulators, so make sure to set this day aside.

On another topic, have you heard of ‘Web 2.0’ yet? If not, don’t worry, because you’ve probably already used it and didn’t know it. If you use the social networking sites LinkedIn or Facebook, whether to keep in touch with colleagues or keep tabs on friends and family, then you’ve seen what ‘Web 2.0’ is all about. As another benefit for you, CMBA is now utilizing both LinkedIn and Facebook to stay connected to our industry. Find our profile and stay in touch for conference info, new member updates and breaking news.

Additionally, we’ve started a YouTube Channel! Here you’ll find the latest conference updates, industry analysis, breaking news from Sacramento, as well as product updates from you – our members. I know there are many bright minds out there amongst the CMBA membership, and I invite anyone who has good topic or news of interest they’d like to share with industry to email Dustin Hobbs, CMBA Communications Director, at dustin@cmba.com. We’ll also be posting short clips from our members promoting a new product or service, so make sure to let Dustin know when your company has some good news to report! I would strongly urge everyone to visit our YouTube Channel and subscribe, to make sure you get the latest updates.

Soon as possible. If your company is not yet a CMBA member, please join today! If you’re unsure as to why you should renew or join, call me at 916-446-7100. Remember that your membership isn’t only important because of the revenues it provides to the association. Your experience and your involvement are what makes this association thrive!

Change is indeed coming but you can be a part of it!
Practice & Procedure Civ.2d §1553). The Court found that there was no evidence showing who the “real” owner of the Note was, including IndyMac, and therefore, IndyMac was not the real party under Rule 17, and could not bring the motion before the Court.

The court further explained that Rule 17 must be interpreted together with Rule 19 which requires joinder by bringing before the court every person with an interest in the Note. This is especially notable in this instance when nonjoinder could, among other things, result in an absent party claiming an interest relating to the subject matter of the action and is so situated that disposing of the matter in that person’s absence could, as a practical matter, impair or impede that person’s ability to protect the interest as stated under FRCP 19(b)(i). The Court reasoned that proceeding with relief from stay without the joinder of the beneficial owner of the Note makes it impossible and impractical to protect the interest of the real owner with respect to the Note. The Court further stated that the protection of its interest was particularly problematic given that the FDIC had taken over IndyMac and the real owner may be reduced to making a claim in the IndyMac receivership instead of collection on the Note. The Court surmised that the reason IndyMac did not join the owner of the Note was because it did not know who it was, and did not have any authority to join voluntarily.

On these bases, the Court concluded that if a loan servicer wishes to seek relief from the automatic stay, either as agent or nominee of the noteholder, the servicer may do so only if the noteholder either joins or ratifies the motion. Absent joinder or ratification, the noteholder must substitute in the servicer’s place and prosecute the motion on its own. If the servicer has mistakenly failed to seek relief in the noteholder’s name, the court must allow a reasonable time for the noteholder to join or substitute into the action under FRCP 17(a)(3).

As a result, on its face, the ramifications of this decision do not seem extreme if the servicer can either join the beneficial interest holder of the Note, or in a securitization scenario, the trustee of the trust, when filing a relief from stay motion. However, in the event such a third party is unavailable, obtaining ratification may be difficult, if not impossible, and relief from stay may become a difficulty in the future if the Bankruptcy Courts in California or others, decide to follow the ruling of this Court.

Hydee J. Mulichak is a shareholder at Barry, Gardner & Kincannon, A Professional Corporation located in Newport Beach, California. Ms. Mulichak specializes in creditors’ rights and business litigation including commercial and real property matters. She may be contacted at 949-851-9111. Questions regarding this article, please call 1-800-574-5587.

1 Originally, IndyMac was the beneficial interest holder under the Note and deed of trust. After regulators seized IndyMac, and FDIC was appointed receiver, a new “bridge bank”, IndyMac Federal Bank, F.S.B. (“IndyMac Federal”), was chartered, and all insured deposits and substantially all of the assets including the Note of issue, were transferred to IndyMac Federal. FDIC was then named conservator of IndyMac Federal. IndyMac subsequently filed a substitution of moving party replacing IndyMac with the FDIC as conservator of IndyMac Federal as servicer of the loan.

2 IndyMac has appealed the decision which is pending in the District Court of California.

NEW MEMBERS

Welcome New Members

BEECHWOOD REALTY
Maricruz Piecho, Moreno Valley, CA
Residential Member

DOYLE LEGAL CORPORATION, P.C.
Benjamin Paden, Indianapolis, IN
Industry Professional Advisor

GRIFFIN KNIGHTS REALTY
Emilia Voge, Newport Beach, CA
Broker

Welcome to the CMBA family!
middle man by selling either directly to Fannie and Freddie, or by selling to the large servicing companies such as Wells and BofA/Countrywide.

Pricing has changed as well. Currently mandatory delivery and pricing is beating “best efforts” pricing by the significant margin of a point or better. Pull through from brokers and bankers who sell loans on a best efforts basis is at an all time low and any originator with below-average pull through performance is finding that investors are penalizing them for this due to the increased hedge costs incurred by investors. This have, or will, appeared in lower pricing or upfront lock fees.

Fannie and Freddie, perhaps the central players in all of this, have not only seen their market share increase dramatically but also find themselves taking a leadership position in spite of being in government conservatorship. Look for this to continue. Many options for them are being explored, including using them as foreclosure prevention organizations, warehouse lending guarantee facilities, having them implement rollover programs similar to those in the 1980’s to help non-delinquent borrowers, etc. Their primary focus, however they achieve it, is to stabilize the housing market, since declining home prices are not beneficial for the home owner or for the mortgage investor, and to help home affordability. They have assured the public that they are working with the new administration, the Treasury Department, the Federal Reserve, the SEC, FHFA, bank regulators, credit union regulators, HUD, the GSEs, as well as private market players in achieving these goals.

•

RESIDENTIAL NEWS CONTINUED FROM PAGE 4

middle man by selling either directly to Fannie and Freddie, or by selling to the large servicing companies such as Wells and BofA/Countrywide.

Pricing has changed as well. Currently mandatory delivery and pricing is beating “best efforts” pricing by the significant margin of a point or better. Pull through from brokers and bankers who sell loans on a best efforts basis is at an all time low and any originator with below-average pull through performance is finding that investors are penalizing them for this due to the increased hedge costs incurred by investors. This have, or will, appeared in lower pricing or upfront lock fees.

Fannie and Freddie, perhaps the central players in all of this, have not only seen their market share increase dramatically but also find themselves taking a leadership position in spite of being in government conservatorship. Look for this to continue. Many options for them are being explored, including using them as foreclosure prevention organizations, warehouse lending guarantee facilities, having them implement rollover programs similar to those in the 1980’s to help non-delinquent borrowers, etc. Their primary focus, however they achieve it, is to stabilize the housing market, since declining home prices are not beneficial for the home owner or for the mortgage investor, and to help home affordability. They have assured the public that they are working with the new administration, the Treasury Department, the Federal Reserve, the SEC, FHFA, bank regulators, credit union regulators, HUD, the GSEs, as well as private market players in achieving these goals.

•

CALIFORNIA MORTGAGE FINANCE NEWS

middle man by selling either directly to Fannie and Freddie, or by selling to the large servicing companies such as Wells and BofA/Countrywide.

Pricing has changed as well. Currently mandatory delivery and pricing is beating “best efforts” pricing by the significant margin of a point or better. Pull through from brokers and bankers who sell loans on a best efforts basis is at an all time low and any originator with below-average pull through performance is finding that investors are penalizing them for this due to the increased hedge costs incurred by investors. This have, or will, appeared in lower pricing or upfront lock fees.

Fannie and Freddie, perhaps the central players in all of this, have not only seen their market share increase dramatically but also find themselves taking a leadership position in spite of being in government conservatorship. Look for this to continue. Many options for them are being explored, including using them as foreclosure prevention organizations, warehouse lending guarantee facilities, having them implement rollover programs similar to those in the 1980’s to help non-delinquent borrowers, etc. Their primary focus, however they achieve it, is to stabilize the housing market, since declining home prices are not beneficial for the home owner or for the mortgage investor, and to help home affordability. They have assured the public that they are working with the new administration, the Treasury Department, the Federal Reserve, the SEC, FHFA, bank regulators, credit union regulators, HUD, the GSEs, as well as private market players in achieving these goals.

•

CALIFORNIA MORTGAGE FINANCE NEWS

middle man by selling either directly to Fannie and Freddie, or by selling to the large servicing companies such as Wells and BofA/Countrywide.

Pricing has changed as well. Currently mandatory delivery and pricing is beating “best efforts” pricing by the significant margin of a point or better. Pull through from brokers and bankers who sell loans on a best efforts basis is at an all time low and any originator with below-average pull through performance is finding that investors are penalizing them for this due to the increased hedge costs incurred by investors. This have, or will, appeared in lower pricing or upfront lock fees.

Fannie and Freddie, perhaps the central players in all of this, have not only seen their market share increase dramatically but also find themselves taking a leadership position in spite of being in government conservatorship. Look for this to continue. Many options for them are being explored, including using them as foreclosure prevention organizations, warehouse lending guarantee facilities, having them implement rollover programs similar to those in the 1980’s to help non-delinquent borrowers, etc. Their primary focus, however they achieve it, is to stabilize the housing market, since declining home prices are not beneficial for the home owner or for the mortgage investor, and to help home affordability. They have assured the public that they are working with the new administration, the Treasury Department, the Federal Reserve, the SEC, FHFA, bank regulators, credit union regulators, HUD, the GSEs, as well as private market players in achieving these goals.

•

CALIFORNIA MORTGAGE FINANCE NEWS

middle man by selling either directly to Fannie and Freddie, or by selling to the large servicing companies such as Wells and BofA/Countrywide.

Pricing has changed as well. Currently mandatory delivery and pricing is beating “best efforts” pricing by the significant margin of a point or better. Pull through from brokers and bankers who sell loans on a best efforts basis is at an all time low and any originator with below-average pull through performance is finding that investors are penalizing them for this due to the increased hedge costs incurred by investors. This have, or will, appeared in lower pricing or upfront lock fees.

Fannie and Freddie, perhaps the central players in all of this, have not only seen their market share increase dramatically but also find themselves taking a leadership position in spite of being in government conservatorship. Look for this to continue. Many options for them are being explored, including using them as foreclosure prevention organizations, warehouse lending guarantee facilities, having them implement rollover programs similar to those in the 1980’s to help non-delinquent borrowers, etc. Their primary focus, however they achieve it, is to stabilize the housing market, since declining home prices are not beneficial for the home owner or for the mortgage investor, and to help home affordability. They have assured the public that they are working with the new administration, the Treasury Department, the Federal Reserve, the SEC, FHFA, bank regulators, credit union regulators, HUD, the GSEs, as well as private market players in achieving these goals.

•

CALIFORNIA MORTGAGE FINANCE NEWS
AB 111 (Niello) Taxation: 
Cancellation of Indebtedness: 
Mortgage Debt Forgiveness

Current law allows for the exclusion of principal residence borrower debt forgiven by a lender from taxable state income that occurred during the specified 2-year period (after Jan 1, 2007 and before Jan 1, 2009). Qualified principal residence indebtedness for the purposes of the bill would be $400,000 for those filing singly and $800,000 for those filing jointly and the amount of debt that can be excluded for state tax purposes for forgiven debt to $125,000 for single filers and $250,000 for those filing jointly. This bill would extend the operation of these provisions to debt that is discharged after Jan 1, 2007 and before Jan 1, 2012.

SB 36 (Calderon) Real Estate Licenses: Mortgages

This bill would create new requirements for real estate licensees (in the Business and Professions Code) in the business as a “mortgage loan originator.” The bill contains portions of the CSBS/ARMR model language for states implementing the requirements of the new Federal SAFE Act. The Federal SAFE Act requires states to have in place a system to license individual mortgage loan originators by August 1, 2009. Specifically, no individual may engage in the business as a mortgage loan originator under the article without first obtaining a real estate license and obtaining a real estate license endorsement identifying the individual as a licensed mortgage loan originator. The endorsement would be valid for one year and expire on Dec 31 of each year. A mortgage loan originator would be an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. In order to fulfill the purposes of the article the Department of Real Estate Commissioner would be allowed to establish relationships or contracts with the National Mortgage Licensing System and Registry (NMLSR) to collect and maintain records and process transaction fees or other fees related to licensees subject to the article. The bill would require applicants to provide fingerprints for a federal criminal background check and provide a personal history and credit report. There is a provision allowing the Commissioner to determine that these background requirements are satisfied based on previous compliance with Section 10152 of the Business and Professions Code. A license endorsement cannot be issued if an applicant had ever had a mortgage loan originator license revoked. There are also restrictions if an applicant had been convicted of a felony or pled guilty to a felony. The bill requires 20 hours of prelicensing coursework approved by the NMLSR. The bill also requires the applicant to pass a written test approved by the NMLSR and annually satisfy 8 hours of continuing education requirements. Further, it requires that licensees provide a license number and unique identifier assigned by the NMLSR in advertisements and in solicitations. Finally, the bill would require licensees that make, arrange or service residential mortgage loans to provide the Commissioner with a report on business activities and with specified data on its mortgage lending.
To access the 2009 Membership Directory,
go to www.CMBA.com and enter your exclusive ‘Members-Only’ ID and password to access the ‘Members-Only’ CMBA website. Then click on the Directory to open!

Keep your listing updated!
Email dustin@cmba.com with any new information, additional employees, or changes.
helped to fuel low cap rates and rising property values. Today the converse is true, as scarce, low-leverage, high-cost debt is helping to raise cap rates and depress property values. Tighter underwriting standards exacerbate the situation. It is no longer common for loans to be underwritten based on Pro-Forma NOI, which allowed property owners to monetize upcoming rental increases. Typically loans are underwritten today based on current income, and as noted above, many lenders currently underwrite based on the lower of market or contract rents. Lower loan-to-value ratios, higher debt-service-coverage ratios, and higher pricing are the order of the day. Interest-only loans seem to be a thing of the past.

The result of this tighter underwriting, lower leverage and higher pricing for commercial mortgage loans, is that buyers need more equity. Lower leverage means a lower achievable yield which puts upward pressure on cap rates and downward pressure on pricing.

Conclusion
So what is “Market” when there is no market? The answer remains elusive, but it will evolve as the markets themselves evolve. As long as sellers want to achieve yesterday’s prices while buyers are constrained by today’s capital availability, the markets will remain stalled, and “Market” will be difficult to pin down. Once sellers embrace the new market fundamentals, either willfully or through distress, and/ or once the capital markets loosen up, then the bid-ask gap will close, we will see more transactions, and our sense of market clarity will return.
Our lawyers represent all sectors of the mortgage industry and are regularly asked to assist our clients with responding to the most challenging issues confronting the industry, including:

- Licensure and regulatory approvals for strategic acquisitions
- Formation of investment funds that purchase distressed loan assets and servicing rights
- State attorney general and Federal and State banking regulatory investigations, enforcement actions, and examinations
- Fair Lending, securities, general class action and individual litigation defense
- RESPA, FHA and other HUD enforcement actions and structuring
- Assistance setting up and reviewing FHA lending and servicing operations
- Federal and state legislation and rulemakings
- Amicus Curiae representation of leading industry trade groups
- Negotiation of M&A transactions
- Regulatory due diligence for transactions
- Capital markets transactions and Regulation AB issues
- Responding to data security breaches

We invite you to learn more about our work defending and representing the mortgage industry by visiting us at www.buckleykolar.com.
Building Stronger Partnerships

The Road Trip Continues...

CMBA hit the trail again in November, as 2008 came to a close, in the same city we started the year in – San Diego, starting at the law offices of KIRBY & MCGUINN. Thanks very much to firm partners Martin T. McGuinn (l) and Dean T. Kirby, Jr. (r). Kirby & McGuinn represents lenders, creditors and fiduciaries in bankruptcy, collection, eviction and foreclosure matters, and is a longtime CMBA supporter. For more information, call (619) 685-4000 or go to www.KirbyMac.com.

Down the street, Susan visited another strong CMBA supporter, THE NATIONAL FIRM, a group of independently-owned premier law firms that provide default legal services nationwide. Thanks as always to firm partner Kevin McCarthy for his time! Pictured (l-r): Wendy Rusnak, McCarthy, Susan DeMars. To find out more about The National Firm/McCarthy, Holthus, Baum & Ackerman LLP call their San Diego offices at or visit www.McCarthyHolthus.com

Traveling a bit north, Susan stopped to visit one of CMBA’s commercial/multi-family member companies, Cushman & Wakefield. A global firm, CUSHMAN & WAKEFIELD assists clients in every stage of the real estate process, representing them in the buying, selling, financing, leasing, managing and valuing of assets, and providing strategic planning and research, portfolio analysis, site selection and space location, among many other advisory services. Pictured (l-r): Stath Karras, Jonathan Walz, Susan DeMars. Thanks very much to company execs Stath and Jon for their time! For more info, call (858) 452-6500 or go to www.CushWake.com.
Completing this visit to San Diego, Susan met with Annemaria Allen (l), President and CEO of The Compliance Group. THE COMPLIANCE GROUP and The Mortgage Licensing Group, is a full service mortgage licensing, licensing maintenance, compliance and QC company dedicated to providing reliable, precise, and premier service to their clients. Headquartered in San Marcos, The Compliance Group can be reached at (760) 747-0364 or on the web at www.TheComplianceGroup.net.

Down the street, Susan visited another strong CMBA supporter, MERS (MORTGAGE ELECTRONIC REGISTRATION SYSTEMS). MERS was created by the mortgage banking industry to streamline the mortgage process by using electronic commerce to eliminate paper. MERS acts as nominee in the county land records for the lender and servicer. Any loan registered on the MERS® System is inoculated against future assignments because MERS remains the nominal mortgagee no matter how many times servicing is traded. MERS as original mortgagee (MOM) is approved by Fannie Mae, Freddie Mac, Ginnie Mae, FHA and VA, California and Utah Housing Finance Agencies, as well as all of the major Wall Street rating agencies. Thanks as always to Bob Pathman, Western Region Director, for his time! To find out more about MERS, call (800) 646-6377 or visit www.MERSInc.com.

The Road Trip continued just a few blocks away at the offices of the GERSON LAW FIRM, and longtime CMBA supporter Gordon Gerson. The firm has an active institutional and mortgage banking practice, and provides a range of services in loan closings for both the traditional banking and conduit lending industry -- including loans secured by commercial, industrial, anchored retail, multi-family and other character property. The firm is nationally recognized for its understanding of the conduit lending industry and agency lending, including Fannie Mae and Freddie Mac. To find out more, call (858) 452-5400 or visit the firm’s website – www.GersonLaw.com.
CMBA started 2009’s edition of the member Road Trip in north Los Angeles, starting at the Westlake Village offices of **SBS TRUST DEED**. Thanks very much to company execs Mitchell Willet, President, and Jennifer Barron, Vice President! SBS Trust Deed has been providing a complete spectrum of trustee services since it was founded in 1978. SBS provides foreclosure services in California, Arizona, Washington and Nevada. They coordinate all activities with attorneys and affiliate trustee companies to process foreclosures in all other states. For more information, call (818) 991-4600 or go to www.SBSTrustDeed.com.

Making a quick stop in the Bay Area, Susan had lunch with one of CMBA’s commercial mortgage banking firms, **SB CAPITAL**. SB Capital is positioned as a commercial mortgage broker and a direct lender to provide optimal financing for all commercial property types. They have a large variety of loan programs available. Special thanks to President & CEO Mark Feathers for his time. For more information about the company, call their Los Altos headquarters at (800) 551-7949 or go to www.sbcapital.com.

CMBA 2009’s edition of the member Road Trip continued this month in Southern California, making stops in numerous locales, beginning with Los Angeles, at the offices of **NEW FRONTIER REALTY**. Thanks very much to exec David Silverstein for his time! New Frontier Realty provides the following Real Estate Services to the Greater Los Angeles Area: Corporate, Real Estate Owned (R.E.O.), Short Sales, and Conservatorships. Highly trained and motivated staff will assist consumers in buying and selling needs. For more information, call (323) 549-2503 or go to www.NewFrontierRealty.net.
Meanwhile, Dustin stopped off in Moreno Valley at the offices of a new residential CMBA member, BEECHWOOD REALTY. Many thanks to execs Pedro Reyes (l) and Maricruz Peicho (r) and for their time. To find out more, call Maricruz at (951) 907-4824.

Staying the in same part of town, Susan and CMBA’s Commercial President, Tup Fisher (r), stopped off at the offices of GRUBB & ELLIS BRE COMMERCIAL. Thanks to company exec Gary Goss (l) for his time. Grubb & Ellis BRE Commercial (Grubb & Ellis BRE) is one of Southern California’s leading privately-held commercial real estate brokerage firms. Independently owned and operated by the very sales professionals that service your accounts, exceeding clients’ expectations is the standard by which we measure our success. Contact Grubb & Ellis BRE Commercial’s San Diego offices at (858) 546-5400 or go to www.breb.com.
EXCELLENCE IN FORECLOSURE PROCESSING. Above all, some of the nation’s largest financial institutions rely on us to process foreclosures with nothing less than the highest standards of performance. And that suits us just fine.

Standard Trust Deed has provided residential and commercial foreclosure services for nearly 20 years. Experience has taught us there is no substitute for relentlessly striving for excellence — in execution, service and commitment.

We invite you to discover the high regard in which Standard Trust Deed holds its clients, and their business. Just call or visit us on the Web.

Higher Standards of Performance

Telephone 800-253-2580 or visit standardtrustdeed.com
Serving: Arizona, California, Nevada, Oregon, and Washington