CMBS 2.0 – Things to Consider From A Borrower’s Perspective

by

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The commercial mortgage backed securities (“CMBS”) market is in the midst of a rebirth, known as CMBS 2.0. Although this market is in its nascent stages, lenders anticipate closing close to $40 billion in new CMBS 2.0 issuances in 2011. In response to issues discovered in CMBS 1.0 (i.e., CMBS loans closed in 2008 or earlier), lenders have returned to more traditional underwriting standards, and revised their standard CMBS 1.0 loan documents to impose greater borrower obligations. Among other things, borrowers should now anticipate needing to infuse more true or “hard” equity and having greater lender involvement in property level decisions and cash management. Borrowers should also anticipate greater restrictions on their ability to change property management, enter into material agreements and/or incur additional debt. Further, borrowers should be prepared to comply with additional single purpose entity requirements and expanded financial reporting requirements. Lastly, borrowers should anticipate being subjected to cash management arrangements with the imposition of either a hard or soft lockbox, as well as additional events of defaults and non-recourse exceptions.

Following you will find a discussion of the new or expanded loan document requirements, highlighted to address potential borrower issues and concerns.

I. Changes in Underwriting

Before the 2008 collapse, CMBS 1.0 exceeded $800 billion dollars and constituted over 25% of the real estate finance market. Interest only loans comprised over 50% of all mortgage loans, and traditional underwriting parameters were jettisoned in favor of forward-looking models, resulting in debt service coverage ratios of less than 1.0 coverage and loan to value ratios exceeding 100%. The fallout from forward-looking underwriting was immense and resulted in losses of billions of dollars in the capital markets.

For CMBS 2.0 loans, lenders have reverted to prudent real estate credit decisions, with a much more conservative attitude towards risk. As part of the
underwriting process, lenders are simultaneously assessing the risks of default and trying to minimize such risks. They are requiring much more detailed borrower and property-level information and are paying closer attention to any inaccuracies and deviations from traditional norms. Underwritten cash flows are more conservative and based on “in-place” income and rent rather than anticipated income or future rent escalations. Leases are analyzed with closer scrutiny to ensure market rate terms with true third parties. In addition to more traditional loan to value and debt service coverage ratios, lenders are calculating the anticipated debt yield (net operating income/loan amount). The anticipated debt yield is the return the lender would receive if it were to purchase the underlying property for the loan amount. Borrowers should expect to have “hard” cash equity invested in their projects. Lenders believe that the more true equity a borrower’s investors have at risk, also referred to as “skin in the game,” the greater the incentive on the borrower’s part to perform its obligations under the loan documents.

II. Property Management.

A. Property Management Agreements.

Lenders are now paying closer attention to how properties are being managed and operated. A borrower will still be obligated to engage a property manager pursuant to a management agreement, and the management agreement must be based on commercially reasonable terms, regardless of whether the manager is a related entity. Borrowers must now be prepared, however, to represent that not only has there been no default under the management agreement, but also that there has been no event which, with the giving of notice or the passage of time, would constitute a default under the management agreement. Borrowers will be required to notify lenders of any alleged default under the management agreement and to deliver to lenders copies of any financial statement, business plan, capital expenditure plan, report or estimate received from the property manager. Borrowers need to make sure that they are comfortable with both the manager and the terms of the management agreement because they will be prohibited from surrendering, terminating, cancelling, modifying or extending the management agreement, or entering into any other agreement relating to the management or operation of the property without their lender’s prior consent in each instance.

B. Property Managers.

While the property manager may be a third party or a related entity, CMBS 2.0 loan documents will prohibit a borrower from changing property managers
without the lender’s prior consent. The lender’s consent may be conditioned upon the borrower delivering a written affirmation from the rating agencies that the change in manager will not result in a downgrade or withdrawal of the applicable credit rating, or a new non-consolidation opinion. Lenders also will reserve the right to require the borrower to replace the property manager with a third party property manager acceptable to lender (i) following an Event of Default, (ii) if the property fails to achieve certain financial underwriting criteria, (iii) upon the property manager becoming insolvent or being in default under the management agreement or (iv) if the property is not being managed in accordance with the management practices of nationally recognized management companies managing similar properties in locations comparable to the related property. Lenders have now added teeth to the borrower’s obligation to remove the manager by making the failure to comply with such obligation a nonrecourse carve-out.
C. **Assignment of Management Agreement.**

Lenders still require an assignment of the borrower’s rights under the property management agreement as part of the loan collateral. Generally, such assignment is a collateral assignment which allows the lender to assume or terminate the management agreement following an Event of Default. Some lenders, however, have expanded this requirement and are now taking an “absolute” assignment of the management agreement with a license back to the borrower to retain its interests under the management agreement versus the traditional “collateral” assignment. An example of such an absolute assignment is as follows:

“The Borrower hereby absolutely and unconditionally transfers, sets over and assigns to the Lender all of the Borrower’s rights, title, interests and benefits in and to the Management Agreement. This is an absolute assignment, not an assignment for security only; provided, however, until the occurrence of an Event of Default (as defined in the Loan Agreement), the Borrower shall have a license to retain all rights, title, interests and benefits under the Management Agreement, and provided further that said assignment shall not be construed to impose any liability or obligation on the Lender. Upon the occurrence of any such Event of Default, such license shall be deemed immediately revoked.”

An absolute assignment of the management agreement is intended to parallel a borrower’s assignment of rents. The absolute assignment of rents with a license back to the borrower was created in order to perfect the lender’s rights to the rents, and presumably (while the parallelism is a bit of a stretch), lenders are trying to ensure that they have perfected their interest in all of the borrower’s right and benefit under a management agreement.

III. **Single Purpose Entities.**

A. **Single Purpose Entity Covenants.**

Borrowers will still be required to be single purpose entities, but they will now be subject to additional “SPE” covenants. One such covenant deals with additional indebtedness and is much stricter than in the CMBS 1.0 setting. Borrowers are prohibited from incurring additional indebtedness other than trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially
reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date; provided however, the aggregate amount of such additional indebtedness shall not exceed at any time two percent (2%) of the outstanding principal amount of the Debt. Another covenant relates to the insolvency and non-consolidation opinions. Borrowers are now obligated to conduct their business so that the assumptions made with respect to such borrowers in the insolvency opinions and any non-consolidation opinion given at closing will continue to be true and correct in all respects. Borrowers are also required to comply with, or cause the compliance with, (i) all of the facts and assumptions (whether regarding the borrower or any other persons) set forth in the insolvency opinions and any non-consolidation opinion, (ii) all of the representations, warranties and covenants contained in the SPE provisions, and (iii) all of the borrower’s and special purpose member’s organizational documents. On top of this, the failure to comply with the SPE covenants has been made a nonrecourse carve-out.

As for the entity structure, a borrower will need to either (i) be a limited liability company formed under Delaware law with at least one springing member, or (ii) have a corporate general partner or managing member (A) whose sole asset is its interest in the borrower, (B) which has not been and shall not be permitted to engage in any business or activity other than owning an interest in the borrower; (C) which has not been and shall not be permitted to incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (D) which has and will at all times own at least a 0.5% direct equity ownership interest in the borrower. Each corporate general partner or managing member of the Borrower will at all times be required to comply, and to cause the borrower to comply, with each of the single purpose entity representations, warranties and covenants as if each such representation, warranty or covenant were made directly by such general partner or managing member.

B. Independent Director.

A borrower’s organizational documents must provide that at all times there will be at least two (2) duly appointed independent directors. To qualify as an independent director, a person must be employed by, in good standing with and engaged by borrower in connection with, in each case, an approved nationally recognized company that regularly engages in the business of providing independent directors, such as CT Corporation, Corporate Service Company, and National Registered Agents, Inc., and have had at least three (3) years’ prior experience as an independent director employed and in good standing with such an approved nationally recognized company.
In response to the course of events leading up to the General Growth Properties bankruptcy filings, lenders have imposed greater restrictions on a borrower’s ability to remove and replace independent directors and have raised the standard of care imposed on independent directors. In addition to requiring two (2) independent directors, lenders are mandating that a borrower’s organizational documents further provide that any resignation, removal or replacement of any independent director will not be effective without two (2) business days’ prior written notice to the lender and the applicable rating agencies. Such notice must identify the replacement independent director and contain evidence that the replacement independent director satisfies both the applicable terms and conditions of the loan documents and the borrower’s organizational documents. Moreover, a borrower’s organizational documents must provide that, (a) to the fullest extent permitted by applicable law, including Section 18-1101(c) of the Delaware Limited Liability Company Act and notwithstanding any duty otherwise existing at law or in equity, the independent directors will consider only the interests of the constituent members and the borrower (including the borrower’s creditors) in acting or otherwise voting on the matters provided for under the loan documents and in the borrower’s organizational documents; and (b) except as to their obligation to consider the direct interests in the borrower, the independent directors shall have no other fiduciary duties to any constituent members, any directors of borrower or any other person. With respect to the duty of the independent directors to consider only the interests of the constituent members and the borrower (including the borrower’s creditors) as described in clause (a) of the preceding sentence, such fiduciary duties to the constituent members and the borrower (including the borrower’s creditors), in each case, will be deemed to apply solely to the extent of their respective economic interests in the borrower exclusive of (x) all other interests (including, without limitation, all other interests of the constituent members), (y) the interests of other affiliates of the constituent members and the borrower and (z) the interests of any group of affiliates of which the constituent members and the borrower is a part). Notwithstanding such restrictions, the independent directors will still be required to act under the implied contractual covenant of good faith and fair dealing under applicable law.

C. Additional Reporting Requirement.

Borrowers will be subject to additional reporting requirements to confirm compliance with the SPE covenants. Not later than ninety (90) days after and as of the end of each fiscal year and at any other time upon request from the lender, a borrower will be required to deliver an officer’s certificate certifying as to the borrower’s continued compliance with the terms of the SPE covenants.
IV. Financial Reporting.

Borrowers should expect to find expanded financial reporting requirements in CMBS 2.0 loan documents. In addition to traditional monthly, quarterly and annual reporting requirements, borrowers will be required to report debt service coverage ratios and changes in financial condition as compared against budgeted income and expenses. Illustrative examples of the expanded reporting requirements are as follows:

“Borrower will furnish Lender on or before the forty-fifth (45th) day after the end of each fiscal quarter, the following items, accompanied by a certificate from the chief financial officer of borrower, certifying that such items are true, correct, accurate and complete and fairly present the financial condition and results of the operations of borrower and the property in accordance with GAAP as applicable:

(i) quarterly and year-to-date statements of income and expense and cash flow prepared for such quarter with respect to the Property, with a balance sheet for such quarter for Borrower;

(ii) a calculation reflecting the debt service coverage ratio and the debt yield as of the last day of such quarter, for such quarter and the last four quarters;

(iii) a current rent roll for the property; and

(iv) a comparison of the budgeted income and expenses and the actual income and expenses for such quarter and year to date for the property, together with a detailed explanation of any variances of more than five percent (5%) between budgeted and actual amounts for such period and year to date.” [emphasis added]

Borrowers will also be required to submit annual operating budgets for lender’s review and approval. To the extent a borrower incurs an extraordinary operating expense or extraordinary capital expense not otherwise set forth in the approved budget, such borrower will be obligated to promptly deliver to lender a reasonably detailed explanation of such proposed expense for the lender’s approval. Since the approval is
often sought after the expense is incurred, borrowers may find themselves in a difficult position if the lender refuses to approve such expense.

V. **Leasing Covenants.**

Borrowers should anticipate expanded leasing representations and covenants in order to keep lenders apprised of a property’s leasing activities. For example, a borrower will not only have to represent that all leases are in full force and effect and that there are no defaults thereunder by either party, but also that no tenant is subject to an action under any state or federal bankruptcy, insolvency, or similar laws or regulations. This will obligate borrowers to conduct continued diligence on their tenants for the life of the loan. Borrowers will also have to represent that no tenant has “gone dark,” regardless of whether the tenant has such right under its lease. As for covenants, borrowers will generally be precluded from renewing, amending, altering, terminating or accepting the surrender of any lease without lender’s approval. Some lenders may be willing to grant certain rights and parameters to deal with non-material leases, but borrowers should still anticipate some form or level of oversight.

Borrowers will be required to (i) promptly furnish to the lender all written correspondence received from tenants or prospective tenants concerning existing and/or prospective leases, and (ii) agree not to willfully withhold from the lender any information regarding renewal, extension, amendment, modification, waiver of provisions of, termination, rental reduction of, surrender of space of, or shortening of the term of, any lease during the term of the loan. Borrowers will further be required to provide lenders with written notice of a tenant “going dark” under such tenant’s lease within five (5) business days after such tenant “goes dark.” A failure by the borrower to provide such notice within such time frame will constitute an Event of Default. Although a borrower will be prohibited from terminating any lease without the lender’s prior consent, such borrower will still be obligated to notify its lender in writing of such borrower’s receipt of any lease termination fee and to promptly deposit all lease termination fees with the lender.

VI. **Events of Default.**

The Events of Default have been expanded to address presumed shortfalls or weaknesses discovered in the CMBS 1.0 loan documents. The following events will now be an immediate Event of Default: (i) a borrower’s failure to comply with the financial reporting requirements; (ii) the failure to notify lender of any variance greater
than five percent (5%) in the property’s performance as compared against budgeted projections; (iii) a borrower’s failure to comply with the newly expanded SPE provisions; and (iv) if any of the assumptions contained in the insolvency opinion or in any non-consolidation opinion is or shall become untrue in any material respect. As for the Event of Default in the preceding clause (iv), borrowers will need to pay closer attention to the actions taken by their attorneys, including the legal opinions and the assumptions taken therein.

VII. Additional Nonrecourse Carve-outs.

Lenders have expanded the nonrecourse carve-out provisions to address perceived deficiencies in the CMBS 1.0 loan documents and to create greater incentives for borrowers and guarantors to comply with the loan documents. Many of the new nonrecourse carve-outs relate to the borrower’s failure to provide property level information necessary to keep the lender fully apprised of the property’s operation and management, or can be viewed as a means to address obstacles previously incurred by lenders in pursuing their rights and remedies following default or protecting their security interests.

Borrowers and recourse guarantors will now be personally liable for any loss or damage incurred by a lender as a result of or relating to (i) the removal or disposal of any portion of the property after an Event of Default; (ii) any personal property taken from the property by or on behalf of a borrower, any guarantor or any party affiliated therewith, and not replaced with personal property of the same utility and of the same or greater value; (iii) any act of arson by a borrower, any guarantor or any party affiliated therewith; (iv) any failure by a borrower to permit on-site inspections of the property, (v) the failure by a borrower to remove and appoint a new property manager upon the lender’s request; (vi) a borrower’s breach or failure to comply with the further assurances provisions of the loan documents or failure to provide all leasing information required to be delivered under the loan documents; (vii) the borrower’s indemnification of the lender for the information provided by the borrower during the securitization process and for any transfer and recordation fees incurred by the lender in foreclosing against the property; (viii) any litigation or other legal proceeding relating to the loan file by a borrower, guarantor or any affiliated party, that delays, opposes, impedes, obstructs, hinders, enjoins or otherwise interferes with or frustrates the lender’s efforts to exercise its rights and remedies, and (vii) the seizure or forfeiture of the property, or any portion thereof, or the borrower’s interest therein, resulting from criminal wrongdoing by the borrower, any guarantor or any affiliate thereof.
A loan will now be fully recourse to borrowers and recourse guarantors for the following additional events: (i) a borrower’s failure to provide the required financial information; (ii) a borrower’s failure to comply with the SPE covenants; (iii) a borrower’s failure to comply with the cash management agreement; (iv) if there is a substantive consolidation of such borrower with any other person in connection with any federal or state bankruptcy proceeding involving a guarantor or any of its affiliates; (v) a borrower contests or opposes any motion made by the lender to obtain relief from the automatic stay or seeks to reinstate the automatic stay in the event of any federal or state bankruptcy or insolvency proceeding involving the guarantor or its affiliates; or (vi) a borrower accepts from any guarantor or any guarantor solicits or provides any debtor-in-possession financing to such borrower in the event such borrower is the subject of a bankruptcy or insolvency proceeding.

VIII. Cash Management.

Lenders now require control of a borrower’s cash flow through lender-controlled accounts. At closing, the lender and the borrower will implement a cash management system whereby the lender will establish a deposit account into which all funds will be deposited on a periodic basis. The deposit account will be broken down into sub-accounts controlled by the lender and used to pay taxes, insurance, capital repairs, tenant improvements and debt service under the loan. Any excess funds would either be held in reserve or distributed to the borrower. Depending on the size of the loan, the cash management system will impose either a “hard” lockbox or a “soft” or “springing” lock box. With the larger loans, lenders almost always require a hard lock box. With a hard lock box, all revenue generated by the property is swept into a lockbox account and promptly transferred to the deposit account to be applied in accordance with the waterfall established under the cash management system. With a soft or springing lock box, a borrower is able to collect all revenue generated by the property and deposit specified monthly sums into the deposit account for application in accordance therewith. Upon the occurrence of a triggering event (that is, something short of an Event of Default), the soft lock box becomes hard or the hard lock box springs into place and thereafter, all revenue generated by the property is swept into a lock box account. A borrower should be prepared to give specific representations and warranties concerning the lock box arrangement, the deposit account and sub-accounts. Lenders will want to know (a) that the accounts constitute “deposit accounts” or “securities accounts” within the meaning of the Uniform Commercial Code, (b) that the loan documents create a valid and continuing security interest (as defined in the Uniform Commercial Code) in such accounts in favor of the lender and (c) that the security interest is senior to all other liens.
and is enforceable as such against creditors of and purchasers from the borrower. During the term of the loan, borrowers will be prohibited from selling or otherwise conveying any interest in the deposit accounts.

Not later than ninety (90) days after and as of the end of each fiscal year and at any other time upon request from a lender, a borrower will be obligated to provide an officer’s certificate certifying as to such borrower’s continued compliance with the terms of the cash management arrangement.

IX. Additional Miscellaneous Provisions

A. Representations and Warranties.

There are many other terms and conditions that have been added to or expanded upon in the CMBS 2.0 loan documents. The new or expanded terms are intended to create greater transparency with the property-level due diligence, as well as the ongoing operation and management of the property. A Borrower is now required to pay close attention to the property appraisal used by the lender in underwriting the loan and confirm that the methodologies used by the appraiser in reaching the appraised value included only the improvements located within the boundaries and building restriction lines of the property. A borrower is also obligated to confirm that there are no facts or circumstances which are reasonably likely to materially adversely affect either the borrower or the operation or condition of the property. As for the internal affairs of a borrower, lenders have now focused on any equitable claims that may exist against either the borrower or the underlying property. In that regard, a borrower will now be asked to represent that no person currently owning a direct or indirect equity ownership interest in the borrower (or any past or current affiliate of such person) has breached any fiduciary duty owed by such person to any other person now or previously owning a direct or indirect equity ownership interest in the borrower or any prior owner of the property.

Further, lenders have expanded the borrower-specific representations and warranties (as opposed to property-level representation and warranties) to apply to any guarantors or borrower sponsors. Borrowers will be asked to represent and warrant for the life of the loan that such representations and warranties are true and correct with respect to such guarantors or sponsors. This will impose a greater obligation on borrowers to confirm both the accuracy of such representations and warranties and the application of such representations and warranties to its guarantors and sponsors, both as of the time the loan is closed and during the term of the loan.
B. **Material Agreements.**

Lenders have imposed additional restrictions on a borrower’s ability to enter into contracts and agreements relating to the ownership, management, use, operation, leasing, repair or improvement of the property. Any such agreement in excess of a defined annual contract amount will now be considered a “Material Agreement”. A borrower will be obligated (a) to perform and/or observe all of the material covenants and agreements required to be performed and observed by it under each Material Agreement and to do all things necessary to preserve and to keep unimpaired its rights thereunder, (b) to promptly notify the lender in writing of the giving of any notice of any default by any party under any Material Agreement of which it is aware, (c) to promptly enforce in a commercially reasonable manner the performance and observance of all of the material covenants and agreements required to be performed and/or observed by the other party under each Material Agreement, and (d) not to amend, modify or terminate a Material Agreement or enter into a new Material Agreement without the consent of the lender. A borrower must further agree that without the lender’s prior written consent, it will not (a) enter into, surrender or terminate any Material Agreement (unless the other party thereto is in material default and the termination of such Material Agreement would be commercially reasonable), (b) increase or consent to the increase of the amount of any charges under any Material Agreement, except as provided therein or on an arms’-length basis and commercially reasonable terms or (c) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under any Material Agreement in any material respect, except on an arm’s-length basis and commercially reasonable terms.

C. **Enforcement Costs, Indemnification.**

Lenders have expanded their ability to recover costs and expenses incurred in pursuing their rights and remedies under the loan documents following an Event of Default. In the event of (a) the foreclosure of the mortgage in whole or in part or the placing into the hands of an attorney for collection, suit, action or foreclosure of the note or any other loan document, (b) the foreclosure of any lien or mortgage prior to or subsequent to the mortgage in which proceeding the lender is made a party, (c) the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of a borrower or guarantor or an assignment by a borrower or guarantor for the benefit of its creditors, or (d) the remedy or attempt to remedy by the lender of any Event of Default, the borrower shall pay all costs incurred by the lender as a result thereof, including all costs of collection and defense (including reasonable attorneys’, experts’, consultants’
and witnesses’ fees and disbursements) in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein. All of such costs and expenses shall be due and payable on demand, together with interest thereon from the date incurred by the lender at the default rate and all required service or use taxes.

Lenders have also expanded the scope of the borrower’s indemnification of the lender to cover all costs and expenses incurred if the loan is subject to special servicing or if the borrower is involved with a bankruptcy proceeding. Borrowers should be prepared to agree to indemnify their lenders against all reasonable costs and expenses incurred in enforcing any obligations of, or collecting any payments due under, the loan documents or with respect to the property or in connection with any “special servicing” of the Loan or restructuring of the credit arrangements provided under the loan documents in the nature of a “work out” or of any insolvency or bankruptcy proceedings (including, without limitation, loan servicing or special servicing fees, loan advances and “work-out” and/or liquidation fees).

D. Additional Transfer Restrictions.

Borrowers will be subject to additional transfer restrictions that require the prior written consent of the lender. Such restrictions will include the prohibition of (i) any merger, consolidation or sale or pledge of stock or the creation or issuance of new stock in one or a series of transactions; (ii) any merger or consolidation or the change, removal, resignation or addition of a general partner or the sale or pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; or (iii) any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) of a limited liability company or the sale or pledge of the membership interest of any member or any profits or proceeds relating to such membership interest.

With respect to permitted transfers, lenders have expanded the facts and circumstances they will consider when evaluating a requested transfer. In determining whether to give its consent to a proposed transfer, a lender will now consider a transferee’s experience and track record in owning and operating facilities similar to the property, a transferee’s financial strength, a transferee’s general business standing and a transferee’s relationships and experience with contractors, vendors, tenants, lenders and other business entities. A lender may also take into consideration additional factors deemed by the lender to be commercially reasonable at the time and may condition its
consent to the extent the lender considers it appropriate. All consents will further be conditioned on such transfer and assumption not constituting a “significant modification” of the loan under Section 1001 of the Internal Revenue Code causing the REMIC to lose its tax status or not otherwise resulting in a prohibited transactions tax on the REMIC Trust.

X. Conclusion

Most, if not all, of the problems encountered by lenders and special servicers relating to CMBS 1.0 were caused by poor or inadequate mortgage loan underwriting and a lack of transparency at the property level. Through the new CMBS 2.0 loan documents, lenders have attempted to address such shortfalls by shifting more and more of the underwriting and property performance risk on borrowers. Borrowers are now subject to expanded financial reporting requirements, including tracking a property’s performance against its forward-looking operating budget, expanded restrictions on a borrower’s ability to manage and operate the property, including the borrower’s ability to deal with tenants and enter into contracts and other agreements necessary for the operation of the property, as well as expanded Events of Default and nonrecourse carve-outs. At the moment, however, there is no universally accepted set of CMBS 2.0 loan documents. While each lender continues to focus on its own particular issues encountered in the CMBS 1.0 marketplace, time will tell which new CMBS 2.0 loan document provisions will have traction and are here to stay.