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The Current State of Hotel Owner Requests for Relief from Existing Lenders: Commercial Real Estate Finance COVID-19 Impact Series

This is part of our Commercial Real Estate Finance COVID-19 Impact Series, which is aimed at providing informed and real-time guidance tailored to various sectors of commercial real estate owners. It examines emerging trends in the lender and servicer response to requests for relief. As the pandemic continues to impact all areas of the economy, hotels have been on the front lines. In response, many hotel owners are beginning to seek relief from their existing lenders.

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PPP Loan Approval

We are now beginning to see how existing lenders are treating borrower requests to obtain Paycheck Protection Program (PPP) loans that would otherwise be prohibited by the existing loan documents. In many cases, PPP loan approvals have been treated separately from general forbearance requests and are being fast-tracked for approval. For many balance sheet lenders and insurance companies, this has resulted in a relatively quick review process typically culminating in a conditional approval. In the case of commercial mortgage-backed securities (CMBS) and other conduit loans, servicer approvals have been slower to materialize. Notably, such requests have largely been treated as needing the approval of the special servicer, but not as a request which necessitates an actual transfer to the special servicer, although this may vary between CMBS loans due to differences in the applicable pooling and servicing agreements (see below for a more detailed discussion of the CMBS servicer structure).

Despite PPP loan approval requests being fast-tracked as compared to other COVID-19 forbearance requests, in many cases, such approvals are not being received quickly enough to meet the timelines required by the PPP loan program. Given the popularity of the PPP loans, borrowers had to act quickly to get approval for such loans prior to allocated funds being depleted, leading many borrowers to submit their PPP loan applications prior to requesting the approval of their existing lender. The Small Business Administration (SBA) only allows 10 days after PPP loan approval for the borrower to finalize the loan documents, resulting in some borrowers reaching the end of the applicable 10 periods without having received a substantive response from their existing lender. Such borrowers are in the unenviable position of either violating their existing loan documents (with potentially serious repercussions) or losing the PPP funds altogether. For the foregoing reasons, any borrower who may be interested in applying for a PPP loan should formally request approval from their existing lenders as soon as possible, even if the final decision to apply for such a loan has not been made.

When submitting a PPP loan request to an existing lender, borrowers should be prepared for lenders to request additional information necessary to process such requests. Common lender requests include (i) copies of any PPP loan applications that have been submitted, (ii) copies of proposed PPP loan documents once provided, (iii) current financial statements, (iv) occupancy reports, (v) reserve balances (vi) projected budgets and (vii) revenue forecasts. Although some of these items, particularly budgets and forecasts that require a borrower to predict economic conditions more than a few weeks in advance, may be challenging to accurately prepare, many lenders will not process a request without this information. Borrowers may be able to shorten the approval timeline by having this information prepared in advance. Having this information at hand may also prove useful to borrowers in other ways, with recent guidance from the Treasury Department indicating that PPP loan applications and forgiveness requests may be subject to additional scrutiny, including a full audit for any loans exceeding \$2 million.

Although many lenders have ultimately approved PPP loans for hotel borrowers who are otherwise applicable, the terms of such approvals vary. At one end of the spectrum are lenders who will only permit borrowers to accept PPP loans in an amount they anticipate will be fully forgiven. The general lack of clarity that exists regarding the finer details of PPP loan forgiveness has made this a difficult representation for borrowers to make. On the other end of the spectrum are lenders who are permitting PPP loans subject only to the requirement that the borrower complies with the requirements of the PPP program. For non-recourse loans, these borrower requirements are usually accompanied by non-recourse carveouts, which we believe should be limited to the amount of lender's losses or the amount of any PPP loan that is not paid off prior to the maturity date thereof. Due to the intricacies of the underlying PPP loan program, a full understanding of the program requirements (including knowledge of where the current guidance is unclear) is necessary for a borrower to properly evaluate the risks associated with existing lender requirements as to the use of PPP funds.

Payment Forbearances

We are beginning to see movement on short term payment forbearances for hotels as well. Generally, balance sheet lenders and insurance companies have moved quickly to reach accommodations with borrowers, although the actual accommodations offered have varied widely. These lenders are largely looking to state and federal regulators for guidance, and are anticipating that short term forbearances will be required (as they already have been in some jurisdictions) or looked upon favorably by the applicable regulatory bodies. Examples of proposed forbearance terms from these types of lenders are as follows:

- Permitting the use of furniture, fixtures and equipment (FF&E) or replacement reserve funds to make monthly payments of principal and/or interest and to make tax reserve deposits. Such allowances are typically accompanied by a short-term waiver of any requirement to make additional reserve deposits, with catch-up deposits required once the property stabilizes.

- Deferring payments for three to four months, provided that any deferred payments must be made in full within a certain period, usually 12 to 18 months after the end of the deferral period.
- Forbearing payments for three to four months and recapitalizing the unpaid amounts at the end of the forbearance period, which may be followed by an additional period of interest-only payments.
- Forbearing payments for three to four months with the payment schedule otherwise remaining unchanged, which may be followed by an additional period of interest-only payments. Any forbore payment amounts would be due at loan payoff or maturity.

Some lenders have also begun to discuss longer term forbearances in the 6 to 9-month range, but not enough for any trends to be observed.

Servicers on CMBS and other conduit loans have moved at a slower pace than other lenders thus far, with little consensus having formed around how to handle forbearance requests outside of PPP loan approvals. This is not surprising, given the number of parties involved in such transactions and the complexities of their respective responsibilities. Any request for forbearance must be made of the primary servicer, if a primary servicer is involved, or otherwise of the master servicer for the applicable loan. Servicers at this level are generally tasked with the routine administration of loans and therefore have limited authority to grant forbearance requests. Any request that exceeds this authority will require the approval of another entity, the special servicer, who may further consult with the underlying bondholders whose interests they represent. The relative authority of each servicing entity is set forth in the applicable Pooling and Servicing Agreement (PSA), which will vary with each pool of loans. Expansion of master servicer authority to include broader ability to grant forbearances remains a possibility in connection with the COVID-19 pandemic, but as of late April 2020 such expansions of authority are not widespread. Some requests may result in an actual transfer of the loan to special servicing (and the fees that may be associated therewith), while

others may merely require one-time special servicer approval which adds complexity. Though the latter approach is common with PPP loan requests, the boundaries for other requests remain largely undefined.

In addition to the complex authority and relationship issues between the servicers, the decision making of each servicer is also subject to certain “servicing standards”. Those servicing standards generally involve considerations which may result in conflicting obligations to the loan borrowers and to the bondholders, requiring a delicate analysis to resolve.

The complexities of these relationships and responsibilities largely explain the slow pace of forbearance agreements in the CMBS and conduit loan markets. Hotel borrowers navigating these complexities in the current climate poses a significant challenge, and will continue to do so until consensus arises regarding the handling of forbearance requests among CMBS loan servicers. Until that time, one-size-fits-all advice is not possible within that market and must be taken on a case-by-case basis.

The situation continues to develop at a rapid pace, with new trends and additional guidance emerging daily. For the latest information, please contact [Geoff White](#), [Josh Brock](#) or another member of Frost Brown Todd’s [Franchise and Hospitality](#) or [Real Estate](#) teams at Frost Brown Todd.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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