



The Changes Continue

February 25, 2021 | Issue No. 21

Upcoming Webinar: Defeasance in Real Estate Finance: Process and Timing, Prepayment and Lockout Provisions

We are pleased to announce that we will be speaking in an upcoming Strafford live video webinar, "**Defeasance in Real Estate Finance: Process and Timing, Prepayment and Lockout Provisions**," scheduled for Tuesday, March 16, 1:00-2:30 p.m. EDT.

Defeasance allows a borrower to prepay its existing loan after a specified lock-out period by substituting for the real estate collateral a basket of U.S. government-backed securities that generate cash flow sufficient to pay the ongoing debt service and the principal amount due at maturity. Defeasance thus results in yield protection for CMBS and other lenders that have been promised continued payments throughout the loan term.

The decision to refinance may be governed by the cost of defeasing the existing loan. Counsel must weigh the economic costs and benefits of defeasing a higher interest rate loan with lower yielding securities. Documentation is significant and typically includes the formation of a new SPE and transfer of the mortgage. Additional issues must be considered in states with significant mortgage taxes. If allowed, simple prepayment (with a prepayment penalty) might be the better option.

When involved in a refinance or sale that will require a defeasance to close, counsel must consider the transaction process and timing. All parties must agree to the closing timeline because once the borrower "pushes the defeasance button," the borrower must purchase securities and close the defeasance and the new loan within the allotted window or incur high breakage costs. In the CMBS context, servicer and rating agency approval must be obtained before closing.

We will examine the mechanics of defeasance in CMBS and other yield-protected commercial real estate loans. We will discuss restrictions inherent in yield maintenance and lockout provisions, the timing complexities and documentation of defeasance transactions, CMBS servicing issues, and additional steps required to avoid mortgage taxes in states like New York and Florida.

We will review these and other key issues:

- What is the rationale for requiring defeasance in CMBS and other commercial real estate loans?
- How should borrowers calculate the cost of defeasance? Why does defeasance make more economic sense later in the loan term?
- Are there times when a cash prepayment is an option? When is prepayment preferable to defeasance?
- How should the transaction be structured in a heavy mortgage tax state?

After our presentation, we will engage in a live question-and-answer session with participants so we can answer your questions about these important issues directly.

We hope you'll join us.

[For more information or to register >](#)

Or call 1-800-926-7926

Ask for Defeasance in Real Estate Finance on 3/16/2021

Mention code: RA1HU1-R9OCAZ