



As a commercial real estate brokerage firm, one question that we often get is, “Do the prospects of assuming a CMBS-issued loan with a below-market rate add value to an investment offering?”

Before we answer that question, here is a little background on the CMBS (Commercial Mortgage-Backed Securities) market:

Many commercial properties were financed with CMBS loans over the last 10 years. These loans, typically with 5-10 year terms, were originated by Wall Street firms, banks and other financial firms. These loans were subsequently pooled together and then sold off in tranches rated by rating agencies, usually to more than one investor.

As a result, the loan originator may no longer be involved in servicing the loan on a property and multiple investors may have a say in how the loan can be assumed by a new buyer. Furthermore, these loans had significant restrictions on prepayment, limiting the opportunity for a borrower/seller to prepay these loans.

The current credit crunch has limited many potential buyers’ ability to acquire properties with debt. As a result, it is in most sellers’ best interests to investigate the assumption process before putting a property on the market.

Below are some ways that a sales process with assumption of a CMBS loan may create hurdles in completing a transaction. We have also added some thoughts on how to improve the process for both buyer and seller.

- Most loans have a master servicer (usually the originator) and a special servicer (usually the buyer of the most risky tranches of the loan pool). Both parties will likely be involved in the assumption approval process. In addition, **sometimes there is another entity (a primary servicer) sandwiched between the borrower and the master servicer that would need to process the assumption** request before it gets to the master servicer.
- **Special servicers tend to be the most difficult parties to work with on assumptions since they are essentially in first loss position.** They have a reputation for looking very closely at the new sponsor (borrower) and the warm bodies that will sign on the carve-out guaranty. **Sometimes it is a significant challenge to get approval from the special servicer on the new sponsor while also releasing the current sponsor.**
- Another **big issue is current underwriting – particularly relating to DCR and LTV ratios.** Most loan docs have material adverse change clauses that were triggered with changes in occupancy and/or lower rents on renegotiated leases. A significant challenge may be that the property may have originally

underwritten at 50% (or lower) loan to value and the new loan to value may be higher than 60% LTV. As a result, the assumption could be rejected or the new borrower could be required to put up reserves.

- Lenders/sponsors have so many problems on their plates that they will likely be slow to respond to assumption requests. As a result, **many buyers are asking to go through “assumption due diligence” first** before they spend any additional money and time on typical property due diligence items. For example, there may be a request for a 30-45 day period to contact the lender and investigate the possibility of assumption prior to a typical 30-45 day physical due diligence and 30-60 day close. **Delays are common and all sources indicated that a 6 week assumption process is considered fast,** whereas there have been assumptions that have dragged on for 6 months.
- Although standard assumption fees and a processing fee are indicated in the Note, **lender lawyer fees can also be significant** and should be negotiated by the buyer up front, if possible.
- Sometimes the borrower is required to approach the lender for lease approvals. **If ownership failed to get lease approvals specified in the Loan Agreement, it may open up a can of worms** with the lender/servicer relating regarding past deals that should have had lender approval.