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LIBOR

The long life and untimely demise of the world's most important number

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Jonathan's clients range from individuals and small privately held businesses to large publicly traded corporations. He focuses on commercial real estate sales, acquisitions and development and complex finance transactions, including portfolio lending, construction lending, commercial mortgage backed securities, conduit lending, corporate and municipal bonds, loan syndications, interest rate caps and swaps, aircraft financing, and other structured finance transactions.

A frequent lecturer, he has authored papers on a variety of topics, most recently on High Volatility Commercial Real Estate regulations, on LIBOR history and transition proposals, on Texas Title Insurance coverage, on Negotiation and Documentation of Commercial Real Estate Construction Loans and on Commercial Mortgage Backed Securities.

Jonathan holds leadership positions in legal and professional organizations on a local and national level. He is an elected fellow the American College of Mortgage Attorneys (ACMA) where he was elected to the Board of Regents and serves as the Texas State Chair and as the Co-Chair of the Capital Markets Committee. He is also an elected fellow of the American College of Real Estate Lawyers where he serves as the Chair of the Capital Markets & Real Estate Finance Committee. He was, also, recently elected to serve on the governing council of the largest of the State Bar of Texas' sections, the Real Estate, Probate & Trust Law Section.

Education: Bachelor of Arts, magna cum laude with honors, Yale University; Juris Doctor, University of Virginia

Professional Recognition:

- American Bar Foundation, Fellow
- AV Preeminent by LexisNexis Martindale-Hubbell
- Best Lawyers in Dallas, D Magazine
- Best Lawyers in America, Real Estate Law
- Dallas Bar Foundation, Fellow
- Legal Leaders/Top Rated Lawyers, ALM and Martindale-Hubbell
- Texas Bar Foundation, Life Fellow
- Texas Super Lawyers® (Thomson Reuters)
- Elected to:

  American College of Mortgage Attorneys:
  Member of the Board of Regents
  Texas State Chair
  Co-Chair of the Capital Markets Committee

  American College of Real Estate Lawyers:
  Chair of the Capital Markets & Real Estate Finance Committee

William "Mac" Taylor, Jr. 112th American Inn of Court, Bencher Member

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Representative Speaking and Writing:

- "*Commercial Mortgage Backed Lending*" - State Bar of Texas' Advanced Real Estate Law Course
- "*Commercial Mortgage Backed Securities 2013*" - State Bar of Texas' Advanced Real Estate Law Course
- "*Conduit Mortgage Lending*" - University of Texas School of Law's William W. Gibson, Jr. Mortgage Lending Institute and the Dallas Area Real Estate Lawyers Discussion Group
- "*Commercial Mortgage Backed Securities Headwinds and Tailwinds 2013-2014*" - Dallas Area Real Estate Lawyers' Discussion Group
- "*Current Title Insurance Coverages and Rates in Commercial Mortgage Loan Transactions*" - State Bar of Texas' Advanced Real Estate Law Course
- "*Dealing with Defeasance*" - University of Texas School of Law's William W. Gibson, Jr. Mortgage Lending Institute
- "*Finance Market Impact on Real Estate*" - State Bar of Texas' Advanced Real Estate Strategies Course
- "*High Volatility Commercial Real Estates Loans: New Federal Rules and the Impact on Loan Availability* - University of Texas School of Law's William W. Gibson, Jr. Mortgage Lending Institute and the Dallas Bar Association's Real Property Section
- "*How to Navigate the Rabbit Hole: The Journey of a CMBS Loan After It Closes*"– American Bar Association Section of Real Property, Trust and Estate Law and the American College of Real Estate Lawyers, Joint Webinar
- "*Intercreditor Agreements – The Giants Fight It Out*"- State Bar of Texas Advanced Real Estate Drafting Course
- "*Intercreditor Agreements: Junior vs. Senior Debt*" - University of Texas School of Law's William W. Gibson, Jr. Mortgage Lending Institute
- "*Lending What Does the Market Look Like*" - State Bar of Texas' Annual Advanced Real Estate Strategies Course
- "*Let's Not Get Burned by These Latest Hot Topics: Lessons to Learn about Delaware LLCs, LIBOR, and Loan Splits*" – American College of Mortgage Attorneys
- *"Libor Debacle and What Actions Should Be Taken Now On Commercial Real Estate Loans"* - State Bar of Texas' Advanced Real Estate Law Course
- *"LIBOR's End: What CRE Lenders and Borrowers Need to Know (and Do) Now"* American Bar Association Section of Real Property, Trust and Estate Law and the American College of Real Estate Lawyers, Joint Webinar
- "*Mezzanine Financing*" - State Bar of Texas' Advanced Real Estate Law Course, University of Texas' School of Law's William W. Gibson, Jr. Mortgage Lending Institute and the Texas Land Title Association's Advanced Closing Issues Seminar
- "*Negotiation and Documentation of Commercial Real Estate Construction Loans*" – State Bar of Texas' Advanced Real Estate Strategies Course
- "*Negotiating Carveouts to Loan Non-Recourse Provisions (Lender's and Borrower's Perspective)*"- SMU School of Law's Real Estate Law: Transactions In-Depth seminar

- "*Negotiating Intercreditor Agreements*" - University of Texas School of Law's William W. Gibson, Jr. Mortgage Lending Institute
- "*Opening Statements*" -Moderator of the William "Mac" Taylor, Jr. 112th American Inn of Court
- "*A Primer on Platting and Zoning*"- SMU School of Law's Real Estate Law: Transactions In-Depth seminar
- "*Property Management and Leasing Agreements*"- SMU School of Law's Real Estate Law: Transactions In-Depth seminar
- "*Recourse Carve- Out Liability: Only for Bad Boys?*" - University of Texas's School of Law's William W. Gibson, Jr. Mortgage Lending Institute
- "*Regulatory Capital Treatment for High Volatility Commercial Real Estate Exposures*" Letter on behalf of the Capital Markets Committees of ACREL and ACMA to the Office of the Comptroller of the Currency, the Board of Governors Federal Reserve System and the Federal Deposit Insurance Corporation
- "*Selected Issues in Loan Documentation*" - State Bar of Texas' Advanced Real Estate Drafting Course
- "*Tenant Remedies when Landlord Defaults or in Other Actionable Circumstances*"- SMU School of Law's Real Estate Law: Transactions In-Depth seminar
- "*Title Insurance –What's Not Covered- What is Covered Solutions*" – Texas Land Title Association
- "*You Can't Always Get What You Want (Loan Documents need a LIBOR alternate rate mechanism)*" – ACREL Notes
- "*You Have a CMBS Loan, Now What*" Moderator of a panel presentation and roundtable discussion at the 40th Anniversary Annual ACREL meeting in New Orleans

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I. LIBOR PROBLEM – FIRST CAUSE.

A. At the end of 2021 LIBOR is going away (sort of).

1. As there are an estimated $300-$800 trillion in LIBOR-denominated contracts, this is a big deal.

B. First Cause – Fraud and Manipulation.

1. Matt Taibbi summarized the cause of LIBOR's demise in an August Rolling Stone article stating: "Years ago, we found out that the world's biggest banks were manipulating LIBOR. That sucked. … Now, the news is worse: LIBOR is made up…. Actually it's worse even than that. LIBOR is probably both manipulated and made up. The basis for a substantial portion of the world's borrowing is a bent fairy tale." Matt Taibbi, *Taibbi: Is LIBOR, Benchmark for Trillions of Dollars in Transactions, a Lie*, Rolling Stone (August 11, 2017) https://www.rollingstone.com/politics/politics-news/taibbi-is-libor-benchmark-for-trillions-of-dollars-in-transactions-a-lie-253166/.

II. HISTORY.

A. To understand why LIBOR is going away, a short history lesson is in order.

B. The Shah of Iran.

1. In 1969 the Shah of Iran needed $80 million. Minos Zombanakis, 43 year old banker at the newly-opened London branch of Manufacturers Hanover Trust Company, organized a bespoke syndicated loan. The loan participants pegged the interest rate to a formula based on the average of the syndicated

[1] Updated from the State Bar of Texas' 41st and 42nd Annual Advanced Real Estate Law Course, *Libor Debacle And What Actions Should Be Taken Now On Commercial Real Estate Loans, and Show Me the Money: The End of Libor,* and from the American Bar Association Section of Real Property, Trust and Estate Law Webinar, *LIBOR's End: What CRE Lenders And Borrowers Need To Know (And Do) Now*, April 1, 2020,

bank's funding costs. The weighted average, rounded to the nearest 1/8th percent plus a 'spread' for profit, became the price of the loan for the next period and was dubbed by Zombanakis as the London interbank offered rate (LIBOR). Kirstin Ridley & Huw Jones, *Insight: A Greek Banker, the Shah and the Birth of Libor*, REUTERS (August 7, 2012), http://www.reuters.com/article/2012/08/08/us-banking-libor-changeidUSBRE87702320120808.

C. Cozy Banker's Club.

1. From its inception, LIBOR was not an objective "index," but represented the aggregated rates at which individual syndicate banks (or referenced banks) could borrow funds. LIBOR would therefore change from transaction to transaction depending on which banks formed the syndicate and the referenced rate. As the demand for these syndicated loans surged, so did their complexity. In the 1970s, financial institutions began developing derivative tools, such as interest rate swaps, to offset the LIBOR-rate risk. LIBOR-denominated contracts subsequently increased, but the opaque and inconsistent nature of the rate setting components curbed the derivatives market.

D. Subjective - Hypothetical Bank engaged in a Hypothetical Transaction.

1. Attempting to create a more transparent index, financial institutions turned to the industry trade/lobbying group, the British Bankers' Association. In 1986, the BBA took control of setting LIBOR and renamed it BBA LIBOR. LIBOR as a publically quoted rate coincided with 1980s deregulation of the financial markets and ballooned in use and importance, going from a club rate of syndicated banks to a rate used around the world for all manner of financial instruments.

2. Once the BBA took over LIBOR, it set rates by asking a select group of large, "reputable" banks to submit quotes daily in answer to a question: "At what rate do you think interbank term deposits will be offered by one prime bank to another prime bank for a reasonable market size today at 11 am [London time]?" Note that this question is not related to actual transactions but instead asks the bank to opine as to the costs of funds of an undefined "prime bank."

E. Objective - Real Bank Ostensibly Engaged in a Real Transaction.

1. In 1998, the Foreign Exchange and Money Markets Committee, an ostensibly independent committee of the BBA, decided that "a universal definition of a prime bank could no longer be given," and that banks needed to link the figures that they reported to their own market activity, "rather than [to] a hypothetical entity." Michael R. Koblenz, Kenneth M. Labbate, Carrie C. Turners, *LIBOR: Everything You Ever Wanted to Know But Were Afraid to Ask*, The Journal of Business, Entrepreneurship & the Law, footnote 11 (Volume 6, Issue 2 April 26, 2013).

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