

# LOAN WORKOUTS AND MODIFICATIONS:

---

**RENEW, EXTEND AND PRETEND**

1

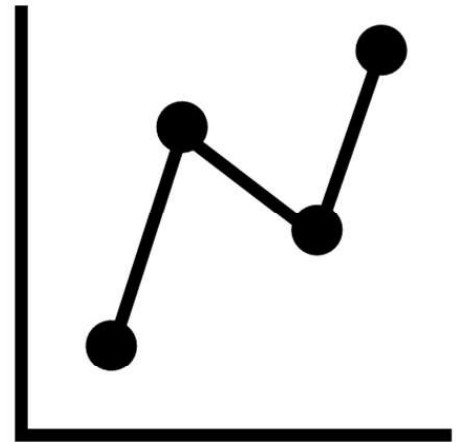
## Industry Challenges & Headwinds

- 
- High Interest Rates
  - COVID Impact On Real Estate Utilization/Hybrid and WFH
  - Bank Failures
  - Increased Costs
  - Decreased lending
    - ↓ 53% overall
    - ↓ 69% for Depository Institutions
    - ↓ 60% for Investor Driven Lenders
    - ↓ 49% for Life Insurance Companies
    - ↓ 23% for CMBS
    - ↓ 11% for GSE Lenders

2

# Maturities and Default

- \$750 Billion in loans maturing in the next 12 months
- \$60 Billion in CMBS, FNMA and Freddie Mac loans mature by end of 2024
- \$2.75 Trillion are set to mature by the end of 2027
  - ❖ Maturities are driving more defaults
  - ❖ CMBS delinquency is 4.41% as of July



# CMBS—Decision Making & Analytics

- REMIC Rules
- Roles:
  - Master Servicer
  - Special Servicer
  - Controlling Class Holder
- The Servicing Standard



## REMIC Compliance— Why Do We Care?

---

Securitization—repackaging and pooling of loans in a trust to create marketable securities for investment

---

REMIC—primary vehicle for conduit

---

Other vehicles— grantor trust (used for SASB) and QRS (CLOs)

---

REMIC—requires the trust to be passive to retain its tax status

---

Servicers are obligated to maintain REMIC status and not subject the trust to “prohibited transaction” tax

5

## Loan Modifications and REMIC

---

### Pre-2009:

- Is the modification “significant”?
- If so, then it is a new loan and the modification would cause the trust to lose its REMIC status
- Exceptions:
  - Default or reasonably foreseeable default
  - Assumption of the loan
  - Waiver of Due on Sale or Due on Encumbrance
  - Interest rate conversions pursuant to terms of a convertible mortgage
  - Modification pursuant to the exercise of a “unilateral option”

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Loan Workouts and Modifications - Renew, Pretend, Extend

Also available as part of the eCourse

[2023 William W. Gibson, Jr. Mortgage Lending and Servicing eConference](#)

First appeared as part of the conference materials for the  
57<sup>th</sup> Annual William W. Gibson, Jr. Mortgage Lending Institute session  
"Loan Workouts and Modifications - Renew, Pretend, Extend"