

LOAN WORKOUTS AND MODIFICATIONS:

RENEW, EXTEND AND PRETEND

1

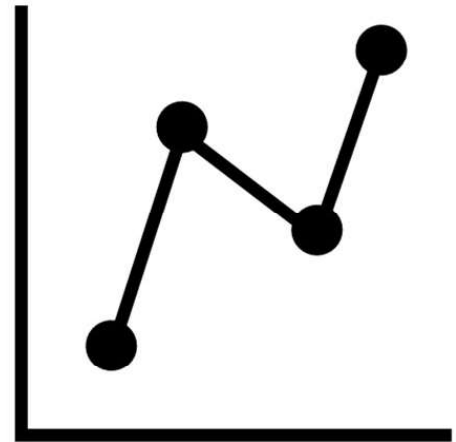
Industry Challenges & Headwinds

-
- 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
57th Annual William W. Gibson, Jr. Mortgage Lending Institute session
"Loan Workouts and Modifications - Renew, Pretend, Extend"