



INSIDE AND OUTSIDE THE BUILDING

**TENANTS TO LANDLORDS AND
LENDERS – WHAT HAPPENS NEXT?**

April 16, 2020

CO-HOSTED BY:

CBRE MILLER | BARONDESS LLP

TODAY'S SPEAKERS



**TODD
TYDLASKA**

TODD.TYDLASKA@CBRE.COM



**GREG
GRANT**

GREG.GRANT@CBRE.COM



**AMNON
SIEGEL**

ASIEGEL@MILLERBARONDESS.COM

MODERATED BY

**SCOTT
STEUBER**

**JACOB
BOBEK**

WEBINAR AGENDA

01 Capital Markets Backdrop

Todd Tydlaska, CBRE

02 Loan Modifications and Forbearance

Amnon Siegel, Miller Barondess

03 Debt Market Update

Greg Grant, CBRE

04 Q&A

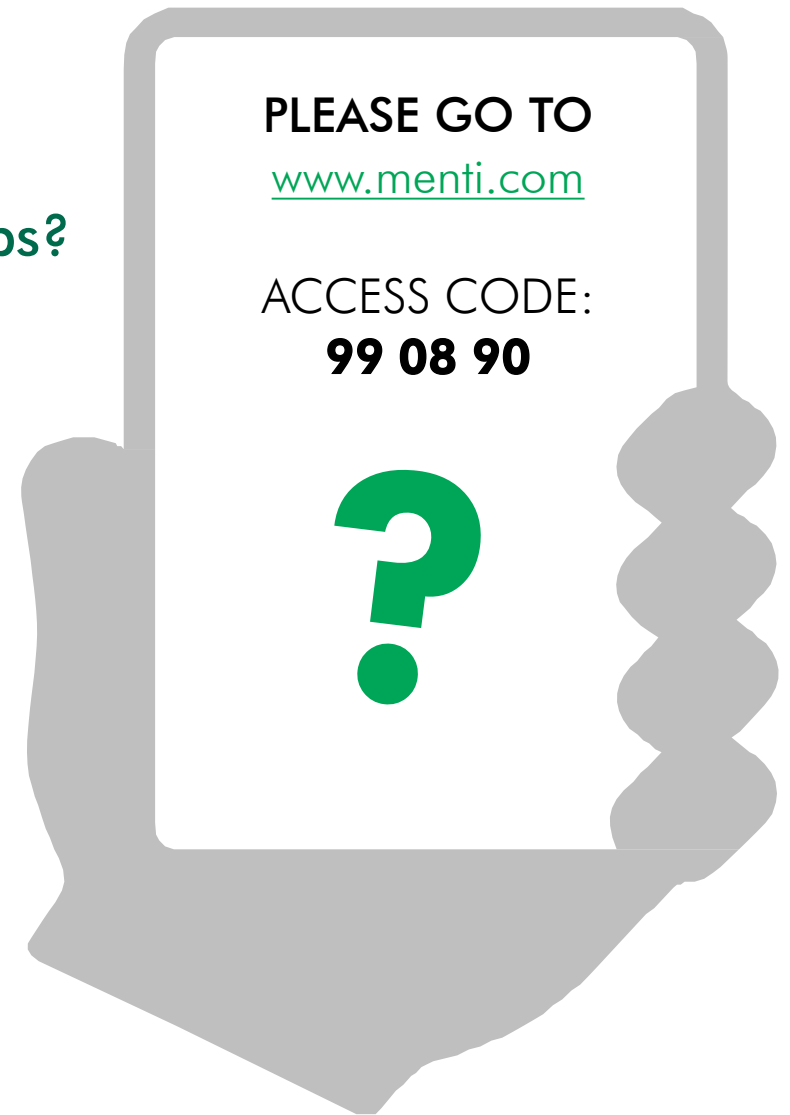
Burning questions answered by the experts



HOW TO SUBMIT QUESTIONS

What are some of your questions regarding the impact of COVID-19 on tenant, landlord, and lender relationships?

- You can access Menti from your laptop or mobile phone
- Submit questions at any time throughout the presentation
- Submit as many questions as come to mind
- All submitted questions are anonymous
- Questions will be answered during the Q&A section
- Any questions we don't have time to address will be covered in future webinars and/or articles



A photograph of three business professionals in a meeting, viewed from the side. They are holding and looking at documents. The background is a blurred city skyline at night with lights. A white rectangular box is overlaid on the bottom left of the image.

**CAPITAL MARKETS
BACKDROP**



OCCUPIERS

- Mobility
- Mission Critical Facilities
- Categories and Behavior



OWNERS

- Collections
- Operations
- Loan Compliance
- Trading Activity



LENDERS

- Liquidity
- Balance Sheet Management
- Categories and Behavior

A close-up, shallow depth-of-field photograph of a person's hands typing on a silver laptop keyboard. The person is wearing a grey, textured sweater. The background is blurred, showing another person's hands and a computer monitor. A semi-transparent white box with a green border is overlaid on the left side of the image, containing the text 'LOAN MODIFICATIONS AND FORBEARANCE'.

**LOAN MODIFICATIONS AND
FORBEARANCE**

What's Happening On the Ground

- City of Los Angeles: moratorium on commercial evictions; three months to pay any back rent
- California: Gov. Newsom's Mar. 16 Executive Order (N-28-20)
 - Requests that banks issue immediate foreclosure moratorium from causes related to the pandemic
 - Participating banks are offering mortgage payment forbearances of up to 90 days
- New York: Gov. Cuomo imposed 90-day mortgage relief: waive payments for hardship; no late fees; postponing foreclosures.
- Fannie and Freddie for Multifamily Properties: Mortgage forbearance on condition of no evictions for renters
- Small Business Loans/Grants under the CARES Act. Proceeds may be used for:
 - Payroll
 - *Mortgage interest payments for mortgages existing before Feb. 15, 2020*
 - Rent payments for leases in place before Feb. 15, 2020
 - *Interest on other loans obtained prior to Feb. 15, 2020*

Negligence: Key Legal Issue in Loan Modification/Forbearance Context



- Can lenders be liable for negligently mishandling the loan modification process?
 - Negligence liability requires a *duty of care* to the borrower.
 - No duty so long as financial institution remains in its *conventional role as a lender*.
 - Courts are divided: some say a duty is owed, some don't.
- Courts: "Nuanced question" = fact-intensive, case-by-case and unpredictable.
 - Seminal case on whether a duty of care exists is *Biakanja v. Irving*, 49 Cal. 2d 647(1958).
 - *Biakanja's* 6-factor test determines whether a duty exists (even absent privity of contract).
- So, does a lender owe a duty of care to a borrower in the loan modification context? *Sometimes*
 - No duty to offer or approve loan modifications.
 - But what about the rest of the process?

Other Potential Legal Claims in “Work-Outs” – LESSONS FROM THE 2008 RECESSION

- Fraud: Misrepresentation (intentional or negligent); False Promise; Concealment
- Breach of Contract
 - Keep in Mind the parties’ *“course of conduct”*
- Breach of the Implied Covenant of Good Faith and Fair Dealing
- Promissory Estoppel
- Tortious Interference
- Unfair Business Practices
- Extreme Cases: Breach of Fiduciary Duty (control over operations)
- Damages: compensatory damages; consequential damages (e.g., lost profits); punitive damages (torts)



Risk Avoidance and Things to Watch For

- Lenders:
 - Pick a lane: pursue default or commit to modification. Don't do both at the same time.
 - Don't string borrowers along.
 - Don't make misrepresentations.
 - Draft forbearance agreements with good legal advice and as if they will be read by a judge one day
- Borrowers:
 - Document everything and follow up regularly in writing.
 - Relationship with your lender matters.



Other Legal Issues: Force Majeure; Impracticability of Performance; Frustration of Purpose

- Force Majeure:
 - Generally means an unforeseeable event that prevents a party from fulfilling a contract
 - Check your loan agreements
- Impossibility/Impracticability of Performance: Implied by law into every contract
 - Performance made impracticable by an unforeseeable event not caused by non-performing party
 - Temporary Commercial Impracticability: temporarily suspends performance until event passes
- Frustration of Purpose:
 - Supervening event frustrated the fundamental reason of *both parties* entering the contract
 - Frustration not fairly contemplated within the risks of the contract
- Potential Application to all contracts, including Loan Agreements
- Lessons from 2008 Recession: PERFORMANCE IMPOSSIBLE OR FRUSTRATED!



DEBT MARKET UPDATE

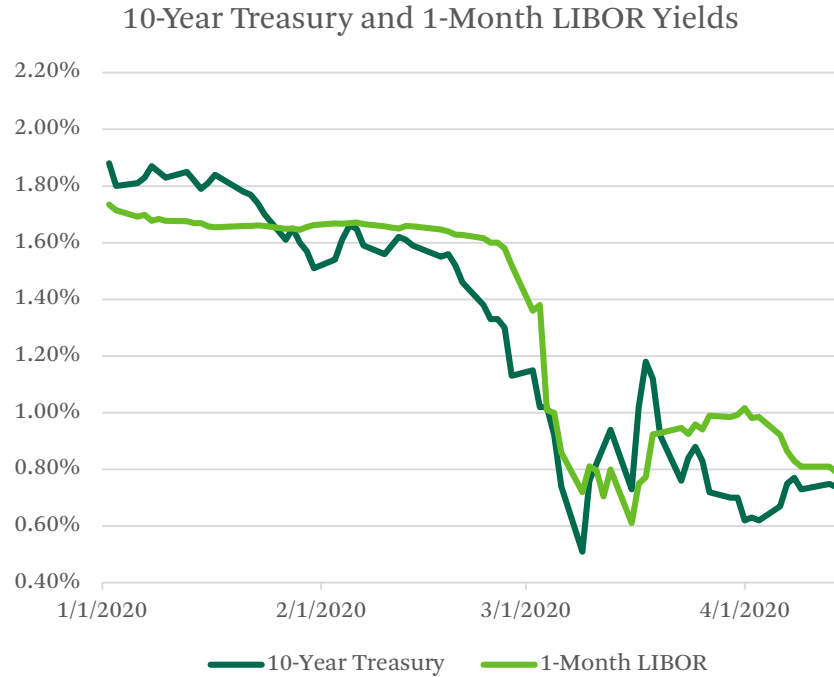
The Good News

- Lenders still quoting and closing new business
- New loans being signed up across the CBRE platform every week
- Abundance of capital on the sidelines – expectation is flood gates will open soon

The Bad News

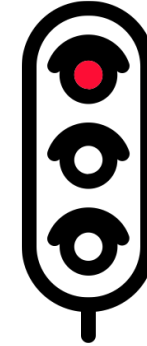
- Market continues to be fragmented and inefficient –
 - Estimated that approximately 60% - 70% of lenders are “on pause” for new originations
 - Bank resources are focused on Loan Workouts / Servicing Existing Clients / Forbearance requests
- Cost of capital has widened materially given
 1. Market volatility
 2. Uncertainty in pro forma cash flows

Q1 2020 – Market Benchmarks:



COMMERCIAL MORTGAGE BACKED SECURITY (CMBS)

- In turmoil - > \$50 billion of CMBS loans have applied forbearance requests
- Lender Terms:
 - **Pre-Covid:** 65-70% LTV / 10 Yr Fixed: 3.25 – 3.75% Rates
 - **Today:** On Pause

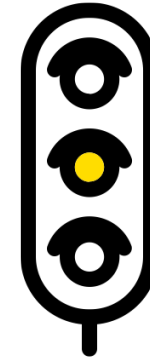


DEBT FUNDS / PRIVATE LENDERS

- CBRE tracks over 340 lenders in this space!
- Many groups still active, but pricing has widened materially
- Lender Terms:
 - **Pre-Covid:** 65-70% LTV / 5 Yr Floating: LIBOR + 2.50% - 3.50%
 - **Today:** Most on pause – those that are active are quoting spreads LIBOR + 4.50% - 5.50%

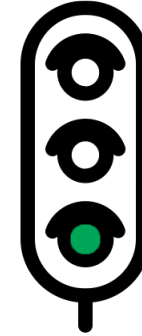
BANKS

- Focused on servicing existing clients
- Loan Workouts / Servicing Existing Clients / Forbearance requests
- Lender Terms:
 - **Pre-Covid:** 55-65% LTV / 5 Yr Floating: LIBOR + 1.50% - 2.25%
 - **Today:** Most on pause – those that are active are quoting spreads LIBOR + 2.00% - 3.00%



LIFE COS:

- Focused on lower leverage / core assets
- Track closely to corporate bonds, so spreads have widened materially (150-200 bps)
- Lender Terms:
 - **Pre-Covid:** 55-60% LTV / 10 Yr Fixed: 3.00% - 3.50% Rates
 - **Today:** 50-60% LTV / 10 Yr Fixed: 4.00% - 4.50% Rates



AGENCY (Freddie and Fannie):

- Slightly backlogged processing billions of dollars in record inflows.
- Terms are in-line with Pre-Covid pricing
- Lender Terms:
 - **Pre-Covid:** Low / Mid 3% (dependent on leverage)
 - **Today:** Low / Mid 3% (dependent on leverage)



Q&A

Q & A

THANK YOU

TODD TYDLASKA

CBRE
Executive Vice President
todd.tydlaska@cbre.com

JACOB BOBEK

CBRE
Executive Vice President
jacob.bobek@cbre.com

AMNON SIEGEL

Miller Barondess, LLP
Partner
asiegel@millerbarondess.com

DAN MILLER

Miller Barondess, LLP
Partner
dmiller@millerbarondess.com

GREG GRANT

CBRE
Senior Vice President
greg.grant@cbre.com

SCOTT STEUBER

CBRE
Senior Vice President
scott.steuber@cbre.com

JIM MILLER

Miller Barondess, LLP
Managing Partner
jmiller@millerbarondess.com



© 2020 CBRE, Inc. All rights reserved. The opinions contained in this presentation are those of the author and not CBRE. The information contained in this article was obtained by the author from sources believed reliable but has not been verified. It is presented without guarantee, warranty or representation of any kind. Any reliance on the information or opinions contained herein is solely at your own risk.