

Reports on the foreclosure challenges facing our country continue. There remains heightened interest and involvement from borrowers, elected officials, financial institutions and community organizations on the role of the trustee.

## Role of the Corporate Trustee

Financial strength. Local expertise. Global reach.

It is estimated that some mortgage lenders securitized as much as 70-80% of their outstanding mortgages through the sale of Mortgage Backed Securities (MBS) in the capital markets. This process, the securitization of mortgage loans, goes back to the 1970s and has contributed to the availability and affordability of mortgage credit.

The combination of high foreclosure rates and high levels of mortgage backed securitization activity has many people attempting to understand the complex securitization process and identify the parties to the MBS transactions and their assigned responsibilities.

### Distinct Party Roles

Parties involved in a MBS transaction include the borrower, the originator, the servicer and the trustee, each with their own distinct roles, responsibilities and limitations.

*The Trust Indenture Act of 1939 prohibits bond issues valued at over \$5 million from being offered for sale without a formal written agreement (an indenture), signed by both the bond issuer and the bondholder, that fully discloses the particulars of the bond issue. The act also requires that a trustee be appointed for all bond issues, so that the rights of bondholders are not compromised.*

- Definition of 'Trust Indenture Act of 1939'

## U.S. Bank as Trustee:

As Trustee, U.S. Bank Global Corporate Trust Services performs the following responsibilities:

- Holds an interest in the mortgage loans for the benefit of investors
- Maintains investors/securities holder records
- Collects payments from the Servicer
- Distributes payments to the investors/securities holder
- Does not initiate, nor has any discretion or authority in the foreclosure process
- Does not have responsibility for overseeing mortgage servicers
- Does not mediate between the servicer(s) and investors in securitization deals
- Does not manage or maintain properties in foreclosure
- Is not responsible for the approval of any loan modifications

All trustees for MBS transactions, including U.S. Bank, have no advance knowledge of when a mortgage loan has defaulted.

Trustees on MBS transactions, while named on the mortgage and on legal foreclosure documents, are not involved in the foreclosure process.

## What is a Mortgage Backed Security?

Residential and commercial property mortgages often are used to create Mortgage Backed Securities (MBS) by firms within the financial industry. Mortgage backed securities are financial instruments which represent an ownership in a group of mortgage loans, commonly referred to as pools, and their corresponding cash flows. Mortgage loans are purchased from banks, mortgage companies, and other originators and then assembled into pools by a governmental, quasi-governmental, or private entity and then deposited into trusts which issue securities entitling the investors to all principal and interest payments made by borrowers on the loans in the pool. This process is known as securitization.

MBS securities are brought to market by the owner of a pool of mortgages, typically referred to as the sponsor, and the transaction is structured and sold by investment bankers. A sponsor may be the originator of the mortgages or, in many circumstances, an aggregator who both originates and purchases mortgage loans from smaller originating institutions. When a pool of sufficient size and diversification has been aggregated, the sponsor will engage the appropriate parties to structure, sell and administer the mortgage loans and trust on an ongoing basis.



## Who initiates and Manages a Foreclosure?

U.S. Bank, as trustee for thousands of securitization transactions involving many millions of mortgages, is often mentioned in media reports about foreclosures. While trustees are listed on mortgages, and therefore in legal documents as well, as the owner of record, its interest is solely for the benefit of investors. The trustee does not have an economic or beneficial interest in the loans and has no authority to manage or otherwise take action on the loans which is reserved for the servicer.

As noted, the trustee does not play a role in initiating or managing a foreclosure process and consequently has little, if any, information relating to mortgage loan activities including a foreclosure. Depending on the particular trust and pool, the trustee may have very limited information on either the borrower or the property.

The servicer, who is selected by the Sponsor of the trust, may have to foreclose on a property if a borrower (mortgagee) does not make payments as required by the mortgage documents. Any action taken by the servicer must maximize the return on the investment made by the "beneficial owners of the trust" -- the investors.

## Servicer vs Trustee Responsibilities

Appointed by the sponsor, the Servicer is the contractual party to the trust for the benefit of investors, and performs the following responsibilities:

- Collects payments from the borrower/mortgagee
- Maintains loan level detail
- Pays property taxes and insurance (if applicable)
- Calls a default for non-payment
- Forecloses on the mortgage and maintains the related property
- Modifies mortgage terms within limitations outlined by the provisions of the Pooling and Servicing Agreement relevant to a particular MBS transaction
- Maintains the physical property to comply with local housing codes

U.S. Bank Global Corporate Trust Services, as Trustee, is responsible and accountable to the investors or holders of the securities that the mortgages are pledged against as collateral for the duties set forth in the contracts governing the transaction. These duties are carefully detailed in the contracts and are limited to the responsibilities specifically accepted by the trustee.

## How Do I Obtain Information on a Specific Mortgage Loan?

To learn more about a foreclosed property, contact the servicer for the MBS transaction that holds the mortgage as collateral. The most effective way to identify the servicer for a specific mortgage is to ask the borrower (homeowner) who they make their monthly payment to or from whom they receive their monthly statements. The firm receiving the payments and sending statements is generally the servicer for the MBS transaction and can offer more details regarding a foreclosed property.

To ensure clarity of the various participants related to a foreclosure process with MBS transactions, U.S. Bank has taken two important actions. U.S. Bank has sent notices to servicers with whom they work on MBS transactions to reinforce the importance of properly identifying U.S. Bank as Trustee for the specific trust in all foreclosure actions and filings, complying with industry servicing practices and maintaining any foreclosures in accordance with applicable laws. Secondly, U.S. Bank established a dedicated toll-free (800) number to handle calls related to loans which identify U.S. Bank as Trustee. Our professional staff explains to callers the role of U.S. Bank as Trustee and also provides the information callers need to connect with the servicer who can best address their questions.

For more information about U.S. Bank and our role as trustee in MBS transactions, please call (800) 236-3488 between the hours of 8 a.m. and 5 p.m. central standard time Monday through Friday.



## Why not modify mortgage loans in default?

Borrowers agree, under the terms of their mortgage and note, that upon a payment default the lender or owner has the right to assume ownership of the property. Whether the servicer pursues a foreclosure or considers a modification of the loan, the goal is still to maximize the return to investors. Consideration of any loan modification is predicated on whether the trust documents allow modifications, the underwriting criteria applicable to the particular borrower's circumstances, and federal and state laws concerning loan modifications.

Regardless, the servicer is fully empowered to enter into modifications with borrowers so long as such actions comply with industry servicing practices, is allowed under the trust documents, maximizes the return to investors and complies with relevant laws.



### Additional Sources of Information:

- American Bankers Association White Paper, The Trustee's Role in Asset-Backed Securities, dated November 9, 2010 (<http://www.aba.com/Press+Room/110910RoleofATrustee.htm>)
- The Trust Indenture Act of 1939

# Parties to a Mortgage Backed Securities Transaction

## Borrower

The person or entity responsible for the mortgage note and making principal and interest payments in accordance with the underlying mortgage documents.

## Investment Bank/Sponsor

Responsible for structuring the MBS transaction and selling the securities to investors.

## Investor

The buyer and owner of an MBS certificate or certificates.

## Originator

The financial institution or mortgage lender who originally initiates the mortgage agreement with the borrower.

## Servicer

Appointed by the sponsor and is a contractual party to the trust, to administer the mortgages loans and to collect monthly payments (e.g. principal/interest, tax, insurance). After collection, the servicer sends the funds to the trustee who then makes payment to the investors. If a borrower (mortgagee) does not make payments to the servicer as required by the mortgage documents, the servicer may have to foreclose on the property and provide property maintenance to maximize the return on the investment made by the "beneficial owners of the Trust" -- the investors. Some MBS transactions have more than one servicer. The servicer does not own the mortgages/collateral. The trustee does not designate the loan servicers, nor are the loan servicers agents of the trustee.

## Trust

Generally a special purpose entity, such as a Real Estate Mortgage Investment Conduit (REMIC), that is formed solely to hold the mortgage collateral and to issue the securities which are then sold to investors. The trust owns the pooled mortgages. The trust conducts no other business. Certificates issued by the trust represent a financial interest in a pool of mortgages owned by the trust and is the primary source of funds for payment of interest and principal due to the investors on certificates they own.

## Trustee

An independent party, responsible for administering the trust for the benefit of investors. While the trustee is listed as the owner of record, the trustee does not have an economic or beneficial interest in the loans. The trustee is the owner of the mortgage solely for the benefit of the investors in the mortgage backed securities, who are the true beneficial owners of the mortgages. The Trustee holds a security interest in the mortgaged property by having the mortgage loans assigned in the name of the trustee for the benefit of the trust (e.g. U.S. Bank as Trustee for the MBS Trust) or in the name of MERS, a Mortgage Electronic Recording System used by many of the largest financial institutions. The duties of the trustee are administrative in nature, are clearly spelled out in the MBS transaction documents, and generally are non-discretionary in nature.

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