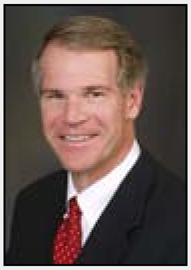
Allen Matkins Legal Alert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IRS Releases Much Anticipated Guidance -- Greater Flexibility for Borrowers of CMBS Loans

> The Alert applies to any borrowers of CMBS debt.
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> Borrowers should be proactive in discussions with servicers of CMBS debt.

The IRS has issued a long awaited revenue procedure ruling which provides increased flexibility to CMBS borrowers. The new procedure allows special servicers to modify CMBS loans even if there is no current or imminent default so long as the special servicer reasonably believes that there is a significant risk of a default, under the loan before or at maturity and that the modification substantially reduced that risk.

The practical effect of this ruling may be extremely significant as it provides borrowers and servicers under severely distressed CMBS loans the ability to solve looming problems before the loans actually go into default, thus avoiding the stress and cost that inevitably follow actual default.

Revenue Procedure 2009-45 offers certain "safe-harbors" for loan servicers modifying securitized commercial mortgage loans. If certain conditions are met, the IRS generally will not challenge the securitization vehicle's qualification as a REMIC or assert that the modification leads to a "prohibited transaction."

> "Changes to the regulations are necessary to better accommodate evolving practices in the commercial-mortgage industry. These changes will affect lenders, borrowers, servicers and sponsors of securitizations of mortgages in REMICs." – *The Department of The Treasury*

The new revenue procedure, which goes into effect today, September 16, 2009, provides new opportunities for borrowers on CMBS loans. The Treasury's decision expands the options of special servicers in amending terms of loans offering additional flexibility to borrowers whose assets are in distress. Previously little flexibility was granted without triggering significant tax implications.

Allen Matkins is actively working with many clients in addressing strategies for over $2 billion in assets. We are at the forefront of the implementation of strategies to modify CMBS loans on behalf of borrowers and are closely tied to the market leadership.

> “Amidst a massive wave of maturing commercial real estate debt — and still virtually no credit available for refinancing — borrowers need to be able to talk with their loan servicers about restructurings in a timely manner, before the point

of default. By easing the tax penalties on changes to securitized conduit debt — i.e. loans held within a REMIC — IRS has taken a very positive step toward easing today's crushing liquidity crisis in commercial real estate," said Roundtable President and CEO Jeffrey D. DeBoer.

If you are interested in learning more about the new revenue regulations and their effect on distressed CMBS loans, please call:

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