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From: Capital Defeasance Group [betsy.ross@capitaldefeasance.com]
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To: Geoffrey S. DeWolf
Subject: The Impact of Defeasance on the Property Sale Process

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CAPITAL DEFEASANCE GROUP

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How Will a Defeasance Impact the Timing of Your Sale Transaction?

The Impact of Defeasance on the Property Sale Process

Property sales will drive approximately half of the 2,700 defeasances that will be completed this year. Sellers and brokers who understand the timing of a defeasance transaction can ensure that their defeasance does not delay the closing.

Defeasance Timing: A defeasance typically takes 30 days to complete, beginning when the borrower notifies the lender of its intention to defease the loan. If the loan balance is over \$20 million, the full 30 days will be needed because the rating agencies that monitor CMBS bond issuances will review the structure of the transaction. For smaller loans (under \$20 million) the process can sometimes be completed more quickly, but it is prudent to allow 30 days. In today's hot real estate market, many transactions include short due diligence periods and short closing periods after the buyer's deposit becomes non-refundable. The defeasance can be managed to coincide with this schedule as long as the buyer and seller agree on the timing up front.

Closing Timing: A defeasance closing typically takes three days. The defeasance will close in the same escrow as the property sale, and the buyer's funds will be used to purchase the substitute securities portfolio.

The Seller's Risk: Sellers are often concerned about the consequences if their buyer fails to close, and they have already notified the lender of the defeasance. The good news is that if the sale closing is simply delayed, the defeasance will be put on hold until the buyer and seller are ready to close, even if the seller ends up selling to a backup buyer. If the property fails to sell at all, however, the seller will be out of pocket for the servicer's processing fee, as well

Welcome to Our July Newsletter

The Capital Defeasance Group newsletter provides you with pertinent information on defeasance. We hope you enjoy reading it. Call us to discuss the timing of your defeasance transaction in more detail.

What Our Clients Say

"Thanks for you help on our defeasance transaction. We have had some very rocky experiences in the past with defeasance deals. You guys are real pros at this."

— Blaine Burnett
Hynes Group

Treasury Yields

	06 July '07	1 Month Ago	1 Year Ago
6 Month	5.01	4.95	5.31
2 Year	4.99	4.97	5.22
3 Year	5.02	4.94	5.17
5 Year	5.10	4.94	5.15
10 Year	5.19	4.97	5.19

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as the servicer's legal fees incurred to date. The amount of these fees varies from \$25,000 to \$100,000 depending on loan size.

Defeasance and the Sale Contract: Sellers can reduce the risk of out-of-pocket costs on a defeasance by adding some simple language to the sale contract. There are several provisions that Sellers should consider:

Closing Date Timing: The most conservative approach to setting a closing date is to provide for a 30-day closing period after the buyer's deposit becomes non-refundable. With this approach, the seller can be sure the buyer will close before notifying the lender of the defeasance. If the sale fails to close, the seller can use the buyer's deposit to cover any out of pocket costs on the defeasance.

Release of Deposit: If a 30-day closing period is not feasible, the contract can alternatively provide that a portion of the initial refundable deposit become non-refundable once the seller notifies the lender of the defeasance. As stated above, \$100,000 or less is typically sufficient to cover any costs to the seller.

Deliveries Into Closing: The sale contract should state that both buyer and seller will make all of their deliveries into closing at least one day prior to the closing date. Then, when the securities are delivered on the Closing Day (the third day of the 3-day defeasance closing period), the buyer's funds can be used to pay for the securities. Buyers and their lenders sometimes resist this provision, but the mechanics of the transaction are such that it is very difficult to get all of the funds delivered properly if the purchase funds are not provided a day in advance of the closing. If the wires are not delivered in time, the defeasance and/or the real estate closing may be delayed. Lenders will receive gap coverage from the title company, and the buyer will be entitled to receive any interest that accrues on the purchase funds overnight.

General Defeasance Provision: It is also prudent to include in the contract a provision stating basic information about the existing loan, and recognizing the seller's intention to defease the loan. This provision should include a requirement that the buyer cooperate with the reasonable and customary requirements of the defeasance, including the delivery of the funds and documents into escrow at least one day in advance of the closing.

If you have questions regarding how to handle a defeasance in your property sale, feel free to contact us at **866-DEFEASE**.

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For further information on analyzing the option for yield maintenance vs. defeasance on a new loan, please call us at 1-866-DEFEASE (333-3273) and we will be happy to help you compare the scenarios.

If you are interested in other helpful ideas to consider when originating new conduit loans, please [click here to email us](#). We will email you back a list of our top tips and 'gotchas' to avoid on your next CMBS loan.

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