

Q&A

Edward T. Bullard

PRESIDENT
American College of Mortgage Attorneys



By Ivanna C. Sukkar

Members of the American College of Mortgage Attorneys (ACMA) represent all sides of the mortgage industry — “If real estate or mortgage lending is touched, ACMA’s fellows are involved,” President Edward T. Bullard says. He tells us more about the 35-year-old association and how its members can help commercial mortgage professionals in this environment.

Who are ACMA’s members? The bulk of our members, which we call fellows, are outside legal counsel to many of the key players in the commercial real estate and mortgage industry. We also have in-house counsel with banks, life-insurance companies, and other mortgage brokers and lenders.

We primarily are lender-oriented in our representations, but a lot of our lawyers also represent developers and institutional holders of real estate. So we cover both sides of the door.

What are some common commercial real estate disputes that ACMA’s fellows mediate? The transactional practice in the past eight months has ground to a virtual standstill. In the kind of economic downturn that we’re in, clients get a different set of problems. Now, we’re working on mortgage defaults, workouts, foreclosures, bankruptcies, construction disputes, lease disputes, and disputes between partners and in limited-liability companies.

Also, a lot of loans have financial covenants. There are requirements that the borrower operate at a certain debt-service ratio. And [even loans originated in 2008] that had financial covenants may be in default at this point. The borrower may still be making loan payments but isn’t meeting the debt-service-coverage ratio.

Which governmental regulations is ACMA helping its fellows through? At our spring board-of-regents meeting [this past March], we discussed the economic-stimulus package, the [Troubled Assets Relief Program] and [the Term Asset-Backed Securities Loan Facility].

We’ve also got a group that has been instrumental in connection with the Uniform Assignment of Rents Act. This act tries to further standardize the security instrument that [lenders] take in most mortgage transactions when there’s income generated by rents.

What other trends are affecting ACMA’s fellows and their clients? First and foremost is the liquidity crisis. And — [this is] perhaps no big surprise — loan workouts. We’re simply seeing more than we had anticipated or hoped for.

For instance, four to five years ago, lenders were making mini-perm loans, where they provided gap financing between construction financing and long-term mortgage financing. [Many of] those loans are coming due today. Not only is there no new money to replace them, but the existing lender who’s got the loan on its books also is scrutinized by regulators. They’re finding in many instances that the properties are appraising for less than what the mortgage indebtedness is now.

Well, that’s not the sort of loan that the regulators want [lenders] to modify and renew. So there’s a real dilemma out there. I can’t profess to know the answer, but there doesn’t seem to be any quick fix to the problem.