

MAYER • BROWN

CMBS Restructuring

What to do if something goes wrong?

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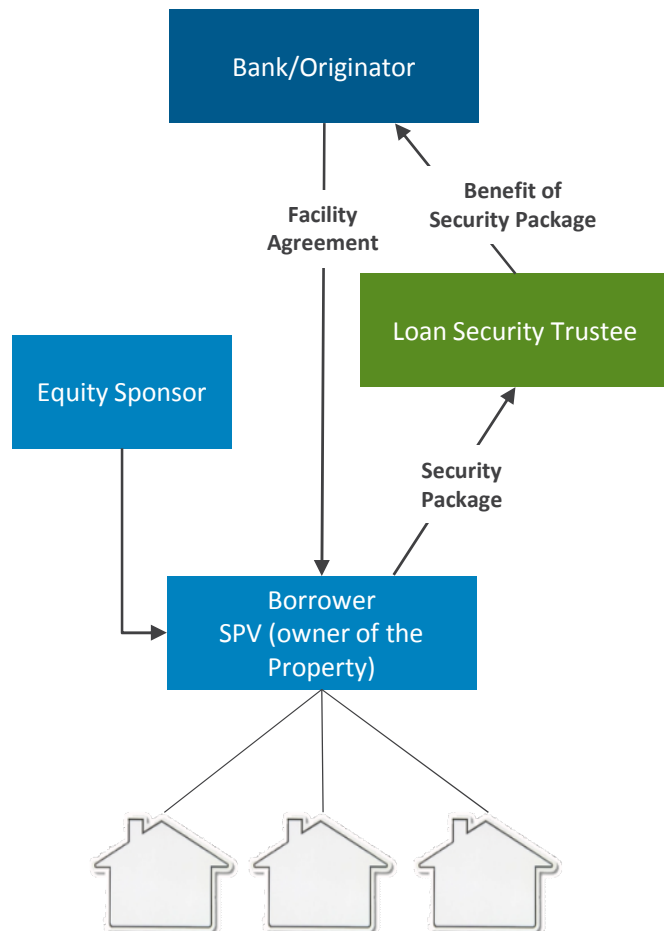
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Von der Immobilienfinanzierung zur CMBS-Struktur

- Grundlagen:
 - Beteiligte
 - Vertragsverhältnisse

Standard Immobilienfinanzierung für CMBS

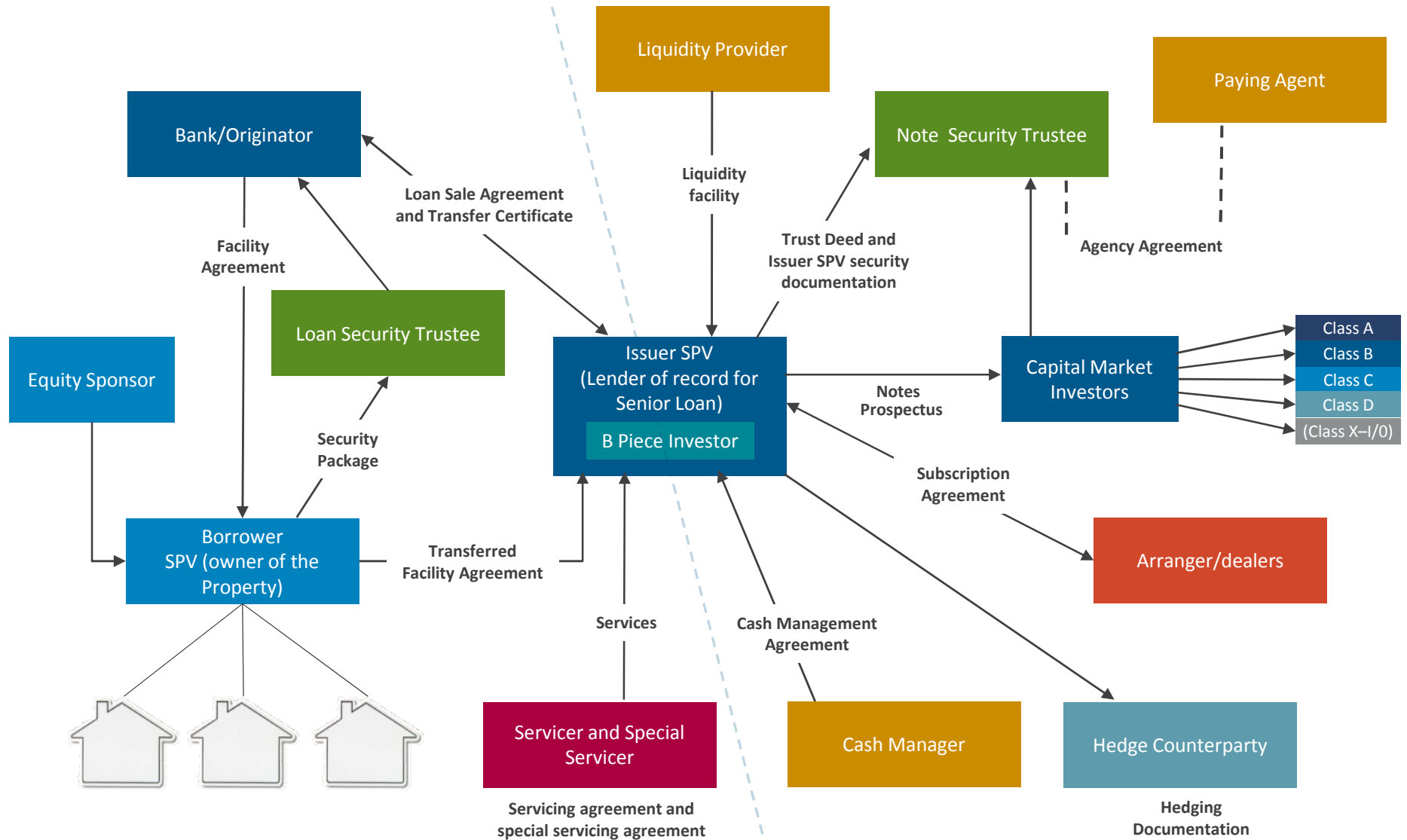


Darlehnsbegebung (*Origination*):

- Deutsches oder englisches Recht mit lokalen Sicherheiten
- Covenants: LTV, ISCR, Bewertung, Reporting
- Sicherheiten werden treuhänderisch vom Loan Security Trustee für den Darlehnsgeber gehalten

BORROWER/ASSET LEVEL

ISSUER/NOTE LEVEL

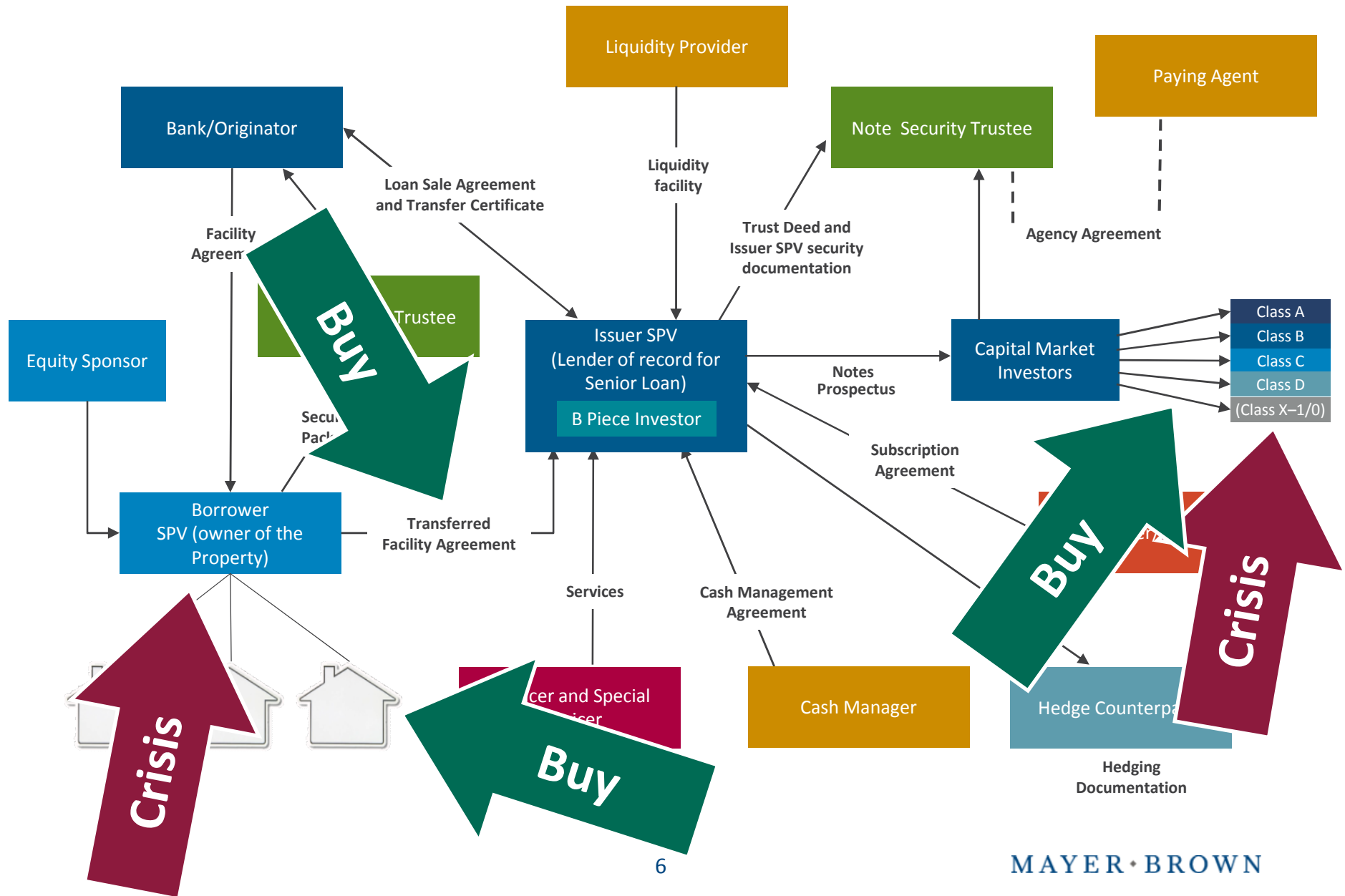


What to do if something goes wrong?

- Panel discussion covering three scenarios:
 - Borrower's perspective
 - Noteholder's perspective
 - Potential Investor's perspective

BORROWER/ASSET LEVEL

ISSUER/NOTE LEVEL



I. CMBS from a Borrower's Perspective

- What happens in case of a covenant breach (LTV, ISCR)?
- Who should the Borrower talk to?
- Who has the power to make decisions?

Excursion: Role of Servicer / Special Servicer

- The Servicer and Special Servicer are appointees of the Issuer
- Both are bound by the “Servicing Standard”, which means they have to act always (broadly speaking):
 - *As a prudent lender of money secured over commercial property*
 - *With a view to timely collection/maximisation of realisations (income or proceeds of enforcement)*

Excursion: Role of Servicer / Special Servicer

Servicer's role:

- Monitoring collections into Rent/other Borrower level accounts
- Instructs movement of monies to meet Note/Swap etc. cash flows
- Reporting which feeds into investor reporting
- Any other action done by "Lender" under Facility Agreement
- These functions continue during Special Servicing

Special Servicer's role:

- When a "Special Servicing Transfer Event" occurs, then the Special Servicer is appointed to:
- instruct the Security Agent/Trustee to enforce the security OR
 - formulate a work-out plan OR
 - work to achieve some type of consensus regarding restructuring AND
 - consult with the "Controlling Class" or "Controlling Party" at all times

I. CMBS from a Borrower's Perspective

- Loan Level Restructuring
 - LTV-breach
 - Waterfall (expenses, Capex etc.)
 - Loan term extension (“*delay and pray*” / “*extend and pretend*”)
 - Margin increase
 - General housekeeping (Reporting, Sales)

I. CMBS from a Borrower's Perspective

- What flexibility is there to agree a loan restructuring?
- Who instructs the Servicer/Special Servicer?
- How is the Controlling Class determined?
- When is a Noteholder meeting required?

I. CMBS from a Borrower's Perspective

- Is there money available for Capex?
- Can the Borrower buy back the debt?
- Is it possible to extend the loan?
- Would this require a banking license?
- Are there regulatory restrictions on the Issuer SPV?

Excursion: Noteholder Meeting

- Notice to Noteholders:
 - The proposals that are being taken to the Noteholders need to be presented as “Resolutions” and notified to the market via the Regulatory News Service approved by the Stock Exchange
 - The Notice of Meeting of Noteholders needs to be given 21 CLEAR days prior to the proposed Meeting date
- Noteholder votes:
 - Noteholders indicate their votes to the Paying Agent 48 hours prior to the Meeting and their Notes are then blocked (meaning they can’t trade them)
 - Quorum is generally 2 or more people representing 50% or more of the Principal Amount Outstanding of the Notes
- The Meeting:
 - Usually carried out at the offices of counsel to the Trustee – if quorum is not met, then 14 CLEAR days is usually required to hold the next meeting

II. CMBS from a Noteholder's Perspective

- What influence does a Noteholder have on servicing/restructuring/enforcement?
- Can a Noteholder require the replacement of the Servicer?
- What conflicts may arise between classes of Noteholders?
- What is the role of a steering committee?

II. CMBS from a Noteholder's Perspective

- If I speak to the Borrower about restructuring would this be considered as insider information?
- The whole documentation includes several binders full of documents – on which agreements should I focus?

III. CMBS from an Investor's Perspective

- As an outsider to the deal: Where do I get information from?
- How could I buy real estate or (non-performing) loans out of a CMBS structure?
- Is the servicer allowed to sell with a discount on the face value?

III. CMBS from an Investor's Perspective

- Is it worthwhile to buy notes until I am a majority note holder?
- Which tranches may be the most interesting to buy?
- What is the minimum size of a note?