MBA’s COMMERCIAL/MULTIFAMILY FINANCE

Insurance Waiver Guide

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The following practices are intended to provide guidance through the process of managing and obtaining waivers of insurance requirements from the ultimate lenders — whole loan lenders, certificate holders, trustee, etc. (collectively “Lender”).

This document represents the efforts of MBA’s Business Strategy Committee and the Insurance Stakeholders Committee of the MBA Servicer Council to memorialize current industry standards with respect to managing this process. This document is for informational purposes only and is not intended to provide legal advice or serve as a substitute for a proper formal procedure by the Servicing Company.

About MBA

The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. MBA represents all segments of the real estate finance industry, unifying the interests of diverse stakeholders, from Main Street to Wall Street, spanning all aspects of real estate finance, including commercial, multifamily, and residential. Our membership of 2,300 companies includes all elements of real estate finance: mortgage banking companies, insurance companies, commercial banks, thrifts, REITs, securitization conduits, and others in the mortgage lending field. As the leading advocate for real estate finance, MBA represents and serves our members through advocacy, networking opportunities, news, data and leadership. For additional information, visit MBA’s website: mba.org/cref or contact us at cref1@mba.org.
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Insurance

THE ROLE OF INSURANCE
A property owner maintains insurance to protect against losses to its assets and/or equity. Simply speaking, an owner maintains insurance to protect its interest.

When a property owner enters into a loan transaction as a borrower and pledges the property as collateral as security for repayment of the loan (“Collateral”), the Lender makes the loan based on the assumption that: (i) the Collateral will exist and continue to generate cash flow during the entire term of the loan; and (ii) the borrower will continue to have adequate assets, cash flow and financial resources to ensure continued repayment of the loan.

This assumption could be upset should the borrower incur a loss as the result of: (i) the Collateral being damaged/destroyed; or (ii) its financial resources are impaired as a result of a lawsuit (or other event for which the borrower is held liable) and the borrower is unable to absorb such loss. This could result in a borrower’s inability to repay the loan, which could in turn result in a loss to/of Lender’s investment.

Insurance provides protection to the insured (borrower) and, by endorsement, to the Lender against the risks to: (i) the Collateral resulting from damage /destruction as a result of insured perils; and (ii) borrower income and assets arising from claims against borrower responsibility, negligence or contractual requirements. As a result, loan documents customarily require that borrowers maintain, property and liability insurance acceptable to Lender, and provide evidence thereof, during the term of the loan.

While insuring the Collateral is a fundamental concern in all secured loan transactions, it becomes paramount in the case of a non-recourse loan transaction where a borrower is not held personally liable for repayment of the loan and the Collateral and income therefrom is the only source of repayment or remedy of the Lender should a default occur under the loan.

While on the surface borrowers and Lenders may have differing views, the underlying purpose is the same, to protect their interests should a loss occur. Note that, the Lender’s generally finance a portion of the property in excess of the equity provided by the borrower/owner. Therefore, the Lenders’ minimum insurance requirements are meant to mitigate the Lender’s risk of loss and may exceed the coverage that an insured/borrower/owner or its agent may feel is adequate.

INSURANCE REQUIREMENTS
Insurance requirements can vary based on the property, location, construction, etc. In addition, insurance coverage can change based on new risks or as a result to increased exposure to the insurer. As a general rule, however, property and liability insurance requirements will consist of the following:

Property Insurance Requirements
A special form cause of loss policy (which includes all perils with the exception of exclusions specifically stated) in a form acceptable to Lender, for the full replacement cost of the Collateral, without any deductions for depreciation, without the potential for co-insurance, and with deductible amounts acceptable to Lender and which names the Lender as mortgagee and loss payee, and generally includes the following coverages/endorsements, as applicable:

- Loss of rental/business income;
- Terrorism, if required by the Lender;
- Coverage for catastrophic perils faced by the property:
  - Flood — If the Collateral is located in a Special Flood Hazard Area and/or if the Lender requires flood insurance. Note that the Lender may require flood coverage over and above the maximum amount provided for under the National Flood Protection Program, including but not limited to full replacement cost coverage and business income coverage.
+ Earthquake — If the Collateral is located in a seismic risk zone and coverage is required by the Lender. Often the requirement for earthquake insurance relates to specific seismic zone and a calculation such as probable maximum loss; and
+ Named Storm — If the Collateral is located in an area susceptible to named storms/hurricanes.

Additional insurance coverage requirements will vary, based on factors such as location, property type, size of the loan, etc. These may include:

- Ordinance or Law — May be required if there are zoning concerns with the Collateral (i.e. zoning changes, grandfathered use, etc.);
- Boiler and Machinery/Equipment Breakdown — May be required if the Collateral includes a boiler, or involves extensive machinery (i.e. refrigeration, racking systems, etc.);
- Mine Subsidence — May be required in areas where mining is/was common such as Illinois, Kentucky, Pennsylvania, Ohio, West Virginia; and
- Sinkhole — May be required for certain areas susceptible to sinkhole hazards, for example, Florida.

**Liability Insurance Requirements**
A commercial general liability insurance policy in a form with deductible and coverage amounts acceptable to Lender, which names the Lender as an additional insured.

Additional liability insurance coverage requirements will vary, based on factors such as property type, size of the loan, etc. These may include:

- Umbrella/Excess Liability — May be required for larger loans or Collateral with high use/ liability risk such as multifamily, healthcare, hotel, shopping mall, office, etc.
- Contractors, Architects and Engineers Liability — May be required for construction loans or if the Collateral is under construction.
- Liquor Liability — May be required if the Collateral includes an establishment which serves liquor (hospitality, restaurant, bar, etc.).
- Loss History — Review the property’s history of losses (both frequency and severity). This will allow for review of the history of claims at the property showing their risk management capabilities as it pertains to the property.

**INSURANCE CARRIER RATINGS**
The financial strength of the insurance carrier is important as it may affect the insurer’s ability to pay any covered losses. Loan documents customarily contain, at a minimum, a requirement that the carrier meet specified AM Best ratings for financial strength and claims paying ability (i.e. A:X). Additionally, Lenders may require credit rating by one or more nationally recognized statistical rating organization (NRSRO) on larger loans or loans which are held as part of a securitized, collateralized loan obligation or collateralized debt obligation transaction.

**DEDUCTIBLES**
Deductibles are typically applied on a per occurrence (i.e. loss) basis. Deductibles can be written as a flat amount or a percentage of the amount of insurance/claim. Property coverage for catastrophic perils are typically subject to percentage deductibles. Loan documents may contain specific references to property coverage deductible amounts or they may be silent. Lender decisions regarding deductibles on property policies can take into account the loan size, the property and borrower financial stability and other factors. Some Lenders build into the loan documents a reference to property coverage deductibles that are “customarily available” in order to simplify the process (avoid the need for a formal waiver) in the event of changes within the insurance industry. Either way, due to the dynamic nature of the insurance industry and the

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1 A credit rating organization focused on the insurance industry.
2 A credit rating organization registered with the Securities and Exchange Commission.
mismatch between long term loan documents and short term insurance policies, the Servicing Company can be challenged to maintain compliance as borrowers seek to balance available coverages, costs and deductible amounts.

Loan document requirements for liability coverage are less likely to set a specified deductible amount. However, some lender guides have specific requirements for liability deductibles, known also as Self-Insured Retentions (SIR). Careful review of loan document requirements and/or lender guide requirements should be done. Assessment of the appropriate deductible will take into account the property performance, the use of the property and other factors as determined by the lender.

**BLANKET POLICIES**

Property owners with a large number of properties in various locations will often insure all the properties under a blanket insurance policy to lower premium costs. The policy will oftentimes include features such as locations limits, margin clauses or have a layered policy structure. In some cases, the policy will list both a limit applicable to the specific Collateral, as well as an aggregate limit [related to all of the properties being insured]. Loan documents are often silent as to specific requirements for blanket policies. Some loan documents may prohibit them all together, while others may allow for such as long as they provide the same coverage for the Collateral as that of a stand-alone policy. This can often be difficult to determine due to the number of other properties covered by the policy. As a result, the Servicing Company must obtain location and property information, as well as a statement of values for all properties covered by the policy in order to determine whether or not the aggregate limit is adequate.
The insurance requirements for the loan are generally set forth in the loan documents. The monitoring of compliance with such may be handled by a Lender’s internal servicing department, third party servicer or in the case of a commercial mortgage backed security transaction or a securitized collateralized debt obligation or collateralized loan obligation transaction, one (or a combination) of the following, master servicer, primary servicer (pursuant to subservicing agreement with master servicer), or special servicer (in the event the loan is a specially serviced loan or an REO (real estate owned)), as the case may be (“Servicing Company”).

Generally, servicing agreements require that a Servicing Company use commercially reasonable efforts consistent with the servicing standard to cause the borrower to maintain all insurance coverage required under the loan documents, that the Lender is entitled to reasonably require and obtain evidence that the required insurance is in place and that the Servicing Company acting for the Lender has the right to force place insurance if the borrower fails to maintain the required coverages.

The servicing agreement and/or Lender’s servicing manual/guide (as applicable), will oftentimes also specify a Lender’s minimum insurance requirements. In the event the loan documents are silent with respect to some or all insurance requirements, a Servicing Company may, subject to the loan documents, rely on the Lender insurance requirements in managing compliance. In the event of a conflict between the Lender Insurance Requirements and the insurance requirements under the loan documents, the loan documents would prevail.

As a general rule, in the event the evidence of coverage provided to the Servicing Company does not comply with the Insurance Requirements (“Insurance Deficiency”), a Servicing Company’s first course of action is to contact the borrower and/or insurance agent to resolve the Insurance Deficiency and obtain evidence of insurance which complies with the Insurance Requirements.

Issues arise when the borrower declines a Servicing Company’s request to correct the Insurance Deficiency, or outside factors such as market availability/cost prohibitive premiums, resulting from high historical loss ratios for a location, property type, etc., impair its ability to maintain compliant coverage.

Issues may also arise when there are conflicts among parties with an interest in the Collateral and documentation related thereto (i.e. insurance requirements in the lease which conflict with or do not meet the Insurance Requirements, a lease which allows the tenant to self-insure, etc.)

The Servicing Agreement will rarely grant a Servicing Company the authority to waive and/or amend borrower obligations, this includes waivers of the Insurance Requirements. As a result, a Servicing Company oftentimes has limited flexibility when it comes to dealing with Insurance Deficiencies and must seek approval for the Insurance Deficiency from the Lender in order to waive compliance or provide a forbearance with the respect to a specific Insurance Requirement (“Waiver Request”).

**INDUSTRY STANDARD:** Servicing Companies have procedures for handling noncompliance insurance and Waiver Requests. The practices in this publication do not replace or supersede specific Servicing Company procedures, but rather are meant to complement them. Note that the varied nature of Servicing Company portfolios and operations may require modification of these practices.
Waivers

There are various types of Waiver Requests that a Servicing Company may encounter while performing its duties. Common Waiver Requests may involve insufficient coverage limits, excessive deductible amounts, issues with catastrophic coverages, inadequate carrier ratings, acceptance of self-insurance, and/or waiver of certain “extra” coverages (umbrella/excess liability, extended period of indemnity, workman’s compensation, contractor’s liability, etc.).

Servicing Companies and the Lenders they serve may have their own unique operations and structure as well as policies and procedures for processing Waiver Requests. While these may vary slightly depending on the level of perceived risk posed by the underlying Insurance Deficiency, as a rule, key processes for pursuing Waiver Requests may include the activities outlined below:

A. Notifying the borrower, risk manager, property manager (Client)” of the Insurance Deficiency in accordance with the obligations set forth in the loan documents, servicing agreement and/or Lender servicing manual.

B. Consulting the loan documents, servicing agreement and/or Lender servicing manual for specific Servicing Company obligations and instructions related to Waiver Requests (decisionmaker, timeframes, required method of submission, force placement requirements, instructions, etc.). Note that certain loan products such as those for inclusion in a public or private securitization may be subject to tax and/or other law that may result in limited flexibility with respect to waiver requests, as opposed to properties securing loan products that are held by a Lender in its own portfolio.

C. Advising the borrower to submit the request in writing, explaining the reason for the request and providing backup materials.

D. Creating a record in the loan servicing system or such other supplemental system/software used to track the Waiver Request and monitor its status (“System”).

E. Requesting the supporting documentation necessary to evaluate the Waiver Request, to the extent the documentation has not been previously been provided or is part of the loan file.

F. Reviewing the documentation provided, and if required pursuant to the Servicing Agreement and/or Client servicing manual, prepare recommendation for Client review.

G. Force placing insurance coverage to mitigate the existing deficiency to the extent required pursuant to servicing agreement, Client servicing manual or Client direction. With regard to force placed (lender placed) insurance, once the asset has been insured through the lender placed insurance Carrier/Company because of the default in insurance coverage, then the date of removal from insurance is when all parties agree to waive coverage. Coverage cannot be waived for the actual period of time that the insurance carrier/company provided coverage. It may be waived going forward on a prospective basis (not a retroactive basis). Therefore, if the insurance company was exposed to risk, then the insurance company has earned that premium.
H. Provide notice of the waiver decision to the Client. The notice is generally in writing (e.g. email) and, if approved should contain the terms and conditions of the approval (e.g. forbearance or life of loan waiver). If a forbearance is granted, the Lender should indicate in the servicing system the need to review the conditions that resulted in the forbearance at the next policy renewal. If the waiver is denied, the notice should include the date by which the borrower is required to provide compliant insurance prior to forced placement or if directed by the lender to force place immediately, the fact that the coverage has been force placed.

Some Servicing Companies utilize a risk classification system to triage Insurance Deficiencies by the level of perceived risk they pose to the property performance and Lender. Triaging the Insurance Deficiency helps the Servicing Company identify and place priority on those which pose the highest level of risk (i.e. missing coverages, insufficient limits, high deductibles, carrier ratings, lack of mortgagee clause, etc.)

**INDUSTRY STANDARD:** Servicing agreements, as a rule, require the Servicing Company to notify the Client regarding any Insurance Deficiency which materially and adversely affects the interests of the Client.
Monitoring and Reporting Waiver Requests

As a general rule, Servicing Company obligations for monitoring and reporting Insurance Deficiencies will be set forth in the servicing agreement and/or Lender servicing manual. Accordingly, a Servicing Company will typically have standard processes and procedures in place for scheduled reporting of Insurance Deficiencies to the Client (i.e. weekly, monthly, quarterly, etc.).

To ensure accurate reporting of information to the Lender, the Servicing Company may continually update the loan file and servicing system to document the Insurance Deficiencies, communication with borrower/agent and efforts taken to resolve the Insurance Deficiency. As a matter of practice, the Servicing Company may also be monitoring and recording the progress of Waiver Requests in the servicing system from the time the request is received until approved/denied. If approved by the Lender, the Servicing Company may also update the servicing system to indicate the type of approval (current policy term or life of loan) and any conditions thereto, especially those which are ongoing and may require future monitoring.
Supporting Documentation and Evaluation

Supporting Documentation

The Servicing Company may be the party responsible for compiling the documentation to support the Waiver Request. In some instances, this documentation may already be part of the loan file, in other instances the Servicing Company may have to request it from the borrower.

Generally, supporting documentation will include financial and collateral related information. Collateral documentation may include items such as an appraisal, updated Marshall & Swift valuation, property physical condition report, plans and specifications, inspection documentation, evidence of compliance with various municipal codes (fire, wind, seismic), etc. Financial documentation may include items such current borrower and/or guarantor financials, rent rolls, operating statements, etc. The Lender’s main concern is the preservation of its interest in the Collateral and the income stream therefrom to ensure repayment of the loan. This supporting documentation allows the Servicing Company and Lender to better assess the potential for loss and the borrower’s ability to absorb the financial impact of such loss.

A Servicing Company may encounter Waiver Requests where additional supporting documentation is required, these may include the following:

A. Carrier Rating — If the financial strength of the insurance carrier fails to meet the loan document/servicing agreement requirements, a Lender may require data related to the reason for the lesser ratings and, if determined to be temporary, may grant a limited forbearance in connection with acceptance of the non-compliant carrier.
B. Flood — If the Client is a federally regulated Lender (see NFIP and FEMA Guidelines) and the property is in a special flood hazard zone, waivers would be considered only if the risk to the Collateral is mitigated in a way that would effectively “remove” the Collateral from the special flood hazard zone. In most cases this would require an elevation certificate (from a surveyor) and following review by the Federal Emergency Management Agency (FEMA), a FEMA issued Letter of Map Amendment (LOMA). Other Clients may also require documentation as to the position/elevation of the property or the portion of the property in a flood zone in order to process a waiver request.

C. Cost and/or Availability of Coverage — In such a case, borrower may also be required to provide several quotes to evidence premium costs and/or lack of availability in order for the Lender to evaluate commercial reasonableness and the impact on property performance.

D. Blanket Insurance Aggregate Limit — Blanket insurance is structured with the assumption that a loss to all the properties covered by the blanket policy would never occur and that a single event would not affect all the properties. Therefore, the aggregate limit of the blanket policy is generally not sufficient to cover all the properties covered by the policy. In order for a Lender to evaluate the impact of the waiver on the Collateral property, the borrower would be required to provide detailed information on all of the properties insured under the blanket policy including property locations and a statement of values itemizing the value of each property subject to the aggregate limit. In addition, site specific or portfolio aggregate analysis of probable maximum loss due to catastrophic events (i.e. hurricane, flood, earthquake, etc.) should be considered to determine if the “Blanket” policy limit and any sublimits are adequate. As noted above, a blanket policy should provide coverage equal to or better than that which would have been provided on an individual stand-alone policy.

E. Liability Limits/Excess Liability — In the event the borrower requests a waiver of the liability insurance limits or excess/umbrella coverage, the borrower may be required to provide information regarding liability loss/claim history, property management information, inspection report, as well information regarding prior life/safety issues and subsequent remediation to assist the Lender in determining the potential risk of a liability claim. In addition, benchmarking loss events for likely liability risks for the occupancy may be valuable in determining adequacy of current and proposed limits. Given recent casualties associated with catastrophic loss of life, there is a possibility that the collateral could be at risk in the event of a serious adverse liability claim.

EVALUATION

The Servicing Company may be responsible for performing a preliminary evaluation of the Waiver Request and formulating a recommendation to submit to the Lender for review. Depending on the Servicing Company’s internal processes/procedures and the type of Waiver Request, this evaluation may be performed by personnel within the insurance department, or it may be a joint effort between the insurance department and other departments responsible for monitoring the status of the Collateral and loan (i.e. asset management, surveillance, etc.).

The evaluation of the Waiver Requests may take into account factors such as those listed below, which are tested against worst-case scenarios, to determine the perceived maximum loss and perceived impact on the Lender, borrower and property/loan.

A. Loan Specifics (loan-to-value, balance, remaining term) — Is the borrower’s investment in the property enough to induce restoration or repayment of the loan should an uninsured loss occur.

B. Lender/Product Type (e.g. whole loan, securitized, government) — The decision maker for an insurance waiver request will be sensitive to the impact that an uninsured loss or failure of a carrier to pay will have on property performance. Lenders, however, have varying abilities/appetites to grant such waivers based on legal agreements, regulation, company policies, borrower strength, loan type (i.e. recourse or non-recourse, location, type of insurance, etc.) Therefore, a borrower
may encounter situations where a waiver or forbearance by one Lender is approved, while a similar request to another is denied.

C. Collateral Specifics: Type, Construction, Location, Tenancy — Is the property in good condition? Does the property type contain extensive build out (i.e. multi-family, office) which would take longer or cost more to restore to its original state? The location of the Collateral, (including the proximity to coast for wind, which flood or seismic zone, proximity to iconic buildings/locations, etc.). Lease termination rights of the tenants should the property not be restored in a timely manner (does rent abate, does the lease allow adequate time to restore). Borrower’s equity position—Loan to value ratio?

D. Borrower/Guarantor Financial Condition — Do the borrower and/or guarantor (if any) have the financial wherewithal to remain viable and restore the property, payoff the loan or continue to pay the debt service coverage under the loan in the event of an uninsured loss or liability claim? Is the loan non-recourse? Is property performance strong?

E. Loss Mitigation Plan — Is the building built to current laws and ordinances or are there strategies in place to mitigate the risk (i.e. sprinklers, security system, retrofitting, etc.)?

F. Cost and/or Availability of Coverage — Is the coverage available? Is the cost “commercially reasonable”? Is this a short or long-term issue? Is the issue the result of an active storm approaching?

G. Flood — Recent letter of map amendment or other elevation certificate?

H. Earthquake — What is the estimated probability of maximum loss or equivalent calculation? Has the Collateral been retrofitted? Does the Collateral have tuck-under parking? Which seismic zone?

I. Blanket Policies — What is the geographic dispersion of the properties insured by the policy? How many locations could potentially be impacted by a single event? What are the values of these properties, pursuant to the Statement of Values? Is the aggregate limit adequate to cover a worse-case loss scenario?

J. Liability/Excess Liability — In addition to determining borrower and guarantor viability in the event of a claim, the evaluation will also include other considerations. What type of property is the Collateral? Is it at higher risk for liability claims (i.e. multifamily, hotel, retail)? What is the borrower’s liability loss/claim history? Does a reputable property management company manage the Collateral? Were there life/safety issues cited on the last inspection? Is the Collateral well maintained?

K. Is the Waiver Request short term (i.e. current policy term) or for the remaining life of the loan?

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3 A letter of map amendment (LOMA) is provided by FEMA following evaluation that determined that a property while mapped within a specific flood zone, is actually on higher ground.
Submission and Approval

Once the documentation is collected and a recommendation prepared, the Servicing Company will submit the Waiver Request and supporting documentation to the Client in accordance with the servicing agreement and/or Lender servicing manual, as applicable.

The Lender will review the Waiver Request and determine if the potential risk posed by the Insurance Deficiency is acceptable. If the Lender deems the risk to be unacceptable, the Waiver Request will be denied. If the Lender determines that the risk is acceptable, the Waiver Request will be approved.

Lender approval may apply to the current term of insurance only or the remaining life of the loan and may impose additional conditions. The conditions may be a prerequisite for the waiver or forbearance approval for the current insurance policy term only or, in the event the waiver granted is for the life of the loan, the conditions may be ongoing criteria reviewed annually for continued approval. It is most common in the servicing industry for the waiver to be approved for the current period only.

Common conditions to Waiver Request approval may include the following: requiring additional documentation; requiring a pledge of additional collateral (i.e. letter of credit, reserve funds, etc.). In some cases, the conditional approval, may require a side letter/amendment to the loan agreement or require ongoing surveillance between the insurance department and other departments responsible for monitoring the status of the Collateral and loan (i.e. asset management, surveillance, etc.) This would most commonly apply when determining compliance with any ongoing financial covenants imposed in connection with a life of loan waiver approval where the borrower and/or guarantor financial wherewithal was paramount to such approval.

Upon receipt of the Lender’s decision regarding the Waiver request, a Servicing Company will provide the borrower with notice of the Lender’s decision, any conditions thereon and enter the waiver (term or life) to its servicing or tracking system.
Liability for Approval Of Waiver Requests

Lenders generally retain decision-making authority regarding approval of Waiver Requests, accepting the risk of a potential uninsured loss.

If the Servicing Company has the right to evaluate and waive or modify the Lender’s requirements the terms of any governing agreements should be reviewed to ensure the authority to waive a Lender requirement is present. In either case, the Servicer should endeavor to ensure that:

A. The borrower provides information required to fully assess the potential risk.

B. All waiver procedures and other requirements set forth in the servicing Agreement and/or Lender servicing manual are reviewed for specific directions or responsibilities, including the authority to grant waiver requests.

C. Any other instruction from the Lender are reviewed and any directions followed, including recognizing the termination date (if any) of the waiver/forbearance during the renewal process.

While care should be taken in submitting a waiver request to the Lender as well as in making its own decision regarding the acceptability of the waiver, the Servicing Company should be aware that, particularly in the case of interests by multiple parties (securitizations, guaranteed loans, participation/syndications, etc.), scrutiny of the appropriateness of the waiver approval may be heightened in the event that a loss occurs that would have been an insured loss but for approval of the waiver. The decision makers should also understand the dynamic nature of the insurance industry and how changes in cost, availability of coverage, conditions and terms can change year to year in making the determination to accept a short-term waiver or a life of loan waiver.
Conclusion

Insurance is a critical condition imposed on borrowers during the lending process. Given, however, the long-term nature of the lending contract and the short-term nature of the insurance contract, it is not surprising that conflicts can arise. The Servicing Company should remain aware of market trends and coverage issues taking place in the insurance industry to be better able to guide a borrower who is requesting assistance.

Ultimately, the Servicing Company should strive to provide to its internal decision makers or to the Lender sufficient information regarding the borrower and the property to enable the Lender to assess any increased exposure that might arise as a result of the waiver.