Client Alert

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TRIA Extension Fails: An Initial Guide to Next Steps

To the surprise of many, Congress failed to extend the Terrorism Risk Insurance Act of 2002 ("TRIA"), which is set to expire at the end of this year. Many hope that TRIA in some form will be re-authorized early in 2015 and, while there appears to be broad bipartisan support for re-authorization, it is not possible to predict when or if such passage will take effect. While watching for the insurance market's response to these developments, set forth below are some practical measures that may be useful for parties in the real estate lending market to consider in the meantime:

- Borrowers and Lenders should review their current deal documents to determine (a) if any defaults are or may be created as a result of TRIA's expiration and (b) how to handle insurance renewals if terrorism insurance becomes unavailable or prohibitively expensive.
- Owners should review the terms of their terrorism insurance policies to determine whether they are cancelable by the relevant insurers once TRIA expires. Lenders might also review such policies (or discuss with the Borrower) to determine the likely consequences under their impacted loans.
- For current deals in process of closing, parties should consider what language should be included in their loan documents to cover terrorism insurance, and review issues relating to TRIA's expiration on the availability and cost of any such coverage.
- For new term sheets or commitments, parties (including mortgage brokers) should consider what requirements to include in respect of terrorism insurance and whether any distinctions should be made for factors such as the size, type and location of the property and/or the size of the loan. The potential increased costs of terrorism insurance should also be factored into the underwriting of new loans.
- In certain instances, loan documents may contain a cap on the amount of premiums that a Borrower is required to pay in connection with terrorism insurance. Lenders with loans containing such provisions (or considering such provisions in pending deals) should give consideration to the amount of insurance that would be obtainable under such caps following TRIA's expiration. If such a cap would not result in a meaningful amount of terrorism coverage, Lenders should consider appropriate risk management measures.
- CMBS servicers might begin force placed terrorism coverage at some point for various loans, which could be expensive, so CMBS borrowers may wish to address this with their loan servicers as appropriate. Also, there is a possibility that the lack of TRIA back-up could potentially lead to downgrade of certain CMBS transactions, especially large single asset deals. Participants in the CMBS market should monitor any guidance that the rating agencies may provide with respect to this matter.

We expect to stay on top of the TRIA situation as it develops. As always, feel free to reach out to any member of the MoFo team if you have any questions.

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