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Gary Markoff sees dealmaking ahead for commercial real estate.

by Craig M. Douglas – April 15, 2011

Gary Markoff is a seasoned lawyer with a practical view of the world as it applies to his clients in the commercial real estate industry. As such, he can neither confirm or deny that today's market is any more rational, from a financing and investment standpoint, than it was during the past decade's bubble.

Indeed, new issues of commercial mortgage-backed securities are back in vogue, with the usual suspects on Wall Street predicting between $25 billion and as much as $40 billion in offerings this year. While that's still below the $80 billion in originations averaged from 2004 through 2007, it's a marked improvement over the $9.8 billion that hit the market in 2010.

Markoff said many of the same factors that led to the market's rise and fall — easy money, an exuberance among investors to put that money to work, whatever the cost — are resurfacing with gusto after an 18-month hiatus. He's also unimpressed by all of the talk about risk controls and heightened vigilance among regulators and investors alike, adding that many of the same cozy relationships still exist between dealmakers and the entities that police them. And that also goes for the credit agencies opining on the quality of the deals themselves.

"I'd like to know what (Moody's Investors Services) and (Standard & Poor's) have done. How are they doing things differently? Because the way they get paid is the same. They get paid by the people that they're rating. That doesn't make any sense to me," said Markoff, the former managing partner at Sherin & Lodgen in Boston and current member of its real estate team. A former auditor with Arthur Andersen, Markoff has particular experience in dealing with CMBS transactions and related properties.

Much of his work of late has focused on clients embroiled in the increasingly murky

world of special servicing. As it stands, property owners have found the special-servicing process frustrating at best. Many complain servicers are unresponsive to their calls or efforts to make good on their troubled mortgages. Others say the system is stacked against them, with servicers content to keep them in limbo or even torpedo viable workouts as long as their loans are generating management fees.

Nationally, landlords have increasingly filed for voluntary bankruptcy protection to sideline the special servicers assigned to their properties.

Markoff said he is aware of it all, but is limited to simply advise his clients on their options — and the consequences of those options — to extract themselves from the special-servicing process.

Markoff said that while more pain is sure to come to property owners who borrowed too much and paid premium prices during the bubble years, distressed property sales and a return of the CMBS market will likely lead to more dealmaking in the months ahead. As long as pricing can stay rational, he said, today's demand for high-quality properties will continue to ripple through the market in a positive way.

Markoff said much of today's positive momentum is being driven by foreign investors. "If you have a building with credit tenants and you don't have a big vacancy, you've got a valuable property. I think we'll see more transactions, not so much in commercial, but in residential. Multifamily."

Markoff said money will continue to creep back into new securities as long as property prices continue to improve. He's hopeful more due diligence will be done this time, but he's not holding his breath.

"Who stands to get hurt? It's the people who bought it," he said. "But who are they? They're institutions. They're pension funds, endowments. People need to do a lot more homework to understand the real value behind those securities."