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REF news and views

Current Trends and Issues Arising in U.S. Real Estate Transactions

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This section of REF News and Views will be an ongoing component of this publication and will highlight (as its title indicates) current trends and issues in U.S. real estate finance transactions. Generally, we will endeavor to identify issues of negotiation between lenders and borrowers that have become commonplace and trends we are seeing in the structure and documentation of U.S. real estate finance transactions.

In this issue, we would like to highlight the ever-increasing focus of parties on the eventual phase-out of LIBOR as the benchmark index in finance transactions. As you are likely aware, LIBOR is scheduled to be phased out at the end of 2021. Cadwalader is especially positioned to provide guidance and insight into this seismic shift in the finance landscape as we are the firm that has been tapped by the Federal Reserve Board and the New York Fed to sit on the Alternative Reference Rates Committee or ARRC. ARRC is a group of private-market participants convened by the Federal Reserve Board and the New York Fed to ensure a successful transaction from U.S. dollar LIBOR to a more robust reference rate, the Secured Overnight Financing Rate (SOFR).

Recently, ARRC published recommended fallback language for syndicated loans that proposes industry-wide language for inclusion in loan documentation which addresses the transition from LIBOR to SOFR and the multitude of "unknowns" which may accompany such transition. Again, as Cadwalader drafted this language, we are uniquely suited to counsel clients on its intricacies.

While the implementation of the transition from LIBOR to SOFR is a work-in-progress, we continue to see a heightened focus by borrowers and their counsel on the manner in which loan documentation addresses this eventuality. Many institutions continue to resist extensive negotiation of those provisions. This factor is mainly due to the fact that many institutions are working internally to determine how they want to address this matter across their institution.

While we continue to see heavy negotiation of these provisions, as ARRC and the Fed refine the landscape of what the transition will look like, we anticipate further clarity and uniform implementation across institutions.

Over the course of future issues of *REF News and Views*, we will indubitably revisit this issue as it will continue to be in the forefront of loan negotiation and documentation.