Construction Lending News

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MF Seen Growing in '05

By Lew Sichelman [1]

ORLANDO — Multi-family housing will be the sector's bright spot next year, according to McGraw-Hill Construction's *2005 Outlook.*

While most other forecasters are saying the apartment market will slow, McGraw-Hill is predicting that multi-family starts will increase by 2%, from 435,000 units in 2004 to 445,000 in '05. It isn't much of a gain, to be sure. Especially considering that just 20 years ago, apartment builders were adding more than 800,000 units annually. But in a market where mortgage rates are expected to rise and construction is expected to tail off after an inspired four-year run, it could be next year's lone growth market.

Multi-family housing is "the favorite property type of every investor," Robert Murray, vice president of economic affairs at McGraw-Hill Construction, told a group of lenders here earlier this month at the Strategies for Success in Construction Lending conference sponsored by Granite Loan Management. Although he conceded that the multi-family sector's financials are weakening somewhat, Mr. Murray said the age demographics that tend to support apartment construction — young persons just starting out and older people starting to slow down — are "still relatively healthy."

Over the next five years, the number of 18 to 24-year-olds will increase by 1.3 million, or 5%, to 30.5 million,

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Requiring Partial Lien Waivers and Title Date Downs

Belts and Suspenders Will Never Hurt You!

By Robert J. MacPherson, Postner & Rubin, New York, NY [2]

It is common and prudent for Lenders to require a "title date down," or search for encumbrances recorded after the mortgage, prior to making monthly construction loan advances. The purpose is to ensure that the mortgage recorded when the loan was made maintains its priority over all other claims on the property. If the search is clear, the Lender makes the advance with comfort that its security is protected. And while that may be true, i.e., the legal status of the mortgage as a first lien on the property is secure, it is not necessarily true that other factors will not imperil the Lender's position.

Before the decision was made to make the loan, the Lender considered several factors, in addition to its ability to secure its loan through a first lien on the property. The Lender took into account the financial strength of the borrower, the value of the property at the time the loan was made and its projected value with the improvements the loan will fund.

A title date down addresses only one of those factors, the position of the mortgage as a lien on the property in relation to other liens. What, if anything, can a Lender do to see that the other factors upon which it made the decision to make the loan do not change in a negative way? Requiring partial, or interim, lien waivers from major contractors and suppliers is a simple, inexpensive way to ensure the loan proceeds get invested in the property and that the borrower not get surprised with a lien claim they cannot afford to satisfy.

Many Lenders think the title date down is sufficient. They may argue that lien waivers are not required by the local lien law and do not provide any more legal protection than the title date down — then why ask for lien waivers? General contractors may echo that argument, since the burden will fall upon them to obtain the lien waivers. The answer is that laws get written to address problems that have come to the legislature's attention. Just because the legislature has not seen the benefit of lien waivers is no reason a Lender should not take advantage of a simple solution to a common problem.

In a perfect world, the general contractor uses payments from the owner, normally the proceeds of a loan, to pay its

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Annual Strategies Seminar Shines in Sunny Florida

The 2004 Strategies for Success in Construction Lending (SSCL) Seminar took place this past December 7–8, at the JW Marriott Orlando, Grande Lakes Resort in Orlando, Florida. In attendance were over 100 leaders in the construction lending industry.

The two-day summit was highlighted by Keynote Speaker, Andrew Cuomo, the former Secretary of Housing and Urban Development who spoke on the long overdue reforms needed in the primary market. Other session highlights included a "Lender Round Table — Industry Challenges" moderated by Tom Hallock, SVP at Affinity Bank, "Manufactured Housing Finance Lien Perfection" led by Marc Lifset and Deborah Robertson of McGlinchey Stafford PLLC, "Don't Shoot the Inspector! — An Interactive Discussion" led by Mark Chapin from FNIS Hansen Quality, "Home Building & Economic Forecast" led by Robert Murray, VP Economic Affairs from McGraw-Hill Construction, and an "Open Forum — Ask the Experts" Q&A, which featured attorney panelists Chip Sander and Marc Lifset.

"…[SSCL] is the best annual gathering of industry professionals that I am aware of — the opportunity for networking is excellent…"

The second day highlights included legendary golfer Chi Chi Rodriguez, who spoke on motivation and success, while Sharon Heitman and Erik Mills from The Heitman Group led "The Competitive Edge — A Lender-by-Lender Review and Comparative Analysis" segment. "Construction Lending Sales Tools — How to Build Your Business" panel was moderated by The National Association of Residential Construction Lenders (NARCL) Executive Director, Richard Nirk and panel members included IndyMac Bank, Market Street Mortgage, Affinity Bank, National City Mortgage, and First Horizon Home Loans.

The 2004 SSCL Seminar was sponsored in part by IndyMac Bank, McGraw-Hill Construction and The National Association of Residential Construction Lenders. Andrew Cuomo's exceptional speech set the tone for the event while eight-time PGA winner Chi Chi Rodriguez drove the event home not only with his impassioned speech on the last day, but also during the seminar's Golf Event, which was held at The Ritz-Carlton Golf Club.

This year's conference was the 6th annual SSCL Seminar, which celebrated its success by hosting the seminar in Orlando, Florida. "This was the first year the seminar was held outside of Colorado, as we were looking to capture attendees from the East Coast and Southern States," said Penny Roach, Executive Vice President of Business Development for Granite Loan Management. The seminar will move back to Colorado for 2005, where it will be held on December 7–8, at The Ritz-Carlton, Bachelor Gulch, in Avon, Colorado. Subsequent seminars will continue to move locations in order to better accommodate attendees.

Presented by Granite Loan Management, the seminar was founded to provide a forum in which members of the construction lending industry could gather once a year to exchange thoughts and ideas. Now one of the most successful seminars of its kind, and one of the best-kept secrets in construction lending, the two-day event continues to focus on core issues facing the industry, while highlighting up-to-the-minute topics in the ever-changing construction lending market. "We consistently look for speakers and topics that will educate our attendees while recapping those issues that are constant throughout the industry," says Bill Cobb, President of Granite Loan Management.

To quote 2004 seminar attendee Jeff Todhunter from HomeStreet Bank, "Granite's success in this Construction Lending seminar is the best annual gathering of industry professionals that I am aware of — the opportunity for networking is excellent, as is the seminar content and venue. I'll be there next year!"

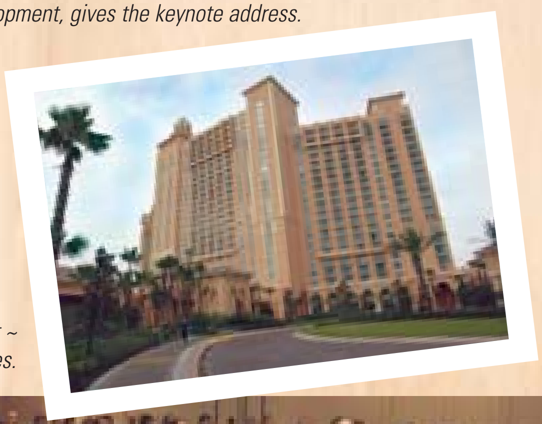
SSCL presenter Granite Loan Management would like to thank each of last year's sponsors, speakers and attendees for making The 6th Annual SSCL Seminar a truly remarkable event and look forward to seeing you in 2005.

Scenes from Strategies for Success in Construction Lending

December 7–8, 2004 • Orlando, Florida

Andrew Cuomo, former Secretary of Housing & Urban Development, gives the keynote address.

Sponsor Jim Kerr from McGraw-Hill Construction and JPMorgan Chase's Dick Lloyd.



The JW Marriott ~ Grande Lakes.

Six-time PGA Champion Chi Chi Rodriguez puts on a show for conference attendees.

Participants listen in rapt attention during one of the conference seminars.

Chi Chi Rodriguez with Granite Loan Management president Bill Cobb.

MF Seen Growing in '05

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the economist pointed out. At the same time, the number of 55 to 64-year-olds will rise 5.8 percent, from 30.4 million to 36.2 million. He also noted that multi-housing will be helped by a continued push for downtown development, especially along the coasts, where the back-to-the-city and urban infill movements are in full swing.

Indeed, a number of large apartment projects were started last year on both coasts, including a $136 million, 309-unit condominium in Bal Harbour, Fla.; a 576-unit, $124 million condo in Boston, and a $100 million, 300-unit condo in Honolulu. Of the 10 largest developments started last year, only one — a 305-unit, $89.5 million condo tower in Las Vegas — was not in a coastal state.

Meanwhile, with short-term rates continuing to rise, the single-family side is expected to slide, according to McGraw-Hill's *'05 Outlook.*

"Single-family housing has been the savior this year and the last three years," Mr. Murray told the group. "It has yet to slow. It just keeps going and going and going. But going into 2005, there is a real concern about whether single-family can keep up its torrid pace."

According to McGraw-Hill's numbers, which the economist stressed are its own, not the government's, single-family starts will top out at 1.53 million units in 2004, an 8% increase from 1.417 million units in 2003.

"That's a gangbuster number," the *Outlook*'s author said. "It's the highest in the last 10 or 11 years." But for the coming year, he is expecting starts to fall out by 7%, to 1.425 million, as mortgage rates creep upward to 6.3–6.4% by mid-year and perhaps "near 7%" by the year's end.

Requiring Partial Lien Waivers and Title Date Downs

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subcontractors and suppliers involved in the project. As the work is performed, the contractor prepares a requisition for the work done in the previous month. Once the Lender and owner are satisfied the work shown in the requisition is done, a loan advance is made and the owner then makes a payment to the general contractor. Before that happens, most Lenders require a title date down to make sure no liens have been filed since that last loan advance. Presumably, if the general contractor has not been paying its subcontractors and suppliers, they will file mechanics liens that will show up in the title date down. Until those liens are cleared up, no payments are made to the general contractor. But, that is in the perfect world.

The reality is that subcontractors and suppliers usually file liens only as a last resort. It may be several payment cycles before a lien claim shows up, and the Lender and owner discover that a significant amount of money paid to the general contractor has not been used to pay debt on their project. Hopefully, the general contractor still has the money he has been paid, but that would be in the perfect world we left sometime ago. The solution to this dilemma is to proactively manage the process by requiring the general contractor provide lien waivers from its major subcontractors and suppliers with each monthly payment request.

The lien waivers should reflect the payments made by the general contractor out of the last monthly payment and, after deducting the amount due the general contractor for general conditions, profit and any self performed work, should roughly equal the amount of the last payment. If there is a wide variation between the lien waivers and the last payment it could signal the general contractor is not paying his subcontractors, or that the general is overbilling the owner, also known as front end loading. For example, the general contractor may request $10,000 for rough plumbing

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Requiring Partial Lien Waivers and Title Date Downs

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early in the job, knowing the true value is only $7,500. Requiring lien waivers as the job progresses limits the ability of a general contractor to front end load.

Should the Lender be concerned if its loan is in a first secured position? The Lender should. The Lender's goal is a completed project, which provides security for a performing loan. Once the liens claims start to come in, or it is discovered the general contractor has been paid in excess of the true value of the work in place, it is usually too late to do anything but damage control. Monitoring the general contractor by requiring lien waivers will alert the Lender to any problems early enough to take corrective action.

The general contractor should be asked to identify its major subcontractors, e.g., electrical, plumbing and HVAC subcontractors, and the major suppliers, e.g., masonry, lumber, roofing, windows and doors, at the time he submits his schedule of values for monthly payments purposes. The inspectors reviewing payment requests should check this list against the invoices submitted with the requisitions and the material on site. For example, if all the lumber on site is stamped "ABC Lumber Co." and no lien waivers have been provided for ABC, this should be pointed out to the general contractor with a request it be addressed before the next payment is made.

Title date downs done regularly will help protect the Lenders legal position. A practice of requiring monthly lien waivers provides practical protection to the Lender's greater economic interest in seeing that its loan is used for the property the loan is improving.

Granite Construction Inspections (GCI) Debuts Website

GCI is pleased to announce the launch of their new website, www.GCInspects.com!

GCInspects.com

www.GCInspects.com will serve as the sole website for Lenders and our National Inspector Network. It will provide comprehensive tools for inspection ordering, reporting and photo uploading throughout all phases of construction.

Mark Your Calendar:

"Strategies for Success in Construction Lending"

The Ritz-Carlton, Bachelor Gulch • Avon, Colorado
December 7–8, 2005

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In This Issue:

Construction-at-a-Glance

	Jan. 04	Jan. 05
Total Monthly Housing Starts*	1,934	2,183
YTD Permits-Single Family*	98.4	105.1
Monthly New Home Sales*	1,155	1,106
Unemployment Rate	5.7%	5.2%

**Thousands of Units*

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