

Construction Dynamics at Initial & Final Closing: *What Could Possibly Go **WrOnG**?*

Monday, July 24, 2023
3:00-4:30 p.m.

Midwest Lenders Association

17th Annual Conference

Swissotel

323 East Upper Wacker Drive

Chicago, Illinois 60601



Moderator:



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Panelists:



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I: Pre-Initial Closing

1. Contractor Vetting / 2530 Clearance

2. Building Permits

- How
- When issued
- When to pull

3. Performance & Payment Bonds (*924554M; 92452A-M*) (or Completion Assurance Agreement) (*92450M*):

- Federal Register Check
- Power of Attorney
- “Same day” Surety Letter

4. Lump Sum *vs* Cost-Plus Construction Contract (*92442M*)

I: Pre-Initial Closing (Cont.)

- 5. **Liquidated Damages:** ➤ How they're calculated and assessed
 - Is there room for negotiation?
- 6. **Incentive Payment & Retainage Reduction Riders:**
 - *When to use—or not?*
- 7. **Contract Exhibits:**
 - General Conditions (*AIA201-2007*)
 - Supplementary Conditions (*92554-M*)
 - 2328 / Cost Breakdown, Plans & Specs Index
 - Davis-Bacon Wage Decision(s)
 - Construction Progress Schedule (*5372*)

I: Pre-Initial Closing (Cont.)

8. Optional Offsite Storage Rider to the CC:

- How and when?

9. Tenant Relocation Escrow:

- How much? (Amount)
- Who holds funds?
- Release test?

10. Pre-Construction Conference:

- When is it held?
- Who attends?
- What happens?

II. Between Initial Closing and Final Closing

11. Mid-construction Contractor Substitution:

- Why?
- Implications for 2530 Clearance/Construction Contract
- P&P Bonds / Surety
- Building Permits
- Builder's Risk Insurance

12. Construction Draw (92448) Issues

13. Change Orders (92437):

- Who, Why, When, & How?

III: Final Closings and Beyond

14. Mortgage Increase:

- When to apply
- How to document

15. Mortgage Decrease:

- Why does it happen?

16. Maximum Insurable Mortgage (92580):

- Anatomy & conditions
- Davis-Bacon Clearance and Escrow Agreements

III: Final Closings and Beyond

17. Final Closing Dynamics, including:

- Final Trip Reports *(95379)*
- Incomplete Items Escrow *(92456M)*
- Certificates of Occupancy *(CO's)*
- Permissions to Occupy *(PTO's)(92485)*

18. Radon Testing at Final Endorsement:

- Testing protocol
- How to pay for it

Panel Participant Bio's

- **Brian Blue** - Brian Blue is a Director with Gershman Investment Corp. He works and lives in Columbus, Ohio and has been a MAP Underwriter for 13 years. Prior to working in underwriting, Brian was a Commercial Real Estate Appraiser
- **Matt Braver** – Matt Braver has been an FHA Construction Loan Administrator with Lument Real Estate Capital since 2019. Since joining Lument's predecessor, Red Capital Group, in 2010 he has held a few different positions (Fannie Mae, Tax Credit, and Balance Sheet asset management). Prior to joining Lument Matt worked for a tax credit syndicator and in construction project management.
- **Eric Golicz** - Eric Golicz is a Technical Specialist Branch Chief with HUD's Multifamily Midwest Region, Production Division covering the Detroit and Minneapolis satellite offices. His primary duties include supervising a team of three appraisers, seven construction analysts and two closing coordinators. Eric has been with the Department for 19 years, the first 11 years as a real estate appraiser before moving to Branch Chief in 2015. Prior to coming to HUD, he was an independent fee appraiser for 13 years in the Detroit area.

- **Matt Towey** - Matt Towey joined HUD after graduating from Law School in 2009, he joined the Legal Honors program at the Chicago Regional Office. At HUD, Matt serves as an Attorney-Advisor, providing legal counsel to the Offices of Multifamily Housing, Residential Care Facilities, Public & Indian Housing, Departmental Enforcement Center, and Community Planning & Development.
- **John Vihstadt, Esq.** - John Vihstadt is a multifamily housing and healthcare financing partner at Krooth & Altman LLC in Washington, D.C., and represents lenders exclusively. Prior to joining the firm in 1989, he served as Executive Assistant to the President of Ginnie Mae and as counsel to the Select Committee on Aging, U.S. House of Representatives. An active member of the Mortgage Bankers Association (MBA) and the National Housing Conference (NHC), his pre-pandemic career goal was to dine at least once in every HUD cafeteria in the country. He came close!



Questions?