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Once a Failed REMIC, Never a REMIC

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Abstract

This article analyses how courts may reach results that undercut arguments that REMICs were the owners of the mortgage notes and mortgages for tax purposes. And even if the majority of states rule in favor of REMICs, the few that do not can destroy the REMIC classification of many mortgage-back securities that were structured to be — and promoted to investors as — REMICs. This is because rating agencies require that REMICs be geographically diversified in order to spread the risk of defaults caused by local economic conditions, REMICs hold notes and mortgages from multiple jurisdictions. Most, if not all, REMICs own mortgages notes and mortgages from states governed by laws that the courts determine do not support REMIC eligibility for the mortgages from those jurisdictions. This diversification requirement makes it very likely that REMICs will have more than a de minimis amount of mortgages notes that do not come within the definition of qualified mortgage under the REMIC regulations. Professionals who helped structure these securitizations may face liability if the IRS were to find that a purported REMIC was just purported and not a REMIC.

Keywords: mortgage-backed securities, MBS, Real Estate Mortgage Investment Conduit, REMIC, beneficial ownership

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4. See Treas. Reg. § , volume 1 , issue jou_issue[1].xmlText , p. 860 - 861
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