The Property Line — Understanding Warehouse Facilities and Repo Lines

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Welcome to The Property Line, a commercial real estate podcast brought to you by Seyfarth Shaw's Real Estate Department. The Property Line is a brief discussion of current market trends, bringing you insights from our acclaimed national team of real estate attorneys. Each episode focuses on a key takeaway for the busy real estate professional. Now, on to this week's discussion.

Dan Evans: Hello and welcome back to The Property Line. My name is Dan Evans, a partner in Seyfarth Shaw's New York office. Today we're joined by Stephen Bush, counsel in Seyfarth's Real Estate Department, resident in our Atlanta office, and a gentleman who has seen quite a number of deals in his practice, both at the originations level and at the JV and above levels. Stephen, thank you for joining us today. We appreciate you joining.

Stephen Bush: Thank you for having me. It's an honor to be here.

Dan Evans: So we wanted to talk terminology at first, because there can be confusion in what we do. Different people would use different terms for things. When people in commercial real estate talk about a warehouse facility or a repo line, where do those concepts overlap and where are they the same?

Stephen Bush: Sure. So those two words actually describe different things, which is why they get used loosely. Warehouse facility describes what the financing does—it gives an originator or a debt fund revolving capital to fund mortgage loans and hold them until they're repaid, sold, or securitized, typically. Repo or repurchase describes another common legal structure used to deliver that financing. So in a repurchase facility, the originator—called the seller here—typically transfers a loan to the financing provider for cash and simultaneously agrees to buy it back later. The difference between the two prices here is the financing cost. And economically, that behaves a lot like secured lending. But a warehouse can also be documented as a secured revolving credit facility, as a participation, or as a loan-on-loan facility.

Where the form matters most is in insolvency. A properly structured repo can qualify for safe harbor treatment under the bankruptcy code, which means that the buyer's contractual right to terminate, net, and liquidate can be exercised without the ordinary delay of the automatic stay, as it typically would. And that's a meaningful advantage if your counterparty files. But the nuance worth keeping—and this is something to emphasize—is that the safe harbor doesn't necessarily create the remedies. It protects the exercise of the ones your contract already gives you. So if your documents are sloppy about what you can do on default, the safe harbor just lets you exercise sloppy remedies faster, essentially. Typically as well, the seller takes on margin obligations, asset-level approval rights, mandatory repurchase events, undefined triggers, and cross-default exposure, but those are negotiated terms, not automatic features necessarily of the label. So between the two terms, they certainly overlap, but the documents determine the risk and the meaning behind both of them.

Dan Evans: That's the best I've ever heard it explained. And I know a lot of people use those terms interchangeably and should not when it matters. Moving on to another question—rates, valuations, credit availability have all moved, and moved sharply in instances. What's changed over the past several years, and what does the market look like now?

Stephen Bush: Sure. So rates in the exit market both matter, but they do different work, and it's important to keep them separate, since people blur the lines between them as well. The rates affect the underlying loan, which the property borrower's debt service coverage, the property valuation, and the debt fund's own floating rate cost of capital on the facility. Higher rates typically squeeze the borrower, pressure the appraisal, and raise the fund's carry all at once. When it comes to the takeout market, this does something different, and it determines whether the facility functions the way it was designed to function at all. A warehouse is built on an assumption that loans come in, they season briefly, and then leave into a securitization or a loan sale. So if the exit door closes, the machine itself is backed up.

And something here to stress as well is that non-bank lenders, they need leverage in every rate environment. That's not going to change, but what changes is how much they draw, what it costs, and whether there's a way out of the other side. Looking back from 2022 and '23, both went the wrong way at the same time. Rates rose sharply, the securitization and loan sale markets slowed dramatically, and loans stayed on facilities much longer than originators had underwritten. And that's a scenario where it stresses every structural term at once. For instance, facility maturity, asset aging and seasoning provisions, margin rights, and above all, the reliability of the takeout. Financing a transitional loan for six months is fundamentally different—it's a fundamentally different risk from financing the same loan for three years, because the collateral itself, it's aging, the business plan itself may be off track, and the market can move against you the whole time.

If we look now to 2026, I would say things look substantially more functional. Real estate CLO issuance through mid-year came in around 26 billion through June. And that's something like 50% ahead of the same period last year. And broader commercial lending activity has recovered as well. So the exit door is open again, which is what makes this product work overall. One thing to stress, though, as well, is that I wouldn't call this a return to cheap money. And I'd caution anyone against that framing, because the Fed's target rate is still in the 3½ to 3¾ area, and performance is highly differentiated, especially when it comes to property type and by market. Looking at multifamily and industrial, which are very different conversations from office—and even within a specific property type, the market and the business plan matter enormously. So certainly some differences between now and a few years ago, but things look a little more steady and clear as we look into 2026 and onward.

Dan Evans: In listening to your discussion there, I guess two questions come to mind. The first is obviously the exit you talked about, and if the exit door closes, we have issues. Can you walk us through the life cycle of a loan that goes onto one of these lines? How is this actually used in real life practice?

Stephen Bush: Sure. So a typical transaction starts when the debt fund originates a floating rate bridge or transitional loan, like value-add multifamily, a lease-up, or repositioning. And then the warehouse provider approves that specific loan as eligible collateral and advances an agreed-upon portion of the principal, which say would be a defined advance rate against the loan amount. The debt fund, it funds the rest out of its own equity, which is otherwise called the haircut or retained piece, and it continues to manage the relationship with the property borrower from day to day, such as draws, approvals, business plan monitoring. And from the property borrower's chair, nothing really looks different. They're dealing with their lender directly.

The loan would then stay on the facility until it's repaid, refinanced by the property borrower, sold, or transferred into a CLO. In the CLO step—that's the important one to understand, because it changes the risk profile fundamentally. Typically, that CLO itself is what replaces the shorter duration, marked, recourse warehouse financing with longer duration, match-term, non-mark-to-market financing at the securitization level. So you've essentially swapped a facility that can margin call you and matures relatively soon for term financing that matches the assets and generally can't be marked against you, which is a much better risk profile for the originator. And that's why securitization market reopening, it matters so much to this whole product in general.

One thing as far as how this works day to day and what they specifically are—push back on the idea that every warehouse is just an aggregation bridge. Though, I mean, the facilities, they also serve as ongoing portfolio leverage, and they're used for single asset financing. But the problem arises when a planned takeout disappears and when the facility's maturity and margin rights stay exactly where we are, the rate movements can aggravate both sides of that mismatch.

Dan Evans: So we're talking about various risks involved here. But when you're actually negotiating, when you're documenting one of these facilities, what are the terms that are really driving that risk?

Stephen Bush: I would typically group them into five areas. First, dependable capacity. Is the line committed? Is it uncommitted? An uncommitted line can be kind of a mirage in a distress scenario. It's capacity right up until you need it. And what qualifies as an eligible asset, and who decides? Is eligibility objective, or does a provider have discretion?

Second, you come to economics—advance rate, pricing, unused fees, step-downs as an asset ages, and how much equity the seller has to retain on each loan. That retained piece, I mean, it's not just economics, it's alignment. It's the reason the originator keeps caring about the loan after it's on the facility.

Number three, for terms that we talk about and what we negotiate, which is really where the risk lives, is margin. And many facilities emphasize credit event marks rather than broad market marks, but it's not universal. And in my experience, the practical protection is to negotiate the trigger, the valuation methodology, the dispute rights, the thresholds, and the cure periods expressly. A general good faith obligation is not a substitute for specific valuation language.

Fourth, guarantee or recourse and contagion—looking at something like guarantees and how they're sized and triggered. Cross-defaults, cross-collateralization, and whether trouble with one asset or one facility can spread across the platform.

And then lastly, you look at control, like amendments, workouts, enforcement, servicing transfers—who holds the pen when things go sideways. And critically, the underlying mortgage documents, they have to permit the pledge in any eventual transfer of the loan. So if the warehouse assumes it can take and transfer the note, but the mortgage docs don't cleanly allow it, you have a defect right at the collateral level. And so those documents right there—the facility and the underlying loan—they really need to be designed together, not in separate silos by separate terms. And so for any of these terms that we're talking about, it's something that has to be conceptualized and thought of holistically when you're looking at either of these sides of the transaction.

Dan Evans: Fantastic. I think we have time for one more question, and then kind of anything you wanted to close on. Looking ahead, where do you see, or what do you think are the biggest opportunities and pressure points that borrowers and lenders on both sides should be watching?

Stephen Bush: The three biggest things are liquidity, maturities, and interconnectedness. Liquidity has improved, and that's really the opportunity. Collateralized loan obligation issuance has rebounded meaningfully. Alternative lenders are active, and bank and insurance capital are competing selectively for the better assets. For originators, that means more funding and more potential exits. Both ends of the pipe, they're more open than they were, say, two years ago.

When it comes to maturities, this is the principal pressure point. Industry estimates put roughly something like $875 billion maturing in 2026. And notably, the highest proportional concentration sits in the combined category of credit companies, warehouse lenders, and other non-bank lenders. And that's the exact corner of the market we're talking about. So extension risk and realistic takeout assumptions, they have to be central to the analysis. A maturity you can't refinance is a maturity you have to extend, and extensions are where the leverage between borrower and lender gets renegotiated.

Third, on regulation—the banking agencies issued new capital proposals earlier this year. The comment period has closed, but the proposals have not necessarily been finalized. Their effects vary by bank category and by exposure, so I wouldn't forecast the ultimate impact on facility capacity or pricing. Anyone who tells you they know precisely how it shakes out is probably hedging a guess, or at least in an educated manner. Separately, regulators, they've expanded reporting on bank exposure to non-bank financial institutions, and they continue to refine it. This tells us where their attention is even before there is any final rule on that.

So ultimately, the market is substantially healthier, but it's not frictionless. The best positioned platforms, they'll have three things: diversified funding, so they're not hostage to one source; realistic exits, underwritten to today's market rather than yesterday's; and then third, carefully limited margin and cross-default provisions, so a single problem stays a single problem. And liquidity solves a lot of the sins, right up until it doesn't.

Dan Evans: A very true statement indeed. Looking at the clock, it appears we're at the end of our time. So I think we'll wrap up here. Stephen, thank you so much for joining us today and for your insights. Folks, if you have questions, Stephen quite obviously knows what he's talking about.

Stephen Bush: Thank you so much for having me.

Dan Evans: Oh, yeah, no, thank you. Thank you.

Stephen Bush: Thank you.

Dan Evans: Special thanks to our listeners for tuning in. Please keep an eye out for future episodes.

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