



CMBS Bedbugs



Hosted by 1st Service Solutions
Part 1 of our 2015 Webinar Series:
“Exposing the Truth About CMBS”

MYTHS AND FACTS ABOUT BEDBUGS

Myths About BedBugs

- Bed bugs only bite in the dark
 - Although bed bugs tend to be more active at night, they can bite at anytime.
- Only dirty, cluttered homes get bed bugs
 - Anyone can get bed bugs. Bed bugs have been found in homes of the wealthy and poor.
- Bed bugs cannot be seen by the naked eye
 - Bed bugs are small but can be seen with the naked eye.
- Bed bugs are only found on the bed
 - Although they are called bed bugs they are not only confined to the bed.



Facts About BedBugs

- Bed bugs are not known to cause or spread diseases
 - Bed bugs have not been shown to cause or spread diseases.
- Bed bugs can live for many months without feeding
 - Bed bugs can live for many months without feeding.
- Products can claim to be effective for bed bugs without proof
 - Pesticides registered with the Environmental Protection Agency do have to have data to back their claims. But products without pesticides may make exaggerated claims without proof. Use common sense. If it sounds like a miracle product, it probably isn't.



MYTHS AND FACTS ABOUT **CMBS** BEDBUGS

Myths About **CMBS** Bedbugs

- CMBS bed bugs will only bite you if you are in default
 - There are many things buried in the CMBS loan documents that allow a servicer on a performing loan to inflict pain if certain things occur (like control the cash when the debt service coverage drops below a certain threshold)
- Only unsophisticated borrowers get bed bugs
 - Even the most sophisticated borrower can get CMBS bed bugs, if they do not know exactly where to find them
- CMBS bed bugs cannot be seen by the naked eye
 - CMBS bed bugs are small but they can be seen by the naked eye, as long as the eye is trained to spot them. CMBS borrower advocates are trained to spot bed bugs
- CMBS bed bugs are only found in loan documents
 - There are many other documents that govern CMBS loans like pooling and servicing agreements and borrowers are not a party to these agreements



Facts About **CMBS** Bedbugs

- CMBS bed bugs are not known to cause or spread diseases
 - CMBS bed bugs have not been shown to cause or spread disease... so far, but studies are currently being done
- CMBS bed bugs can live for many months without feeding
 - CMBS bed bugs can live many months without feeding and then suddenly, they bite without warning
- Products can claim to be effective for CMBS bed bugs without proof
 - There are advocates without the proper background and unfortunately, they are allowed to make exaggerated claims about their 'pesticides' without proof. As a commercial real estate owner, do your research before hiring an advocate.



EXAMPLES OF THE COMMON TYPES OF BEDBUGS

The Common Household Bedbug

(Cimex lectularius) is found worldwide. These insects adapt well to human environments and typically live in temperate climates.



In CMBS, the *Cimex lectularius* is typically found in existing loan documents and look like this:

- CARVE-OUT GUARANTEE
 - “Has remained and intends to remain solvent and has maintained and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.....”
 - Cherryland Mall case

In CMBS, the *Cimex lectularius* is typically found in existing loan documents and look like this:

- PRE-STIPULATION TO A RECEIVER
 - Under certain scenarios, a receiver has already been stipulated to and/or other rights waived
 - Modification documents almost always include springing 'deed in the box' and receiver actions upon occurrence of another default

In CMBS, the *Cimex lectularius* is typically found in existing loan documents and look like this:

- TRIGGERS
 - Cash management
 - Implementation of reserves
 - Elimination of cap on reserves

In CMBS, the *Cimex lectularius* is typically found in existing loan documents and look like this:

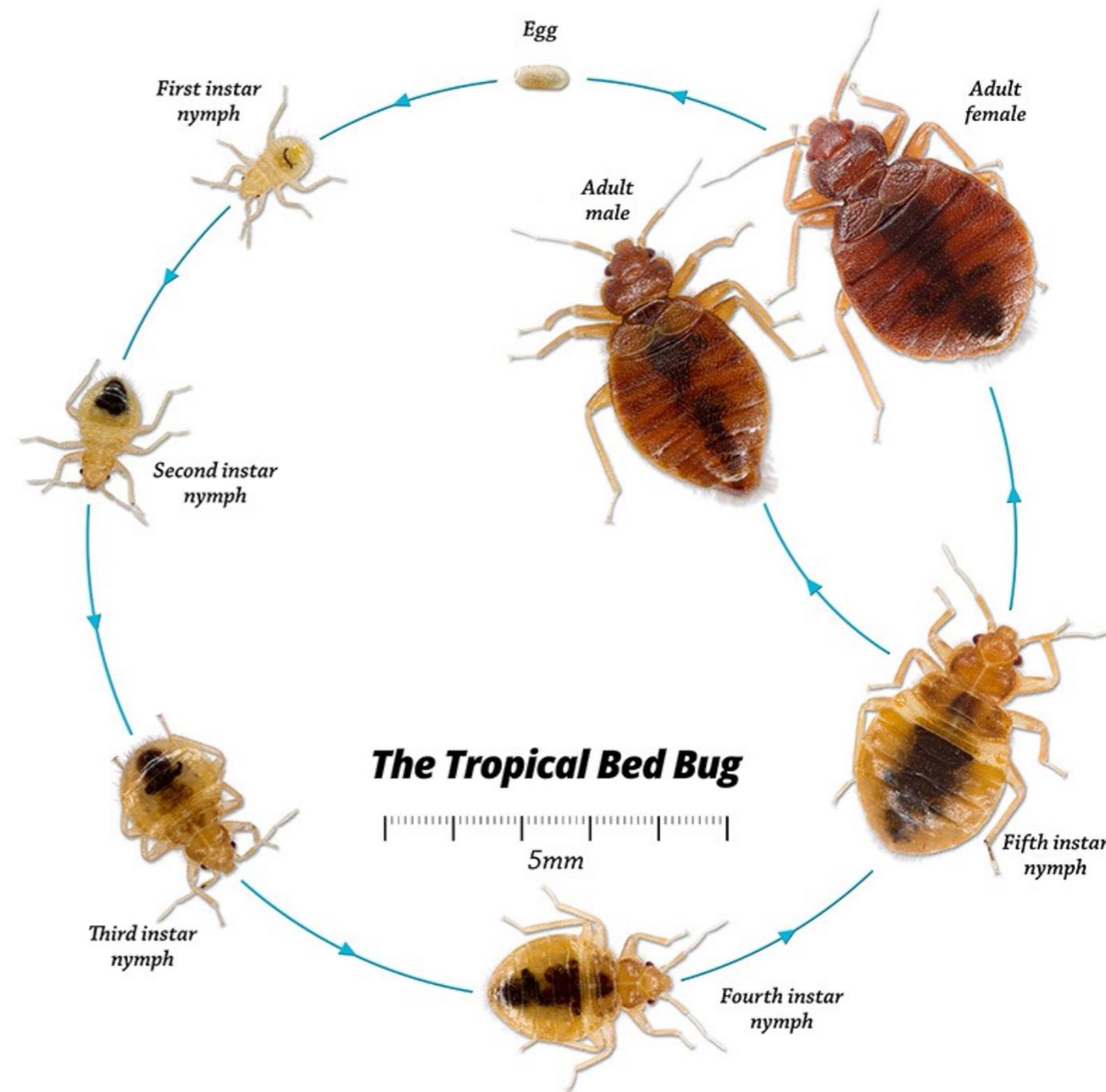
- Pooling and Servicing Agreement
 - Governs the servicing and disposition of the loans in a specific pool
 - There are times that loan documents and the pooling and servicing agreement do not agree

In CMBS, the *Cimex lectularius* is typically found in existing loan documents and look like this:

- **Intercreditor Agreement**
 - When there are two lenders involved in one property or loan, there is often an Intercreditor agreement
 - Governs specific Lender's authority and roles
 - Necessary document to have when negotiating with a Lender yet borrower's do not often possess the document

The Tropical Bedbug

(Cimex hemipterus) also feeds on humans but prefers more tropical regions such as florida.



In CMBS, the *Cimex hemipterus* is typically found at the time of an assumption of the loan and look like this:

- LIMITS ON ASSUMPTIONS

- When assuming a CMBS loans, check the language contained in the “Lender shall not unreasonably withhold it’s approval” section to ensure that it does not state “Lender shall not unreasonably withhold it’s approval to a one-time assumption” or you, as the buyer will never be able to sell the property without the new buyer defeasing the loan.



In CMBS, the *Cimex hemipterus* is typically found at the time of an assumption of the loan and look like this:

- WARM BODY CARVE OUT GUARANTEES
 - Buyers assuming CMBS loans will be expected to provide a warm body for the replacement carve-out guarantee – regardless of whether the existing carve-out guarantor was a warm body or not



In CMBS, the *Cimex hemipterus* is typically found at the time of an assumption of the loan and look like this:

- **BUYER IS COMPARED TO SELLER**
 - The single most misunderstood fact about a CMBS assumption approval is that it has nothing to do with whether the buyer can get a new loan or not
 - The approval is based on whether the assumption alone will make the CMBS Trust any worse off than it was with the current owner



In CMBS, the *Cimex hemipterus* is typically found at the time of an assumption of the loan and look like this:

- RESERVES

- At the time of assumption, the servicer will reunderwrite the loan to ensure sufficient reserves are in place for the remainder of the life of the loan
- When they are not, reserves will be required; whether or not they were in place at the time of the assumption



The Bat Bug

(Cimex adjunctus) have also been observed in tropical regions as well as more temperate areas. This species feeds primarily on bats, although they do sometimes feed on human hosts.

(Cimex Lectularius)



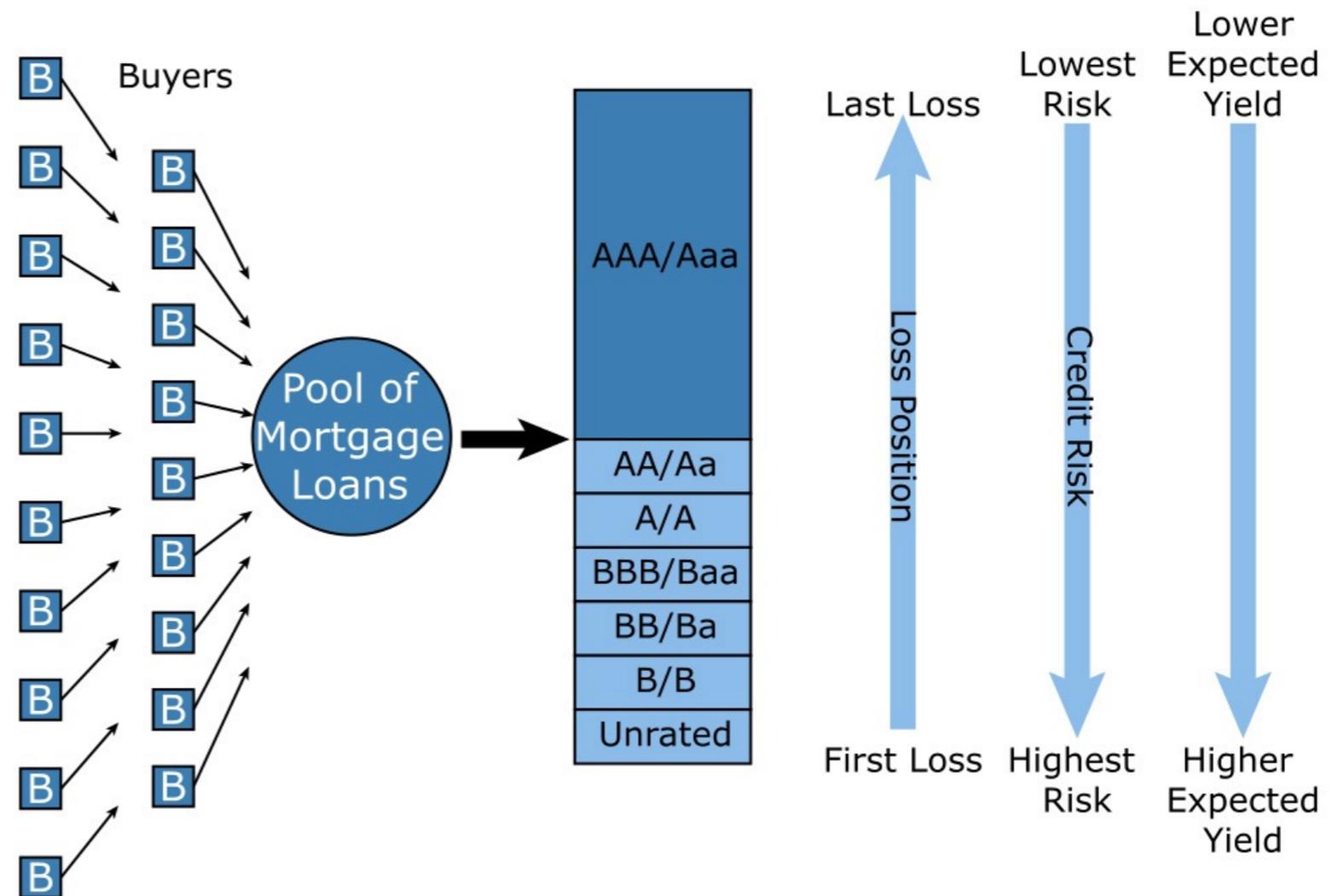
(Cimex Adjunctus)



In CMBS, the *Cimex adjunctus* is typically found at the time a loan gets transferred to the Special Servicer. Those bed bugs look like this:

- Special Servicers

- Appointed by lowest rated bond holders
- Change as bonds suffer losses
- Actual losses (not “book” losses) cause change of control
- Affect restructure decisions



In CMBS, the *Cimex adjunctus* is typically found at the time a loan gets transferred to the Special Servicer. Those bed bugs look like this:

- Pre Negotiation Agreement
 - Non-negotiable
 - A must
 - TIC structure
 - Without one = Foreclosure



In CMBS, the *Cimex adjunctus* is typically found at the time a loan gets transferred to the Special Servicer. Those bed bugs look like this:

- Cash

- All net cash flow must be sent to servicer monthly
- If cash management agreement is in place - modify the waterfall
- When servicer advances for property expenses = Receiver
- Servicer changes will disrupt cash management
- New cash / capital is required for a modification



In CMBS, the *Cimex adjunctus* is typically found at the time a loan gets transferred to the Special Servicer. Those bed bugs look like this:

- Exit Strategy

