

# Distressed Asset and Workout

## Overview

We provide strategies and solutions throughout all phases of problem loan resolution, including workouts, litigation, and bankruptcy proceedings. Our representation begins with a thorough review of the debt relationship, which includes an analysis of credit and litigation risk from which we develop a timely, cost-effective strategy. We represent a wide variety of creditors including banks, insurance companies, property management firms, real estate investment trusts, asset-based lenders, commercial finance companies, indenture trustees, bondholders, receivers, and creditors' committees. Our experience, developed throughout several real estate cycles, includes real estate financing, litigation, and bankruptcy.

## Experience

- Large-scale commercial foreclosures; commercial loan workouts, including loan/mortgage modifications, deed-in-lieu agreements, cross-default/cross-collateralization agreements, loan bifurcation agreements, and cash-flow mortgages; and CMBS loans and related CMBS loan servicing.
- Workouts of bad condominium and resort loans.
- National workout counsel for the holder of a \$30 billion portfolio of mortgage loans secured by multifamily properties throughout the country and directly responsible for more than 500 problem loans in over 30 states.
- Represented various REMIC Trusts and special servicers in over 50 problem loans involving a principal balance in excess of \$1.1 billion secured by commercial properties of all types.
- Represented large construction lender in the restructure of 12 loans ranging from \$25 to \$125 million for various development projects comprised of condominium, multifamily, and commercial uses.

- Represented nationally recognized special servicer in connection with foreclosure of a \$108 million senior loan secured by a luxury hotel in Miami, included addressing various collateral attacks on the proceeding by the mezzanine lender.
- Lead trial counsel in case where we filed a commercial foreclosure action in Florida state court in St. Petersburg, Florida, as to the Safety Harbor Resort and Spa in Safety Harbor, Florida, on behalf of our national bank client. After the filing of the state court action, the borrower filed a Chapter 11 bankruptcy proceeding and Wells became the largest secured creditor in the case. The Chapter 11 proceeding was hotly litigated with numerous depositions and hearings including a valuation proceeding. Shortly before confirmation, the bank sold its loan to a subsidiary of a global European bank. We continued as counsel to the secured creditor and proceeded to a four- to five-day plan confirmation trial. After this trial, and numerous follow-up hearings, the court confirmed a plan of reorganization which included most of the protections requested by the lender and paid its secured claim in full and partially paid its unsecured claim. The plan also contained protections to allow the lender to pursue the guarantors at the completion of the plan.
- Lead trial counsel in case where we initially filed a commercial foreclosure action in Florida state court in Miami-Dade County, involving a condominium development in Coral Gables, which after extensive written and deposition discovery, the appointment of a receiver and a special set summary judgment hearing, resulted in entry of a foreclosure judgment in favor of the client in an amount in excess of \$38.1 million. On the eve of a scheduled foreclosure sale, the borrower filed a Chapter 11 bankruptcy proceeding and client became the largest secured creditor in the case. The Chapter 11 proceeding was hotly litigated with numerous depositions and hearings, and then a three-day plan confirmation trial. After this trial, and numerous follow-up hearings, the Court confirmed a plan of reorganization which included all of the protections requested by the client and paid the client 100 percent on its secured claim. The plan also allowed the client to retain its lien on the property until paid in full. The client was further allowed to pursue the guarantors of the underlying debt.

- Lead trial counsel in case in which we represented plaintiff, a large commercial bank, in a hotly contested commercial foreclosure action involving undeveloped property with entitlements against the borrower, numerous junior lienors and various guarantors. Bank had acquired the loan at issue from the FDIC when it acquired numerous assets of the failed bank that had originally made the loan. After the case was filed in state court, additional parties were brought into the case by several defendants which resulted in the case being removed to federal court. After a number of extended hearings and significant discovery, the court entered a final judgment of foreclosure in an amount in excess of \$32.9 million including an award of in excess of \$800,000 in attorneys' fees and costs, and successfully took back the property for the client at a foreclosure sale held by a court-appointed special master appointed. Additionally, during the course of the foreclosure action, one of the third-party defendants added to the suit brought a third-party claim against bank client asserting a number of contractual and quasi-contractual claims arising from the conduct of Orion Bank before it failed and before the subject loan went into default. After additional discovery and extensive motion practice, the court held a two-day bench trial after which it entered a complete defense verdict in favor of bank client on the third-party claims.

## Insights

07.30.2020

Florida Governor Limits Mortgage Foreclosure and Eviction Relief to Non-Payment Defaults and Single-Family Mortgagors and Residential Tenants

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08.27.2013

What You Must Know About Florida's Commercial Mortgage Foreclosure Process

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01.08.2013

Checklist for Foreclosure or Deed-in-Lieu of Foreclosure Involving Subdivision and Condominium Properties

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01.03.2012

Nuts and Bolts of the Florida Commercial Mortgage Foreclosure Process

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07.01.2011

Primer - FAQs by Out of State Clients Relating to Florida Real Estate

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06.01.2009

Concerns for Lenders on Florida Condominium Projects: New Triggers for Turnover and Some Considerations on Successor Developer Liabilities

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10.17.2008

Positioning Real Estate and Lending Practitioners to Respond to the Emergency Economic Stabilization Act of 2008

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## Our Team

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## Related Practices

- Banking, Commercial, and Consumer Finance
- Construction
- Construction Litigation
- Construction Transactions
- Consumer Finance
- Creditors' Rights and Bankruptcy
- Crypto Insolvency and Fiduciary Practice

- Development
- Environmental, Land Use & Development Approvals and Litigation
- Litigation and Trials
- Public-Private Partnerships
- Real Property Litigation
- Title Insurance
- Investment Funds
- Real Estate Workouts and Problem Loan Resolution
- Distressed Health Care
- Real Estate
- Insurance

## Related Industries

- Banking, Commercial, and Consumer Finance
- Construction
- Real Estate
- Insurance