

→ Distressed Real Estate Loan Workouts and Enforcement

View our Distressed Real Estate Loan Workouts and Enforcement Brochure

Sheppard Mullin is uniquely qualified to advise clients on all aspects of distressed commercial real estate. We have a well-earned reputation for our expertise in real estate loan workouts, enforcement and bankruptcies in all asset classes, nationwide. With significant involvement, in and out of the courtroom, we negotiate and implement restructure plans for troubled real estate projects, equity interests and secured debt at any stage of the capital stack.

According to Chambers USA, our team has a “legendary” and “thriving restructuring and workouts practice.” We represent clients across the entire range of distressed real estate projects, including collateralized and securitized loans (including commercial mortgage backed securities) and portfolios of loans.

We advise on the benefits (and implications) of short term forbearance and standstill agreements, substantive loan and asset restructures and entity recapitalization, receivership, distressed property management, foreclosure remedies and bankruptcy. We devise feasible and durable exit strategies and effectuate defaulted loan sales, purchases and investments. As such, we help our clients assess their options and opportunities, enhance value, preserve reputation and develop creative and effective long-term business solutions. Our real estate loan workout transactions have saved iconic properties and revitalized neighborhoods.

We know commercial real estate; we know finance, the capital markets and financial structures; we know how to protect our clients in court. With a “last day first” insight, we bring a results-oriented mindset to bear in every distressed real estate loan workout or foreclosure. We bring about paths to partnership, certainty, finality and asset value creation for lenders, sponsors, investors, developers, debt funds, loan purchasers and sellers alike, while finding ways to minimize the risk of loss and unpredictability of litigation.

Loan Workouts and Enforcement Expertise

We have unmatched experience with respect to today’s cutting-edge issues, including:

- Bankruptcy and creditors’ rights
- Clean energy and C-PACE lending and structures
- Collateral realization events, discounts, purchases
- Commercial loan securitization
- Consent judgments of foreclosure
- Current management – future deed-in-lieu transfers
- Dual collateral implications and equity of redemption challenges and protections
- Discounted loan repayment (“DPO”) models
- Election of remedies, single action rule and anti-deficiency rules

- Environmental cleanup and liability, including safe harbors for lenders
- Equity slivers and value creation incentives
- Fiduciary duty
- Forbearance and loan modification agreements
- Foreclosure, receivership and consensual property management
- Guaranty enforcement
- Intercreditor, participation, co-lender and repurchase agreements and disputes
- Interference with remedies and non-recourse carveouts
- Lender liability claims and defenses
- Loan on loan structures, leverage and risk
- Loan sales (portfolio, individual and joint venture interests)
- Loan sale financing
- Mezzanine loan foreclosure and commercial reasonableness
- Note A / Note B / Note C
- Office-to-residential conversion prospects and roadblocks
- Partnership and joint venture disputes and workouts
- Preferred equity investment enforcement and recognition agreements
- Pre-negotiation agreements
- Property disposition and exit strategy development
- Real estate common equity investments, returns and enforcement
- Recapitalizations, and other rescue finance options
- Remedies, including provisional remedies (State and Federal)
- Section 363 sales
- Section 1111(b) considerations
- Standing to sue and ownership of debt
- Statute of limitations
- Syndicate member rights and remedies
- Tax and accounting considerations
- Triple net leases
- Valuation proceedings and implications

We have crafted and successfully applied enforcement, collateral preservation, springing recourse, equity and occupancy creation and defensive approaches. We have restructured, sold and financed the acquisition of or investment in underperforming loans and portfolios of loans. We implement innovative techniques at the cross-section of real estate and remedies, using the tools of loan enforcement and springing recourse as workout leverage to restructure the defaulted loan and right-size the distressed real estate asset. And we do so every day, in any economy, geography, interest rate environment or state of the real estate and financial market.

Market and Thought Leadership

Our workout and restructuring lawyers are dedicated to distressed assets and solutions. We are subject-matter experts in the law, the real estate industry and secured finance and are widely known for our expertise. We are skilled tacticians and strategists and know how to prosecute and defend foreclosures and bankruptcies in a highly effective, efficient and predictable manner.

As a global law firm, we bring to bear more than 1,000 lawyers, including practitioners in the key ancillary practice areas most often called on to advise on real estate restructuring transactions, such as conveyancing, joint ventures, preferred equity, land use, zoning, environmental, construction, REITs, securities, tax and labor.

Our lawyers lecture nationally on these topics for PLI, State and Local Bar Associations, American Bankruptcy Institute, International Council of Shopping Centers, Mortgage Bankers Association, American College of Real Estate Attorneys, American College of Mortgage Attorneys and industry groups. We provide practical, insightful training programs for our clients on the most current and provocative topics of the day. Our articles on these topics are widely read and utilized.

We are consulted by other major law firms, and their clients, for our expertise, our time-tested understanding of distressed real estate and the law, our creativity and our lasting results. Clients choose us for their most sensitive, risky, complex and high-profile distressed real estate workouts.

Clients

- Amalgamated Bank
- Amtrust Realty
- Arbor Realty Trust
- California Bank & Trust
- California Community Reinvestment Corp.
- C-III Asset Management
- Fifth Third Bank
- First Citizens Bank (CIT)
- Flagstar Bank
- M&T Bank
- Mechanics Bank
- Metropolitan Commercial Bank
- Pacific Mercantile Bank
- Provident Bank
- Quadrant Real Estate Advisors
- Scale Lending
- SKW Funding
- Slate Property Group

- Umpqua Bank
- Union Bank
- Walker & Dunlop

Experience

Over the past several years, we have represented institutional lenders in major (often high profile, newsworthy) distressed loan workouts, foreclosures, restructures and loan sales involving the following properties and projects, among others. Many of these have transformed the assets and the communities in which they are located.

- Beekman Hotel, New York, New York
- Admiral's Row, Brooklyn Navy Yard, New York
- 110 William Street, New York, New York
- Candler Building, Times Square, New York
- PREIT Regional Shopping Mall Restructuring and Bankruptcy
- The Ritz Carlton Club and Residences at Kapalua Bay, Maui, Hawaii
- One Market Plaza, San Francisco, California
- 111 Wall Street, New York, New York
- Industry City, Brooklyn, New York
- Jaguar, Land Rover, Maserati and Ford dealership floorplan loan workout (thousands of vehicles)
- Verizon Building, 375 Pearl Street, New York, New York (deed-in-lieu and springing recourse)
- The Mark Hotel, New York, New York (foreclosure)
- Gramercy Park Hotel, New York, New York (foreclosure)
- Several New York City boutique hotels
- Hamilton Mall, New Jersey
- Riverhouse Condominium, New York, New York (construction litigation)
- Renaissance Boston Waterfront Hotel, Boston, Massachusetts
- 111 Washington Street, New York, New York (foreclosure; deed-in-lieu)
- Copper Beech Farm, Greenwich, Connecticut
- New York Financial District and midtown office buildings
- Distressed office, hotel, retail and self-storage assets across the country
- Lehman Brothers in its recapitalization of more than \$2 billion of distressed multi-site development projects, mezzanine loans and joint venture interests in Southern and Central California (each consisting of several thousand residential land development lots)
- A global lender in the sale of a large portfolio of underperforming commercial real estate loans
- Bidders for the Signature Bank commercial real estate portfolio