

Real Estate Distressed Real Estate & Real Estate Debt

pillsbury

Pillsbury's Distressed Real Estate practice offers deep market experience, knowledge and an international presence. Our attorneys are consistently ranked as leaders in the United States by Best Lawyers in America, Chambers USA and The Legal 500 U.S.

Attorneys in our Distressed Real Estate practice draw upon the skills of practitioners from a number of core areas, including Real Estate, Insolvency and Restructuring, Litigation, Financial Services Regulation, Corporate and Securities, Structured Finance, Tax, Insurance, Environmental, and Government Contracts.

Pillsbury has a long history of working with clients in major real estate transactions. We represent some of the United States's largest and most sophisticated financial institutions, corporations, REITs, governmental entities, pension funds and pension fund advisors, developers, managers and investors in a broad range of complex transactions and public and private ventures.

The team's experience extends to multi-jurisdictional real estate financings, recapitalizations, investments, developments, workouts and restructuring. We handle restructurings of distressed single-asset and multi-asset portfolios, including portfolios in the billions of dollars. We also assist with company and partnership restructurings and the acquisition and disposition of target business entities, units or assets.

Pillsbury attorneys analyze, structure and close real estate investments in distressed real estate assets (including debt instruments) involving complicated capital structures, sponsorship/management turnaround issues, divestitures and bankruptcies – whether resulting from inefficient capital structures, asset-level difficulties or event-driven (or macro-economic) distress situations. We also assist in acquiring (including through enforcement) distressed real estate assets in all classes, non-performing loan pools, distressed mortgage and mezzanine loans, distressed securities and joint venture interests with financially stretched borrowers and sponsors.

We are prepared to act quickly and decisively to preserve value, achieve stability and allow our clients to seize market opportunities.

The team practices nationally, with offices throughout the United States, and internationally, with offices in London, the Middle East, China and Japan.



Our experience includes:

- Debt and equity restructurings, including loan modifications and workouts, and extension and forbearance agreements
- Loan enforcement and lien priority disputes, including mortgage and mezzanine foreclosures, deeds-in-lieu-of-foreclosure, receiverships and property recovery issues, analysis of liability issues and analysis of intercreditor agreements in complex debt stacks
- Bankruptcy, including cram-downs
- Collateral realization settlements and analysis of settlement strategies
- Distressed loan purchases, including purchases of loan portfolios, whole mortgage loans and loan participations, and related capital markets (and diligence) issues
- Preferred equity investments (and mezzanine loans) in highly leveraged/distressed situations
- Formation of private equity and other investment structures to acquire distressed assets, including portfolios of mortgages and financial products
- Analysis of fraudulent conveyance or preference claims
- Negotiation of rescue and exit financing
- Regulatory compliance
- Tax advantaged structurings

Workouts Experience

- Developing, negotiating and documenting complex loan workouts and loan restructurings for single lenders or a syndicate of lenders
- Counseling debtors and borrowers in connection with their capital structure and general business restructuring
- Providing legal and strategic advice to corporate trustees and indenture trustees in anticipation of bankruptcy filing
- Providing advice to clients on alternatives to bankruptcy
- Providing tax and corporate restructuring advice

Litigation Experience

- Non-bankruptcy fraudulent conveyance and other avoidance actions
- Constructive trusts
- Receiverships
- Writs of attachment, writs of possession (also known as replevin or claim and delivery) and other pre-judgment remedies

- Judicial and non-judicial foreclosures
- Defense of lender liability claims
- Execution, garnishment, judgment debtor examinations and other methods of enforcement of judgments
- Consolidations

Bankruptcy Experience

- Negotiating, formulating and confirming plans of reorganization
- Prepackaged bankruptcies
- Bankruptcy sales of stock and other assets
- Committee representation (creditors, bondholder and equity committees)
- Representation of indenture trustees
- Cash collateral stipulations and adequate protection
- Objections to disclosure statements and plans
- Cram-down litigation
- All facets of unexpired leases, executory contracts and intellectual property licenses
- Prosecution and defense of avoidance actions (e.g. fraudulent transfers, preferences) in bankruptcy
- Turnover actions
- Abstention and removal issues
- Involuntary petitions
- Governmental/municipal bankruptcies
- Bankruptcy discharge and non-dischargeability actions
- Resolution of lien priority, intercreditor and subordination issues
- Assertion and allowance of clients' claims in bankruptcies
- Debtor-in-possession (DIP) financing
- Relief from stay litigation
- Representation of estate fiduciaries and trustees

Representative transactions closed by Pillsbury lawyers include the following:

Acquisitions and Dispositions of Distressed Assets or Debt

- Representation of numerous acquirers of non-performing loans and real estate, including
 - Blackstone Realty Advisors
 - Cerberus
 - G.E Credit Corporation

Real Estate

- Goldman Sachs, including Whitehall Fund
- J.E. Robert Companies
- Lehman Brothers
- Representation of a government-supported foreign bank and its investment vehicle in purchasing substantial amounts of illiquid securities and other distressed assets from another foreign bank.
- Representation of major private equity funds in pursuing acquisitions of loan portfolios from the FDIC and other federal financial regulatory agencies.
- Representation of a financial institution in the sale of billions of dollars of investments in apartment projects nationally.
- Representation of a large New York real estate company in its liquidation and sale of scores of commercial and residential properties and mortgage interests.
- Representation of bank in the distressed sale of 28 agricultural properties and ranches (in multiple states) under bankruptcy court supervision. Client held a senior lien position in the properties and obtained bankruptcy court approval to negotiate and coordinate the sales with the debtor (acting through a transition agent approved by the court).
- Representation of a real estate investment company in the purchase of a mezzanine loan for a Boston office property (and subsequent negotiation of a deed-in-lieu with the borrower).
- Representation of institutional investor in the purchase of the B Note and mezzanine loan in a \$250MM apartment project (and a subsequent voluntary bankruptcy/363 auction sale process for the property).
- Representation of a financial institution in the seller-financed sale of single family REO portfolios in Florida, California, Illinois and Nevada.
- Representation of a debtor in the sale of the Ritz-Carlton Central Park South and Ritz-Carlton Washington DC to a foreign hotel investor.
- Representation of a specialty finance company in the portfolio sale of leased assets (a retail chain of stores) located in New York and New Jersey.
- Representation of a proposed stalking horse bidder in the bankruptcy of the Yellowstone Resort in Montana.
- Representation of an investor group in acquisition of 183 Madison Avenue out of bankruptcy. Investor group acted as stalking horse bidder and received large multi-million dollar break-up fee when another group provided winning bid.

- Representation on acquisition and sale of tranche of debt within capital stack of prominent Manhattan Hotel.
- Representation of investor in the acquisition of mortgage debt secured by luxury inn and spa located in Connecticut and subsequent joint venture with international operator following deed-in-lieu of foreclosure.
- Representation of the Whitehall Fund in the acquisition of a portfolio of distressed mortgage loans owned by CrossLand Savings Bank.

Loan Modification, Workouts and Restructurings on behalf of Lenders

- Representation of a 72 member bank group in restructuring a \$4 billion portfolio of real estate and business assets of Donald J. Trump including an \$800 million personal guarantee.
- Representation of Goldman Sachs in restructuring equity and debt interests with Cadillac Fairview.
- Representation of bank group in restructuring real estate portfolios held by Solomon Equities in trophy Manhattan properties.
- Representation of bank group in restructuring real estate portfolios held by Portman Real Estate.
- Representation of a large institutional investor, as national workout counsel advising as to a range of lien, foreclosure, finance, collateral and tax issues. Representation includes workouts and restructurings of its equity investments in multifamily and mixed use developments nationally, such as troubled apartment and office projects in Texas, Illinois and New Jersey.
- Representation of investment bank in the origination, and later restructuring, of \$6.5 billion of mortgage and mezzanine loans on hotel/casinos in various states.
- Representation of investment bank in restructuring \$3.5 billion of bridge, mortgage, and mezzanine loans on retail shopping centers throughout the United States.
- Representation of a commercial bank in the workout of an approximately \$300 million loan secured by 52 properties and held by our client and two securitization trusts.
- Representation of a consortium of senior noteholders in the \$150 million restructuring of equity, debt, and a master lease on a prominent San Francisco office building.
- Representation of a major lender in connection with restructuring 20 loans totaling in excess of \$250 million made to affiliated limited partnerships with real property collateral.

- Representation of international commercial bank in extending and restructuring various defaulted construction loans.
 - Representation of the participating lender in a residential lot development and vertical construction loan workout for projects in San Diego.
 - Representation of a major banking institution on workouts of subprime loans which were the subject of Truth in Lending Act violations or alleged violations.
 - Representation of a large institutional investor, as national workout counsel, including restructurings of its equity investments in multifamily and mixed-use developments.
 - Representation of a lender in workout of a supermarket chain financing.
 - Representation of a lender in workout of loans secured by shopping centers in NY and NJ.
 - Representation of a lender in a workout of defaulted IDA bond financing.
 - Representation of a lender in a workout of a wood supply business with numerous property locations in NY.
 - Representation of the following domestic banks regarding the restructuring of numerous real estate large single asset and portfolio loans for:
 - AEGON USA Real Estate Advisors
 - Bank of America Merrill Lynch
 - Bank of New York
 - Bank of the West
 - Blackstone Real Estate Advisors
 - Citibank
 - Dai-ichi Kango Bank
 - General Electric Credit Corp.
 - Goldman Sachs
 - PNC Bank
 - Wells Fargo Bank
 - Several S&Ls, including Dime Savings Bank and Ensign Bank
 - Representation of the following non-U.S. banks/lenders restructuring U.S. based real estate loans
 - Kawasaki Leasing Corp.
 - Lloyds Bank
 - Mitsubishi Trust and Banking
 - The Nomura Trust and Banking Co.
 - ORIX Trust
 - Royal Bank of Canada
 - Societe Generale
 - Sumitomo Mitsui Banking Group
 - Toronto-Dominion Bank
 - Representation of bank group in connection with the bankruptcy of debtor mall owner with malls located throughout Pennsylvania.
 - Representation of Lehman Brothers Holdings Inc. and related affiliates in connection with distressed hotel debt with respect to hotel and resorts in South Florida, Colorado and California and related review and renegotiation of hotel management agreements with prominent hotel operators.
 - Representation of lead institutional lender in multi-lender syndicate in connection with the workout of the Riverway Office complex, Chicago, Illinois.
 - Representation of institutional lender in the workout of loans in New York City, Philadelphia, Pennsylvania, Rancho Mirage, California, Turks and Caicos Islands and Mexico.
- Loan Modifications, Workouts and Restructurings on behalf of Borrowers**
- Representation of the Trump Organization in restructuring the public bond debt on the Trump casinos in New Jersey.
 - Representation of Olympia & York in a \$20 billion asset restructuring of its global assets, including Canary Wharf in London.
 - Representation of the following borrowers restructuring multi-tranche debt:
 - Cafritz Organization
 - Centennial Properties
 - Cohen Brothers
 - Park Tower Real Estate
 - Representation of a borrower in its negotiation and settlement with two banks, one of which held a \$125 million first mortgage and the other of which held a derivative contract secured by a second mortgage.
 - Representation of an investor in a transaction involving the removal of multiple general partners and management entities, including enforcement of guaranties.

Real Estate

- Representation of PurEnergy in restructuring \$320 million in debt as it took over the 440 megawatt, coal-fired Red Hills Generation Facility located in Choctaw County, Mississippi.
- Representation of The San Francisco Ballet Association in its \$50 million refinancing of existing bond debt from a financially troubled insurer.
- Representation of a debtor in forbearance and restructuring of \$35 million in senior debt secured by undeveloped real property in New Jersey intended to be developed as a data center park.
- Represented three affiliated debtors in the “abandonment” of real estate secured properties to effectuate a 1031 tax deferred exchange in connection with the purchase of a new replacement property (to effectuate a debt restructuring).
- Representation of farmer/real estate developer with \$55 million of loans from a dozen banks and \$150 million of assets (ranging from orchards to a business park) in its debt restructuring, including defending a judicial foreclosure lawsuit and receiver application.
- Representation of a lender in a complex participated loan workout involving a receiver’s sale of a failed housing development in Northern California.
- Representation of a government contractor (as a ground tenant) in connection with the foreclosure, by the landlord’s lender, of the landlord’s interests. Representation included assertion of claims against leasehold lender, options for direct leasing, analysis of subordination and nondisturbance issues, sub-leasehold quiet enjoyment issues, receiver interactions and ground lessor direct lease options.
- Representation of Lehman Brothers Holdings Inc. and related affiliates in the enforcement of a mezzanine hotel loan, acquisition of the senior loan from the senior lender, and subsequent sale by deed-in-lieu of the Rihga Royal Hotel (now named the London) to an affiliate of Blackstone.
- Representation of Lehman Brothers Holdings Inc. and related affiliates in the enforcement of a mortgage and debenture secured by a resort and casino located in Freeport, Bahamas, and subsequent sale by power of sale to an Irish based owner and developer.

Deeds-in-Lieu and Foreclosures

- Representation of Crescent Real Estate Equities (as lender and fee owner/ground lessor) in a deed-of-lieu of foreclosure of a leasehold interest in Trammell Crow Center in Dallas, Texas.
- Representation of Shorenstein in a mezzanine loan foreclosure and acquisition (from Tishman Speyer) of the 210,000-square-foot Santa Clara Towers (formerly known as McCandless Towers), located in Silicon Valley California.
- Representation of a real estate investment company in the purchase of a mezzanine loan for a Boston office property and negotiation of deed-in-lieu with the borrower.
- Representation of sponsor in connection with a guarantor liability after a deed in lieu of foreclosure transaction.
- Representation of a lender in a foreclosure of participated acquisition and development loans secured by real property in Florida, Nevada, Arizona, Utah and California.
- Representation of a financial institution in the restructuring and enforcement proceedings relative to land, development, and construction loans for projects in California and Nevada, including loan sales.
- Representation of a lender in forbearance and workout negotiations, enforcement of remedies, and bankruptcy and foreclosure proceedings in connection with lot development and residential construction for projects in California.
- Representation of Lehman Brothers Holdings Inc. and related affiliates in the enforcement of a mortgage and debenture secured by the Hurricane Hole Condominiums and Marina, Paradise Island, Bahamas, and subsequent sale to Kerzner International Limited.
- Representation of Lehman Brothers Holdings Inc. and related affiliates in the enforcement of a mortgage secured by the Omni Mall and Radisson Hotel, Miami, Florida, and subsequent sale to New York based investor.
- Representation of Lehman Brothers Holdings Inc. and related affiliates in connection with distressed hotel debt with respect to resort in Kauai, Hawaii, deed-in-lieu and subsequent sale of asset to foreign investor.
- Representation of investor in the acquisition of mortgage debt secured by luxury inn and spa located in Connecticut and subsequent joint venture with international operator following deed-in-lieu of foreclosure.
- Representation of institutional lender in the foreclosure and subsequent sale of a full service hotel near the Astrodome, Houston, Texas.
- Representation of major investment bank in the foreclosure of full service hotels located in Orlando and Miami, Florida.
- Representation of major investment bank in the exercise of remedies under a mortgage and debenture for a resort known as the Royal Oasis, Freeport, Bahamas, and subsequent sale to an Irish based real estate investment company.

- Filed judicial foreclosure actions on behalf of lenders secured by office buildings and mobile home parks throughout California.

Bankruptcies and Related Work

- Representation of the debtors or chapter 11 trustees in three separate bankruptcies of California-based mortgage brokers and blind pool mortgage funds, including:
 - A case involving 133 first, second and third priority loans secured by 67 different real properties (in all asset classes and stages of development) totaling \$200 million investment capital of 1,200 investors; resolved through nonjudicial foreclosures and a sales program effected in the bankruptcy case.
 - A case involving a \$70 million fund holding approximately 30 loans secured by second and third mortgages against resort hotels, golf courses and SFR developments in a variety of states; resolved in a plan under which a liquidating trust liquidated the real estate assets.
 - A case for a blind pool fund holding loans against single family residences located in California; resolved by a plan under which a liquidating trustee is administering the loan portfolio (mostly performing).
- Representation of bank group in restructuring senior debt of U.S. single family homes in debtor's bankruptcy.
- Representation of Capstead Mortgage Corporation in connection with the involuntary bankruptcy of the Four Seasons Hotel in Nevis.
- Representation of Morgan Stanley in the Bray & Gillespie / Ocean Resorts bankruptcy (involving 79-entities owning hotels and other properties constituting 6 non-contiguous miles of oceanfront property in Daytona, Florida).
- Representation of mid-Atlantic developer in connection with the acquisition of a B Note and mezzanine loan on a residential project, and subsequent voluntary bankruptcy/363 auction sale process for the property).
- Representation of a Chinese investment group in a \$360 million acquisition of 5,000 unit multi-family real estate project located in Texas and Maryland through restructure of multi-tranche CMBS debt in bankruptcy case of prior owner.
- Representation of investment bank in providing debtor in possession financing for a casino.

Financing Distressed Debt Portfolios

- Representation of institutional lender financing 230 asset portfolio of mortgages held by multiple savings and loan.
- Representation of mortgage real estate investment trust in the collateralization of mortgages in workout of loan facility.

About Pillsbury

Pillsbury Winthrop Shaw Pittman LLP is a leading international law firm with offices around the world and a particular focus on the energy & natural resources, financial services, real estate & construction, and technology sectors. Recognized by *Financial Times* as one of the most innovative law firms, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their unsurpassed commercial awareness.

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