



Distressed Property Group

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Distressed real estate, like many complex investment undertakings, is ultimately about defining value and identifying opportunities. Specific, localized contacts and knowledge coupled with a mastery of a broad range of legal disciplines are especially vital to these dealings. Success often hinges upon having a knowledgeable, capable partner with the right resources at its disposal.

The Bilzin Sumberg Distressed Property Group is focused on delivering meaningful, comprehensive legal service to owners, investors, lenders and financing sources in matters related to distressed and special opportunity real estate and real estate financing matters. The Group is comprised of attorneys from our Real Estate, Corporate & Securities, Litigation, Restructuring & Bankruptcy and Land Use practice areas, providing the multidisciplinary approach necessary to address the intricacies of distressed property and to develop creative solutions. As a firm widely known for our expertise in the real estate industry and our dominant representation of homebuilders, the largest special servicer of securitized loans in the country and other major players in the real estate market in and out of Florida, we have a unique, comprehensive understanding of all phases of the market cycle, including the inevitable downturns.

Our Distressed Property Group represents and advises public and private real estate funds, special opportunity and equity funds and other investors and developers in the acquisition, development, financing and disposition of distressed properties. We represent institutional and other investors in organizing special opportunity and investment funds, providing take-out financing, and acquiring distressed property and other assets in the marketplace and out of bankruptcy. We also handle zoning and land use due diligence that is critical in determining entitlements and the existence of vested real property rights, and to give property owners realistic appraisals of property values as zoned.

We also represent lenders and borrowers of senior and mezzanine financing on every possible solution to distressed real estate loans, including:

- Restructuring
- Workouts
- Foreclosure
- Deeds in lieu of foreclosure
- Receiverships
- Disposition of distressed property

These workouts and restructurings often involve portfolios of and individual significant properties throughout the country, including office buildings, industrial facilities, retail centers and malls, condominiums, hotels and resorts, apartment buildings, residential communities, entertainment facilities, sports arenas, golf courses, marinas and mixed use projects.

The areas of expertise represented by our Distressed Property Group distinguish Bilzin Sumberg as a leading law firm nationally, as well as regionally, as evidenced by the fact that ours is one of only nine firms nationwide to be nominated for the prestigious *Chambers & Partners USA* “2007 National Award for Excellence in Real Estate.” We are especially well-suited to advise our clients regarding every legal aspect of the real estate industry, at every phase of the economic cycle.

Our Restructuring and Bankruptcy practice, an integral part of the Distressed Property Group, is highly regarded for its successful representations in high-stakes, complex bankruptcy and restructuring matters. Additionally, our attorneys have advised secured and unsecured creditors, loan servicers, asset purchasers and other interested parties in major debt restructurings and asset liquidations.

Our Corporate & Securities Group lends its extensive experience to the Distressed Property Group. Our lawyers, experienced in handling multi-billion dollar transactions in the real estate sector (such as homebuilding company acquisitions, real estate development joint ventures and real estate mortgage fund offerings), represent private equity and investment funds and provide a solutions-oriented approach to a wide variety of complex and sophisticated matters.

Participation by our Litigation Group is a key component of the Distressed Property Group. The attorneys in this group have an intense concentration in developing meaningful strategies to deliver constructive solutions to issues surrounding distressed property and to market participants who purchase, own, sell or finance such property. In our experience, productive solutions to a distressed property resolution are oftentimes improved by aggressive, thoughtful litigation strategy. We have significant experience in prosecuting and defending real property actions and ancillary disputes, and in guiding pre-suit planning and strategy involving, among others, foreclosure claims, lender liability actions, partnership disputes and corporate governance claims.

If you have any questions regarding our Distressed Property Group, please contact any of our co-chairs: Daniel H. Aronson at 305.350.7340 or aronson@bilzin.com; Scott L. Baena at 305.350.2403 or sbaena@bilzin.com; or Carey A. Stiss at 305.350.2419 or cstiss@bilzin.com.

Distressed Property Experience



The following are select distressed property transactions in which our attorneys have represented various parties:

- Represented Lennar Corporation in its due diligence and acquisition of the asset portfolio of Amerifirst Federal Savings Bank, a savings and loan association. Lennar and joint venture partner, Morgan Stanley Real Estate Fund, acquired these assets from the Resolution Trust Corporation (RTC), which was created by the federal government to take over and liquidate commercial real estate loans that had been assets of insolvent savings and loan associations as a result of the savings and loan crisis in the late 1980s and early 1990s. The portfolio was valued at approximately \$1 billion and consisted of over 1,000 assets, including loans and REO property. Representation also included Lennar's financing of the acquisition and the workouts of a large number of the portfolio's loans and sales of REOs.
- Represent one of the nation's largest homebuilders, in its formation of a strategic land investment joint venture with an affiliate of Morgan Stanley, to acquire, develop, manage and sell land for residential use, as well as its concurrent sale of a \$525 million diversified portfolio of land to the investment venture, with a book value of \$1.3 billion.
- Representing the Official Committee of Unsecured Creditors in the chapter 11 bankruptcy case of Poinciana Development, LLC, a developer of single family homes in Southwest Miami-Dade County. Poinciana developed more than 500 home sites, and eventually ran out of construction financing to complete the development of the last 34 homes it was under contract to build. Additionally, the former principal of the debtor, expended all of the purchasers' deposits, which by contract were required to be placed in escrow. The Committee has been attempting to work with the lender to the debtor, which acquired principal equity interests.
- Counsel to S&G Financial Services Inc., a mezzanine and mortgage lender to Puig, Inc., a large condo converter/developer, and its affiliated debtor and non-debtor entities in this chapter 11 proceeding filed in 2007, pending in the Southern District of Florida.
- Since 2004, we have handled \$384 million in loan sales and \$40.2 million in bankruptcy claim sales to national purchasers for the largest special servicer of CMBS loans.
- Represent the special servicer in the workout of a \$83.5 million loan for a 707-room Crowne Plaza Hotel in New Orleans, LA, in connection with the sale of the hotel to a joint venture consisting of Loeb Partners and Deutsche Bank. The sale of the hotel was the largest local lodging facility to be sold since Hurricane Katrina. The project and resulting workout was challenged by operating and debt service shortfalls, failure to make needed capital improvements, underinsurance based on the loan requirements for the loan which was originated prior to Hurricane Katrina, and defaults with the hotel franchisor.
- Represent a developer in the bulk sale of 230 residential condominium units in a master-planned community in North Miami to a privately-held real estate investment manager formed specifically to focus on real estate assets.

- Represent several lending institutions and developers preparing for foreclosure, in entitlement analyses to determine the value of outstanding loans and property values as zoned. This includes an analysis of permits, concurrency appraisals and other vested rights.
- Represented several investment companies and trusts in the formation of a limited liability company for the acquisition of up to 80 nonperforming loans and the liquidation of the loans through a combination of workouts and restructurings of nonperforming loans into performing loans, refinancing of loans, foreclosing real property secured by loans and selling the real property acquired through foreclosure.
- Represented a homebuilder in connection with the origination and subsequent restructuring of land bank option and construction transactions throughout the county. The transactions involved negotiating and drafting documents with 10 different national and regional land banks and providing the homebuilder and its subsidiaries rights to acquire and develop properties valued in excess of \$750 million, representing home sites throughout Florida, Maryland, New Jersey, Arizona, California, Nevada and Texas.
- Represented LandSource Communities Development LLC (LandSource), a strategic joint venture between Lennar Corporation, a New York Stock Exchange-listed company and LNR Property Corporation, controlled by the private investment firm Cerberus Capital Management L.P., in the negotiation and restructuring of LandSource, in an effort to amend debt covenants with its lenders. In addition, the team effectuated numerous revisions to the corporate structure of LandSource and its subsidiaries to facilitate a workout. Unfortunately, the parties were unable to agree on restructuring terms that were mutually acceptable and subsequently filed for chapter 11.
- Counsel to chapter 7 trustee of the First NLC bankruptcy estates, pending in the Southern District of Florida. First NLC was a subprime mortgage lender based in Boca Raton, Florida. The cases were initially filed under chapter 11 and Bilzin Sumberg served as counsel to the Joint Committee of Creditors Holding Unsecured Claims against the First NLC debtors. After conversion of the cases to chapter 7, Bilzin Sumberg became special litigation counsel to the chapter 7 trustee.
- Represented the lender in the restructuring of the ownership of seven communities by creating a four-tier structure. The transaction required the preparation and negotiation of a significant number of agreements and other documents on a very short timeframe.
- Represents clients in several UCC Article 9 foreclosure sales, in which clients have taken ownership of all membership interests on raw land deals secured by loans, following borrowers' defaults on their respective loans.
- Representing the developer of a south Florida condominium project in a workout involving a senior construction loan in excess of \$120 million; a mezzanine loan in excess of \$15 million; and a significant general contractor's claim. The project consists of in excess of 300 units.
- Successfully represented a national mezzanine lender in the workout of a large retail complex in downtown Tampa, Florida. This transaction involved the purchase by our client of the first mortgage loan, restructuring the purchase contract, a settlement between the

borrower's members, negotiations with the general contractor and major subcontractors who had filed claims of lien, and closing the sale of the property to a national real estate company.

- Represented the debtor in the chapter 11 reorganization of a significant residential real estate developer in south Florida, including Century Village, Glen Eagles, Polo Club, Polo Trace, Oceania and Wynmoor Village.
- Representing the mortgage lender in a federal action involving claims by a loan participant that the mortgage lender overfunded the loan based on the mortgage lender's alleged misinterpretation of an appraisal. The loan is secured by a first mortgage on a waterfront property in north Florida. The mortgage lender is also suing the developer to foreclose the mortgage.
- Counsel to the Official Committee of Unsecured Creditors in the chapter 11 case of New River Boat Club d/b/a New River Marina. This operator of a boatyard and marina on the New River in Ft. Lauderdale is the third in a series of marina-related bankruptcy cases filed by the principals of the debtor. The firm was also counsel to the Committee in the second case filed by these principals.
- Represented the developer of a high rise residential condominium in the negotiation and documentation of a \$27.5 million inventory loan, for unsold condominium units in a newly constructed project in downtown Miami, Florida.
- Representing a first mortgage lender in a mortgage foreclosure action on a hotel in south Florida. The lender's debt is in excess of \$30 million. The developer planned to demolish the existing improvements and construct a high rise condominium. A receiver was appointed to manage the hotel during the pendency of this action; however, the receiver was discharged once the hotel ceased operations.
- Representing a mezzanine lender who owed \$20 million in a chapter 11 bankruptcy of a mixed use multi-tower property in Tampa. After the debtor finished construction, only one-third of the condominium units actually closed, with a vast number of buyers forfeiting their deposits in lieu of closing. The first mortgage construction loan has an outstanding debt of \$58 million.
- Represent CMBS special servicer in the negotiation and closing of a back-to-back deed in lieu of foreclosure and resale of the REO involving four apartment complexes in Wisconsin, which secured loans totaling over \$45 million.
- Representing the lender in a mortgage foreclosure action. The property owner of office condos has an outstanding debt of over \$7.5 million. Several units were closed and the debt was paid down, until sales ceased and the loan matured. Other defendants include several mezzanine lenders, who hold a second mortgage on the property. There are also several construction liens recorded against the property.
- Counsel to the liquidating trustees of Southern Pacific Funding Corporation and ContiFinancial, two of the largest mortgage lenders in the country.

- Represented the secured lender, Fremont Capital, in the chapter 11 case of Shops at Ocean Court, and was instrumental in obtaining the appointment of a chapter 11 trustee.
- Represented the debtor/owner of the Ritz-Carlton San Juan Hotel and Casino, in its chapter 11 reorganization.
- Represented the principals of the borrowers in a workout agreement in connection with two failed fractional ownership projects in Wisconsin and Florida, with a total debt of approximately \$18 million. In return for being released on the guarantees on these two properties, the principals provided a second mortgage in excess of \$9 million on an additional property in Florida and guaranteed the interest on this second mortgage.
- Represented a then privately-owned outsource teleservices provider in the restructuring of ownership prior to going public, where the two founding shareholders sold portions of their stock to two employees, GRATs for the founding shareholders were created to own a portion of the stock and employment agreements were entered into with senior management, and, as part of the initial public offering in which we were that company's counsel, the AAA accounts of the two founding shareholders were distributed.
- Represented a family that owns paramutual companies and operations and other businesses in the restructuring of numerous entities to directly or indirectly transfer a substantial portion of the ownership of the principal owner in those entities to family members, including organization of new entities, sale of assets and interests in entities and drop down of assets.
- Represented an affiliate of the second largest homebuilder in the United States, in its corporate restructuring and refinancing, which included the withdrawal of certain of the limited liability company's members and termination of their membership interests, as well as the cancellation of mezzanine loan made to the company in the amount of \$34 million and a restructure of its \$60 million construction loan facility.
- Representing the lender in the restructuring of a \$35 million mortgage warehouse loan facility, which is in default due to a deterioration in the quality of the underlying commercial and residential mortgage loan collateral.