

Steptoe & Johnson LLP
 China Central Place, 29th Floor,
 Tower 2
 79 Jianguo Road, Chaoyang
 District
 Beijing, 100025
 Tel: +86 10 5834 1000
 Fax: +86 10 5969 6099

Avenue Louise 489
 3rd Floor
 B-1050 Brussels
 Belgium
 Tel: +32 2 626 0500
 Fax: +32 2 626 0510

115 South LaSalle Street
 Suite 3100
 Chicago, IL 60603
 Tel: 312.577.1300
 Fax: 312.577.1370

2121 Avenue of the Stars
 Suite 2800
 Los Angeles, CA 90067
 Tel: 310.734.3200
 Fax: 310.734.3300

633 West Fifth Street
 Suite 700
 Los Angeles, CA 90071
 Tel: 213.439.9400
 Fax: 213.439.9599

1114 Avenue of the Americas
 New York, NY 10036
 Tel: 212.506.3900
 Fax: 212.506.3950

201 E. Washington Street
 Suite 1600
 Phoenix, AZ 85004
 Tel: 602.257.5200
 Fax: 602.257.5299

1330 Connecticut Avenue, NW
 Washington, DC 20036
 Tel: 202.429.3000
 Fax: 202.429.3902

Steptoe & Johnson
 99 Gresham Street
 London, EC2V 7NG
 England
 Tel: +44 20 7367 8000
 Fax: +44 20 7367 8001

Distressed Real Estate Litigation & Restructuring

Today's troubled real estate market requires experienced and innovative lawyers. Steptoe provides both. Steptoe's Distressed Real Estate Litigation & Restructuring Team handles litigation, workouts, insolvency matters, distressed asset sales, and all related tax issues arising from troubled real estate properties of all types, particularly office buildings, industrial, multi-family, retail, hospitality and resort properties, and undeveloped land. Our clients include investors, lenders, borrowers, owners, sellers, purchasers, commercial banks, investment banks, REITs, REMICs, hedge funds, private equity funds, special purpose entities, securitization trustees and servicers, developers, and construction companies.

We develop creative solutions to the most complicated transactional, ownership, and financial problems in distressed real estate. Steptoe's team has deep experience with complex financial instruments and transactions, mortgage-backed securities, collateralized debt obligations, financial guarantees and mortgage insurance, as well as joint ventures, partnerships, limited liability companies, REITs and REMICs. Our team members are drawn from all of our US offices and from a wide range of the firm's practices, including litigation, restructuring and insolvency, corporate and real estate, environmental law, and tax.

Litigation

Our trial lawyers have collectively tried hundreds of matters and continue to try cases regularly. Our reputation for trying cases successfully often helps clients resolve matters short of trial. This trial experience also leads to more effective case management, since we are better able to decide what is important during pretrial preparation. We often seek early dispute resolution through provisional remedies such as injunctions, attachments, and receiverships as well as summary judgments. Steptoe attorneys are experienced in enforcing and defending contractual commitments, guaranties, surety bonds, and security interests in court or in bankruptcy. Our team includes a number of former prosecutors with extensive experience pursuing and defending claims of financial fraud and racketeering, securities fraud, breach of fiduciary duty and professional liability, as well as state unfair competition, deceptive practices act and fraudulent conveyance claims. We are also versed in the economic, finance, valuation and accounting issues that pervade contemporary real estate disputes.

Business & Financial Restructuring

Our sophisticated Restructuring practice represents lenders, debtors, creditors, insurance companies, and purchasers in the workout or restructuring of troubled real estate projects, loans, investments, and asset portfolios, both within and outside of bankruptcy proceedings. Liquidation of assets occurs with increasing frequency in bankruptcy cases, and judicious sale and acquisition strategies are

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critical. Our attorneys have represented debtors, secured, unsecured and subordinated creditors, equity security holders, trustees, purchasers, sureties and insurers regarding financially troubled enterprises, both in the US and abroad, and we have deep experience in failed or failing real estate and construction projects.

Corporate & Real Estate

Our Corporate & Real Estate attorneys handle real property, financing, workouts, and corporate issues involving real estate in all property types and phases of development: office, industrial, warehouse, hotels and resorts, shopping centers, restaurants, retail space, apartment and condominium buildings, medical offices, mobile home parks, undeveloped or partially developed land, residential developments, railroad yards, oil pipeline-related real estate, public venues and stadiums, and large portfolios of varied types of real estate interests. In connection with this work, the firm has represented buyers, sellers, lenders, loan originators, investment banks, borrowers, landlords, and tenants, as well as receivers and conservators of interests in real estate.

Environmental

The Environmental & Natural Resources Practice Group arranges and participates in environmental audits related to property or corporate acquisitions and divestitures. We frequently perform the environmental portion of pre-acquisition due diligence reviews and draft transactional documents to clearly define environmental responsibility.

Tax

There are federal, state, and foreign tax costs associated with restructuring debt and distressed asset sales at a time when parties are least able to bear them. Financial distress also can present opportunities to take advantage of certain tax benefits. Our Tax attorneys frequently help debtors, creditors, equity holders, and purchasers navigate through both federal and state income tax issues such as cancellation of debt income, bad debt and worthless stock deductions, debt modifications, debt and equity exchanges, bankruptcy reorganizations, and equity or asset purchases. Our Tax attorneys also advise debtors (loss corporations) and creditors (new owners of the loss corporation) in connection with the limitations imposed on, and the use of, tax attributes, such as net operating losses, capital losses, and credits, in workouts. Our clients benefit from the expertise and foresight needed to mitigate taxes and to restructure in a manner that qualifies for tax benefits. Our Tax attorneys also actively lobby the Congress and the Treasury Department on tax issues arising from financial distress and have considerable experience handling these issues during IRS and state audits, appeals, and in tax litigation. Our tax attorneys are also available to

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advise and assist clients on possible sales tax and transfer tax aspects of distressed asset sales as well as on property tax valuation issues relating to those distressed properties.

Representative Matters

Step toe attorneys have handled the following types of matters:

Contract Disputes

- Brought claims against real estate investment trusts to recover collateralized mortgage obligations.
- Brought merger rescission claims on behalf of a real estate holding company in complex litigation concerning the ownership and board membership of the holding company and affiliated entities. The holding company owns office holdings worth hundreds of millions of dollars.
- Brought breach of contract and fraud claims against a national home builder with extensive focus on divisional accounting issues.
- Brought claims on behalf of a major national commercial bank concerning scores of millions of defaulted real estate loans.
- Served as lead trial counsel in arbitration resulting in a \$40 million award for a client in the real estate industry. The arbitration involved a dispute over the amount owed under an “earn-out” provision in a purchase agreement.
- Served as lead trial counsel for a privately owned real estate developer in an action brought by one of its former members for a “buy-out” of his “partnership” interest pursuant to Section 16701 of the California Corporations Code. Following an appraisal, our attorneys won an arbitration enforcing the appraisal against the former partner.
- Successfully defended a developer against a general contractor's claims for millions in allegedly unpaid contractor's fees and for foreclosure of a mechanic's lien. We obtained a \$750,000 jury verdict in favor of our client against the same general contractor.
- Brought and defended claims brought by lenders against the guarantors of failed commercial real estate development projects.

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- Obtained a favorable settlement on behalf of investors of a condominium project (who unwittingly purchased a dilapidated basement floor of a condominium building at a foreclosure sale) by enforcing California's Davis Stirling Act and the condominium's CC&Rs.

Lease Disputes

- Successfully defended a commercial tenant's claim for breach of lease agreement and obtained a favorable money judgment in favor of our client following AAA arbitration.
- Represented a savings and loan association in arbitration with a savings bank concerning the occupancy of an office building in Phoenix.
- Handled an appeal from a \$22 million judgment against our client for breach of a shopping center lease for a movie theatre complex. The judgment was reversed, with award of costs to our client, on the grounds that the sole remedy clause of the parties' lease limited the remedy for termination of the lease to \$12,267.22 in architectural fees.
- Served as lead trial counsel for a post-production company, which claimed that its tenant had violated a non-compete provision in its lease. Our client was awarded \$575,000 in damages at a bench trial before a judge pro tem.

Officer, Director, Accountant Actions

- Represented a brokerage firm in five actions brought by over 100 investors in oil and gas limited partnerships sponsored by the same general partner. The suit alleged violations of state and federal securities laws, racketeering and common law claims based on alleged misstatements in prospectuses.
- Defended fraud, securities, breach of fiduciary duty and consumer fraud claims against an accounting firm arising from the bankruptcy of a national home builder, with extensive focus on real estate valuation and reserve issues.
- Defended a national accounting firm and one of its partners in a \$15 million action for accountant malpractice, breach of fiduciary duty, fraud and racketeering. The case arose from tax planning and financial statement work for two British Virgin Islands corporations that invested in Phoenix real estate.

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Fraud Litigation

- Brought racketeering, fraud and constructive trust claims against a real estate developer and loan syndicator involved in office, apartment and retail development on behalf of an issuer of financial guaranty bonds, as well as associated debt enforcement and securities litigation.
- Defended a savings and loan association against racketeering and fraud claims arising from an alleged loan origination fraud involving securitized mobile home loans.
- Defended a title insurer against racketeering, fraud and breach of fiduciary duty claims arising from an escrow relating to complex stock transactions.
- Obtained a judgment against a commercial real estate broker, including punitive damages, in the excess of \$10 million.
- Obtained a multi-million dollar settlement for investors against a real estate developer for certain misrepresentations made concerning the value of the real properties.
- Defended a building developer against a \$13 million misrepresentations claim in connection with the sale of a building near Los Angeles Airport (LAX). Our attorneys were successful in obtaining a \$500,000 jury verdict in favor of our client against the plaintiffs.
- Obtained a multi-million dollar settlement for investors of real properties in Henderson, Nevada, against real estate developers for certain misrepresentations made in connection with the purchase of raw land.

Restructuring, Workout, Bankruptcy

- Represented a group of sureties in workout transactions and bankruptcy proceedings involving two major international construction companies.
- Provided a wide range of workout, restructuring, and bankruptcy-related counsel and advice to a major commercial bank, successfully representing the bank in matters involving hundreds of millions of dollars in loans to companies in the real estate development, and commercial real estate development and ownership sectors.

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- Represented a major commercial bank in the bankruptcy of a developer's real estate interest.
- Represented a real estate development company in connection with its restructuring of secured debt financing for a real estate project.
- Served as Chapter 11 Trustee in the successful sale of thousands of acres of undeveloped real property and resolution of secured claims and tax issues.
- Reorganized numerous real estate developers through Chapter 11 bankruptcies.
- Represented the committee of creditors of an owner and operator of fully encumbered office complex in Southern California. Negotiated consensual plan of reorganization in extensively litigated case that provided for full payment plus interest within one year of confirmation to general unsecured creditors.
- Served as lead counsel in a complex adversary proceeding involving an international construction company between secured and unsecured creditors and surety companies, involving issues relating to international construction projects, including the priority of a DIP loan, equitable subordination, accountings, restitution, breach of trust, constructive trust and equitable lien claims. The matter was ultimately resolved through the plan of reorganization.
- Represented the Official Committee of Unsecured Creditors in the Chapter 11 bankruptcy cases of an energy company and certain of its affiliates, which are engaged in the acquisition, exploitation, and development of oil and gas properties, located primarily in the United States.

Financing

- Represented issuers of over two billion dollars of asset-backed securities collateralized by mortgage loans, home improvement loans, student loans, insurance premium finance loans, credit card receivables and mobile home loans.
- Represented the manager of the pension fund for a large Canadian telecommunications company in its capacity as construction lender to an Arizona developer in connection with the developer's conversion of an upscale apartment community into a condominium complex.

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- Represented a global restaurant franchisor in connection with the purchase, sale and leaseback of its corporate headquarters located on tribal lands.
- Represented a US-based utility company in connection with its financing of the development of a resort community in Sonora, Mexico.

Environmental

- Supervised environmental due diligence associated with the construction of the US Airways Center in Phoenix.
- Supervised environmental due diligence for 26 commercial facilities in 12 states with a transaction value of \$500 million.
- Supervised environmental due diligence related to the purchase of chemical manufacturing facilities in multiple states for a foreign purchaser.
- Supervised environmental due diligence for the purchase of every piece of property made by one of the country's largest outdoor sign advertising companies.
- Negotiated the development with ADEQ of prime property in the City of Phoenix that is a state superfund site which has ongoing remediation.
- Supervised the purchase and environmental due diligence of 14,000 acres of farm land to be used for residential purposes. The due diligence avoided approximately \$50+m in subsequent cleanup costs.

Tax

- Represented clients in appealing the property tax valuation of distressed commercial and industrial properties to achieve significant tax reductions and refunds.
- Represented and advised lenders on state and local tax issues arising from foreclosures on commercial and industrial property.
- Advised borrower-developers on state income tax consequences of short sales, foreclosures and transfers in lieu of foreclosure as well as bankruptcy.