

# Real Estate Finance and Lending

## Overview

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The financing of commercial real estate has become as innovative and complex as the capital markets that fuel the industry. Katten's Real Estate Finance and Lending group brings valued industry experience, practical know-how, multi-disciplinary resources and a deep bench to assist our clients with real estate finance projects of every size and type through all phases of the project and all economic cycles. As part of a broad-based, national and international practice, our attorneys are well-versed in all aspects of real estate transactions. We represent lenders, borrowers, owners and investors with equal skill in origination, syndication, servicing, restructuring, insolvency and enforcement matters in all market conditions, including distressed real estate markets.

### Global reach and national prominence with local insight

With offices in major US real estate markets, the UK and Asia, our Real Estate Finance and Lending team has the geographic footprint and experience to support our clients locally, nationally and internationally. Our team of more than 120 real estate attorneys is one of the largest real estate groups among leading US law firms, and we have been recognized for the breadth and depth of our practice and our commitment to client service. Our integrated, multi-office team allows us to cost effectively staff both single asset and large portfolio transactions and provide market sensitive support to our clients in the many markets in which they invest. We represent providers and users of financial products and offer current industry advice on a geographic basis that our clients value and have come to expect.

As part of an international, full-service law firm, we regularly draw upon the support of our other practice groups, including our tax, litigation, environmental, insolvency and restructuring, financial services, structured finance and securitization, corporate and securities, private fund regulation and formation, and employment and compensation practice groups to assist us in supporting our clients.

**"They do a good job of explaining legal situations for a layperson [and] . . . separating material issues from immaterial or minor ones so we can focus our time and effort in the right places."**

*- Chambers USA 2018 (North Carolina, Real Estate: Finance) survey response*

## Sophisticated knowledge with a client-first focus

The complexity of real estate transactions requires a comprehensive understanding of the asset being financed and the current state of real estate markets. As we represent both lenders and borrowers, our attorneys are adept at both understanding the structure of the transaction and the issues that need to be addressed (including potential problems that could affect the value and marketability of the underlying asset), as well as conducting the required due diligence to uncover any additional potential issues and, finally, documenting the transaction accordingly. As such, we are able to suggest resolutions to legal and business issues in addition to assisting our clients in analyzing the risks in each transaction and structuring the transaction to mitigate those risks, which is especially important during distressed real estate markets. Working closely with our lender and borrower clients, as applicable, we negotiate solutions that protect their interests and take into account the current economic environment — regardless of asset type — while constantly moving the deal forward toward closing.

While our focus is to assist our clients in structuring their financial products, obtaining capital from a variety of sources and structuring their capital stack to meet their objectives, our experience enables us to understand the needs of all other parties to the transactions, resulting in an experience that leaves a positive impression on all parties. When investments do not go as planned, we help our clients preserve and recover those investments, including workout, restructuring and enforcement.

We are proud to be a trusted advisor to a broad range of clients with respect to their various financial products covering all asset classes. Our Real Estate Finance and Lending team assists start-ups and middle market lenders and borrowers, as well as internationally recognized global institutions. Our clients include local, regional, national and international banks, investment banks, insurance companies, pension funds, mortgage REITS, debt funds, private equity funds, developers, owner/operators, managers and non-profit organizations. We assist our clients in the financing of office, retail, hospitality, mixed-use, industrial, multi-family (including affordable housing), stadiums, for sale condominium projects and working capital needs with a wide range of financial products, including:

- Senior secured, mezzanine and subordinated debt financing
- CMBS financing and CMBS and CLO securitizations
- Portfolio financing

- Construction financing
- Bridge financing
- Subscription lines
- Preferred equity
- Syndications
- Participations
- Co-lending relationships, including multi-tranche senior/subordinate financings
- Repurchase agreements, warehouse lines and “loan on loan” financings
- Revolving credit loans
- Ground leasehold financing
- Sale/leaseback and credit tenant financing
- Bond financing, including affordable housing bond financing
- Tax credit financing, including LIHTC, NMTC and HTC investing
- Defeasance
- Loan assumptions
- Loan and loan portfolio acquisitions and dispositions
- Forbearance, workouts and modifications of loan transactions
- Judicial and nonjudicial foreclosures and deed-in-lieu transactions
- Discounted note sales and payoffs
- REO acquisitions and dispositions
- Tax issues related to real estate financing
- Real estate litigation, insolvency and bankruptcy matters
- Environmental issues

## Our Experience

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### *Workouts/Restructurings*

- Represented a commercial bank in the restructuring of a \$7 billion credit facility for a large casino/hotel operator secured by casinos and hotels in multiple states.\*

- Represented an international bank in the workout of a \$442 million construction loan secured by a condo/hotel in Honolulu.\*
- Represented a large insurance company with respect to setting up a platform for handling coronavirus (COVID-19)-related loan modifications, including form modification documents with alternative provisions, form checklists, form pre-negotiation agreements, form term sheets and formats for internal committee approval memos.
- Represented a financial institution borrower in the workout of a defaulted mortgage loan involving a master lease on a limited service hotel owned by tenants-in-common, which involved CMBS special servicing.

### ***Bankruptcy***

- Represented a large national commercial bank in a \$1.3 billion transaction in connection with a failed whole loan repo transaction with Lehman Brothers in conjunction with the Lehman Bankruptcy, which included 35 distressed loans that were subject to the bankruptcy court proceeding.\*
- Represent a lender in the restructuring of a \$250 million secured casino loan in connection with a borrower's Chapter 11 prepackaged bankruptcy reorganization.\*
- Represented lender in a workout pertaining to settlement of claims in a bankruptcy of a \$183 million loan secured by personal property security interests pertaining to the equity ownership of a lodging company with hotels located in multiple jurisdictions within the United States.

### ***Deeds-in-lieu***

- Represented a lender on deed-in-lieu of foreclosure and resale of 240 unsold condominium units in 26-story tower outside of Fort Lauderdale.
- Represented the owner of a shopping mall in Glendale, Wisconsin, facing a mortgage debt of \$205 million in a deed-in-lieu of foreclosure transaction.
- Represented the owner of an office building in Woodridge, New Jersey, facing a mortgage debt of \$220 million in a deed-in-lieu of foreclosure transaction.

### ***Foreclosure***

- Represented an international bank in the foreclosure of a \$520 million syndicated construction mortgage loan secured by a condominium/hotel ski resort development in Colorado.\*

- Represented a large financial institution as foreclosing lender and REO owner with respect to two condo hotel, traditional hotel and retail properties located in Hawaii, including foreclosure, ground lease issues, tax structuring, hotel management, retail leasing, liquor license and sale of condo hotel units (including securities law considerations).

#### ***Mortgage loan sales and discounted payoffs***

- Represented large financial institution on the sale of \$1.56 billion mortgage loan pool made up of over 40 mortgage loans relating to properties across the country in 40 days.
- Represented a commercial bank in the sale of two pools of loans, each in excess of \$1 billion, secured by real estate throughout the United States.\*
- Represented lead lender/servicer on workout and eventual discounted payoff of multi-tranche loans financing a shopping center/entertainment complex in Hallandale Beach, Florida, and a six-block casino development parcel in downtown Las Vegas.

#### ***REO sales and acquisitions***

- Represented a client with respect to the acquisition of a distressed commercial real estate portfolio of non-performing loans and real estate acquired by foreclosure or transfer in lieu of foreclosure in a transaction valued at more than \$500 million.
- Served as exclusive national counsel to affiliate of a bank on sale of more than \$400 million of REO properties and mortgage loans across the country.

#### ***Litigation***

- Represented a lender in a lawsuit relating to a \$112 million mortgage loan for acquisition, entitlements and infrastructure improvements on a luxury resort/residential/retail development in Phoenix regarding various failure to fund, contract and tort claims, as well as actions on the guaranty.

#### ***Other***

- Represented a large public company in more than \$2 billion distressed real estate transactions, including complicated modifications, workouts in multi-lender capital structures, foreclosures, sales of non-performing loans, "short" sales, development of creative workout strategies, and deeds-in-lieu of foreclosure relating to hospitality projects, condominium projects, office projects and land development projects.

- Represented large financial institution in all aspects of loan modification, workouts, deeds in lieu of foreclosure, foreclosures, discounted payoffs, whole loan sales and REO Property Sales; projects included hospitality, condominium, office, retail and multifamily projects across the country.

## Key Contacts

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## Recognitions

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- *Chambers UK*
  - Real Estate: Lower Mid-Market
    - London (Firms), 2016–2021
    - Hotels & Leisure - UK-wide, 2019–2021
- *Chambers USA*
  - Real Estate
    - Nationwide, 2012–2020
    - District of Columbia, 2016–2020



- Illinois, 2006–2020
  - North Carolina, 2016–2018
- Real Estate: Finance
  - North Carolina, 2012–2020
- Real Estate: Mainly Corporate & Finance
  - New York, 2016–2018
- The Legal 500 United Kingdom
  - Real Estate
    - Commercial Property, 2012–2019
    - Commercial Property: Hotels and Leisure, 2012–2021
    - Property Finance, 2015–2021
- The Legal 500 United States
  - Real Estate, 2016–2020
  - Real Estate and Construction, 2013–2018
- *U.S. News Best Lawyers – "Best Law Firms"*
  - Real Estate Law
    - National, 2011–2021
    - Charlotte, 2011–2021
    - Chicago, 2011–2021
    - Los Angeles, 2011–2021
    - New York, 2011–2021
    - Washington, DC, 2011–2021