

REITs

Real estate investment trusts (REITs) are a special form of tax-advantaged business entity created for the specific purpose of encouraging widespread ownership of real estate by small investors. REITs provide the average investor with an opportunity to pool capital with others for investment in managed real estate, to spread risks through diversified holdings and to acquire properties which might otherwise be beyond the means of the individual investor.

Andrews Kurth historically has been significantly involved in the REIT industry, with a number of our lawyers having served as outside general counsel or issuer's counsel to major industry players. We have advised some of the nation's oldest and largest REITs, as well as some of the newest.

Our lawyers are skilled in the tax and operational aspects of REITs, and we are active members of the National Association of Real Estate Investment Trusts (NAREIT). We have a practical understanding of REIT business needs, problems and concerns, and we work closely with our clients to further their success.

Financing Leaders

We are one of the nation's leading law firms in representing REITs in connection with equity offerings, including initial public offerings, secondary offerings, follow-on offerings and other securities matters. Additionally, we have had significant experience in advising a rating agency in its role of analyzing and reviewing securitized mortgage pools that include REIT debt.

IPO Counsel

We have had particular success in helping REITs with IPOs as issuer's counsel, underwriters counsel and contributor counsel. IPO transactions in which we have acted in such capacity include:

- American Health Properties
- Annaly Mortgage Management, Inc.
- Ashford Hospitality Trust
- Capstead Mortgage Corporation
- Columbus Realty Trust
- Patriot American Hospitality, Inc.
- Public Storage, Inc.
- Weingarten Realty Investors

Operational Advisors

Our lawyers advise REIT clients on everyday operating issues, helping them negotiate the complicated REIT rules and regulations. Because REITs operate within the requirements of the Internal Revenue Code, we help clients conform to all IRS regulations on qualification and structuring of transactions, helping these clients remain competitive with other real estate companies that don't have the same tax restrictions. We also advise these clients on day-to-day corporate governance and securities law issues, many of which are significantly impacted by REIT status. As NAREIT participants, we keep up-to-date on all industry developments and play a key role in shaping the REIT industry's continuing growth.

The snapshot of clients below shows both the range of our lawyers' activities and the strength of our long-term client relationships:

- **Allied Capital Commercial Corporation and Business Mortgage Investors, Inc.**—We have acted as outside general counsel to these mortgage REITs, assisting with loan origination and purchase, loan securitizations, tax compliance, and repurchase and other debt financings.

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- **Ashford Hospitality Trust Inc.**—We have acted as counsel for Ashford since its inception in 2003, in a \$202.5 million initial public offering. Since that time, we have represented the company in all of its subsequent public and private equity offerings, raising over \$1.2 billion in public offerings and approximately \$295 million in private equity offerings. We have also represented Ashford in acquiring multiple real estate properties with the issuance of partnership interests through its umbrella partnership structure. Further, we have assisted Ashford in numerous other matters, including structured finance transactions related to the purchase and sale of assets and day-to-day matters concerning SEC compliance, NYSE compliance, corporate governance and shareholder communications.
- **Capstead Mortgage Corporation**—We have represented this Maryland REIT since its inception in 1985, helping with multiple common and preferred stock issues (including \$400 million in merger transactions) and more than \$13 billion in mortgage-backed securities issues. We also assisted Capstead in joint venture transactions as well as serving as outside general counsel to the company and assisting management with day-to-day matters concerning SEC compliance, NYSE compliance, corporate governance and shareholder communications.
- **Public Storage, Inc.**—We provided real estate, financing and transactional advice to this California REIT (formerly Storage Equities, Inc.) on its organization and initial public offering in 1980, and we have worked with affiliated entities since their inception in 1972.
- **Weingarten Realty Investors**—After advising the predecessor of this Texas REIT for many years, we helped it convert to REIT status in 1984. We acted as issuer's counsel on the 1985 initial public offering for Weingarten, and assisted the company with many other public and private debt and equity issues (including EuroBonds) thereafter.

Unique Challenges

In 2007, we acted as counsel to a special committee of the board of directors of Desert Capital REIT, Inc., in connection with the sale of its mortgage company to a related party. In this representation, we advised the special committee on general REIT considerations as well as corporate governance and related-party matters.

In late 2000, in response to shareholder unrest, we worked with United Investors Realty Trust (UIRT) as it engaged an investment bank to auction the company. The company believed that the proposals received in the auction process were inadequate, so additional bids were solicited. At the same time as the auction process was continuing, a major investor waged a hostile proxy fight to oust UIRT's management. We represented UIRT throughout the proxy fight, which ended in a negotiated settlement with the UIRT entering into a merger agreement with Equity One, Inc., pursuant to which it ultimately acquired UIRT.

Practical Partners

REITs are complex business entities that provide distinct tax and investment advantages for businesses that own real estate. Our goal is to help our REIT clients enter into profitable investment transactions while meeting all the necessary tax and regulatory requirements to which REITs, by their nature, are subject.

After decades of working in partnership with our clients, we have developed a "real-world" perspective on what it takes for REITs to succeed. We give straight talk and clear advice that helps our REIT clients better compete in the crowded financial marketplace, while at the same time navigating the complexities of the IRS REIT rules.