

Real Estate Finance/Capital Markets

We have adopted a systematic approach to leveraging experience and solving problems for our clients in all facets of loan originations, securitization and secondary market transactions, loan servicing and asset management, and institutional investment.

Loan Originations

In addition to traditional on-book or portfolio lending, we have acted as program counsel for a variety of nationwide lending platforms involving securitization and other secondary market exit strategies. This perspective to closing loans provides insight in identifying and resolving loan-level issues and the ability to cultivate best practices for our clients in managing legal risk.

Our loan origination experience includes:

- CMBS or Securitized Loans
- Portfolio Loans
- Fixed-rate Loans
- Floating/Adjustable Rate Loans
- Construction Loans
- Bridge/Acquisition Loans
- Credit Tenant Lease Transactions
- Pari Passu Loans
- Mezzanine Loans
- Senior/Subordinate Loan
- Preferred Equity
- Loan Participations
- Loan Syndications
- Franchise Loans

In the CMBS area, loans that are among the "Top 10" by loan amount in any loan pool are the subject of additional detailed disclosure and typically involve structural and asset complexity. From Manhattan office towers to regional malls, our clients have entrusted us with handling their most demanding transactions. We also take pride in the processes and efficiencies we have developed for high-volume, small loan programs. Across the loan origination spectrum, we bring a market-savvy perspective attuned to risk and mindful of our client's business objectives.

Securitization and Secondary Market Transactions

Andrews Kurth is one of the few law firms nationally that actively represents clients in all segments of the real estate capital markets. By fusing the experience from origination, securitization and servicing lines of business, we have adopted a cross-disciplinary approach to anticipating and solving problems.

Our fluency with the real estate capital markets is critical to evaluating and realizing emerging opportunities, and our lawyers are in the forefront of industry and government efforts to re-energize commercial lending.

Our securitization and secondary market experience includes:

- Loan Sales
- CMBS (Commercial Mortgage-Backed Securities)
- Warehouse Loans
- Loan Repurchases (Repos)

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- Derivatives and Swap Transactions
- Loan Syndications
- Loan Participations
- Structured Finance
- REMICs
- FDIC Pools

Loan Servicing and Asset Management

We are counsel to master, primary and special servicers in connection with the transactional aspects of their business—from establishing baseline servicing program documentation and handling consensual requests to enforcing lender remedies. We routinely delve into pooling and servicing agreements and the tax-related issues that accompany servicer actions for REMIC-structured loan pools. For CMBS loan servicing, our familiarity with securitization structures, loan underwriting and property diligence issues permits quick understanding and resolution of complex problems.

For institutional clients that have originated or purchased loans for their own account, or have real estate-owned on their books, we provide advice and transactional assistance on property management, leasing and disposition matters as well.

For our special servicer clients that face the challenge of non-performing real estate loans, we evaluate strategies available under loan documents and servicing agreements, taking into consideration servicing standards and the ultimate goal of maximizing recovery. We have extensive experience nationally with the appointment of receivers, foreclosure proceedings, and the implementation of forbearance, discounted payoff and other problem loan resolutions.

Our loan servicing and asset management experience includes:

- Primary Servicing
- Master Servicing
- Special Servicing
- REMIC
- Assumptions
- Modifications
- Defeasance
- Workouts

Loan and Property Due Diligence

Evaluating legal risk is essential in times of economic stress. For loan origination programs and CMBS and portfolio distressed asset acquisitions, we have developed a systemic approach to evaluating legal risk:

- Loan summaries to trap information potentially relevant to internal quality control and secondary market information requirements
- Loan-level diligence to verify or evaluate loan presentation information and address problems with structure, documents or property diligence
- Overview memoranda to ready loan pool data for disclosure, reps/warranties compliance and investor follow up
- Best practice takeaways to identify decision-making tendencies and procedural or substantive issues for program-wide corrections

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Our legal risk processes have been developed and continually refined since the inception of the CMBS markets. Since 2005, for example, we have reviewed mortgage loan documentation, evaluated loan summary and property diligence information, prepared disclosure documentation and issued opinions required by rating agencies and transaction participants for over 3,000 loans in more than 50 CMBS securitizations involving eight different shelves, as well as for a variety of portfolio transactions. In addition, we redesigned loan information data gathering for a GSE in connection with its ongoing securitization of multi-family loans, and have performed MBS-related due diligence for more than 1000 loans sourced from both conforming and nonconforming programs. These skills are no less relevant in times of economic downturn, where assessing distressed loan opportunities hinges on the legal and structural attributes of the underlying transaction documents and property diligence.

Our loan and property due diligence experience includes:

- CMBS Loan Pools
- GSE Loan Pools
- Secondary Market Loan Sales
- Takeaways Protocols
- Legal Risk Analysis
- Reps and Warranties Exceptions
- Best Practices Analysis
- Legal Data Capture
- Loan Repurchases (Repos)
- FDIC Loan Auctions
- Rating Agency/Investor Feedback

Equity and Joint Venture Investment

We represent institutional and private equity investors, tax-exempt funds, private REITs, and pension advisors in the acquisition, leasing, management and disposition of investment-grade properties on a national basis.

Utilizing our experience in tax-advantaged transaction structures, we prepare joint venture and partnership agreements for equity investments. We analyze property compliance with tax-exempt ownership requirements, including unrelated business third party income (UBIT) issues and REIT-specific tax rules.

We address all aspects of our clients' investment in commercial real estate, including traditional property due diligence, environmental review, tax/REIT review, negotiation of financing terms, and analysis of entitlements, leases and property management agreements, construction documents, brokerage agreements, and vendor contracts.

Our equity and joint venture investment experience includes:

- Joint Ventures (Front-end and Back-end Equity Funding)
- Recapitalizations/New Capital Infusion
- Portfolio Acquisitions
- Acquisition and Construction Financing
- Industrial, Office and Retail Leasing
- Loan Workouts and Modifications
- Property-level UBIT/REIT Analysis

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Distressed Assets - Workouts and Restructurings

Ever-changing economic conditions and upheaval in the credit markets create myriad legal questions and strategies for distressed assets. Our lawyers draw on decades of national experience in out-of-court workouts, settlements, and restructurings, as well as in-court insolvency proceedings to guide clients in debtor-creditor rights, corporate law and governance, regulatory matters, finance, tax, real estate and litigation. With the increased role that the capital markets have played in financing real estate, our CMBS and servicing experience permits us to devise viable strategies for such complicated structures.

Our Distressed Assets - Workouts and Restructuring experience includes:

- Loan Defaults
- Foreclosures
- Workouts
- Pre-Negotiation and Forbearance Agreements
- Multi-State Remedies
- Commercial and Multifamily Property Types
- FDIC Loan Pools
- Bankruptcy Reorganization and Liquidation
- Mezzanine Loan Workouts
- Receiverships
- Distressed Loan Sales
- Single Asset Real Estate Bankruptcies
- Franchise Properties