

→ Commercial Mortgage Backed Securities ("CMBS")

Sheppard Mullin is a recognized leader in the mortgage banking and securitized lending area and is proud to represent many of the leading financial services companies in all aspects of their ongoing business and legal needs. We are known for drawing on our industry experience, reputation, contacts and understanding to assist lenders and special servicers in developing innovative strategies for achieving their business goals.

Our ability to help our clients achieve their goals is based upon Sheppard Mullin's strategic practice approach. We understand it is important that a law firm not just be an expense line item on an income statement. We strive to be viewed as an important asset to, as well as a trusted advisor in, our client's business. We take pride in our strategic business focused approach, which consistently achieves success as well as cost-effective results for our clients.

Conduit Lending

Sheppard Mullin represents lenders in connection with commercial mortgage conduit loan origination programs. Our lawyers have closed countless loans originated by clients for sale into the CMBS. As a result, we are knowledgeable about the special needs and requirements of clients engaged in these transactions. Our expertise in this area represents a natural continuation of the firm's mortgage loan documentation practice, which has been a long-standing specialty of the firm. We have lawyers across the firm who can service clients in this area. Our representation of CMBS lenders, as in the representation of traditional mortgage lenders, includes:

- preparation of mortgage loan documents, including loan agreements, promissory notes, deeds of trust, assignment of rents and leases and security agreements;
- negotiation of documents with borrower's counsel;
- handling all aspects of borrower and collateral due diligence; and
- when necessary, preparing and negotiating documents with third parties, such as tenants, governmental authorities and subordinate and mezzanine lenders.

In addition and as a result of the unique structural and legal requirements of CMBS loan originations, our attorneys have additional expertise in such areas as:

- review of borrower formation to ensure compliance with lenders' bankruptcy remote and special purpose entity requirements;
- property due diligence to ensure compliance with rating agency requirements with respect to title and survey review, zoning compliance, environmental matters, restrictive covenants and cross use agreements, as well as tenant issues;
- establishing guidelines for negotiating loan documents consistent with the permitted scope of both rating agency requirements for mortgage backed securities and client generated policies;
- formulating and implementing administrative procedures for the management of "deal flow" from initial contact with the borrower through loan closing and subsequent securitization;

- assisting clients with assigning sold loans to a REMIC trustee and coordinating with the trustee's loan servicers to address post closing matters; and
- creating a network of local counsel across the country to give advice with respect to special state law requirements and closing customs and practices.

Default Administration

Reflecting the reality of business, the financial restructuring and insolvency practice of Sheppard Mullin has been a key element of the firm's composition since its founding more than 80 years ago. We have the resources to respond to the time sensitivity of financial crises and the depth to provide whatever size team is required. As part of a large, broad based commercial law firm, we are able to draw on all of the resources necessary to solve the multidisciplinary problems presented by commercial real estate defaults and insolvencies.

In addition to the great depth of our bankruptcy and restructuring practice, we have particular experience in the complex workouts of CMBS loans, with more than two decades of experience representing special servicers, lenders and originators in the CMBS market. Sheppard Mullin's CMBS default practice enjoys great breadth of expertise and depth of experience. With a multi- office interdisciplinary team focused in Los Angeles, San Francisco, Orange County, San Diego and New York, the CMBS default practice serves as a go-to resource for several major CMBS special servicers for both default administration/foreclosure work and bankruptcy/insolvency matters. With a diverse group of lawyers ranging from senior partners to junior associates – with significant experience in workouts, restructurings, enforcement of remedies and bankruptcy matters – as well as related real estate transactional matters of all kinds – the Sheppard Mullin CMBS default practice provides a full service approach to the challenges faced by its special servicer clients.

We advise our clients on enforcement of obligations under pooling and servicing agreements and related documents to respond to demands made upon them. We routinely handle all aspects of CMBS workouts, including strategic plan development, workout negotiations, techniques for controlling cash, title and other pre-foreclosure work and documentation, deed-in- lieu transactions, judicial and non-judicial foreclosure techniques and defenses, loan modifications, forbearance agreements and third-party loan sales and borrower discounted payoffs. We rely upon our restructuring, insolvency and litigation expertise to assist note holders in maximizing the value. We represent servicers in state and federal court litigation, including judicial foreclosures and receiverships, as well as in bankruptcy cases.

Sheppard Mullin currently serves as regional bankruptcy counsel for one of the largest CMBS special servicers – handling borrower and guarantor bankruptcy filings throughout California and the neighboring West Coast states.

Strategic Support

For our clients' mutual benefit, in our role as counsel, we offer clients access to the contacts, relationships and networks existing throughout our firm. The goal of this approach is not only to give our clients access to the most efficient provider of legal services to meet their needs, but also to encourage our clients to connect with other clients and firm contacts, so they may serve as vendors, advisers or strategic allies to each other. After careful, confidential vetting by each client or contact, these introductions could include other financial services companies (with which the client might joint venture), investment bankers, institutional financing sources (such as warehouse lenders or investors), employee placement firms, software vendors, executive management candidates, real estate leasing agents and valuation or auditing firms.

Representative Matters

With a client base that engages in a variety of financial services, attorneys at Sheppard Mullin have been involved in numerous matters in the mortgaging banking industry and, as a result, have been called on to assist our clients in the following:

MBS Workouts and Bankruptcy

- Represented a major financial services company in review of its entire MBS portfolio and advised the institution with respect to its rights and obligations, in and out of default scenarios, vis-à-vis all deal parties, including insurers/guarantors such as Ambac. We have in-depth working knowledge of the transaction documents that serve as the debtor's asset base.
- Represented several major U.S. banks and numerous mortgage lenders in:
 - Renegotiation of failed projects
 - Foreclosures
 - Asset acquisitions
 - Arranging the appointment of receivers
 - Analyzing and advising upon investor exposure related to failure or changes in underwriting policies by pool insurers
 - Lender fraud
 - Defense of actions thought by upstream lenders
- Represented major CMBS special servicer in workout and restructuring of various commercial real estate loans secured by retail, office hospitality and multi-family properties.
- Represented a major bank and back-up CMBS special servicer (after default by original special servicer) in workout and restructuring of various commercial real estate loans secured by office, retail and industrial properties.
- Represented multiple special servicers of various securitized loan portfolios secured by properties on which restaurant, hospitality and other franchised businesses are conducted.
- Represented a top residential lender in the following matters:
 - *In re Ownit Mortgage Solutions*. Represented a client in a Chapter 11 case involving a multi-million dollar loan purchase transactions and related servicing issues. Our client is a member of the Official Unsecured Creditors' Committee.
 - *State Law Dissolution of Subprime Loan Originator*. We recovered favorable cash payout from liquidating subprime mortgage loan originator, its principals and from the acquiring company resulting from pursuit of successor liability and fraudulent transfer theories.
 - *National Mortgage Loan Purchaser/Servicer*. Provided pre-bankruptcy advice to protect client's interest in a hedge fund in which it holds a principal interest. Fund partner is an industry leader in purchasing, servicing and securitizing residential mortgage loans.
 - *Repurchase Transactions*. Assist client in drafting of master repurchase agreement in light of bankruptcy and other concerns.

- Represented a worldwide financial services company in the following matters:
 - *Loan Purchase Transaction*. Assisted a worldwide financial services company in structuring and enforcing loan purchase transactions.
- Represented one of the largest privately owned investment managers in an \$80 million commercial real estate matter.
- Represented a mortgage servicer in the following matters:
 - *In re People's Choice Home Loans*. A chapter 11 bankruptcy case in which we represented client in all aspects of its loan purchase and repurchase claims against debtor.
 - *In re Steward Investment*. Represented a client in recovering mortgage loan and servicing files from insolvent subprime loan originator as well as pursuing guarantor for claims.
 - *C-Bass*. Represented client with respect to a Subprime loan trader with whom client had outstanding trades of repos and forward contracts.
 - *Belvedere Funding*. Represented client with respect to a subprime trader with liquidity problems.
 - *In re First Magnus*. Represented a client as agent of bank syndicate in bankruptcy of one of the country's largest loan originators involving loan pool transactions.
 - *Loan Purchase and Repurchase Agreement*. Provided advice to client regarding repurchase documentation on loan documentation.
- Represented a capital markets residential mortgage company in the following matters:
 - *In re Quality Home Loans*. Represented client, with \$60 million warehouse line, in all aspects of Chapter 11 case including: expedited transfer of servicing rights, relief from stay, loan sales, modified securitization documents and liquidated portfolios.
 - *In re Home Loan Mortgage*. Represent client, with \$10 million warehouse line, in all aspects of this Chapter 7 case including: expedited transfer of servicing rights, relief from stay, loan sales, modifying securitization and liquidating portfolios, out-of-court workout with financially troubled home mortgage company resolving transfer of loan, servicing and, ultimately, surrender of loans.

MBS Litigation Matters

- Counsel for major commercial real estate financial servicer in lawsuit alleging breaches of representations and warranties against the originator and seller of multi-family mortgage loans into securitized pools. We also represented this servicer in bankruptcies involving office buildings, retail centers, multifamily housing and hotels.
- Counsel for major mortgage real estate investment trust servicer in a \$12 million dispute over the modification of a \$40 million loan facility secured by multi-family housing and in bankruptcies involving retail centers, multifamily housing and hotels.
- Advised NYSE traded mortgage REIT on multi-state and federal law regarding residential mortgage loan modifications in order to develop a program to most-efficiently restructure loans and avert defaults; included working with subservicers and warehouse lenders to agree on correct procedures.
- Represented a national U.S. commercial bank in predatory practices/nuisance cases by the City of Cleveland and the City of Baltimore brought to recoup lost revenue due to foreclosures.

- Represented banks, funds and other prospective acquirers of performing and nonperforming commercial loans.

Corporate Governance Matters

- *Kennedy v. Peninsula Bank of San Diego*: Defended the inside directors in a Milberg Weiss effort to enjoin the merger of Peninsula Bank into U.S. Bank. We successfully defeated the request for an injunction.
- Represented largest corporate trust department of bank in responding to demands and requests for action and information by government and deal parties resulting from the subprime mortgage crisis.

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