

Real Estate Finance, Default Resolution & Servicing

Winstead's team of 50-plus real estate finance and loan servicing professionals serve the top CMBS lenders, special and master servicers, commercial banks, insurers and private lenders with sophisticated counsel in lending and loan servicing transactions nationwide. We can structure the deal, help get it securitized, resolve master and special servicing concerns, and follow through on defaults and foreclosures, all at a regional rate structure that offers extraordinary value given our world-class knowledge and experience in the industry.

Winstead attorneys complete deals quickly (typically closing 50 or more a month) because we focus on making transactions go smoothly for parties on all sides of the table. Above all else, we nurture and value each client relationship, helping national and regional commercial real estate lenders, loan servicers, mortgage bankers and brokers maintain and increase their market share. Our land-use, real estate development, construction and banking groups provide a deep bench, offering critical and timely insight to meet closing targets.

On the servicing side, clients benefit from our regional reputation and rate efficiency combined with national capabilities. We literally wrote the book on Texas foreclosure law, and our business litigation and bankruptcy practices offer the deepest support for any related needs. Originators and servicers of all sizes know us to be responsive, fair and a pleasure to work with.

Snapshot of Real Estate Finance Strengths

Winstead is a strategic real estate finance resource for loan originators, banks, insurance companies, loan servicers and investment advisors. From term sheet commentary to closing and post-closing delivery, we execute and service real estate projects and portfolio investments through comprehensive assistance with:

- Master servicing – consent, transfer, assumption, modification
- Bank loans – bridge, mezzanine, acquisition, syndicated, CMBS
- Construction loans – single-asset, project-based, property-secured
- Default resolution – workouts, foreclosures, bankruptcy, deeds-in-lieu, receiverships
- Secured loan modification and secured note sales
- Inter-creditor relationships
- Private debt placement and A/B note financing

Next Steps

In real estate finance, default resolution and loan servicing, Winstead is committed to achieving our clients' objectives through proven, yet innovative lending and servicing strategies. For CMBS lenders as well as for banks with special servicing needs, we have closed loans from coast to coast. We have the reach, relationships and experience to be the right choice for you.

Experience

LOAN ORIGINATIONS

CMBS Loan Originations:

We represent the largest CMBS originators in the country and have closed hundreds of loans in CMBS 2.0 including:

- Closed a new \$75 million CMBS loan secured by 37 industrial properties located in Houston, Texas
- Closed a new \$44 million CMBS loan secured by 10 office buildings in Michigan, Ohio and Florida
- Closed a new \$54 million CMBS loan secured by a portfolio of office buildings in Irving, Texas
- Closed a new \$50 million CMBS loan secured by 42 single asset, retail locations in 12 different states

- Closed two separate \$55 million CMBS loans secured by an office property and a boutique hotel in Houston, Texas
- Closed a new \$68 million CMBS loan secured by a mall in Las Vegas, Nevada

Bank Lending:

Our bank lending clients include national, regional and community banks. A small sample of our recent representations include:

- Closed a new \$29 million bank-originated loan secured by 3 office buildings in Dallas, Texas
- Closed a new \$26.5 million bank-originated loan secured by an office building in Fort Worth, Texas
- Closed a new \$25 million bank-originated loan secured by a marina complex in Jersey City, New Jersey
- Closed a new \$17.7 million bank-originated loan secured by four (4) marinas in Georgia, Iowa, Oklahoma and Virginia
- Closed a new \$15.6 million bank-originated loan secured by a student housing facility in Denton, Texas
- Closed a new \$40 million bank-originated loan secured by a revolving line of credit
- Closed a new \$35 million bank-originated loan secured by the construction of a top luxury hotel in Houston, Texas
- Closed a new \$31.8 million bank-originated loan secured by an apartment complex to be constructed in Kirkland, Washington
- Closed a new \$30.2 million bank-originated loan secured by an apartment complex to be constructed in Fort Worth, Texas
- Closed a new \$26.8 million bank-originated loan secured by retail center in Dallas, Texas
- Closed a new \$18.4 million bank-originated construction loan for a new senior living facility located in Irving, Texas
- Closed a new \$17.1 million bank-originated construction loan for a new senior living facility located in Lynnwood, Washington
- Closed a new \$16.1 million bank-originated construction loan for a new senior living facility located in Gilbert, Arizona
- Closed a new \$13.8 million bank-originated construction loan for a new senior living facility located in Kansas City, Missouri

Life Company Loans:

- Engaged by a life insurance company as its sole outside counsel for the company's capital markets group. Transactions included participation in a \$350 million loan to a real estate fund and A/B/C loan structure secured by 26 senior living facilities in multiple states
- Represented a life insurance company in the design and implementation of "construction to perm" loan program. Transactions included a \$15 million loan to build an apartment project in Oregon and an \$85 million loan to build a high-rise apartment project in Jersey City, New Jersey
- \$250 million dollar club deal with three insurance companies relating to the refinance of office buildings in Houston, Texas, involving the structure of the intercreditor arrangement, due diligence, review of over 200 leases, and documentation of the transaction
- Represented two life companies in two separate credit facilities of \$70 million, each to the same borrower, consisting of separate \$50 million Private Shelf Facilities and separate \$20 million Series A Notes
- Engaged by an insurance company and pension fund advisor to restructure its CMBS loan origination program
- \$310 million – Mortgage loan evidenced by 5 notes and secured by office buildings in Kentucky and Texas

Revolving Facilities:

- Administrative Agent in closing and subsequent restructuring and workout of revolving/term real estate secured credit facilities ranging from \$150 million to \$1.4 billion made to retail REIT, large format convention hotel REIT, hotel management/ownership company and land development REIT
- Administrative Agent in closing revolving/term unsecured real estate borrowing base credit facilities ranging from \$150 million to \$250 million made to government property REIT and office REIT

- Administrative Agent in restructuring of \$115 million real estate secured homebuilder credit facility
- Administrative Agent in closing and subsequent restructurings of real estate secured credit facilities ranging from \$42 million to \$115 million secured by multifamily, medical office and office properties
- Lender in closing multiple project construction project loans for retail projects located in North Carolina, Virginia, Georgia, Tennessee, Maryland and Florida (totaling approximately \$300 million) and related corporate revolving credit facility
- Lender in closing multiple retail project construction facilities (totaling approximately \$200 million) to retail development REIT for properties located in Florida, Illinois and Georgia

Mezzanine Debt:

- \$200 million – Secured mezzanine loan program for multifamily and student housing properties throughout the United States

Syndicated and Participation Structures:

- \$193 million – Syndicated loan structure (with 5 different notes) secured by 19 office buildings located in 4 states; followed by a \$20 million increase to the loan; and summaries of 285 space leases utilizing a lease review database created by a Winstead affiliate
- \$97 million – Syndicated senior secured construction and term loan financing to support a 50 million gallon per year fuel-grade ethanol plant and to enhance an existing corn mill by adding dry fractionation and corn fiber gasification systems
- \$350 million – Syndicated revolving line of credit, secured and unsecured tranches, proceeds used to acquire and remodel multi-tenant and single-tenant offices, industrial and research and development properties throughout the United States

Bond and Public Finance Loans:

Major investment house in restructuring, bond redemption and purchase and sale of 2,000 unit multifamily military housing project, which included negotiations among the U.S. Army, the project owner, a proposed purchaser, guaranteed investment contract providers, bond insurers and multiple institutional investors

DEFAULT RESOLUTION

Portfolio Loans - Representation of National Lenders with Real Property Non-CMBS Modifications:

- Restructure of a real estate construction loan in excess of \$35 million and a related subordinate real estate construction loan in excess of \$6 million secured by a partially constructed retail shopping center in Moore, Oklahoma
- Modification of a real estate construction loan in excess of \$48 million involving several loan participants and secured by a prominent mixed-use condominium property in downtown Dallas, Texas
- Restructure and extension of a loan in excess of \$63 million involving several loan participants and secured by a condominium project in Charlotte, North Carolina
- Modification of a real estate construction loan in excess of \$35 million secured by a mixed-use condominium project in San Diego, California
- Restructure and extension of a real estate construction loan in excess of \$88 million involving several loan participants and secured by a prominent apartment complex in Philadelphia, Pennsylvania
- Modification, consolidation and extension of a portfolio of seven sponsor-related loans in excess of \$52 million secured by various apartment complexes and retail shopping centers throughout Texas
- Restructure on behalf of 22 banks of \$260 million mortgage debt covering office buildings, hotel and retail properties

Defaults:

- \$250 million dollar club deal with three insurance companies relating to the refinance of office buildings in Houston Texas, involving the structure of the intercreditor arrangement, due diligence, review of over 200 leases, and documentation of the transaction
- Act as restructure counsel for big six accounting firm representing two major pension funds in attempted restructure of national portfolio of office buildings
- Sole outside general counsel for a government sponsored agency in relation to workouts and developed new technology solutions focused on oversight and data collection from local counsel, allowing client 24/7 access to legal information
- Engaged by a federal savings bank to handle all workouts and foreclosure actions (on a national basis) in its builder finance construction loan portfolio; national oversight allowed our client to maximize asset recovery and to implement a consistent approach in its recovery plan
- Representation of a top five public pension plan in workout of numerous premier office buildings in various states (including Texas, California, Arkansas and Minnesota)
- Restructure on behalf of 22 banks of \$260 million mortgage debt covering office buildings, hotel and retail properties in Dallas and eventual sale of notes in unsolicited tender offer

LOAN SERVICING

CMBS and Related Structured Finance Loan Representations:

- Restructure of a CMBS loan in excess of \$100 million secured by a prominent hotel in Beverly Hills, California
- Modification of a \$140 million CMBS loan secured by corporate office complex in Austin, Texas
- Bifurcation of a CMBS loan in excess of \$40 million secured by a downtown hotel in Seattle, Washington
- Restructure of a CMBS loan in excess of \$45 million secured by a ground leasehold interest in a prominent downtown office building in Dallas, Texas
- Loan restructure of a \$121 million debt facility secured by numerous multifamily properties in California
- Modification and extension of a CMBS loan in excess of \$35 million subject to a syndicated tenant-in-common borrower structure and secured by a hotel in Las Vegas, Nevada
- Successfully obtained multiple appointments of receivers in all major Texas metropolitan areas
- Representation of Special and Master Servicer in REMIC analysis and issuance of numerous REMIC opinions

Single Asset Construction Loans, Project-Based Construction Loans:

- Administrative Agent in closing and subsequent restructuring and workout of revolving/term real estate secured credit facilities ranging from \$150 million to \$1.4 billion made to retail REIT, large format convention hotel REIT, hotel management/ownership company and land development REIT
- Administrative Agent in closing revolving/term unsecured real estate borrowing base credit facilities ranging from \$150 million to \$250 million made to government property REIT and office REIT
- Lender in restructuring of \$300 million, 18 loan portfolio of real estate project construction financing facilities
- Lender in closing and subsequent restructurings of project construction financings ranging from \$30 million to \$50 million related to retail centers located in Charlotte, North Carolina, Clark City, Nevada, King County, Washington and a portfolio in multiple states and a multifamily project in Charlotte, North Carolina
- Lender in closing multiple project construction project loans for retail projects located in North Carolina, Virginia, Georgia, Tennessee, Maryland and Florida (totaling approximately \$300 million) and related corporate revolving credit facility

Real Property Foreclosures:

Although the recent foreclosure volume has declined from the 40-50 commercial mortgage foreclosures per month Winstead handled, we continue to be the go-to foreclosure firm for lenders and loan servicers on properties throughout Texas. The number and variety of foreclosures completed by the firm are simply too numerous to list.

Winstead authors three highly regarded and widely used legal books:

- Texas Foreclosure: Law and Practice (Texas Practice Series, Vol. 15), (Shepard's/McGraw-Hill, 1984; Thomson/West Group, 2nd Edition, 2001)
- Co-Author, Professor Norton and Baggett, Lender Liability Law and Litigation (Matthew Bender, 1989) and Texas Practice Guide, Real Estate Litigation (West Group 2002)

Deeds in Lieu of Foreclosure:

The firm regularly handles deed in lieu transactions and has guided lenders in the development of structures and state of the art documentation. The following is a sample of recent transactions:

- Deed in lieu to significant residential development located north of Atlanta, Georgia, on behalf of lead bank
- Representation of lead lender in the transfer in lieu of foreclosure of assets held by the Trust, including an office building in Austin, Texas, two industrial/office buildings in San Diego, California, and the transfer of the economic interests in and to a building and mixed-use site in Bellevue, Washington, and its related leasehold premises for a relocation site for a branch bank building, and the economic interests in a mixed use project site in Carlsbad, California
- Representation of lender in deed in lieu transaction where lender took title to several residential condominium units for a residential project located in Austin, Texas. Deed in lieu negotiations included the transfer of certain rights relating to the operation of the condominium to the lender and other condominium specific issues such as common expense obligations and limitations on declarant and association rights
- Representation of lender in deed in lieu of foreclosure involving the transfer of title of several hundred acres of partially developed real property in a residential community that were subject to a number of municipal development agreements, impact fee agreements, homebuilder contracts and restrictive covenants
- Negotiation of deed in lieu relating to portfolio of apartment properties in six states, including pre-bankruptcy consultation and pre-foreclosure litigation planning on behalf of New York institutional investor
- Negotiation of deeds in lieu prior to, during and subsequent to Chapter 11 filing, and eventual foreclosure of all properties relating to a \$110 million portfolio of office buildings, warehouses and retail properties in six states
- Negotiation of deed in lieu and ultimate sale of \$150 million Note relating to downtown Dallas, Texas, office tower on behalf of pension plans

Real Property-Secured Note Sales:

The firm has represented and continues to represent both lenders and purchasers of notes, including the design and formulation of note sales programs. The following is a sample of the transactions handled by the firm:

Representation of Note Sellers:

- Underperforming real-estate secured loans by large regional bank over numerous transactions; scope of duties include preparation of form documents, creating an extranet site and establishing policies and procedures
- Winstead currently acts as primary outside counsel to a major CMBS special servicer handling all of its pool-based loan sales, having handled over \$1 billion in loan sales for them from 2010 to present

Representation of Note Purchaser:

- \$30 million Note previously held by numerous participants and syndicated parties and secured by a prominent multifamily project in the Dallas-Ft. Worth area; subsequent foreclosure of the property which was owned by thirty-five (35) tenants in common borrowers
- \$13 million Note previously held by national financial institution secured by an office property in Florida
- \$80 million Note held by United Kingdom-based financial institution and secured by prominent hotel property in Arkansas
- Defaulted \$40 million Note from regional bank secured by mixed use multifamily facility in Atlanta, Georgia; subsequent foreclosure for benefit of the purchaser
- \$110 million Note from European lender secured by a multifamily portfolio with sites in Texas and Georgia

- \$26 million Note and \$4.5 million Note from life insurance companies secured by a mixed use retail project in Los Angeles, California, and an office building in Texas
- \$25 million Note from FDIC, acting as receiver
- Restructure of debt and acquisition of \$1 billion portfolio of office buildings, high rise condominiums, high rise apartments, hotels and other assorted properties in Southern California on behalf of institutional investor
- Representation of assembler of \$500 million of distressed debt throughout the country in related bankruptcies, litigation, and the rehabilitation, acquisition and disposition of properties

Secured and Unsecured Creditor Representation in Insolvency:

The firm regularly represents secured and unsecured lenders in insolvency proceedings and the following is a sample of the transactions and representations:

- Syndicate of lenders owed approximately \$100 million in a Chapter 11 in New Orleans, Louisiana, involving one of the largest orthodontic physician practice management groups in the United States. In addition to confirming the reorganization plan, we also obtained the dismissal of our client bank from a lender-liability lawsuit
- Syndicate of lenders owed approximately \$75 million, by a Kentucky coal mining operation. Our coal mining industry and environmental capabilities helped obtain a confirmed plan
- Lender Group holding total secured debt of \$700 million in Wilmington, Delaware-based Chapter 11 case
- Lender Group holding total secured debt of \$400 million in New York, New York-based Chapter 11 case

Guarantor Collection:

The firm pursues personal guarantors on behalf of creditors in hundreds of cases on full recourse debt and recourse carve-outs in non-recourse debt. Representation generally involves defending against typical defenses raised by guarantors, including among other things, lack of consideration, fraud, and offset. The firm has successfully:

- Pursued various guarantors under carve-out provisions in non-recourse loans following borrowers' bankruptcy filings and/or borrowers' unauthorized transfer of collateral
- Defended against claims by limited partner guarantors that they were released from their guaranty obligations following a conversion of the partnership loan from a recourse to a non-recourse loan
- Defended against claims by guarantors contesting the fair market value of the real property following foreclosure in an attempt to offset the deficiency amount
- Defeated efforts by guarantors to obtain issuance of injunctions or supplemental stay under Section 105(a) of the Bankruptcy Code where the non-debtor guarantor has argued that the guarantor and the debtor enjoy such identity of interests, that the suit against the non-debtor is essentially a suit against the bankrupt debtor
- Defended against usury claims by guarantors

Defensive (Lender Liability) Litigation:

Long recognized as leaders in the area of lender liability, Winstead's trial attorneys have a proven record of defending lenders both in and out of court over the past 20 years. Mike Baggett, the former CEO of Winstead, literally wrote the book on lender liability. Mike's book "Lender Liability Law and Litigation" (Matthew Bender, 1989) is a staple in the library of every major law firm in the state. As a consequence of his efforts and other major contributions in the area by others in the Firm, Winstead is regularly engaged to defend the nation's largest banks, foreign financial institutions, local commercial banks and finance companies, as well as bank holding companies, insurance companies as lenders, loan servicers, loan originators and bank lending groups. Examples of such representation include:

- Defending national banking association in a currently certified class challenging the association's status as trustee for approximately 220 trusts; class certification is on appeal to the Fifth Circuit
- Defending national bank against allegations that one of its workout officers conspired with one of the borrower's officers and other borrower-insiders to steal the borrower (a closely held corporation) from its owners through a negotiated private sale of the borrower's assets
- Represented lender against claims that it and its president had aided and abetted borrower's securities fraud, including borrower's theft of millions of dollars belonging to securities customers

- Currently defending REMIC trust lender in state court action alleging special servicer induced borrower into making property renovations by misrepresenting its intent to extend loan maturity and interfered in borrower's efforts to secure refinancing
- Successful jury verdict for National Savings and Loan Association to collect debt owed by borrower on SBA loan; borrower counterclaimed that bank had misled it about the profitability of the business to induce the loan
- Defended lender against borrower's claim that bank had refused to refinance or modify construction loan and wrongful foreclosure on partially developed subdivision, including private water utility
- Negotiation of cross-collateralization of security followed by uncontested conveyance of collateral to lender and secured deficiency note; defended lender liability allegations against a \$100 million loan on shopping centers in Ohio

SERVICING

Assumptions:

- \$6.4 million assumption and modification on medical office building in Cincinnati, Ohio
- \$3.7 million assumption and modification on multifamily project in Springfield, Missouri
- \$33 million assumption and modification on multifamily project in Richardson, Texas
- \$26 million assumption and modification on office building in Dallas, Texas
- \$16 million assumption and modification on multifamily project in Atlanta, Georgia
- \$12 million assumption and modification on multifamily project in Columbia, Missouri
- \$16 million assumption and modification on mixed-use (office and industrial) in Chicago, Illinois

Modifications:

- \$85 million modification on office complex in Stamford, Connecticut
- \$22 million modification on multifamily project in Waco, Texas
- \$49 million modification on retail shopping center in Rocky Mount, North Carolina
- \$140 million modification on office complex in Austin, Texas
- \$17 million modification on hotel in Glen Allen, Virginia

Loan Sales:

Provide ongoing representation of major CMBS special servicers with respect to auction and bulk loan sales.

PSA Review & Analysis:

Provide review and analysis of pooling and servicing agreements to various master, special and primary servicers.