

OUR PRACTICE

CMBS Special Servicers

The Commercial Mortgage-Backed Securities (CMBS) industry involves distinct legal issues that require a different type of experience and knowledge from traditional bankruptcy, workout and restructuring issues in balance sheet loans. Baker Donelson's CMBS Servicer Team includes professionals with bankruptcy, real estate, litigation and tax experience, allowing us to provide the depth of experience our servicer clients require.

We represent CMBS special servicers across the country in matters of:

- Bankruptcy
- Receivership
- Foreclosure
- Workouts
- Restructuring

We have particular experience in multi-family, health care, hospitality, office, industry, retail development and other income producing properties. Our CMBS team is an active member of the Commercial Real Estate Finance Council, and provides regular industry updates to clients through client training sessions.

Representative Matters

- Maximized recovery on two loans cross-collateralized with multifamily properties in two different states through receivership, foreclosure, and avoiding pitfalls to preserve deficiency and guarantor liability to allow equity on one property to cover deficiency on property with shortfall in value.
- Handled defaulted loan secured by mall in Alabama and maximized recovery through dealing with basic documentation and title defects with declaratory judgment action, collection of amounts due from guarantor, and sale of REO after foreclosure resulting in recovery of 85% of loan balances after estimate of less than 10% due to documentation and title defects.
- Structured lender exit from office building loan in Nashville with lender protections including payment of lease termination fees, escrow of receiver order and deed in lieu contingent on borrower default, consensual modifications of security instruments to correct title problem, borrower representations tied to additional recourse liability, and ultimate sale and assignment of loan to borrower related purchaser with waiver of controlling class purchase option.
- Obtained order for appointment of receiver without a monetary default based on borrower hardship representations regarding property condition intended to position for a more favorable discounted payoff which resulted in a higher recovery through a third-party note sale of loan secured by Knoxville office building.
- Foreclosed multifamily property loan upon maturity, defended litigation for wrongful foreclosure, obtained and collected judgment of \$2 million against individual guarantor based on violation of single purpose entity requirements including insolvency.
- Obtained appointment of receiver in federal court action over five industrial properties in four states, navigated through possible claim against mezz lender, and managed disposition of properties through foreclosure and receiver sales.
- Restructured matured loan secured by aging mall in Atlanta area including new cash management waterfall, deferral of insider management fees and incentives for borrower payoff above appraised value.

- Represented secured lender with six retail properties in three states with imminent maturity default including advising in regard to mezz lender rights and duties and exercising senior lender's remedies to protect against property deterioration resulting in municipal ordinance violations prior to monetary default.
- Representation of lender in \$23 million loan secured by commercial retail/office complex in Memphis with post-origination unauthorized TIC owners from foreclosure and continuing representation through REO disposition.
- Negotiated a consensual Chapter 11 plan on behalf of a special servicer, resulting in the recovery of all attorneys' fees incurred in connection with a loan default both pre-and post-bankruptcy. The borrower remains current on the loan.
- Represented a special servicer as lead counsel, successfully negotiating the consensual foreclosure of a Florida retail center with a loan amount of approximately \$8 million. The borrower and guarantors were seeking certain releases, which were not provided as part of the settlement.
- Represented a lender in connection with the foreclosure of a securitized loan with an amount in controversy of \$78 million secured by a retail center in Florida, prevailing in a bench trial and appeal.
- Successfully defended a CMBS lender in a matter where the borrower sued to recover a late fee paid on the balloon payment due at maturity. The court granted summary judgment in favor of the lender and dismissed the case.



Interactive Foreclosure Map

- To visit Baker Donelson's Interactive Foreclosure Map, [click here](#).