

# Distressed Real Estate

Rising interest rates, disruptions in the financial markets, and a global paradigm shift in office utilization have created extreme stress in the real estate industry. Cozen O'Connor is uniquely prepared to help clients manage these challenges. Our Distressed Real Estate team comprises an interdisciplinary group of lawyers and government relations professionals who bring to the table deep experience in all aspects of distressed real estate. We frequently negotiate workout arrangements with lenders and capital partners; creatively restructure transactions in the face of rapidly changing market conditions; litigate when agreements cannot be reached; commence or defend foreclosure, guaranty, and bankruptcy actions when necessary; and arrange sales and rescue capital when possible.

When a project is in distress, it is important to have a strong, nimble, and diverse team that can work closely with clients to determine and implement the most effective strategies, marshalling all available facts and legal options. Our clients include developers, investors, banks, non-bank lenders, construction companies, landlords, tenants, owners, and operators.

Cozen O'Connor's Distressed Real Estate team stands ready to provide clients with expedited but thorough assessments and to work effectively as a unit to achieve results. Whether our clients need the assistance of Cozen O'Connor Public Strategies to guide them through the complexity of federal, state, and local government regulations; our Real Estate Finance Group to negotiate workouts and restructuring agreements between lenders, borrowers, investors, landlords, and tenants; our Commercial Litigation Group to handle all manners of dispute resolution; our Bankruptcy, Insolvency & Restructuring Group to advise on debtors' and creditors' rights; our Tax Group to address the tax implications of these actions; or some mixture of some or all of these, Cozen O'Connor takes a holistic approach to address and respond to these issues under one roof. A lender structuring a forbearance arrangement with a "deed in a box" as additional security, an owner facing significant office vacancies, ground landlords and tenants facing complex and untenable rent resets in current market conditions, a distressed loan fund looking for opportunities, parties seeking to mitigate phantom income from distressed real estate, and the signatories to an untenable commercial mortgage-backed securities contract are just a few examples of clients for whom an excellent outcome demands close collaboration among senior members of various disciplines.

## Managing Difficult Transactional Matters

Cozen O'Connor's real estate transactional practice is nationally recognized and handles a large volume of complicated deals involving all asset classes from the perspective of a purchaser, borrower, lender, investor, landlord, tenant, hotel operator, and developer. Our clients range from family offices to publicly traded companies and everything in between. This enormous breadth of experience is invaluable when called to assist with the workout of a troubled asset. Our deep understanding of the lending industry gives us a clear-eyed perspective on a borrower's negotiating position — and this perspective is relevant whether we are called upon to assist a lender, borrower, or investor. Similarly, due to our decades of experience representing developers, we can add value when the distressed project remains unfinished. Our real estate attorneys communicate with all stakeholders with respect to each real estate asset, whether the goal is to stave off enforcement action by a lender, preserve a lender's rights, manage interest rate risk, and/or to counsel landlords whose tenants are in crisis.

Clients must take into account every aspect of the matter, from a party's obligations under its lending facility that may be impacted by the breach of financial covenants to provisions under a joint venture agreement to a lease or construction contract that may be impacted by rising costs. In each case, an



**William F. Davis**  
Vice Chair, Real Estate

wdavis@cozen.com  
Phone (212) 883-4947  
Fax (866) 537-7524



**Michael B. de Leeuw**  
Vice Chair, Business Litigation

mdeleeuw@cozen.com  
Phone (212) 908-1331  
Fax (212) 509-9492



**Zachary Samton**  
Co-Chair, Real Estate Finance

zsamton@cozen.com  
Phone (212) 883-4971  
Fax (212) 509-9492

## Related Practice Areas

- Bankruptcy, Insolvency & Restructuring
- Business
- Real Estate
- Real Estate Finance
- Real Estate Litigation
- Zoning, Land Use & Development

## Industry Sectors

- Real Estate & Construction

experienced Cozen O'Connor professional is available to quickly get up to speed on a network of interlocking complex documentation. We have decades of experience negotiating foreclosures, loan workouts, complex lease and joint venture restructurings, bankruptcies, and partnership disputes with respect to every category of real estate, including office, hospitality, industrial, commercial, and residential assets.

### **Handling Litigation in Times of Crisis**

Cozen O'Connor's real estate litigators have decades of experience in handling all types of distressed asset litigation, including foreclosure litigation, workouts, insolvency matters, construction disputes, and landlord-tenant litigation (including commercial and ground leases) arising from distressed real estate assets of all types, including office buildings, industrial, retail, hospitality and resort properties, multifamily residential buildings, and undeveloped land. We represent lenders, borrowers, REITs, investors, landlords, sellers, purchasers, commercial and investment banks, private equity funds, developers, and construction companies. Our real estate litigators work closely with the firm's Real Estate, Corporate, and Bankruptcy, Insolvency & Restructuring teams to advise on the litigation aspects of out-of-court workouts and other restructurings, foreclosures, and other issues arising out of distressed real estate assets.

When litigation is necessary, our real estate litigation team is uniquely qualified to litigate quickly, aggressively, and efficiently. Cozen O'Connor is a sophisticated trial firm with a national footprint that is ready to go into any court (or arbitration) in the country to vindicate its clients' rights. Our real estate litigators have successfully litigated cases arising out of distressed real estate assets in all levels of state and federal court (including federal Bankruptcy court) and in arbitrations. Our litigators understand that one size does not fit all and creatively structure cost-effective and practical approaches tailored to meet each client's needs as appropriate for each case. While they thrive in the courtroom, our litigators are creative and thoughtful in working with clients to reach satisfactory out-of-court resolutions if that is the best result.

### **Providing Guidance to Clients Facing Bankruptcy, Insolvency, or Restructuring**

The firm's Bankruptcy, Insolvency & Restructuring Group has many years of experience representing a broad range of parties-in-interest confronted with distressed real estate situations both inside and outside of formal bankruptcy proceedings. Our bankruptcy attorneys provide representation involving distressed real estate in jurisdictions across the country; however, with numerous members of the bankruptcy team admitted to practice in Delaware and New York, we are uniquely well-suited to efficiently handle matters in the two primary bankruptcy courts for distressed real estate matters — the District of Delaware and the Southern District of New York.

Our attorneys regularly represent debtors/borrowers, creditors, creditors' committees, and trustees in insolvency matters involving distressed real estate, including in the hospitality, health care, commercial, and residential segments of the real estate market. These representations include negotiating and documenting loan workouts for owners/developers and acquisition agreements for third-party purchasers of distressed properties pursuant to Section 363 sales and/or Chapter 11 plans of reorganization. In connection with formal bankruptcy proceedings, our representative matters also include automatic stay proceedings; lease assumption/rejection disputes; assertion of claims for payment of rent (administrative, pre-petition, and lease rejection damages); negotiation of settlement agreements resolving disputed issues between landlords and debtor-tenants; and representation of a national hotel franchisor in franchise agreement disputes arising out of Section 365.

As the interest rate environment and associated credit crunch have drained easy money from the system, the bankruptcy team has increasingly been involved in advising clients on exactly how the potential future bankruptcy of property owners, landlords and tenants (prime and sub), guarantors,

franchisor/franchisees, and other parties-in-interest would affect complex real estate financings, and how to structure or restructure contemplated financings to address bankruptcy related risks to enable our clients to best protect their interests.

## Experience

Represented an owner facing a matured/defaulted loan on an office/retail project requiring recapitalization with contribution by the lender's preferred equity investor and an 18-month loan extension.

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Represented owners of real property in negotiations with tenants dealing with lease terminations, preparing lease termination agreements, including resolving issues dealing with COVID-19 governmental regulations.

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Represented a Debtor in Chapter 11 proceedings initiated after the lender for a parcel of real estate which the Debtor owned obtained a judgment of foreclosure against the parcel. The bankruptcy case was ultimately dismissed, with the Debtor retaining its equity in the property, having become solvent through exit financing.

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Represented an investment fund in connection with a preferred equity investment as rescue capital to restructure a fund with distressed loans coming due.

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Represented a ground lessor in litigation over a complex rent reset involving multiple parcels of property, with separate owners beneath a single Manhattan skyscraper, where leasing in building could not support debt service and reset rent and the subtenant building manager ceased operations during the COVID-19 pandemic.

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Represented a mezzanine lender in litigation with borrowers, guarantors, and a senior lender involving a hotel shuttered during the COVID-19 pandemic where borrowers and guarantors cooperated with the senior lender in foreclosing and consequently affected mezzanine lender's ability to exercise rights.

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Represented borrowers and guarantors where the tenant occupant of an entire building merged with another entity and relocated its headquarters, leaving the borrower with an empty building and causing senior and mezzanine lenders to declare defaults.

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Counseled a construction and real estate lender regarding risks involving underwriting assets and development in changing market conditions.

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Represented the borrower/owner of the Stratford Square Mall in the negotiation and implementation of a deed in lieu of foreclosure/sale of the suburban shopping center.

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Advised a real estate private equity fund in the successful restructuring, modification, and extension of three separate senior mortgage loans held by debt fund lenders and secured by hotel assets throughout the Eastern United States amid the COVID-19 pandemic.

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Advised a real estate family office, seeking to mitigate economic impacts associated with the COVID-19 pandemic, in the successful forbearance on exercise of remedies and modification of senior and junior loans held by a life insurance company and secured by a hotel, office, and retail mixed use property in Philadelphia.

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Represented a real estate private equity fund, during the COVID-19 pandemic, in connection with the acquisition at discount of a senior leasehold mortgage loan secured by a Five Star hotel in New York City and in the arrangements for a non-contested foreclosure by a debt fund lender on a hotel in suburban Philadelphia, including additional funding by the lender and full releases of all borrower

constituent parties.

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Represented the owner in raising equity funds for, and the acquisition at discount of, a senior mortgage loan held by a life insurance company and secured by a convention center headquarters hotel subject to a significant amount of publicly funded subordinate debt and suffering from poor operating results.

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Represented a real estate private equity fund in the purchase from another debt fund and restructuring and forbearance on a senior leasehold mortgage loan secured by a distressed office building in Washington, D.C., and led the companion negotiations with the borrower, senior co-lender, and mezzanine lender on the terms of the forbearance and restructuring of the senior leasehold mortgage loan and modifications to the mezzanine loan.

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Represented a real estate private equity fund in the workout with the debt fund lender of a defaulted senior mortgage loan secured by a convention center hotel and parking garage, which included the “friendly foreclosure” on the hotel, complete release of the borrower and guarantor, and the acquisition of the garage property by an affiliate of the borrower.

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Represented the owner of a hotel in western Pennsylvania in connection with the workout of a CMBS loan secured by a hotel affected by the COVID-19 pandemic.

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Represented the owner of a mixed use development in the southeast area of the United States in working out an approximately \$35 million CMBS loan involving the creation of an “A Note” and a “B Note” and the agreement of the commercial mortgage-backed securities trust to accept a discounted payoff.

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Counseled borrowers through numerous workouts with CMBS and balance sheet lenders, including litigation and other strategies resulting in favorable modifications, recapitalizations, settlements, and, when appropriate, discounted payoffs.

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Represented the owner of the Hilton at Penn’s Landing in extensions of a senior loan with Bank of Ozark and mezzanine loans with an affiliate of a REIT, followed by the refinancing of loans with a CMBS loan from Deutsche Bank, AG affiliate.

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Represented a private equity fund in the restructuring of approximately \$400 million of distressed debt and equity capital in numerous joint ventures nationally.

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Represented a national real estate investment company in multiple deals throughout the United States as preferred equity investor, joint venture partner, purchaser, or seller.

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Represented a private equity fund in multiple transactions involving the purchase of distressed debt and/or negotiating discounted payoffs, including transactions in which the original borrower remained in the deal in a joint venture with the client.

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Represented borrowers and lenders in multiple deed in lieu transactions.

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Represented a real estate investment firm in purchasing a distressed loan at a discount in a joint venture.

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Representing a national banking concern in the development of multiple sites in southeastern Pennsylvania.

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Obtained dismissal of a multimillion-dollar securities fraud suit against a New York-based real estate developer and its individual executives. On the advice of a financial advisor, the plaintiffs invested

millions in the developer's funds, which lost significant value as a result of the 2008 recession. The federal district court granted our motion to dismiss, and the victory was affirmed by the U.S. Court of Appeals for the Second Circuit.

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Represented NFI Industries in the acquisition of a warehouse property in Greensboro, N.C., from the bankruptcy estate of Sears Holdings Corporation, et al.

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Represented the investment group that acquired a distressed loan for a 505,000 sq. ft. office building in Wilmington, Del., and the subsequent acquisition of such building through a deed-in-lieu transaction. The firm also provided representation for the subsequent financing and refinancing of the building.

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Represented a major corporation in multiple lease terminations and settlement agreements.

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Represented a hotel owner in a workout of a defaulted mortgage loan.

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Represented a preferred equity owner in a takeback and settlement agreement with respect to a defaulted investment for a mixed-use project.

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Represented the purchaser of a commercial real estate loan, and negotiated the resolution of 13 mechanics' liens and a second mortgage with subsequent foreclosure of the senior mortgage to obtain clear title for purchaser, as part of a distressed redevelopment strategy, resulting in land use entitlements to construct a 170-unit multifamily property on an abandoned site.

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Represented a real estate debt fund in connection with loan modifications with respect to distressed real estate.

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Converted a \$340 million syndicated construction loan facility to a coop "inventory" loan secured by a pledge of shares in the newly formed cooperative corporation in New York City over the course of several years, with seven subsequent modifications, for a multi-national bank.

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Won summary judgment on behalf of a landlord in litigation against a restaurant tenant (and its guarantor) who stopped paying rent and abandoned the premises due to business decline following COVID-19 and government-mandated closures. In granting summary judgment, the court rejected the tenant's common law defenses of impracticability, frustration of purpose, and illegality as against public policy. Because summary judgment was granted against both the tenant and the guarantor, the client was able to apply for an award of all attorneys' fees.

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