

Workouts and Restructuring

Goulston & Storrs is recognized regionally and nationally for its expertise in real estate workouts and restructurings. The 2017 Chambers guide quoted an independent source who described our Workouts & Restructurings Group as follows: "They are a strong team [with] a substantial and broad-based practice representing debtors and lenders." Other sources told Chambers: "They are very client-centric, always quick to return calls and address critical issues, and they provide expert advice at a reasonable cost." They can "*balance the legal and business aspects, marry them together and find easy, workable solutions.*"

Advocates on our service team include two Fellows of the American College of Bankruptcy, Chambers band-one rated lawyers, former clerks to U.S. bankruptcy court judges, and active lecturers and speakers on bankruptcy topics at conferences sponsored by American Bankruptcy Institute (ABI), National Conference of Bankruptcy Judges (NCBJ) and Turnaround Management Association (TMA). Some of our lawyers are also past or present leaders in the Turnaround Management Association.

Collectively, the lawyers on our team are admitted to practice in multiple U.S. district courts, appellate courts and the United States Supreme Court. They have garnered many years of experience handling almost every conceivable type of workout and restructuring arrangement.

Our bankruptcy and workout attorneys work seamlessly with lawyers in our finance, real estate, environmental and tax groups across all three offices. As a result of this collaborative culture, we are able to develop some novel home-grown approaches to real estate workouts, particularly ones structured to take advantage of tax benefits.

Clients appreciate that we work as a team to provide practical results-oriented counseling within the context of a low-leverage, lean staffing model that insures partner level responsiveness to every matter and cost-effective service delivery.

Our Clients

Goulston & Storrs provides real estate workout and restructuring counseling and related services for a wide variety of clients, including developer-borrowers, REITS, real estate investment funds, lenders, parties acquiring distressed real estate assets, hotel management companies, retailers, landlords, domestic and foreign liquidators, and court-appointed trustees.

Our team handles matters across a wide range of industries, and we have particularly significant experience dealing with real estate bankruptcy and workout matters in the retail, restaurant, multi-family, hospitality, industrial and office sectors.

Our Experience

Our lawyers counsel borrowers, lenders, investors and purchasers regarding real estate workouts and restructurings and when necessary, appear regularly in federal and state courts in Massachusetts, New York and throughout the country.

The firm has been involved as debtor counsel in major Chapter 11 cases involving complex real estate portfolios, including cases in New York, Delaware, Indiana, Montana, Oregon and New England venues.

In addition, we often counsel mortgage lenders regarding the workout or foreclosure of underperforming loans in their efforts to maximize recoveries from distressed real estate assets.

On behalf of shopping center developers and lessors, we participate in all the major retail bankruptcy cases around the country. We also frequently represent developers, investors and liquidators seeking to acquire businesses and real estate assets out of bankruptcy or to fund a Chapter 11 restructuring.

In addition to representing clients in bankruptcy cases, our team provides expertise in a wide variety of sophisticated financial transactions, including out-of-court workouts on behalf of lenders and borrowers, asset-backed (CMBS) securitizations, and mezzanine and second mortgage financings.

We provide lenders, borrowers and investors many services related to workouts and restructurings that involve real estate interests, including but not limited to the following:

- Providing innovative solutions to the problem of capital gain recognition from the forgiveness of non-recourse debt, enabling deferred gain recognition that will facilitate many kinds of debt restructurings
- Analyzing, restructuring and negotiating ground leases and sale-leaseback arrangements;;
- Drafting and negotiating deeds in lieu of foreclosure, forbearance agreements and consensual foreclosures;
- Solving tax problems through 1031 like-kind exchanges involving distressed real estate assets;
- Facilitating new equity infusions to rehabilitate distressed real estate projects;
- Facilitating the sale of FDIC loan portfolios and distressed real estate generally;
- Litigating and resolving lease issues arising from the bankruptcy of a landlord or tenant.

Representative Projects and Transactions

- Lead debtor-in-possession counsel in Chapter 11 cases involving real estate assets and environmental liabilities across multiple jurisdictions including Betsey Johnson LLC, Victor Oolitic Stone Company, Omni Facilities Services, Inc., and Fuddruckers, Inc. and High Voltage Engineering Corporation.
- Special debtor-in-possession real estate counsel in Chapter 11 cases for Hoop Holdings, LLC (dba Disney Stores), Tweeter Home Entertainment Group, Inc., and other companies.
- Representation of shopping center owners in negotiating forbearance agreements, settlement agreements, deed-in-lieu agreements and consensual foreclosures, using tax-advantageous structures in appropriate cases, with respect to commercial mortgage-backed securitized (CMBS) loans.
- Representation of a joint venture seeking to acquire a large portfolio of hotel properties out of a Chapter 11 proceeding.
- Representation of CrossHarbor Capital as first mortgagee and buyer in the Spanish Peaks Holdings II LLC case. Assisted CrossHarbor to acquire the debtor's real property and to obtain the cash proceeds of the sale pursuant to its first mortgage lien, including resolving disputes with the trustee and a major construction lienholder, and successful litigation with the debtor's insider concerning leases on the property which CH SP acquired. The lease litigation involved appeals up to the United States Court of Appeals for the Ninth Circuit, resulting in a favorable decision for CrossHarbor on an issue of first impression as to when a sale of property can be free and clear of leasehold interests.
- Counsel to Gordon Brothers Group and DJM Asset Management in the following distressed real estate transactions: (i) the disposition of all inventory and real estate in the Fresh & Easy Neighborhood Market, Inc. case (Delaware); (ii) the bid to purchase inventory liquidation rights and real estate in the Loehmann's Holdings, Inc. case in a joint venture with Hilco Merchant Resources (New York); (iii) the successful acquisition and wind down of CompUSA, Inc.; (iv) the liquidation of underperforming assets in the Sportsman's Warehouse chapter 11 case (Delaware);
- Representation of Starwood Capital as plan sponsor in \$500 million chapter 11 restructuring of multi-family portfolio owned by PJ Finance Company LLC
- Representation of Edens Limited Partnership (formerly Edens & Avant) in its successful acquisition of a majority interest in the Closter Mall as plan sponsor in the Irani Chapter 11 case in the District of New Jersey.
- Representation of national and regional lenders and real estate funds acquiring or holding mortgage loans in foreclosures, workouts and deeds in lieu involving commercial, industrial, multi-family, tax credit, senior living and hospitality real estate assets located in Massachusetts, New York, Texas, Florida, Ohio, Louisiana, Alabama and other jurisdictions.
- Representation of owner of \$100 million retail-residential complex in Queens, New York involving multiple tranches of senior and subordinated debt, workout and forbearance negotiations, construction disputes, multi-party litigation and a prolonged sale process.

- Represent owner of west coast hotel portfolio in threatening litigation and then negotiating a forbearance agreement on matured CMBS loans to allow for a sale that netted equity a meaningful return.

Our Service Difference

At Goulston & Storrs, we place a cultural emphasis on individualized partner-level attention to each case. We are responsive, efficient and deliver results, choosing the right staff and employing the right tools to handle each matter and service each client optimally. Often we litigate or resolve matters successfully with fewer lawyers than our opponents, while remaining more accessible to our clients when needed.

Our lawyers are also keenly aware of the business context in which legal decisions must be made, and they make special efforts to understand the unique business and industry background of each client as it pertains to any bankruptcy or restructuring assignment.

We are known for our ability to develop creative win-win solutions whenever possible, conducting ourselves as formidable but reasonable adversaries with a reputation for professionalism.

We understand and greatly appreciate that clients are entrusting their life's work to us when they turn to us as advocates, and we take that very seriously. In fact, the very structure of our firm is client-centric, providing incentives for us to work collaboratively, sharing information and ideas in order to support our clients to the fullest while discouraging any attitudes or behaviors that interfere with the rendering of superior client service.

Because of our collaborative culture, our bankruptcy and restructuring attorneys work seamlessly with lawyers in our finance, real estate, mergers and acquisitions, environmental, employment and tax groups, so that clients receive comprehensive, coordinated and cost-effective solutions to their problems.