

CAPABILITIES / BUSINESS & FINANCE

Lender Liability & Workouts

Obermayer's Lender Liability and Workout group takes troubled loans and helps restructure them to salvage the lender-debtor relationship, always with an eye toward aggressively protecting a lender's rights.

OVERVIEW

"We are an interdisciplinary team of seasoned attorneys focusing solely on recovery of assets for lenders while defending financial institutions' actions and interest and mitigating banks' exposure in an increasingly volatile area of the law."

— David Nasatir

The biggest issue creeping into the lender liability and workout space is defaulting borrowers seeking to compromise or erase their obligations by using litigation to claim that the bank is responsible for the default instead of the borrowers' failure to simply make their agreed upon payments. While lender liability claims are frequently unsuccessful, banks can incur significant costs and face business disruption.

Against this backdrop and what makes our team uniquely poised to help with these issues is our background. We comprise a multi-disciplinary group of attorneys looking at all facets of a business deal or project, including:

- Front-end lending
- Bank defense counsel
- Bankruptcy
- Foreclosure
- Real estate
- Litigation; and,
- Construction

Clients seek our help because we look at the whole picture, long-term, and thanks to our depth and breadth of experience from all sides. Rather than focus on the next step of the matter, the members of our group anticipate the end result, mapping out how to proceed.

While we are interested in winning a client's hearing, we are more interested in the steps that need to be taken *after* our win. We think in terms of a roadmap, spending time to discuss, as a group, what the best global, long-term solution should be for our client. This strategic approach sets Obermayer apart.

Our Value

Since the financial crisis of 2008, lender liability claims have developed into an increasingly used tool by defaulting borrowers to improperly extract compromises of debt elimination from banks. Unlike many law firms, however, Obermayer has a Lender Liability and Workout group solely dedicated to protecting the lender's rights in workout with an eye toward lender liability risks.

Our team seeks business solutions to mitigate the financial and time expense of litigation. At the same time, our team is not afraid to fight for our client in litigation.

Clients appreciate that we address the exposure to the bank. Our primary goal is to work to ensure that our lender clients recoup loans advanced to borrowers. However, as our clients are often publicly traded institutions that must report on a quarterly basis to their shareholders and federal regulatory agencies, we are acutely aware of the potential risks associated in today's workout environment and of the impact a multimillion dollar demand can have upon earnings and shareholders.

Our Clients

Our integrated team of seasoned attorneys represents financial institutions from small to large as well as other lenders, in handling both workout and collections matters, in addition to defending claims filed against them. We have handled some of the largest lender liability claims in the region and have seen the practice evolve. Moreover, because we have attorneys on the front lines of all facets of a matter – from starting a project, to handling issues when a project is in danger of falling apart, to projects that collapse and result in litigation we handle it all. On many occasions, we have taken a project from teetering, through to bankruptcy and defended banks from lender liability claims and foreclosure actions, to finally resolving the case.

Our Focus

Our attorneys represent financial institutions, at both the trial court and appellate court levels, in highly complex defense and collections disputes. These include foreclosure and liquidation actions, confession of judgment enforcement and the defense of claims against lender liability, check fraud, federal and state forfeiture proceedings, lien priority determinations, subordination agreement disputes, interest rate SWAP agreement litigation, wire transfer litigation, trust disputes, condemnation actions, credit life insurance matters, confessions of judgment, letters of credit and the enforcement of various loan and

security agreements.

Our team helps clients resolve matters prior to commencement of litigation. Significantly, many on our workout team have been front-end lending legal counsel at various points in their careers and understand the value of entering into forbearance agreements as appropriate or achieving resolution so that the loan is satisfied, if at all possible, prior to foreclosure or collection litigation.

EXPERIENCE

- We represented a bank in a deal that started out as a troubled loan we tried to restructure. Our litigators filed claims against the borrower. The borrower brought a multi-million dollar lender liability claim against our client at the end of the financial quarter causing our client a publicly traded company to report this claim in its quarterly filings with the SEC. The borrower filed for bankruptcy to protect himself from our client's potential counterclaims and foreclosure claims against him. Our litigators spent six days at trial and succeeded in getting the court to remove the borrower from the controlling seat of his company and appointed a bankruptcy trustee to run the company instead.
- We represented a national lender adverse to a local, well-known, non-profit borrower that had lost its ability to fiscally manage its assets and liabilities. After attempts to restructure, the non-profit sued our client for several million dollars and claimed our client was responsible for the borrower's fiscal problems. Ultimately, we settled the matter.
- We represented a regional bank against a real estate developer who had numerous projects with issues, including a significant suburban redevelopment. After working first to restructure the loan, our team moved forward to foreclose on the properties, then addressed a multi-million dollar lender liability claim the developer filed against our client and, ultimately, bankruptcy maneuvering by the borrower and related entities to delay our efforts to liquidate the assets and have the funds returned to our client.

ATTORNEYS

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