
# Real Estate Committee Webinar Panel

## Understanding CMBS Loans and Restructuring Strategies

October 26, 2022

## CLE Materials and Speaker Biographies

**Moderator:** Katharine Clark, Thompson Coburn LLP, Dallas, Texas

**Panelist:**
Debra Morgan, CohnReznick, Dallas, Texas
Joseph Pack, Pack Law, Miami, Florida
Graham Stieglitz, Burr & Forman LLP, Atlanta, Georgia

# HOW SECURITIZATION BEGAN

Interest rate risk problem in the 1970s

Early 1980's Recession

The first wave of securitization

CohnReznick

# SECURITIZATION MARKET EMERGED


CohnReznick

# SECURITIZATION MARKET EMERGED

**Banks**

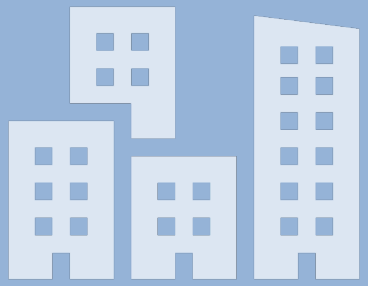
$ $ $

Bank loans to borrowers

**Mortgage Pool**

$ $ $

Borrowers pay interest & repay principal



**Servicer**

Banks sell loans to GSE's

Interest of loans go to investors

Fannie Mae

FreddieMac

GinnieMae
Our Guaranty Matters

**Gov't Sponsored Enterprises**

MBS

MBS

MBS

**Investors**

CohnReznick

# SECURITIZATION MARKET EMERGED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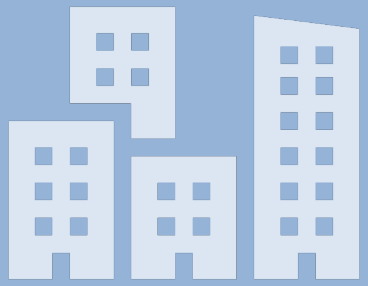

**Servicer**

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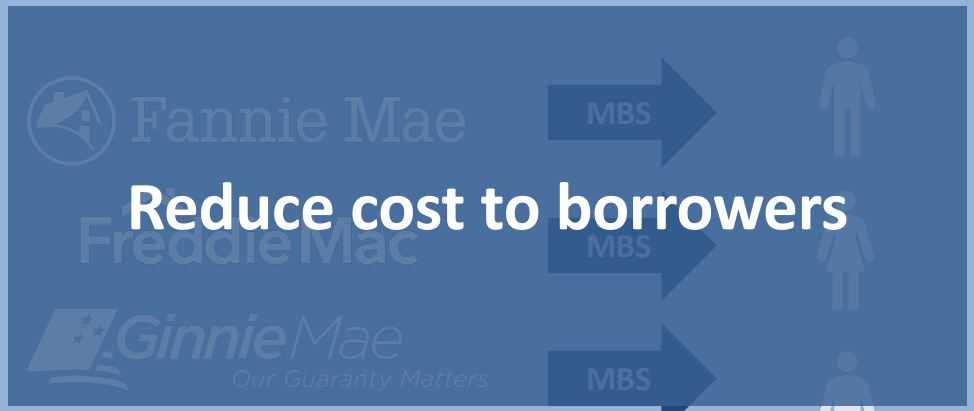


**Gov't Sponsored Enterprises**

**Investors**

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| Residential | Commercial |
| --- | --- |
| 15-30 years | 2-5 years |
| Prepayments allowed | Restrictions on prepayments |
| Mostly fixed rate | Floating Rate |

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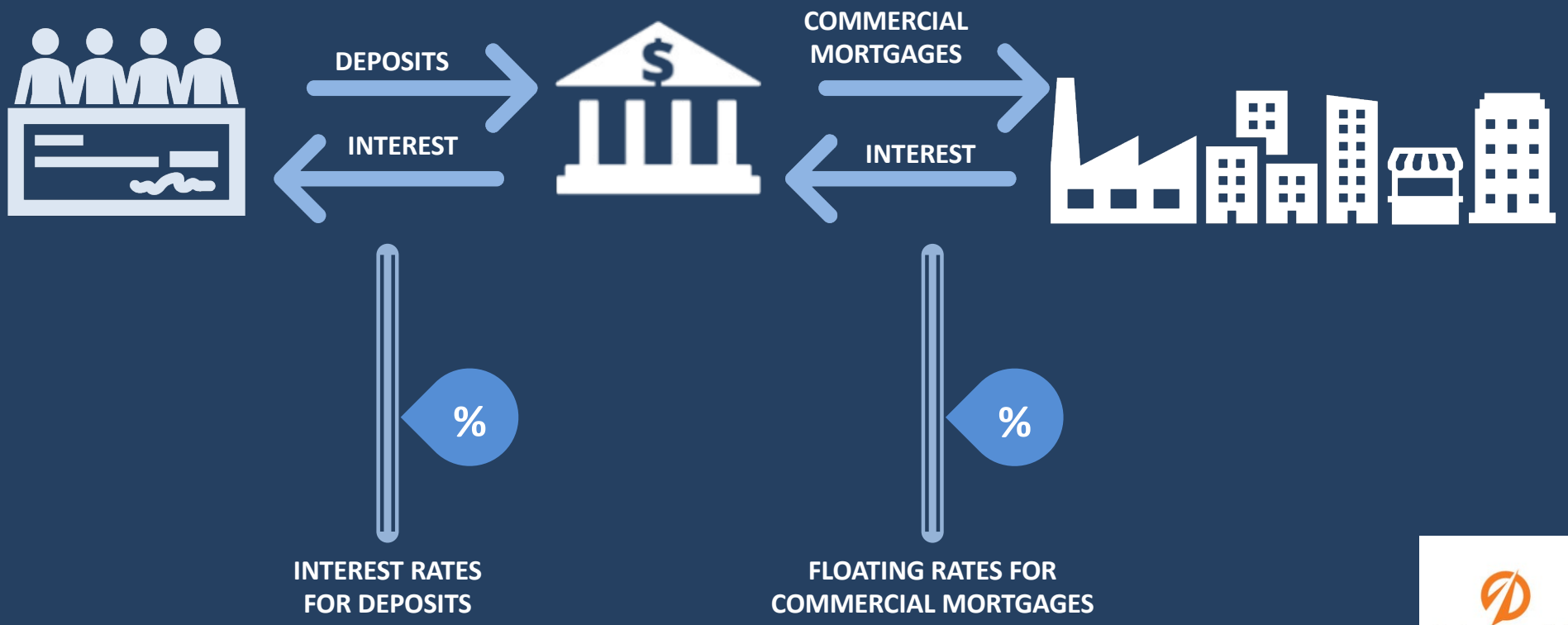
# FLOATING RATE

- Interest rate paid by the borrower is at some spread over some index.
- Historically, the index has been LIBOR – the **London Inter-bank Offered Rate** though this is now being retired and replaced with SOFR – the Secured Overnight Funding Rate
- The floating rate decreases the asset-liability timing risk

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# Key Risks

## Interest Rate Risk

The losses investors can face when interest rates go up.

## Credit Risk

A lender's potential loss of their principal from a borrower.

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# COMMERCIAL FINANCING

- While most residential mortgages are **self amortizing**, commercial loans are not
- Residential loans are often paid over 15 or 30 year terms, paying the same amount each month until the balance reaches $0
  - In the beginning, most of the payment goes to interest
  - As time goes on, more of the payment goes toward principal
- Remember, residential loans typically have much longer periods than commercial loans

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# COMMERCIAL FINANCING

- Commercial loans are often 3, 5, 7, or 10 years during which borrowers pay interest and little or none of the principal
- At the end of the loan period, the borrower often owes a **balloon payment** which might be 80%-90% of the original loan amount
- Often, most borrowers must refinance or roll-over their loan to a new mortgage, or try to arrange a sale
- With companies stepping in to refinance commercial loans, the CMBS market began to unlock

CohnReznick

Real Estate (Mortgage) Loan Portfolio

**Lender**

Loans $$ to Borrower

Bundles & Sells Loans To a **Trust**

**Trust**

Mortgage Loans

- Mortgage 1
- Mortgage 2
- Mortgage 3

**Investors** buy interests in Trust (bonds) & receive payments monthly.

**Servicer**

Borrower interface is now Servicer, not Lender or Trust. Servicer collects mortgage payments $$ and remits cash flows to Trust for payment to Investors (Bond Holders).

LAW360 // 31 JAN 2022

# Fight Real Estate Defaults With Proactive Bankruptcy Filings


With cash flow woes in the pandemic putting an unprecedented number of commercial real estate projects in default, savvy borrowers are using Chapter 11 bankruptcy filings in a new way to turn the tables on aggressive lenders, cure their defaults and move forward without risk.

Without a doubt, the latest data show the defaults are significant: In January, 7.37% of lodging-sector commercial mortgage-backed securities loans were delinquent and 4.36% were under special servicing, compared to 1.26% and 0.42%, respectively, for pre-pandemic January 2020.[1]

Be that as it may, loan servicing is nowhere near the level of nondefault figures seen pre-pandemic. Hungry lenders, who can double as property managers on the hunt for portfolio additions, are recognizing these trends and targeting the following trifecta — property with (1) equity, (2) the loan for which is in technical default and (3) the borrower for which would face challenges refinancing.

In such circumstances, with deed-in-lieu arrangements and foreclosures abounding, borrowers can effectively beat lenders at their own games by entering Chapter 11 bankruptcy strategically. This approach is far from the white flag that raising such a filing may conjure in the minds of business owners. Indeed, equity remains in place, management remains in place and the secured mortgage lender is put back in its place — as nothing more than a securedmortgage lender.

In other words, this is the quintessential Chapter 11 filing as a sword, not a surrender, and despite the incredible variety in industries and loan documents, these cases play out in remarkably similar ways.

## How the Borrower Finds Its Proverbial Back Against the Wall

Borrowers operate and meet their obligations under the business plans they spent time, effort and know-how putting together; an uncontrollable change in circumstance — like the pandemic — throws a wrench into that plan; the business falls behind on its mortgage; operations eventually pick back up and cash flow eventually starts to look normal again, but the hiccup set the business far enough behind that getting out in front of the mortgage default seems impossible.

At some point after the default, the lender undoubtedly called the default and began calculating default-rate interest. Not long after that, the desperate-feeling borrower likely started requesting accommodations while the lender — believing it held all the cards — may have gone so far to accelerate the debt and sit back waiting for a full payoff.

Borrowers in this position can continue to try to cut a deal, but it will likely not be long before they are served with a foreclosure complaint. In addition, the lender will often seek Joseph Pack Jessey Krehl an expedited order to get payment during the pendency of the foreclosure case and appointment of a receiver to control the property in the meantime.

The extent to which these asks will be granted is dependent on the state's foreclosure law, but the borrower is likely already getting buried under the growing snowball. Even the threat of these actions can begin to make things look impossible.

Fortunately, as competent counsel know well, there are ways to avoid these new hurdles and refocus to what most borrowers wanted to do in the first place: Get current and back to status quo.

## Prepayment Penalties — Avoiding Double Jeopardy

Many, if not most, large, commercial loan instruments will include a prepayment penalty — perhaps styled as a more friendly sounding "yield maintenance premium." These provisions will likely provide that the borrower has no right to prepay any portion of the loan for a set period of time, and then apply certain penalties to whole or partial prepayments after that period.

These provisions can vary wildly, so it is important to review commercial loan documents with knowledgeable professionals to ensure proper understanding of — and compliance with — these provisions.

Notably, these provisions often impose the strictest penalties when prepayment comes during the continuation of an event of default. When paired with the standard right of lenders to accelerate the full amount due in the case of an event of default, borrowers may find themselves in a double-jeopardy situation.

the lender is seeking full payment plus some penalty for prepayment?

Fortunately, some borrowers may be able to find reprieves at state law that can provide — admittedly, jurisdiction-specific — relief.

In Florida, for example, the Supreme Court has endorsed "the general rule that unless otherwise specifically provided for in the note, the lender cannot upon the lender's acceleration also collect the prepayment penalty."[2] Accordingly, in Florida, the content of the prepayment provision is key in the case of discretionary acceleration.

There is little guidance in Florida as to what precisely makes a post-acceleration prepayment penalty "specifically provided for in the note." One 2006 case from Florida's Third District Court of Appeals, Feinstein v. New Bethel Missionary Baptist, upheld prepayment of accelerated debt where the agreement explicitly contained the following provision:

> Acceleration of the debt as set forth in this paragraph constitutes an involuntary prepayment for which the prepayment fee provided for elsewhere herein shall be due and payable. This clause specifically was bargained for as consideration for the extension of credit based upon the interest rate granted by lender.[3]

While the provision in Feinstein represents the high-water mark of a so-called specifically provided, post-acceleration prepayment penalty, the vast majority of loan documents are not nearly so precise.

In 1996, another Third District Court of Appeals case, General Mortgage Associates Inc. v. Campolo Realty & Mortgage Corp., stated this plainly when evaluating the following prepayment provision: "The foregoing prepayment penalties shall also apply in the event borrower defaults under the terms and conditions of this mortgage."[4]

The court determined that this provision did not "'specifically' provide for recovery of the penalty after and in addition to the 'lender's acceleration' and collection of default interest."[5] Merely providing for acceleration in the event of default in one place and separately providing for prepayment in the event of default in another does not, so it seems, provide the requisite specificity to enforce a post-acceleration prepayment penalty in Florida.

While it has not been specifically litigated, it seems likely that a general cumulativeremedies provision also would not meet this bar. Because provisions of the kind in General Mortgage are far more common than those in Feinstein, many Florida borrowers may not be faced with the double jeopardy of both being forced to prepay the full amount due and forced to pay a penalty for prepaying the full amount

While this article's focus is on Florida, it is worth noting that the Sunshine State is far from the only jurisdiction to protect borrowers from this oppressive post-acceleration prepayment penalty scheme. These other courts rely on a variety of rationales in coming to similar conclusions.

For example, courts in New York, Illinois, Indiana and Arizona have held that recovery of a prepayment penalty is only appropriate where prepayment is voluntary, and, accordingly, these lenders cannot recover the penalty in a post-acceleration and foreclosure proceedings context.[6]

Other jurisdictions, such as Texas and Washington, have determined that prepayment penalties are wholly inapplicable in the event of acceleration because there can be no prepayment of a debt that has been accelerated to become due and payable now.[7]

Additionally, in the context of bankruptcy, bankruptcy courts have shown that they are not shy about applying Section 506(b)'s reasonableness requirement to post-acceleration prepayment penalties when assessing the allowance of a claim under 502(b).[8]

As discussed below, this potential application of 506(b) and 502(b) is far from the only benefit debtor-borrowers may find in the Bankruptcy Code, however.

## Chapter 11 Bankruptcy — A Sword to Turn Back the Clock

Notwithstanding the discussion of avoiding prepayment penalties above, a Chapter 11 reorganization under the Bankruptcy Code can provide mortgage borrowers a wealth of tools to counteract their over-zealous lenders.

As a threshold matter, Section 362 of the Bankruptcy Code imposes an automatic stay to all collection efforts the moment the bankruptcy petition is filed. While creditors, especially secured creditors, can petition the bankruptcy court for relief from the automatic stay, this is a powerful tool available to debtors. Staying the state court foreclosure action can give the debtor-borrower much needed time to formulate a strategy and seek needed financing, particularly in today's market, where even bridge loans enjoy relatively reasonable terms.

Bankruptcy also provides a host of tools unavailable to debtor-borrowers outside of bankruptcy, and one such tool is the ability to decelerate a loan to make its payment more manageable.

Section 1124 of the Bankruptcy Code provides that, notwithstanding an acceleration clause in a loan agreement, a creditor's claim is not impaired under a proposed plan of reorganization if, pursuant to the plan, the debtor (1) cures any defaults under the loan agreement; (2) reinstates the loan's original maturities; (3) compensates the creditor for any damages incurred as a result of "reasonable reliance"

Where loans have not yet reached their original maturity date, courts have held that a borrower is legally entitled to decelerate those maturities under Section 1124(2), effectively returning them to their pre-default status quo.[10] This is a particularly attractive option, as this deceleration and restatement renders a claim unimpaired, which means that such claim holder is conclusively deemed to accept the plan of reorganization and is not afforded a chance to vote — i.e., the lender is forced to remain as lender and will not be refinanced out.[11]

If a debtor-borrower is able to pay its remaining nonloan debts or separately settle those, a debtor-borrower may be able to put forward a full unimpairment plan, whereby it decelerates any accelerated loans, pays all other claims in full and proceeds to confirming its plan without the need to solicit votes on its plan at all — even in Chapter 11.

While this deceleration and reinstatement is a well-settled possibility under the Bankruptcy Code, surprisingly little development has been given to the issue of whether prepayment penalties apply in bankruptcy in the event the debtor elects not to decelerate the debt.

In one such case, In re: Skyler Ridge, the U.S. Bankruptcy Court for the Central District of California refused to find that the automatic acceleration resulting by operation of law from a bankruptcy filing defeats enforcement of a prepayment fee clause because, if that were the law, a debtor could "avoid the effect of [such a] clause by filing a bankruptcy case."[12] The 1987 decision stated that such a result would be drastic and unfair to lenders.[13]

In another case, In re: Imperial Coronado Partners Ltd.,[14] the Bankruptcy Appellate Panel for the Ninth Circuit held that the election to not decelerate pursuant to Section 1124 was wholly voluntary on the part of the debtor:

> As [the borrower-debtor] admit[ed], this was a conscious decision on its part. In [the court's] view, the decision to sell the property and pay off the loan was voluntary, and the prepayment premium is therefore enforceable.[15]

More recently, in the 2010 case HSBC Bank USA v. Calpine Corp., which dealt instead with a no-call provision — a provision that categorically forbids prepayment — the U.S. District Court for the Southern District of New York held that no-call provisions are unenforceable in bankruptcy.[16] Accordingly, it reversed the bankruptcy court's ruling that the lender was entitled to an unsecured claim — as opposed to a secured claim — for its expectation damages in receiving prepayment, instead completely disallowing such claim.

The court acknowledged, in dicta, however, that "the notes could have provided for the payment of

argument to borrowers whose lenders erroneously thought they were covered by merely forbidding prepayment.

This inconsistency — and, more importantly, the lack of development — in case law leaves debtor-borrowers not immediately clear what the result would be in the event its loan subject to a prepayment penalty is not decelerated — i.e., remains accelerated.

There exists a bona fide argument that such prepayment fees constitute claims for unmatured interest, which are wholly disallowed in bankruptcy pursuant to Section 502(b)(2) of the Bankruptcy Code. It appears more likely however, that such prepayment fees give rise to a general unsecured claim for expectation damages, as the above-cited cases indicate.

The law is far from settled, however, and there is ample room for clever debtors to bring novel arguments in negotiating payoffs of their mortgages pursuant to a Chapter 11 plan.

What is clear, however, is the general understanding that state law determines the substantive rights of parties in bankruptcy — i.e., whether a claim is enforceable in bankruptcy and the degree to which such claim is enforceable in bankruptcy.[18] To that end, the arguments available to borrower-debtors at state law are equally applicable in bankruptcy.

While it is not uncommon to think of a bankruptcy filing as the last place to hide, the tools available in bankruptcy — in particular deceleration under Section 1124 and the disallowance of unmatured interest under Section 502(b)(2) — may instead be wielded as sword to fight off overzealous lenders. What is well known to bankruptcy professionals is becoming more common knowledge to borrowers after the onset of COVID-19: Lenders do not hold all the cards, and tactical filings under the Bankruptcy Code can put them back in their place.

PREV NEXT

THOMPSON COBURN LLP

# Katharine Clark

Partner

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## PRACTICES

- Business Litigation
- Financial Restructuring and Bankrupcy
- Workout & Foreclosure

## INDUSTRIES

- Financial Services

## EDUCATION

- SMU Dedman School of Law, J.D., cum laude, Order of the Coif, 2004, SMU Law Review, Associate Managing Editor
- Austin College, B.A., magna cum laude, 2001

## ADMISSIONS

- Texas
- Texas USDC, Eastern District
- Texas USDC, Northern District
- Texas USDC, Southern District
- Texas USDC, Western District

## EMPLOYMENT

- Thompson Coburn LLP Partner, 2020-Present
- Hedrick Kring PLLC Partner, 2019-2020
- Thompson & Knight LLP Partner 2013-2019, Associate 2004-2013

Katie represents clients before bankruptcy courts, federal and state trial courts, arbitration panels and appellate courts nationwide. She routinely handles bankruptcy and insolvency litigation, including the representation of debtors, banks, court-appointed fiduciaries, and creditors in Chapter 11, 7, 15, and 13 bankruptcies.

Katie has broad commercial litigation experience related to troubled and insolvent businesses. Her experience includes representing companies, fiduciaries, lenders, secured and unsecured creditors, as well as constituencies from every segment of the capital structure in federal and state court reorganization, liquidation and litigation proceedings. She has helped clients navigate insolvency matters involving billions of dollars in liabilities.

In 2017, Katie was part of a team that received the Turnaround of the Year Award (Large Company) from the Turnaround Management Association for her work on the first successful bankruptcy reorganization of a life settlement company.

Katie has significant experience in bankruptcy and litigation matters involving the real estate and energy industries. She has also litigated actions related to fraud that leads to bankruptcy or other displacement of management or control, including fraudulent transfer litigation, and state and federal court receivers.

Katie enjoys the challenge of pursuing innovative solutions for her clients. Her diverse experience allows her to quickly absorb complex fact patterns and distill them so she and her clients can focus on the best strategy for the situation at hand.

## Experience

- **Representative Experience**

  Served as counsel to the court-appointed fiduciary for a life settlement company with more than $1.4 billion in liabilities.

  Represented an oil and natural gas company and its affiliates, a public

## COMMUNITY

- Attorneys Serving the Community, 2017-Present
- Junior Players, Board Member, 2017-Present
- International Student Foundation, Board Member, 2017-Present

## PUBLICATIONS

- "Tips in Navigating the Retail Tenant Apocalypse," *Dallas Bar Headnotes,* June 2018
- "Recharacterisation risk in modern finance," *Financier Worldwide,* August 2014
- "Introduction to Chapter 15 of the Bankruptcy Code," *Dallas Bar Headnotes,* July 2012
- "§ 362(d)(3): Codification of Extend and Pretend?," *Bloomberg Law Reports-Bankruptcy, Vol. 5, No. 20,* May 16, 2011
- "Managing and Mitigating Bankruptcy Risk in the Oil and Gas World," *Co-Author, LSU Institute on Mineral Law, Vol. 57,* March 2010
- "'Willful and Malicious' Injury Exception to Discharge of Debt," *56 SMU Law Review 1045,* 2003

## AFFILIATIONS

- International Women's Insolvency and Restructuring Confederation (IWIRC), DFW Network, Board Member, Past Chair
- State Bar of Texas
- Bar Association of the Fifth Circuit
- American Bar Association

## RECOGNITIONS

- Listed in the Best Lawyers in America (by BL Rankings), 2021-2023

company upstream debtor, which obtained confirmation of a pre-negotiated Chapter 11 plan in four months.

Represented operators and other property owners in the defense of their rights in recharacterization fights in Texas and Delaware bankruptcy courts.

Represented a debtor, a Mexican glass manufacturer, in a cross-border (Chapter 15) restructuring of more than $2 billion in liabilities.

Represented a financial institution as a lead creditor in a case that resulted in a successful reorganization of a major development in the Austin, Texas area.

Represented numerous tenant-in-common (TIC) clients in a matter in the U.S. Bankruptcy Court, District of Delaware, Wilmington Division.

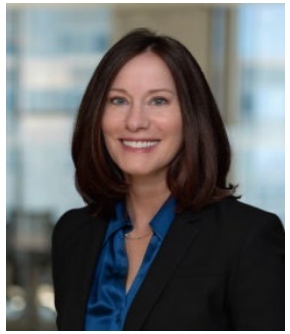
Represented court-appointed receivers in civil securities fraud actions.

Represented a client in appeal of an award of fraud and damages for fraud resulting in a reversal of the award.

Represented a life insurance company in claim for breach of contract and breach of alleged fiduciary duties.

### Presentations

- "Class Warfare—Class Litigation Proceedings and Structures in Bankruptcy," 35th Annual Jay L. Westbrook Bankruptcy Conference, Four Seasons Hotel, Austin, Texas November 18, 2016
- "An Overview of Bankruptcy," Federal Court Practice Seminar, May 16, 2014



# Debra Morgan

## Managing Director, Restructuring and Dispute Resolution Practice

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Debra Morgan is a managing director with CohnReznick's Restructuring and Dispute Resolution Practice. She has more than 25 years of experience in commercial real estate portfolio management, acquisitions, recapitalizations, and the restructure and disposition of distressed debt and over-leveraged real estate. Debra's areas of expertise include CMBS, bridge and mezzanine debt, bankruptcy and litigation management, and real estate economics.

Debra's experience and credentials include:

- Managing director and Credit Committee voting member at a top five special servicer.
- Asset managed and resolved over $10 billion of distressed debt secured by multifamily and commercial real estate assets located throughout the US, Caribbean and Canada.
- Managed over 30 commercial real estate bankruptcies from 2011 – 2014 with successful resolution for the lender; no cram-downs.
- Underwrote $450 million in B-piece investments for private hedge fund during 2016 through 2021.
- Managed receiverships governing 10,000+ multifamily units in multiple states covering varying asset classes and submarkets. Oversaw receiver's (property manager's) business plan and budget, including a $10 million capital improvement plan during receivership.
- Assisted in the deployment of $400 million in fund equity by identifying debt/equity investment opportunities or operating partners for the fund, valuing debt and real estate, and structuring solutions within the constraints of the underlying CMBS servicing agreements and loan documents.
- Sponsored and acquired over 350 multifamily units in multiple states using bridge and agency financing, along with equity through high-net worth investors.

Prior to joining CohnReznick, Debra was the founder of BlackEagle Real Estate Partners. Earlier in her career she served as managing director at C-III Asset Management (k/n/a/ Greystone) and as vice president at CLMG, a Beal Bank affiliate. Debra also previously served for two years as the co-chair of CREFC's High Yield, Distressed Realty Assets Forum.

Education

- The University of Texas at Dallas: Bachelor of Arts, Interdisciplinary Studies

Professional Affiliations

- Real Estate Sales License – Texas Real Estate Commission

BURR FORMAN LLP

# Graham H. Stieglitz

Partner

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Graham Stieglitz's practice in the Creditors' Rights & Bankruptcy group encompasses a broad range of bankruptcy, restructuring, and corporate matters with a focus on litigation, distressed M&A transactions, and representing lenders in a connection with commercial workouts and restructurings.

He has represented debtors, trustees, receivers, unsecured and secured creditors in Chapter 11 cases and federal and state court receiverships and foreclosures. Graham has also represented commercial lessors and lessees, financial institutions, receivers, special servicers, and commercial lenders in bankruptcy cases and structured loan workouts. Due to his substantial creditors' rights experience, Graham frequently advises clients on insolvency issues, such as bankruptcy-remote structures and preference and fraudulent transfer analysis, arising in connection with business and financial transactions and provides reasoned legal opinions on bankruptcy-related issues, such as substantive consolidation.

Graham's practice in Commercial & Corporate Finance focuses on representing banks and finance companies in various finance transactions in the middle and large corporate markets. Graham has experience with the following kinds of lending/borrowing transactions: real estate finance; accounts receivable and inventory finance; mezzanine finance; cash flow finance; health care finance; equipment finance; and debtor-in-possession finance.

Graham was honored with the "Restructuring Deal of the Year between $10 million and $100 million," for his involvement in the receivership and sale of Turkington Industries/Turkington USA, LLC.

Publications and Presentations

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## CAPABILITIES

Avoidance Actions

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Financial Services

Bankruptcy Litigation

Commercial & Corporate Finance

Creditors' Rights and Bankruptcy

Lender Liability

Receiverships

Section 363 Sales

Workouts, Restructurings, & Enforcement

Tax Sales

Agriculture Funding & Lending

Multifamily Housing

## EDUCATION

LL.M., Bankruptcy, St. John's University (2000)

J.D., Georgia State University School of Law (1999)

B.A., Economics, Washington University in St. Louis (1995)

The Westminster Schools (1991)

# Graham H. Stieglitz

## Experience

**Representative Bankruptcy and Restructuring Matters**

- Represent lender in portfolio-wide forbearance negotiations (two phases) required due to COVID-19.
- Represent $11.5MM first-lien lender in hotel bankruptcy.
- Represent $9MM second-lien lender in hotel bankruptcy.
- Represent $9MM first-lien lender in hotel bankruptcy and §363 sale of hotel.
- Represent $14MM first-lien lender in hotel bankruptcy and §363 sale of hotel.
- Represented lender in contested §363 sale of real estate in excess of $15MM.
- Represent $17MM secured lender in bankruptcy of cloud-based outsourced business process and marketing services
- Represented Hospital Director in breaches of fiduciary duty, gross mismanagement and divided loyalty allegations in excess of $20MM
- Represent lender in loan workout involving $25MM secured by real property, equipment, inventory and accounts.
- Represent lender in loan workout involving +$13MM in recycling company's operating assets.
- Represent lender in loan workout involving $35MM in metal manufacturer.
- Represented purchaser of a commercial property acquired in §363 sale.
- Representation of lender in national loan workout involving in excess of $40MM in related real estate loans to a National Residential Subdivision Developer.
- Represented Lender in loan workout involving in excess of $23MM in related real estate loans to a Southeastern residential subdivision developer.
- Represented Lender in loan workout involving a $21MM real estate loan in Georgia to a Southeastern Residential Subdivision Developer.
- Represented large national bank in a loan workout involving $150MM in related real estate loans to national golf resort and real estate development company.

LICENSED IN

Georgia

PACK LAW

# Joseph Pack

## Founder and Managing Partner (Miami, FL)

Mr. Pack is a licensed attorney in New York, Florida and Wyoming. His practice focuses on in-court and out-of-court loan and lien, and corporate restructuring. Mr. Pack founded Pack Law in 2020 at age 35 after handling multibillion-dollar cases at Kirkland & Ellis and White & Case. These included "free-fall," pre-arranged and pre-packaged chapter 11, out-of-court restructurings, and asset sales (from inventory worth less than $100,000 to ring-fenced, regulated energy companies worth more than $15 billion).

Applying that experience, in early 2021 Joe, alongside his colleague on a two-person legal team and B. Riley Advisory Services as CRO, confirmed a "straddle" prepackaged plan of reorganization in 37 days, effectuating an exempt debt-to-equity swap via a priming debtor-in-possession facility for a hybrid tech/manufacturing company. The case is on record as New York State's smallest and quickest prepackaged chapter 11, described by Bankruptcy Judge Chapman as "remarkable." Simultaneously, Mr. Pack represented the Steinhardt-backed Behrens Investment Group in its DIP lending to, and acquisition of, the Gorham Paper Mill in Gorham, N.H., the chapter 11 case for which is pending in Delaware, all while separately litigating against Torchlight and Wells Fargo in an alleged bad faith CMBS foreclosure case.

Also a Certified Public Accountant, Mr. Pack's accomplishments and accolades simply defy his age. Earlier this year, he was named as one of only twelve United States restructuring attorneys on Turnaround & Workouts' "Outstanding Young Restructuring Lawyers" list. All other attorneys selected work at international firms with over thousands of attorneys. Mr. Pack was named an American Bankruptcy Institute "40 Under 40," has been selected as a 2021 and 2022 *Florida Superlawyer* and was placed on the 2022 *Florida Best Lawyers List*.

As a junior associate, Joe was a New York State Bar Association Empire State Counsel 2011 Honoree for his high level of *pro bono* hours provided to "low-income, vulnerable and disadvantaged individuals," contributing to Kirkland & Ellis's 7,674 firm-wide *pro bono* hours. He has received awards for his *pro bono* efforts virtually every year since beginning practice and was voted onto the Campaign Committee of Legal Services of Miami, joining the ranks of some of the region's most esteemed attorneys. In addition, he has guest-lectured on chapter 11 for the University of Miami School of Law's Chapter 11 Clinic and has taught as an adjunct professor for Advanced "Applied" Bankruptcy at the University of Florida Levin College of Law.

Pack Law maintains a database that contains the published and unpublished decisions interpreting the Small Business Reorganization Act (SBRA). The firm shares this database with other professionals, including subchapter V trustees, providing access to up-to-date materials to guide them in their strategy and responses in small business cases.

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# David Levy


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**David is head of the Summit Investment Management and Keen-Summit Capital Partners Chicago office. He responsible for all aspects of business development and execution in connection with the company's distressed debt acquisitions and opportunistic credit transactions, plus real estate brokerage and auction, investment banking, and lease modification and restructuring services. David has more than 13 year's experience in real estate advisory and transaction experience, with particular expertise in workout, bankruptcy, and other special situations.**

### EDUCATION, LICENSES, & CERTIFICATES

- MBA, Miami University
- BS, Business Administration/Marketing, Miami University
- Illinois Real Estate Managing Broker
- Illinois Auctioneer
- Illinois Notary
- Wisconsin Auctioneer
- Texas Auctioneer
- Certificate Commercial Investment Member (CCIM) Designee
- Certified Auctioneers Institute (CAI)
- Accredited Auctioneer of Real Estate (AARE)

## REPRESENTATIVE CLIENTS

### FINANCIAL & PRIVATE EQUITY

- Bank of America
- Chase Bank
- BB&T Bank
- Hanmi Bank
- National Credit Union Association

### CLIENTS CATEGORIES

- Bankruptcy and Real Estate Attorneys
- Trustees
- Receivers
- Turnaround Consultants
- US Marshals Service

### PROFESSIONAL AND INDUSTRY EXPERIENCE:

- David has more than 13 year's experience in real estate advisory and transaction experience, with particular expertise in workout, bankruptcy, and other special situations. David began his career in general management and marketing roles for various consumer product companies., and most recently as the Vice President of NRC Realty & Capital Advisors.

- David holds both the Certified Commercial Investment Member (CCIM) and Certified Auctioneers Institute (CAI) designations, making one of fewer than fifty professionals in the United States to hold both. He is a frequent speaker and moderator on real estate restructuring programs, a member of the Turnaround Management Association Chicago/Midwest Board of Directors, and has held various leadership roles on the American Bankruptcy Institute Real Estate Committee.