

# Real Estate

Our real estate practice is one of the largest in the American West, including Arizona, California, Colorado, Nevada and Washington with experience in all aspects of the real estate development process, from due diligence, acquisition and finance, through land use permitting and entitlements, to leasing and sale.

Our attorneys represent a wide range of clients, including industrial, commercial, title/escrow companies, agricultural, financial institutions and residential clients. Our substantial experience allows for efficient, practical application of the law that is catered to each client's individual needs.

## LEADERSHIP



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## CONSTRUCTION LAW

Our construction attorneys have substantial experience with the diverse and often complex aspects of the construction business. Our clients include general contractors, developers, architects, and engineers. Our attorneys from litigation, real estate, business and finance law, environmental law, employment law, government relations, and other areas of the law work together in our construction legal practice to assist clients with projects ranging from resorts, office, multifamily, retail, and energy projects to casinos, sports stadiums, bridges, roads and toll roads, dams, and highways.

## CONSTRUCTION DEFECTS AND DISPUTES

Our construction attorneys are experienced in mediation, arbitration and litigation of construction-related disputes as well as mass actions, class actions and construction-related appeals. This includes construction defects, liens, delays, and contested work as well as handling claims relating to planning, design, engineering, original trade work, and subsequent repairs. In addition to defending claims brought against general contractors and developers, our construction lawyers have significant experience prosecuting reimbursement claims against

subcontractors, vendors, and other responsible third parties. In conjunction with our experience in defending defect claims and prosecuting reimbursement claims, we frequently pursue insurance carriers on coverage claims arising from alleged faulty workmanship. Finally, our construction litigators often are involved in legal work that accompanies construction defect litigation, such as property evaluations, contract issues and public report matters. Construction litigation encompasses federal and state actions throughout the Mountain West, as well as administrative proceedings before state registrars or state contractor boards and other state agencies.

## **CONSTRUCTION TRANSACTIONS**

Our construction law attorneys provide comprehensive document review and revisions, with adjustments necessary to implement the client's desires and requirements' timely completion, compliance with contract documents, lien and stop notice prevention/mitigation, payment procedures, lender requirements, statutory payment limitations, privilege taxation, insurance and indemnification, allocation of uninsured risks, and dispute resolution mechanisms. Our construction legal services also include assistance with strategic planning; selecting appropriate project delivery systems; contract negotiation and regulatory compliance; permitting; bid processes; and employment issues related to construction. Our construction attorneys routinely provide seminars and training on effective construction administration as well as on recent law changes impacting construction projects, such as those relating to liens and stop notices, prompt payment obligations, environmental matters, and construction-related employment requirements.

## **GOVERNMENT PROCUREMENT CLAIMS**

Our construction litigators bid protests before the comptroller general of the General Accountability Office and state agencies. We also represent general contractors against city, county, state and federal governments. In addition, we prosecute claims against federal agencies before the various boards of contract appeals and claims courts.

## **INFRASTRUCTURE PROJECTS**

We represent numerous prime contractors working on civil projects throughout the Mountain West. Construction law services include providing counsel to clients concerning procurement issues, bid protests, joint venture agreements, public/private partnerships, contracts, financing transactions, employment, and litigation of all types relating to civil projects, including bridges, dams, roads, highways, toll roads, and other large projects.

## **LAND REGISTRY & PROPERTY DEEDS**

We helped to build the American West in this high-profile category, and now, blockchain has the potential to be an important component in areas such as deeds, property titles and ownership changes when they occur. All parties involved in a transaction – property owner, lender, title company, city and county, etc., – would have access to clean records of title transfers and ownership.

## **COMMERCIAL DEVELOPMENT LAW**

We offer a comprehensive commercial, retail, manufacturing and industrial real estate law practice. Our real estate attorneys represent sellers, buyers, users, developers and redevelopers of numerous major commercial projects in the Southwest and across the country. Our commercial real estate attorneys have a great deal of experience with state and local

government economic incentives and tax issues; assemblage and acquisition; entity formation and tax ramifications; construction; and permanent financing and leasing.

## **COMMERCIAL PROPERTY LEASING LAW**

We have an accomplished practice in the leasing of commercial property for both owners and tenants. Our real estate attorneys represent owners of high-rise office buildings, multitenant industrial complexes and shopping center. In connection with shopping centers, we represent national, regional and local tenants, including "big box" stores and all types of retail, theaters and hotels.

Our commercial real estate attorneys develop and implement leasing procedures for office, industrial and retail properties, including the development of lease forms tailored to particular strategies. Through developing standardized documents that encompass both the requirements of lenders and the practicalities of property management as well as facilitate negotiation and consummation of leases, our real estate attorneys assist our clients in achieving competitive advantage while lowering transaction costs. In other cases, particularly for major national real estate advisors, asset managers, developers, and institutional investors, we work within pre-established lease forms and procedures.

## **CONVENIENCE STORES & MOTOR FUELS FACILITIES**

Our commercial real estate attorneys have a long history of representing the owners and operators of convenience stores and motor fuels facilities. We have worked closely in many regions of the country with some of the largest names in the industry. Our work has included everything from standalone projects to those covering hundreds of sites, in all facets of the convenience store and motor fuels business, including:

- Site acquisitions, including due diligence investigations and real estate financing
- Zoning and land entitlements, including government relations
- Regulatory issues, including antitrust concerns
- Operating issues
- Motor Fuels and other branding issues
- Cooperative arrangements, including licensing, cobranding agreements and co-management arrangements
- Franchisee issues, including issues arising under the Petroleum Marketing Practices Act
- Leasing and subleasing
- Assignments and assumptions
- Enforcement of lease rights
- Environmental concerns related to the ownership and operation of motor fuel storage tanks
- Fuels issues, including alternative fuels and renewable resources
- Site divestments
- Post-sale contractual and environmental issues

The motor fuels/convenience store practice is a core part of our real estate and environmental legal services, with a number of our directors, associates and of counsel attorneys devoting the

majority of their time to this area of real estate law. We work closely with our land use law, business and finance law, real estate litigation, and environmental and natural resource law practice groups to provide full service to our clients.

## **GOLF COURSE DEVELOPMENT**

We have represented clients in the acquisition and development of property for many high visibility golf course projects throughout the Southwest, and internationally. We have assisted with the development of public and private golf courses and clubs, including membership documents, plans and related issues. Our land use attorneys' experience in water rights and environmental issues has proven beneficial to clients at virtually every stage of golf course development.

## **JOINT VENTURES & SYNDICATIONS**

We have extensive experience in forming and representing real estate joint ventures and syndications (generally limited liability companies or limited partnerships) for a variety of project types, including industrial parks, office buildings, shopping centers, master-planned communities, residential developments and recreational communities and golf course communities.

Representative transactions range from \$1 million to more than \$600 million of equity, and include several projects that individually will produce revenues well in excess of \$1 billion. Our real estate attorneys have represented landowners, developers and financial partners (including tax-exempt entities) in these joint ventures on a broad range of real estate and tax issues.

Included in our real estate attorneys' syndication experience is forming "opportunity funds" that pool money for properties identified at a later date and that reinvest the proceeds into additional projects. Our experience with such syndications exceeds \$100 million.

## **LAND USE AND DEVELOPMENT, PLANNING & ZONING**

### **CONDEMNATION, INVERSE CONDEMNATION AND EMINENT DOMAIN LAW**

Subdivision map and entitlement work, CEQA compliance, development agreements, zoning,

- construction and related professional contracts, water and agricultural matters, Williamson Act withdrawal, CC&Rs, redevelopment matters and environmental issues.

Our land use attorneys are experienced in handling condemnation and eminent domain matters, including:

- Addressing condemnations and partial takings by state, county, city and public agencies, as well as private entities

- Dealing with both entire property and partial takings giving rise to severance damages, cost of cure measurements and other consequential damages

- Addressing the apportionment of damages between the property owner and those with leasehold partial fee or lesser interests with and without clauses in entitlement documents addressing the apportionment of such damages

Additionally, our land use attorneys have broad experience in challenging appraised values as well as the use of appraisers and other specialized experts to address the compensation issues associated with all such takings. Our real estate attorneys have tried cases to verdict

- and obtained rulings prohibiting takings and demands for immediate possession. Our senior attorneys have spoken regularly at continuing education seminars for condemnation lawyers, appraisers, right-of-way experts, and others involved in condemnation matters.

## **LAND USE LAW, ZONING AND REGULATORY ENTITLEMENTS**

Our real estate attorneys handling land use and zoning matters serve commercial, industrial and residential developers; renewable energy project developers, municipalities and other government entities; and brokers, lenders and borrowers. Our land use attorneys work with government entities at all levels, as well as Indian communities on a broad variety of land use and zoning matters.

We advise clients with respect to state land entitlements; amendments to city and town general plans and county comprehensive plans; approval and adoption of plan amendments (both text and map); adoption and modification of area plans and comprehensive master plans (PADs, PUD's, RUPDs, CUPDs); negotiation, drafting and approval of development agreements, annexation and pre-annexation agreements, economic incentive agreements, the creation and application of overlay zoning districts, and the approval and amendment of existing zoning districts; adoption and approval of site plans, preliminary plats, final plats, use permits, special use permits, sign permits and comprehensive sign packages; and opposition and challenges to zoning and rezoning applications. Our land use attorneys also bring substantial experience in the pursuit of zoning code interpretations; approval and implementation of master planned developments; impact created by historic preservation districts and overlays, conservation easements, hillside overlays, and the proposal and adoption of text and ordinance amendments, formation of community facilities districts, and all other aspects of the zoning and land use legislative and administrative processes.

Our real estate development attorneys have significant experience representing clients seeking to purchase, lease and entitle lands managed by the Arizona State Land Department for purposes of residential and commercial development. They also work with clients to acquire easements and rights of way over state trust lands for purposes of streets and access roads as well as municipal and utility infrastructure lines.

Additionally, our land use attorneys have a substantial background in analyzing and arguing state land issues regulated by the Federal Enabling Act, the Arizona Constitution and Arizona Statutes. Our attorneys routinely interface on land use, land exchange and property acquisition with representative agencies, including the U.S. Bureau of Land Management, the U.S. Forest Service, and state and county departments of transportation, water resources, natural resources, mining and mineral resources, flood control districts and others.

## **MASTER-PLANNED COMMUNITIES**

From acquisition and financing to development and sales, our real estate attorneys have extensive experience with master-planned community development projects of varying size and complexity.

We have assisted clients in acquiring land from the Arizona State Land Department, and securing development agreements and planned area development approvals from municipalities. Our real estate attorneys were instrumental in coordinating a project, which included a central lake and water recharge project owned and operated by a municipality that may serve as a prototype for future master-planned communities. Another significant enterprise included the acquisition (through an assemblage of 11 different landowners), development approval, construction, covenants, conditions and restrictions, and homebuilder sales for a large East Valley master-planned community in the Metro Phoenix Area.

We also have substantial experience working with age-restricted CC&Rs, retirement communities and homeowners associations.

## **PRODUCTION HOME BUILDERS**

Our real estate legal services include representing home builders in connection with the acquisition and development of real property, including unimproved land, finished lots, and property falling under various stages in between. Our attorneys work with master developers, other homebuilders and local municipalities to prepare cooperative construction and development agreements concerning the construction and installation of infrastructure (such as roads, water, sewer and other utility facilities). Our real estate attorneys assist homebuilders with the sale of parcels and improved lots through the use of "rolling option" agreements, dual beneficiary trust agreements and other arrangements, including financing arrangements with land bankers, master lenders and other financial entities. We also provide general advice and assistance in the development process, including drafting of construction contracts and declarations of covenants, conditions and restrictions; advising on sales and property tax issues; and assisting with business planning and entity selection issues.

## **PROPERTY TAX LAW**

Our real estate attorneys have extensive experience in real and personal property tax matters. Our property tax attorneys appear regularly in the state courts and before the various county and state administrative tribunals that review appeals of property tax valuations and related issues. Our attorneys have handled appeals determining significant legal issues related to all varieties of state and local tax issues.

We have handled property tax valuation cases, including residential property (predominantly apartment complexes); commercial buildings (resorts, hotels, shopping centers, high-rise and industrial manufacturing facilities); vacant land; agricultural property; producing copper mines; gas and electric utilities; and local exchange, long-distance and cellular telecommunications companies.

Our real estate tax attorneys have also represented numerous clients in actions in various United States district courts, the federal appeals courts for the Ninth and Tenth Circuits, the Arizona Tax Court, both divisions of the Arizona Court of Appeals and the Supreme Court of Arizona seeking the recovery of discriminatory or illegally collected taxes.

## **REAL ESTATE FINANCE LAW**

Our real estate legal services include structuring, negotiating and documenting a variety of commercial and real estate financing transactions, such as asset-based lending documentation, security agreements, project financing, leveraged leases, loan restructures and workouts, letters of credit, repurchase and reverse repurchase agreements, and acquisition financing. Our financing experience ranges from complex national and international multilevel credit arrangements to small business and personal loans in both the real estate and commercial finance industries.

Commercial and real estate finance attorneys work closely with other attorneys in the firm concentrating in related fields of law when such experience will assist in achieving the client's objectives. For example, our land use attorneys regularly counsel clients on the environmental consequences of foreclosing on loans secured by real property. On the transactional side, the firm is particularly strong in tax law, environmental law, securities law, water rights, real property, corporate finance law, partnership, utilities, and labor and employment law. Real estate litigation issues often concern creditors' rights issues, collection and enforcement, bankruptcy and lender liability.

## **LOAN AND CREDIT AGREEMENTS**

Our real estate attorneys' experience in structuring, negotiating and drafting appropriate documentation in financing transactions covers a wide range of transactions and industries. We represent participants on virtually all sides of financing transactions, including lenders, borrowers, trustees, guarantors, shareholders, partners, insurance companies, and other parties. Our real estate attorneys have participated in financing transactions for aircraft, mining equipment, utility facilities, refining companies, high-rise office buildings and high-rise building campuses, master-planned communities and subdivisions, golf courses, hospitals, agriculture, resort hotels, professional sports arenas, performing arts facilities, shopping malls, and high-technology company products. We have extensive experience with a variety of credit enhancement techniques, such as letter of credit support, guarantees, and other forms of standby assistance.

## **WORKOUTS, LITIGATION AND BANKRUPTCY**

Our real estate litigation attorneys have substantial experience in representing lenders and creditors in workout, litigation and bankruptcy matters. We strive for efficient and creative methods to resolve workout situations to avoid litigation and bankruptcy, if possible. To protect creditor clients involved in bankruptcy matters, our real estate litigators endeavor to preserve assets and terminate the automatic stay when appropriate. We communicate with the financial institution throughout every stage of workout, litigation and bankruptcy proceedings to fulfill the client's objectives in the most cost-effective manner possible. When appropriate, we can assist in seeking alternative methods for resolving disputes, such as arbitration and mediation.

## **REAL ESTATE, LEASING & LEASE LITIGATION**

We are experienced in all facets of real estate litigation, including landlord/tenant, construction, condemnation, specific performance, adverse possession, injunction, and quiet title actions. Our real estate litigators have significant experience in drafting workout and settlement agreements, enforcing judgments obtained through settlements or trials, and collection procedures, including garnishments, property seizures and attachments.

Our real estate attorneys represent clients in matters including breach of contract, business torts, fraud, entitlement litigation, boundary disputes, condemnation actions, title disputes, landlord-tenant matters, professional malpractice, and construction law.

Landlord or tenant representation with respect to the preparation, negotiation and enforcement of leases, leasehold financing and options to purchase.

## **WATER & ENVIRONMENTAL LAW**

Our land use attorneys provide environmental counseling for industries and businesses across the country. We routinely work in the areas of federal and state Superfund laws, groundwater quality protection, wetlands regulation, environmental audits and site assessments, environmental impact assessments, and permitting.

Our landmark work on the Groundwater Replenishment District Act in Arizona helped create a balance between growth and water conservation, and an assurance of long-term water supplies for the Phoenix Metro Area. Our land use attorneys have substantial experience in water rights matters, including water rights conveyances, water farm transactions, demonstrations of assured water supply for residential subdivisions, water rights adjudications, golf course and real estate development, water service agreements, and infrastructure financing.

## **WORKOUTS & RESTRUCTURINGS**

We represent clients in state and federal court proceedings, Chapter 11 bankruptcy cases, debt restructuring, liquidation cases, out-of-court workouts, asset recovery, foreclosure actions and

other insolvency proceedings. Our real estate attorneys partner with our bankruptcy, creditors' rights and financial restructuring attorneys with regard to troubled commercial and residential real estate assets, including such areas as (i) negotiation and documentation of financing agreements, debt restructurings, loan workouts, forbearance agreements, cash collateral arrangements, and debtor-in-possession financing arrangements; (ii) receiverships, prejudgment remedies such as replevin, garnishment, attachment, restraining orders and injunctions, deeds in lieu of foreclosure, judicial and non-judicial foreclosure actions, collection actions and deficiency actions and other commercial litigation matters; (iii) Uniform Commercial Code issues and sales; (iv) complex bankruptcy litigation; (v) fraudulent transfer analysis; (vi) counseling clients with respect to transfers of claims against or interests in bankrupt entities; (vii) formulation, negotiation and promulgation of plans of reorganization and related documents; (viii) reviewing and issuing non-substantive consolidation opinions; and (ix) representing clients with environmental claims in bankruptcy cases. Our real estate attorneys represent financial institutions, insurance companies, and receivers in the administration and liquidation of multimillion-dollar commercial real estate and residential real estate portfolios, including the sale of property, the management of properties, and the sale of mortgage portfolios by bid, both commercial and residential, and through receivership court administration. We also guide buyers past the pitfalls of due diligence, title insurance and contracts associated with buying troubled real estate assets. Once the property is purchased, our real estate legal services extend to real property management issues, including residential, multifamily and commercial leasing matters.

#### **PURCHASE AND SALE OF REAL ESTATE**

Purchase and sale agreements, non-taxable exchanges, financing, brokerage representation, environmental assessment, joint venture structures, title/escrow claims, eminent domain, foreclosures, and other due diligence items.

#### **TITLE AND ESCROW COMPANIES**

Representation of title and escrow companies and their insureds against all types of claims, including easement disputes, predatory lender claims, negligence, fraud, quiet title actions, mechanic and other property lien disputes (e.g., Equitable Subrogation), bad faith claims, and loan broker fraud.