



Bankruptcy, Restructuring and Creditors' Rights

In a dynamic economy, bankruptcy happens. Fortunately, there are strategic ways to manage its consequences. For decades, Hoge Fenton has provided comprehensive legal services to its business clients affected by insolvency or non-performing debt. Our Bankruptcy and Restructuring team is composed of attorneys with a deep understanding of bankruptcy law and business transactions, and strong negotiation, dispute resolution, and litigation skills.

Loan Workouts and Bankruptcy

Most problem loans in our practice are loans secured by real estate where either the loan is greater than the fair market value of the property, or the cash flow is insufficient to service the debt. Our lawyers have represented both lenders and borrowers in each situation. Our experienced trial, bankruptcy, tax and real estate lawyers analyze the legal ramifications of loans, leases and guaranties, suggest practical solutions to the problems, and litigate only when necessary. Frequently the workout possibilities arise during litigation and, when effectively utilized, result in savings to all parties. Our tax attorneys assist in restructuring loans to minimize adverse tax effects, and our environmental attorneys devise ways to avoid environmental risks.

We represent both debtors and creditors in all aspects of bankruptcy, workouts and restructuring. In Bankruptcy Court we represent lenders, businesses, and individuals in Chapter 7, 11 and 13 proceedings, and creditor committees in Chapter 11 bankruptcies. Our clients have presented us with a wide range of legal problems and have included secured and unsecured lenders, landlords, and technology licensors.

Commercial Collections / Litigation

Despite their best efforts to mitigate risk, all lenders experience some level of loan default. We have developed an effective and efficient approach to working with our lender clients in the collection of defaulted loans through such means as collections litigation (both consumer and commercial) and bankruptcy. We emphasize practical, economic, and cost-effective legal solutions and often find that Hoge Fenton's reputation as a seasoned and competent trial firm allows us to negotiate early resolution of cases from a position of strength. We keep our clients involved and advised so that the strategies are understood, important decisions are informed and reasoned, and litigation costs are anticipated and properly budgeted.

With more than 50 years' experience representing banks, credit unions, savings and loan associations, mortgage bankers, and other lenders in state and federal courts, Hoge Fenton has extensive experience trying and resolving cases involving most business, commercial, and real estate issues affecting the real estate and lending industries, including both prejudgment remedies and post-judgment collection. On behalf of numerous lenders, our lawyers have successfully:

- negotiated, mediated, and arbitrated debt repayment matters
- handled hundreds of prejudgment claim and delivery applications for credit unions and thrift and loan companies
- recovered millions of dollars in losses due to fraud or negligence by loan brokers, escrow agents, and appraisers
- pursued actions to reform and/or correct faulty loan documentation
- handled breach of contract and servicing sale disputes
- prosecuted loan collection cases in the courts, including enforcement of secured transactions through judicial foreclosures and receiverships

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- placed a receiver in a business on an *ex parte* basis to preserve assets for a national television channel
- domesticated judgments obtained in another state, allowing our clients to begin collecting on the debt owed
- resolved title insurance claims
- recovered possession of REO property through unlawful detainer proceedings
- established clients' rights in quiet title actions and boundary disputes
- avoided larger disputes through interpleading contested funds

In addition to the more common types of litigation in which lenders are named as defendants (such as eminent domain and partition actions, mechanics lien and stop notice disputes, and forged check claims), our lawyers have substantial experience defending lender liability claims brought by disgruntled borrowers and investors where allegations of fraud, breach of contract, breach of fiduciary duty, unwritten joint venture claims, and even Racketeer Influenced and Corrupt Organizations Act ("RICO") violations are common.