Distressed Debt Transfers & Restructurings in a Dynamic Environment

BRYAN CAVE

THE ENVIRONMENT

It is unclear whether we are toward the end, or in the middle, of the largest economic downturn since the Great Depression. What is clear, however, is that we are in a dynamic environment with a large amount of stress on the domestic and world economy.

In this environment, there are significant strategic opportunities in the area of debt transfers and restructurings, especially those involving commercial real estate, because participants with significant liquidity have returned to the market. So, while we are in a tough market for some, it is clearly an opportunistic environment for others with access to cash and the skill sets necessary to pursue distressed debt opportunities.

Throughout this economic cycle, Bryan Cave has acted as lead counsel for clients across this spectrum and are seeing a substantial increase in debt transfer transactions and related restructurings (See Select Representative Engagements below). A few short years ago, virtually no market participants were willing to provide liquidity for distressed business situations, especially in the commercial real estate sector. More recently, the capital markets have opened up and there is increasing competition for opportunities, particularly when there is a high quality underlying asset or business.

We expect these trends to continue. In addition to restored liquidity, a key reason for this is the staggering volume of maturing commercial real estate debt alone – more than $1.0 trillion primarily in the office, shopping center, multifamily, hotel, industrial and self storage asset classes.

THE BUY SIDE

Hedge funds, opportunity funds, private equity firms, REITs and institutional lenders are all actively pursuing purchases of distressed debt, especially in the commercial real estate sector. The debt may be secured by a single property or an entire portfolio of properties, and can be acquired through a variety of legal structures in pursuit of various financial strategies.

Buyers may acquire debt seeking to hold it to maturity, restructure it or enforce available remedies (including foreclosure) to gain control of the underlying asset, or they may be interested in other transactions arising out of distressed debt scenarios. These strategies may also be pursued by the buyer on its own or through a joint venture with existing lenders or borrowers or other partners.

THE SELL SIDE

Distressed debt sales have become a key disposition tool for lenders as an alternative to the more typical approaches used early in this downturn, when the predominant tools were collateral liquidations (in or out of bankruptcy), discounted payoffs, and "kicking the can down the road" through loan modifications or forbearance agreements. Early in this cycle, we observed a reluctance by many lenders and other participants on the sell side (e.g., special servicers) to use debt transfers as an exit strategy. There was simply no appetite by buyers for debt involving commercial real estate, the largest sector of distressed debt available in the market. Plus, lenders and special servicers were at the time wrestling with a massive number of distressed loans that had to be valued and otherwise analyzed before a restructuring or disposition game plan could be formulated.

With liquidity restored in the market and lenders having had time to digest their distressed portfolios, the "sell side" of distressed debt is heating up. While buyers continue to seek off-market opportunities, a significant number of brokered portfolio transactions have been moving through the market. Moreover, many regional and local lenders used 2010, and are continuing in 2011, to reduce their distressed commercial estate portfolios through multiple and single note dispositions.

BRYAN CAVE'S CAPABILITIES

Experienced and creative counsel is often critical to successful execution of distressed debt transfers and restructurings. We regularly serve that role on the buy and sell side. Bryan Cave has the depth, experience and geographic reach to meet the needs of any market participant that has an interest in debt transfers and restructurings. Our experience includes:

- Debt Transfer Transactions: Buyer and seller representations in billions of dollars of debt sale transactions -- portfolio, multiple and single note sale transactions for a wide range of asset classes. Nationwide due diligence teams for portfolio acquisitions and dispositions.

- Joint Ventures: Structuring and implementing joint ventures between buyers, other money partners, existing lenders and borrowers in transactions involving billions of dollars of distressed loans.

- Restructuring and Enforcement: Working on behalf of noteholders and borrowers to restructure virtually all kinds of distressed debt. Nationwide teams for all restructuring and loan enforcement needs, including in and out-of-court restructurings, chapter 11 proceedings, receiverships, contested and controlled (consensual) foreclosures.

- Taxation: Experience in all aspects of tax planning for domestic and cross-border (inbound and outbound) restructurings of commercial real estate portfolios, including various tax favorable structures for holding and managing cross-border loan portfolios, as well as federal and state tax issues associated with debt restructurings and modifications.

Between our real estate and banking and restructuring practice groups alone, we have more than 150 professionals available to assist in these kinds of engagements, with established teams in the following major markets:

- Atlanta, GA
- Chicago, IL
- Charlotte, NC
- Dallas, TX
- Kansas City, MO
- Irvine, CA
- Los Angeles, CA
- New York, NY
- Phoenix, AZ
- San Francisco, CA
- St. Louis, MO
- Washington, DC

Select Representative Engagements

- Buyer's counsel for real estate opportunity fund acquisition of debt secured by a portfolio of 51 hotels located in 21 states, utilizing joint venture with the borrower and operator to simultaneously purchase debt and acquire title through a deed-in-lieu of foreclosure.
- Buyer's counsel for real estate opportunity fund acquisition of a senior mezzanine loan for a multi-hotel portfolio, joint venture with junior mezzanine lender, and cooperation arrangement with the original borrower to facilitate equity foreclosure and quick resale of hotels.
- Buyer's counsel for hedge fund acquisition of debt secured by 5 million square foot global corporate headquarters.
- Buyer's counsel for real estate opportunity fund acquisition of debt secured by New York City hotel, followed by debt restructuring with cooperation of borrower and syndication a portion of the restructured debt to third party lenders.
- Buyer's counsel for real estate opportunity fund acquisition of an office building in Irvine, California, involving a joint venture with an operating partner, a modification of the existing mortgage debt and cooperation arrangement among the seller, receiver, special servicer and mezzanine lender.
- Real estate and tax counsel to private debt buyer and completion of 3 major strategic "loan to own" transactions in 2010-11.
- Restructuring and tax counsel to numerous real estate companies acting as sponsor/asset manager under various tenant-in-common (TIC) and Delaware statutory trust (DST) structures involving $300+ million in debt restructurings.
- Counsel for national lender in due diligence for $1.0+ billion homebuilding asset portfolio in support of broker-based disposition program.
- Seller's counsel for regional bank in sale of $500+ million commercial loan portfolio secured by retail commercial center property collateral located in Arizona, Nevada, California, Oregon and Washington.
- Seller's counsel for national lender in the sale of $350 million mezzanine loan portfolio.
- Seller's counsel for national banking association in the sale of $2.0+ billion real estate secured loan portfolio involving residential tract home developments located in Arizona, Nevada, California and Texas.
- Seller's counsel for lender in sale and carryback loan transaction involving $1.0+ billion in timeshare notes and related collateral.
- Restructuring, corporate and tax counsel to foreign bank in numerous restructuring and foreclosure matters – involving $500+ million of debt.
- Special tax counsel to foreign bank in $10 billion U.S. loan portfolio sale.
- Special servicer representations in General Growth Properties, Inc. chapter 11 cases -- largest ever real estate chapter 11 reorganization cases.
- Special servicer and certificate holder representations in chapter 11 cases of Innkeepers USA Trust.

A Broader Perspective℠

A full list of Bryan Cave's professionals in each of our offices may be found at www.bryancave.com. If you have any questions or need more detailed information, do not hesitate to contact any of the following Bryan Cave partners:

Eastern United States & Europe

Ronald B. Emanuel
Bryan Cave LLP
New York
Tel 1 212 541 2334
Fax 1 212 541 1434
rbemanuel@bryancave.com

Midwestern United States

Daniel F. Cullen
Bryan Cave LLP
Chicago
Tel 1 312 602 5071
Fax 1 312 698 7471
daniel.cullen@bryancave.com

Western United States & Asia

Robert J. Miller
Bryan Cave LLP
Phoenix
Tel 1 602 364 7043
Fax 1 602 716 8043
rjmiller@bryancave.com

Atlanta	Hamburg	Kansas City	New York	Shanghai
Charlotte	Hong Kong	London	Paris	Singapore
Chicago	Irvine	Los Angeles	Phoenix	St. Louis
Dallas	Jefferson City		San Francisco	Washington, D.C.

www.bryancave.com