

Real Estate Solutions

Forensic Accounting Investigations for Lenders and Special Servicers

In the face of tighter credit markets and weakening fundamentals, borrowers can be tempted to (and often do) skirt lockboxes, commingle and misappropriate funds, file misleading personal financial statements and engage in a litany of other “bad acts” that not only violate their loan documents, but give rise to guaranteed recourse obligations.

Lenders and Special Servicers face an uphill battle monitoring and tracking their borrowers’ compliance with credit agreements. FTI Consulting’s Forensics and Investigatory practice — with dedicated and experienced real estate accountants and fraud examiners — can help.

AWARDS & ACCOLADES

The Deal

**#1 U.S. Restructuring Advisor
of the Year**
17 Consecutive Years

Forbes

**America’s Best Management
Consulting Firms**
9 Consecutive Years

**LEXOLOGY
INDEX**

**Led the Lexology Index Arbitration
Expert Witnesses List**
15 Consecutive Years

How We Help

Our team of seasoned forensic accountants, certified fraud examiners, financial experts, data analysts, statisticians and business intelligence experts sift through complex data and apply proven investigative and forensic accounting methods to support legal teams with independent investigations and court-ready reports. Lenders and special servicers engage our professionals to address suspicions of accounting improprieties by borrowers. This includes non-compliance with loan provisions, avoiding lockboxes, conflicts of interest, misappropriation of assets and circumvention of regulations and/or the underlying loan agreements.

A Sampling of Our Services



**Forensic
Investigations
and Litigation
Consulting**



**Workout
Strategy and
Negotiations**



**Bankruptcy
Interest Rate
and Plan
Feasibility**



**Challenges
to Special
Servicing
Standards**



**Financial
Advisory and
Expert Witness
Testimony**



**Disputed
Valuations**



**Receiverships
and Interim
Management**

CAPABILITIES

Forensic Accounting Investigations and Analysis

FTI Consulting provides specialized forensic accounting services to address a range of challenges to lenders when servicing loans, including investigations of accounting improprieties, non-compliance with loan provisions, circumventing lockboxes, conflicts of interest, misappropriation of assets and circumvention of regulations.

Restructuring and Bankruptcy Advisory

Clients seek FTI Consulting’s expert help with liquidity assessment and cash flow analysis, bankruptcy plan negotiation, feasibility and interest rate analysis, negotiation of sales procedures and oversight of \$363 asset sales, interim management services including receiver and trustee services and buy- and sell- side services related to REO and distressed debt interests.

Valuation Services

FTI Consulting’s valuation experts have an extensive record of providing collateral valuation opinions, fairness and solvency opinions, strategic advisory and transaction support and dispute support services.

Fiduciary and Interim Management

FTI Consulting provides industry-leading fiduciary and interim management services in complex circumstances, which require trusted, experienced professionals to serve as independent custodians of real estate and other assets. We work throughout the U.S. and internationally.

Dispute and Litigation Advisory

FTI Consulting assists with every phase of the dispute resolution process starting from early case assessment, pre-litigation strategy and discovery to litigation/mediation consulting and expert testimony and trial. We help special servicers resolve a range of CMBS counterparty disputes including breach of representations and warranties, waterfall distributions and other matters.

LANDMARK CASES CLIENT SELECTED SUCCESS STORIES:

Confidential Client	<p>Borrower Investigation FTI Consulting was retained by the loan servicer to conduct a forensic investigation of the operations of a 1,000+ unit government-sponsored residential project. FTI Consulting confirmed that liquidity problems were not only related to storm-related damage, as claimed by management, but also by an ineffective collections policy, poor management and disregard for contractual obligations.</p>
Confidential Consortium of Foreign Banks	<p>Lockbox Compliance and Expert Testimony In its review of the borrower’s bank records and financial statements, FTI Consulting’s forensics team identified several discrepancies. Among them, the team found that one temporary tenant had been instructed to direct rent payments to the borrower rather than the lender lockbox as stipulated in the loan agreement. As a result, upon reviewing FTI Consulting’s analysis and other facts, the judge ruled that the borrower’s actions had triggered recourse under the terms of the loan and a judgement against the guarantor was awarded.</p>
Confidential Client	<p>Borrower Investigation FTI Consulting was retained by the mezzanine lender on a large hotel-resort. The borrower was in default, had undertaken a number of complex transactions and implemented numerous operating changes at the property. FTI Consulting assembled a checklist of the “guaranteed obligations” in the loan agreement and cross-checked them against financial records and operations at the Property. The investigation uncovered numerous violations that gave rise to full or partial recourse. FTI Consulting’s team went further to conduct asset searches for the multiple guarantors, referencing social media and public records to investigate ownership of cars and boats. FTI Consulting’s analysis has been helpful in “bringing the guarantors to the table.”</p>
Publicly-Listed Hotel REIT	<p>Forensics and Lockbox Compliance, Expert Testimony Subsequent to Innkeepers USA filing for Chapter 11 bankruptcy, a team of professionals at FTI Consulting was retained by the special servicer for the benefit of the CMBS Trust to perform forensic analyses, recover diverted cash and provide expert testimony, which led to a legal defeat of the debtors’ initial restructuring proposal. As part of the process, FTI Consulting prepared multiple valuation analyses, reviewed financing, sale and bankruptcy options, performed ongoing analysis of the hotel portfolio and monitored cash flow. The team at FTI Consulting worked closely with the debtor’s advisors and potential bidders to maximize the value to the CMBS Trust from the ultimate \$363 sale of the portfolio.</p>
Confidential Client	<p>Borrower Investigation – Special Servicer FTI Consulting was retained by the special servicer for a series of CMBS loans made to a single sponsor of multiple retail and residential properties. FTI Consulting investigated potential diversion of rents and commingling of funds among different sponsor-borrowers. FTI Consulting’s professionals performed forensic accounting investigations and determined that, in fact, funds were “loaned” to other sponsor entities and that payments to related parties of the sponsor, not previously approved, were in violation of the underlying loan agreements. The special servicer used the findings in FTI Consulting’s report to require the borrower to post additional collateral for the loans and to repay all intercompany loans.</p>

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