

Real Estate Solutions

Lender and Special Servicer Advisory

Lenders and Special Servicers face multiple challenges, including changing market conditions, investigatory and forensic issues, borrower liquidity constraints and bankruptcies, disputes related to servicing agreements, “tranche warfare” and a host of other issues associated with commercial and residential mortgage-backed securities.

FTI Consulting’s highly experienced professionals are experts at addressing these matters. We provide a broad spectrum of services that can help special servicers identify and pursue strategies to maximize recovery in particularly complex or adversarial cases. Our reputation for technical excellence, in-depth analytics, practical objectivity and negotiating expertise are all critically important to our clients’ success.

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

A SAMPLING OF OUR SERVICES



**Litigation Support and
Expert Witness Testimony**



**Bankruptcy Interest Rate and
Plan Feasibility Testimony**



**Forensic Analyses and
Investigations; Cash and
Lockbox Reconciliations**



**Disputed Valuations,
Fairness Opinions and
Deficiency Claims**



**Workout Strategy
and Negotiations;
\$363 Asset Sales**



**Challenges to Special
Servicing Standards;
“Tranche Warfare”**



**Restructuring of
Commercial and Residential
Mortgage Entities**



**Receiverships and
Interim Management;
REO Asset Management**

CAPABILITIES

Dispute & Litigation Advisory

We assist with every phase of the dispute resolution process, starting from early case assessment, pre-litigation strategy and discovery to mediation consulting, expert testimony and trial. FTI Consulting helps special servicers resolve a range of CMBS counterparty disputes, including breach of reps and warranties, deficiency claims, putback litigation, and other complex matters.

Restructuring & Bankruptcy Advisory

Clients seek our 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; and buy/sell side services related to REO and distressed debt. Our expert testimony has supported servicers on Till rates of interest, plan feasibility, and the litany of issues that arise in bankruptcy.

Forensic Accounting Analyses & Investigations

FTI Consulting provides specialized services to address a range of challenges, including embezzlement and misappropriation, regulatory inquiries and fraud claims. Under duress, borrowers frequently skirt cash management and lockbox provisions of loans, giving rise to guarantor recourse obligations. Our Real Estate forensics team is adept at sifting through files and documents to identify key issues.

Lender Liability & Special Servicer PSA Compliance

Special servicers often face a variety of lender allegations: mismanagement, negligence, and breach of PSA. FTI Consulting's support has been integral to some of the more complex special servicer disputes, such as an alleged breach of a PSA, putback litigation, FMV purchase disputes, aggrieved bondholders and other high profile, complex matters.

Receivership and Interim & Asset Management

FTI Consulting provides aid to lenders during the process of receivership and REO, offering key insights into risk mitigation, legal compliance, stakeholder communication, and value preservation. We frequently serve as receiver – or support receivers – in more complex situations, including fraud, issues of disputed title and land use issues, high-value properties, or those under construction (involving our Construction Solutions practice).

LANDMARK CASES: CLIENT SELECTED SUCCESS STORIES



Dispute & Litigation

The iconic Peter Cooper Village/Stuyvesant Town, a massive, 11,250-unit residential project, was sold by the CMBS Trust that gained title to it in a much-publicized foreclosure. Certain certificate-holders disputed the distribution of \$600 million of default interest paid to the special servicer. We prepared an expert report and provided trial testimony in support of the servicer, which was critical to the district court's ruling in favor of our client.



Restructuring & Bankruptcy

FTI Consulting was retained by the special servicer of \$1 billion CMBS debt following the owner's bankruptcy filing. Our experts advised the client during negotiations of the cash collateral order and DIP loan sizing. We analyzed financial/operational performance and cash flows, evaluated debtors' projections and budgets, and advised on reorganization and asset sale efforts. The debt was repaid in full, with post-petition interest.

In re 3MB, LLC, Debtor
Case No. 18-14663-B-11

Bankruptcy Testimony re: Default Interest

Professionals at FTI Consulting prepared an expert report regarding the economic rationale and reasonableness of the lender's claim for default interest. The bankruptcy court ruled in favor of the lender and issued a written opinion with frequent references to FTI Consulting's expert report – this set a precedent used in other cases.



Alleged Breach of the CMBS Pooling & Servicing Agreement

A team at FTI Consulting was retained by the special servicer of the \$3 billion CMBS loan, associated with the Atlantis Casino Hotel in the Bahamas, to provide analytics and dispute advisory services in connection with the proposed loan modifications that were subsequently challenged by certain certificate holders.



Forensics & Lockbox Compliance

When Innkeepers USA filed Chapter 11, FTI Consulting was retained by the special servicer to conduct forensic analysis; seek recovery of diverted cash collateral; provide expert testimony leading to a defeat of debtors' initial restructuring proposal; perform valuation analyses; review financing, sale and bankruptcy plans; and analyze hotel performance and liquidity, working collaboratively to maximize recovery to the Trust from the ultimate \$363 sale.



Disputed Valuation

FTI Consulting was retained by the secured lender to rebut a \$100 million appraisal on 75 developable acres in Albany, NY, as the basis of a deficiency claim. FTI Consulting's valuation of \$2.55 million – a \$97 million reduction – was accepted by the court, noting the "defendants failed to adequately rebut FTI Consulting's opinions and conclusions."



Receivership

FTI Consulting was appointed as the receiver of a Utah resort club upon allegations of diversion of rents and commingling of funds. We stabilized club operations, reduced costs, created a restructured and healthy membership program, funded stalled construction and facilitated a successful negotiation between members and lenders, allowing for an estimated 100% recovery for lenders.

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