

# FINANCIAL INSTITUTIONS OVERVIEW

BOCA RATON / DESTIN / FT. LAUDERDALE / MIAMI / ORLANDO / TALLAHASSEE / TAMPA / WEST PALM BEACH

## INDUSTRY KNOWLEDGE

The attorneys comprising Broad and Cassel's Financial Institutions Industry Group serve as counsel to a number of Florida-based, out-of-state and foreign-based financial institutions. Broad and Cassel attorneys have substantial expertise in the various areas necessary to provide the Firm's financial institution clients with a full range of legal advice. In addition to representing institutions in connection with international and U.S. loan transactions, workouts and loan recoveries, municipal finance and other corporate finance matters, the Firm's Banking and Institutional Lending attorneys provide services involving various regulatory matters, such as regulatory compliance, change-in-control issues, permissible business activities and charter conversions. Broad and Cassel's corporate and securities expertise is also available to assist financial institution clients in their corporate transactions, such as mergers and acquisitions, asset and deposit transactions, and holding company reorganizations. In addition, the Firm's litigation practice is experienced at representing financial institution's in all stages of litigation. Our knowledge has enabled the financial institutions team to advise a diverse portfolio of clients on a variety of issues including, but not limited to:

- UCC compliance
- Small Business Administration (SBA) loans
- Initial public offerings (IPOs)
- Licensing and reporting
- Due diligence issues
- Holding company formations

## FINANCIAL INSTITUTIONS PRACTICE

### LITIGATION

Broad and Cassel's litigators have significant experience and success in handling the matters most frequently faced by financial institutions, such as foreclosures, actions to recover on promissory notes, marshalling collateral such as inventory, accounts receivable and equipment and other collection matters. Our litigators also have well-developed expertise in such other commonly arising issues as Truth-in-Lending violations, lender liability claims, and other compliance matters under federal and state laws and regulations.

Additionally, the Firm uses a team approach to workout, bankruptcy and restructurings, involving attorneys with expertise in bankruptcy, litigation (including complex foreclosures), real estate and corporate and lending matters as necessary for a given project. Our attorneys have been involved in complex workouts and bankruptcies throughout the state through the Firm's representation of community-based, super-regional and money-center financial institutions and other lenders such as life insurance companies.

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## **LENDING AND FINANCIAL TRANSACTIONS**

Broad and Cassel has been active in representing lenders in a broad range of residential and commercial loan transactions and other types of financings for more than a decade. Our attorneys have significant experience in representing lenders in commercial loan transactions that include convertible mortgage and asset-based loans, multi-tranche facilities, equity and profit participations, wraparound financing, as well as traditional acquisition, development, construction, revolving and permanent financing. Our attorneys are also experienced in representing lenders and trustees in bond financings, such as housing, revenue, general obligation, redevelopment and other public and municipal financing arrangements, and in a variety of corporate debt financings. Our experience encompasses the negotiation, drafting and review of the loan, transaction and disclosure documents, including trust indentures, and the preparation and review of filings under the Trust Indenture Act of 1939.

## **REORGANIZATIONS AND CHARTERING**

Our attorneys assist clients with a variety of transactions involving financial institution charters and restructurings, such as:

- De novo and interim charter applications
- Holding company formations
- Charter conversions
- Subsidiary reorganizations and spin-offs

Broad and Cassel currently represents public companies, management and investors seeking to form de novo institutions and holding companies. Our attorneys have actively participated in all phases of these transactions, including consultation regarding corporate structural issues, preparation of necessary agreements and regulatory applications, and assistance with post-transaction operational issues.

## **MERGERS AND ACQUISITIONS**

Broad and Cassel attorneys have extensive experience in handling all components of mergers and acquisitions of financial institutions and their holding companies, such as:

- Negotiating and drafting acquisition/merger agreements
- Assistance with due diligence, including review of asset portfolios, corporate records, regulatory compliance and pending litigation
- Preparing regulatory applications and consulting with the appropriate banking regulators
- Preparing registration statements and proxy statements filed with the Securities and Exchange Commission and the appropriate banking regulators

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- Handling termination of employee benefit plans, payouts under executive severance packages, cancellation of stock options and other corporate matters affected by the transaction
- Preparing documents for and managing the closing of the transaction
- Preparing all post-closing regulatory filings

Broad and Cassel's attorneys handle all aspects of branch/deposit transactions, including:

- Negotiating the deposit assumption agreement
- Addressing the real estate issues related to the branch locations
- Preparing the necessary regulatory applications
- Handling the closing of the transaction and transition of operations

Broad and Cassel also has significant experience in purchases and sales of portfolios of financial assets (such as residential mortgage loans, consumer loans and commercial equipment leases), including experience in conducting due diligence reviews of the portfolios.

## **CAPITAL RAISING**

Broad and Cassel advises clients in all aspects of capital-raising for financial institutions and their holding companies, its attorneys having handled offerings ranging from small private to initial public to large public offerings of debt and equity securities. In addition, our Banking and Institutional Lending attorneys have significant experience in representing financial institutions undertaking capital markets financings, such as commercial paper and medium-term note programs.

Our attorneys have established strong working relationships with international, national, regional and local investment banking and venture capital firms that assist the Firm's clients in raising capital and financing acquisitions. In particular, our attorneys have worked closely with investment bankers that specialize in acquisitions and offerings by financial institutions and their holding companies.

Broad and Cassel attorneys also have significant experience in representing institutions in connection with the issuance of asset-backed securities, such as collateralized mortgage obligations and REMICs.

## **REGULATORY MATTERS**

Broad and Cassel's attorneys have assisted their clients with a wide variety of bank regulatory matters, such as:

- Assistance with examinations and pre-examination reporting, change-in-control rebuttals and applications, applications for new subsidiaries and new activities, new branch applications, dividend and capital distribution applications, and the full range of other advice and assistance with reports and applications arising in the conduct of an institution's business;

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- Compliance with federal and state lending laws, including the Truth-in-Lending Act and the Real Estate Settlement Procedures Act, and handling litigation matters arising thereunder; and
- Advice regarding compliance with all other general banking laws and regulations, such as related party and affiliate transactions issues, deposit disclosure issues, and deposit insurance questions.

## **FINANCIAL INSTITUTIONS EXPERIENCE**

Our attorneys' experience encompasses a wide range of transactional and litigation experience, including:

- Representation of a major national lender in a successful suit and workout with regard to what purported to be a large non-recourse promissory note secured by collateral, consisting of a mixed use project under development in South Florida, where the collateral was found to be contaminated by arsenic in the ground water and where the lender elected to sue on the note rather than foreclose the mortgage.
- Representation of financial institutions in foreclosure actions, including numerous hotels, shopping centers and office buildings, throughout the state of Florida, many of which actions were quite complex and involved receiverships, the issuance of receiver's certificates to fund operations and repairs, long term land leases, deficiency judgments, defense of usury and lender liability claims, and bankruptcy proceedings.
- Representation of the lead lender in a complex \$30 million construction loan litigation where the borrower was insolvent. We successfully concluded the matter and the lender was made whole.
- Representation of a large out-of-state bank in an \$86 million workout/disposition of a Dade County mixed use project. The work included addressing all building, zoning, concurrency and land use issues, and resulted in the issuance of a building permit for construction of the balance of the project. This, together with the remainder of the legal services, including negotiating purchase and financing terms and preparation of the required documents, enabled the closing to occur and the lender/client to make a significant recovery of the monies owed to it.
- Representation of a European bank in foreclosure of one of the largest private urban renewal/projects in the State of Florida. The action involved the resolution of complex title insurance and survey matters relating to the assemblage of numerous acres of land in Palm Beach County and the negotiation with both the State of Florida and the City of West Palm Beach concerning condemnation proceedings and vested development rights.
- Representation of a national REMIC with respect to foreclosures and the negotiation of loan modifications and deeds in lieu of foreclosure affecting numerous commercial properties located throughout the state.

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- Representation of the lead lender in a major loan transaction in which the consortium of lenders included many of the major U.S. banks in connection with a corporate financing, secured in part by mortgages on real property throughout the State of Florida. This representation involves complex title and survey issues, Florida intangible tax and documentary stamp tax issues as well as uniform commercial code issues pertaining to the collateral.
- Foreclosure and workout for an out-of-state lender of several multi-family and single-family development projects throughout the State of Florida.
- Representation of a commercial bank in a foreclosure action involving nine commercial properties in four Florida counties with loans aggregating approximately \$30 million.
- Representation in foreclosure and bankruptcy proceedings of a commercial bank having a secured loan of approximately \$18 million.
- Representation of commercial banks in Florida in numerous workout and foreclosure actions, including the recent workout of an \$8 million commercial loan secured by real estate in Palm Beach County, Florida.
- Representation of out of state savings and loan associations in receivership in connection with the disposition of hotel property in Florida.
- Representation of a lender whose collateral for a multi-million dollar loan was diverted through fraud. Our attorneys successfully unraveled the fraudulent scheme, traced the collateral and the proceeds of its disposition, and obtained and collected upon a multi-million dollar judgment; as a result, the lender was made whole.