

Real Estate Practice Group



Breadth. Depth. **Results.**



Greeley Mall



Real Estate Practice Group

Real estate is a large component of many types of businesses. For some companies, it is their primary business. For others, it is an asset that supports vital objectives or the security for the loans that are a core component of the finance industry. Seyfarth Shaw's Real Estate Practice Group understands the difference. Our attorneys balance legal counsel with a full understanding of how a client's business works and how their real estate assets and investments fit with the rest of their organizational objectives.

Our nationally recognized practice provides innovative real estate counseling to clients throughout the country. Supported by our colleagues practicing in tax, environmental, benefits, construction, and private equity law, our attorneys counsel clients on the wide range of issues that arise in connection with owning, leasing, developing, financing or investing in real estate, allowing us to be an integral part of the strategic team that helps our clients succeed. Our Structured and Real Estate Finance Group is part of the Real Estate Practice Group and includes our real estate finance attorneys from across our offices. This group works closely with our bankruptcy and restructuring, corporate and finance, tax, and environmental colleagues in closing loans and restructuring existing transactions.

Our real estate attorneys have a deep understanding of project life cycles. We combine that knowledge and apply it to our clients' specific business needs to ensure our clients receive the best legal and practical business advice at each phase of development. Our group includes attorneys who have worked as outside counsel and on the business side of the industry, so we fully understand the pressures facing our clients to negotiate the best transactions and close deals quickly. We emphasize focused and highly responsive service that helps our clients meet the ever-increasing pace of modern business. We are committed to the delivery of practical, result-oriented service through efficient staffing, consistent points of contact and clear, partner-level leadership. With our national presence and networks of highly experienced attorneys, our real estate group has the breadth of resources and depth of knowledge to help our clients maximize the value and return from their real estate transactions and activities. We help our clients achieve real results that can be seen in their bottom line, and we do it effectively, efficiently, and expeditiously.

Strategic Representation

With offices strategically located in key urban and real estate centers throughout the country, we help our clients buy, sell, finance and manage their real estate assets and investments in nearly every state. We address clients' real estate concerns as part of a broader business vision, not just as a series of discrete, isolated tasks. We know that most real estate transactions follow a natural life cycle. Requirements and needs must be identified, land or buildings acquired or leased and, when appropriate, real estate assets must be sold or otherwise transferred. Our attorneys combine this life cycle perspective with an understanding of clients' history, business plans, and goals.

Whether negotiating a single retail lease, managing deals involving hundreds of thousands of square feet of industrial, office or retail space, or coordinating a multi-property transaction involving multiple jurisdictions, our team brings exacting legal analysis and pays meticulous attention to all of our client engagements. Our group helps clients identify emerging opportunities and challenges and develop forward-looking strategies that meet their short- and long-term goals. As a result, we have long-standing relationships with our clients and have seen many of them, with our assistance, grow over the years.

We represent many of the country's largest investors, developers, owners and users of real estate across all industries and have developed networks and relationships with key industry players and parties, including developers, title companies, due diligence and land-use consultants, regulators, lawyers, real estate brokers, agents, advisors, lenders and investors. Additionally, we represent commercial and investment banks in nearly every area of real estate finance. When our lawyers represent lenders, we not only address specified loan terms, but also the practical needs of the property owners/borrowers. In doing so, we strengthen the business relationship between our clients and their customer base while always protecting our clients' security position and business interests.

Corporate

For corporate and other clients with significant real estate assets—whether or not their core services or products involve real estate itself—we provide legal services that support the ongoing creation, financing, management and disposition of these assets. We represent clients in construction and development of new facilities, sale/leaseback, leasing of office and industrial properties, governmental incentives and service agreements.

Retail

With decades of experience on projects across the country, we understand the nuances that affect successful retail development projects. We apply the lessons learned from years of service to the unique and specific demands of each client matter. Our team represents many of the nation's largest and best-known shopping center owners and developers, retailers, restaurants and real estate investment trusts (REITs) in negotiating leases, purchases, loans, construction and other contracts for millions of square feet of retail space each year. Our clients buy, sell, finance, develop and redevelop, lease and occupy space from regional malls, mixed-use projects and power centers to neighborhood centers and free-standing sites.

On behalf of landowners, developers, lenders, tenants and municipalities, our attorneys routinely handle:

- Permanent and construction financing
- Site design and layout
- Construction and reciprocal easement agreements
- Entity formation and joint venture work
- Development reimbursement, including tax increment financing (TIF), sales tax rebates and other economic development incentives
- Guarantees involving costs and construction dates
- Redevelopment of existing centers
- Environmental concerns
- Ground and build-to-suit leases

Pension Funds

Our team provides innovative real estate counseling to public and private pension funds, investment advisors and other institutional investors nationwide. In addition to traditional acquisition, disposition, financing and leasing, we regularly represent institutional investors in comingled funds targeting international and domestic real estate. We have particular knowledge of Employee Retirement Income Security Act of 1974 (ERISA), unrelated business taxable income (UBTI) and fiduciary issues. We assist clients involved in direct ownership of real estate, joint ventures, REITs and real estate-focused funds that include projects ranging from office, retail, multifamily, industrial, special-use and multi-state properties, and in such, we:

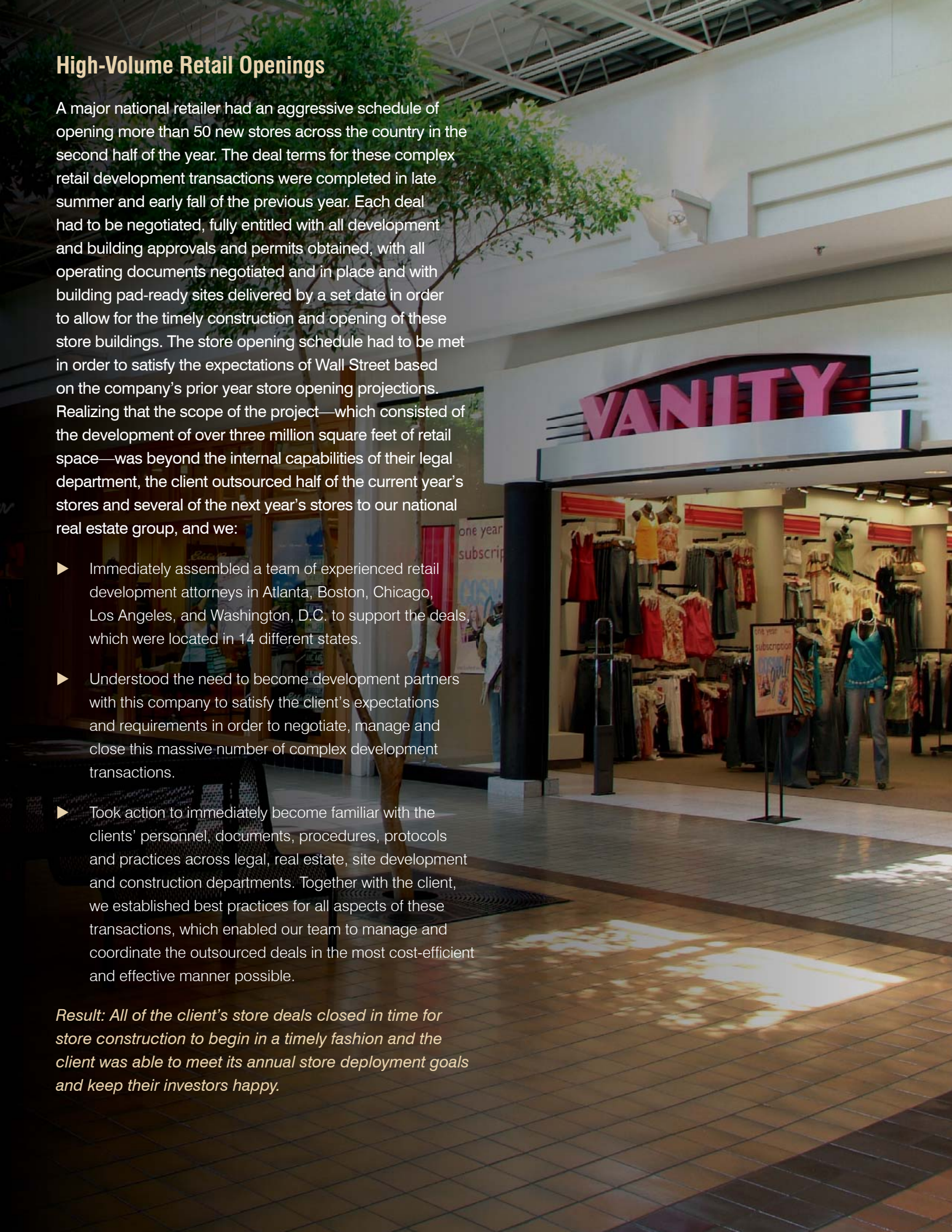
- Negotiate, form and operate joint ventures
- Acquire and dispose of properties and projects
- Develop leases and other landlord-tenant agreements
- Secure financing for acquisitions and developments
- Determine investment strategies
- Counsel pension funds on investments including real estate-focused domestic and foreign-pooled funds
- Ensure fiduciary compliance with state pension codes and ERISA
- Develop effective tax strategies


High-Volume Retail Openings

A major national retailer had an aggressive schedule of opening more than 50 new stores across the country in the second half of the year. The deal terms for these complex retail development transactions were completed in late summer and early fall of the previous year. Each deal had to be negotiated, fully entitled with all development and building approvals and permits obtained, with all operating documents negotiated and in place and with building pad-ready sites delivered by a set date in order to allow for the timely construction and opening of these store buildings. The store opening schedule had to be met in order to satisfy the expectations of Wall Street based on the company's prior year store opening projections. Realizing that the scope of the project—which consisted of the development of over three million square feet of retail space—was beyond the internal capabilities of their legal department, the client outsourced half of the current year's stores and several of the next year's stores to our national real estate group, and we:

- ▶ Immediately assembled a team of experienced retail development attorneys in Atlanta, Boston, Chicago, Los Angeles, and Washington, D.C. to support the deals, which were located in 14 different states.
- ▶ Understood the need to become development partners with this company to satisfy the client's expectations and requirements in order to negotiate, manage and close this massive number of complex development transactions.
- ▶ Took action to immediately become familiar with the clients' personnel, documents, procedures, protocols and practices across legal, real estate, site development and construction departments. Together with the client, we established best practices for all aspects of these transactions, which enabled our team to manage and coordinate the outsourced deals in the most cost-efficient and effective manner possible.

Result: All of the client's store deals closed in time for store construction to begin in a timely fashion and the client was able to meet its annual store deployment goals and keep their investors happy.





We assist with the entire project life cycle, from initial conception to the creation of final governing documents and ongoing interaction with unit owners.

Multifamily

Working with developers and institutional and private investors on projects ranging in size from ten to over 15,000 units, we assist with the entire project life cycle, from initial conception to the creation of final governing documents and ongoing interaction with unit owners. We also represent clients who are involved in raising equity and financing acquisitions and who rehabilitate existing apartment communities throughout the United States.

Our experience includes working on large, mixed commercial and residential projects as well as single residential or condominium office sites. Our services include examination of building sites, review of business and marketing plans to determine optimal ownership structure, and addressing issues related to property acquisition and property development, including construction and conversion and sales of units.



Office/Industrial

Our attorneys assist landlords and tenants in negotiating and finalizing nearly every form of lease including traditional space leases, ground leases, master leases, sale and leaseback, credit tenant leases and leases of partial interest and other structured interests.

We regularly develop favorable agreements that allow the tangible use of physical space in a flexible and economical manner. We counsel on issues such as general property management agreements, service contracts, parking facility leases and service arrangements and electrical, utility and telecommunications arrangements.

“Bad Income” Becomes “Good Income”

Pension funds are subject to extremely strict rules in terms of the tax code and must avoid having income from properties classified as UBTI. One of our pension fund clients owned a parking lot and wanted to charge users hourly, daily and/or monthly fees, but couldn't because that would create taxable income. Our attorneys solved this problem with a plan to lease the parking lot to a parking lot management company to run it. In doing this, we:

- ▶ Calculated an appropriate rent that would approximate an operating income for the parking business
- ▶ Prepared a two-year lease for the parties to sign
- ▶ Review the lease every two years to protect the pension fund's income in case there is a wide disparity between the operating income and the rent charged

Result: Our attorneys helped our client turn “bad income” from a property into “good income” it could recognize to the benefit of all parties involved.

Development/Construction

Developers, government entities, property owners and lenders seek our counsel on a full range of legal services relating to the development and redevelopment of commercial, industrial and residential land, including assistance with:

- Strategic planning
- Site acquisition and assemblage
- Due diligence
- Project coordination
- Permitting
- Project financing
- Construction
- Preparation of all transactional documents and documents of record
- Project disposition

Our team helps protect owners and developers of retail, office and residential properties by managing their contractual relationships with architects and contractors at every stage in the construction life cycle. We have significant experience with projects involving issues such as:

- Annexation of land into a municipality
- Development agreements
- Planned unit developments
- Master-planned community and condominium documentation
- Rezones
- Variances
- Special-use permits
- Subdivision approvals



Structured and Real Estate Finance Group

Seyfarth Shaw's real estate finance attorneys form one of the country's leading national practice groups offering sophisticated counsel to lenders engaged in the full range of real estate transactions. Working with the lending and capital markets groups of a diverse array of financial institutions and companies, we structure and negotiate loans and other credit facilities, handle loan administration and servicing issues and represent the interests of our clients in loan defaults, workouts, foreclosures and borrower bankruptcies.

We provide counsel that is firmly grounded in the fundamentals of real estate and finance law, enhanced by our knowledge of the lending and capital markets and industry trends. Our strong working knowledge of our clients' interests and goals, together with our extensive experience, allows us to assist our clients in structuring transactions that meet their current objectives while mitigating potential risks.

Special Services Offered

- Capital markets loans (including conduit financings)
- Permanent and interim loans
- Mezzanine and AB tiered structures
- Participations and other syndicated arrangements
- Preferred equity
- Leasehold and fee mortgage financing
- Shopping center, office, multifamily, hotel and mixed-use financings and re-financings
- Commercial and multifamily condominium and planned-unit development financings
- Servicer representation
- Issuer representation in loan securitizations
- Commercial and multifamily construction financing
- Financing of environmentally impaired properties
- Foreclosures and workouts
- International transactions
- Lease financings
- Acquisitions
- Like-kind exchanges
- Sale/leaseback arrangements
- Letter of credit enhanced transactions

Substantial Mortgage Loan Closings

A national banking client asked us to negotiate and close a series of commercial mortgage loans aggregating approximately \$102 million with a major developer based in the Mid-Atlantic region. The loans were secured by multiple properties and the closings involved extensive negotiations with the developer's in-house legal team and various outside counsel. The team included lawyers from our Atlanta, Boston, New York, and Washington, D.C. offices and included our Real Estate, Tax and Bankruptcy groups.

- ▶ The transactions involved Maryland properties and previously existing, inter-related Washington, D.C. and Maryland borrower entities. Due to various tax considerations, we utilized an Indemnity Deed of Trust structure and various recycled and new entities in the eight-tier, 44-entity organizational structure. As the loans were scheduled to be securitized in the capital markets, we reviewed and negotiated 11 opinions, including non-consolidation and special-purpose entity opinions. Additionally, by way of collateral defeasance of the properties from a pre-existing securitized pool of loans, we addressed the transition to the new secured structure and did so under a short time frame in order to meet the borrower's defeasance deadlines and the client's securitization schedule.

Result: All of the loans were closed within the essential time requirements and successfully securitized. The developer continues to request us as outside lender's counsel.



Conduit Lending

Understanding the legal issues and business considerations that are unique to conduit lending, we institute processes and procedures to allow for the handling of a high volume of transactions, including the use of specialized software and document management systems. We are well versed in the securitization process including issuer representations and warranties, loan structuring, bankruptcy and REMIC considerations, rating agency requirements and post-closing submissions. We understand the sensitivities of loan origination and the requirements of the various parties involved in a loan including borrowers, rating agencies, servicers and investors.

About Seyfarth Shaw

Seyfarth Shaw was founded in 1945 by three lawyers and has grown to more than 750 lawyers across ten offices. We handle issues for our clients in all key areas including labor and employment, commercial litigation, construction, corporate and finance, employee benefits, environmental, government contracts, intellectual property, litigation, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



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