

Q&A With White & Case's Steven Vainder

Law360, New York (February 10, 2012, 3:23 PM ET) -- Steven J. Vainder is a partner in the Miami office of White & Case LLP, where he advises on all aspects of real estate, including acquisitions, dispositions, operations, leasing, management, development and financing.

He represents investors, owners and other stakeholders in complex real estate projects, including development, financing and sale of shopping malls, large planned-unit developments, mixed-use projects, hotel and hospitality assets and office and industrial parks. He also represents lenders and private equity funds with restructuring, repositioning, disposition and acquisition of distressed real estate loans and assets.

Vainder possesses a thorough understanding of green building practices and principles and is certified as a Leadership in Energy and Environmental Design (LEED) Accredited Professional by the United States Green Building Council.

Q: What is the most challenging case or deal you have worked on and what made it challenging?

A: Recently, the most challenging transactions have been the acquisitions of distressed debt portfolios. In these deals, it is extremely difficult to get information about the loans and the underlying collateral. In many cases, the seller purchased the portfolio from the Federal Deposit Insurance Corp. (FDIC) or acquired a failing institution and is unwilling to provide any representations or assurances that the files are accurate and complete.

To make matters worse, the owner of the collateral/borrower is often unaware of, or perhaps even hostile to, the transaction. Thus, it is very difficult to get a complete picture of the situation.

Another complicating factor is that the strategy for each loan in the portfolio might be different. Some may be loan-to-own, some may be a discounted payoff, some may be modify and extend, etc. Thus, the priorities for each loan may be different.

Finally, to be attractive to the seller, these transactions often need to be consummated in a very short time, which is challenging given that the collateral is often located in multiple jurisdictions, requiring coordination with local counsel on enforcement issues, and consists of diverse asset classes — residential, hotel, retail, land, etc. — with their own unique issues.

You need to be in a position to quickly pull together a multidisciplinary team with a broad spectrum of expertise, e.g., bankruptcy, litigation, tax, environmental, etc.

Q: What aspects of your practice area are in need of reform and why?

A: Clearly, the residential mortgage industry needs reform. Excessive risk was undertaken, with much too little accountability.

However, the same can be said about commercial real estate lending. Legislation has been, and will continue to be, created to address these risky lending practices. For instance, the banks are being asked to keep more "skin in the game" and to set aside additional capital to cover potential losses.

The result is that real estate lenders are requiring lower loan-to-value ratios, higher debt service coverage and better sponsorship. While the system may benefit in the long run from better underwriting and more attention to detail, the capital markets will likely remain tight in the short term for all but the strongest borrowers.

Q: What is an important issue relevant to your practice area and why?

A: Sustainability is a very important practice issue. Recognizing this early on, I was one of the first attorneys in the state of Florida to obtain LEED accreditation. Through this educational process, I learned the benefits of recycling, water conservation, energy efficiency, in-fill development, etc.

As the population of the world continues to explode — it has been reported that we just surpassed the seven billion mark — and the earth's limited natural resources are depleted, public and private sector players are requiring that buildings be built, updated or retrofitted to be environmentally friendly.

Whether representing builders, landlords, tenants, contractors or pretty much any other participant in the real estate industry, a working knowledge of the techniques and certifications involved in "green building" is becoming essential.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: I am fortunate in my practice to have worked with many competent opposing counsel over the years. Most recently, I had a very good experience with Paul Ayoub of Nutter McClennen & Fish LLP in Boston. Paul was representing one of the sellers of the loan portfolios. In addition to having excellent legal skills, Paul is pragmatic and professional.

Rather than add "fuel to the fire," he and I would take a proactive approach to help navigate the clients through each impasse. While we were each an advocate for our clients' interests, we used frequent "sidebars" to focus on the big picture and brainstorm creative solutions that would address both clients' needs.

Q: What is a mistake you made early in your career and what did you learn from it?

A: At the start of my career, I spent most of my time in the office and teaching at the University of Miami Law School. I was so focused on building my legal "skill set" that I failed to actively engage with professional and community organizations.

In addition to the importance of "giving back," involvement in associations and organizations — at any level, local, regional or global — is a wonderful way to develop a network of social and business contacts.

Through participation, we can work with peers at other firms and companies to address legal and business issues in a format where we are all sitting on the same side of the table. I routinely encourage young lawyers to pursue such activities at an early stage in their career.

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