

# CREDITORS' RIGHTS AND BANKRUPTCY



Wong Fleming's bankruptcy and creditors' rights practice focuses solely on the representation of creditors. Our clients include many of the top Fortune 100 companies. The type of creditors' rights work is varied and runs the gamut from business bankruptcies, foreclosures, replevin actions, commercial collections and REO issues.

Wong Fleming's creditors' rights practice group is a national practice group that covers all 50 states, the U.S. Virgin Islands and Puerto Rico. It is a cradle-to-grave service that unifies all components - law firm-prepared asset searches, pre-litigation collection, litigation (including defaults and repossessions), bankruptcy, REO issues and post-judgment collection - into a single platform.

Our practice group includes attorneys who have published peer-reviewed journal articles in the bankruptcy bar's leading law review, the ABI Law Journal, as well as a past president of the ABI. Wong Fleming attorneys also have substantial trial experience when called upon to protect creditors' rights, including fraudulent transfer trials, bankruptcy preference trials, and lender liability trials.

## **BANKRUPTCY LITIGATION**

Wong Fleming attorneys have substantial bankruptcy experience in the federal courts throughout the country. Our attorneys have been board certified in both business bankruptcy and consumer bankruptcy by the American Bankruptcy Board of Certification, and authors of peer-reviewed articles in the American Bankruptcy Institute Law Review. Our attorneys also include a past president of the American Bankruptcy Institute, a Fellow in the American College of Bankruptcy, and a member of the Judicial Conference Advisory Committee on Bankruptcy Rules.

We have handled a substantial amount of creditor-based bankruptcy work, including first-day orders, DIP financing, bankruptcy sales and auctions, challenges to the extent and validity of liens, all forms of contested matters and adversarial proceedings, including fraudulent transfers and preference actions, objections to disclosure statements and plans of reorganization, including bankruptcy-related workouts and forbearance agreements.

We regularly represent secured and unsecured creditors, creditors' committees and bankruptcy trustees in cases under Chapters 7, 11 and 13 and the entire range of bankruptcy litigation. Our practice also includes extensive representation in loan workouts, debt restructuring, dispositions of assets and refinancing. We can respond quickly and effectively to the pressures and uncertainties of changing economic conditions to meet our clients' needs.

The scope of our bankruptcy practice includes the representation of creditors in bankruptcy proceedings under all Chapters of the Bankruptcy Code. We have litigated against debtors, debtors-in-possession, other creditors, committees, other secured creditors, landlords, plan of reorganization proponents, parties to acquisition agreements, and special interests. As previously stated, we have regularly litigated contested matters and adversary proceedings in Chapter 11 cases, as well as Chapter 7 liquidations.

We can quickly prosecute claims in the state and federal courts, including the prosecution of orders to show cause and applications for restraints, and just as quickly handle first day orders in Chapter 11 bankruptcy cases, including the use of cash collateral and adequate protection. We have negotiated all forms of first day Orders and Debtor-In-Possession Financing, especially in connection with automotive dealer bankruptcies. We have regularly negotiated Bankruptcy Section 363 sales. We have also regularly participated in state analogue insolvency proceedings, such as assignments for the benefit of creditors.

## **WORKOUTS**

As a sub-set and in direct relation to bankruptcy, the firm also routinely negotiates and prepares workout and forbearance agreements for secured lenders, and can quickly prepare such agreements with little notice from the client. The firm is familiar with all aspects of workouts and forbearance terms.

## **UCC LITIGATION**

UCC litigation often revolves around the secured creditor's effort to negotiate a voluntary repossession of the business assets or, in the alternative, a temporary restraining order application with the court and a motion for a prejudgment writ of attachment. UCC litigation in this field also relates to enforcing the rights of a secured creditor under UCC section 9-406 in connection with the enforcement of the rights granted in accounts and account receivables as collateral. We have assisted commercial lenders in replevin actions involving other assets, such as aircraft, boats, office equipment, motorcycles, trucks, and cars. Our approach is to take expedient action to avoid situations in which the assets have been diluted in value or have been fraudulently transferred to other businesses. We have often litigated these issues successfully for secured creditors as well as many other aspects of the UCC. We are also regularly called upon in a consultative capacity to advise on various UCC issues for our clients. This includes presenting UCC seminars to bankers and credit officers.

The firm's concentrated capabilities include debt transactions such as secured lending transactions, subordinated debt, loan restructuring and loan syndication and trading. Our commercial litigation experience includes all areas of lender liability, defense of consumer fraud claims and litigation, including class actions; and UCC and secured transactions litigation.

## **COMMERCIAL COLLECTIONS AND CORPORATE ASSET RECOVERY**

Wong Fleming's Corporate Asset Recovery Group combines the firm's strengths of commitment to delivering value that exceeds expectations and our national geographical reach to provide a comprehensive collection service to meet all of the needs of any corporate client seeking to collect on deficiency claims and the like. Unlike a collection agency or many law firms, Wong Fleming is organized to take a deficiency claim from the pre-litigation, demand-letter stage through litigation and post-judgment recovery, if necessary.

We have the knowledge and resources to efficiently and successfully collect large accounts that are delinquent. Wong Fleming represents clients in many different types of commercial and debt collection matters. These matters include actions to collect debts owed under loan agreements, retail installment contracts, negotiable instruments, promissory notes, and goods sold and delivered. We file actions seeking judgments against business owners and other third parties on personal guaranties of corporate debts. The firm also has extensive experience representing creditors owed balances; including filing replevin actions.

## FORECLOSURES

On a national basis, the firm has represented banks and other financial services companies in connection with foreclosure matters, both commercial and residential, since the firm's founding in 1994. As such, the firm is very familiar with the process of quickly moving uncontested residential and commercial foreclosures through the judicial and non-judicial processes throughout the country. The firm has litigated over many defendants' efforts to contest, and thereby prolong, the foreclosure process. We are well equipped to suppress defenses and strike answers that are not germane to the foreclosure. The firm is also experienced in prosecuting so-called "strict" foreclosures, negotiating deeds-in-lieu of foreclosures and workouts, applying for rent receivers, and executing on absolute assignments of rent without resorting to time-consuming and expensive applications to the court.

We have never delegated the work of lawyers to paralegals, never exposed our clients to liability, reduced our clients' mortgages to unenforceable mortgage interests, or subjected our clients to adverse publicity. For certain, we did not resort to the salacious use of "robo-signers" in foreclosure actions, and never suggested to our clients that they engage in such a risky and wrong-headed practice. At Wong Fleming, we believe it is our mission to exceed client expectations in every case, and this can never be achieved unless we remain loyal to our core values. We are not a commodity. We do not consider ourselves to be a so-called "foreclosure mill" and we would never take any action that would give our client a black eye.

## EVICCTIONS

In connection with our foreclosure practice, the firm has successfully litigated thousands of commercial and residential evictions, representing landlords and REO creditors in the following areas: (a) residential leases involving Section 8 tenancies, (b) residential leases involving other subsidized housing issues, (c) commercial leases, (d) nonpayment of rent, (e) forfeiture, (f) safety, (g) quiet enjoyment, (h) damage to property, (i) security deposit disputes, (j) holdovers, and (k) criminal activity and criminal convictions. Our substantial eviction experience includes representing landlords in the abandonment of property, eligibility for reduced rent and actions seeking damages relating to such tenancies.

### Creditors' Rights and Bankruptcy Attorneys:

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