

Real Estate Litigation

Over the past several years, the real estate industry has gone through a period of disruption and continues to present a unique set of challenges resulting from the continually evolving nature of the industry. As a National Tier 1 Best Law Firm, we partner closely with you to help your business adapt and thrive. From navigating the unique issues presented by a global pandemic to advising on more routine real estate disputes, our group uses its nationwide presence and knowledge of local markets to efficiently litigate disputes and advise clients on how to reduce litigation risk.

Polsinelli's Real Estate Litigation attorneys regularly advise clients on drafting and interpreting leases, guarantees, purchase and sale contracts, development agreements, and a variety of associated types of contracts. We also litigate land disputes including easements, right of way and other property rights issues. We also partner extensively with Polsinelli's nationally recognized Real Estate practice to leverage its practitioners' deep industry knowledge in related practice areas, including real estate development, construction, environmental, and real estate finance and lending. This collaborative partnership ensures we are offering our clients a comprehensive perspective that informs strategic decisions on the legal issues impacting your business. And this cross-disciplinary approach positions Polsinelli to provide clients advice during any phase of a real estate project.

To the extent, a dispute cannot be resolved out of court, our Real Estate Litigation attorneys have substantial trial experience, having handled a varied array of real estate litigation in federal courts, state courts, and alternative dispute resolution bodies across the country. Our primary goal is to help our clients resolve complex real estate challenges and deliver innovative solutions while keeping our clients' ongoing business interests at the forefront. Our attorneys assist clients on a diverse range of real estate disputes, including:

- Boundary disputes
- Commercial landlord and tenant issues
- Development and related property rights
- Easement and access
- Eminent domain, condemnation, valuation, and partition
- Land use and zoning
- Property management
- Purchaser/encumbrance status
- Real estate brokers and agents
- Title insurance

Matters

Condemnation

- Represented public utility in condemnation actions and other litigation-related matters in Kansas and Missouri with respect to the development of an 800-mile-long electric transmission line.
- Represented developers, property owners, and public university in defense of and prosecution of various condemnation actions.
- Represented public utility in condemnation actions in Kansas and Missouri with respect to the development of a 70-plus mile-long electric transmission line.
- Represented landowner in multiple condemnation actions where the Georgia Department of Transportation (DOT) took property for a roadway expansion project. After discovery and as cases approached trial, obtained significantly more in compensation than DOT's pre-litigation offers.
- Represented a publicly traded shopping center owner in connection with a condemnation action that would significantly alter the access to the center.
- Part of a team acquired via condemnation property necessary to build venues for the 1996 Summer Olympic Games in Atlanta. Handled numerous special master hearings whereby multiple parcels were acquired.

Construction Claims

- In Re Mission Construction, No. 10-cv-04262 (S.D.N.Y.): Defended the Permanent Mission of the Republic of Namibia in a complex, multiparty construction dispute raising novel issues under the Foreign Sovereign Immunities Act (FSIA).
- Successfully represented a developer and property owner in a multi-year arbitration and litigation related to significant building defects for a mixed-use project with claims in excess of \$15 million.
- Successfully enforced damages settlement for commercial real estate company against real estate developer after client sustained significant property damage due to the developer's construction of a neighboring luxury apartment complex.
- Experience representing contractors, developers, and builders in all types of commercial construction disputes.

Foreclosures and Liens

- Prosecuted a quiet title action and obtained declaration that a broker's lien on condominium development arising out of the pre-sale of over 200 condominium units was void, thereby allowing the sale of the development free of the lien.
- Prevented the judicial foreclosure of more than 30 condominium units following a widespread real estate investment fraud that involved hundreds of fictitious deeds of trust and promissory notes and resulted in criminal charges.
- Represented developer in pursuit of title claims and indemnification related to mechanic's lien for major industrial development project.
- Successfully defended several condominium unit owners against judicial foreclosure actions filed by lenders following one of the largest real estate scams in the State of Colorado and the criminal prosecutions of those involved, and then pursued actions against certain professionals who failed to properly search title and obtain the release of Deeds of Trust.

Land Use and Zoning Disputes

- Representing a ready-mixed concrete and concrete block manufacturer in multiple zoning litigation matters.
- Defended developer of a grocery-anchored strip center against challenges from neighboring property owners seeking to enjoin the development based on the impact on existing wetlands.
- Defended wind energy company against township claims seeking to limit or prohibit commercial wind farms.

- Obtained involuntary dismissal of claims against a developer that it violated an easement by establishing that the 20-year-old easement was void from inception because the original grantor did not have the underlying right to grant the easement.
- Successfully extricated major property owner from common interest community, resulting in the ability to develop the property free of fees and restrictions imposed by the community association.
- Lead counsel in an eight-day trial arising from a real estate transaction where the adjacent landowners asserted the right to enter and use the purchased property based on various deeds and subdivision plats.
- Represented developer in defending trespass claims that it infringed upon easement, which had been in place for over 25 years, after determining that the grantor of easement had divested itself of title several days before grant of easement, obtained ruling that easement was void and dismissal of all claims. The Supreme Court of Georgia affirmed the decision.

Leasing Disputes

- Regularly represent and counsel major, multinational corporations in connection with commercial leasing and real estate disputes, often relating to their national and international headquarters.
- First-chaired a weeklong bench trial concerning an alleged breach of an agreement to purchase a ground lease interest in a New Jersey commercial property.
- Represented a multinational telecommunications company in a dispute with its commercial landlord concerning a wrongful lease termination.
- Representing a subsidiary of a nonprofit university in a claim against a publicly traded building materials company for a breach of lease involving an underground mine.
- Representing an industrial property landlord in a lease dispute with a publicly traded water treatment company.
- Represented a publicly traded retail chain in a jury trial in connection with damages following its vacating of leased premises.
- Represent a CRE investment company in a leasing dispute with an in-patient substance abuse disorder treatment center tenant it inherited when it purchased a commercial building.
- Currently representing more than 60 regional and superregional shopping centers in connection with interpreting and enforcing retail leases, including collecting unpaid rent and enforcing operating covenants, exclusive use provisions, radius restrictions and CAM obligations.
- Successfully defended national retailer in federal jury trial with regard to claims brought by a landlord.

Property Damage and Nuisance

- Representing a private community country club in a nuisance lawsuit brought by neighbors alleging noise from pickleball play interferes with their use and enjoyment of their properties.
- Represented office building owner in pursuing city for damage to plumbing system caused by city when it failed to resort appropriate water flow to building after a water meter inspection. Defeated city's motion for summary judgment and obtained ruling that owner could pursue nuisance theory against city. Thereafter, case settled on favorable terms.
- After large sinkhole occurred in parking lot of pharmacy chain's store, represented pharmacy chain investigation and pursuing claims against a city that refused to accept responsibility for the dangerous condition. After investigation, it was established that the cause of the sinkhole was a defective sewer pipe; reached an agreement with the city whereby it agreed to pay all expenses to repair the site.
- After a massive sinkhole developed, threatening a cell phone carrier's facility, which was critical for providing service to Atlanta, represented landowner in responding to the demand from carrier to repair sinkhole. After investigating and establishing a sinkhole caused by another adjacent landowner, the other landowner reached an agreement on all necessary repairs.

Title Claims and Property Tax Appeals

- Successfully represented a religious Order and its affiliated university in obtaining a property tax exemption for an apartment complex owned by the Order and used to house students, faculty and members of the Order.

- Successfully represented one of the country's largest lifestyle and shopping centers for the overvaluation of property taxes involving numerous parcels for several assessment years, resulting in significant tax savings for the client.
- Represented numerous property owners in millions of dollars of aggregated claims related to title coverage and disputes.

Additional Matters

- Lead counsel for a global investment client in breach of contract, fraud and environmental contamination action involving sale of commercial property in New Jersey state court, won dismissal on all causes of action.
- Representing a foreign manufacturer and its U.S. subsidiary in a breach of contract action resulting from the failed sale of manufacturing facility located in China; obtained precedential dismissal of the foreign parent company for lack of personal jurisdiction Representing U.S. and international entities in an American Arbitration Association (AAA) arbitration alleging breach of a purchase and sale agreement.
- Representing a development company developing a hotel in a dispute with its lender over failure to fund its loan obligations, causing the project to stall. The court entered a default judgment against the defendants for \$15 million.
- Represented seller of an office building defending fraud claim that seller hid structural and design defects which caused the roof to leak. Established that the buyer was on notice about purported defects and obtained a grant of summary judgment in favor of the seller.
- After the city had obtained an Order requiring the demolition of an apartment complex because of the owner's repeated violations of building codes, represented lender who held security interest in the subject property in challenging the demolition order. Obtained ruling that lender could intervene in appeal of Order to trial court. After the lender acquired via foreclosure property and, as the case moved toward trial, obtained a favorable settlement with the city whereby the city purchased property.
- Represented a real estate development company in a lawsuit seeking the right to purchase and close certain real estate. The litigation was disputed given the likelihood of redevelopment of the property, greatly enhancing its value.
- Represented home builder in defending claims that it violated architect's copyrights related to certain home designs by using certain similar designs. Obtained ruling excluding architect's primary witness (former employee) because of improper witness agreement whereby witness could profit from the case, and summary judgment ruling that virtually all designs at issue were sufficiently different than architect's design and did not violate any copyrights held by an architect. The case settled on favorable terms after the ruling.
- For over 15 years, defended home builder against numerous claims brought by former business partner arising from the redevelopment of former housing project. Primary underlying issue was whether the contemplated golf course component of the project was properly excluded from the project for former partner's failure and inability to perform. Obtained favorable rulings in two arbitrations, dismissal of former partner's claims in court action and a judgment for fraud against the former business partner.