



FINANCIAL INSTITUTIONS

A Complicated Industry, Simplified.

Luce Forward provides comprehensive services for all facets of financial institutions. Our multidisciplinary approach gives you the best of all possible legal worlds. Our legal specialists in areas as varied as banking regulations, securities, mergers and acquisitions, employment, bankruptcy, tax implications, compensation and contract negotiation work as a team to provide you with complete and thorough representation throughout the life of your institution from its very formation to its potential sale.

In a complex and evolving regulatory environment, Luce Forward stays at the crest of industry change, delivering proactive, efficient and personal legal solutions to financial institutions throughout California. We help financial institutions and their associates formulate and implement business expansion plans, raise capital, and maximize shareholder value. We advise our clients in all of the major areas of banking, including: strategic transactions, vendor exposure, loan work outs, loan enforcement, construction disputes and executive transitions.

Strategic Transactions.

We ensure that our clients understand all the key elements to a successful merger and acquisition and/or capital raising transaction, and we advise clients on every stage of the transaction, including:

- Deal structure.
- Negotiating and drafting all documents, including private placement documentation and offering memoranda or purchase and sale agreements.
- Due diligence, indemnification and contribution arrangements.
- Corporate governance and fiduciary duty issues for boards of directors, committees and officers.
- Filing and obtaining regulatory approval of transactions, including clearance with the DFI, FRB, OCC and FDIC.
- Documenting and conducting California fairness hearings to exempt securities issued in sales exempt from federal securities registration.
- Filing and obtaining clearance for registration statements for the sale of securities.
- Tax-advantaged structures to maximize after-tax return on investment.

Vendor Exposure.

We ensure that our clients understand and negotiate favorable changes to the onerous provisions in back office contracts such as clauses that:

- Require payment of the full term of the contract on early termination.
- Disallow termination and do not provide liability for extended down-time or failures.
- Only vaguely describe support commitments and are difficult to enforce, such as time to respond to down-time for failures.
- Add costs for minor improvements and upgrades.

Vendor Exposure. *Continued.*

- Limit damages to the amounts paid to the vendor even if the results are catastrophic to the financial institution.
- Disclaim any liability for things done by the vendor unless it can be finally proven in court that the vendor is liable.
- Address service being interrupted if the vendor is sued by a third-party for breach of intellectual property rights.
- Restrict assignment of the contract even if the financial institution is sold.
- Exculpate the vendor from liability for anything involving a third party provider, even if the third party provider is proposed or required by the vendor.

Loan Work Outs.

We ensure that our clients learn the secrets to “best case” loan work outs, including:

- The loan officer who made the loan should not be involved in the workout.
- Tough enforcement may not be the best choice, although it is the easiest choice.
- If there is any potential that a bank employee or other affiliate of the bank is personally involved with the borrower or with the borrower’s business, investigate immediately.
- To protect against regulatory scrutiny, have your troubled loan identification and processing procedures reviewed by an independent third party.
- Before you start foreclosure proceedings, talk to a lawyer about the impact on guaranties and personal property collateral.
- Make sure you understand the impact on your loan loss reserves and loan loss allowance of each step in the workout process.

For additional information about our services in connection with loan workouts and similar matters, please see our Distressed Real Estate Asset Group page at www.luce.com/distressedasset.

Loan Enforcement.

We ensure that our clients understand and take advantage of their loan enforcement rights and remedies where litigation becomes necessary, including:

- Assisting the lender to navigate through the requirements of a non-judicial foreclosure/trustee’s sale.
- Pursuing guarantors for breached obligations through litigation and provisional remedies, such as writs of attachment.
- Bringing judicial foreclosure actions and pursuing deficiency judgments against borrowers.
- Seeking the appointment of a receiver to complete a failed construction project or to take control of an existing business or income property.
- In the event of a bankruptcy filing by the borrower or guarantor, providing the financial institution with advice and guidance on how to protect its interest in its secured collateral and the bankruptcy proceeding.
- Defending lenders against lender liability claims brought by borrowers.

Construction Disputes.

We ensure that our clients are prepared to handle the potential fall-out from a failed construction project during these challenging times, including:

- Protecting the lender's interests in actions to foreclose a mechanic's lien.
- Analyzing the potential for title insurance coverage for claims against the lender's secured collateral and tendering such claims in a timely and efficient manner.
- Advising the lender about the consequences of receiving a stop notice or bonded stop notice.
- Defending lenders against claims to enforce stop notices or bonded stop notices.

Executive Transition.

We ensure that our clients know the do's and don't's of hiring new executives, including:

DO:

- Get a copy of the executive's existing employment agreement and any non-compete or other agreement.
- Obtain a copy of the current employee manual of the executive's former employer.
- Evaluate the enforceability of any agreements by the executive not to solicit employees, customers or to compete against the former employer.
- Provide in any written agreement with the executive that the executive's duties specifically include NOT breaching any obligations to a prior employer.
- Include in your agreement with the executive appropriate protections for your business, including protection for trade secrets and other confidential information.
- Include counsel in deliberations regarding retention of the executive in an effort to protect such deliberations under the attorney-client privilege.

DON'T:

- Have the executive provide services to you while still employed by another employer.
- Ask the executive to provide confidential information about the prior employer.
- Tell anyone you are obtaining the executive to cause harm to a competitor or go after a competitor's employees.
- Allow the executive or any director to say, write or e-mail things that would give the appearance of unfairly criticizing a competitor, or that you have trade secrets of the competitor that you will exploit.

> **REPRESENTATIVE MATTERS**

We represented Security Business Bancorp in its sale of \$5,803,000 of preferred stock to the U.S. Department of the Treasury under its Capital Purchase Program. Security Business Bancorp is the parent company of Security Business Bank of San Diego, a community bank operating three San Diego locations.

We represented 1st Pacific Bancorp in its acquisition of Landmark National Bank. 1st Pacific Bancorp is the parent company of 1st Pacific Bank of California, a community bank operating seven San Diego locations.

We have represented numerous community banks in their formation, regulatory approvals with the DFI, FRB, FDIC and OCC and in all legal aspects of raising capital.

We are currently involved in a workout transaction relating to the restructuring and extension of a \$115,000,000 loan secured by a hotel property. As part of the transaction, our client is also obtaining a \$15,000,000 junior loan as well as approximately \$20,000,000 of additional equity investment.

We represented a client in the workout of 29 mostly real estate secured loans totaling approximately \$180,000,000 to affiliated California and Nevada homebuilders, including the negotiation and documentation of discounted payoff agreements and loan sales agreements, loan restructure modifications and new working capital and accounts payable loans to the borrower, handling the foreclosure of several of the loans and representation in the bankruptcies of certain of the guarantors.

We have represented clients in numerous loan restructurings for loans originated by lenders such as Citigroup, GE, Bank of America and Morgan Stanley Mortgage Capital, Inc.

We have represented large savings and loans in Commercial real estate debt restructuring, receiverships, and foreclosures in Southern California, covering over 250 loans.

We represented a purchaser in the acquisition of a master-planned community from a Chapter 11 case, including confirmation of the creditor's plan of reorganization.

We represented a foreclosing lender on residential subdivision issues in a "broken" condominium conversion project related to a bulk sale of the remaining units.