

Real Estate and Real Estate Litigation Practice

Fennemore Craig's Real Estate Practice is one of the largest in the Southwest and encompasses all aspects of real estate, from acquisition and finance, through development, leasing and sale. Representation includes:

Commercial developers of retail, office, industrial and commercial projects

Fennemore Craig has a strong commercial, retail, manufacturing and industrial real estate practice. We have represented sellers, buyers, users, developers and redevelopers of numerous major commercial projects in the Southwest and across the country. The firm has a great deal of experience with state and local government economic incentives and tax issues, assemblage and acquisition, entity formation and tax ramifications, construction, and permanent financing and leasing.

Commercial property leasing for tenants and owners

The firm has an active practice in the leasing of commercial property for both owners and tenants. We represent owners of high-rise office buildings and multi-tenant industrial complexes, as well as numerous shopping center owners nationwide. In connection with shopping centers, we represent national, regional and local tenants, including "big box" stores, all types of retail, theaters, and hotels.

We develop and implement leasing programs for office, industrial and retail properties, including the development of lease forms tailored to particular strategies. By developing standardized documents that satisfy requirements of lenders and the practicalities of property management while facilitating negotiation and consummation of leases, we assist our clients in achieving competitive advantage while lowering transaction costs. In other cases, particularly for major national real estate advisors, asset managers, developers, and institutional investors, we work within pre-established lease forms and procedures.

We also have substantial experience with ground leasing of projects from municipalities to achieve the benefits of tax abatements, such as the Arizona Government Property Lease Excise Tax in lieu of real property taxes. Major projects of this type include major office, retail and hotel projects.

Convenience Stores and Motor Fuels Facilities

Fennemore Craig has a long history of representing the owners and operators of convenience stores and motor fuels facilities. We have worked closely in many regions of the country with some of the largest names in the industry, including 7-Eleven and Circle K. Our work has included everything from standalone projects to those covering hundreds of sites, in all facets of the convenience store and motor fuels business, including:

- Site acquisitions, including due diligence investigations and real estate financing;
- Zoning and land entitlements, including government relations;
- Regulatory issues, including antitrust concerns;
- Operating issues;
- Motor Fuels and other branding issues;
- Cooperative arrangements, including licensing, co-branding agreements and co-management arrangements;
- Franchisee issues, including issues arising under the Petroleum Marketing Practices Act;
- Leasing and subleasing;
- Assignments and assumptions;
- Enforcement of lease rights;
- Environmental concerns related to the ownership and operation of motor fuel storage tanks;
- Fuels issues, including Alt Fuels and renewable resources;
- Site divestments; and
- Post-sale contractual and environmental issues.

The motor fuels/ convenience store practice is a core part of our real estate and environmental work, with a number of our directors, associates and of counsel attorneys devoting the majority of their time to this work. We work closely with our land use, business and finance, real estate litigation and environmental and natural resource practice groups to provide full service to our clients.

Golf course development

Fennemore Craig attorneys have represented clients in the acquisition and development of property for many high visibility golf course projects throughout the Southwest, and internationally. The firm has assisted with the development of public

and private golf courses and clubs, including membership documents, plans and related issues. The firm's expertise in water rights and environmental issues has proven beneficial to clients at virtually every stage of golf course development.

Joint ventures and syndications

Fennemore Craig has extensive experience in forming and representing real estate joint ventures and syndications (generally limited liability companies or limited partnerships) for a variety of projects, including industrial parks, office buildings, shopping centers, master-planned communities, residential developments and recreational communities and golf course communities. Representative transactions have ranged from \$1 million to more than \$600 million of equity, and include several projects that individually will produce revenues well in excess of a \$1 billion. We have represented landowners, developers and financial partners (including tax-exempt entities) in these joint ventures on a broad range of real estate and tax issues.

Included in the firm's syndication experience is forming "opportunity funds" that pool money for properties identified at a later date and that reinvest the proceeds into additional projects. Firm experience with such syndications exceeds \$100 million.

Land use and planning and zoning

The firm has substantial experience in dealing with the broad variety of issues and situations involved in zoning and land use development and land use related litigation, advising clients with respect to rezonings, condemnations, general plan amendments (both text and map) and submittals of comprehensive master plans (PADs, RUPDs, CUPDs), overlay zoning districts, site plans, preliminary platting, final platting, use permits, special use permits, and zoning interpretations, both formal and informal, master planned developments, historic preservation, hillside overlays and ordinance amendment, and other aspects of the zoning and land use administrative processes. The firm has recent experience in the full range of such matters, from zoning changes for commercial corners to master planning an 8,000-acre development community. In addition, the firm provides advice to private clients regarding subsequent stages of land use approvals, including referenda and zoning enforcement and land use litigation.

Master-planned communities

The firm has been involved in many of Southwest's larger master-planned community developments. From acquisition and financing, to development and sales, the firm has extensive experience with projects of varying size and complexity.

Our attorneys have assisted clients in acquiring land from the Arizona State Land Department, and securing development agreements and Planned Area Development approvals from municipalities. The firm was instrumental in coordinating a project, which includes a central lake/water recharge project owned and operated by a municipality that may serve as a prototype for future master-planned communities. Another significant project included the acquisition (through an assemblage of eleven different landowners), development approval, construction, covenants, conditions and restrictions, and home builder sales for a large East Valley master-planned community in the Metro Phoenix Area.

The firm has substantial experience working with age-restricted CC&Rs, retirement communities, and homeowners' associations.

Property tax

The firm has extensive experience in issues relating to real and personal property tax matters. Our property tax attorneys appear regularly in the state courts, and before the various county and state administrative tribunals that review appeals of property tax valuations and related issues. The firm's attorneys have handled appeals determining significant legal issue related to all varieties of state and local tax issues.

The firm has handled property tax valuation cases that include: residential property (predominantly apartment complexes); commercial buildings (resorts, hotels, shopping centers, high-rise and industrial manufacturing facilities); vacant land; agricultural property; producing copper mines; gas and electric utilities; and local exchange, long-distance and cellular telecommunications companies.

The firm has also represented numerous clients in actions in various United States District Courts, the federal appeals courts for the Ninth and Tenth Circuits, the Arizona Tax Court, both divisions of the Arizona Court of Appeals and the Supreme Court of Arizona seeking the recovery of discriminatory or illegally collected taxes.

Real estate finance

Fennemore Craig attorneys structure, negotiate and document a variety of commercial and real estate financing transactions, such as asset-based lending documentation, security agreements, project financing, leveraged leases, loan

structures and workouts, letters of credit, repurchase and reverse repurchase agreements and acquisition financing. The firm's financing experience ranges from complex national and international multi-level credit arrangements to small business and personal loans in both the real estate and commercial finance industries.

Real estate and lease litigation

The Real Estate Practice Group is experienced in all facets of real estate litigation, including landlord/tenant, construction, condemnation, specific performance, adverse possession, injunction and quiet title actions. The firm has significant experience in drafting workout and settlement agreements, enforcing judgments obtained through settlements or trials, and collection procedures, including garnishments, property seizures and attachments.

Production home builders

The firm represents home builders in connection with the acquisition and development of real property, including unimproved land, finished lots, and various stages in between. We prepare cooperative construction and development agreements with master developers, other home builders, and local municipalities concerning the construction and installation of infrastructure such as roads, water, sewer and other utility facilities. Our attorneys assist home builders with the sale of parcels and improved lots to other users, including other home builders, through the use of "rolling option" agreements, dual beneficiary trust agreements and other arrangements, and financing arrangements with land bankers, master lenders and other financial interests. The firm also provides general advice and assistance in the development process, including drafting of construction contracts and declarations of covenants, conditions and restrictions, advising on sales and property tax issues, and assisting with business planning and entity selection issues.

Water and environmental issues

Fennemore Craig provides environmental counseling for a variety of industries and businesses throughout the Southwest and across the country. The firm routinely works in the areas of federal and state Superfund laws, groundwater quality protection, wetlands regulation, environmental audits and site assessments, environmental impact assessments, and permitting.

The firm's landmark work on the Groundwater Replenishment District Act in Arizona helped create a balance between growth and water conservation, and an assurance of long term water supplies for the Phoenix Metro Area. Our attorneys have substantial experience in water rights matters, including water rights conveyances, water farm transactions, demonstrations of assured water supply for residential subdivisions, water rights adjudications, golf course and real estate development, water service agreements, and infrastructure financing.

Workouts and restructurings

Fennemore Craig attorneys represent clients in state and federal court proceedings, Chapter 11 bankruptcy cases, debt restructuring, liquidation cases, out-of-court workouts, asset recovery, foreclosure actions and other insolvency proceedings. The firm's real estate attorneys team with the Bankruptcy, Creditors Rights and Financial Restructuring practice with regard to troubled commercial and residential real estate assets, including such areas as (i) negotiation and documentation of financing agreements, debt restructurings, loan workouts, forbearance agreements, cash collateral arrangements, and debtor-in-possession financing arrangements; (ii) receiverships, pre-judgment remedies such as replevin, garnishment, attachment, restraining orders and injunctions, deeds-in-lieu of foreclosure, judicial and non-judicial foreclosure actions, collection actions and deficiency actions and other commercial litigation matters; (iii) Uniform Commercial Code issues and sales; complex bankruptcy litigation; (iv) fraudulent transfer analysis; (v) counseling clients with respect to transfers of claims against or interests in bankrupt entities; (vi) formulation, negotiation and promulgation of plans of reorganization and related documents; (vii) reviewing and issuing non-substantive consolidation opinions; and (viii) representing clients with environmental claims in bankruptcy cases. Fennemore Craig's real estate attorneys represent financial institutions, insurance companies, and receivers in the administration and liquidation of multi-million dollar commercial real estate and residential real estate portfolios, including the sale of property, the management of properties and the sale of mortgage portfolios by bid, both commercial and residential, and through receivership court administration. Fennemore Craig attorneys can also guide buyers past the due diligence, title insurance and contract pitfalls associated with buying troubled real estate assets. Once the property is purchased, assistance extends to real property management issues, including residential, multi-family and commercial leasing matters.

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