PENDER & COWARD
ATTORNEYS AND COUNSELLORS AT LAW

PRACTICE AREA

LENDING AND FINANCE

Our experienced lending and finance attorneys provide comprehensive legal services to national, regional and local lenders, including banks, credit unions and specialized lenders making loans to consumer and commercial borrowers, as well as to individuals buying a home and businesses seeking financing to acquire or expand their business or facilities. We have closed thousands of single-family residence purchases as well as hundreds of commercial loans involving everything from small investment rental property to multi-million dollar manufacturing facilities, apartment buildings and shopping centers. We provide independent counsel to review loan documents, title work and due diligence items for real estate and other collateral types so that our client's interest is properly documented and protected. In addition to complex real estate transactions, our attorneys have experience in many specialized lending arrangements including auto dealer finance, participation loans, mezzanine financing and securitized secondary market transactions.

Our banking and finance attorneys also have decades of experience working with the banking and credit union business community to enforce creditor's rights and remedies, including problem loan workout, collateral liquidation including foreclosure and UCC sales, special assets, deficiency collection and in bankruptcy proceedings, including relief from stay, actions to block discharge and plan confirmation issues. Our attorneys also stand ready to defend against lender liability claims brought by dissatisfied borrowers in Federal and state courts. We are proud of our good reputation and long history working with most of the leading banks and bankers in Southeast Virginia and Northeast North Carolina.

Loan Negotiation and Documentation

With respect to commercial loans, our attorneys have represented both borrowers and lenders in the early stages of negotiating the terms of the loan and ensuring that the loan documents are consistent with the agreed upon terms. Clients can generally agree on the broad strokes of a deal, but the average loan document package totals over a hundred pages, so each line must be carefully reviewed to ensure that it matches the parties' agreement and does not include objectionable terms or conditions. While this language is frequently described as "boilerplate", both lenders and borrowers are frequently surprised when we explain some of the terms and the details which are encompassed in that language.

Pre-Closing Due Diligence

In addition to the loan documents, there are a number of other items which must be carefully reviewed including title work and a survey. Once again, our goal is to make sure that our client understands exactly what is being bought or serving as collateral and any issues or limitations which may exist. We do not want there to be any surprises at the closing or even several years afterward. Our attorneys and paralegals order and collect all of the due diligence items needed and then carefully review them to make sure there are no problems or omissions. We

order and review surveys to verify that any buildings or structures are properly located on the real estate being acquired and that there are no unnecessary easements, forgotten "paper streets" or other issues affecting the property. Likewise, we review title reports closely for consistency with the survey and to make sure that the borrower has or is acquiring the entirety of the property and taking title in the manner desired.

Commercial Real Estate

Commercial real estate transactions not only involve higher purchase prices and loan amounts in many instances but also have many additional and sometimes unique challenges. In addition to standard title and survey requirements, commercial transactions usually involve specialized endorsements to the title policy and enhanced survey detail. Our attorneys carefully review these items in order to resolve any issues. Commercial loan transactions also frequently involve issues and documents related to tenants, environmental concerns, property condition and/or entity borrowers. We are experienced in drafting tenant estoppel certificates, subordination, non-disturbance and attornment agreements, landlord lien waivers, loan participation agreements, intercreditor agreements and many other custom documents and agreements. We gather, review, or prepare as applicable all documents necessary for a timely and successful closing.

Asset Based Lending (ABL)

Asset based lending is a form of loan transaction in which the collateral is something other than "dirt", typically the "inventory" manufactured by a company and the "accounts receivable" owed by purchasers of that inventory to the borrower. Unlike a fixed loan amount which is paid back over a term of years, these loans are made on a revolving basis where funds are borrowed and repaid on a daily basis as inventory is sold, new raw materials are purchased, and customers pay for the products purchased. The Uniform Commercial Code provides the legal framework for these loans, but due to the fast-paced nature of the loan and inherent challenges involved in monitoring the collateral, the loan documentation requirements are extremely detailed. Our attorneys regularly prepare or review hundreds of pages and have extensive dialogue with counsel for the other side to negotiate the very fine points of the transaction.