

CO-MANAGING PARTNER

## Brian F. Plunkett

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DIRECT

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### PRACTICE AREAS

Banking & Commercial Finance

Acquisition Financing

Asset-Based Loans

Commercial & Industrial Lending

Commercial Loan Modifications

Commercial Real Estate Finance

ESOP Financings

Franchise Lending

Healthcare Finance

Hospitality Lending

Leveraged Loans

Participations & Syndications

Search Fund & Private Equity Financing

Small Business Lending (SBA)

Subordination & Intercreditor Arrangements

Bankruptcy & Creditors Rights

Commercial Mortgage Foreclosures

### OVERVIEW

Brian Plunkett's practice is concentrated in commercial lending and commercial real estate finance. He has represented both lenders and borrowers in the following types of transactions:

- Middle-market and lower middle-market loans of all types ranging in loan size from under \$1.0MM individual term or revolving loan facilities up to multiple facility loans exceeding \$75MM
- Commercial and industrial loan transactions secured by all types of collateral including owner-occupied real estate
- Commercial real estate lending transactions including mortgage term loans, construction loans of all types, subdivision and condominium loans, and 40B projects
- Multi-lender syndicated deals and loan participations
- Asset-based lending transactions
- Equipment lending and leasing facilities
- SBA-guaranteed Section 7(a), Section 504, and SBA Express lending transactions for national and local SBA lenders
- Secured transactions involving investment accounts, equipment, accounts receivables, intellectual property, equity interests, motor vehicles, rolling stock, vessels, aircraft, liquor licenses, and tort and judgment claims
- Documentation and negotiation of intercreditor and subordinated debt agreement including: franchise lending, commercial lease finance transactions, Search Fund lending and private equity sponsored deals, and

Restructuring & Workout

financing for merger and acquisition transactions

Business & Corporate Law

Entity Formation

Mergers & Acquisitions

Commercial Real Estate

Purchase & Sale

Brian's practice has always included an extensive creditor's rights, loan workout, and liquidation component. Brian has had extensive experience since the recession of the early 1990s in representing lenders in loan workouts, troubled debt restructures, mortgage foreclosures, UCC secured party sales, deeds in lieu of foreclosures, and pre-bankruptcy analysis. He continues to represent lenders in troubled loan matters from the initial default stage to final liquidation of collateral or the resolution/restructure of indebtedness.

## EDUCATION

J.D., *cum laude*, University of Pennsylvania Law School, 1988

B.A., *cum laude*, Brown University, 1984

Brian also assists individual and corporate clients in business transactions and commercial real estate matters including the documentation of business asset purchase agreements, purchase contracts for the sale of real property, and commercial leasing.

## ADMISSIONS

Massachusetts

Brian has previously represented lending institutions such as Bank of New England (and its successors RECOLL Management and the FDIC), Shawmut Bank, Bank of Boston, Baybank, USTrust, Fleet National Bank, and Sovereign Bank among others. He currently represents Citizens Bank, Eastern Bank, Rockland Trust, Brookline Bank, Santander Bank, TD Bank, M&T Bank, and various other community banking institutions in Massachusetts.

## AFFILIATIONS

Member, Boston Bar Association

Originally from Newton, Massachusetts, Brian now spends time in both Marblehead and West Tisbury, Massachusetts.

## EXPERIENCE

### Publications

Commenced the firm's "Why Do We Care?" series of posts in April, 2020 that has covered the following topics:

- Financial Covenant Waivers
- Demand Obligations
- Bond Reissuance issues
- Forbearance Agreements
- Landlord Waivers
- Leading a Borrower down the Primrose Path
- Subordination Agreements for junior creditors
- Turnaround Consultants
- Right of Setoff
- Taking Possession of Collateral

- Title Insurance for a lender
- Swap Breakage
- SNDAs and why they matter
- Name Changes by a Borrower
- The importance of the “MAC” clause
- Bonded Receivables
- Bankruptcy waiver language in settlement agreements
- Payoff Letters
- Attorney Client Privilege- how to avoid waiving it
- Disclaimers in communications
- Fraud by a Borrower
- Privacy issues
- Death of an Obligor
- Motor Vehicle Liens
- Non-Recourse guaranties
- Payoff letters
- Joint vs. Several Guaranties
- Term Sheets vs. Commitment Letters.
- Zoning Opinions vs. Zoning Endorsements
- Dragnet Clauses
- Consideration for Guaranties

## Presentations

- Defensive Banking 101 Seminar
- Recession Training 101 Seminar
- Loan Document Review Training Seminar