



**BREAKWATER**  
— EQUITY PARTNERS —



“ *they are legitimate and have a stronger team to accomplish the goal of bank capitulation than anybody in the country...* ”

– Malcolm D.  
California Developer



## **Breakwater Helps Developer Save Their Project With an 87% Loan Cramdown**

In late 2007, investors from two states, a private equity group out of Texas and a group of individuals from California, began construction on a twelve-story office building in downtown San Diego. The bank, having committed to a \$16MM construction loan, fearing the economic downturn and the resultant impact on commercial real estate, eventually declared a borrower default and stopped funding the project. For eight months the investor group tried in vain to get the bank to reengage in the project so they could finish the construction, but to no avail. Despite repeated attempts to resolve the dispute, the bank would not budge and filed a Notice of Trustees' Sale. Of the original \$16MM loan, \$4.3MM had been drawn down for construction costs, penalties, and liens.

It was an investor's ultimate nightmare. After investing over \$5MM in cash and several years of effort, the entire project was on the verge of collapse. Foreclosure was only 30 days away and the investors were about to lose their entire investment. Adding to the investor woes were very likely negative tax consequences stemming from the impending foreclosure.

With foreclosure just 30 days away, the investors had to make a decision: lose the property, hire legal counsel, or find a workout specialist. The investors spoke with an attorney and quickly realized that they could rack up hundreds of thousands of dollars in legal bills and be tied up in litigation for years – with no guarantee of a successful resolution. The lawyers would not work on a contingency and had no idea of a likely outcome or timeframe. The investors decided on the third option, Breakwater Equity Partners.

Breakwater quickly went into action researching the financial health of the lender, scrutinizing the loan documentation process, and analyzing the bank's conduct during the lending period. Breakwater determined that there were significant leverage points against the lender.

With a tight foreclosure deadline looming, Breakwater devised a creative and cost-effective strategy to persuade the bank to delay the Trustees' sale. The bank entered into settlement discussions with Breakwater but tried to avoid liability by adopting a hard line negotiation position. Knowing the strength of the leverage points they had uncovered, Breakwater refused to back down. After lengthy maneuvering and negotiations over many months, Breakwater convinced the bank to write the loan down to just \$575,000 - a total reduction of 87%. Furthermore, Breakwater's strategy enabled the investors to escape large negative tax consequences by avoiding Cancellation of Debt Income. Needless to say, they were thrilled with Breakwater's results.

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