



Real Estate

Combining real estate expertise with operational goals

Masuda Funai provides expert legal counsel in all areas of real estate law. Our attorneys represent domestic and international businesses, investors, lenders, developers, syndicators, construction and property management companies, landlords, and tenants in the full scope of property-related matters across the U.S. Because practically every business transaction today involves a real estate component, it is critical to retain counsel that understand not only the law, but also the underlying business drivers of the matter.

Our firm represents investors, buyers, and sellers in the development, purchase, and sale of real property for headquarters, manufacturing, distribution, logistics and offices. We advise on the design and construction of commercial facilities, multi-family housing, manufacturing plants, and logistics facilities. We also represent our clients on annexations and the procurement of zoning variances, planned unit developments, and special and conditional use permits. In addition, we draft and negotiate all types of commercial leases and assist with the build-out of leased space.

We represent lenders and borrowers in secured financings for commercial, industrial, and residential projects, credit enhancers in leveraged transactions, sale-leasebacks, and other off-balance sheet financings. We also advise on Industrial Development Revenue Bond financings throughout the U.S.

We provide legal counsel regarding the income taxation of real estate, including tax deferred exchanges. We help our clients procure development and economic incentives and advise on ad valorem tax management by challenging tax assessments and obtaining favorable tax classifications for properties such as shopping centers, factories, open spaces, churches, and farms. We work with environmental consultants to develop regulatory compliance and property remediation programs including for manufacturing operations, chemical processing, food production, and brownfield redevelopment.

Our litigators serve as passionate advocates in real estate controversies that include purchase/sale disputes, leasing issues, and ownership disagreements. We have resolved issues and disputes pertaining to design and construction, lease interpretations, environmental contamination, insurance coverage, and boundary and easement irregularities, to name only a few. In addition to our real estate litigation abilities, we employ productive mediation, arbitration, and conciliation efforts that have resulted in swift and favorable outcomes for our clients.

Range of Services

Acquisitions & Dispositions

Masuda Funai, our attorneys represent buyers and sellers in all stages of the purchase and sale of real property. Regardless of the monetary value and/or scale of the transaction, we always seek to understand each client's specific goals, transaction terms, and the nature and history of the property, as well as the time frame for the deal, budget, and financing requirements. We focus on structuring transactions that strike the careful balance between risk and reward.

Our clients include domestic and international developers, businesses and investors in programs that range from multi-state site selection competitions, the exercise of purchase options, tax-deferred exchanges, to real estate portfolio acquisitions and dispositions. Our experience with the acquisition and disposition of all types of real estate is extensive, a sampling of which includes single and mixed use properties, industrial, residential housing, apartment towers, condominiums, shopping centers and other retail and commercial establishments, office buildings and office parks, hotels and resorts, recreational properties, agribusiness operations, and greenfield developments.

We are skilled in every aspect of buying and selling real estate. We draft and negotiate purchase and sale agreements, coordinate title, survey and zoning review and due diligence, identify and address environmental challenges, and counsel on financings, title insurance, escrows and closings. We also negotiate and draft all manner of ancillary documents and agreements that pertain to integral aspects of the acquisition and disposition of real property, such as easements, water rights, development agreements, environmental remediation, indemnification agreements, reparation agreements, air rights, annexations, recapture agreements and utility and rail service agreements. For undeveloped properties, our counsel extends to the negotiation and documentation of design and construction agreements, as well as to obtaining approvals from regulatory agencies. Throughout every transaction, we focus on realizing our client's objectives and the protection and enforceability of their rights going forward.

Site Selection & Due Diligence

In order to protect and maximize our client's investment, we are frequently called upon as advisors at the initial stages of planning for a real estate project and throughout the site selection process. Because the location of the property and potential incentives available can have a measurable impact on the bottom line, we work closely with our clients and other advisors around the country to identify, investigate and ultimately select the optimal property and solicit, review and analyze the true value of incentive packages from multiple candidate sites throughout the country. Whether we are advising on the relocation of a new corporate headquarters, or seeking a Greenfield site for manufacturing, our in-depth real estate and tax law know-how coupled with our practical understanding of incentive programs results in a distinct advantage for our clients.

Before purchasing, leasing or financing commercial real estate, it is imperative to undertake an assessment, or what is commonly known as "due diligence", of the target real estate. If a thorough review and investigation of the prospective real estate, including related documentation and records, is not undertaken, the property may

not ultimately serve the best interests or needs of the buyer, tenant or lender. Through properly performed due diligence, environmental contamination, contractual liabilities, survey irregularities, title issues, building and zoning code violations, geotechnical deficiencies, structural weaknesses or other latent defects may be uncovered. Pitfalls, costly mistakes and litigation can be avoided by expertise and knowledge of the various types and degrees of due diligence investigations. After decades of successful practice in real estate law, Masuda Funai is highly skilled in property investigation, review and analysis and all relevant due diligence procedures, resources, criteria and initiatives.

Development & Construction

At the national, regional and local levels, Masuda Funai advises on complex and extensive real estate development and construction projects. Our clients include domestic and international businesses, commercial developers, equity investors and construction and permanent lenders which require cost-efficient solutions to timely delivery of projects within budget. Our firm offers both the knowledge and experience needed to navigate the hurdles encountered by our clients in turning visions into reality.

Our in-depth understanding of the national real estate market, coupled with extensive specialized industry know-how, aids us in helping our clients identify and maximize opportunities. Our attorneys are involved in structuring, negotiating and financing development projects across all asset classes, ranging from residential and retail, to office and mixed-use, to resort and recreational developments. We work hand-in-hand with our clients through all phases of development, from acquisition and initial planning, to public and agency approvals and permitting, to construction and final use.

We are very proud of our involvement, typically on behalf of not-for-profit and tax exempt entities, in affordable housing projects incorporating a variety of financing options such as low-income housing, new markets, historic rehabilitation and energy tax credits, facade easements and other tax-advantage incentives. We also advise on federal grants, U.S. Department of Housing and Urban Development loan guaranties, tax increment financings, enterprise zone funds, redevelopment agreements and tax abatements.

Our firm provides both the depth and breadth of experience and expertise in construction law needed to provide counsel on all aspects of a construction project. We advise on everything from entity structure, to land use, to permitting. We negotiate construction-related contracts such as prime, construction, design/build, architect/engineer, construction management and subcontractor agreements. We also work with our clients to make sure they are properly insured and/or bonded and to avoid mechanics lien issues.

In the event a dispute should arise, our real estate litigators focus on swift and productive resolution through mediated or informal negotiations, which can frequently occur even while construction is still ongoing. Both in and out of court, we defend our client's rights in the full array of construction litigation ranging from bid protests, to labor and prevailing wage claims, to defective work claims, to delay, disruption and acceleration matters. We also advocate our client's rights on all claims related to professional and other liability, as well as regarding mechanics liens, stop notices and bond issues.

Leasing

Commercial leasing is a unique discipline of real estate law that demands specialized knowledge and skill. At Masuda Funai, our lawyers deliver practical and timely results when representing landlords and tenants in their leasing initiatives. For decades, our firm has been actively involved in drafting, revising and negotiating commercial leases for office buildings and industrial parks, shopping centers, mixed use properties, distribution centers, medical facilities, media and tech studios and research and laboratory facilities, among many others. We have advised countless businesses in connection with the leasing and build out of rental properties throughout the U.S., ranging in size from thousands to hundreds of thousands of square feet.

Our experience includes retail, warehouse and industrial, manufacturing facilities, office, multi-property, ground, natural resource, build-to-suit and turnkey leases. We also advise on and execute the full array of ancillary agreements, which can range from renewal and expansion amendments, to subleases and assignments, to termination agreements and tenant improvements to subordination and non-disturbance among others. In addition, we provide legal counsel pertaining to lease terminations, workouts and buyouts.

Leasing transactions are usually fast-paced, and a properly negotiated agreement can conserve time, resources and money. Our attorneys consistently negotiate, document and close lease transactions quickly, with a focus on safeguarding each client's position and limiting the risk and liability. In the event a dispute should arise, our litigators jump into action to resolve the problem amicably and productively. Whether behind the scenes or at trial, we have proven time and again to be persuasive and diplomatic advocates, particularly when our client seeks to preserve the leasing relationship.

Financing

Masuda Funai represents foreign and domestic lenders and borrowers in structuring, negotiating and documenting credit arrangements and secured financing transactions for all types of real property. We also represent credit enhancers in leveraged transactions, public and securitized financings, sale-leasebacks and other off-balance sheet financings. Our experience ranges from single asset real estate loans to large, complex syndicated transactions for commercial, industrial, hospitality, and residential projects.

After decades of practice, we have created a comprehensive approach to financing that optimizes our ability to problem solve in the areas of loan origination, securitizations, secondary markets and institutional investment. We understand the challenges involved in all types of capital structures, as well as what motivates deal constituents. Our comprehensive knowledge of the applicable law allows us to guide clients effectively through analyzing and addressing their specific financing needs and leveraging opportunity in an ever-changing and sometimes volatile marketplace.

Our attorneys advise on a broad range of financing transactions such as loan syndications and participations, mezzanine financing and A/B structures, commercial real estate financing, securitized mortgage lending, and construction, development, convertible, revolving, bridge and permanent loans. We have negotiated, documented and closed contingent interest/equity kicker financings, conduit financings, mixed debt/equity

agreements, interest rates and currency swaps, credit enhancements and sales-leasebacks. We also advise on tax-exempt financings, equity investment programs, participating/shared appreciation agreements, joint ventures and partnership investments, loan portfolio sales, loan workouts and restructurings.

Our clients value our real estate attorneys' continuous innovation regarding the protection of their financial stake and for the ability to deliver consistently on-point and economical counsel on every transaction. We assist borrowers, lenders and investors in structuring, managing and maximizing their return on debt and equity investments. Not only do we provide the requisite capabilities needed to structure and execute complex real estate financing and investing deals, but we also understand both the challenges and opportunities associated with real estate and financial market fluctuations, as well as how such change impacts lenders and borrowers alike.

Governmental & Economic Incentives

Masuda Funai offers comprehensive legal counsel to domestic and international companies that are locating, relocating, expanding or restructuring their businesses and operations, nationwide. Our experience includes obtaining critical incentives for clients in a wide variety of industries and market segments, including food, automotive, logistics, machinery, agriculture, hospitality, medical, entertainment, office, R&D, steel, pharmaceuticals, data, retail and electronics to name only a few.

Our ability to establish immediate rapport with government agencies and their representatives allows us to work with our clients to secure state, regional, county and city level-incentives and support in numerous states. We offer in-depth knowledge of both the well-known and more obscure incentives available to businesses seeking to invest and do business in the U.S. market. Our attorneys ensure all incentive possibilities are identified, analyzed and leveraged according to each client's specific needs. We are skilled in working with and through state departments of commerce and revenue and other government agencies, industrial development boards, counties and municipalities, port authorities and other local or regional stakeholders to realize a truly competitive incentive package.

Our firm advises on the incentive process from beginning to end, ranging from the design of comprehensive pre-development strategies, to executing public-private partnerships to issuing RFPs, to negotiating inducement letters to assisting with ongoing compliance-related matters.

Land Use & Entitlements

Our attorneys work with clients in identifying and overcoming the challenges associated with land use and the creation of defensible entitlements involving urban, rural, suburban and coastal development and redevelopment. We have successfully navigated our clients through and beyond — from start to finish — even the most complicated land use and entitlement projects across the country. We also advise on smaller-scale land use and entitlement matters that require our assistance only at certain junctures.

Working with land planners, architects, surveyors, civil engineers and local officials, our attorneys negotiate and document important land use-related contracts such as development agreements, subdivisions, CC&Rs, PUDs, annexation agreements, easements, recapture agreements, water rights and applications for zoning opinions, variances, special use permits and rezoning. For most of our clients, underlying land use and entitlements are tangible commercial goals, so we focus on providing solutions that have the best possible chance of positively impacting their specific development agenda. We advise on Brownfield revitalization, greenfield development, condominium conversion, cultural resource and historic preservation, wetlands and endangered species compliance, agricultural and open space preservation and we vigorously advocate our client's position in the event of project opposition at any level.

Real Estate Litigation

Masuda Funai advocates the rights of owners, investors, developers, lenders, landlords, tenants, receivers and commercial and retail brokers in the full array of disputes and litigation that can arise when buying, selling, financing, leasing, managing and developing real property. We understand the intricacies of the regional and national real estate markets, and our legal prowess in real estate law and litigation and our unwavering focus on problem-solving in the most cost-effective and timely way imaginable, are the reasons our clients turn to our real estate litigators.

Our experience includes a wide variety of real property disputes such as purchase and sale breaches of contract, lease defaults, ejectments forcible entries and detainers, title defense, easement protection, judicial and non-judicial foreclosure, partnership disputes, zoning, subdivision, soil subsidence, construction and architectural issues, eminent domain, environmental contamination, compliance and remediation, mechanic liens and brokerage claims. We have successfully practiced at the trial and appellate court levels, before the full array of alternative dispute resolution panels, as well as represented our clients' positions before councils, committees, building departments, rent control authorities, commissions and other public agencies.

Particularly in the real estate industry, litigation and the courts do not always provide the most efficient way to resolve acrimony, particularly when a dispute must be handled quickly and with the goal of ultimately preserving the business relationship. As a result, we are highly adept in mediation, arbitration, productive and behind the scenes negotiation and conciliation that results in resolving even the most complicated and heated disputes.

Real Estate Tax

Broad real estate industry and deep experience defines Masuda Funai's Real Estate tax practice. Whether our firm is advising a multi-national business, real estate owner or developer, our attorneys understand how to minimize the tax consequences of each client's investment in, development and ownership of real property in practically every major market across the country.

Our experience includes income tax issues involving tax deferred exchanges and other tax planning vehicles. We are involved in pre-contract tax planning, the tax-advantaged structuring of transactions and complex real estate partnerships and LLCs, as well as the tax challenges that arise in refinancing and restructuring investments in hotels, office buildings, malls and mixed-use developments. We are valued by foreign and domestic clients for our ability to facilitate inbound and outbound real estate investment by advising on tax strategies both in the U.S. and abroad.

In addition, our firm assists clients with the reduction of their real estate ad valorem tax burdens by challenging real estate tax assessments and obtaining favorable tax classifications for properties such as shopping centers, factories, warehouse and distribution, open spaces, hotels, churches and farms. Working with appraisers and other consultants, we develop advance strategies for newly developed properties and negotiate with local tax officials to assure the minimum property tax burdens for our clients' projects. When appropriate, we appeal ad valorem assessments through the administrative process up to judicial review. With decades of experience, our attorneys are recognized experts in this area, resulting in numerous publications and speaking engagements.