REITs

Skadden

For more than 40 years, Skadden has represented clients in transactions and other engagements that have changed the face of the REIT industry. Our practice has been built to serve the unique operating environment that REITs face. Our group has one of the most diverse REIT practices of any law firm, with an interdisciplinary team of more than 80 lawyers practicing in 10 offices in five countries. This includes leading attorneys from numerous practice areas, such as tax, M&A, corporate finance, investment management, real estate, restructuring, antitrust and employee benefits.

Chambers USA 2016 recognized our REIT practice in the top tier among all law firms nationwide, with sources describing Skadden as "very knowledgeable" and "one of the most market-aware firms" in the industry. We also ranked first in the REIT category in the 2015 edition of *Legal 500 United States*. In *The American Lawyer*'s "Corporate Scorecard" (2016) we ranked first as REIT debt issuer's counsel by value and tied for first for number of issuances. In addition, Skadden was recognized in the 2011 *Financial Times* "US Innovative Lawyers" report for our representation of Centro Properties in its restructuring.

Helping Our Clients Lead the Way

We have represented REIT industry leaders in their most important and innovative transactions, including a number of "first-of-their-kind" matters.

- We represented HCP in its $6.1 billion acquisition of the senior living facilities of HCR ManorCare. This was the largest real estate transaction of 2010, one of the largest private equity deals of 2010, and included three "largest-ever" transactions — the largest-ever REIT follow-on equity offering, the largest-ever REIT bond offering and the largest commercial lease in U.S. history.
- We have led the way in converting traditionally taxable corporations into REITs, becoming pioneers in the specialty REIT space. For example, our attorneys:
  - upended 40 years of industry convention when the IRS agreed with us that a timber company could operate as a REIT and sell timber on a tax-free basis. That work led to our representation of the first privately held timber REIT and all but one of the publicly traded timber REITs as of 2007;
  - advised The GEO Group on its REIT conversion, which included obtaining the first-ever private letter ruling from the IRS stating that prisons, halfway houses and youth residential facilities are REIT-qualifying real estate assets;
  - acted as REIT tax counsel to Penn National Gaming in the separation of its gaming operating assets and real estate property assets into two publicly traded companies. The transaction represents the first-ever tax-free spin-off of a "PropCo" REIT from a taxable C corporation. Penn has obtained a private letter ruling from the IRS regarding the proposed structure, which is the first ruling the IRS has issued addressing the tax-free spin-off of a PropCo REIT. The transaction also provides a model for real estate-intensive businesses to similarly employ a "PropCo/OpCo" structure and enjoy the benefits it affords;
  - are advising CBS Inc. as special REIT tax counsel in the spin-off and REIT conversion of its subsidiary, CBS Outdoor Americas, which would represent one of the first billboard REITs; and in the $644 million IPO of common stock of CBS Outdoor Americas;

- represented Crown Castle, a $25 billion telecommunications provider, as special tax counsel in its proposed conversion into a REIT; and
- are advising Ladder Capital in its proposed conversion to a REIT.

- We pioneered the development of UPREIT and DownREIT acquisition structures, which enable REITs to acquire properties in tax-efficient transactions. We represented Liberty International Holdings in its $600 million joint venture with Equity One. This marked the first time that a DownREIT structure was used to acquire the stock of a target REIT in a public company transaction.
- We have helped our clients lead the expansion and development of the mortgage REIT market, serving as either issuer's counsel or underwriters' counsel in the largest and most complex mortgage REIT securities offerings of the past decade, including Starwood Property Trust in its $932 million IPO, which remains the largest mortgage REIT IPO in history.
- Skadden has been instrumental in transforming the way mortgage origination and servicing companies operate, including by migrating mortgage servicing assets and businesses into public REIT structures. We obtained a first-of-its-kind IRS ruling that permitted REITs to hold mortgage servicing assets and represented Newcastle Investment in the spin-off of New Residential Investment, the first public REIT to focus on mortgage servicing assets. Skadden has continued to pioneer the use of REITs in the mortgage servicing space, representing REITs in the acquisition of several billion dollars' worth of mortgage servicing assets.
- We have established one of the premier REIT M&A practices. Our attorneys have represented REIT clients in hostile takeovers on both the acquirer and target side and also have worked on a large number of negotiated transactions, mergers of equals, and auctions. Our ability to seamlessly utilize internal resources from around the globe is exemplified by our representation of Westfield in its hostile takeover of Rodamco, the Dutch holding company that owned Urban Shopping Centers. This transaction required M&A, corporate finance, antitrust and tax experience in multiple jurisdictions and culminated in the successful takeover of Rodamco's U.S. assets.
- We have been able to develop unique, first-of-their-kind structures to help distressed REITs through their most trying times, with Centro Properties Group and the underwriters for General Growth Properties representing two examples of our work in this area.
- We have advised companies in their conversions into a REIT, such as Ryman Hospitality Properties (formerly Gaylord Entertainment Company), which included reorganizing the company to comply with REIT requirements.
- These achievements have enabled us to expand our practice so that we now represent REIT clients in every segment of the industry, including apartments, office buildings, shopping centers, mortgage finance, cell phone towers, health care facilities, hotels, industrial properties, manufactured home communities, prisons, storage and timber.

M&A and Real Estate

Utilizing our knowledge and experience on issues and structures unique to REITs, we have advised on numerous mergers, acquisitions, joint ventures and spin-offs of REITs and their subsidiaries. Recent representations include:

- Anbang Insurance Group Co., Ltd. (China) as lead member of an investor group in its proposed, but terminated, US$14 billion acquisition of Starwood Hotels & Resorts Worldwide Inc.
- Plum Creek Timber Co. Inc. in its US$8.4 billion acquisition by Weyerhaeuser Co.
- HCP, a REIT specializing in health care facilities, in its $6.1 billion acquisition of the senior living facilities of HCR ManorCare.
- Centro Properties Group in:
  - the sale of its U.S. property portfolio to BRE Retail Holdings, an affiliate of Blackstone Real Estate Partners, for a purchase price of $9 billion; and
  - the restructuring of its A$16 billion of Australian debt through a debt-for-equity exchange and a proposed combination of numerous affiliated companies and funds to create the second-largest commercial property owner in Australia.
- Nationwide Health Properties in:
  - its $7.4 billion acquisition by Ventas. The deal created one of the largest publicly traded REITs and the leading health care REIT by equity value; and
  - a multiyear transaction valued at $1.75 billion with Pacific Medical Buildings, which included the acquisition of a portfolio of medical office buildings, a 50 percent interest in a full-service property management company and an opportunity to purchase new medical office buildings developed by Pacific Medical Buildings.

- AustralianSuper Pty Ltd. in its partnership with General Growth Properties, Inc. to own and operate the $5.5 billion Ala Moana Center mall in Honolulu.
- Westfield America, a subsidiary of Westfield Group (Australia), a developer and manager of real estate and shopping malls, in its formation of a $4.8 billion joint venture with Canada Pension Plan Investment Board for 12 of Westfield's shopping centers in the U.S.; and in its $1.3 billion joint venture with O'Connor Capital Partners in a portfolio of six Westfield regional malls in Florida.
- Column Financial in connection with the CMBS financing for NorthStar Realty Finance Corp.'s $4 billion acquisition of Griffin-American Healthcare REIT II.
- American Capital, Ltd. in two transactions as a result of a strategic review launched under pressure from activist investor Elliott Associates LP, American Capital's largest shareholder: its sale to Ares Capital Corporation, excluding American Capital Mortgage Management, LLC, for $3.43 billion and its sale of American Capital Mortgage Management to American Capital Agency Corp. for $562 million.
- Select Income REIT in its $3 billion acquisition of Cole Corporate Income Trust.
- CommonWealth REIT in its rejection of a $2.9 billion unsolicited offer from Corvex Management and Related Fund Management.
- Genesis HealthCare in the $2.4 billion acquisition of the majority of its real estate assets by Health Care REIT.
- The independent members of the board of directors of Inland American Real Estate Trust in the US$2.3 billion sale of a portfolio of net lease assets to AR Capital.
- QIC Global Real Estate (Australia) in its US$2.1 billion joint venture with Forest City Enterprises Inc. to invest, using a REIT structure, in a portfolio of eight regional shopping malls owned by Forest City.
- InvenTrust Properties Corp. in its $1.4 billion sale of its student housing platform to UHC Acquisition Sub LLC.
- New Residential Investment in its $1.4 billion acquisition of substantially all of the assets of Home Loan Servicing Solutions.
- Holiday Acquisition Holdings in its US$491 million sale/lease buyback of 25 independent living communities to National Health Investors; and its US$1 billion sale of a portfolio of 52 senior housing properties to Newcastle Investment; and its $550 million sale of a portfolio of 21 independent living facilities to Sabra Health Care REIT.
- Thomas Properties Group in its US$1.2 billion stock-for-stock merger with Parkway Properties.
- Brookdale Senior Living in its $1.2 billion joint venture with HCP to own and operate entry fee continuing care retirement communities.
- Formation Capital in a joint venture with NorthStar Realty Finance in which Formation and NorthStar will acquire a $1 billion health care real estate portfolio from investment partnerships owned and managed by Formation Capital and SAFANAD Limited (Switzerland).
- Chartwell Retirement Residences (Canada) in its $849 million sale of CSH Master Care USA Inc. to a joint venture between Brookdale Senior Living Inc. and HCP.
- A joint venture sponsored by affiliates of TPG Realty and Divco West in its $798 million acquisition of the real estate assets of Mission West Properties.
- Colony Capital in the $660 million acquisition by Colony Financial of substantially all of Colony Capital's real estate and investment management businesses and operations.
- Holiday Retirement in its $640 million sale of a portfolio of 28 private pay, independent living senior housing properties to New Senior Investment Group.
- Capital Shopping Centres Group, an affiliate of Liberty International Holdings, a publicly traded U.K. property company, in a $600 million joint venture with Equity One, a publicly traded U.S. REIT.
- Boston Properties in its joint venture with a sovereign wealth fund managed by Norges Bank Investment Management (Norway) in which the fund will acquire a 45 percent stake in Times Square Tower for US$684 million.
- SL Green Realty in its $386 million acquisition of 315 W 33rd Street in New York.
- SCOR SE in its $348 million acquisition of a controlling stake in MRM Group. Both companies are based in France.
- Chartwell Seniors Housing REIT in its $290 million sale of the Bristal Assisted Living portfolio and in its $166 million sale of six U.S. assisted living facilities.
- IASIS Healthcare in its US$283 million sale-leaseback agreement with Medical Properties Trust.
- Arbor Realty Trust, Inc. in its US$250 million acquisition of the agency platform of Arbor Commercial Mortgage LLC.
- Reit Management & Research LLC (RMR) in the $170 million acquisition of a 48 percent stake in RMR by an investor group including

Senior Housing Properties Trust, Hospitality Properties Trust, Select Income REIT and Government Properties Income Trust.

- Gaming and Leisure Properties in its US$140 million acquisition of the real estate assets of the Casino Queen in East St. Louis and the lease-back of the property to Casino Queen.
- Plum Creek Timber Co. Inc. in the formation of a joint venture with several institutional investors to own and sustainably manage a portfolio of U.S. timberlands. The joint venture company is called Twin Creeks Timber, LLC.
- Colony American Homes, Inc. in its merger with Starwood Waypoint Residential Trust.
- Darden Restaurants in the separation of a portion of its real estate assets into a separate, publicly traded REIT.
- Pinnacle Entertainment in:
  - the unsolicited, but subsequently agreed upon, acquisition of substantially all of its real estate by Gaming and Leisure Properties, Inc. (GLPI). As part of this transaction, the Belterra Park Gaming & Entertainment unit of Pinnacle will be spun off into a separate, publicly traded company and the real estate assets held by the remaining company will be acquired by GLPI; and
  - the proposed separation of its operating assets and its real estate assets into two separate, publicly traded companies.
- Windstream in its spin-off of certain telecommunications network assets into a separate, publicly traded real estate investment trust.
- Newcastle Investment in the proposed spin-off its senior housing business, New Senior Investment Group.
- the special committee of the board of directors of Inland American Real Estate Trust in connection with the termination of the management agreement with its business manager, including the acquisition of the assets of its business manager necessary to perform the day-to-day operations of the REIT, in order to become self-managed.
- Ares Commercial Real Estate in its acquisition of Alliant Capital.
- The Ensign Group in the separation of its health care and real estate businesses into two independent, publicly traded companies through a spin-off that is intended to be tax-free.

Corporate Finance

We have advised both issuers and major investment banks in a wide range of corporate finance transactions involving REITs, including IPOs and offerings of debt, equity, hybrid and synthetic securities in both private and public transactions. We represented:

- HCP in:
  - the financing of its $6.1 billion acquisition of the senior living facilities of HCR ManorCare, including a primary offering of $1.5 billion of common stock, representing the largest REIT follow-on offer in history;
  - a $3.3 billion fully committed bridge loan;
  - a $2.4 billion offering of senior unsecured notes, the largest REIT bond offering ever;
  - a $2 billion financing, comprising $1 billion of common stock and a $1 billion offering of senior unsecured notes, to acquire the senior housing portfolio from the Emeritus-Blackstone joint venture;
  - in its $800 million offering of 3.875% senior unsecured notes due 2024;
  - $750 million offering of 4% senior notes due 2025; and
  - $600 million offering of 3.4% senior notes due 2025.
- Westfield Group in:
  - creating a new separately listed property trust, Westfield Retail Trust, with more than A$12 billion of assets. The transaction was effected through a pro rata distribution of units in the new trust to Westfield Group security holders and a concurrent A$3.5 billion Rule 144A/ Regulation S offering of new Westfield Retail Trust units;
  - the U.S. securities law issues of its $1.8 billion Rule 144A/ Regulation S placement of ordinary stapled securities to institutional investors in Australia, the U.S. and certain other jurisdictions; and
  - a $1 billion Rule 144A/Regulation S offering of 4.625% senior guaranteed notes due 2021 by its finance subsidiary, WEA Finance.
- American Capital Agency in numerous public offerings of common stock totaling nearly $9 billion.

- Dividend Capital Total Realty Trust in the offering of up to $2 billion of its common stock.
- The Leona M. and Harry B. Helmsley Charitable Trust and the Estate of Leona M. Helmsley, the largest shareholder of Empire State Realty Trust, in Empire State Realty Trust's US$930 million initial public offering of Class A common stock and listing on the New York Stock Exchange.
- SL Green Realty, New York City's largest commercial office landlord, in its $1.45 billion mortgage financing of 388-390 Greenwich Street, New York, provided by a lending group led by Citigroup and including Bank of China, Wells Fargo and Barclays; in a $900 million first mortgage refinancing of the 1515 Broadway office tower in Manhattan; and in its $405 million offering of common stock.
- Colony American Homes, Inc. in connection with its $800 million warehouse financing for its single family home portfolio, arranged by JPMorgan Chase Bank, N.A.
- Numerous REITs in initial public offerings and proposed IPOs, including: Starwood Property Trust ($932 million, the largest mortgage REIT IPO), Springleaf REIT, ($500 million), CyrusOne ($444 million), Select Income REIT ($198 million), American Capital Mortgage Investment, ($200 million) and Government Properties Income Trust ($200 million).
- A variety of REITS in debt and equity offerings, including: Newcastle Investment (multiple offerings), New Residential Investment (multiple offerings), Apartment Investment and Management ($375 million), Nationwide Health Properties ($800 million), Alexandria Real Estate Equities ($750 million), HCP ($350 million), Plum Creek Timberlands ($325 million), CyrusOne ($266 million), CareTrust ($260 million), CommonWealth REIT ($250 million), SL Green Realty, SL Green Operating Partnership and Reckson Operating Partnership ($250 million), The GEO Group ($250 million) and New Senior Investment Group ($241 million).
- The underwriters or joint bookrunning managers in numerous debt and equity offerings, including for, American Homes 4 Rent, Boston Properties, Brookfield Asset Management, Brixmor Property, Crown Castle International, CYS Investments, Easterly Government Properties, ESH Hospitality, Extended Stay America, General Growth Properties, Getty Realty Corp., Host Hotels & Resorts, Invesco Mortgage Capital, Macerich, Mack-Cali Realty, Medical Properties, MPT Operating Partnership, New York Mortgage Trust, Omega Healthcare Investors, PS Business Parks, Public Storage, Ramco-Gershenson Properties, RHP Hotel Properties, Silver Bay Realty, Simon Property Group, Starwood Property Group, Strategic Hotels and Resorts and Vornado Realty.

Restructurings and Reorganizations

Skadden has counseled public and private REITs in workouts, restructurings and bankruptcy proceedings, including creating a first-of-its-kind offering for General Growth Properties to replace financing from investors who helped fund its bankruptcy restructuring. We also have represented:

- Centro Properties Group in the restructuring of its A$16 billion of Australian debt through a debt-for-equity exchange and a proposed combination of numerous affiliated companies and funds to create the second-largest commercial property owner in Australia.
- the underwriters in the $2 billion equity offering of General Growth Properties, an owner of shopping malls. The offering funded a portion of General Growth's emergence from bankruptcy, the largest U.S. real estate bankruptcy ever. The novel offering provided General Growth with an opportunity to reduce its bankruptcy plan sponsors' investments with more advantageously priced capital and provided a flexible balance sheet to meet General Growth's post emergence goals.
- Gyrodyne Co. of America in its planned liquidation and declaration of a special dividend.
- RREEF America REIT III, a real estate investment fund organized as a private REIT (an affiliate of RREEF America acts as investment manager to the fund), in its multibillion dollar debt restructuring and enterprise recapitalization.
- Longview Fibre Company, Menasha Forest Products and Potlatch in their respective corporate reorganization and restructuring transactions, which enabled them to qualify as REITs.

Tax

Due to the highly regulated environment in which REITs operate, our tax practice is involved in virtually all of our REIT transactions. In addition to the matters listed earlier, our tax attorneys have been involved in a number of tax-specific matters that have revolutionized the REIT industry:

- We helped draft legislation that will significantly reform the Foreign Investment in Real Property Tax Act (FIRPTA) in order to remove the barriers to foreign investment in U.S. real estate and facilitate the recovery of the commercial real estate market. The legislation was passed by the U.S. House of Representatives in July 2010 and constitutes one of the most significant recent pieces of legislation directly affecting REITs.
- We were instrumental in drafting Revenue Procedure 2010-12, a pronouncement by the IRS that enables REITs to conserve cash by making their required distributions in the form of REIT stock. Prior to the issuance of industry-wide regulatory guidance, we obtained numerous private letter rulings that permitted REITs to make such stock distributions. Before we obtained the first of those private letter rulings, the stock distribution structure was thought to be unavailable to REITs desiring to conserve cash.
- Our attorneys advised Windstream in its plans to spin off certain telecommunicaions network assets into an independent, publicly traded REIT. Windstream has received a private letter ruling from the IRS relating to certain tax matters regarding the tax-free nature of the spinoff and the qualification of the spunoff entity's assets as real property for REIT purposes.
- Skadden counseled NorthStar Asset Management Group Inc. with the tax aspects of its merger with Colony Capital, Inc. and NorthStar Realty Finance Corp. The new company will be named Colony NorthStar, Inc.
- We represented Lone Star Funds with the tax aspects of its $7.6 billion acquisition of Home Properties, Inc. in a going-private transaction.
- Skadden advised Alstria Office REIT-AG with the tax aspects of its proposed, unsolicited $890 million acquisition of DO Deutsche Office AG.
- Skadden represented CyrusOne as special REIT tax counsel in its $314 million initial public offering of common stock.
- We acted as special tax counsel to Potlatch in connection with the 2008 tax-free spin-off of its pulp-based businesses into a publicly traded company called Clearwater Paper Corporation. This transaction marked the first time that a REIT distributed a non-REIT in a tax-free spin-off transaction.
- As recently as the early 2000s, conventional wisdom held that a REIT could not acquire a company whose stock recently had been distributed in a tax-free spin-off transaction. We successfully challenged that belief when we represented Plum Creek Timber Company, a publicly traded REIT, in connection with its tax free acquisition of The Timber Company, a company whose stock had been spun-off on a tax-free basis by the Georgia-Pacific Corporation. In 2013, we represented the company with the tax aspects of its US$930 million acquisition of industrial timberlands and related assets from MeadWestvaco Corporation.
- We have negotiated the terms of U.S. tax treaties and changes to the U.S. tax rules applicable to foreign real estate investors, both of which required the participation of tax regulatory and legislative attorneys from our Washington, D.C. office. This work has resulted in billions of dollars being invested in U.S. real estate by non-U.S. investors. Due to our experience in this area, foreign investors regularly consult with our tax lawyers.
- Our attorneys acted as U.S. tax counsel to Westfield Group (Australia) as U.S. tax counsel in connection with the merger of its Australian and New Zealand operations with Westfield Retail Trust (Australia) to form two new entities. We also represented its subsidiary Westfield America as tax counsel in its US$1.6 billion joint venture with Starwood Capital in a portfolio of seven shopping centers in the United States.
- We have used our knowledge of international tax to help some of Australia's largest REITs, including the Westfield Group, Centro Properties Group and Dexus Property Group, make investments in U.S. REITs and large portfolios of U.S. real estate.
- We have handled a number of so-called "REIT rescues," for new clients that had run afoul of the REIT requirements and needed a private ruling or IRS closing agreement in order to retain their REIT status.