

## James L. Allen

### SERVICE AREAS

#### Business

- Finance
  - Restructure, Enforcement, Insolvency + Bankruptcy
- Real Estate
  - Real Estate Finance
  - Workouts + Foreclosures

#### Litigation + Trial

- Workouts + Foreclosures

#### Governments + Nonprofits

- Real Estate
  - Workouts + Foreclosures

### EDUCATION

- University of Michigan Law School, J.D.
- Wayne State University Law School, L.L.M.
- University of Michigan, B.A.

### BAR ADMISSIONS

- Michigan
- Ohio

### COURT ADMISSIONS

#### U.S. Supreme Court

#### U.S. Courts of Appeals

- Third Circuit
- Sixth Circuit

#### U.S. District Courts

- Eastern District of Michigan
- Western District of Michigan
- Southern District of Ohio
- Western District of Pennsylvania



### Principal

#### Troy

840 W. Long Lake Road  
Suite 200  
Troy, Michigan 48098

T: +1.248.267.3285

F: +1.248.879.2001

allenj@millercanfield.com

James L. Allen uses his keen knowledge of commercial real estate workouts and foreclosures to serve his lender clients, primarily in Michigan, Ohio, Illinois, and Indiana. With more than 30 years of experience and as the author of the Michigan Chapter on Foreclosures for *The Law of Distressed Property*, Jim focuses on finding practical solutions for his clients.

*"I try to gain a clear understanding of my lender clients' business objectives. Armed with this knowledge, I can almost always suggest solutions which are quick, practical and efficient."*

James L. Allen

Jim leads a team of lawyers and other professionals who use Miller Canfield's Assessment and Plan of Action system, which enables them to advise their clients promptly and efficiently. In fact, they are able to detect legal issues and advise on solutions before their lender clients even know that they have a problem.

*"We use this system to suggest alternate strategies to achieve our client's business objectives. In one case, we were able to restructure the foreclosure process and save our client nearly \$175,000 in transfer taxes."*

### EXPERIENCE

Mr. Allen has over 30 years of experience representing lenders in transactional matters and litigation. Since 1997, he has focused his practice exclusively on the representation of special servicers and lenders in workout negotiations and enforcement activities related to commercial mortgage loans in default.

U.S. Tax Court

Mr. Allen has an active practice in all property types, both core (office, retail, industrial and multi-family) and non-core (construction loans, health care, hospitality, restaurants, gas stations, golf courses, mobile home parks, self-storage facilities, franchises, etc.). These projects have unpaid principal balances from \$1,000,000 to \$100,000,000, most typically between \$5,000,000 to \$20,000,000, for properties located principally in the Midwest (most typically Michigan, Ohio, Indiana, and Illinois).

He handles all phases of the workout process, whether resolved consensually or through contested proceedings. As such, he is experienced in:

- Forbearance Agreements
- Deed-in-lieu Transactions
- Distressed Real Estate Loan Sales
- Mortgage Assumption Agreements
- Deed-in-Escrow Agreements
- Consensual Sales through Receivers
- Mortgage Foreclosures (judicial and non-judicial in Michigan; judicial in Ohio, Indiana, and Illinois)
- Receiverships
- Suits against Guarantors (both recourse and non-recourse carve-out violations)
- Fraudulent Transfer Claims
- Fraud Investigations and Litigation
- Lender Liability Claims and Litigation
- Bankruptcy
- Sales of Distressed Real Estate through Powers of Attorney, Receivers, Bankruptcy Estates and as REO Property

Mr. Allen has tried lender liability cases to jury verdict. His lender clients have prevailed, both by summary judgment and trial, in lender liability lawsuits, and have successfully prevailed in appeals of such cases.

### **REPORTED + PUBLISHED DECISIONS**

8375 Honeytree Boulevard Holdings, LLC v Jeffrey S. Starman, et al., 2012 WL 683379 (E.D. Mich., March 2, 2012) (summary judgment for lender on carve-out guaranty for bankruptcy filing)

## James L. Allen

51382 Gratiot Avenue Holdings, LLC v Chesterfield Development Co., \_\_\_ F Supp 2d \_\_\_, 2011 WL 6153023 (ED Mich, Dec 12, 2011), *reconsideration denied* 2012 WL 205843 (summary judgment for lender on carve-out guaranty for insolvency)

U.S. Bank National Association v Mobile Associates National Network Systems, Inc., et al., 195 Ohio App.3d 699 (2011) (foreclosure judgment affirmed; prenegotiation agreement bars claim of modification)

Livonia Properties Holdings, LLC v 12840-12976 Farmington Road Holdings, LLC, 717 F.Supp.2d 724 (E.D. Mich. 2010), *aff'd* 399 Fed. Appx. 97, 2010 WL 4275305 (6<sup>th</sup> Cir. 2010), cert. den. — S. Ct. —, 2011 WL 283329 (2011) (borrower's request for preliminary injunction to enjoin foreclosure sale denied since 'record chain of title' means documents recorded in register's office and borrower lacks standing to contest interim assignments of mortgages in blank)

In re Griswold Building, LLC, 420 B.R. 666 (Bkry.E.D.Mich.2009) (denial of confirmation in single asset real estate case)

Highland Park CDO I Grantor Trust v Wells Fargo Bank, N.A., as Trustee, 2009 WL 183496 (S.D.N.Y. 2009) (intercreditor agreement)

Ivankovich v PAMI Grand Lake, LLC, 910 N.E.2d 271 (Ind. App. 2009) (summary judgment for lender on guaranty affirmed)

AXS Opportunity Fund, LLC v Continent French Quarter, LLC, 2008-Ohio-1047 (10th Dist., 2008) (contempt of court for violation of receivership order)

In re Briggs, Receiver of Birmingham Bloomfield Bank, 116 Mich App 267, 324 NW2d 332 (state bank receivership)

Check Reporting Services, Inc. v Michigan National Bank - Lansing, 191 Mich App 614, 478 NW2d 893, 16 UCC Rep2d 1116, lv den'd 440 Mich 887 (lender liability)

Wholesale Tool Company, Inc. v Liberty State Bank & Trust, Michigan Court of Appeals, Case No. 141391-L (unreported), lv den'd 448 Mich 924 (letter of credit)

### PROFESSIONAL ACTIVITIES

- American College of Mortgage Attorneys, Fellow

## James L. Allen

- State Bar of Michigan, Representative Assembly, 1978-1990; Real Property Law Section
- Ohio Bar Association
- Oakland County Bar Association, Chairman, Program Committee, 1979-1982
- CRE Finance Council

### HONORS + AWARDS

- University of Michigan, Phi Beta Kappa, Regents Scholar
- Michigan Super Lawyers, Real Estate 2007-present
- Best Lawyers in America, Banking Law and Real Estate Law 2008-2011; Litigation-Banking & Finance, Litigation-Real Estate, and Real Estate law 2012
- DBusiness Magazine, Top Lawyers, Banking 2011

### CIVIC, CULTURAL + SOCIAL ACTIVITIES

- University of Michigan Alumni Association
- National Eagle Scout Association
- Phi Gamma Delta
- Birmingham Community House, Board of Directors, 1983-1986

### TEACHING EXPERIENCE

- Instructor, Business Law, Walsh College, 1980

### PUBLICATIONS

"Michigan Foreclosure Practice," *The Law of Distressed Real Estate*, Thompson West, December 2007

"Common Law Theories and Lender Liability: A Transactional Approach," © 1989

"Lender Liability: The Cause of Action for Breach of the Implied Obligation of Good Faith," Master's Thesis, Wayne State University Law School, 1988

"Attitude Change Following Jury Duty," 2 *The Justice System Journal* 246, 1977

**SPEECHES**

"Distress Real Estate Loans and Workouts," Panelist, American College of Mortgage Attorneys, Annual Meeting, September 2010

"Lender Liability," ING Clarion, May 2010

"Intercreditor Agreements," ING Clarion, June 2009

"Sale of Properties Through Receiverships," Capmark Finance Inc., May 2009

"Distress Debt Symposium," Panelist, Plante & Moran, April 2009

"Post-Foreclosure Due Diligence Checklist," Teleconference, Lorman Education Services, November 2008

"Handling Curves in the Lender Ballpark," Panelist, 8th Annual Trigild Lender Conference, San Diego, CA, October 2008

"Distressed Real Estate Investing Summit," Conference Chair, Infocast, New York, February 2008

"Selling Distressed Debt in a Declining Real Estate Market," Panelist, 3rd Annual Creditors and Credités Conference, Miami, FL, January 2008

"Legal Issues in Commercial Real Estate Workouts," Capmark Finance Inc., November 2007

"Recovery and Disposition," Panelist, 7th Annual Trigild Lender Conference, San Diego, CA, October 2007

"Commercial Real Estate Workouts: From Forbearance to Foreclosure and Bankruptcy in Michigan," Lorman Education Services, March 2004, March 2005

"Exceptions to Non-Recourse Liability," Criimi Mae Services LP, May 2004

"Distressed Real Estate: The Impact on the Market - The Opportunities They Present," Moderator, RealShare Detroit Conference, May 2004

"Foreclosure and Repossession in Michigan," Lorman Education Services, April 2003, April 2004

"Exceptions to Non-Recourse Liability," GMAC Commercial Mortgage and Midland Loan Services, November 2003, December 2003

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"Loan Workout and Collateral Liquidation in Michigan," Lorman Education Services, November 2002

"Lender Liability in Michigan," Fifth Third Bank, May 2002, Lorman Education Services, March 2002

"Revised U.C.C. Article 9 - What You Need to Know by July 1, 2001," First American Title Insurance Company, May 2001

"Commercial Real Estate Lending - Loan Documentation," Huntington National Bank, June 1999

**SEMINARS + EVENTS**

- Trigild Lender Conference