

Summary

Marshall Tracht is bankruptcy and real estate law professor who combines his legal expertise with the perspective gained from his MBA in Finance from the Wharton School and background in management consulting. A tenured professor at New York Law School, he has not only published and lectured widely on topics ranging from bankruptcy reorganization and liquidation, to guaranties, real estate workouts and finance, but he has more than 20 years of experience in bankruptcy law and restructuring. His career started with economic and management consulting at the American Enterprise Institute and the Cambridge Research Institute, then took him to a clerkship with The Honorable S. Martin Teel, Jr. of the D.C. Bankruptcy Court and the Bankruptcy and Real Estate Practice Groups at Arnold & Porter. In addition to his teaching and writing, he has advised a "Fortune 50" company on potential bankruptcy strategies for handling mass tort litigation, served as an economic expert in the WorldCom bankruptcy case, counseled multiemployer pension plans in a major Chapter 11 case, and served as an expert witness in bankruptcy proceedings and other legal cases. He brings a broad strategic perspective encompassing both legal and financial concerns.

EDUCATION:

- University of Pennsylvania School of Law**, Philadelphia, Pennsylvania 1990
Juris Doctor, *magna cum laude*; Order of the Coif.
Moot Court Board; President, JD/MBA Society.
Research Assistant to Professor Michael Schill, 1988-89.
- The Wharton School**, Philadelphia, Pennsylvania 1990
Master of Business Administration, 1990, with Distinction.
Degree in Finance.
- Yale University**
B.A. in Economics, 1983, *cum laude*.
Distinction in the Major.

Prior Experience

Consultant and Expert Witness

2005-Present

Expert witness and/or consultant on a range of bankruptcy, debt renegotiation and enforcement matters, on both debtor and creditor sides, including issues of bankruptcy remote structuring, SPE covenants in nonrecourse carve-outs and guaranties, mezzanine financing, labor contract rejection and pension fund obligations in chapter 11 reorganization, and fraudulent conveyance litigation.

New York Law School, New York, New York

2007- Present

Professor of Law (Visiting Professor, 2007-2008)

Expertise in workouts and bankruptcy, finance, suretyship and debt contracts, with particular focus on real estate issues and “bankruptcy remote” structuring.

Teaching includes Bankruptcy Law; Workouts, Foreclosure and Bankruptcy; Real Estate Transactions and Finance; Financial and Economic Analysis of Real Estate; Advanced Topics in Real Estate Finance.

Other Law School Teaching

New York University School of Law: Real Estate Transactions (2002-07); Real Estate Finance (2009)

Benjamin N. Cardozo School of Law: Real Estate Transactions (2006-14)

Hofstra University School of Law, Hempstead, N.Y.

Vice Dean and Professor of Law

2001 to 2007

Associate Professor of Law

1994 to 2001

Other Law School Teaching

New York University School of Law: Real Estate Transactions (2002-2007)
Real Estate Finance (2009)

Benjamin N. Cardozo School of Law: Real Estate Transactions (2006-2014)

United States Bankruptcy Court for the District of Columbia

1994

Law Clerk for The Honorable S. Martin Teel, Jr.

Arnold & Porter, Washington, D.C.

1990 to

Associate in the Bankruptcy and Restructuring Practice Group and
Real Estate Practice Group.

1994

Cambridge Research Institute, Cambridge, MA

1984 to

Associate. Performed empirical research and consulted with clients on
antitrust litigation, telecommunications strategy and related matters.

1986

American Enterprise Institute, Washington, D.C.
Research Assistant to economist Herbert Stein.

1983 to
1984

PUBLICATIONS

BOOKS:

THE REAL ESTATE INVESTOR'S DESKBOOK (West /Thompson Reuters, 2014 ed.) (with Alvin Arnold)

CONSTRUCTION AND DEVELOPMENT FINANCING (West Group, 3rd ed. 2014)

THE REAL ESTATE LEASING PRACTICE MANUAL, VOLUMES I AND II (West /Thompson Reuters, 2014) (with Alvin Arnold)

LAND TRANSFER AND FINANCE: CASES AND MATERIALS (Aspen Law & Business, 6th ed. 2011) (with Quintin Johnstone and the late Curtis Berger)

BOOK CHAPTERS:

Effect of Sublessor's Bankruptcy, in Brent C. Shaffer, ed., The Sublease and Assignment Deskbook (American Bar Association, 2013) (with Elliott Dolby-Shields)

Chapter 46: Suretyship, in Theodore Eisenberg, Debtor-Creditor Law (Matthew Bender, 2012)

Chapter 45: Guaranty, in Theodore Eisenberg, Debtor-Creditor Law (Matthew Bender, 2005)

Co-Ownership and Condominium, in Vol. II, Encyclopedia of Law and Economics 62-89 (Edward Elgar, 2000)

Workouts, Foreclosure and Bankruptcy, Chapter 11 in Alvin L. Arnold, Real Estate Investor's Deskbook (1994)

ARTICLES:

Can a Debtor's Exempt Assets Be Surcharged as a Sanction for Misconduct?, 41 ABA S.Ct. Preview 196 (2014)

Does "Defalcation" by a Fiduciary, Rendering a Debt Nondischargeable, Include Unknowing Breach of the Duty of Loyalty?, 40 ABA S.Ct. Preview 267 (2013)

Leasehold Recharacterization in Bankruptcy: A Review and Critique, The ACREL Papers, Fall 2012

Can a Secured Creditor Be Denied the Right to Credit Bid When the Creditor's Collateral Is Sold Pursuant to a Chapter 11 Plan of Reorganization?, 39 ABA S.Ct. Preview 248 (2012)

Godzilla Lives!; or, Nonrecourse Carveouts Run Amok, 8 J. Bankr. L. 195 (2012)

Does RESPA Bar Charges for Undivided, Unearned Services?, 39 ABA S.Ct. Preview 202 (2012)

Single Asset Real Estate and Development Projects: The Kara Homes Mistake, 127 Banking L.J. 258 (2010)

Lawyers and Lenders Sanctioned, Mortgage & R.E. Exec. Report, Vol. 41, No. 7 (June 1, 2008)

Patenting a Business or Legal Strategy, Mortgage & R.E. Exec. Report, Vol. 40, No. 8 (June 15, 2007)

OCC Rulings on Real Estate Projects Spark Furor, Mortgage & R. E. Exec. Report, Vol. 38, No. 24 (February 15, 2006)

Drafting an Effective Arbitration Clause, in Alvin L. Arnold and Jeanne O'Neill, Real Estate Leasing Practice Manual (Thomson/West 2002)

Arbitration of Truth-in-Lending-Act Claims, 118 Banking L.J. 3 (2001)

Will Exploding Guaranties Bomb?, 117 Banking L.J. 129 (2000)

Insider Guaranties in Bankruptcy: A Framework for Analysis, 54 U. Miami L. Rev. 601 (2000)

Renegotiation and Secured Credit: Explaining the Equity of Redemption, 52 Vand. L. Rev. 599 (1999)

Supreme Court Restricts New Value Exception, Mortgage & R.E. Exec. Report, Vol. 32, No. 8 (June 15, 1999)

Bankruptcy Review Commission Recommendations, Mortgage & R.E. Exec. Report, Vol. 30, No. 23 (Feb. 1, 1998)

Contractual Bankruptcy Waivers: Reconciling Theory, Practice, and Law, 82 Cornell L. Rev. 301 (1997)

SELECTED PRESENTATIONS

Panelist, "Protecting the Commercial Landlord's Rent and Damages Claim in a Tenant Bankruptcy," ALI CLE Webinar, April 22, 2014

Panelist, "Welcome to My Counterparty: Bankruptcy Risks in Any Economy," The Rooftops Conference, New York, N.Y., April 19, 2012

"Avoidance Powers in Bankruptcy," ABA Community Outreach Program, February 23, 2012

"Pre-Bankruptcy Planning and Commencement of a Case," ABA Community Outreach Program, January 23, 2012

"Big Deals in Court," Practising Law Institute Commercial Real Estate Program, New York, January 23, 2012

"Stern v. Marshall and Other Chapter 11 Issues," E. D. Pa. Bankruptcy Conference, Philadelphia, PA, January 20, 2012

Panelist, "Economics of Post-Graduate Programs," AALS Annual Meeting, Washington, D.C., January 7, 2012

"Results May Vary: When Plain Meaning Collides With Customary Bankruptcy Practices," E. D. Pa. Bankruptcy Conference, Philadelphia, PA, January 21, 2011

"Hot Topics in Mortgage Foreclosure," New York Law School Center for Real Estate Studies, April 12, 2010

Panelist, "Anatomy of a New Construction Condominium Workout," NYSBA Annual Meeting, Real Property Section, January 28, 2010

"Groundlease Issues in Bankruptcy," ABA Real Property, Trusts & Estates Section Groundlease Committee Webinar, November 12, 2009

"Ethical Issues Confronting Transactional Lawyers," ABA Community Outreach Program, New York, October 15, 2009

"The Coming Failure of Mortgage Regulation," Southeast Association of Law Schools Conference, Palm Beach, Florida, August 8, 2009

"Workouts in a Securitized World," NYLS Center for Real Estate Studies, March 18, 2009

"The Evolving Landscape of Real Estate Law," Cardozo Law School, November 18, 2008

"Advanced Considerations in 1031 Exchanges," ABA Tax Section, Washington, D.C., May 8, 2008

"Will Borrower Protections Go Too Far? Fallout From the Subprime Crisis," New York Law School Center for Real Estate Studies, April 2, 2008

"Development in the 21st Century," Institute for Real Estate, Hempstead, N.Y., November 29, 2006

"Developments in Real Estate Law," Real Estate NEXT Conference, October 19, 2006

PROFESSIONAL ASSOCIATIONS, POSITIONS, HONORS

American Bankruptcy Institute

American College of Real Estate Lawyers

Contributing Editor, Real Estate Law Report (1993 - present)

Member, ABA Section on Legal Education

Chair, AALS Section on Post-Graduate Legal Education, 2010-11

Member, Board of Editors, Banking Law Journal (A.S. Pratt & Sons) (2001-2012)

Recipient, Grant Gilmore Award for Excellence in Legal Writing (American College of Commercial Finance Lawyers)