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Real Estate Litigation 2025

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Jennifer S. Recine and David H. Kupfer
King & Spalding LLP



Chambers

Global Practice Guides

Real Estate Litigation

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2025

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Published by

Chambers and Partners

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London

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Web www.chambers.com

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King & Spalding LLP helps leading companies advance complex business interests in more than 160 countries. Working across a highly integrated platform of more than 1,300 lawyers in 24 offices globally, it delivers tailored commercial solutions through world-class offerings and an uncompromising approach to quality and service. King & Spalding's real estate litigation team is led by experienced trial lawyers devoted to resolving disputes across every aspect of the real estate industry. A pragmatic, com-

mercial approach to conflicts ensures sensible business resolutions. Its litigators handle matters including contract disputes, partnership and joint venture disputes, breach of fiduciary duty and fraud claims, and development rights disputes, as well as foreclosures, workouts and other restructurings. An emphasis is placed on achieving the client's specific goals, whether through negotiation, preparation for possible litigation, or prevailing on the merits through discovery and trial.

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Real Estate Litigation: Key Developments From the Past 24 Months

The legal framework surrounding real estate continues to evolve as courts, legislatures, and regulators around the world address critical and time sensitive issues affecting the commercial and residential real estate industries. This introduction provides a brief survey on recent litigation and regulatory trends across key categories of real estate-related disputes, many of which are addressed in this Guide, offering a global perspective. Additionally, this introduction discusses areas of likely real estate disputes to watch for in the coming year.

Real Estate Finance Disputes

Over the last 24 months, there have been significant market and legal challenges in the real estate industry. In particular, the interplay between rising interest rates, increasing expenses, shifting property values, and high-profile bank failures has significantly influenced litigation between borrowers and lenders, particularly in the commercial real estate sector. In the United States, the collapse of Signature Bank and others in March 2023 added a layer of complexity to an already strained market, while globally, central banks have faced the challenges of navigating high inflation and an uneven recovery from the COVID-19 pandemic.

In the United States, the commercial real estate market has faced extraordinary headwinds stemming, at least in part, from the Federal Reserve raising the federal funds rate from near-zero in March 2022 to a peak of 5.5% by July 2023. This rapid increase elevated borrowing costs, challenging borrowers' ability to service real estate debt and refinance loans.

The rise in interest rates and tightening of credit has contributed to declining property values,

particularly in some sectors of the office market, where hybrid work trends have already reduced demand. This depreciation eroded loan-to-value ratios, triggering various disputes, including disputes relating to covenant breaches, valuation fights, maturity defaults and non-recourse guarantees.

The failure of Signature Bank and other banks in March 2023 exacerbated these tensions. Signature Bank held a massive USD36 billion commercial real estate loan portfolio. These collapses – driven by the rapid rate hikes, deposit runs, and exposure to underwater assets and unrealised losses – disrupted lending relationships, creating an environment ripe for litigation.

Recent rate cuts have offered some relief, potentially reducing the stress on the real estate market by easing refinancing pressures. The office sector, however, remains a likely tension point, with values on average down more than 20% from 2022 to 2024.

Globally, the commercial real estate landscape mirrors US trends, but varies by region due to differing monetary policies and market conditions. China's property sector, strained by a spike of high-profile developer defaults, has seen notable government interventions with troubled firms. Globally, declining property values – particularly in office and retail – have led to negative equity, prompting legal battles and debt restructuring.

Guarantor liability – as borrower defaults increased, often by judgment-proof special purpose entities, personal guarantors have been targeted by a surge in legal claims. Many cases involve disputes over the applicability and enforceability of non-recourse (or “bad boy”) carve-outs from guarantees that remove liability protections for guarantors when certain triggers

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occur, including the filing of a bankruptcy or misrepresentations made to the lender, among others.

Foreclosure proceedings – with respect to real estate foreclosure proceedings, surprisingly, US judicial foreclosure proceedings were down 10% in 2024 and down 35% from pre-pandemic levels. It is hard to tell, however, whether the decrease in judicial foreclosure filings is indicative of fewer defaults and disputes concerning commercial real estate, especially because many loans are now structured to permit lenders to pursue non-judicial foreclosure on interests in the underlying real property or entities which own the real property.

Lender liability claims – lenders had a string of victories in 2023 and 2024 in cases alleging breaches of the implied covenant of good faith and fair dealing. Still, anecdotal evidence suggests borrowers may be gaining traction on claims and counterclaims against lenders under theories that lenders contributed to the borrower's default by failing to comply with provisions of loan agreements.

Receiverships – obtaining a receiver following a loan default was once a sure thing. More recently, some borrowers in default due to an inability to refinance, rather than poor management, have successfully convinced courts that receivers should not be appointed because they would not best preserve the assets or value of the property. Expect this trend to continue as the law on this subject is rewritten by the courts.

While the depth of property value declines is still being realized and understood by the market, 2025 brings renewed optimism for a stabilization, if not recovery, of global real estate. Some market participants are publicly articulating the

view that this year presents an opportunity for the industry to turn the page on the challenges of the last 24 months. Interest rate cuts and a new US administration offer hope that refinancing may get easier, and credit will loosen, in the coming months.

Landlord-Tenant Disputes

Courts continue to adjudicate disputes over eviction protections, lease enforcement, residential rent control and stabilisation laws, and the scope and enforceability of personal guarantees in connection with commercial leases. A pending onslaught of lease terminations by the federal government may well test the established law on commercial leases in the US.

In 2024, the US Supreme Court again declined to review a challenge to New York's rent-stabilisation system based on 2019 amendments, leaving in place protections for tenants. Also in 2024, New York enacted the "Good Cause Eviction Law". The new law prohibits the eviction or removal of tenants from all housing accommodations without "good cause". The law also imposes rent increase caps and additional notice requirements on landlords. The law automatically applied to New York City, but other municipalities need to opt in and may make certain modifications. Pro-tenant legislation will likely continue to be tested in other jurisdictions around the country that enacted similar reforms, including the District of Columbia, Maine, Michigan, New Jersey, Oregon and Washington, particularly if these state initiatives are put at odds with rolled-back federal protections, including the Renter's Bill of Rights.

Rent control remains a contentious issue in major European cities like London, where legislation proposing the abolition of no-fault evictions has been introduced, and Berlin and Paris,

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where legal challenges have emerged over government-imposed rental caps.

In the US, the change in administration has brought leases with the federal government under intense scrutiny. Over the course of 2025, expect novel challenges from the government to settled commercial leasing law and standard contract notions.

Challenges to Real Estate Practices and Tools as Anti-Competitive

Nearly a dozen class-action lawsuits have been filed over the last several years challenging traditional real estate commission structures as anti-competitive and alleging that rules governing broker compensation violate antitrust laws.

In November 2024, a court approved a USD418 million settlement proposed by the National Association of Realtors, with other entities agreeing to pay hundreds of millions more. New rules regarding the compensation of brokers and agents were also implemented in mid-2024, including those that allow for direct negotiations over commissions. If followed and enforced, these rules could have a lasting impact on the purchase and sale of residential real estate in the US.

In a similar vein, in August 2024, the US Department of Justice sued RealPage, alleging that its pricing algorithm is an “unlawful scheme to decrease competition among landlords in apartment pricing and to monopolise the market for commercial revenue management software that landlords use to price apartments”. The Department of Justice has asserted in other cases that using algorithmic tools to set prices can amount to illegal price-fixing, even if the parties using the tools do not communicate directly.

European regulators are likewise investigating commission structures, including in connection with property rentals, for potential anti-competitive practices.

Real Estate Disputes to Watch in 2025

In the US, litigation over the Corporate Transparency Act remains ongoing, with the vitality of the law still unclear. The law, which requires business to report information regarding the beneficial ownership of corporate entities, could have significant ripple effects on the commercial real estate market and real estate investment structures, if upheld.

With the rise of digital infrastructure, including data centres, as a premier real estate asset class, expect litigation connected to digital infrastructure and appropriate zoning for these spaces to rise and play a prominent role in 2025. Likewise, litigation related to energy and water supplies needed to power and cool data centres should be anticipated to grow along with the development of this sector.

With the increased popularity of property-related technology and applications, legal battles over data privacy, smart contracts and tech failures in property management will likely increase.

Litigation surrounding “greenwashing” and ESG-related disclosures in real estate, as well as regulatory and class action activity regarding non-compliance with emerging environmental regulations, will likely play a prominent role in 2025.

Conclusion

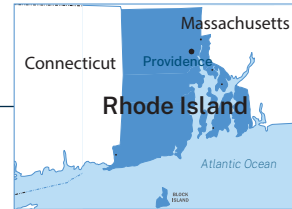
The real estate sector continues to be a source of varied legal disputes, driven by economic, legislative and societal shifts. With rising interest rates, fluctuating tenant protections, and

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increased scrutiny of lenders and brokers, combined with the shifting priorities of a new federal administration, real estate disputes continue to reshape the industry's landscape. While market participants look ahead to 2025 with a renewed sense of optimism, major court decisions and regulatory actions will continue to play a pivotal role in the industry.

USA – RHODE ISLAND



Law and Practice

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Island, the firm focuses on key areas of law: corporate & business, including M&A, employment, tax, and nonprofit; real estate, including commercial financing, energy, environmental, and land use; and complex commercial litigation & disputes.

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1. Landlord-Tenant Disputes

1.1 Access

1.1.1 Remedies for Landlords Denied Access for Repairs

Under the Residential Landlord and Tenant Act, Rhode Island General Laws § 34-18-26(a), a tenant is obligated to provide the landlord with reasonable access to the premises to make necessary or agreed repairs, to show the dwelling unit to prospective or actual purchasers or tenants, and for certain other purposes.

1.1.2 Emergency Access

Under the Residential Landlord and Tenant Act, R.I. Gen. Laws § 34-18-26(b), a landlord may enter the dwelling unit without the tenant's consent in the event of an emergency. This statutory right is likely sufficient for most emergencies that a landlord might encounter. However, if the tenant actively obstructs the landlord's ability to enter the unit to address any emergency, the landlord has the ability to petition the court for injunctive relief to obtain access over the tenant's objection.

1.1.3 Impact on Neighbours

The courts are empowered to issue injunctive relief in appropriate circumstances, and the landlord could avail itself of that right if needed. An impacted tenant could raise a claim of breach of the covenant of quiet enjoyment.

1.2 Harassment

1.2.1 Landlord Harassment

As set forth in the Residential Landlord and Tenant Act, R.I. Gen. Laws §§ 34-18-34, the landlord can be held liable for the greater of three months' periodic rent, or threefold the tenant's actual damages, in the event that the landlord unlawfully removes or excludes the tenant from the premises or wilfully diminishes heat, run-

ning water, hot water, electricity, gas, or other essential services to the tenant. The tenant is also entitled to recover reasonable attorneys' fees in that situation.

Under R.I. Gen. Laws §§ 34-18-28–31, the tenant can also bring an action against the landlord for damages if the landlord — wilfully or negligently — fails to supply heat, running water, hot water, electricity, gas, or other essential services. The tenant may also recover reasonable attorneys' fees, and has the option to seek to terminate the lease in the event that the landlord engages in such activity. Additionally, the tenant may seek injunctive relief against the landlord to compel the latter to restore the terminated services. Finally, under certain circumstances, the tenant has a limited right to pay for replacement services or repairs and deduct the actual costs from the tenant's subsequent rent payment.

1.2.2 Impact of Unit Status

Rhode Island does not have rent-controlled units. All tenants have the same rights against a landlord with respect to impeding use of their rentals. Tenants of federally subsidised units may have additional rights if specified in their lease.

1.2.3 Consequences of a Regulatory Finding of Landlord Harassment

Various state and federal agencies may have jurisdiction over wrongful conduct of a landlord with respect to its tenants. It is conceivable — though uncommon — that the action of a regulatory agency could lead to monetary penalties, fines, or damages, as well as injunctive relief. The Attorney General also enforces certain consumer protection statutes applicable to landlord practices.

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1.3 Rent Stabilisation/Regulation

1.3.1 Statutory Tenancies: Types and Differences

No such tenancies exist in Rhode Island. Nor does Rhode Island law provide for any restrictions on the increase of rent between rental periods, except for a requirement of 60 days' notice to a tenant before any increase in rent (or 120 days for tenants over the age of sixty-two). See R.I. Gen. Laws § 34-18-16.1.

1.3.2 Exceptions to Renewing a Statutory Tenancy

Not applicable.

1.3.3 Converting a Statutory Tenancy to a Free Market Unit

Not applicable.

1.3.4 Regulatory Oversight of Statutory Tenancies

Not applicable.

1.4 Injunctive Relief in Lease Disputes

1.4.1 Injunctive Remedies for Tenants Facing Insufficient Cure Periods

While there is no statutory requirement, in the absence of specific language in the lease, a court would likely provide a tenant a reasonable period to cure any defaults.

A tenant in this situation has two procedural options while working to cure the defaults. It can affirmatively seek injunctive relief to prevent the landlord from going forward with an eviction at the end of the cure period, or it can simply wait until the landlord pursues an eviction action and raise a defence asserting that the cure period was not reasonable. In either case, the specific terms of the lease will be given great weight in determining the dispute. The tenant must act reasonably in taking steps to cure any defaults.

Generally, a party in Rhode Island seeking injunctive relief needs to show a likelihood of success on the merits of a dispute, inadequacy of a legal remedy, and that the balance of the harms and the public interest favor issuance of an injunction.

In the case of a lease dispute, the tenant must show that it made diligent efforts to cure the default when it was brought to the tenant's attention.

1.4.2 Impact of Failing to Obtain an Injunction and Alternative Options

The failure to obtain an injunction is not necessarily fatal to the tenant's efforts to preserve its tenancy. The tenant may attempt to raise the same issues in defence to any eviction action brought by the landlord.

1.4.3 Landlord Bad Faith

Rhode Island law provides no specific remedy to the tenant in this situation. However, it is conceivable that the tenant could obtain injunctive relief against the landlord to prevent further bad faith default notices. A tenant could also make a claim against the landlord for breach of the covenant of quiet enjoyment.

1.5 Guarantees in Landlord-Tenant Context

1.5.1 Types of Guarantees in Tenancies

There is no limitation upon the availability of guarantees in the context of either residential or commercial tenancies. It is common practice for landlords to seek guarantees from parents or third parties for the rental of student housing.

1.5.2 Revocation of Guarantees

A guarantee is revocable to the extent of the terms of the agreement providing for the guar-

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antee. Generally, a guarantor has to obtain a written release to discharge a guarantee.

1.5.3 Expedited Recovery

A creditor has no expedited means to recover on guarantees.

2. Foreclosure Actions

2.1 Foreclosure Process

Judicial and non-judicial foreclosures are both available in Rhode Island. Non-judicial foreclosures are more common because, typically, they are faster and less expensive. However, in the last ten years, judicial foreclosures have become more and more commonplace, particularly in the consumer context.

This response generally describes non-judicial foreclosures via exercise of a power of sale in a mortgage. See R.I. Gen Laws §§ 34-11-22 and 34-27-4. This process is available for both consumer and commercial mortgages. However, for consumer mortgages, there are additional requirements (a mediation process) that the lender must complete prior to exercising the power of sale as described here. See R.I. Gen Laws § 34-27-9. Moreover, the lender must strictly comply with any requirements set forth in the mortgage, promissory note, and associated loan documents. *Woel v Christiana Trust as Trustee for Stanwich Mortgage Loan Trust Series 2017-17*, 228 A.3d 339, 348 (R.I. 2020).

To exercise the power of sale, a lender must first send written notice to the mortgagor, via certified mail, of the time and place of sale. This notice must be sent at least twenty (20) days prior to the first day that notice of sale is published in a qualifying local newspaper. See § 34-27-4(b).

For consumer mortgages, such notice must be sent at least thirty (30) days prior to publication.

The next step is to cause notice of the sale to be published in a qualifying newspaper at least once per week during the three (3) weeks preceding the sale date, with the first notice being published at least twenty one (21) days prior to the sale date. See § 34-27-4(a).

On the date of sale, an auction will be held at which the lender is eligible to bid. Upon receipt of the purchase price, the foreclosing lender delivers to the high bidder a foreclosure deed and supporting affidavits reciting compliance with the statutory procedures, which is sufficient to convey title to the mortgaged premises.

This is only a general overview of the non-judicial foreclosure process in Rhode Island, and is not an exhaustive list of all requirements and procedures.

2.2 Foreclosing on Pledged Equity

The equity of the property owner is deemed to be personal property, a pledge of which is subject to Article 9 of the Uniform Commercial Code. A lender may foreclose by following the procedures set forth in Part 6 of Article 9. R.I. Gen. Laws §§ 6A-9-601 – 624.

Foreclosure can be accomplished through a public or private sale, provided that all aspects of the sale or disposition are commercially reasonable. Notice of the sale must be provided to the debtor, any secondary obligors, and lienholders with interests in the collateral to be sold.

It is also possible for a lender to accept the pledged equity, in full or partial satisfaction of the secured obligation, by following the procedures

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in § 6A-9-620 – 621 to obtain the consent of the debtor, secondary obligors, and lienholders.

Note that pledged equity is typically in the form of a member interest in a limited liability company. The rights of a transferee of such a member interest are likely limited by the Rhode Island Limited Liability Company Act, R.I. Gen Laws Title 7, Chapter 16, and the operating agreement of the property owner.

2.3 Notice Requirements for Non-Judicial Foreclosures

The power of sale is exercised by the publication of a notice of foreclosure sale in a newspaper of general circulation beginning not less than 21 days prior to the foreclosure sale date. In addition, written notice must be given to the mortgagor at least 20 days (for non-consumer mortgages) or at least 30 days (for consumer mortgages) prior to the date of first publication in the newspaper.

Finally, in the event that the more instrument establishes greater or additional notice requirements, those requirements must also be followed strictly. See *Woel v. Christiana Trust* as Trustee for Stanwich Mortgage Loan Trust Series 2017-17, 228 A.3d 339, 348 (R.I. 2020).

See 2.1 Foreclosure Process for more detail.

2.4 Borrower's Rights of Redemption in Foreclosure

The borrower has the right to redeem the mortgage by paying the secured obligations in full prior to the sale of the property at foreclosure. Rhode Island follows the so-called “gavel rule”, which provides that the right of redemption ceases when the auctioneer declares the property sold at the public auction. In re Medaglia,

402 B.R. 530, 532 (Bankr. D.R.I. 2009); In re Vertullo, 610 B.R. 399, 413 (B.A.P. 1st Cir. 2020).

2.5 Pursuing Claims Against Borrowers and Foreclosure Simultaneously

There is no barrier, such as the election of remedies doctrine, to a lender simultaneously pursuing foreclosure of a mortgage and a money judgment against a borrower or other party liable for the secured obligation.

2.6 Foreclosure Timelines

A judicial foreclosure can be reasonably expected to last three to six months to complete from the filing of the complaint to the entry of an order confirming the sale. In contrast, a non-judicial foreclosure of non-residential property can be completed in as few as 50 days. Both of these timelines should be viewed as minimums. In practice, these timelines can be delayed based upon factors outside of the lender's control.

2.7 Remedies for Deficiency After Foreclosure

A deficiency is computed by subtracting the sale price at a foreclosure sale from the amount of the secured obligation including principal, interest, and all other sums secured by the mortgage. A lender can pursue the borrower, or other party liable on the secured obligation, by bringing a civil action against that party. The lender would seek a money judgment in essentially the same way that it would pursue collection of an unsecured obligation.

3. Joint Venture Disputes

3.1 Common Joint Venture Entity Types and Partner Requirements

Rhode Island law governing partnerships is likewise applied to joint ventures.

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A joint venture can be any “association of two or more persons to carry out a single business enterprise for profit”; and “the law governing the relationship between partners is applicable to joint venturers”. See *Scully Signal Co. v Joyal*, 881 F. Supp. 727, 740 (D.R.I. 1995). A joint venture may involve a “passive” partner who does not take an active role in the venture as an ongoing matter. That is, joint venture or operating agreements need not require active cooperation between partners in a real estate joint venture (except insofar as that partner must take the minimum action necessary to form the venture, such as by executing an operating agreement).

Rhode Island has adopted the Uniform Partnership Act, the provisions of which also govern joint ventures. R.I. Gen. Laws § 7-12.1-1et seq. As an alternative to the joint venture, real estate projects are often structured using the limited-liability company (LLC) corporate form, governed by the Rhode Island Limited-Liability Company Act, R.I. Gen. L. § 7-16-1et seq.

3.2 Joint Venture Duties and Remedies for Violation

Joint venturers, like partners under Rhode Island law, owe a fiduciary duty “of the utmost care and loyalty” to both the partnership and to the other partners themselves. See *Marsh v Billington Farms, LLC*, C.A. No 04-3123, 2006 WL 2555911, at *4 (R.I. Super. 31 August 2006) (citing *Sullivan v Hoey*, 102 R.I. 487, 488, 231 A.2d 789, 790 (1967)).

Traditional equitable remedies are available for breach of this fiduciary duty, including restitution, disgorgement, and accounting. See, for example, *R.I. Economic Development Corp. v Wells Fargo Securities, LLC*, No PB-12-5616, 2013 WL 4711306, at *16 (R.I. Super. 28 August 2013). Courts may impose a constructive trust

“upon property that is obtained in violation of a fiduciary duty”, though a plaintiff must show both duty and breach by clear and convincing evidence. See *Manchester v Pereira*, 926 A.2d 1005, 1013 (R.I. 2007). Courts may also order preliminary injunctive relief to maintain the status quo during an action. See *Handy & Harman Elec. Materials Corp. v Molex Inc.*, C.A. No 99-6323, 2000 WL 1727355, at *12 (R.I. Super. Oct. 16, 2000) (ordering preliminary injunctive relief pending appraisal process defined by parties’ joint venture agreement).

The same is also true under Rhode Island law of members of a closely held corporation – ie., a corporation whose shareholders “act among themselves as partners”. See *A. Teixeira & Co. v Texeira*, 699 A.2d 1383, 1387 (R.I. 1997). “The existence of such a fiduciary duty is a fact-intensive inquiry”, and Rhode Island courts look to “the small number of shareholders in plaintiff corporation, the active participation by these shareholders in management decisions, and their close and intimate working relations”. *Id.* Thus, in the *Marsh* decision, for example, members of a real estate joint venture (including non-managing members) owed fiduciary duties to each other, notwithstanding the fact that the venture was organised as an LLC. The court reasoned that “the very nature of the entire land development project suggests that the members of the LLC acted as if they were partners”, including the “active participation” and “intimate relationship” in the venture by non-managing members. 2006 WL 2555911, at *5.

3.3 Joint Venture Management Disputes

If parties to a joint venture are deadlocked, or have reached a decisionmaking stalemate which cannot be resolved under the venture’s governing documents, a member may apply the Superior Court for an order of dissolution, as provided

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by the Uniform Partnership Act, R.I. Gen. Laws § 7-12.1-901(4)(iv).

For limited-liability companies, the company's managers shall act by majority vote unless the entity's governing documents provide otherwise. R.I. Gen. Laws § 7-16-19. Managers may be removed (with or without cause) and elected by a majority vote of the members. *Id.* § 7-16-16.

Deadlock in the governance of an entity (whether a partnership or LLC) is also grounds for appointment of a receiver under R.I. Gen. Laws § 10-21-6(a)(3)(iii), which authorises the court to appoint a receiver if "persons responsible for management of the [entity] are deadlocked in the management of the [entity's] affairs". The court in a receivership action has "exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property". *Id.* § 10-21-5. The appointed receiver, in turn, has a broad set of powers to break the deadlock, including power to manage company property, distribute or transfer property (with court approval), or continue operating the business in the ordinary course. *Id.* § 10-21-12. For further discussion of Rhode Island law governing receiverships, see **5.1 Receivers**.

3.4 Enforceability of Automatic Judgment Provisions and Provisional

Rhode Island law makes no provision allowing for automatic entry of either a final judgment or interlocutory relief.

While there does not appear to be any case in this jurisdiction testing the enforceability of an automatic-remedy provision in an operating agreement, it is unlikely that such a provision would be enforceable. Courts in this jurisdiction do not have discretion to issue preliminary injunctive relief absent specific judicial findings

on the elements for such relief. See, for example, *United Parcel Serv, Inc. v Griffiths*, 297 A.3d 502, 503 (R.I. 2023). Such a provision would also conflict with the ordinary rule that "before an interlocutory injunction is issued in such cases, an adversary hearing should be conducted so that the court may 'review what has gone on between the disputants'". See *School Comm. of City of Pawtucket v Pawtucket Teachers' Alliance* Loc. No 930, 117 R.I. 203, 206, 365 A.2d 499, 501 (1976); see, also, *Iorio v Waste Connections of R.I., Inc.*, C.A. No PC-2021-01558, 2021 WL 2533129, at *15 (R.I. Super. 16 June, 2021) ("[A]n alleged breach of an agreement does not automatically entitle the plaintiff to a temporary injunction pending trial;... temporary injunctions require specific matters be demonstrated by the applicant, including a probable right to the relief sought and probable, imminent, and irreparable injury in the interim".).

3.5 Winding Down Joint Ventures

Rhode Island has enacted the Uniform Partnership Act, which will govern the winding up of a joint venture organised as a partnership. See R.I. Gen. Laws § 7-12.1-801 et seq.

For an LLC, the Superior Court may conduct the winding up of the business, on application by a member or member's representative. See R.I. Gen. Laws § 7-16-45.

4. Guarantor Liability

4.1 Types of Guarantees

It is most common to encounter an absolute, unlimited, unconditional guarantee of payment in this jurisdiction. However, on occasion, other types of guarantees are also encountered, including as non-recourse carve-out "bad boy" guarantees.

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4.2 Non-Recourse Carve-Out Guarantees

No rules or limitations apply to non-recourse carve-out guarantees.

4.3 Guarantee Enforceability

Rhode Island has a typical Statute of Frauds which requires that guarantees be memorialised by a writing (R.I. Gen. Laws § 9-1-4(4)). Otherwise, there are no unusual rules in this jurisdiction pertaining to enforceability of guarantees.

In many contexts, the Rhode Island Supreme Court follows rules expressed in the American Law Institute's Restatement of the Laws for the relevant subject matter. Accordingly, the reader is referred to the Restatement (Third) of Suretyship and Guaranty (1996) for specific questions.

4.4 Expedited Judicial Procedures and Statutory Limitations

There are no expedited judicial procedures available in the jurisdiction that are particularly appropriate in a guarantee-enforcement context.

There are no statutory rules affecting a lender's ability to enforce guarantee provisions. In many contexts, the Rhode Island Supreme Court follows rules expressed in the American Law Institute's Restatement of the Laws for the relevant subject matter. Accordingly, the reader is referred to the Restatement (Third) of Suretyship and Guaranty (1996) for specific questions.

5. Other Issues Arising in Distressed Situations

5.1 Receivers

5.1.1 Appointment of Receivers

The law pertaining to the appointment of a receiver in Rhode Island is set down in several places. A practitioner should be familiar with

Part 13 of the Rhode Island Business Corporations Act, R.I. Gen. Laws Title 7, Chapter 1.2; Rule 66 of the Rhode Island Superior Court Rules of Civil Procedure; and the Rhode Island Commercial Receivership Act, R.I. Gen. Laws Title 10, Chapter 21.

A receivership proceeding is typically commenced by the filing of a petition which is then presented informally to the Superior Court justice in charge of the Business Calendar of the relevant county. The justice is generally empowered to immediately appoint a receiver on a temporary basis, or to conduct appropriate proceedings, with notice to relevant parties, as the circumstances may require.

By executive order, the Rhode Island Supreme Court has established a process for establishment of a list of qualified attorneys to serve as receiver on a rotating basis. See Executive Order No 2012-06 for the most recent version of that order. In practice, judges have wide discretion to deviate from the rotation and often do so, either sua sponte or at the request of the petitioning party.

5.1.2 Common Scenarios for Receivership Appointment

The most common ground for the appointment of a receiver is the insolvency of the subject entity or of the owner of the asset in question. Other grounds include risk of waste, loss, dissipation, misapplication, or impairment of the assets of an entity, deadlock in the management of an entity's affairs, or illegal, oppressive, or fraudulent acts by the managers of the subject entity.

A receiver may also be appointed to wind up the affairs of a legal entity when that entity's legal existence has been revoked, or the entity has

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been dissolved under the statute governing that entity type.

5.2 Real Estate Bankruptcies

5.2.1 Requirements for Single Asset Bankruptcy

Bankruptcy is a matter of federal law. While the bankruptcy court sitting in Rhode Island could theoretically establish local rules and procedures pertaining to single asset cases, it has not done so.

A single asset real estate bankruptcy is permissible under the United States bankruptcy laws. There are no unique requirements or procedures to commence a single asset real estate case.

However, once such a case is commenced, there are unique requirements designed to minimise the duration of such bankruptcies, which are often mere two-party disputes for which bankruptcy court intervention is less desirable. These requirements are found in 11 U. S. C. § 362(d)(3).

This statute establishes a limited time frame within which a single asset real estate debtor must either: a) propose a plan that has a reasonable possibility of being confirmed within a reasonable time; or b) commence making monthly payments to the secured lender according to a formula set forth in the statute. If the debtor fails to comply with either of these requirements, then a lender should be able to obtain prompt relief from the automatic stay to foreclose its mortgage or otherwise enforce its rights under non-bankruptcy law.

5.2.2 Impact of Bankruptcy Filing

The commencement of a bankruptcy proceeding creates an automatic stay that prevents a lender from foreclosing or otherwise enforcing its rights under the relevant loan documents. The lender

may not resume foreclosure or other collection actions until the automatic stay terminates. Generally, the automatic stay will terminate at the conclusion of the bankruptcy proceeding or if the lender establishes cause for the court to terminate or give relief from the automatic stay at an earlier time.

A bankruptcy proceeding of a borrower does not automatically stay collection actions against a guarantor who has not itself filed for bankruptcy. It is conceivable that the bankruptcy court overseeing a borrower bankruptcy could issue a stay of actions against a guarantor, but this is relatively uncommon. Accordingly the bankruptcy of a borrower will ordinarily not impact the lender's ability to pursue remedies against a guarantor.

6. Arbitration

6.1 Prevalence of Arbitration Clauses

Rhode Island has several statutory vehicles that enable a claimant in a real estate dispute to obtain a relatively quick resolution to the matter in the Superior Court, negating one of the primary advantages of arbitration. These include: the immediate recording of a Lis Pendens in the chain of title to the property in dispute; the filing of a lawsuit that includes a claim for immediate injunctive relief (temporary restraining order), together with a claim for Declaratory Judgment; and if the dispute involves a claim by a contractor for money owed for improvements to real estate, a Mechanics' Lien can be filed. These mechanisms provide for rapid hearings, and often result in a quicker resolution than can be attained in arbitration. In addition, disputes over real estate often require the filing for preliminary injunction relief to maintain the status quo. As a result, the enforcement of an arbitration clause

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may result in the claim being litigated in multiple venues.

6.2 Arbitration or Litigation?

In Rhode Island, the Superior Court has created a Business Calendar that provides a forum for a rapid resolution of issues early in any litigation. The business calendar judges will conference the case almost immediately, and critical issues can be addressed up front. The Superior Court also has a calendar that exclusively handles real estate matters. Litigants are often afforded an opportunity to mediate a dispute with another Superior Court judge. In light of these practices, it is most common for real estate related disputes to be litigated in the Rhode Island Superior Court.

6.3 Prevalence of Mediation

See 6.2 Arbitration or Litigation?

7. Provisional Remedies

7.1 Types of Provisional Remedies in Real Estate Disputes

In a dispute over the ownership of a parcel of real estate in Rhode Island, an aggrieved party has a powerful tool to preserve the status quo until the matter is resolved. The Rhode Island legislature in R.I. Gen. Laws § 9-4-9 enacted a broad statute allowing a litigant to record a Lis Pendens in the chain of title to the property which is the subject of the dispute. The filing of the Lis Pendens can be recorded immediately after the legal claim is filed in the appropriate court.

7.2 Requirements for Obtaining a Provisional Remedy

It is important to note that the Lis Pendens does not create a “lien” against the property, it only places all prospective purchasers on notice of

the pendency of the dispute. The Lis Pendens should include a brief statement of the substance of the dispute, the identity of the litigants, the court where the matter is pending and the date of filing. Because the Lis Pendens only constitutes notice of the dispute, the Rhode Island Supreme Court has held that pre-filing notice to the record owner is not required. A copy of the Lis Pendens must be mailed to all parties to the pending lawsuit within seven (7) days of its recording.

7.3 Risks of Improper Use of Provisional Remedies

Once the Lis Pendens is recorded any potential purchaser is deemed to be on notice of the claim against title by the individual or entity recording the Lis Pendens. As a practical matter, the recording of a Lis Pendens impacts the marketability of the subject property. Once recorded, an aggrieved property owner can file a motion to quash the Lis Pendens. The record title owner often files a counterclaim asserting a claim of slander of title. If the filing of the Lis Pendens results in a lost sale of the property to a third party, the potential damages can be substantial, if the Lis Pendens is found to have been improperly filed.

7.4 Availability of Temporary Injunctions

As in most other jurisdictions, litigation involving real property often includes a claim for injunctive relief. Depending on the timing of any impending transfer of the interest in the property, the litigant may seek a Temporary Restraining Order (TRO) in addition to the filing of the Lis Pendens. In Rhode Island, a litigant can seek an immediate hearing on a TRO in Superior Court either on the Formal and Special Cause Calendar or before a judge on the Business Calendar sitting in the County where the property is located. A litigant should file an affidavit along with the motion for

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injunctive relief setting out facts supporting the required elements. Pursuant to Rule 65(a) of the Superior Court Rules of Civil Procedure the moving party must show that: 1) the plaintiff has a likelihood of success on the merits; 2) will suffer irreparable harm without the requested injunctive relief; 3) the balancing of the equities are in the moving party's favour; and 4) the granting of the injunctive relief will preserve the status quo. The irreparable harm standard is generally satisfied due to the unique nature of real estate that precludes the ability to quantify the resulting harm to the aggrieved claimant.

7.5 Proving Irreparable Harm

See 7.4 Availability of Temporary Injunctions.

7.6 Mechanic's Liens

Rhode Island's Mechanics' Lien Statute, R.I. Gen. Laws §§ 34-28-1 through 34-28-37 creates a powerful mechanism for obtaining full payment for work performed improving real property. The filing of a Mechanics' Lien is a multi-stage process, with many specific filing and timing requirements that are strictly enforced. A properly recorded Mechanics' Lien includes the filing of a Lis Pendens. Once perfected, notice and a copy of the lien is mailed to every person or entity that has an interest in the property including mortgage holders, lien holders, and

other mechanics' lien holders. A timely response must be filed by every person or entity receiving notice that has an interest in the property. The failure to timely file an answer, known as an "Account and Demand" by the return date, may result in the loss of priority to the Mechanics' Lien holder. This can and has resulted in recalcitrant lien holders of record losing their priority position vis-à-vis the Mechanics' Lien holder. A Mechanics' Lien holder is entitled to attorneys' fees and costs associated with pursuing payment. A Mechanics' Lien holder can seek to foreclose on the property to satisfy the amount owed.

8. Real Estate Investment Trusts (REITs) and Single-Family Rentals (SFRs)

8.1 REIT/SFR Regulation

At this time, Rhode Island does not have law or regulatory schemes specific to REITs. They are, however, closely regulated at the federal level, and it is advisable to seek specialised counsel in connection with the creation, management, and taxation of REITs.

8.2 Public Interest

See 8.1 REIT/SFR Regulation.

Trends and Developments

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Short-Term Rental Law in Rhode Island

The legality and regulation of short-term rentals, which in some municipalities are defined as “guest house” or “transient guest facility” uses (STRs), has, with the explosion in popularity and use of hosting platform websites such as Airbnb, VRBO, and others, led to a legal quagmire of land use issues and litigation in jurisdictions throughout the country. Rhode Island is certainly no exception to this, and has produced a number of recent court decisions arising from land use disputes involving STR issues in different Rhode Island cities and towns; these decisions all have involved, in part, disputes concerning the application and construction of statutory language and whether such language pre-empts municipalities from prohibiting or overregulating STRs.

In 2021, the Rhode Island General Assembly passed legislation which made advertising STRs through online platforms explicitly legal. The passage of this legislation was contemporaneous with the creation of a statewide STR registration scheme administered by the Rhode Island Department of Business Regulation (DBR). As in many jurisdictions, there are significant disparities in how STRs are regulated though local zoning ordinances and municipal registration requirements governing shorter-term lease arrangements. For example, some municipalities in Rhode Island have amended their zoning ordinances in recent years to include specific definitions for STR uses, which are generally rentals for a period of thirty (30) days or less. These zoning amendments also, in some cases, have included more stringent dimensional and use restrictions on STRs, prohibiting these uses in specific zones, imposing increased parking capacity requirements, and further restricting occupancy limits in STR housing, among other restrictions. Additionally, some municipalities have, either in lieu of or in addition to such zon-

ing amendments, created local and often onerous registration requirements, which are a prerequisite to the use being deemed permitted in that particular city or town. Other municipalities may not yet have any specific provisions in their zoning ordinances related to STRs, or may only have a registration scheme but no accompanying zoning code provisions. These disparities, in conjunction with the statutory scheme discussed below, have led to a number of contentious legal disputes, and many legal questions remain unanswered until further clarity is provided either by the courts or the state legislature.

Rhode Island General Laws § 42-63.1-14 governs STR advertising on third-party hosting platforms. The statute was the first to explicitly address third-party hosting platforms such as Airbnb and VRBO. The statute allows for advertising of STRs on such third-party hosting platforms so long as the property listed is registered with the DBR. Under the statute, “short-term rental” means “a person, firm, or corporation’s utilization, for transient lodging accommodations, not to exceed thirty (30) nights at a time.” (R.I. Gen. Laws § 42-63.1-14(b).) Importantly, the statute also provides that:

“(a) For any rental property offered for tourist or transient use on a hosting platform that collects and remits applicable sales and hotel taxes in compliance with §§ 44-18-7.3(b)(4)(i), 44-18-18, and 44-18-36.1, *cities, towns, or municipalities shall not prohibit the owner from offering the unit for tourist or transient use through such hosting platform, or prohibit such hosting platform from providing a person or entity the means to rent, pay for, or otherwise reserve a residential unit for tourist or transient use* “ (RI Gen Laws §42-63.1-14(a)) – [emphasis added].

As noted above, municipalities throughout Rhode Island have employed vastly different approaches in regulating STRs. Generally, most municipalities have effectuated some form of local STR regulation through their zoning ordinances and/or separate registration requirements. For example, the City of Newport and the Town of Narragansett have pursued more restrictive approaches in an effort to significantly limit STRs. Newport's ordinance only permits STRs in a few of the City's nineteen (19) zoning districts and prohibits STR uses in all nine (9) of the residential zoning districts. For properties where these uses are allowed either by right or by special use permit, the ordinance imposes further dimensional and use constraints which are more restrictive than what is applicable to an ordinary residential use.

Similarly, in May of 2024, the Town of Narragansett passed ordinances restricting STRs; however, Narragansett employed a different approach than that of Newport. The Narragansett ordinance banned all rentals with durations of less than seven (7) days and required a Short-Term Rental permit for rentals lasting from 8-30 days. The ordinance further limited the number of Short-Term Rental permits allowed in the town, and this cap will progressively decrease each year. Various municipalities, including Newport, have also enacted separate ordinances that prohibit property owners from advertising on third-party hosting platforms if using the property, as an STR would otherwise violate the zoning ordinance. Both Newport and Narragansett additionally require STR owners to register their properties with the municipality and meet various requirements for such registration.

Many of these more recent ordinance amendments have sparked litigation challenging the legality of these restrictions. Various arguments

have been advanced regarding the legality of certain municipal ordinance provisions, including, but limited to, lack of delegation of authority by the state and pre-emption under R.I. Gen. Laws § 42-63.1-14. These arguments are often accompanied by other constitutional arguments and legal challenges. A number of recent Rhode Island Superior Court decisions present varying rulings and analyses on these issues. In October of 2024, one Superior Court judge issued a temporary restraining order and a preliminary injunction against the Town of Narragansett, prohibiting the implementation of the STR ordinance in the Town – see *Narragansett 2100, Inc. et al. v Town of Narragansett et al.*, No WC-2024-0372 (R.I. Super. 2 October 2024) – [Superior-WC-2024-0372.pdf](#). That Court held that, because the Narragansett ordinance entirely prohibits advertising of STRs for a period of less than seven (7) nights, the Plaintiffs had a reasonable likelihood of success on the merits on their argument that the ordinance conflicts with the above-quoted statutory language which provides that cities and towns shall not “prohibit the owner from offering the unit for tourist or transient use through such hosting platform,” and the ordinance may therefore be pre-empted by the state statute. (*Id.*) Additionally, in January 2025, a different Superior Court judge issued a decision upholding an ordinance regulating STRs, enacted by the Town of Exeter, upholding that Town's ordinance – see *Mark Hughes & Tonya Hughes v Town of Exeter Zoning Board of Review et al.*, No WC-2024-0058 (R.I. Super. 6 January 2025) – [Superior-WC-2024-0058.pdf](#). While the Exeter case involved a different set of circumstances and local regulations (ie, whether a special-use permit should have been required for the property owner to be able to conduct STR uses of the property), both decisions cite to §42-63.1-14(a) in their analyses of the parties' pre-emption arguments that the state statute does not allow towns to have “blanket prohibition[s]

on short-term rental[s]”. (*Id.*). However, those two decisions raise an important distinction – that the state statute creates a right to advertise STRs on hosting platforms, but does not necessarily create a right to use property as STRs. This distinction was why the Court in the Exeter case ruled for the Town, because, unlike the Narragansett ordinance, the Exeter ordinance does not expressly restrict a property owner’s right to advertise their property for STR use.

Newport has been enforcing its short-term rental regulations through quasi-criminal enforcement actions in its municipal court against property owners both for conducting STR uses without having a valid guesthouse registration permit (which owners cannot even qualify for in any residential zone unless the use is part of a “Home Occupation” use where the owner resides in the property full time or unless the City has on file a preexisting Special Use Permit) and also for simply having advertisements posted on a hosting platform website. These issues were the subject of a number of recent Superior Court decisions issued by a different judge (eg, *City of Newport v Chubby Hosp., LLC*, No N3-2023-0287A, 2024 WL 401592 (R.I.Super. 26 January 2024) in which that Court held that there was no direct pre-emption or implied pre-emption issue with Newport imposing additional registration requirements at the local level and pursuing enforcement actions against property owners for having advertisements posted online without having obtained a local guesthouse registration permit.

Outside of Rhode Island, other jurisdictions have also produced recent court decisions involving the pre-emption doctrine; for example, in a recent Hawaii case, a court adjudicated a dispute as to whether a state statute pre-empted municipal ordinance restrictions (see *Hawaii Legal Short-Term Rental All. v City & Cnty. of*

Honolulu, 709 F. Supp. 3d 1141 (D. Haw. 2023)). Another common issue which is litigated in the context of STRs is when there is a lack of specific zoning ordinance provisions and regulations governing STRs, or when there are ambiguous local ordinance provisions. For example, the Connecticut Supreme Court held in one recent decision that a zoning regulation, which allowed long-term rentals of single-family dwellings and defined “single-family dwelling” as a dwelling “occupied exclusively as a home or residence for not more than one family” did not exclude the use of a single-family home for short-term vacation rentals (see *Wihbey v Zoning Bd. of Appeals of Pine Orchard Ass’n*, 350 Conn. 87, 323 A.3d 324 (2024)). In this Connecticut case, the definition of “single-family dwelling” did not clearly and unambiguously mean that only long-term rentals of such dwellings were permitted, but reasonably could be interpreted to mean that only structures designed and used as houses or dwellings for occupation by a single family at a given time were permitted. Other court decisions often involve various constitutional questions, including whether a local regulation of STRs constitutes a regulatory taking, violates due process rights, or violates the contracts clause.

As municipalities throughout Rhode Island and the country continue to wrestle with how to validly regulate STRs, legal disputes and zoning challenges will continue to arise. Rhode Island has the added distinction of the state statute which seems to validate property owners’ rights to advertise on hosting platforms, although this issue continues to be a source of contention. Practitioners representing property owners who are using, or intend to use, property for STRs should, in addition to reviewing the local ordinance provisions in conjunction with prevailing statutes and caselaw, continue to monitor ongoing litigation regarding the topic and how it may impact STR property rights.

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