



# Real Estate



## OVERVIEW

New Mexico real estate encompasses a broad variety of types and uses: office, industrial, multi-family, retail, mixed use, rural and urban vacant land, and ranching and agriculture. Our real estate attorneys provide legal counsel in each of these contexts for buyers and sellers, borrowers and lenders, industrial and commercial developers, and commercial landlords and tenants. Our services regularly include negotiation and drafting of documents, due diligence, title review, and land use and subdivision compliance. We get to know our clients' businesses and we build lasting relationships that further the long term goals of our clients.

### Commercial Real Estate Transactions

Clients seek us out for acquisition, development, leasing, financing, and construction of industrial and commercial real estate from negotiation to closing. With the firm's long history in New Mexico and our team of seasoned professionals, we work effectively with title companies, government officials, opposing counsel and real estate professionals to manage our clients' transactions efficiently.

New Mexico is a checkerboard of private, state, federal and Indian lands. Our real estate team assists all types of clients in navigating the complex issues that arise from this diverse landscape. We regularly work with water rights, title issues, and coordination of surface and mineral estate ownership and uses. We handle transactions involving Indian lands and land grants. We work on federal and state leases, rights of way, and land exchanges. Our familiarity with issues that are unique to New Mexico is instrumental to the success of our clients' transactions.

### Development and Land Use

From rural energy and agricultural uses to urban infill projects, New Mexico is full of development opportunities. Energy developers of all types regularly turn to us to help with siting, financing and structuring their projects. Our real estate lawyers work closely with our [water rights](#), [environmental](#) and [public lands](#) lawyers to guide businesses through the unique title, mineral and water issues that energy projects raise. We assist with tax abatement processes, such as issuance of industrial revenue bonds and applying for state tax incentives.

Our lawyers also regularly assist urban developers, whether a greenfield project, redevelopment opportunity, tax incentive transaction, or public-private partnership. We represent condominium and hotel developers, senior living facilities, nonprofit redevelopment agencies, and real estate investment companies. Clients rely on us to represent their real estate interests in land use, subdivision and zoning processes. We offer thoughtful guidance and structure well-planned deals to achieve our clients' objectives, even in the most complex transactions.



## Leasing

Our lawyers have a range of experience in sophisticated leasing transactions, including shopping centers, industrial sites, hotels, and mixed-use developments. We have expertise reviewing complex commercial leases for both landlords and tenants. Our lawyers frequently leverage their knowledge of state and federal leasing procedures to assist companies who lease public lands for various purposes, including energy development, cattle operations and industrial uses.

## EXPERIENCE

- Represented BHP Billiton New Mexico Coal, Inc., in the sale of 100% of the stock of its subsidiary, San Juan Coal Company (SJCC), to Westmoreland Coal Company. Modrall Sperling's representation included seller's due diligence, negotiating and drafting a detailed stock purchase agreement and related agreements regarding employee and employee benefits matters, transition services, among other aspects. This transaction was closely intertwined with negotiations between Westmoreland and Public Service Company of New Mexico (PNM), as those companies have developed a new coal supply agreement and related agreements to govern the services that SJCC will provide to PNM following the close of the stock sale transaction. The transaction will enable the San Juan Generating Station and San Juan Underground Mine to continue operations for at least an additional five years beyond their current contract terms.
- We have worked with a number of charter school foundations to secure property and construction financing for the schools they support. Most recently, we served as counsel to ASK Academy Education Foundation, a support organization to a New Mexico charter school, for both the real estate acquisition and bond financing. Legal requirements placed on New Mexico charter schools necessitate a layered ownership and leasing structure whereby the non-profit foundation purchases the property, obtains the financing, and leases the property to the school under a build-to-suit lease arrangement. The lease requires state approvals, and meeting the expectations of regulators and lenders requires a solution that meets the legal requirements and bond purchaser expectations. Modrall Sperling provides the insight to do so. ASK Academy, one of the state's premier charter schools, has recently expanded to include grades 6-8, and the additional space in their new facility is imperative to their continued expansion. The structure of the transaction allows ASK to use public funds to equip their building, something that is prohibited as long as a school is in a private building not subject to an approved lease-purchase arrangement.
- Represented the Neighborhood at Sommerset, LLC, a wholly-owned subsidiary of Haverland Carter Lifestyle Group, in acquiring Sommerset Assisted Living outside of Oklahoma City, Oklahoma. Modrall Sperling negotiated and drafted the Asset Purchase Agreement and related closing documents and assisted with due diligence, employment and licensure matters and attendant transactional requirements. Haverland's first acquisition outside of New Mexico marks an important milestone for the long-standing firm client and iconic Albuquerque institution. The acquisition financing was achieved through tax-exempt bonds, with Modrall Sperling serving as bond counsel. This involved coordination of a private placement bond transaction with a facility acquisition requiring governmental licenses precision and vigilant attention to keep all aspects of the transaction moving toward simultaneous closing.
- Assisted a utility-scale solar developer in acquisition of the membership interest of an existing solar power project entity. Modrall Sperling assists with New Mexico law aspects of the transaction and due diligence, as well as reviewing and advising the client on the industrial revenue bond transaction being completed by the target company prior to acquisition. This transaction is another in a number of renewable energy developments Modrall Sperling has worked on, and we continue our team approach to providing broad-based legal support to developers of renewable energy projects in New Mexico.
- Represents Albuquerque Public Schools in its real estate related work. Most recently, we have been involved in negotiating and drafting the purchase agreement and performing the title work and other due diligence for a large commercial property and several leases for school bus facilities, as well as day to day issues relating to easements, leases of bill board space,



responding to requests for assistance relating to existing and expired land use agreements with the City of Albuquerque as well as with the Middle Rio Grande Conservancy District. We also assist in obtaining any required approvals from the State Board of Finance.

## KEY CONTACT

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## RELATED INDUSTRIES

Business in Indian Country  
Construction and Design  
Educational Services and Institutions  
Energy  
Financial Services  
Manufacturing  
Mining  
Railroads  
Ranching and Agriculture