

SERVICE

Real Estate Litigation



ATTORNEYS

Jessica Jeffrey
Steven S. Broadley
Joseph P. Crimmins
James E. O'Connell, Jr.
Dustin F. Hecker
Catherine J. Savoie
Ann M. Sobolewski
Adam L. Littman

Posternak attorneys represent landowners, developers, abutters and neighborhood associations before planning boards, zoning boards of appeals, administrative land use agencies and, when necessary, in the trial and appellate courts in a variety of land use related matters, including boundary disputes, enforcements of rights of first refusal, constitutional issues, actions to quiet title, reformation of instruments and eminent domain issues. We have also represented municipal boards and officers defending a variety of claims against them. We have appeared on behalf of our clients in every level of state and federal courts, including the Massachusetts Supreme Judicial Court and the United States Supreme Court.

ENVIRONMENTAL LITIGATION

Landowners with environmental issues seek Posternak's expertise and advice in acquiring, selling and cleaning up contaminated sites, environmental permitting, obtaining insurance coverage relating to cleanups, and negotiating and drafting transaction documents specific to environmental issues. We represent landowners on matters concerning permitting and cleanup issues before state and federal courts and the Department of Environmental Protection.

LANDLORDS AND TENANTS

Posternak attorneys also represent landlords and tenants in their relationships with each other, and assist in the negotiations during an economic downturn to resolve issues related to the lease relationship. We handle property damage claims, evictions and Chapter 7 and Chapter 11 bankruptcy matters for landlords, tenants and mortgagees. Bankruptcy matters handled by Posternak include assisting landlords when a lease is assumed and assigned to third parties in a bankruptcy sale process, filing claims on behalf of tenants against landlords, and obtaining relief from the automatic stay for purposes of exercising a mortgagee's rights under applicable state law to recover property.

EXPERIENCE

The cases below are only a sample of the wide range of real estate litigation matters handled by Posternak attorneys. We provide advice to clients on land use, environmental, bankruptcy and landlord-tenant matters early enough in the process to make a difference. We assist our clients in developing both litigation and litigation-avoidance strategies.

- Challenged a neighborhood development on behalf of abutters by successfully appealing five special permits and negotiating an exceptional settlement for the abutters.
- Restored a landowner/developer's right to develop five lots by securing a Land Court ruling invalidating a special law, which conflicted with the Commonwealth's zoning protection.
- On behalf of a shopping center owner/developer, we negotiated the cleanup of a Tier 1 site contaminated by perchloroethylene used by a drycleaner, which included using innovative technology to supervise the cleanup, and resulted in the settlement of an insurance claim which covered all costs of the cleanup and enabled the developer to purchase, cleanup and incorporate into the shopping center an abutting parcel that was contaminated by the drycleaner.
- Obtained title by adverse possession over property in Brookline and preserved the Land Court's decision granting title in an Appeals Court decision which clarifies the ability of a property owner to use the actions of a tenant to establish adverse possession.
- Successfully defended property owner against municipality's claim that a nonconforming use of property had been extinguished which allowed resale of the property for over one million dollars and unlocked the value in adjacent property.
- Defended oil company in multi-party contamination case with no liability attaching to the company for its actions.
- Represented major shopping center owners in protecting their leasehold interests in major bankruptcy cases including Kmart, Service Merchandise and Bradlees.
- Obtained a speedy injunction preventing a city from enforcing a general bylaw aimed at blacklisting a developer from pursuing further development opportunities.
- Won a \$500,000 judgment for a landowner/developer in an easement dispute.
- Negotiated with potentially responsible parties and the insurer of a Superfund Site contaminated by dumping of hazardous materials in the leaching fields, which enabled the landowner to cleanup the site containing an apartment building and convert it to a condominium.
- Assisted shopping mall owner seeking to eliminate the mall by resolving tenants' property rights through negotiation and eviction proceedings.
- Achieved a successful settlement for a client whose defense of a tax taking case was in the Appeals Court on constitutional due process grounds.