



Navigating Ground-Up Development Projects

From Planning to Exit

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

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SEYFARTH'S DEVELOPMENT PRACTICE

From conception to completion, clients rely on Seyfarth's real estate lawyers for practical and entrepreneurial advice. Our experienced deal teams handle all aspects of real estate development including due diligence, regulatory review and permitting, development agreements and utility extension agreements, acquisitions, build-to-suit leasing and ground leasing, construction and project financing, joint venture agreements and institutional investment, and construction of large, complex projects. We also routinely handle post-development asset management, leasing, refinancing, and disposition matters.

Clients also look to our real estate development lawyers to quarterback transactions that cross multiple components such as construction, project finance, environmental, corporate, litigation, ADA, and tax-related issues. We leverage firm resources to provide seamless advice across these critical practice areas.

40+

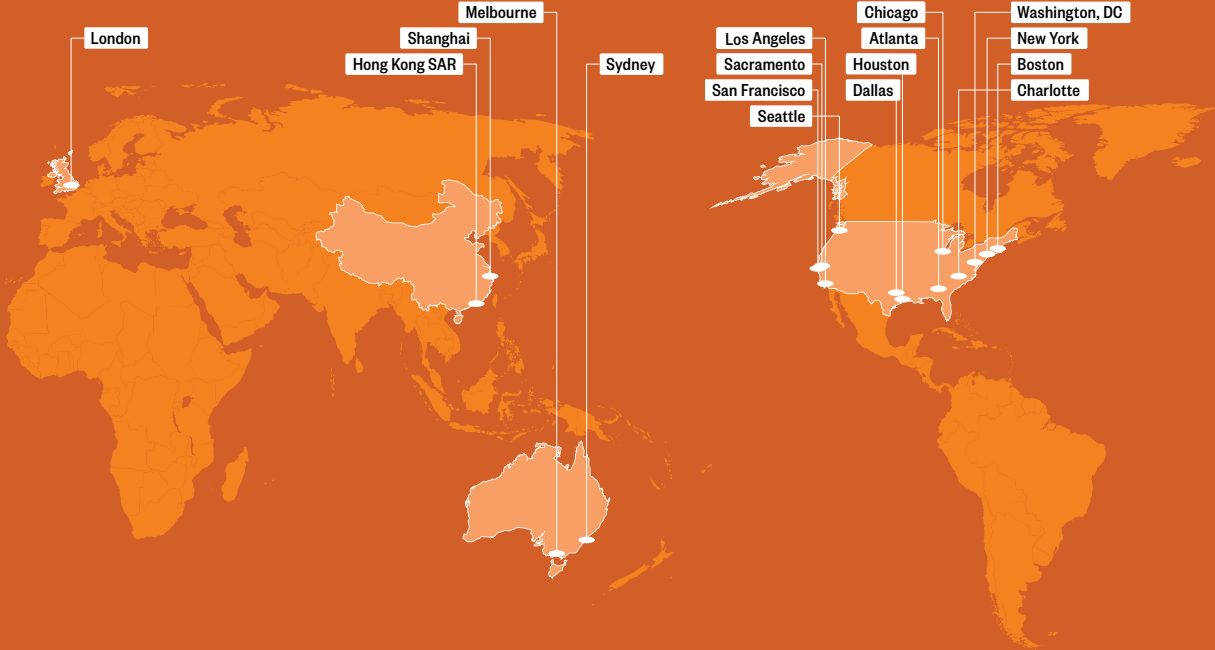
Attorneys who devote a sizable portion of their practice to development projects

140+

Real estate attorneys in key markets across the US

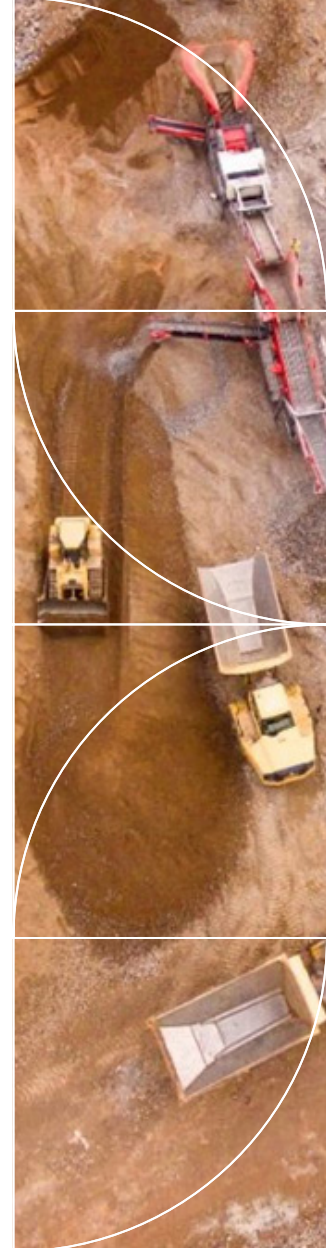
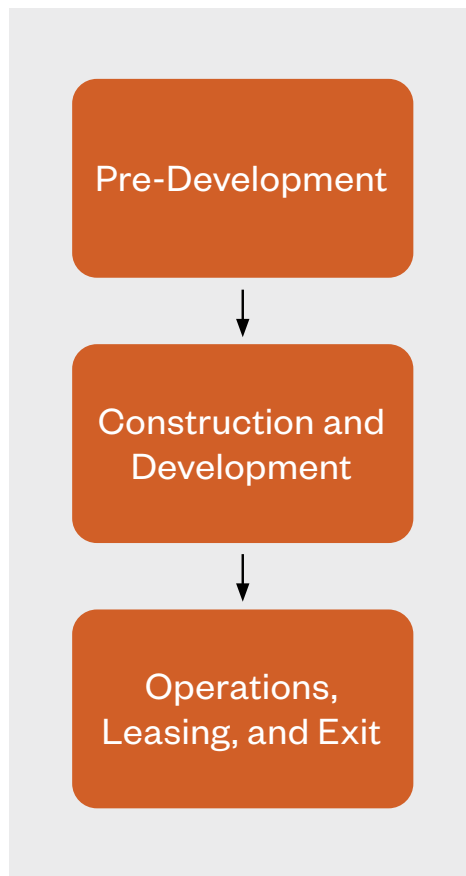
SEAMLESSLY SERVING REAL ESTATE CLIENTS

Seyfarth is the **5th** largest real estate practice among AmLaw 100 law firms, helping clients close more than **\$50 billion** in transactions since 2022. The firm has 18 offices in the United States, London, Shanghai, Hong Kong, Melbourne, and Sydney, offering a national platform and an international gateway to serve our clients' real estate development needs.



STAGES OF A DEVELOPMENT PROJECT

From the early stages of land acquisition to post-construction focus on leasing, operations, or a potential exit, each stage of a real estate development project demands strategic foresight, deep understanding of market and regulatory realities, diligence, planning, and strategic negotiations to ensure maximum returns on investments. Seyfarth attorneys play a vital role in the client's team of real estate advisors from site selection to disposition, offering practical real estate and business strategies based on our extensive knowledge of real estate transactions, development, and construction.





PHASE ONE: PRE-DEVELOPMENT

Once a project site is selected, the pre-development stage includes feasibility studies and due diligence, site planning, permitting, and devising corporate and finance structures. Our lawyers are experienced in handling all aspects of this project phase, summarized in part as follows:

Initial Feasibility Studies

Prior to committing significant resources, developers conduct feasibility studies to assess the viability of a project, evaluating factors such as market demand, financial projections, regulatory requirements, and potential risks.

Land Acquisition and Diligence

Once feasibility is established, developers negotiate terms for acquiring or ground leasing land and perform diligence—considering title and survey matters, zoning regulations and permitting timelines, environmental and other physical site conditions, and utilities and construction cost, among other factors.

Joint Ventures

In complex or capital-intensive projects, developers often enter joint ventures with other parties, such as investors or other developers, to pool resources, share risks, and leverage expertise, thereby enhancing the project's prospects for success.

PHASE ONE: PRE-DEVELOPMENT

Consultant Agreements

Developers engage consultants such as architects, engineers, and biologists through formal agreements to provide specialized expertise crucial for ensuring compliance with regulations, design excellence, and project efficiency.

Development Agreements

These contracts outline the terms and responsibilities between developers and stakeholders, including municipalities or landowners, governing the development process, land use, construction, infrastructure, and any associated obligations or benefits.

Entitlements

Developers pursue entitlements from local authorities or governmental bodies, granting permission to proceed with a proposed development project, which may involve rezoning, development plan approvals, wetland fill permits, height or other variances, environmental assessments, or other regulatory processes.

Economic Incentives

Developers often seek economic incentives, such as tax credits, grants, or subsidies from government entities or economic development agencies to reduce costs, mitigate risks, and enhance the economic feasibility of development projects, promoting investment and community development objectives.

Financing

Discussions commence on loan terms and equity requirements for construction loans and/or bridge financing.

PHASE ONE: PRE-DEVELOPMENT

Diligence

Depending on the type and location of a project, our team can assist with:

- **Permitting, including Land Use Permits**
- **Rezoning**
- **Environmental and GeoTech**
- **Wetlands and Biological Review and Permitting**
- **Traffic Studies and Mitigation**
- **Easements and Utilities**
- **Site Plan and Development Plan**
- **Survey and Title Review**
- **Financing**
- **Development Agreements and Right-of-Way Agreements**

PRE-DEVELOPMENT EXPERIENCE

Represented an e-retailer with respect to a development agreement for a 600,000 square-foot warehouse in Wisconsin.

Represented a data center developer in acquiring and permitting a 168 MW data center campus in Atlanta, Georgia.

Represented a builder in a joint venture for the development of multiple multifamily projects in the Puget Sound region. The joint venture structure allows our client to act as the local developer and participate as an equity member in the joint venture.

Represented a developer in obtaining an individual permit from the Army Corps of Engineers for a 500-acre mixed-use project in Washington State.

Represented a client in the development of a 272-unit apartment project in Pennsylvania. The property is on a former golf driving range on top of abandoned mine shafts. The transaction involved complicated structuring with a distressed developer who previously permitted the development, including structuring to avoid seller's foreclosure.

Represented a developer in its ground lease of vacant land for the development of a state-of-the-art medical center in Texas.



PHASE TWO: CONSTRUCTION AND DEVELOPMENT

Once the financing, acquisition, and corporate structure is in place, the construction and development phase can begin.

Development agreements and construction contracts outline the terms and responsibilities between developers and municipalities, detailing zoning requirements, infrastructure provisions, and environmental considerations. These agreements serve as a roadmap for the project's progression, ensuring compliance with regulatory frameworks. Simultaneously, construction contracts specify project scope, timelines, and payment structures. Clear and comprehensive contracts minimize disputes and delays.

Negotiating and documenting easements is also crucial to safeguarding the project's integrity and ensuring unimpeded development.

Effective coordination and oversight during the development phase lay the groundwork for a successful real estate project, delivering value to investors and enriching communities.

PHASE TWO: CONSTRUCTION AND DEVELOPMENT

Development Agreements

During the construction and development phase, development agreements serve as the backbone of the project, outlining the roles, responsibilities, and obligations of all parties involved, including developers, contractors, architects, and municipalities. These agreements govern critical aspects such as project timelines, budgetary constraints, design specifications, and compliance with regulatory requirements.

Construction Contracts

Construction contracts between developers and contractors delineate the scope of work, project milestones, payment terms, quality standards, and dispute resolution mechanisms. These contracts play a vital role in ensuring the successful execution of the construction phase while managing risks and ensuring accountability among all stakeholders.

Easements and Utilities

As construction progresses, developers secure necessary easements and utilities to facilitate access to the site and ensure essential services such as water, electricity, sewage, and telecommunications are available to support the project. Negotiating easements and utility agreements involves coordinating with utility providers, neighboring properties, and regulatory authorities to meet the project's infrastructure needs.





PHASE TWO: CONSTRUCTION AND DEVELOPMENT

Vertical Construction

Vertical construction marks the physical manifestation of the development, involving the erection of buildings and structures according to architectural plans and engineering specifications. This phase encompasses activities such as site preparation, foundation laying, structural framing, MEP (mechanical, electrical, plumbing) installation, interior finishing, and landscaping, culminating in the completion and delivery of the commercial real estate project.

Marketing and Pre-Leasing

Prior to completion, developers engage in marketing and pre-leasing to generate interest from tenants or buyers. This involves negotiating leases, thereby reducing vacancy risks and enhancing the project's financial viability.

Permanent Financing and Conversion

Once construction is finished, developers secure permanent financing to replace interim construction loans or bridge financing. Often in the form of a mortgage, this financing provides the capital necessary to repay construction loans and support operations.

Property Management

After completion and occupancy, property management becomes essential for the day-to-day operation and maintenance of the commercial real estate asset.

Certificate of Occupancy (CO)

The CO is issued by local building authorities, indicating that a building or structure complies with applicable building codes and regulations and is suitable for occupancy. Obtaining the CO marks the transition from the development phase to the operational phase, allowing tenants or buyers to occupy the premises legally.

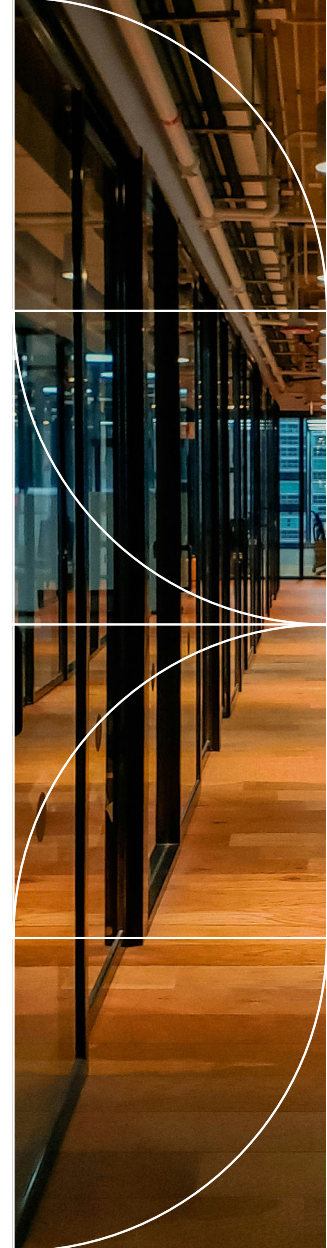
CONSTRUCTION AND DEVELOPMENT EXPERIENCE

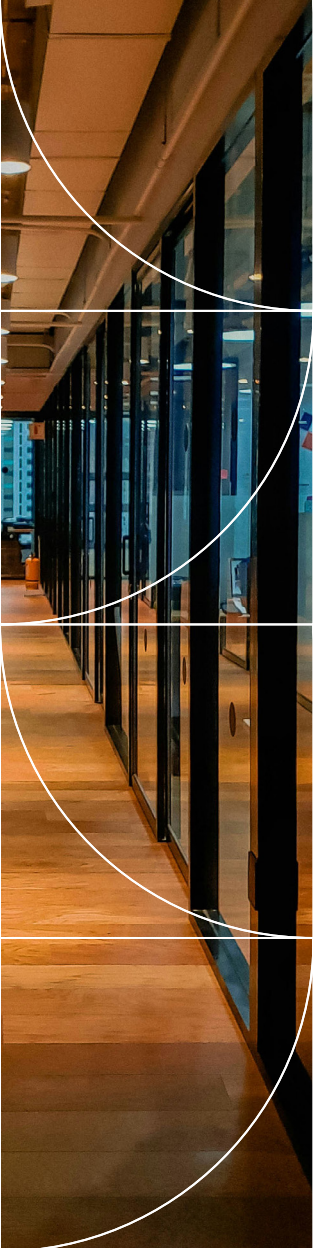
Closed a build-to-suit lease and ground lease financing for the development of a 1.4-million square-foot battery manufacturing complex in Arizona on a 300-acre site. The first phase of the \$5.5 billion project is the largest single investment ever for a stand-alone battery manufacturing facility in the US. The complex will include one facility for cylindrical batteries for EVs valued at \$3.2 billion and another facility for lithium iron phosphate (LFP) pouch-type batteries valued at \$2.3 billion.

Represented a large-scale retail developer in a \$250 million acquisition and construction of 11 acres of land in suburban Milwaukee, Wisconsin for redevelopment into a center containing retail stores, restaurants, entertainment venues, and apartments.

Represented a developer in a \$1.5 billion transportation infrastructure project in Washington, DC, which included drafting and negotiating the construction, design, and professional service contracts for our developer client and counseling on project issues as they arose.

Represented a sustainable data center platform in multiple raw land acquisitions and assisted with development matters. One of the acquisitions included a sustainable data center, featuring 180 megawatts of capacity, waterless cooling, and a 1.15 Power Usage Effectiveness (PUE) rating on a campus near downtown Atlanta. In addition, our team assisted with site acquisition, diligence, development, and construction, as well as resolving zoning, entitlement, and infrastructure issues, including power.





PHASE THREE: OPERATIONS, LEASING, AND EXIT

This marks the final phase of a real estate development project, where the primary focus shifts to the day-to-day management of the property and stabilizing occupancy to ensure a steady cash flow and maximize return on investment (ROI). Effective operations management is critical at this stage, encompassing property maintenance, tenant relations, and compliance with regulations to maintain high standards and tenant satisfaction. The goal is to achieve and maintain full occupancy through strategic leasing efforts, which involve marketing the property, negotiating lease agreements, and retaining quality tenants.

At this stage, the developer will also evaluate market conditions to explore the long-term value of the property. This might involve recapitalization efforts, such as adding venture partners to reinvest in the project, upgrading the property to enhance its value, or implementing new strategies to increase revenue. Additionally, the developer may consider an exit strategy to realize gains, which could include selling the property. This phase requires a thorough analysis of market trends, financial performance, and potential opportunities to ensure the best possible outcomes for the investment.

PHASE THREE: OPERATIONS, LEASING, AND EXIT

Marketing and Leasing

During this phase, the focus shifts to promoting and leasing available space within the commercial real estate property. This includes negotiating lease terms or sales agreements.

Hold/Sell Analysis

Developers and investors conduct hold/sell analyses to evaluate market conditions, projected cash flows, property appreciation potential, tax implications, financing costs, and investment objectives to determine whether to retain the property as a long-term investment or to sell.

Stabilization and Leasing

Once the property achieves a certain level of occupancy and operational stability, it enters the stabilization phase. Property managers continue to oversee leasing activities, tenant relations, and ongoing maintenance to ensure the property reaches its full income-generating potential.

Joint Venture/Recapitalization

Developers can opt to restructure the property's financing or ownership structure through a joint venture arrangement, where new investors inject capital or existing partners adjust their ownership stakes to further leverage resources, expertise, and capital for ongoing management, expansion, or repositioning initiatives aimed at enhancing the property's long-term value and profitability.

Sale of Property

When the decision is made to sell the property, developers or investors engage brokers, conduct property valuations, and market the property to potential buyers. The sale transaction involves negotiating terms, conducting due diligence, and finalizing the transfer of ownership, ultimately culminating in the sale of the asset.

OPERATIONS, LEASING, AND EXIT EXPERIENCE

Represented a real estate development firm focused on student housing in a \$70 million sale of a student housing facility in Syracuse, New York.

Represented a joint venture in a lease for the office portion of a building containing nearly 90,000 square feet in the West Loop neighborhood of Chicago.

Represented a multinational construction and development company in a \$140 million sale of the client's 165,000 square-foot "trophy-quality" office building in Washington, DC. Our work on this project started with the land acquisition and the sale represents the end of a three-year project.

Represented a national real estate investment company in the leasing of a newly developed 65,000 square-foot mixed-use office and retail facility in Berkeley, California, including negotiations with high-profile lifestyle brands.

Represented a real estate and development firm specializing in mixed-use retail/residential and hotels as a co-seller in a \$5.4 million sale of a retail property in Fairhaven, Massachusetts.

Represented a real estate company in a \$43 million acquisition, development, and sale of an 80-unit apartment building to a private family office.

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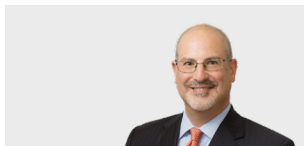
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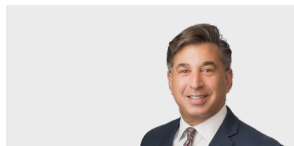
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