



W. David Bernard
Attorney/ Shareholder

Areas of Concentration

- Real Estate
- Mergers & Acquisitions
- Banking, Lending & Financial Institutions
- Corporate & Securities
- Cross-Border Business

Education

University of Texas at Austin
Juris Doctor *with honors*

United States Military Academy, West Point
Bachelor of Science

Admissions & Qualifications

State Bar of Texas

Certified in Commercial Real Estate Law by the Texas Board of Legal Specialization

Languages:

- English
- Spanish

Contact Information

- T: 915.546.8205
- F: 915.546.8333
- dber@ScottHulse.com

Attorney David Bernard is the immediate past President of ScottHulse and Chair of the Firm’s Board of Directors, positions he held from 2006 until February of 2018. His primary areas of practice are real estate, real estate lending, and mergers and acquisitions.

Mr. Bernard has been a shareholder at ScottHulse since 1984 and has been certified in Commercial Real Estate by the Texas State Board of Legal Specialization since 1983.

Mr. Bernard advises clients on all aspects of the acquisition, financing, development, construction, leasing, management, and sale of improved and unimproved real property as well as the formation of joint ventures, partnerships, and syndications of real estate projects. Regarding mergers and acquisitions, he represents clients in the buying and selling of privately held companies and divisions, and cross-border U.S./Mexico transactions.

Over the past 40 years, Mr. Bernard has represented clients in the sale or acquisition of privately held companies ranging in size from \$2 million to \$120 million in enterprise value. The nature of these transactions includes the sale and/or acquisition of assets, stock sales and purchases, and mergers. Many of the acquisitive and dispositive transactions have involved operations in numerous states and countries, particularly transactions that involved maquiladora operations of either the selling or buying company in Mexico.



Mr. Bernard has the highest Martindale-Hubbell peer rating of AV Preeminent. An AV Preeminent peer rating reflects an attorney who has reached the heights of professional excellence. He or she has usually practiced law for many years and is recognized for the highest levels of skill and integrity. He has been frequently named one of the “Best Lawyers in America” as well as a Texas Monthly Magazine “Texas Super Lawyer.”

Prior to joining ScottHulse, Mr. Bernard served in the U.S. Army. After completing the U.S. Army Airborne and Ranger Schools, he served first as a small unit commander with the 4th Infantry Division, and later as a trial counsel in the Judge Advocate General’s Corps.

Mr. Bernard received a Bachelor of Science degree with honors from The United States Military Academy, where he was the Corps’ middle-weight boxing champion. He received a Doctor of Jurisprudence with honors from the University of Texas School of Law, where he was associate editor of the Texas Law Review.

Mr. Bernard is a member of both the El Paso and American Bar Associations.

Except for his military postings, Mr. Bernard is a life-long resident of El Paso and is active in the community. He is a founder and director of Borderplex Realty Trust, a private real estate investment trust formed to acquire, develop and manage real estate in downtown El Paso, Texas and Ciudad Juarez, Mexico. Currently a director of the Greater El Paso Chamber of Commerce Foundation, Mr. Bernard is also a former member of the Chamber’s executive committee and has served as its outside general counsel in the past. He is currently a director of the El Paso Museum of Art Foundation and is the immediate past chairman of that Foundation. Mr. Bernard is a past president of the board of directors of St. Clement’s Episcopal School, and a former Chancellor of the Episcopal Diocese of the Rio Grande.

Representative Matters

Real Estate and Real Estate Lending

Mr. Bernard has advised clients on all aspects of the acquisition, financing, development, construction, leasing, management and sale of improved and unimproved real property as well as the formation of joint ventures, partnerships, and syndications of real estate projects. A sampling of projects includes the following:

- Represented a privately held real estate investment trust, in its organization and start-up, including private offering of \$30 million in units of beneficial interest.
- Represented a privately held real estate investment trust in the acquisition of some of El Paso’s largest high-rise office towers and in the acquisition of historic downtown landmark properties acquired for restoration and redevelopment.
- Represented the largest land developer in El Paso County, Texas in the development of integrated, mixed-use retail centers, including sales to major anchors, negotiation of joint

development agreements among the anchors and pad site users, and ground leases with major national tenants on the pad sites.

- Represented the largest land developer in Las Cruces in connection with the development of numerous major mixed-use development projects in the main Las Cruces growth corridor ranging in size from 8- to 10-acre office/retail projects to 100-acre-plus mixed-use commercial and multi-family housing (apartments and condominiums) projects.
- Represented national development companies and brokers in connection with private sector real estate projects on the Fort Bliss, Texas military installation including structuring of transactions and advice as to applicable legislative jurisdiction for private real estate projects on a federal enclave. This advice was essential in determining the applicability of state and local laws to development projects on a federal enclave, including building codes, minimum wage, and state real estate licensing (broker) statutes and, more importantly, the applicability of state and local taxes to private real estate developments on federal lands. These projects involved coordination with the army and other governmental agencies, including the office of the Fort Bliss Staff Judge Advocate. Mr. Bernard's prior experience as an officer in the Judge Advocate General's Corps was invaluable in assisting in these public/private development projects on a military installation.
- Represented the developers of the 110-acre infill development of the old Las Cruces, New Mexico Country Club Golf Course, one of the largest infill developments ever for a city of this size, from the acquisition stage through the current development of the infill site into an integrated, mixed-use project that includes a major regional medical center and planned mixed-use retail, residential and commercial combinations.

Mergers & Acquisitions

Mr. Bernard has represented clients in the sale or acquisition of privately held companies ranging in size from \$2 million to \$120 million in enterprise value. These transactions have included the sale and/or acquisition of assets, stock sales and purchases, and mergers. Many of the transactions have involved operations in numerous states and countries, particularly transactions that involved maquiladora operations of either the selling or buying company in Mexico. A sampling of projects includes the following:

- Represented a privately held, regional transportation company in the acquisition of Central Transportation Systems, Inc., one of the largest and most diversified household goods moving companies in the State of Texas. This transaction was structured as a taxable reverse subsidiary merger because of the diversified (though private) share ownership of the seller, and involved operations and facilities in every major city in Texas and many states of the Union.
- Represented major Borderplex-based and mid-western based manufacturing companies in the acquisition of other businesses representing expansion opportunities. These transactions have involved asset purchases, stock purchases, and mergers, and have involved companies based in California, Minnesota, Florida, New Jersey, Connecticut, Texas, Oklahoma, and other states,

many of which operations were consolidated to the Borderplex region following the acquisition. One particular transaction, involving the acquisition of the stock of a Connecticut Subchapter S corporation, was structured as a §338(h)(10) election under the Internal Revenue Code to allow the buyer to account for the transaction as an asset purchase rather than a stock purchase.

Business Succession Planning & Transactions

- Advised the owner of multiple transportation-related businesses on matters related to succession planning and tax matters related to the transfer of ownership interests to the founder's heirs and the division of assets and ownership interest among children employed by the family business and children not employed by the family business.
- Represented a family member, who was a minority shareholder in a family-owned manufacturing business, in a leveraged buyout of the business from other family members, including the founder and control shareholder.

Organizations

- El Paso Bar Association
- American Bar Association
- Borderplex Realty Trust
- Greater El Paso Chamber of Commerce Foundation
- El Paso Museum of Art Foundation Board of Directors, 2012 – Present (President, 2013 – 2016)