

American Conference Institute's 12th National Forum on

RESIDENTIAL MORTGAGE LITIGATION & REGULATORY ENFORCEMENT

Expert strategies for in-house and outside counsel on navigating litigation hurdles
and preparing for new and emerging government enforcement initiatives

Regulatory and enforcement priorities from:

James E. Elliott
Federal Trade Commission

R. Stephen Stigall
U.S. Attorney's Office, D.N.J.

Richard K. Hayes
U.S. Attorney's Office, E.D.N.Y.

J. Bryan Howell
HUD-OIG


Doug Foster
Tex. Dept of Savings & Mortgage Lending

Joseph Borg
Alabama Securities Commission


James A. Daross
Office of the Texas Attorney General


Thomas P. James
Office of the Illinois Attorney General


Judicial perspectives from:


 Hon. Fernando J. Gaitan, Jr.
U.S. Dist. Ct., W.D. Mo.


 Hon. Harold Baer
U.S. Dist. Ct., S.D.N.Y.

 Hon. Jeanne E. Scott (ret.)
U.S. Dist. Ct., C.D. Ill.

 Hon. Susan Davis Wigenton
U.S. Dist. Ct., D. N.J.

 Hon. F.A. Gossett III
U.S. Dist. Ct., D. Neb.

 Hon. Michael B. Kaplan
U.S. Bankr. Ct., D. N.J.

 Hon. Clifton B. Newman
South Carolina Circuit Court

September 26 – 27, 2013 | The Adolphus | Dallas, TX

Featuring in-house insights from industry experts, including:

Michael Goldberg
Wells Fargo

Nathan J. Bouchér
Homeward Residential

Nicholas M. Lewandowski
Wells Fargo

Brian C. Kelly
Flagstar Bank, FSB

Cindy S. Buhr
PrimeLending

Janna Lewis
Fay Financial/Fay Servicing

Michael K. Sullivan
Pulte Homes Inc.

Gene R. Clark
5 Arches, LLC

Scott Murphy
Wells Fargo

Eric Spett
Homeward Residential

John Fleming
Texas Mortgage Bankers Association

Karim Hatata
Liberty Home Equity

Sarah Jahner Mahloch
Planet Financial Group, LLC

Andrew Lusk
Quicken Loans Inc.

Sessions include:

- The CFPB's regulatory and enforcement agenda in anticipation of Jan. 2014
- Federal & state regulatory and enforcement insights in a multi-agency environment
- State Hotbeds: Stepped up litigation & enforcement at the state level
- The borrower's perspective: insights from the plaintiffs' bar and consumer advocates
- Fair lending: managing and defending against claims of discriminatory lending and assessing the status of 'disparate impact' in lending litigation and enforcement
- Class actions: Forced place insurance & HAMP litigation, and pivotal issues in play and coming down the pike from the Supreme Court on certification and CAFA
- Foreclosure litigation: standing and claims relating to MERS, contested foreclosures, and responding to borrower counterclaims & stall tactics
- Loan servicing: new regulations, borrower claims, & loss mitigation strategies

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Led by expert in-house counsel, key governing agencies, top firms, and renowned judges from across the nation, this is the only event that will fully prepare you to manage and defend against lending, servicing, and foreclosure litigation, and keep you ahead of the curve in regards to increased enforcement efforts and the evolving regulatory paradigm at both the state and federal level.

The industry is bracing itself after the CFPB turned its complete attention to residential mortgages, and their enforcement of this regulatory overhaul is expected in 2014. The coming year is going to bring a wave of new litigation, comprehensive regulations, and enhanced enforcement efforts. In addition, the industry continues to be faced with scrutiny over implementation of the AG settlement, allegations of foreclosure documentation errors and “robo-signing,” and an extremely active class action litigation landscape including Fair Lending, Forced Place Insurance and HAMP claims. It is more critical than ever for in-house and outside counsel to remain up-to-date on new and emerging borrower and investor claims as well as increased state and federal regulatory and enforcement initiatives.

In direct response, American Conference Institute is pleased to announce its 12th National Forum on Residential Mortgage Litigation & Regulatory Enforcement. This year's Dallas event, *co-chaired by Andrew Stutzman at Stradley Ronon Stevens & Young and Frank Hirsch at Alston & Bird*, has been revamped to provide attendees with up to the minute insights and strategies that are necessary to defend against these new claims and adapt to the evolving enforcement and regulatory landscape. Our unparalleled faculty of federal and state government officials, judges, expert in-house counsel, and leading outside counsel will provide you with strategic advice, critical insights, and comprehensive updates for:

- The CFPB's Regulatory and Enforcement Agenda: An In-Depth Look in Preparation for 2014
- How to Prepare and Respond to Examinations and Supervision in a Multi-Agency Environment
- Key State Nuances and Developments in Hotbed Jurisdictions such as California, Florida, New York, Illinois, Texas and Nevada
- Fair Lending: Managing and Defending Against Claims of Discriminatory Lending and Assessing the Status of 'Disparate Impact' in Lending Litigation and Enforcement
- Forced Place Insurance and HAMP Litigation: The Recent Explosive Causes of Action in Residential Mortgage Class Actions
- Pivotal Residential Mortgage Issues Currently in Play and Coming Down the Pike from the U.S. Supreme Court

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- ✓ In-house counsel from:
 - Mortgage lenders
 - Mortgage brokers
 - Banks and thrifts
 - Loan servicers
 - Loan purchasers
 - Investment banks
 - Hedge funds
 - Private equity
- ✓ Private practice attorneys specializing in:
 - Financial services
 - Mortgages
 - Bankruptcy
 - Securities litigation
 - Consumer finance
 - Regulations and compliance

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Day One: Thursday, September 26, 2013

7:15 **Registration and Continental Breakfast**

8:00 **Co-Chairs' Opening Remarks**

8:05 **In-House Insights on How CFPB's New Rules Are Affecting Litigation Management and Relationships with Outside Counsel; Responding to Enhanced Regulation and Enforcement; Compliance Strategies; Selecting and Retaining Law Firms and Distribution of Legal Spend in Today's Environment; and More**

Nicholas M. Lewandowski

Senior Counsel
Wells Fargo & Co. Law Department

Brian C. Kelly

Vice President, Associate General Counsel
Flagstar Bank, FSB

Eric Spett

SVP & Associate General Counsel
Homeward Residential

Scott Murphy

Senior Counsel, Consumer Lending and Corporate
Regulatory Division
Wells Fargo & Co. Law Department

Cindy S. Buhr

Executive Vice President and General Counsel
PrimeLending, A PlainsCapital Company

Michael B. Goldberg

Senior Counsel
Wells Fargo & Co. Law Department

Janna Lewis

EVP and General Counsel
Fay Financial/Fay Servicing

Karim Hatata

Compliance Leader
Liberty Home Equity Solutions, Inc.

Gene R. Clark

General Counsel
5 Arches, LLC

Michael K. Sullivan

Senior Vice President, General Counsel
Pulte Homes, Inc.

Sarah Jabner Mahloch

Vice President & Senior Counsel
Planet Financial Group, LLC

Andrew Lusk

Senior Corporate Counsel
Quicken Loans Inc.

Co-Moderators:

Andrew K. Stutzman

Stradley Ronon Stevens & Young, LLP

Alan Warfield

Jones Walker

- Challenges in preparing for January 2014: CFPB's new regulations go into effect
 - The impact on existing origination and servicing systems
 - The threat of the regulations being used as a cause of action before they are even formally in place
- The fallout from of the AG settlement: what impact did it have?; enforcement issues; continued compliance
- How are lenders and servicers adapting to the increased regulatory and enforcement landscape? What changes have they made? Who are they looking to for guidance?
- How is the industry dealing with fighting wars on two fronts- the federal side and the state side?
- What does corporate counsel find to be the most challenging aspects of revamping compliance procedures and policies in the wake of Dodd-Frank?
- Managing and responding to enforcement actions
- Adapting litigation strategies and settlement calculations in an era of legal uncertainty and increased regulation
- Identifying and minimizing exposure to risk
- Aftermath of 'robo-signing' and foreclosure documentation error litigation: looking back, practices to avoid this unnecessary litigation
- Foreclosure mediation
 - Best practices for maximizing its effectiveness
- Lessons learned from past litigation
 - Minimizing your exposure to future litigation and better managing future litigation
- Advising outside counsel on how to better support in-house counsel
- Top 5 issues that in-house counsel want their outside counsel to be thinking about
- How corporate counsel are responding to internal budgetary pressures
- In-house solutions for stretched legal departments
- Working with outside counsel: In-house pet peeves and concerns

10:05 **Morning Coffee Break**

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10:20 **The CFPB's Regulatory and Enforcement Agenda: Changes on the Horizon and Adapting Your Practice in Anticipation of January 2014 Implementation Dates**

Robert Lotstein

LotsteinLegal PLLC

Ronald Rubin

Hunton & Williams LLP

(former enforcement attorney at CFPB)

David N. Anthony

Troutman Sanders LLP

Douglas A. Thompson
Bryan Cave LLP

Albert J. Rota
Jones Day

- The CFPB's regulatory and supervisory agenda
 - Loan Originator Compensation
 - Ability to repay
 - QM/HOEPA Rules
- Servicing standards
 - CFPB enforcement initiatives against non-bank affiliated mortgage default servicers
 - CFPB and similar foreclosure look-backs
- Which UDAPs are being targeted most heavily by the CFPB?
 - Assessing the definition of abusive practices
 - Potential pitfalls for lenders and servicers
- CFPB examinations and enforcement actions: how to best prepare
 - Status and review of actual enforcement cases
- The amalgamation of RESPA/TILA
- Practical effects of the CFPB's initiatives on compliance and litigation strategies
- QWR's under the Dodd-Frank Act
 - Changes to the QWR provisions and the CFPB's mortgage loan complaint process
- Evaluating preemption in the wake of Dodd-Frank
- Future CFPB implications: what's next?
 - Areas of focus

11:35 **Unique Regulatory and Enforcement Insights by Key Governing Bodies in the Mortgage Industry: Federal and State Agencies and Attorneys General Speak Out on How Your Company and Client Should Prepare for and Respond to Examinations and Supervision in a Multi-Agency Environment**

James E. Elliott
Senior Attorney, Southwest Region
Federal Trade Commission

R. Stephen Stigall
Assistant U.S. Attorney
U.S. Attorney's Office, District of New Jersey

Richard K. Hayes
Deputy Chief, Civil Division
U.S. Attorney's Office, Eastern District of New York

J. Bryan Howell
Counsel to the Inspector General
HUD-OIG

Doug Foster
Commissioner
Texas Department of Savings & Mortgage Lending
Executive Director
Finance Commission of Texas

James A. Daross
Assistant Attorney General, Consumer Protection
Division
Office of the Texas Attorney General

Thomas P. James
Senior Assistant Attorney General, Consumer Counsel –
Consumer Fraud Bureau
Office of the Illinois Attorney General

Co-Moderators:

Joseph Borg
Director
Alabama Securities Commission

Frank Hirsch
Alston & Bird LLP

- The aftermath of the AG settlement
- Overlap and differences with CFPB initiatives relating to mortgage servicing standards
- Impact of the CFPB on state enforcement initiatives: arrangement with state regulators
- Mortgage origination standards
- CFPB examinations
- Status of the Independent Foreclosure Review: lessons learned
- Increasing focus on fair lending concerns
 - New HUD rule
- Ensuring compliance with UDAP laws in light of enhanced enforcement initiatives
- The influx of cases being brought by state AGs
- Assessing the multi-state mortgage examination process
- Cooperating with investigations
- Reaching consent settlements with regulators
- Implementing lessons learned from past enforcement actions

1:10 **Networking Lunch For Speakers and Delegates**

CLASS ACTION LITIGATION IN THE RESIDENTIAL MORTGAGE CONTEXT

2:10 **A Focus on Forced Place Insurance and HAMP Litigation: Proven Defense Tactics and Techniques**

David L. Permut
Goodwin Procter LLP

W. Drake Blackmon
Starnes Davis Florie LLP

Rik Tozzi
Burr & Forman LLP

Forced Place or Lender-Placed Insurance

- Allegations that Banks engaged in deceptive practices
 - In violation of TILA, the RICO Act and other consumer protection laws
 - Possible collusion among lenders and insurance companies
- Results of States' investigations: NY and CA
- How lenders can defend against operational and reputational risks in their force-placed practices

Home Affordable Modification Program (HAMP)

- Complying with and abiding by the requirements for a permanent modification
 - 30 day trial period
- Borrower's claims
- Effective defenses

3:05 **Other Pivotal Residential Mortgage Class Action Issues Currently in Play and Coming Down the Pike from the U.S. Supreme Court: Class Certification, CAFA, Settlement Considerations and More**

Christopher Chorba
Gibson, Dunn & Crutcher LLP

Michael D. Ferachi
McGlinchey Strafford PLLC

Carlos Ortiz
Hinshaw & Culbertson LLP

- Class action trends involving residential mortgage litigation
 - What some recent cases may tell us about what's next
- Recent Supreme Court term end: trickle down effect of decisions on residential mortgage class action litigation
 - Recap of relevant cases
 - *Knowles* case: first decision on CAFA
- New and emerging claim approaches
 - Defending against the influx of cases being brought by plaintiffs' attorneys
 - Where plaintiffs are filing and why
 - Using this information to structure your case
- The continuing impact of *Wal-Mart v. Dukes* on class certifications: How are the federal (and state) courts applying the decision?
- Defeating plaintiffs' arguments that *Wal-Mart* should not apply to a particular case
- *Comcast* and post-*Wal-Mart* issues
- The treatment of *AT&T Mobility v. Concepcion* by lower court and emerging legal issues
- Settlement considerations
 - Making the decision to settle, and ensuring effective client communication throughout the settlement process
 - Evaluating tradeoffs in scope of class and release; creating a comprehensive settlement order

4:00 **Afternoon Coffee Break**

4:05 **The Borrower's Perspective: Insights From the Plaintiffs' Bar and Consumer Advocates**

Andrew Pizor
National Consumer Law Center

Amanda L. Lundergan
Ice Legal, P.A.

Moderator:

E. Hutchinson Robbins, Jr.
Miles & Stockbridge P.C.

In this session, you will hear from leading plaintiff attorneys and consumer advocates on claims trends, foreclosure litigation, where cases are headed in the coming months, and how lenders and servicers can work with borrowers to minimize the need for litigation. You will obtain key insights into the types of actions counsel are focusing on and how to prepare for and respond to new and innovative claims, as well as how consumer advocates view the current residential mortgage landscape. Highlights of

this session will include:

- How borrowers' counsel are approaching litigation arising from alleged foreclosure documentation errors
- Emerging theories of liability
- How the plaintiff bar is continuing to adapt to CAFA
- Consumer advocate perspectives on MERS
 - Long term viability of MERS
- How the industry can best work with borrowers to pursue loan modifications and avoid foreclosures and litigation
- Recent litigation against property preservation companies

4:55 **STATE HOTBEDS: Responding to Stepped Up Litigation and Enforcement Being Brought at the State Level, With an Emphasis on California, Florida, New York, Illinois, Texas, and Nevada**

Donna L. Wilson
BuckleySandler LLP

John Fleming
General Counsel
Texas Mortgage Bankers Association

Sanjay P. Ibrahim
Parker Ibrahim & Berg LLC

Robert T. Mowrey
Locke Lord LLP

Michele Stocker
Greenberg Traurig, P.A.

- Which states are driving the litigation nationwide?
 - CA, FL, NY, IL, TX, NV
- Actions taken by these states
 - California Homeowner's Bill of Rights: will it be susceptible to class actions?
- How these states implicate other states' litigation
- What to be on the lookout for
- Lessons to be learned

6:10 **Conference Adjourns**

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Day Two: Friday, September 27, 2013

7:30 Continental Breakfast

8:00 Views from the Bench: Judicial Perspectives on the Latest Plaintiff Theories, Emerging Defense Strategies, Loan Modification Litigation, Foreclosure Documentation Errors, Bankruptcy Litigation, Class Certification, Case Management, E-Discovery, and More

The Honorable Fernando J. Gaitan, Jr.
District Court Judge
U.S. Dist. Ct., W.D. Mo.

The Honorable Harold Baer
District Court Judge
U.S. Dist. Ct., S.D.N.Y.

The Honorable Jeanne E. Scott (ret.)
District Court Judge
U.S. Dist. Ct., C.D. Ill.

The Honorable Susan Davis Wigenton
District Court Judge
U.S. Dist. Ct., D. N.J.

The Honorable F.A. Gossett III
Magistrate Judge
U.S. Dist. Ct., D. Neb.

The Honorable Michael B. Kaplan
Bankruptcy Judge
U.S. Bankr. Ct., D. N.J.

The Honorable Clifton B. Newman
Circuit Court Judge
South Carolina Circuit Ct.

Moderator:

Hunter R. Eley
Doll Amir & Eley LLP

- Judicial perspectives on new and emerging plaintiff theories and defense strategies
- The dos and don'ts of litigating mortgage-related cases in federal and state courts – tips on motion practice, requested relief, and more
- Navigating through bankruptcy court and recent bankruptcy cases
- Discretionary awards of attorneys' fees
- Determining when sanctions are appropriate
- Novel approaches to trial and case management, and pre-trial procedures
- Evidentiary issues arising in mortgage-related cases
- E-discovery: What are the expectations of counsel when dealing with a case involving voluminous discovery requests?; how should attorneys approach discovery disputes in the courtroom?
- ADR, early dispute resolution, and mediating cases involving claims by borrowers against lenders and servicers
- Juror impressions about the issues and about servicers and lenders as a whole
- Looking to the future

9:40 Morning Coffee Break

9:50 Fair Lending: Managing and Defending Against Claims of Discriminatory Lending and Assessing the Status of 'Disparate Impact' in Lending Litigation and Enforcement

Richard E. Gottlieb
Dykema

Darren M. Welch
Skadden, Arps, Slate, Meagher & Flom LLP

Philip R. Stein
Bilzin Sumberg Baena Price & Axelrod LLP

Melanie Brodie
K&L Gates LLP

- Recent cases and enforcement actions
- How state and federal agencies are approaching fair lending issues
 - New HUD rule
 - Recent and pending cases before the DOJ
 - *Burbank Case*
- Assessing the status of 'disparate impact' in lending litigation and enforcement
- New and emerging allegations of discriminatory practices relating to upkeep of bank-owned houses in minority neighborhoods
- Assessing the evolving definition of and uncertainty relating to fair lending
- Impact of the CFPB on fair lending litigation
 - CFPB initiatives and enforcement efforts relating to discriminatory lending and disparate impact
- Defending against the latest claims alleging fair lending violations
 - Early interviews and information gathering
 - Data analysis
- Possible emerging trends in fair lending claims
 - LGBT discrimination
- Impact of recent regulatory and litigation developments on the defense of predatory lending claims
- Public relations concerns
- Settlement considerations and strategies

FORECLOSURE LITIGATION

11:00 Foreclosure Litigation Part I: Establishing Standing and Defending Against Claims Relating to MERS

Nathan J. Bouchér
Assistant General Counsel, Litigation Management
Homeward Residential

Anthony Laura
Patton Boggs LLP

Joseph J. Patry
Blank Rome LLP

- Conditions precedent to foreclosure
- Assessing borrower attacks on standing

- New and emerging claims
- How to combat and defeat standing attacks
- Update on MERS litigation
 - Borrower claims
 - *Qui tam* cases
 - County recorder/AG litigation
- MERS interest as mortgagee or beneficiary
- Transfer of notes via endorsement and delivery rather than assignment
- Assignment of mortgages

11:55 **Foreclosure Litigation Part II: Overcoming Contested Foreclosures and Responding to Borrower Counterclaims and Stall Tactics**

Keith Anderson

Bradley Arant Boult Cummings LLP

Christy A. Ames

Stites & Harbison

Alan Warfield

Jones Walker

Roland P. Reynolds

Palmer, Lombardi & Donohue LLP

Sunny S. Huo

Severson & Werson

- Handling borrower counterclaims in contested foreclosures
- Overcoming commonly raised defenses including TILA, SCRA, fraud, and rescission claims
- Preventing bankruptcy from becoming a tool used by borrowers to stall foreclosures
- Loss mitigation
- Litigation challenges relating to mortgage origination
- Loan modifications and foreclosure
 - Defending against counterclaims arising from loan modifications and HAMP
- Responding to challenges to foreclosures in non-judicial foreclosure states

1:15 **Networking Luncheon For Speakers And Attendees**

2:10 **Loan Servicing: Complying with New and Emerging Regulations, Employing Best Practices, Defending Against Borrower Claims, and Implementing Effective Loss Mitigation Strategies**

Therese G. Franzen

Franzen & Salzano, P.C.

Katrina Christakis

Pilgrim Christakis LLP

Richik Sarkar

Ulmer & Berne LLP

William Heller

Akerman Senterfitt

- Assessing the impact of the AG settlement and the CFPB on servicing standards

- Enforcement issues
- Ensuring compliance
- Defending against claims relating to loan servicing
 - Debt collection practices claims
 - Credit reporting claims
 - Escrow issues
 - RESPA issues
- Class action issues arising from loan servicing
- Servicer liability for lack of disclosure
 - Viability of good faith defense
 - Sufficient evidence to show adequate disclosure
 - Conducting due diligence of servicing compliance
- Loss mitigation programs
- Loan modifications
 - Borrower claims
 - Effective defenses

3:20 **Third Party Vendor Management in the Mortgage Servicing Context**

Richik Sarkar

Ulmer & Berne LLP

- Recent increased scrutiny by the government agencies and regulators
 - expected increased oversight
- CFPB activity in the area
 - CFPB now holding banks responsible for lending done out of the third party relationship
- OCC activity in the area
- Having an effective process in place to manage the risk of outsourcing
- Contracting with third parties
- The potential increase to the cost of servicing over time vs. the risk of exposure to litigation and damage to reputation

3:50 **Conference Ends**



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Expert strategies for in-house and outside defense counsel on navigating litigation hurdles and preparing for new and emerging government enforcement initiatives

September 26 – 27, 2013 | The Adolphus | Dallas, TX

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Judicial perspectives from:

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- Hon. Jeanne E. Scott
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- Hon. F.A. Gossett III
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