



American Conference Institute's 15th National Forum on

RESIDENTIAL MORTGAGE LITIGATION & REGULATORY ENFORCEMENT

Expert strategies for in-house and outside counsel on navigating litigation hurdles
and preparing for government enforcement actions and examinations

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September 22 – 23, 2014 | The Adolphus | Dallas, TX

Hear directly from the frontline on federal and state regulatory and enforcement priorities and
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Dama J. Brown

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Bryan Greene

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CoreLogic, Inc.

Andrew Lusk

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Scott Murphy

Wells Fargo

John Fleming

Texas Mortgage Bankers Association

Charles Beveridge

Prospect Mortgage

Brian Blake

MERSCORP Holdings

Nathan Boucher

RoundPoint Financial Group

LeAllen Frost

Nationstar Mortgage

Leesa Logan

Statebridge Company

Steven S. Albert

Allstate

Our distinguished faculty will provide you with key insights, practical advice, and best practices for:

- The CFPB and the residential mortgage industry: practical guidance for complying with the servicing rules, implementing lessons learned from recent CFPB enforcement actions and examinations, and gauging the bureau's approach to UDAAP issues
- Developments in lender-placed insurance claims and loan modification litigation in conjunction with the Home Affordable Modification Program (HAMP)
- Fair lending: managing and defending against claims of discriminatory lending and assessing the status of 'disparate impact' in lending litigation and enforcement
- Establishing standing, defending against claims relating to MERS, overcoming contested foreclosures, and responding to borrower counterclaims and stall tactics
- Best practices for management of third-party vendors, service providers, and mortgage brokers

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Led by senior in-house counsel, key regulatory and enforcement officials, top outside counsel, and renowned federal and state judges from across the nation, this is the only event that will fully prepare you to manage 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.

In the wake of the CFPB's new servicing rules, and given the renewed regulatory and enforcement focus on the residential mortgage industry at the state and federal levels, lenders, servicers, and their outside counsel must be prepared for enhanced enforcement initiatives, heightened examination procedures, and a wave of new litigation from the plaintiffs' bar.

In response, American Conference Institute is pleased to announce its *15th National Forum on Residential Mortgage Litigation & Regulatory Enforcement*. This event has been tailored to provide attendees with the insights and strategies that are needed to ensure compliance with the new rules, defend against new and emerging claims, and adapt to the evolving regulatory landscape. Our unparalleled faculty of key regulatory and enforcement officials, federal and state judges, senior in-house counsel, and leading outside counsel will provide you with strategic advice, critical insights, and comprehensive updates. **Here are just a few of the benefits of attending:**

- Obtain best practices for ensuring compliance with the CFPB's new servicing rules, preparing for examinations, and avoiding litigation arising from the rules
- Hear directly from key agencies and government officials regarding federal and state regulatory and enforcement priorities
- Network with senior corporate and outside counsel and benchmark your litigation and compliance strategies against those of your peers
- Receive judicial perspectives on the latest plaintiff theories, emerging defense strategies, lender-placed insurance litigation, bankruptcy and foreclosure litigation, heightened scrutiny of lenders and servicers, e-discovery, and more
- Determine what measures lenders and servicers must take in order to mitigate future liability

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DAY ONE: MONDAY, SEPTEMBER 22, 2014

7:20 Registration and Continental Breakfast

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



Rob Mowrey
Locke Lord LLP



Andrew K. Stutzman
Stradley Ronon Stevens & Young, LLP

8:05 **In-House Roundtable: Ensuring Compliance in an Evolving Regulatory and Enforcement Environment, Preparing for and Managing Lending, Servicing, and Foreclosure Litigation, Enhancing Relationships with Outside Counsel, and Working With Reduced Budgets and Smaller Staffs**

Scott Murphy
Senior Counsel
Consumer Lending and Corporate Regulatory Division
Wells Fargo & Co.

LeAllen Frost
Vice President & Associate General Counsel
Nationstar Mortgage

Nathan Boucher
Vice President & Associate General Counsel
RoundPoint Financial Group

Charles Beveridge
Vice President/Associate General Counsel
Prospect Mortgage

Andrew Lusk
Associate Corporate Counsel
Quicken Loans, Inc.

Leesa Logan
Corporate Counsel
Statebridge Company, LLC

Jeannie White
Vice President & Associate General Counsel
CoreLogic, Inc.

Moderator:



Hunter R. Eley
Doll Amir & Eley LLP

- Perspectives on the CFPB servicing rules and their impact on the mortgage servicing industry
 - o Compliance challenges and how to overcome them
 - o Practical guidance regarding CFPB examinations
 - o Litigation trends arising from the new rules
- How are lenders and servicers adapting to new and emerging regulations and case law? What changes have they made?
- What do corporate counsel find to be the most challenging aspects of revamping compliance procedures and policies?
- Where are lenders and servicers turning for guidance?
 - o Developing best practices
- Managing and responding to enforcement actions
 - o Tools that are available when facing an enforcement action
 - o Responding to the action
 - o Filing a motion to quash a subpoena

- o Jurisdiction hurdles when dealing with multiple state and federal agencies
- o Assessing the role of state attorneys general versus the role of the CFPB and other federal agencies
- Adapting your litigation strategies and settlement calculations to account for new trends
- Dealing with overzealous discovery requests in litigation and regulatory inquiries
- Managing and defending against claims arising from TILA, HAMP, and RESPA
- Lender-placed insurance claims
- Top 5 concerns of in-house counsel now and in the near-term
- Identifying and minimizing exposure to risk
- Foreclosure mediation
 - o Best practices for maximizing the effectiveness of these programs
- Lessons learned from past litigation
 - o 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
- Exploring the use of alternative fee agreements with outside counsel
- Internal and external cost-cutting
 - o What has worked and what has not
- In-house staffing solutions for stretched legal departments

9:40 **Networking and Refreshment Break**

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ATTORNEYS AT LAW

9:55 **The CFPB and the Residential Mortgage Industry: Practical Guidance on Complying with the Servicing Rules, Implementing Lessons Learned from Recent CFPB Enforcement Actions and Examinations, Gauging the Bureau's Approach to UDAAP Issues, and Assessing its Enhanced Oversight and Heightened Scrutiny of Lenders and Servicers**



Ronald L. Rubin
Hunton & Williams LLP



Paul H. Schieber
Stevens & Lee



Michael S. Waldron
Ballard Spahr LLP

- How the servicing rules have impacted the industry so far
 - o Lessons learned and pitfalls to avoid
 - o Best practices for ensuring compliance
 - o Litigation risks arising from the new rules
 - Practical experiences with litigation to date
- CFPB examinations – what to expect
 - o What are examiners looking for?
 - o Practical guidance on how best to prepare
 - o Enforcement and litigation risks arising from an examination

- CFPB enforcement actions
 - Status and assessment of recent enforcement cases
 - How companies are responding
 - What to expect going forward
- The amalgamation of RESPA and TILA
- Changes to the QWR provisions
- The CFPB's mortgage loan complaint process
- Amicus program: analysis of cases filed so far
- The CFPB and UDAAP
- Why UDAAP violations should be of paramount concern to lenders and servicers
- Which acts and practices put lenders and servicers at greatest risk for UDAAP violations?
- Assessing the definition of 'abusive' practices
 - Potential pitfalls for the mortgage industry
 - What aspects of origination and servicing may be 'abusive'?
 - Lessons learned from recent enforcement actions
- Addressing potential UDAAP concerns
 - Minimizing exposure to UDAAP issues
- What to expect from the CFPB in the coming months
 - Potential changes to the new rules

11:10 Establishing Standing, Defending Against Claims Relating to MERS, Overcoming Contested Foreclosures, and Responding to Borrower Counterclaims and Stall Tactics

Patrick Smith
Enterprise Fraud Management
PNC Bank

Brian Blake
Counsel
MERSCORP Holdings, Inc.

R. Dwayne Danner
McGlinchey Stafford PLLC

Kenneth S. Steely
Jones Walker 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
- 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
- Foreclosure mediation programs
- Responding to challenges to foreclosures in non-judicial foreclosure states

12:40 Networking Luncheon for Speakers and Attendees

1:45 A Focus on Residential Mortgage Class Actions: New and Emerging Cases and Theories, the Continuing Impact of *Wal-Mart v. Dukes* and Its Progeny on Certification Issues, Innovative Settlement Considerations, and More



Paul J. Ferak
Greenberg Traurig, LLP



Rik S. Tozzi
Burr & Forman LLP



Anthony J. Laura
Epstein Becker & Green, P.C.

- Class action trends involving residential mortgage litigation
 - What recent cases tell us about what may be coming next
- Recent Supreme Court decisions and the trickle-down effect of those decisions on residential mortgage class action litigation
- Removability of AG actions under CAFA
- New CAFA removal and misjoinder issues
- Recap of relevant cases
 - *Knowles*
 - *Hood v. AU Optonics*
- New and emerging class action claims and how to defend against them
 - Where plaintiffs are filing class actions and why
 - Using this information to structure your case
- Assessing the continuing impact of *Wal-Mart* and its progeny on class certifications
 - How are the lower courts applying *Wal-Mart*?
 - Defeating plaintiffs' theories as to why *Wal-Mart* and its progeny should not apply to a particular case
- 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

3:00 Networking and Refreshment Break

3:10 The Evolving Landscape for Mortgage Servicing: Litigation and Enforcement Concerns, Servicer Liability Under the FDCPA and the FCRA, Determining and Implementing Best Practices, Defending Against New and Innovative Borrower Claims, and More



Sanjay P. Ibrahim
Parker Ibrahim & Berg LLC



Rob Mowrey
Locke Lord LLP



Elizabeth Sperling
Alston & Bird LLP

- Fallout from the servicing rules
 - Enforcement issues
 - Compliance hurdles and how best to overcome them
 - Types of private claims arising from the rules
 - Practical experiences with such litigation
- Impact of Basel III on loan servicing

- Defending against claims relating to loan servicing
 - Debt collection practices claims
 - Credit reporting claims and the FCRA
 - Escrow issues
 - RESPA issues
 - Fair lending issues
- Class action issues arising from loan servicing
- What can originators learn from recent litigation involving servicers?
- Servicer liability under the FDCPA
- Assessing when a mortgage servicer may be considered a debt collector
- 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

4:25 **Developments in Lender-Placed Insurance Claims and Loan Modification Litigation in Conjunction With the Home Affordable Modification Program (HAMP)**



Christy A. Ames
Stites & Harbison, PLLC



David M. Bizar
Seyfarth Shaw LLP



Roland P. Reynolds
Palmer, Lombardi & Donohue LLP

- Assessing recent claims alleging that banks engaged in deceptive practices relating to lender-placed insurance
 - Potential violations of TILA, RICO, and other consumer protection laws
 - Possible collusion among lenders and insurance companies
- Results of state investigations: NY, CA, IL
 - NYSDFS regulation of lender-placed insurance
- How lenders can defend against and mitigate operational and reputational risks relating to their lender-placed insurance practices
- Loan mod litigation and HAMP
- Complying with the requirements for a permanent modification
 - 30-day trial period
- Borrower claims
 - Effective defenses
- The rise in HAMP-related False Claims Act litigation
- Mortgage fraud considerations in relation to HAMP

5:40

Conference Adjourns

DAY TWO: TUESDAY, SEPTEMBER 23, 2014

7:30 Continental Breakfast

8:00 **Views from the Bench: Judicial Perspectives on the Latest Plaintiff Theories, Emerging Defense Strategies, Lender-Placed Insurance Litigation, Bankruptcy and Foreclosure Litigation, Heightened Scrutiny of Lenders and Servicers, Case Management, E-Discovery, and More**

Panel 1 8:00 – 9:30	Panel 2 9:30 – 10:45
<i>Hon. James L. Robart</i> U.S. Dist. Ct., W.D. Wash.	<i>Hon. Michael B. Kaplan</i> U.S. Bankr. Ct., D.N.J.
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<i>Hon. Allan L. Tereshko</i> Phil. Ct. of Common Pleas	

Panel 1 Moderator:



Andrew K. Stutzman
Stradley Ronon
Stevens & Young, LLP

Panel 2 Moderator:



Katrina Christakis
Pilgrim Christakis LLP

- Emerging claims and litigation trends arising from the plaintiffs' bar
 - How defense counsel are responding
- Insights into new measures lenders and servicers must implement to mitigate future liability
- Lender-placed insurance litigation
- Loan modification litigation
- Navigating through bankruptcy court — what lenders and servicers need to know
- Discretionary awards of attorneys' fees
- Determining when sanctions are appropriate
- Insights into foreclosure mediation programs
 - How effective are these programs?
 - How to maximize the benefits of foreclosure mediation
- Novel approaches to trial and case management
 - Pre-trial procedures
- Judicial perspectives on e-discovery
 - What are the expectations of counsel when dealing with a case involving voluminous discovery requests?

10:45 Networking and Refreshment Break

11:00 **Regulatory Enforcement and Examination Roundtable: The View from Federal and State Agencies and Attorneys General on New and Emerging Initiatives, Enforcement Actions, Examination Procedures, and Investigations**



Dama J. Brown
Regional Director
Southwest Regional Office
Federal Trade Commission



Bryan Greene
General Deputy Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development



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

Richard L. Bischoff
Assistant Attorney General
Consumer Protection Division
Office of the Texas Attorney General

Clay Mahaffey
Assistant United States Attorney
U.S. Attorney's Office, Northern District of Texas

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

Gerald B. Sullivan
Assistant United States Attorney
U.S. Attorney's Office, Eastern District of Pennsylvania

Moderator:



Richard E. Gottlieb
BuckleySandler LLP

- Perspectives on the new servicing rules and their impact on the mortgage servicing industry
 - o Compliance challenges for the industry
 - o Best practices for ensuring compliance
- CFPB and other federal and state agency examinations
 - o What to expect and how to prepare for an examination
 - o Problems that regulators, especially the CFPB, are finding in examinations
 - o Top 10 violations
- How federal and state agencies and attorneys general are working together
- Increasing focus on fair lending concerns
- Ensuring compliance with UDAP
- Perspectives on lender-placed insurance
- Assessing the multi-state mortgage examination process
- Cooperating with investigations
- Reaching consent settlements with regulators
- Implementing lessons learned from past enforcement actions

12:40 **Networking Luncheon for Speakers and Attendees**

1:45 **Fair Lending: Managing and Defending Against Claims of Discriminatory Lending and Assessing the Status of 'Disparate Impact' in Lending Litigation and Enforcement**



John Fleming
General Counsel
Texas Mortgage Bankers Association



Eric Jon Taylor
Parker, Hudson, Rainer & Dobbs LLP

- Recent cases and enforcement actions
- How state and federal agencies are approaching fair lending issues
- Assessing the status of 'disparate impact' in lending litigation and enforcement
 - o HMDA data serving as basis for claims
- Disparate impact in the age of the Qualified Mortgage
 - o Assessing the likelihood that lenders who underwrite QM loans will face fair lending claims because loans meeting the QM standards may result in a disparate impact on certain demographic groups
- New and emerging allegations of discriminatory practices and how to defend against them
- Assessing the evolving definition of and uncertainty relating to fair lending
- Impact of the CFPB on fair lending litigation
 - o CFPB initiatives and enforcement efforts relating to discriminatory lending and 'disparate impact'
- Defending against the latest claims alleging fair lending violations
 - o Early interviews and information gathering
 - o Data analysis
- Impact of recent regulatory and litigation developments on the defense of predatory lending claims
- Public relations concerns
- Settlement considerations and strategies

2:45

A Due Diligence Guide to the Management of Third-Party Vendors, Service Providers, and Mortgage Brokers

David K. Stein
SVP/General Counsel
PMAC Lending Services, Inc.



Steven S. Albert, MAI, SRA
President
Allstate Appraisal

A. Michelle Canter
LotsteinLegal PLLC

- Impact of enhanced regulatory scrutiny and oversight
- CFPB initiatives
 - o Power to supervise "related persons" and "material service providers"
 - o To what extent are banks liable for lending done through a third-party relationship?
- OCC activity
- Implementing best practices to manage and mitigate the risk of outsourcing
- Third-party vendor products and fees
- Liability for the actions of mortgage brokers
- Contracting with ethical third parties
- Making the decision to work with a third-party entity
 - o Assessing the decrease in servicing costs vs. the increased risks of litigation and reputational damage

4:00

Conference Ends

WHO YOU WILL MEET

- ✓ **In-house counsel from:**
 - Banks
 - Mortgage lenders
 - Mortgage brokers
 - Loan servicers
 - Loan purchasers
- ✓ **Private practice attorneys specializing in:**
 - Financial services
 - Mortgages
 - Bankruptcy
 - Complex litigation and class actions
 - Regulation and compliance

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