

American Conference Institute's National Forum on

# RESIDENTIAL MORTGAGE

## LITIGATION & REGULATORY ENFORCEMENT

PREPARING FOR THE NEXT GENERATION OF CLAIMS, REGULATIONS,  
AND LEGISLATIVE DEVELOPMENTS ARISING FROM THE CREDIT CRISIS

October 27 - 28, 2009 | The Adolphus Hotel | Dallas, Texas

### DISTINGUISHED CO-CHAIRS:



**Frank A. Hirsch, Jr.**  
Partner  
Alston & Bird LLP



**Andrew K. Stutzman**  
Partner, Chair of the Mortgage  
& Lending Litigation Practice Group  
Stradley Ronon Stevens & Young, LLP

### REGULATORY AND ENFORCEMENT PERSPECTIVES FROM:

Department of Justice  
Federal Deposit Insurance Corporation  
Federal Reserve Board  
Illinois Attorney General's Office

### EXPERIENCED IN-HOUSE COUNSEL FROM:

Bank of America	Sterling Bank
GMAC Financial Services	SunTrust
Greenpoint	UBS
Mortgage Bankers Association	Wachovia

### OBTAIN EXPERT ADVICE AND KEY INSIGHTS THAT WILL HELP YOU:

- Mitigate the impact of **borrower stall tactics**, including claims arising from bankruptcy proceedings, on foreclosures
- Respond to **suitability and misrepresentation claims** tied to Option ARMs and other non-traditional mortgages
- Prepare for the effects that **emerging regulations and legislation**, including amendments to RESPA and TILA, will have on litigation and compliance initiatives
- Defend against **investor claims arising from loan modifications**
- Manage the increase in **investor repurchase demands** and contest improper claims
- Counter **investor claims related to mortgage-backed securities and derivative products**, including CDOs and CDS
- Ensure proper **standing** before bringing foreclosure proceedings and defeat **challenges to loan ownership**
- Defend against **claims brought by municipalities** seeking damages for alleged harm caused by foreclosures

### VIEW FROM THE BENCH:

Hon. Timothy J. Corrigan - U.S. Dist. Ct., M.D. Fla.    Hon. Michael B. Kaplan - U.S. Bankr. Ct., D.N.J.

### Plus, don't miss the Post-Conference Master Class:

Mastering the Nuances of Foreclosure and Bankruptcy:  
Establishing Effective Defenses Against the Newest Claims and Counterclaims

October 28, 2009 - 3:15 p.m. - 5:45 p.m.



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## Be a part of the only event that will fully prepare you to defend against the next generation of mortgage-related claims being brought by borrowers, investors, and municipalities

In the wake of the subprime crisis and ensuing credit crunch, lenders, servicers, investment banks, and their outside counsel are faced with new challenges relating to residential mortgages and mortgage-backed securities. Bankruptcy claims and foreclosure counterclaims are on the rise as borrowers seek to stall foreclosure proceedings. Municipalities are becoming more aggressive in seeking damages for and pursuing injunctions against foreclosures tied to non-traditional loans. At the other end of the spectrum, investor lawsuits tied to loan modifications and mortgage-backed securities are on the rise. In addition, reform initiatives at both the state and federal levels, including amendments to RESPA and TILA, will result in increased litigation and enforcement actions in the immediate future.

Attend **American Conference Institute's National Forum on Residential Mortgage Litigation & Regulatory Enforcement** and you will *obtain the insights and strategies necessary to defend against these new claims and adapt to the evolving regulatory environment*. Our unparalleled faculty of regulatory and enforcement officials, federal judges, expert in-house counsel, and leading outside counsel will provide you with the keys to:

- Responding to the increase in bankruptcy filings and the **use of bankruptcy as a tool by borrowers**
- Defending against **borrower counterclaims** arising from foreclosure proceedings
- Assessing the impact on the mortgage industry of **predatory lending legislation and other federal and state initiatives**
- Managing the fallout from **foreclosure moratoriums** and related investor lawsuits
- Prevailing in **litigation between institutional plaintiffs and institutional defendants**, including trustees, servicers, banks, monolines, and hedge funds

PLUS, add value to your attendance by also registering for the Post-Conference Master Class:

### Mastering the Nuances of Foreclosure and Bankruptcy: Establishing Effective Defenses Against the Newest Claims and Counterclaims

October 28, 2009 – 3:15 p.m. - 5:45 p.m.

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#### WHO YOU WILL MEET:

##### In-House Counsel from:

- Mortgage Lenders
- Mortgage Brokers
- Loan Servicers
- Loan Purchasers & Securitizers
- Bank & Thrifts
- Hedge Funds
- Private Equity

##### Private Practice Attorneys specializing in:

- Financial Services
- Mortgages
- Bankruptcy
- Securities Litigation
- Consumer Finance
- Regulation and Compliance

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**Wendy Tyler**  
Group Leader & Business Development Executive  
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[www.AmericanConference.com/FinFraud](http://www.AmericanConference.com/FinFraud)

7:30 Registration and Continental Breakfast 

8:30 Co-Chairs' Opening Remarks

**Frank A. Hirsch, Jr.**

Partner, Alston & Bird LLP (Raleigh, NC)

**Andrew K. Stutzman**

Partner, Chair of the Mortgage & Lending Litigation Practice Group  
Stradley Ronon Stevens & Young, LLP (Philadelphia, PA)

8:45 **In-House Roundtable: Insights Into Preventing and Managing Mortgage and Lending Litigation**

**C. Vance Beck**

Senior Vice President, Wachovia Corporation (Charlotte, NC)

**Patricia L. Hobbib**

Managing Director, Counsel  
GMAC Financial Services, LLC (Philadelphia, PA)

**Debra Lee Hovatter** (*Invited*)

First Vice President & Assistant General Counsel  
SunTrust Banks, Inc. (Richmond, VA)

**Greg Walker**

Managing Director and Corporate Counsel  
UBS Investment Bank (New York, NY)

**Moderator:**

**Kerry P. McInerney**

Shareholder, Co-Chair of the Mortgage Banking Litigation Group  
Sirote & Permutt, P.C. (Birmingham, AL)

**Document Management and E-Discovery**

- Formulating a document management and e-discovery plan that defends against plaintiffs' overly aggressive and expensive requests and their use of discovery as a weapon rather than a fact finding tool
- Lessons learned on discovery burdens and the exorbitant costs of discovery falling disproportionately on defendants
- Scope of information that the defense must turn over to plaintiffs

**Expertise and Coordination with Outside Counsel**

- Handling the defense more efficiently and effectively through national/regional counsel and the use of experts who have specialized skill sets
- Determining when to stay in-house and when to go with outside counsel
- Balancing the difficulty of finding quality counsel while keeping costs under control
- Consideration of alternative fee arrangements

**Case Evaluation**

- Early case assessment: Evaluating the cost of defense versus chronic settlement of unmeritorious claims and the precedential value of a settlement
- Controlling future litigation: Identifying trends to ward off future lawsuits; knowing when to resolve a case for economic reasons and when to pay significantly more to defend a suit
- How to reach an early and cost-effective resolution of class action claims that will not result in payment of attorney fees that are disproportionately large in relation to the amount that can be achieved by individual plaintiffs participating in a class action

**Prevention: Reducing Litigation, Regulatory and Enforcement Risks**

- Clearly defining terms for appropriate markets
- Providing prospective borrowers and prospective investors with timely, straightforward, and objective marketing materials and disclosures
- Ensuring that disclosures provide borrowers and investors with information sufficient to make informed choices
- Internal compliance assessment: Implementing training programs and compliance controls
- The benefits of early intervention: Resolving disputes before borrowers or investors file suits

10:15 Morning Coffee Break 

10:30 **Anticipating and Preparing for the Impact of Emerging Legislative, Regulatory, and Enforcement Initiatives on the Residential Mortgage and Lending Industry**

**A. Timothy Dill**

Assistant General Counsel  
Federal Deposit Insurance Corporation (Washington, DC)

**Veronica L. Spicer**

Assistant Attorney General, Consumer Fraud Bureau  
Office of the Attorney General – Illinois (Chicago, IL)

**Clifford J. White III**

Director, Executive Office for U.S. Trustees  
Department of Justice (Washington, DC)

**Anne Zorc**

Counsel  
Legal Division, Federal Reserve Board (Washington, DC)

**Ken Markison**

Associate Vice President and Regulatory Counsel  
Mortgage Bankers Association (Washington, DC)

**Julie R. Caggiano**

Associate General Counsel  
Sterling Bank (Houston, TX)

**Robert H. Ledig**

Partner  
Fried, Frank, Harris, Shriver & Jacobson LLP (Washington, DC)

**Moderator:**

**Joseph T. Lynyak III**

Partner  
Venable LLP (Los Angeles, CA)

- Analysis of the Congressional predatory lending bill
- What role will the SEC play in mortgage lending going forward?
- Impact of the federal government making contract modifications and taking an ownership interest in financial institutions
- RESPA Regulation X amendments
  - Impact on loan originations
- TILA Regulation Z amendments
  - Impact on disclosure requirements
- Assessment of the Treasury's mortgage modification program
  - Advantages and disadvantages of participating
- Status of state and federal investigations into mortgage and lending fraud

12:30 **Networking Luncheon for Speakers and Delegates** 

1:45 **Bankruptcy Court Claim Developments: What Lenders, Servicers, and Law Firms Need to Know to Prevail Against the Latest Claims**

**Katrina Christakis**

Partner  
Grady Pilgrim Christakis Bell LLP (Chicago, IL)

**H. Hunter Twiford III**

Member  
McGlinchey Stafford PLLC (Jackson, MS)

- Bankruptcy essentials for lenders, servicers, and their outside counsel
- Preventing bankruptcy from becoming a tool used by borrowers to stall foreclosure proceedings
- Defending against borrower claims in bankruptcy court
- Ensuring that you follow the proper procedures during bankruptcy proceedings
  - Avoiding stay violations
- Evaluating the potential for cram-down provisions to be made available to borrowers in bankruptcy
  - Impact cram-down would have on mortgage payments

- Collecting attorney's fees – steps outside counsel can take to mitigate the possibility of their fees being voided in bankruptcy
- What lenders need to do before entering the courtroom
  - Establishing that you own the loan
  - Developing a strategy for getting the bankruptcy judge on your side
- Class certification considerations that are unique to bankruptcy court
  - Strategies for winning a motion to deny class certification in the bankruptcy context
- Anticipating and preparing for copycat bankruptcy claims that aggressive plaintiffs' attorneys will file
- Filing accurate proofs of claims that do not exceed allowable amounts
- Avoiding conduct that has been sanctioned by bankruptcy courts

### 3:00 Afternoon Refreshment Break

### 3:15 Navigating Through Foreclosure Proceedings: Overcoming Borrower Stall Tactics, Increased Scrutiny from the Courts, and State Foreclosure Moratorium Laws

**Therese G. Franzén**

Partner, Franzén and Salzano, P.C. (Norcross, GA)

**Robert T. Mowrey**

Partner, Locke Lord Bissell & Liddell LLP (Dallas, TX)

- Conclusively establishing who owns the loan in a foreclosure proceeding
- Ensuring that the entity bringing the foreclosure proceeding has standing to do so
  - When is original loan documentation necessary to prove standing?
  - Challenges to ownership of the loan
- Update on state foreclosure moratorium laws – where and under what circumstances foreclosures are being suspended
  - Fremont and “presumptively unfair” loans
- Preparing for litigation arising out of foreclosures
  - Counterclaims arising from TILA and RESPA
  - Wrongful foreclosure lawsuits
- Managing counterclaims so as to mitigate the delay of foreclosure

### 4:15 Evaluating and Expediting Resolution of Investor Repurchase Demands

**Robert Austin**

Assistant General Counsel, Bank of America (Charlotte, NC)

**Talcott J. Franklin**

Partner, Patton Boggs LLP (Dallas, TX)

- Evaluating different repurchase demands
  - First/early payment default
  - Material guideline deviations
  - Fraud and misrepresentation
- Techniques for processing investor repurchase demands and contesting improper claims
- Alternatives to repurchase claims
- Strategies for mitigating damages
- Effect of foreclosure on damages
- Impact of insurance claims on repurchase agreements
- Laches: When is it too late to pursue a claim?
- Establishing viable defenses and developing effective negotiating tools
- Impact of changing market conditions on ability to recover or defend repurchase requests

### 5:15 Conference Adjourns

### 5:15 Cocktail Reception Hosted By:

**ALSTON+BIRD<sub>LLP</sub>**

*All participants are invited to attend this networking opportunity and enjoy a cocktail reception hosted by Alston & Bird LLP*

## DAY TWO: WEDNESDAY, OCTOBER 28, 2009

7:30 Continental Breakfast ☪

8:00 Co-Chairs' Remarks

### 8:15 A View From the Bench: Judicial Perspectives on Heightened Scrutiny of Lenders, Loan Modification Litigation, Bankruptcy, Removal Under CAFA, and Municipal Lawsuits and Foreclosure Injunctions

**The Honorable Timothy J. Corrigan (Invited)**

United States District Judge

U.S. District Court, Middle District of Florida

**The Honorable Michael B. Kaplan**

United States Bankruptcy Judge

U.S. Bankruptcy Court, District of New Jersey

#### Moderator:

**Joseph L. Barloon**

Partner, Skadden, Arps, Slate, Meagher & Flom LLP (Washington, DC)

- Insights on new measures lenders must implement to mitigate future liability
- How courts are responding to investor suits against servicers arising from loan modifications
- When a class action can be removed to federal court under CAFA – analysis of the split between the 9<sup>th</sup> and 7<sup>th</sup> Circuits
  - Impact on filings – are more claims being filed in California in order to benefit from the 9<sup>th</sup> Circuit decision?
  - Impact on litigation outcomes
- Navigating through bankruptcy court - what lenders and servicers need to know
- Analyzing the claims and defenses that are currently being made in bankruptcy courts
- Judicial responses to municipality suits against lenders for damages related to foreclosures
  - Cleveland case
- Perspectives on foreclosure injunctions sought by municipalities
  - Fremont decision
  - South Carolina
  - Cook County

9:30 Morning Coffee Break ☪

### 9:45 Defending Against the Next Generation of Suitability, UDAP, Misrepresentation and Inadequate Disclosure Claims

**Ronald M. Arlas**

Litigation Counsel

Greenpoint Mortgage Funding, Inc. (Novato, CA)

**Frank A. Hirsch, Jr.**

Partner, Alston & Bird LLP (Raleigh, NC)

**Andrew K. Stutzman**

Partner, Chair of the Mortgage & Lending Litigation Practice Group  
Stradley Ronon Stevens & Young, LLP (Philadelphia, PA)

- Defending against borrower claims of unsuitability and misrepresentation relating to Option ARMs
- Satisfying emerging suitability standards
- Defending suitability claims brought under state statutes
- Potential for state AGs to rewrite definition of fairness after Fremont case
- Preparing for the rise in UDAP claims being brought by aggressive plaintiffs' attorneys who are following the lead of state AGs
- Defending against borrower UDAP claims
  - Making the claim that disclosures in prospectuses were adequate and complete at the time that products went to market and that no one could have predicted the subsequent meltdown in the structured finance market
- Establishing viable defenses against TILA claims

10:45 **Investor Lawsuits: Defending Against Claims Arising From Loan Modifications and Mortgage-Backed Securities**

**Philip M. Cedar**

Partner, K&L Gates LLP (New York, NY)

**Thomas M. Hefferon**

Partner, Chair of the Consumer Financial Services Litigation Practice  
Goodwin Procter, LLP (Washington, DC)

**S. Lawrence Polk**

Partner, Sutherland Asbill & Brennan LLP (Atlanta, GA)

**Investor Claims Relating to Loan Modifications**

- Borrower claims that are driving loan modifications
  - Predatory lending
  - Discriminatory lending
- Best practices for servicing modified loans
  - Pitfalls to avoid
- How have loan modifications worked out to date?
- Assessing investor claims against servicers pertaining to loan modifications
- Establishing effective defenses to investor claims
- Achieving modifications of securitized loans
  - Determining the relevant parties and obtaining the necessary approvals
- Key provisions of servicer-investor agreements
  - Is loan modification allowed?
  - Procedures that must be followed when modifying the loan

**Claims Tied to Mortgage-Backed Securities and Other Structured Products**

- Analyzing mortgage-related investment products:
  - MBS
  - CDOs
  - CDS
- Defending against the new wave of claims arising from MBS and derivative products
  - Suitability
  - Inadequate disclosure and misrepresentation
- Utilizing the doctrine of loss causation in the wake of the subprime crisis
- Strategies for defending against institutional investor plaintiffs

12:00 **Networking Luncheon for Speakers and Delegates** 

1:10 **Municipal Lawsuits Against Mortgage Lenders Arising Out of Alleged Predatory Lending Practices: Consumer and Defense Perspectives**

**Bradley H. Blower**

Attorney, Relman & Dane PLLC (Washington, DC)

**Richard E. Gottlieb**

Member, Chair of the Consumer Financial Services Practice  
Dykema Gossett PLLC (Chicago, IL)

- Lessons learned from the Fremont decision
- Defending lenders and servicers against claims seeking damages for alleged harm caused by foreclosures tied to non-traditional loans
  - Cleveland's public nuisance claim
    - Improper municipality regulation of lending
    - Lack of causation
  - Baltimore's discriminatory lending claim
- Shareholder and investor lawsuits against lenders and servicers arising from foreclosure injunctions sought by municipalities

2:10 **Mitigating Servicer and Originator/Lender Liability in the Wake of the Subprime Crisis**

**Gary A. Deutsch, Esq.**

Former Senior Vice President and Assistant General Counsel  
Sovereign Bank (Villanova, PA)

**Anand S. Raman**

Partner, Skadden, Arps, Slate, Meagher & Flom LLP (Washington, DC)

- Ensuring compliance with emerging licensing standards for mortgage lenders
- Determining what constitutes "unfair" loan terms after the Fremont decision
- Defending investment banks against predatory lending claims
- Assessing the scope of preemption as it relates to fair lending
- Preparing for the uptick in post-discharge fee class actions against lenders and servicers
- Fallout from Beazer Homes class action settlement and insurance coverage issues
  - Is this a sign of things to come?
  - What are insurance carriers going to do about paying these kinds of claims?
  - Pitfalls to avoid:
    - Civil conspiracy claims
    - Predatory lending practices
    - RESPA violations
- Countering claims against banks for aiding original lender fraud

3:10 **Conference Ends**

**POST-CONFERENCE MASTER CLASS**

**Wednesday, October 28, 2009**

3:15 p.m. – 5:45 p.m.

**Mastering the Nuances of Foreclosure and Bankruptcy: Establishing Effective Defenses Against the Newest Claims and Counterclaims**

**John R. Chiles**

Partner  
Burr & Forman LLP (Birmingham, AL)

**Lawrence A. Young**

Partner  
Hughes Watters Askanase, LLP (Houston, TX)

*Defaulting borrowers have raised the stakes in foreclosure and bankruptcy proceedings, filing novel and aggressive claims and counterclaims in order to stall foreclosure proceedings. Further, courts are more willing than ever to entertain borrower claims, given the sympathetic treatment that they have received from the media as well as from the Obama administration and Congress. Thus, lenders and servicers must be prepared to defend against the onslaught of litigation arising from these borrower stalling tactics. This Master Class will provide you with the necessary tools to successfully defend against these innovative and aggressive claims.*

*Topics to be addressed include:*

- Proposed federal predatory lending legislation and its effect on foreclosure litigation
- Impact that cram-down provisions could have on bankruptcy proceedings and mortgage payments
- Navigating through the bankruptcy courts and avoiding pitfalls
- Viable defenses against TILA claims
- Assessing whether fees are bona fide and reasonable
- Ensuring adequate cancellation notice
- Effectively defending against suitability claims
  - Burden of proof
  - Facts necessary to prove loan was suitable
  - Reasonableness of transaction
  - Expert testimony
- Successful defenses against discrimination claims
- Strategies for minimizing damages where fault is found

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

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