

22nd 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*

January 11 – 12, 2017 | Hilton San Diego Resort & Spa | San Diego, CA

Featuring in-house insights from industry experts at

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-  **Hon. Helen W. Gillmor**
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-  **Hon. John M. Younger**
Pa. Ct. Common Pleas
-  **Hon. Mark I. Bernstein**
Pa. Ct. Common Pleas

Sessions include:

- The CFPB's Escalating Oversight of the Residential Mortgage Industry:** Imminent Rulemaking, Top Trending Areas for Enforcement, The PHH Action and its Effects Including Appeal, and More
- Mortgage Servicing Update in Light Of the CFPB's Updated and Finalized Rule:** New Rule Provisions and Implementation Deadlines
- The CFPB's Interest in Loss Mitigation and Debt Collection:** Potential FDPCA Amendments and More
- CFPB's Mortgage Data Collection Rule (HMDA):** Understanding the Final Rule and How to Gear Up for Impending Implementation Dates, Plus Technological Implications and Possible Litigation with Regard to Fair Lending
- TRID Check-In:** Benchmarking your Compliance and Implementation Efforts, Compliance Fallout Since the Rule's Implementation and Early Enforcement/Litigation Activity
- The Current State of Litigation Related to **Repurchase/Indemnification Demands**
- State by State Survey on Important Case Law with a Spotlight on California's Distinct Landscape:** Litigation Trends, New Statutes, Statute of Limitations Issues and More
- TCPA in the Residential Mortgage Industry,** Plus Impact of the FCC Order, Litigation and Settlement Trends, Emerging Defense Strategies, Class Action Certification Issues, and Staying Ahead of the Curve in the Face of Complex and Unclear Rules
- Up to the Minute Developments on Article III Standing Including the Impact of the Spokeo Decision,** Overcoming Contested Foreclosures, and Responding to Borrower Counterclaims and Stall Tactics

Hear directly from the frontline on federal and state regulatory and enforcement priorities and examination procedures:

- CFPB (invited)
- U.S. Attorney's Office, E.D.N.Y.
- Texas AG Office
- Calif. Housing Finance Agency
- Maryland DLLR
- Illinois AG Office

Also Book for the Class Actions Master Class

- See pg. 6 inside

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The industry's leading litigators and in-house counsel are meeting in San Diego on January 11-12, 2017. Attend to benchmark your current strategies, learn the latest government enforcement and regulatory priorities, and get judicial insights from top State judges and Federal judges.

In addition to unparalleled networking opportunities, **ACI's 22nd Residential Mortgage Litigation and Regulatory Enforcement** conference will provide attendees with a revamped agenda reflecting the latest insights and expert advice from our exceptional faculty on defending against lending, servicing and foreclosure litigation, and will keep you ahead of the curve with regard to increased enforcement efforts and the evolving regulatory paradigm at both the federal and state level. Sessions include:

- **The CFPB's Escalating Oversight of the Residential Mortgage Industry:** Imminent Rulemaking, Top Trending Areas for Enforcement, The *PHH* Action and its Effects Including Appeal, and More
- **Mortgage Servicing Update In Light Of the CFPB's Updated and Finalized Rule:** New Rule Provisions and Implementation Deadlines
- **The CFPB's Interest in Loss Mitigation and Debt Collection:** Potential FDCPA Amendments and More
- **CFPB's Mortgage Data Collection Rule (HMDA):** Understanding the Final Rule and How to Gear Up for Impending Implementation Dates, Plus Technological Implications and Possible Litigation with Regard to Fair Lending
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- **Up to the Minute Developments on Article III Standing Including the Impact of the *Spokeo* Decision,** Overcoming Contested Foreclosures, and Responding to Borrower Counterclaims and Stall Tactics

WHO YOU WILL MEET

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

Federal and state regulatory and enforcement officials

PLUS, add value to your attendance by also registering for the Interactive Master Class:

Managing and Defending Against Class Actions: What Defense Counsel Must Know In Order to Avoid Class Certifications, Prevail Against New and Emerging Plaintiff Strategies, Assess the Latest Filings, and Obtain Favorable Settlements

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DAY ONE: WEDNESDAY, JANUARY 11, 2017

7:30 Registration and Continental Breakfast

8:00 Co-Chairs' Opening Remarks

Hunter Eley
Doll Amir & Eley LLP

Joy Harmon Sperling
Day Pitney LLP

8:05 In-House Perspectives on Strategies for Keeping Pace in a Climate of Regulatory Fear, Managing Litigation/Enhancing Relationships with Outside Counsel, and Working with Reduced Budgets and Smaller Staffs

Panel I- 8:05-9:20

Daniel Halvorsen
Senior Attorney
TransUnion

Alice Wang
General Counsel
National Creditor's Connection, Inc.

Lynde Selden
Sr. Corporate Counsel
Plaza Home Mortgage

Nisa Reyes Howard
SVP Director of Compliance
Prime Lending

Wade Pyun
Vice President & Senior Corporate Counsel
U.S. Bancorp

Karen Crawford
Chief Legal Officer
Pacific Union Financial, LLC

Panel II- 9:20-10:35

Christopher M. Bass
Senior Vice President, Deputy General Counsel
Caliber Home Loans

Danielle Ducre Rawls
Corporate Counsel, Legal
Ditech Financial LLC

Luke Umstetter
General Counsel and Chief Compliance Officer
Shellpoint Mortgage Servicing

Maya Koyfman
VP General Counsel
Fairway Independent Mortgage Corporation

Elizabeth Betta
Counsel
MERSCORP Holdings, Inc.

Jason Miller
General Counsel
Select Portfolio Servicing, Inc.

Moderator for Panel I and II:

Hunter Eley
Doll Amir & Eley LLP

10:35 Morning Break Sponsored by: **dae** doll
amir
eley

10:45 Navigating the Regulatory and Enforcement Landscape Going Forward and How to Work with your Regulators and Prepare for and Respond to Examinations and Supervision in a Multi-Agency Environment

Richard Hayes
United States Attorney
United States Attorney's Office,
Eastern District of N.Y.

Richard Bischoff
Assistant Attorney General
Office of Attorney General of the
State of Texas

Thomas O. Freeburger
Assistant General Counsel
California Housing Finance Agency

Moderator:

D. Jean Veta
Covington & Burling LLP

Jedd Bellman
Assistant Commissioner
Office of the Commissioner of
Financial Regulation
Maryland Department of Labor,
Licensing & Regulation

Tom James
Senior Assistant Attorney General
Consumer Counsel – Consumer
Fraud Bureau
Office of the Illinois AG

12:00 Networking Lunch for Speakers and Attendees

1:00 The CFPB's Escalating Oversight of the Residential Mortgage Industry: Imminent Rulemaking, Top Trending Areas for Enforcement, The PHH Action and its Effects Including Appeal, Plus Examinations, Investigations, Administrative Actions and Appealing CFPB Decisions

Jan A. Zemanek
General Counsel
Kondaur Capital Corporation

David Stein
Bricker & Eckler LLP

Philip R. Stein
Bilzin Sumberg Baena Price &
Axelrod LLP

Michael Gordon
WilmerHale

- CFPB's rulemaking agenda—what's on the horizon? Successor-in-interest rules; Debt collection rulemaking; Credit reporting- long term action
- Recent/trending areas for CFPB enforcement actions
- CFPB examinations – what to expect: What are examiners looking for? Practical guidance on how best to prepare; Enforcement and litigation risks arising from an examination

- *PHH* Action: The CFPB's position on mortgage servicing agreements and the fallout from the decision; Violations of RESPA and resultant fines
- *PHH*'s appeal of the fines in the DC Circuit Court: Important test of the CFPB's authority
- 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
- Loan Origination issues: Weaknesses in compliance management systems
- Loan modification issues: Error in processing issues or complying with regulations: More borrowers asserting damage claims
- Appealing CFPB decisions
- False and misleading actions by lenders: What is misleading? Explaining qualifying factors and selling the product in the best light but not telling the obligations
- CFPB's open investigation on bank rates and mortgage calculators
- E-closing and what the CFPB has to say

2:00 Mortgage Servicing Update In Light Of the CFPB's Updated and Finalized Rule: New Rule Provisions, Implementation Deadlines, Plus Issues Arising from Mortgage Servicing Transfers, Litigation and Enforcement Concerns, Servicer Liability Under the FDCPA and the FCRA, Implementing Best Practices, and Defending Against New and Innovative Borrower Claims

Laurie A. Maggiano (*invited*)

Servicing and Secondary Markets Program Manager
Office of Research, Markets & Regulations
Consumer Financial Protection Bureau

Robert Mowrey

Locke Lord LLP

Joshua Charles Prever

Morgan, Lewis & Bockius LLP

- August 2016 Final Mortgage Servicing Rule: Rule Provisions; Implementation deadlines; Compliance hurdles and how best to overcome them
- Impact of Basel III on loan servicing
- Mortgage Servicing Transfer Issues: CFPB preventative bulletin; Admissibility of prior servicer records as evidence
- 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

3:00 Afternoon Break

3:10 The CFPB's Interest in Loss Mitigation and Debt Collection: Potential FDCPA Amendments and More

Christy Ames

Stites & Harbison, PLLC

Stephen Fogdall

Schnader Harrison Segal
& Lewis LLP

- CFPB's recent partial proposal (July 28, 2016) regarding third party debt collection: FDCPA amendments
- Future implications for first party creditors in addition to the third party debt collection industry (covered by the FDCPA)
- Handling of loss mitigation in light of these developments
- Interplay between State and Federal laws

3:55 CFPB's Mortgage Data Collection Rule (HMDA): Understanding the Final Rule and How to Gear Up for Impending Implementation Dates, Plus Technological Implications and Possible Litigation with Regard to Fair Lending

Loretta Salzano

Franzen and Salzano, P.C.

Martha J. Svoboda

Poyner Spruill LLP

- Purpose and effect of HMDA: Collection of information on borrowers including race, gender, and analyzed by the government; CFPB enforcement actions resulting from collection of information submitted by lenders as a result of HMDA
- Implementation dates: Collection of data, January 1, 2018; Reporting of data, March 1, 2019
- Requirements dropped from proposed rule
- Loosened requirements for small banks and credit unions
- What data will be required to be reported
- Other requirements set forth by the final rule
- How to best prepare for compliance in advance
- The rule's technological implications: how to prepare for increased demands
- Litigation implications of the rule with regard to fair lending: fertile ground?

4:40 TRID Check-In: Benchmarking your Compliance and Implementation Efforts, Compliance Fallout Since the Rule's Implementation and Early Enforcement/Litigation Activity

Melissa S. Koupal

Vice President of Loan Integrity
LoanDepot

Rose Marie Brook

Fabrizio & Brook, P.C.

- TRID effective date: October 3, 2015: Compliance fallout issues since implementation
- Rule breakdown for review/updates
- Measures taken for timely compliance
- Costs associated with compliance
- Opinions on consumer friendliness
- Situations not addressed by the regulation that still require additional guidance
- The scope and effect of TILA and RESPA's liability provisions given the integration of the two sets of disclosures
- Problems and grievances with the rule since implementation
- Early enforcement or litigation activity

5:25 The Current State of Litigation Related to Repurchase/Indemnification Demands

Sarah Alexander Goldfrank

Senior Vice President & Deputy General Counsel
Fannie Mae

James W. Brody

American Mortgage
Law Group, P.C.

- Litigation regarding loans which have been the subject of repurchase and indemnification demands from secondary market investors
- Litigation surrounding loans purchased by government sponsored entities (GSE's)
- Demands still persist years after the mortgage crisis has subsided
- Effect of tightening credit and underwriting standards in recent years
- Recent changes and proposals regarding GSE's

6:10 Conference Adjourns

DAY TWO: THURSDAY JANUARY 12, 2017

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

Hon. Helen W. Gillmor
U.S. Dist. Ct., D. Hawaii

Hon. Robert B. Freedman
Calif. Super. Ct., Alameda

Hon. Matthew Kennelly
U.S. Dist. Ct., N.D. Ill.

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Hon. Mark I. Bernstein
Pa. Ct. Common Pleas

Moderator:

Andrew K. Stutzman
Stradley Ronon Stevens & Young, LLP

9:50 The Borrower's Perspective: Insights From the Plaintiffs' Bar and Consumer Advocates

Abbas Kazerounian
Kazerouni Law Group, APC

Tara Twomey
National Consumer Law Center

Moderator:

Katrina Christakis
Pilgrim Christakis LLP

In this session, you will hear from leading plaintiffs' 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 plaintiffs' 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 plaintiffs' bar is continuing to adapt to CAFA
- How the industry can best work with borrowers to pursue loan modifications and avoid foreclosures and litigation
- Recent litigation against property preservation companies

10:35 Morning Break

10:40 State by State Survey on Important Case Law with a Spotlight on California's Distinct Landscape: Litigation Trends, New Statutes, Statute of Limitations Issues and More

Joy Harmon Sperling
Day Pitney LLP

Michael R. Pfeifer, Esq.
Pfeifer & de la Mora, LLP

Jarlath Curran
Severson & Werson

- Which states are driving the litigation nationwide and why?
- California – *Yvanova v. New Century Mortgage Corporation* case: Implications of the decision going forward and in other jurisdictions; Subsequent *Saterbak* decision limiting *Yvanova's* reach
- Other recent California case law
- California's unique consumer protection statutes
- California's own successor-in-interest bill: SB 1150
- Homeowner's Bill of Rights: First in California then Minnesota and Nevada, now Virginia: Which states will follow next?
- State by state statute of limitations issues in foreclosure law and bankruptcy proceedings: Washington, NY, Texas, Florida; Litigation where borrowers are using statutes of limitations to avoid foreclosure or affirmatively strike mortgages.
- *ACE Securities Corp.* decision in New York on statute of limitations
- Bad faith settlement negotiations in Nevada
- Super majority liens in Nevada: Borrower fails to pay HOA dues and homeowner association closes and wipes out the lien resulting in bank doesn't own the property and doesn't have the lien
- Florida — Paragraph 22 litigation: Loan acceleration clauses and requirements lender has to send to the borrower when the borrower defaults on the loan; Recent foreclosure defense in Florida

11:35 TCPA in the Residential Mortgage Industry, Plus Impact of the FCC Order, Litigation and Settlement Trends, Emerging Defense Strategies, Class Action Certification Issues, and Staying Ahead of the Curve in the Face of Complex and Unclear Rules

Geoffrey K. Milne
Hunt Leibert Jacobson, PC

Michael Cavallaro
Fox Rothschild LLP

- Effecting the Residential Mortgage industry from both a debt collection and marketing perspective
- FCC order: outlining new TCPA rules; Strict definition of an autodialer; Increased litigation risk?
- Other compliance concerns, enforcement trends
- Emerging trends and developments in TCPA litigation: Key cases; Offers of judgment in the TCPA class action context; Lessons learned
- Settlement trends
- Evolving issues relating to consent and revocation of consent under the TCPA; Impact on liability
- The latest on the definition of automated telephone dialing system (ATDS)
- Defense strategies for combatting the new wave of TCPA claims and class actions; Assessing the latest plaintiff strategies
- Certification issues relating to TCPA class actions
- Overcoming TCPA challenges and limiting TCPA exposure in the face of complex and unclear rules
- How technology can be used to minimize your exposure to TCPA claims
- Practical guidance for what lies ahead

12:15 Up to the Minute Developments on Article III Standing Including the Impact of the *Spokeo* Decision, Overcoming Contested Foreclosures, and Responding to Borrower Counterclaims and Stall Tactics

Alan S. Wolf
The Wolf Firm, A Law Corporation

Susan Overbey
Burke, Warren, MacKay & Serritella, P.C.

- Effect of the *Spokeo* decision (May 2016): Consumers do not have to suffer injury but can still bring a suit under Article III? Early battles over standing and whether statutory harm, without concrete injury, is sufficient under statutes relevant to the residential mortgage industry; How Plaintiffs are using the decision in lower courts so far, and what are the outcomes?
- Conditions precedent to foreclosure
- Assessing borrower attacks on standing: New and emerging claims; How to combat and defeat standing attacks
- MERS interest as mortgagee or beneficiary

- Transfer of notes via endorsement and delivery rather than assignment
- Assignment of mortgages: 6th Circuit Court of Appeals case in favor of MERS related to assignment of mortgage; States/jurisdictions objecting to MERS holding assignment of mortgages for future mortgage assignments preventing re-recording of mortgages with the city/county
- 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
- Reviewing the *First American* case and whether the consumer has to show she suffered injury after discovering illegal kickbacks related to insurance company's services violating RESPA

- Current trends in class certification: *Tyson Foods* decision: classification by statistics; what will the impact be?
- *Campbell-Ewald*
- Heightened standards of commonality and predominance
- Class definition and ascertainability; superiority/adequacy
- CAFA developments, Removability, issue certification, Rule 23
- Use of experts
- Recent settlement trends and strategies
- Settlements for preliminary and final approval
- Class Notice Issues, Release scope, Attorney's fees
- Class action reform
- Split in circuit courts on treading certification of classes
- Recent trend in difficulty of settling class action cases: The need to show that the class members will have a real value from class action settlement: More scrutiny from the appellate courts on settling class action lawsuits

12:55 Fair Lending Updates: Status of Disparate Impact since *Texas Department of Housing*; Increased Enforcement by Regulators Including the CFPB; Using UDAAP Where Other Statutes or Regulations Fail; The Latest Litigation Strategies and Recent Themes and Issues

Shelly Pine

Senior Associate General Counsel
Mission, Legislative and
Regulatory Affairs Dept.
Freddie Mac

David L. Permut

Goodwin Procter LLP

- Landmark Supreme Court case law on the Disparate Impact Rule: *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*
- How state and federal agencies are approaching fair lending issues
- Proposed HMDA changes and proposals
- CFPB's HMDA data serving as basis for fair lending claims
- 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
- UDAAP in Fair Lending: Use when unable to prevail ECOA/FHA Disparate Impact; Preventing such claims
- Disparate impact in the age of the Qualified Mortgage: 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 recent regulatory and litigation developments on the defense of predatory lending claims
- Public relations concerns
- Settlement considerations and strategies

1:35 A Focus on Class Actions: Supreme Court Activity Including the Decision in *Tyson Foods* – 'Certification by Statistics' – and Decision in *Campbell-Ewald* and its Impact on Rule 68, Plus CAFA and Removal Developments and the Latest on Early Resolution and Settlement Strategy

Eric Simonson

McGlinchey Stafford

2:00 Main Conference Ends-Lunch for Master Class Participants

POST-CONFERENCE MASTER CLASS THURSDAY, JANUARY 12, 2017

3:00 p.m. – 5:00 p.m.

Managing and Defending Against Class Actions: What Defense Counsel Must Know In Order to Avoid Class Certifications, Prevail Against New and Emerging Plaintiff Strategies, Assess the Latest Filings, and Obtain Favorable Settlements

David L. Permut

Goodwin Procter LLP

Philip R. Stein

Bilzin Sumberg Baena Price &
Axelrod LLP

To defend against the latest influx of claims, it is critical that you have a clear and detailed understanding of where plaintiffs are filing and why, which defense strategies are having the most success, how to best utilize multiple sources of data to strengthen your defense, and how to obtain favorable settlements. Obtain expert insights and proven strategies for how to successfully manage and defend against the new wave of claims and class actions, including:

- Class action trends involving residential mortgage litigation, and what to expect going forward; Loan modification litigation; Force-placed insurance litigation
- Defending against the influx of cases being brought by plaintiffs' attorneys and state AGs; New and emerging plaintiff strategies
- Where plaintiffs are filing and why; Using this information to structure your case
- Using expert testimony and data to make a direct challenge to a class certification
- Dealing with successor liability; Multiple owners or managers
- Managing and defending against duplicative claims
- Using data and analytics to make your case
- Ensuring that technology is usable and reliable at trial
- Settlement considerations; Making the decision to settle; Ensuring effective client communication during the settlement process
- Best practices for ensuring that settlements remain settled; Creating a comprehensive settlement order; Litigating the release

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22nd National Forum on

RESIDENTIAL MORTGAGE

LITIGATION & REGULATORY ENFORCEMENT

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San Diego, CA

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