

BUCKLEY

Mortgages Practice

As the mortgage industry continues to evolve, mortgage-related government scrutiny continues. Buckley is a leading provider of legal services to the mortgage industry, representing the top mortgage originators and servicers in the United States. Our clients include the nation's largest financial institutions, regional banks and lenders, start-up firms, mortgage insurers, title insurers, securities broker-dealers, private equity investors, specialty servicers, warehouse lenders, e-commerce and technology vendors, home builders, and mortgage industry trade associations.

Our comprehensive experience is based on decades of experience as trusted counselors across regulation, enforcement, litigation, transactions, and licensing, and our team approach informs our advice across the entire spectrum of work that we do. Our firm defends mortgage lenders and servicers in every stage of government investigation and enforcement, as well as federal and state court proceedings. We provide regulatory counseling on compliance matters for all aspects of the origination and servicing process, including fair and responsible lending and servicing, the complex set of federal and state disclosure and timing requirements, government insured and guaranteed lending, mortgage fraud and anti-money laundering (AML), preemption, privacy and information security, and electronic delivery of commercial and residential loans. We assist nonbank clients in analyzing state license requirements to engage in the various aspects of the mortgage business, as well as to obtain such licenses or approvals for changes of control. We work with our clients to develop new products as well as design and implement new policies, procedures, and disclosures that ensure compliance with recently enacted federal and state laws and regulations. We also advise on the purchase and sale of mortgage companies, servicers, settlement service providers, as well as mortgage loans and mortgage servicing rights, and assist in negotiating servicing sub-servicing, credit facility, joint venture, private-label outsourcing, technology, and other critical vendor agreements.

Significant work includes:

- Assisted a wide range of bank and nonbank lenders and servicers in adapting systems and procedures to implement the sweeping mortgage regulations adopted under the Dodd-Frank Act, including the Ability-to-Repay/Qualified Mortgage Rule, Loan Originator Compensation Rule, Mortgage Servicing Rules, Truth in Lending Act-Real Estate Settlement Procedures Act (TILA-RESPA) Integrated Disclosure Rule (TRID), and Home Mortgage Disclosure Act (HMDA)
- Represented numerous mortgage servicers in CFPB investigations regarding alleged violations of RESPA, the Mortgage Servicing Rules (MSR)

and the prohibition on unfair, deceptive, or abusive acts or practices (UDAAP)

- Conducted due diligence and transactional work in connection with numerous mortgage lender and servicer acquisitions
- Conducted substantial reviews of disclosure and loan documents for mortgage lenders transitioning to new document vendors
- Represented mortgage servicer in complex investigation involving the interplay of the Bankruptcy Code and RESPA's escrow rule
- Representation of numerous correspondent lenders in actions for breach of contract and indemnification brought by the ResCap Liquidating Trust as successor to Residential Funding Company (RFC) arising from the sale and subsequent securitization of residential mortgage loans
- Represented a U.S. financial services company in its exit from mortgage business
- Represented a U.S. financial services company in sale of mortgage servicing rights and a default servicing platform to Green Tree, which included a subservicing arrangement between the two entities
- Represented a federally chartered bank in the sale of mortgage servicing rights to Two Harbors
- Represented a private equity firm in an equity investment in a reverse mortgage lender
- Represented a mortgage company in \$100M stock sale to private equity firm
- Represented a Wall Street bank in a mortgage loan private-label outsourcing arrangement, including related servicing and loan sale agreements
- Represented a client in the acquisition of two mortgage-related fintech companies

- Representing clients in connection with various portfolio retention structures
- Represented clients in establishing Affiliated Business Arrangements/joint ventures

Sub Practices

Mortgage Origination

Buckley is a leading provider of legal services to the mortgage lending industry and advises on all aspects of the origination process. We assist clients with product development, advertising and marketing, disclosures, loan originator compensation, underwriting/ability-to-repay, fair lending, applying Real Estate Settlement Procedures Act (RESPA) and other anti-kickback requirements to business development efforts, appraisal management, vendor relations, and electronic disclosure and signature. Our clients include mortgage lenders, brokers and insurers, as well as securities broker-dealers, consumer finance companies, home builders, document preparation firms, real estate brokers, lead generators, and mortgage industry trade associations. Our attorneys are recognized authorities on the laws affecting this industry, including the Equal Credit Opportunity Act (ECOA), Fair Housing Act (FHA), Truth-in-Lending Act (TILA), RESPA, Home Ownership and Equity Protection Act (HOEPA), Home Mortgage Disclosure Act (HMDA), Homeowners Protection Act, the Fair Credit Reporting Act (FCRA), and the myriad state laws applicable to mortgage origination.

Mortgage Servicing

Our attorneys advise on mortgage servicing-related examination, enforcement, regulatory counseling, litigation, and transactional matters. We advise on all issues pertaining to loss mitigation foreclosure alternatives, collection activities, using affiliated providers for default or other services, payment application, managing escrows, portfolio retention, state licensing, and federal preemption for bank servicing loans given the impact of Dodd-Frank. We are involved in regulatory and private litigation actions pertaining to lender-placed insurance, fair and responsible servicing; loss mitigation and loan modifications; foreclosure and bankruptcy; affiliated and unaffiliated vendor management matters; and False Claims Act (FCA)-related issues. We guide clients through Consumer Financial Protection Bureau (CFPB) examinations and investigations, state regulator examinations and enforcement (including joint actions through the Multi-state Mortgage Committee (MMC)), Servicemember's Civil Relief Act (SCRA) investigations and enforcement actions, state attorney general investigations, and Federal Trade Commission (FTC) investigations. We negotiate mortgage servicing right purchase and sale agreements, sub-servicing agreements, and various types of vendor agreements. We also assist with remedial efforts to enhance servicing compliance policies, procedures, practices, and internal controls, including the preparation of comprehensive legal requirement inventories, risk assessments, policies, and procedures.

Counseling & Compliance

Our lawyers provide local, state, and federal compliance and risk management advice. We develop compliance management programs, including written policies, training, and

ongoing monitoring to address compliance with evolving lending laws and regulations. We advise on the complex rules governing Federal Housing Administration lending and servicing. We have played an active role in federal compliance initiatives involving government agencies, including the various investigations and actions relating to the foreclosure crisis such as the interagency horizontal review of the mortgage servicing industry and related Independent Foreclosure Review process. We also regularly conduct 50-state surveys of laws governing the mortgage industry.

Enforcement

Our firm advises on mortgage-related enforcement matters initiated by the Consumer Financial Protection Bureau (CFPB), Department of Justice (DOJ), Federal Trade Commission (FTC), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), Federal Housing Administration, state regulators (both individually and through the MMC) and state attorneys general. We resolve complex parallel proceedings involving concurrent government enforcement and civil litigation, congressional investigations, and class actions. We assist our clients in responding to bank regulatory examinations, as well as Federal Housing Administration, Veterans Affairs (VA), and Ginnie Mae audits and inspector general reviews.

Litigation

Our litigators defend mortgage-related class action and complex civil claims, ranging from multi-district class and mass actions and other complex civil litigation to arbitration and alternative dispute resolution (ADR) proceedings. Our experience involves allegations of fair and responsible lending, unfair competition and deceptive trade acts and practices, fraud, false statements, false claims, breach of contract, loan repurchase claims, and breach of fiduciary duties, as well as alleged violations of regulations and laws governing the mortgage industry. We offer our mortgage industry clients a strong appellate practice, and serve as amicus curiae counsel on cases that impact this industry.

Mortgage Transactions

Buckley is involved in the full range of transactions relevant to mortgage companies, servicers, settlement service providers, vendors, and investors. We negotiate the most favorable business terms possible for our clients by leveraging our knowledge of the mortgage industry and its business risks, our experience handling litigation and enforcement matters, and our deep understanding of the relevant laws, regulations, and the expectations of regulators, the government-sponsored enterprises (GSE), and Ginnie Mae. Our lawyers are experienced in regulatory and corporate due diligence of both acquisition or investment targets as well as service providers. We negotiate mergers and acquisitions of mortgage lenders, servicers, brokers, settlement service providers, and other service providers; asset purchase and sale transactions, including loans and servicing rights; and distressed asset purchases and sales agreements. We negotiate and document correspondent, wholesale lending, broker, servicing and subservicing, pooling and servicing, warehouse lending and other credit facility, outsourcing, co-branding, portfolio retention, and marketing and affinity marketing agreements. We are also involved in vendor transactions that include, loan origination, servicing, collections,

settlement services, vendor arrangements, the provision of electronic/digital mortgage-related services, and joint ventures under Real Estate Settlement Procedures Act's (RESPA) affiliated business arrangement rules.

Licensing

Our firm offers law-related licensing services to mortgage lenders, loan investors, and mortgage servicing rights-owners, brokers, and servicers, as well as debt collectors, consumer finance companies, and other non-depository financial institutions. We assist with every phase of the licensing process, from identifying potential target licenses to interacting with state regulatory agencies. We work with our clients to obtain licenses in all 50 states, the District of Columbia, and most U.S. territories. Our experience includes federal and state licensing; mortgage, Federal Housing Administration, and loan originator/loan officer licensing; the Nationwide Mortgage Licensing System (NMLS); and license changes of control, modifications, upgrades, downgrades, and surrenders. We navigate our clients through amendments to corporate structure and change of control, management and location, and Certificate of Authority and DBA filings. Our attorneys have extensive experience working with state and federal regulators and licensing authorities on licensing and compliance matters. Our integrated approach to licensing give us an advantage when drafting initial applications and follow-on requests that have the best chance of obtaining timely approval.

Loan Repurchase

Buckley delivers an in-depth understanding of mortgage lending operations, loan sale transactions, and market expectations in the representation of mortgage lenders in loan repurchase litigation brought by investors, trustees, and bond insurers alleging breaches of representations and warranties in loan purchase or credit enhancement agreements. We also assist clients in responding to repurchase demands made by private investors and government-sponsored enterprises (GSEs). As needed, our team can assist in the difficult, loan-by-loan analysis of the validity of repurchase requests.

Mortgage Insurance

Our attorneys routinely advise mortgage insurers on a broad range of compliance matters, including those involving the Real Estate Settlement Procedures Act (RESPA); federal, state, and international privacy laws; Equal Credit Opportunity Act (ECOA); Fair Housing Act; Fair Credit Reporting Act (FCRA); and Truth in Lending Act (TILA). We also counsel clients on issues pertaining to federal and state fair debt collection laws, state insurance statutes, and other state and federal laws and regulations. We assist our clients in drafting and negotiating mortgage insurance contracts and ancillary agreements, contract underwriting, and other arrangements with various settlement service providers. We represent mortgage insurers before Congress, the Department of Housing and Urban Development (HUD), FTC, and federal banking and state regulatory agencies.

Mortgage Industry Public Policy

Buckley advises corporate clients and industry trade associations on pending federal and state legislative and regulatory developments affecting the mortgage industry. Our

lawyers draft legislative and regulatory language, prepare comment letters, and advocate client positions before Congress, regulatory agencies, and state legislatures.