UT LAW CLE Continuing Legal Education

# 49th Annual William W. Gibson, Jr. Mortgage Lending Institute
# September 17-18, 2015 • AT&T Conference Center • Austin, TX
# November 5-6, 2015 • Cityplace Conference Center • Dallas, TX

## Thursday Morning, Sep. 17, 2015

**Presiding Officer:**
**Tommy Bastian,** Barrett Daffin Frappier Turner & Engel, LLP - Addison, TX

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| 8:00 am | **Registration Opens**<br><br>Includes continental breakfast. |
| 8:50 am | **Welcoming Remarks** |
| 9:00 am<br>0.75 hr<br>0.25 hr ethics | **Case Law Update, Part I**<br><br>Overview of recent cases addressing legal and ethical issues in mortgage lending and real estate, including foreclosures, loan agreements, guaranties, leases, conveyances, and more.<br><br>David A. Weatherbie, Cramer Weatherbie Richardson Walker LLP - Dallas, TX |
| 9:45 am<br>0.50 hr | **Developments from the Texas Legislature**<br><br>A report on laws passed by the 84th Texas Legislature affecting mortgage lending and the practice of real estate law.<br><br>In Austin:<br>John H. "Jack" Miller III, Irelan McDaniel, PLLC - Houston, TX<br><br>In Dallas:<br>Jack P. Turano III, Hoover Slovacek LLP - Houston, TX |
| 10:15 am<br>0.50 hr | **Foreclosure Update—The Courts Have Spoken and You Need to Hear This!**<br><br>Buckle up and prepare for a fast and furious ride through the dynamic realm of foreclosure.<br><br>Robert D. Forster II, Barrett Daffin Frappier Turner & Engel, LLP - Addison, TX |
| 10:45 am | **Break** |

### Mortgage Lending Review and Essentials

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| 11:00 am<br>0.50 hr | **Lender Provisions in Leases: Getting Your Priorities Straight**<br><br>Identify the basic lease provisions that are generally of greatest importance to lenders on loans secured by single-tenant and multi-tenant nonresidential, income-producing, commercial real estate while considering the impact of the Texas Assignment of Rents Act (TARA).<br><br>Thomas M. Whelan, McGuire, Craddock & Strother, P.C. - Dallas, TX |

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| 11:30 am<br>0.50 hr | **Guaranty Liability**<br><br>Issues that guarantors should consider in negotiating guaranties in order to avoid unpleasant surprises.<br><br>J. Cary Barton, Barton, East & Caldwell, P.L.L.C. - San Antonio, TX |
| 12:00 pm<br>0.50 hr | **ESIGN Consent**<br><br>A practitioner's approach to drafting an enforceable ESIGN pre-consent disclosure with reference to applicable case law.<br><br>Christopher W. Christensen, PeirsonPatterson, LLP - Dallas, TX |
| 12:30 pm | **Pick Up Lunch**<br><br>Included in registration. |

## Thursday Afternoon, Sep. 17, 2015

**Presiding Officers:**
In Austin: **Janna R. Melton,** Attorney at Law - Austin, TX
In Dallas: **Charles E. Fiscus,** Shackelford, Melton, McKinley & Norton, LLP - Dallas, TX

### LUNCHEON PRESENTATION

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| | **Introduction**<br><br>In Austin:<br>Brian C. Rider, The University of Texas School of Law, Austin, TX<br><br>In Dallas:<br>Tommy Bastian, Barrett Daffin Frappier Turner & Engel, LLP, Addison, TX |
| 12:50 pm<br>0.50 hr | **Rescission in the Truth in Lending Act: The UT Law Supreme Court Clinic's Victory on Behalf of Borrowers in *Jesinoski v. Countrywide Home Loans, Inc.***<br><br>In January 2015, the United States Supreme Court handed down a succinct 9-0 decision in favor of borrowers seeking to rescind mortgages under the Truth in Lending Act, surprising many Court watchers. Hear a brief analysis of the UT Law Supreme Court Clinic's strategic choices in seeking certiorari in this case while the issue was moving through several courts of appeals simultaneously, and then in successfully litigating on behalf of borrowers against Seth Waxman and Bank of America.<br><br>In Austin:<br>Lynn E. Blais, Co-Director of the Supreme Court Clinic, The University of Texas School of Law - Austin, TX<br>In Dallas:<br>Lisa M.C. Elizondo, Fourteenth Court of Appeals - Houston, TX<br>Emily A. Fitzgerald, The Supreme Court of Texas - Austin, TX |
| 1:20 pm | **Break** |

### CONCURRENT SESSIONS

## Commercial Lending

**Presiding Officers:**
In Austin: **Janna R. Melton,** Attorney at Law - Austin, TX
In Dallas: **Charles E. Fiscus,** Shackelford, Melton, McKinley & Norton, LLP - Dallas, TX

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| 1:35 pm<br>0.50 hr | **Standby Letters of Credit: Tips and Traps**<br><br>Whether representing the beneficiary of a letter of credit, the party required to post a letter of credit, or the bank issuing the letter of credit, it is important to understand the structure of these transactions. Learn the risks and benefits of letter of credit transactions applicable to all three parties.<br><br>Marilyn C. Maloney, Liskow & Lewis - Houston, TX |
| 2:05 pm<br>0.50 hr | **The Troublesome Opinion Requests: Dealing with It**<br><br>Gain insight into inappropriate requests for legal opinions and learn how to respond to such requests, including alternatives that may be proposed.<br><br>Stephen C. Tarry, Vinson & Elkins LLP - Houston, TX |
| 2:35 pm<br>0.50 hr | **Foreclosing Security Interests on Non-Securitized Single Family Residential Real Estate Secured Promissory Notes**<br><br>Review the foreclosure of UCC Chapter 9 security interests on promissory notes secured by single family residences and the impact that UCC Chapter 3 has on such foreclosures.<br><br>Frederick J. Biel, Atlas Hall Rodriguez - McAllen, TX |
| 3:05 pm<br>0.50 hr | **Title Insurance: Closing Protection Letters**<br><br>Take a closer look at closing protection letters—what they do, what they don't do, and why you need them in real estate transactions—and gain timely insight into trends in closing protection letters and liability in the real estate settlement process.<br><br>James L. Gosdin, Stewart Title Guaranty Company - Houston, TX |
| 3:35 pm | **Break** |

## Residential Lending

**Presiding Officer:**
**Tommy Bastian,** Barrett Daffin Frappier Turner & Engel, LLP - Addison, TX

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| 1:35 pm<br>0.50 hr | **Reverse Mortgages: An Idea Whose Time Has Come**<br><br>Hear a brief overview of the history of reverse mortgages, the compelling need for such loan programs in retirement planning in the United States today, and the legal challenges that face reverse mortgage lenders and servicers.<br><br>James M. Milano, Weiner Brodsky Kider PC - Washington, DC |
| 2:05 pm<br>0.50 hr | **TILA-RESPA Integrated Disclosures**<br><br>An overview of how practices in the real estate industry are impacted by the TILA-RESPA Integrated Disclosure rule, including process and workflow challenges presented around pre-application, application, provision of upfront loan estimates, and closing disclosures under the new rule.<br><br>Chris A. Peirson, PeirsonPatterson, LLP - Dallas, TX |
| 2:35 pm<br>0.50 hr | **Successfully Navigating the Texas Foreclosure Statute of Limitations Minefield**<br><br>There has been a considerable increase in Texas lawsuits filed to void residential liens based on the expiration of the statute of limitations to foreclose. To assist in navigating the foreclosure limitations |

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| | minefield and avoid the draconian result of a voided lien, the accrual, tolling, and stopping of the limitations clock become of paramount importance in foreclosure litigation.<br><br>Jason L. Sanders, Locke Lord LLP - Dallas, TX |
| 3:05 pm<br>0.50 hr | **Hot Property Owner Association (POA) Topics for Lenders' Lawyers**<br><br>Gain insight into the most pertinent subject matter when lenders and property owners associations cross paths, including lien priority and/or subordination issues, lenders' right of redemption, and a wish list for lenders from a POA lawyer.<br><br>Brady Ortego, Roberts Markel Weinberg Butler Hailey PC - Houston, TX |
| 3:35 pm | **Break** |
| 3:45 pm<br>0.50 hr | **Construction Lending: Mechanic's Liens and How They Work**<br><br>An overview of Texas mechanic's and materialman's lien laws, and a discussion of lien law issues that lenders should consider when getting involved in a construction project.<br><br>Andrea Alford Hight, Winstead PC - Dallas, TX |
| 4:15 pm<br>0.75 hr ethics | **Attorneys in the Hot Seat: Problems and Solutions**<br><br>Explore selected recurring problem areas for lawyers, consider how the ethics rules may apply, and hear suggestions for real estate lawyers.<br><br>Nicole T. LeBoeuf, Anderson Tobin, PLLC - Dallas, TX |
| 5:00 pm | **Adjourn** |

## Friday Morning, Sep. 18, 2015

**Presiding Officers:**
In Austin: **Paul D. Pruitt,** Fidelity National Title Group - Austin, TX
In Dallas: **Mark McPherson,** Attorney at Law - Dallas, TX

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| 8:00 am | **Conference Room Opens**<br><br>Includes continental breakfast. |
| 8:30 am<br>0.75 hr<br>0.25 hr ethics | **Case Law Update, Part II**<br><br>A continuation of the Case Law Update.<br><br>David A. Weatherbie, Cramer Weatherbie Richardson Walker LLP - Dallas, TX |
| 9:15 am<br>0.50 hr | **Title Insurance Coverage: Current Issues**<br><br>Current issues in title insurance from attorneys representing commercial real estate buyers, lenders, and counsel for title insurers.<br><br>Jerel J. Hill, Attorney at Law - Kingwood, TX |
| | **Responding to the Title Commitment and Survey** |

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| 9:45 am<br>0.75 hr | An outline and discussion of the analysis of a title commitment, types of responses for buyer's and lender's counsel, and integrating the survey into the title commitment.<br><br>William A. Kramer, Republic Title of Texas, Inc. - Dallas, TX |
| 10:30 am | **Break** |

### Sources of Funding: Where is the Money Coming From?

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| 10:45 am<br>0.50 hr | **Basics of EB-5 Lending**<br><br>Review the basics of EB-5 lending/investing in the commercial real estate context, including the statutory basis for the program, requirement of job creation, and typical structures and projects. Hear considerations for traditional lenders when EB-5 money is in the capital stack, including setting reasonable expectations, and look at common compliance issues associated with EB-5 programs.<br><br>Mark L. Patterson, Akin Gump Strauss Hauer & Feld LLP - Dallas, TX<br>M. Scott Barnard, Akin Gump Strauss Hauer & Feld LLP - Dallas, TX<br>Jenny M. Walters, Akin Gump Strauss Hauer & Feld LLP - Dallas, TX |
| 11:15 am<br>0.50 hr | **Crowdfunding**<br><br>A look at crowdfunding as a source of financing in real estate projects and development and its impact on real estate lending.<br><br>Bjorn J. Hall, Fundrise - Washington, DC |
| 11:45 am | **Pick Up Lunch**<br><br>Included in registration. |

## Friday Afternoon, Sep. 18, 2015

**Presiding Officer:**
**Brian C. Rider,** The University of Texas School of Law - Austin, TX

### LUNCHEON PRESENTATION

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| 12:05 pm<br>0.75 hr | **Capital Sources and Current Trends in Real Estate Financing**<br><br>A look into where real estate capital is coming from in 2015, along with a discussion on emerging sources and trends in the industry.<br><br>In Austin:<br>Casey Knust, CBRE Capital Markets - Austin, TX<br><br>In Dallas:<br>Scott Lewis, CBRE Capital Markets - Dallas, TX |
| 12:50 pm | **Break** |
| 1:05 pm<br>0.75 hr | **Identifying and Indemnifying against Environmental Risks**<br><br>A brief introduction to and identification of environmental risks of concern to secured lenders and borrowers, highlighting recent developments of interest in environmental law, followed by a deeper dive into environmental indemnity agreements and a discussion on how they might be simplified to better achieve parties' objectives. |

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| | Jeff Civins, Haynes and Boone, LLP - Austin, TX<br>Mary S. Mendoza, Haynes and Boone, LLP - Austin, TX |
| 1:50 pm<br>0.75 hr | **Health Care Facilities Lending**<br><br>Understand the unique considerations, special regulations (and potential pitfalls), and resources available in lending or developing for a health care facility.<br><br>Mary Taylor Henderson, Texas Department of Aging and Disability Services - Austin, TX<br>Derek J. Jakovich, Texas Department of State Health Services - Austin, TX<br>Nancy A. Shellhorse, Carls, McDonald & Dalrymple, LLP - Austin, TX |
| 2:35 pm<br>0.50 hr | **Hot Topics and Tips**<br><br>Discussion of recent developments and hot topics in mortgage lending and related real estate matters.<br><br>In Austin:<br>Brian C. Rider, The University of Texas School of Law - Austin, TX<br>Travis J. Siebeneicher, DuBois, Bryant & Campbell, LLP - Austin, TX<br>In Dallas:<br>Brian C. Rider, The University of Texas School of Law - Austin, TX |
| 3:05 pm<br>0.75 hr ethics | **How to Save Your Job and Still Keep Your Soul**<br><br>Whether a new lawyer or an experienced one, in-house counsel or law firm, we each deal with difficult ethical dilemmas in our jobs or in counseling others: clients suggesting perjury; being ordered to go down a questionable litigation path; investigating and managing ethical issues in our own practices and for clients. Learn specific techniques for raising an ethical issue with a client or colleague, avoiding ethical dilemmas, neutralizing an unethical instruction, and effective storytelling.<br><br>In Austin:<br>DeDe Wilburn Church, DeDe Church & Associates, LLC - Austin, TX<br>In Dallas:<br>Liz D’Aloia, HR Virtuoso Company - Dallas, TX<br>Michael P. Maslanka, FisherBroyles, LLP - Dallas, TX |
| 3:50 pm | **Adjourn** |