

Diana M. Eng | Partner

Financial Institutions Litigation and
Regulatory Compliance ("FILARC")

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Diana Eng has 20 years of litigation experience and concentrates her practice in consumer financial services litigation, representing mortgage loan servicers, lenders, and debt collectors in all aspects of litigation and disputes, as well as appeals and contested bankruptcy matters, across multiple jurisdictions. Diana's broad experience includes:

- the Fair Debt Collection Practices Act ("FDCPA");
- the Fair Credit Reporting Act ("FCRA");
- the Truth in Lending Act ("TILA");
- the Real Estate Settlement Procedures Act ("RESPA");
- the Bankruptcy Code and Bankruptcy Rules (stay violations, allowance of claims, objections to confirmation, discharge of mortgage liens, notices of payment or escrow change, and "cramdown");
- various New York statutes, such as the Foreclosure Abuse Prevention Act, the Real Property Actions and Proceedings Law, the Real Property Tax Law, and the General Business Law; and
- fraud, misrepresentation, negligence, title curative, and other common law claims.

She also routinely counsels her clients on compliance with consumer statutes, loan origination and brokering statutes, the CARES Act, New York's Foreclosure Abuse Prevention Act, the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, the Bankruptcy Code and the Bankruptcy Rules, indemnification and repurchase demands arising from vendor errors and the seller's breach, and statute of limitations issues.

Prior to joining Blank Rome, Diana represented domestic and foreign clients in a

variety of commercial litigation matters, including antitrust, contractual disputes, employment, and intellectual property and media, contested Chapter 11 bankruptcy matters (the largest bank failure in U.S. history), and a multijurisdictional auto parts cartel investigation. She also has extensive experience with efficiently managing large-scale electronic discovery in complex cases and advising clients on related issues.

Diana speaks at Continuing Legal Education seminars and webinars and frequently publishes on consumer litigation and regulatory developments.

Outside The Firm

Diana served as the Secretary of the Board of Trustees of the Bronx High School of Science Alumni Association until September 2017.

Diana is a Certified Sommelier through the Court of Master Sommeliers.

Diana is also a Vice President of the Board of Directors for the 16th Street Tenants Corporation.

Select Engagements

- Successfully defended a top ten mortgage servicer in a putative class action alleging violations of New Jersey consumer protection statutes and the FDCPA based on allegedly unauthorized bankruptcy fees.
- Defend a debt collector in putative class actions and individual consumer actions alleging violations of the FDCPA.
- Obtained summary judgment in favor of a loan servicer and defended against non-borrower, record owner's cross-motion for summary judgment alleging that the statute of limitations to foreclose had expired prior to the commencement of the foreclosure action. The Kings County Supreme Court held that the loan servicer sufficiently established that it affirmatively revoked the prior acceleration of the loan based on the voluntary discontinuance of the prior foreclosure action, together with the de-acceleration letter to the borrower, delinquency notices, monthly mortgage statements, new 30-day default notice, and New York Real Property Actions and Proceedings Law § 1304 notice (90-day notice).
- Prevailed on motion to dismiss FDCPA claim against a mortgage servicer in the District of New Jersey based on borrower's execution of Consent Order in foreclosure action. Borrower agreed to waive, withdraw and dismiss, with prejudice, any and all claims, affirmative defenses and/or counterclaims, whether asserted or unknown, that the borrower may have arising from or related to the loan, the litigation and/or the property, which may exist from the beginning of time to the date of the stipulation. The District Court held that borrower's FDCPA claim fell within the scope of the Consent Order's waiver because borrower's claims arose from the servicer's attempt to enforce the terms of the loan by filing a foreclosure action.

- Overturned on appeal a lower court's decision dismissing foreclosure action as time-barred. Developed strategy to re-open borrower's bankruptcy case to compel enforcement of settlement agreement, which surrendered the property and waived borrower's right to challenge the foreclosure, forcing borrower to consent to judgment and turn over the property without cash consideration.
- Prevailed on a petition to expunge a former occupant's improper \$856,950 mechanic's lien before conducting any discovery. The New York County Supreme Court held that even under the most liberal construction of the New York Lien Law, respondent's Notice of Lien failed to substantially comply with the statute.
- Negotiated a settlement for full payoff of a loan post-tax sale after commencing an action against the City of Middletown challenging the Middletown Charter's process of only providing post-sale notice of a tax sale to mortgagees in violation of due process under the Fourteenth Amendment.
- Represented a top ten mortgage servicer in the successful settlement of an Article 78 proceeding against the City of New York resulting in significant reduction, and discharge, of six-figure relocation lien against the property.
- Successfully defended largest failed savings and loan bank in U.S. history against \$30 million tax claim asserted by the Oregon Department of Revenue and second-chaired litigation team and coordinated with bankruptcy team in preparation for three contested Chapter 11 confirmation hearings, including witness preparation of the Treasurer, Chief Restructuring Officer, and expert witnesses on valuation and tax issues.
- Represented American automobile manufacturer in Chapter 11 mediations to resolve products liability claims and provided risk assessments of the same.
- Represented real estate investment trust, which was the second largest shopping mall owner/operator, in contested Chapter 11 matters and provided pre-litigation counseling regarding termination provisions in vendor agreements.

Admissions

- New Jersey
- U.S. District Court - New Jersey
- New York
- U.S. District Court - Eastern District of New York
- U.S. District Court - Southern District of New York
- United States Court of Appeals for the Second Circuit

Memberships

- Asian American Bar Association of New York
- New York City Bar Association

Education

- Barnard College, BA, summa cum laude; Phi Beta Kappa
- Columbia Law School, JD

Professional Activities

- Member of the New York City Bar Association and served on its Women in the Legal Profession Committee
- Member of the firm's Diversity & Inclusion Committee and Co-Chair of BR Asian affinity group
- Co-editor of the firm's *Consumer Finance Watch* blog
- 2019 Fellow, Leadership Council on Legal Diversity Fellows Program

Languages

- Chinese