



## Diane H. Banks

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### Practice Areas



Real Estate



Business Transactions &  
Corporate Law

## Biography

Diane H. Banks has over 30 years of experience as a real estate attorney focusing on development and transactions, including sales, acquisitions, financing, and leasing. She negotiates on behalf of clients while handling all documentation from letter of intent through closing in many types of sophisticated real estate deal structures. For example, Diane represented the buyer of the historic Walker Center in Salt Lake City in purchasing and later refinancing the property. She managed documentation and negotiation with and between the lender, mezzanine lender and tax credit counsel, including issues relating to air rights. Diane also assists lenders in commercial loan workouts and is recognized as a skilled mediator and arbitrator. In complex transactions, Diane draws upon the expertise of Fabian VanCott attorneys specializing in tax, environmental issues and other areas of core competency when needed. She has taught real estate document drafting at the University of Utah. Diane graduated from the University of Utah Law School where she was a William H. Leary Scholar, was on law review and won best oral argument in Moot Court Competition. Diane also received her bachelor's degree from the University of Utah, where she graduated Magna Cum Laude. Diane is admitted to Utah's state and federal courts.

## Professional

Business Excellence Award, Utah CCIM 2013 Real Estate Attorney of the Year

Attorney and Shareholder, Fabian VanCott

Past Director, Fabian VanCott Board of Directors

Founder and Member, Fabian VanCott Women Lawyers Group

Founder and Past Chair, Fabian VanCott Real Estate Group

Rated AV by Martindale Hubbell

Recognized by Utah Business magazine as Legal Elite in the field of Real Estate Law

Recognized as an Outstanding Real Estate Lawyer by Chambers USA. since its inception in Utah

Recognized by Best Lawyers as outstanding in the field of Real Estate Law

Recognized in Super Lawyers as among the top 40 women lawyers in the states of Utah, Nevada, Montana, Idaho and Wyoming

Award, Young Alumnus of the Year presented by the Alumni Board of the S.J. Quinney College of Law

Board Member, Utah Dispute Resolution

Secretary/Member, CREW Utah (Commercial Real Estate Women of Utah) Executive Committee

Member, American Bar Association

Member, American Arbitration Association National Arbitration Panel

Member, Salt Lake County Bar Association

Member, Women Lawyers of Utah

Member, Utah CCIM Chapter

Past Chairman, Member and Loan Committee Member, Redevelopment Advisory Committee for Redevelopment Agency of Salt Lake City

Past Chairman, Continuing Member, Real Estate Section of Utah State Bar Association

Past Executive Committee, Continuing Member, Alternative Dispute Resolution Section of Utah State Bar Association

Adjunct Professor, 2000-2004, S.J. Quinney College of Law at the University of Utah, Teaching Real Estate Document Drafting

Past Member, S.J. Quinney College of Law Board of Trustees

Admitted to Utah State Bar and U.S. District Court, District of Utah, 1987; U.S. Court of Appeals, Tenth Circuit, 1994

## Representative Projects

**SALES AND ACQUISITIONS:** Diane handles real estate transactions from the letter of intent through closing. The first step is often creation of the deal structure, followed by the preparation and negotiation of documents implementing or related to the transaction such as the purchase and sale agreement, deeds, bills of sale and assignments, easements, covenants, declarations, leases, security instruments, service agreement and other documents unique to a specific transaction. In most cases the constituent documents for client entities need to be created or updated, and related agreements like joint venture documents, leases, management agreements, and employment and service contracts need to be prepared. The extent that Diane helps with the due diligence process depends on the specific deal and needs of the client. The final step is getting all aspects of the transaction finalized and closing the deal.

Not that solid legal documentation alone is enough for Diane, nor should you settle for it. Diane is committed to negotiating transactions in the best, overall interest of her clients and she seeks to provide maximum benefit to them. For example, she may work with Fabian's tax lawyers to find the most favorable tax structure for major transactions or with Fabian's securities lawyers to ensure compliance with securities laws and regulations.

Diane's experience in the acquisition and sale of commercial properties extends from multi-family housing complexes, office buildings, mines, restaurants, ski resorts, warehouses and industrial properties, to unimproved land for development. Matters may involve 1031 exchanges or other tax planning. Diane has represented clients in the purchase or sale of over 3,000 multifamily apartment units and hundreds of thousands of square feet of office and retail space. For example, she just completed the purchase of a large, unimproved parcel to be developed into a major commercial subdivision; the acquisition of commercial land for retail development and resale; the acquisition of an out-of-state industrial property; the acquisition and financing of two properties subject to leases by major national tenants and the exercise of a right of first refusal related to a property with complex title issues; and numerous leases representing both landlords and tenants.

In the development context, Diane works with annexation agreements, declarations, financing documents, easements and other necessary documents like covenants restricting a seller's remaining land. Since the firm represents a number of school districts, Diane is frequently involved in purchases for construction of school sites.

When representing the buyer of the historic Walker Center in downtown Salt Lake City, Diane was involved with all aspects of the acquisition starting with creation of the entity documents, negotiating the purchase agreement for the building, engaging in the necessary due diligence to insure the valid transfer of the air rights leases for the parking structure, obtaining and negotiating numerous consents and documenting the related public and private financing and escrow matters.

**FINANCING:** Borrowers and institutional lenders count on Diane for help with conventional loans, construction loans, conduit lending and bond and securitized financing. The work often includes negotiating and or drafting loan documents, escrow instructions, guaranties, UCC Financing Statements, opinions and entity documents.

Lenders new to Utah may engage Diane to conform loan documents to Utah law before proceeding with a specific loan transaction. She recently represented a borrower who completed a lot split before to closing the financing transaction, requiring amendment of existing declarations before to completing the financing.

Other recent transactions involved representing a borrower in obtaining subordinate financing for an office building subject to existing financing including a tri-party agreement, representing a lender financing a major retail site, and another in releasing a portion of a secured property from an existing loan. If private financing is an essential component of a troubled loan workout, and Diane's experience in loan foreclosures and deeds in lieu of foreclosure make an invaluable contribution to the process.

Diane welcomes the opportunity to handle more unusual transactions such as when she represented a lender in the substitution of collateral for a securitized loan when the original parcel was taken by condemnation. The process required the modification of loan documents in twelve states and coordinating the substitution of the replacement collateral.

**WORKOUTS:** Diane has enjoyed working with lenders in negotiating and documenting workouts of distressed commercial loans including settlement agreements, foreclosures and deeds in lieu of foreclosures.

**LEASING:** Representing landlords and tenants has been a significant part of Diane's work for the last several years. She has prepared and negotiated hundreds of leases for shopping centers, office buildings and industrial space.

Thanks to her knowledge of provisions and terms, she has helped clients avoid pitfalls and negotiate more favorable terms, and her expertise helps to get the job done more quickly and efficiently.

**DEVELOPMENT:** Dealing with zoning authorities is essential in representing developers. Diane has represented numerous developers of residential subdivisions and condominium projects, including conversion of multifamily or office units into condominiums. These development projects often include negotiating and documenting zoning and entitlement issues between the governmental authority and the developer. Her expertise in development agreements, annexation documents and other agreements between the developer and the governing authority serves her clients well.

**REDEVELOPMENT:** Thanks to her experience representing the Redevelopment Agency of Salt Lake City since 1996, Diane is well versed in the redevelopment process. During her ten years as a member of the Redevelopment Advisory Committee for the Redevelopment Agency of Salt Lake City, Diane served on the loan committee and was Chair for two consecutive terms. The result? Unique insight in the redevelopment arena.

**OWNERS' ASSOCIATIONS:** Diane has drafted many residential and commercial covenants, conditions and restrictions. She has also created residential and commercial condominium projects. She currently works with associations in connection with day-to-day governance issues and has drafted association agreements for associations.

**ARBITRATION AND MEDIATION:** Diane is a skilled mediator in real property and other cases. A member of the AAA arbitration and mediation panels, she has arbitrated and mediated numerous real-estate related disputes, including owner-contractor disputes, boundary disagreements, and general real estate matters. In one particularly interesting case, she arbitrated a partition action between siblings concerning hundreds of acres of farming property in Summit County, Utah and the related water rights.

**LITIGATION -** Diane partners with Fabian's litigators on complex real property and commercial disputes, such as easement and boundary problems, leasing issues, lien disputes, purchase disputes, foreclosure and receiverships. Some of the issues now pending include a seller's breach of contract preventing the buyer from closing and getting the benefit of its bargain, the defense of claims relating to subdivision development, and issues generally relating to disputes between parties to real estate transactions such as easements, boundary and contract issues.

## Education

J.D., University of Utah Law School, 1986; Utah Law Review; Moot Court Competition: Best Oral Argument Award; Moot Court Board; William H. Leary Scholar

Graduate Studies, University of Arizona

Honors B.A., University of Utah, 1972; Magna Cum Laude; Phi Kappa Phi

## Publications & Presentations

Speaker, "Closing the Deal," sponsored by the National Business Institute

Speaker, "Ten Steps to a Successful Arbitration," sponsored by the American Arbitration Association

Speaker, "60 Tips in 60 Minutes," sponsored by the Utah State Bar Association, Fall Forum

Speaker, "Hot Tips for a Successful Mediation or Negotiation," sponsored by the Alternative Dispute Resolution Section of the Utah State Bar Association

Speaker, "Minding and Binding Corporate Clients," sponsored by the Corporate Section of the Utah State Bar Association, Annual Meeting

Speaker, Utah State Bar Association Real Property Section, Panel Discussion

Speaker, "Opening Statements," sponsored by the Alternative Dispute Resolution Section of the Utah State Bar Association, ADR Academy

Speaker, sponsored by the Utah State Bar Association Real Property Section, Mid-Year Meeting

Speaker, "Choosing the Right Business Entity," Zions Women's Conference

Speaker, 19th Annual Women & Business Conference, Salt Lake Chamber of Commerce

Presenter, Litigation Section of Utah State Bar Association, Fall Forum

Panel Discussion, "Effective ADR," sponsored by the Alternative Dispute Resolution Section of the Utah State Bar Association, Annual Meeting

Moderator, "Effective Preparation and Advocacy in ADR," sponsored by the Alternative Dispute Resolution Section of the Utah State Bar Association, Annual Meeting

ADR for the Real Property Attorney, Utah State Bar Association Real Property Section

Author, "Paths to Mediation, with Sample Clauses," Utah Bar Journal, December 2001

Author, "Negotiating & Understanding Commercial Leases"

Author, Section 365 of the Bankruptcy Code: "Out of Balance After 1984?" 1986 UTAH LAW REVIEW 781

## Community Service

Member, Special Exhibitions Council for Utah Museum of Fine Arts

Past Member, Board of Trustees for the Society for Environmental Education

Founder, Utah high school mock trial team for Judge Memorial High School

Coach, Utah high school mock trial competition for nine years; including coaching winning team in state competition for three years

Participant, Utah Law Related Education Mentor Program for Judge Memorial High School

Participant, Utah Law Related Education Mentor Program for Highland High School

Participant, Fabian & Clendenin service projects

Volunteer, Ronald McDonald House