

# Fabian VanCott



## Philip D. Dracht

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## Practice Areas:



Litigation, Trials &  
Appeals

## Biography

Phillip D. Dracht has over 10 years of experience in a practice focused on banking and consumer finance litigation, including complex litigation and class action lawsuits. He has successfully defended lenders in real property cases and has extensive experience with litigation involving the Truth in Lending Act, Home Equity Protections Act, Home Affordable Modification Program and Real Estate Settlement Procedures Act. Phil is able to team with Fabian VanCott attorneys in the firm's areas of core competency when handling complex cases. In the community, he served as supervising attorney for the University of Utah's Small Business Clinic and as a volunteer at the Tuesday Night Bar, where attorneys provide free legal consultations to the general public. Phil earned his law degree at the University of Michigan, and obtained his bachelor's degree from Calvin College. He is licensed to practice in the state and federal courts of Utah and California.

## Professional

Admitted: California State Bar, 2002 all California State Courts, the U.S. District Courts for the Northern District of California, the Central District of California, and the Southern District of California;

Admitted: Utah State Bar, 2007, U.S. District Court, District of Utah

Salt Lake County Bar Executive Committee

David K. Watkiss-Sutherland II Inn of Court, American Inns of Court

## Representative Projects

Rodgers v. American Brokers Conduit, et al., No. 2:09-cv-715, 2009 WL 3584323 (D.Utah). Phil represented a lender in obtaining a dismissal of a lawsuit brought by a borrower seeking to invalidate the loan on a Utah property on a variety of theories, including negligence, misrepresentation, breach of the covenant of good faith and fair dealing, and unfair lending practices. Phil successfully argued for the case to be dismissed both because of legal and factual shortfalls in the complaint.

D.M. Johnson Family Trust v. Countrywide Home Loans, Inc., et al. No. 2:09-cv-00317, 2009 WL 3615690 (D.Utah). Phil represented a lender and servicer in obtaining a dismissal of a complaint alleging third party rights arising from a "straw purchaser" scheme of a Salt Lake City property that went awry. Phil obtained a dismissal of the complaint alleging fraud, negligence, violations of the Truth in Lending Act (TILA) and the Home Equity Protection Acts (HOEPA).

Southam v. Lehman Bros. Bank FSB, No. 2:10-CV-45 TS, 2010 WL 3258320 (D.Utah,2010)

August 17, 2010. Phil defended a lender and servicer in a complaint alleging violations of the Real Estate Settlement Procedures Act (RESPA), TILA, and fraud. The Court dismissed the complaint in favor of Phil's client.

Estrada v. Aurora Loan Services, LLC, NO. 2:10-CV-1009 TS, 2010 WL 4869093, (D.Utah, November 23, 2010). Phil defended a loan servicer against claims that the servicer had entered into an oral modification of the mortgage loan. The Court dismissed the complaint in favor of Phil's client, finding that there was no meeting of the minds on the alleged modification and that plaintiff's claims for promissory estoppel did not allege reasonable reliance.

Andersen v. Homecomings Financial, LLC, NO. 2:11-CV-332-TS, 2011 WL 2470509, (D.Utah, June 20, 2011). Phil moved to dismiss claims against his client arising out of the mortgage modification process, which included claims for fraudulent inducement, HAMP based claims, and negligent misrepresentation. The Court agreed with the arguments presented and dismissed the case.

## Education

J. D. University of Michigan, 2001

B. S. degree, Calvin College 1977, majoring in philosophy, history and political science.

## Community Service

Volunteer Attorney, Tuesday Night Bar (organization that provides free legal consultations to members of the general public)

Supervising Attorney, University of Utah, S.J. Quinney College of Law, Small Business Clinic