

Philip S. Rosen, PARTNER

Philip Rosen is a skilled, efficient problem solver with nearly three decades of experience in financial services litigation; asset recovery and workout; commercial litigation; banking litigation; due diligence review for loan acquisitions; and bankruptcy litigation. Phil practices in New Jersey and New York, is a member of the firm's management committee, the co-chair of the firm's creditors' rights group and the diversity, equity and inclusion officer. Through his sharp and creative strategies, Phil has developed a reputation as an accomplished litigator having appeared in high-stakes litigation in state and federal courts throughout New Jersey and New York. Phil's experience, intellect and street smarts has benefitted clients in numerous reported decisions and matters.



PRACTICE AREAS

Financial Services Litigation – Phil is seasoned in foreclosure law having foreclosed millions of dollars of commercial and residential mortgages and regularly prosecutes commercial foreclosures for commercial mortgage lenders, CMBS servicers and private equity firms, and has extensive experience in receivership matters. Phil has defended claims of lender liability, and challenges to the enforceability of pooling and servicing agreements, to a lender's status as a holder-in-due course, and claims of bad faith. Phil has developed long-lasting ties with his clients who rely upon his counseling in defending escalated residential foreclosures and claims involving lien priority disputes, mortgage fraud, predatory lending, statutory violations including RESPA, TILA, HOEPA, FDCPA and FCRA, state consumer fraud statutes and unfair business practices.

Asset Recovery and Workout – Phil is adroit in enforcing and restructuring troubled portfolio and CMBS loans including resolving disputes between lenders, borrowers, and guarantors. Phil is skilled in using litigation as a tool to leverage and facilitate favorable loan recoveries and workouts in an efficient and price advantaged manner concerning guarantees, complex loan agreements providing for default interest, yield maintenance, and pre-payment consideration.

Commercial Litigation – Phil's practice includes litigating and advising clients with respect to general business and commercial issues including fraud and fraudulent transfers, breach of contract, breach of fiduciary duty, theft of business, finance, and commercial disputes.

Banking Litigation – Phil is experienced in representing financial institutions in actions based on Articles 3 and 4 of the Uniform Commercial Code concerning wire transfers, checks and letters of credit payments and bank customer contracts.



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Due Diligence Review – Phil regularly assists investors in their acquisition of performing and defaulted loan portfolios including due diligence of the loan instruments, title and litigation analysis and negotiating and preparing the respective loan purchase agreements.

Bankruptcy Litigation – Phil has extensive experience in bankruptcy related litigation including stay relief motions, preference and fraudulent transfer claims, dischargeability objections and adversary proceedings.

CLE SEMINARS

Phil is a frequent presenter and writer and some of his recent webinars and articles include:

Available online at <https://www.nacle.com/CLE/Courses/Navigating-New-Jersey-Residential-Foreclosures-A-Plaintiff-s-Guide-to-the-Process-1430>; <https://www.nacle.com/CLE/Courses/So-Your-Commercial-Borrower-Is-In-Default-Protecting-your-Security-Interest-1087>.

RECENT ARTICLES

- [New York Court of Appeals Issues Decision Clarifying RPAPL Notice and Compliance Requirements for Residential Foreclosures.](#)
- [COVID-19 Emergency Protect Our Small Businesses Act of 2021.](#)
- [New York Court of Appeals Issues Landmark Decision Concerning Statute of Limitations in Mortgage Foreclosures.](#)
- [COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020.](#)
- [CARES ACT: Impact on banks, their customers and the broader financial markets.](#)

REPRESENTATIVE MATTERS

- [Republic Group v. Bank of America and Merrill Lynch](#), 2021 U.S. Dist. LEXIS 18796 (D.N.J. Feb 1, 2021), New Jersey District Court dismissed complaint alleging claims for discrimination and retaliation under federal and state law.
- [Martins v. Nationstar Mortgage, LLC](#), 2017 U.S. Dist. LEXIS 52712 (D.N.J. Apr. 6, 2017), New Jersey District Court dismissed complaint alleging wrongful foreclosure, fraud, conspiracy and related tort-based claims.
- [Lau v. Bank of America, N.A.](#), 2017 U.S. App. LEXIS 5291 (3rd Cir. March 27, 2017), United States Third Circuit affirmed district court's dismissal of complaint alleging lender liability, predatory lending and violations of state consumer fraud statutes.
- [A.A. Action Collection Co. v. TD Bank, et al.](#), 2015 U.S. Dist. LEXIS 130747 (D.N.J. 2015), New Jersey District Court granted TD Bank summary judgment dismissing complaint alleging that the bank had negligently accepted hundreds of checks with forged indorsements. The Court held that the complaint was pre-empted by the UCC and precluded by its three-year statute of limitations.



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- Edwards v. Countrywide Home Loans, Inc., 2012 N.J. Super. Unpub. LEXIS 2831 (N.J. App. Div. December 28, 2012), New Jersey Appellate Division affirmed dismissal of complaint alleging lender liability, violations of state consumer fraud statutes and failure to comply with pooling & servicing agreement.
- Bank of America, N.A. v. Princeton Park, 2012 N.J. Super. Unpub. LEXIS 2470 (N.J. App. Div. November 8, 2012), New Jersey Appellate Division affirmed summary judgment against commercial borrower alleging lender had modified the loan through a continuous course of conduct between the parties.
- Freedman & Gerstein, LLP v. Bank of America, N.A., 2010 U.S. Dist. LEXIS 130167 (D.N.J. 2010), New Jersey District Court dismissed complaint alleging fraud and violations of federal and state consumer statutes.

COMMUNITY INVOLVEMENT

Phil is active in many charitable and religious organizations and devotes his leisure time to those endeavors.