



SpencerFane®

Banking and Financial Services

We know banking inside out – because we’ve worked inside.

**Members of our Banking and Financial Services team have served as senior executive leaders or as in-house counsel at some of the largest financial institutions in the U.S., so we understand the challenges and pressures our clients face. We’ve faced them ourselves.**

## Overview

### Passion and urgency

We recognize that banks and other financial services firms need to address transactions, legal matters, and compliance issues in an ever-changing and complex regulatory landscape. To help them do this with precision, speed, and cost-efficiency, we bring passion and urgency to our know-how and deep experience in the industry.

### Serving financial institutions of all shapes and sizes

Whether for ongoing strategic counsel, one-time transactions, or serving as outside general counsel, we advise entities from all corners of the industry:

- National, regional, and community banks
- Bank holding companies
- Credit unions
- Insurance companies
- Investment banks
- Broker-dealers
- Investment advisers
- Business finance companies
- Equipment leasing companies
- Mortgage banking companies
- Venture capital firms
- Factoring companies

## Experience

Following are representative examples showing how the Spencer Fane Banking and Financial Services attorneys help lenders and other financial services institutions:

- Lender’s counsel in connection with a \$30 million construction financing for a multifamily project in Kansas City, Missouri. This project also involved municipal IRBs issued in connection with the project.

- Lender's counsel in closing a \$19 million loan for the conversion of a historic downtown office building into residential apartments and a hotel, which involved additional financing from historic tax credits, new markets tax credits, and a PACE loan.
- Lender's counsel in closing a \$26 million loan for the construction of an office building with tax abatements made possible with the use of industrial revenue bonds.
- Counsel to an agent on a \$65 million syndicated multifamily agricultural loan transaction.
- Lender's counsel in a complex credit facility for a craft brewing company, including a revolving line of credit, an equipment loan, a term real estate loan, and an SBA 504 bridge loan involving three affiliated borrowers, nine cross guaranties, loan participations, and interest rate swaps.
- Lender's counsel in numerous workout, receivership, and foreclosure matters and actions involving a variety of commercial properties throughout Colorado.
- Lenders' and loan servicers' defense counsel in connection with commercial, consumer credit, and other financial services litigation, including the Telephone Consumer Protection Act, Fair Debt Collection Practices Act, Fair Credit Reporting Act, Truth in Lending Act, Home Ownership and Equity Protection Act, and related state statutes. Cases include substantial class action suits.
- Credit Union counsel in a suit against the U.S. for the refund of unrelated business income taxes paid on income from direct and indirect lending programs and on royalty income from AD&D insurance. The court held that the credit union was not liable for the tax.
- Lenders' counsel in connection with their dealings with the Federal Reserve, OCC, FDIC, and state regulators regarding applications and examinations, affiliate transactions, and regulatory enforcement actions and compliance issues.
- Financial institutions' counsel in connection with all aspects of their data breach response strategy.
- Historic tax credit syndicator's counsel with respect to investments into historic rehabilitation projects in multiple states. This representation includes drafting of all germane equity documents arising out of the admission of the fund into the project's ownership structure and due diligence review.

## Areas of Focus

### Agrifinance and Agriculture

**Meeting the industry-specific needs of agricultural producers, lenders, and creditors.** We work with national, regional, and community banks and agricultural lending cooperatives to finance projects nationwide, including dairy, cattle, and swine facilities; cattle, pig, sheep, and buffalo operations; public warehouses and grain storage facilities; and cropland and rangelands.

**With extensive experience handling agribusiness matters involving livestock, crops, and lands, members of our team:**

- **Document, administer, service, restructure, and collect agricultural loans**, including syndicated loans.
- **Securitize domestic and international commodity transactions** through letters of credit and other credit enhancement devices.
- **Service large pools of agricultural loans** as well as specific livestock, crop, and land loans.
- **Litigate, mediate, and resolve** lien priority disputes, commercial disputes, cattle frauds, and claims brought before the Commodity Futures Trading Commission.
- **Work on livestock export and import issues** with the U.S. Department of Agriculture and the Justice Department.
- **Address questions involving laws governing agribusiness**, including the Packers and Stockyards Act, the Perishable Agricultural Commodities Act, the Uniform Commercial Code, and state branding laws.
- **Prepare and enforce supply agreements** on behalf of livestock producers and packers.

- **Navigate complex agricultural insolvency proceedings**, including receiverships and bankruptcy proceedings under Chapter 7, Chapter 11, and Chapter 12.

## Banking and Financial Services Litigation

**Quick resolution of nonpayment of loans and other issues.** Using a deep knowledge of statutes and procedures in these matters to identify beneficial outcomes for the parties involved, we collaborate to find solutions that minimize losses. We address issues throughout the life cycle of a loan and advise parties on all sides: traditional and nontraditional financial institutions and lenders, servicing entities, debt buyers, and collection agents.

**Using early case evaluation to assess potential exposure and offer alternatives** that keep the financial interests of the client at the forefront, we resolve:

- **Consumer claims relating to ECOA and UCC** brought against state-chartered and national banks.
- **Claims against servicing agents**, including individual lawsuits, class actions, or other multiparty actions.
- **FDCPA, FCRA, TCPA, RESPA, and TILA claims**, and claims brought under state consumer protection statutes.
- **Bond deals in jeopardy.** We work with trustees to find creative solutions when repayment of the original investment may be in question, a process that often involves creative forms of alternative dispute resolution.

Because our attorneys litigate such cases regularly, we are well-equipped to handle them quickly and efficiently. Where litigation can be avoided, we advise clients in negotiations that can maximize returns.

## Commercial Lending and Real Estate Finance

**Prompt execution is critical to compete in the financial marketplace.** Though the financial sector business environment is complex, we work quickly and collaborate closely with clients on each project, helping them navigate the industry's specific requirements and timelines to complete transactions. We help lending and financial institutions of all types – national and state-chartered banks, credit unions, mortgage lenders, and other licensed financial institutions – get deals done.

**Bespoke commercial lending counsel.** Each type of financial institution not only faces unique regulatory challenges but also seeks to achieve unique business goals, so our team tailors its solutions to meet each client's regulatory obligations and business objectives. We also represent private commercial finance companies with traditional lending and alternative finance, such as factoring (the purchase of accounts receivable at a discount).

**Combining industry insights with responsive, considerate legal counsel, our team:**

- **Advises on all phases of lending**, from loan structuring, negotiating and drafting transaction documents, and regulatory compliance to loss mitigation, collection, foreclosures, and receivership.
- **Represents clients in lending transactions of any level of complexity**, from single bank loan matters to complex syndicated transactions.
- **Guides clients in dealings with regulators**, including the Federal Reserve, OCC, FDIC, and state regulators.
- **Counsels clients in real estate development, employee stock ownership plans, and mergers and acquisitions.**
- **Helps unregulated financial service companies** develop and implement business strategies.

Members of our practice are involved with the American Bankruptcy Institute, the nation's largest association of bankruptcy professionals, as well as other key organizations within the industry.

## Corporate Trust

### **Bringing transactional, litigation, bankruptcy, and financial services attorneys together for a full-service approach.**

With our team of lawyers experienced in a wide range of areas, clients know we can meet their complex needs on a variety of corporate trust matters.

#### **Spencer Fane Corporate Trust attorneys:**

- **Guide financial institutions** in their document-based duties and fiduciary responsibilities.
- **Help clients uphold their roles and responsibilities as indentured trustees** in areas ranging from debt to syndication to bond issuance.
- **Advise financial services providers on legal compliance and risk management** when entering transactions, administering accounts, and identifying and resolving discretionary actions and defaults.
- **Counsel clients through difficult situations**, including bond issuance default and enforcement.
- **Handle fiduciary claims and lawsuits** brought by security holders, transaction parties, regulatory authorities, and consumers.
- **Negotiate and handle indentures** for secured, corporate, and municipal debt in capital market transactions.

## Regulatory Compliance

**Unraveling complex regulatory matters swiftly.** Our attorneys bring deep experience in private practice, and many of them have served as in-house counsel or executives in the financial services industry. This enables them to quickly analyze a complex matter and provide the guidance needed to develop and implement effective solutions.

**With a comfort level and agility born of vast experience** in this fast-moving industry, our team provides practical advice to banks and other financial institutions, helping to protect the integrity of their business reputation and avoid potentially costly missteps that affect their bottom line.

#### **Members of our Regulatory Compliance team:**

- **Help financial institutions navigate state and federal regulations** affecting charters, licensing, mergers and acquisitions, affiliate transactions, securities activities, privacy, regulatory examinations, and enforcement actions.
- **Advise on a full range of compliance matters, including:**
  - Change-in-control applications
  - Capital raising
  - Deposit operations
  - Consumer lending
  - Fair lending
  - Equal Credit Opportunity Act
  - Fair Credit Reporting Act
  - Truth in Lending Act
  - Treasury management services
  - Electronic and mobile banking
- **Handle bank management issues**, including board of directors governance, business policies, and general management.
- **Serve as in-house counsel for community banks**, drawing on experience accumulated with larger financial institutions to provide comprehensive legal services.