



DIANE H. BANKS

FABIAN & CLENDENIN

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AREAS OF PRACTICE:

- Real Property
- Business & Corporate

PRACTICE SUMMARY

After more than 20 years practicing law, Diane Banks is highly skilled in negotiating, documenting and closing real estate transactions. Fabian's clients appreciate her expertise in getting all kinds of deals done including sales, acquisitions, financing, leasing, construction, and obtaining entitlements. Fabian's real estate litigators rely on her for real estate related case analysis and strategy.

PROFESSIONAL

- Admitted to Utah State Bar and U.S. District Court, District of Utah, 1987; U.S. Court of Appeals, Tenth Circuit, 1994
- Attorney and Shareholder, Fabian & Clendenin
- Group Leader, Fabian & Clendenin Real Estate Group
- Founder and Member, Fabian & Clendenin Women Lawyers Group
- Rated AV by Martindale Hubbell
- Recognized by Utah Business as outstanding in the field of Real Estate
- Recognized as Outstanding Real Estate Lawyer by Chambers U.S.A. since its inception in Utah
- Recognized in Super Lawyers as among the top 40 women lawyers in the states of Utah, Nevada, Montana, Idaho and Wyoming
- Chairman of the Board and Member, CREW Utah (Commercial Real Estate Women of Utah)
- Member, American Bar Association
- Member, American Arbitration Association National Arbitration Panel
- Member, American Arbitration Association National Mediation Panel
- Member, Salt Lake County Bar Association
- Member, Women Lawyers of Utah
- Past Chairman, Continuing 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
- Past Director, Fabian & Clendenin Board of Directors
- Adjunct Professor, 2000-2004, S.J. Quinney College of Law at the University of Utah, Teaching Real Estate Document Drafting
- Award, Young Alumnus of the Year presented by the Alumni Board of the S.J. Quinney College of Law
- Past Member, S.J. Quinney College of Law Board of Trustees

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

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 purchase or sell 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 prior to closing the financing transaction, requiring amendment of various existing declarations prior 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 like 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.

- **LEASING** - Representing landlords and tenants has been a significant part of Diane's work for the last several years. She has prepared and/or 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 multi-family 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** - During the surge in development activity that subsided in late 2007, Diane drafted numerous residential and commercial covenants, conditions and restrictions. She recently completed the creation of a residential condominium project and a major commercial project in Summit County. She currently works with associations in connection with day-to-day governance issues.
- **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.