

“CFPB Again Finds Loan Servicers Routinely Violate Federal Laws Causing Injury to Homeowners”

By: Adam Deutsch, Esq. (7/22/16)

In the final days of June, 2016 the Consumer Finance Protection Bureau (CFPB) released its eleventh Supervisory Highlights report. The Report offers a summary of findings from CFPB regulatory investigations on loan servicing practices and compliance with federal statutes including the Real Estate Settlement Procedures Act (RESPA). The report is a devastating critique of the loan servicing industry, providing the general public a look into the continued systematic abuses of law and institutional incompetence of the companies that oversee collection of mortgage payments nationwide.

For homeowners who have been victims of loan servicing errors, the report offers a small bit of relief knowing that "you are not alone." For attorneys representing homeowner victims, the report is a new arrow in the quiver because it details industry wide patterns of practices in violation of federal law. RESPA specifically awards statutory damages where a pattern and practice of wrongful behavior is exhibited and now consumers have government backed research to show industry wide patterns of abuse.

The latest CFPB report is not surprising to consumer advocates who speak daily with homeowners about their mortgage loans. The report concludes that the “magnitude and persistence of compliance challenges since 2014, particularly in the areas of loss mitigation and servicing transfers, show that while the servicing market has made investments in compliance, those investments have not been sufficient across the marketplace.” In other words, the loan servicing industry still has failed to ensure that homeowners are afforded all of their rights under federal law. There are five specific areas that the CFPB has found loan servicing industry compliance to be lacking:

- Loss mitigation acknowledgment notices – “Examiners found that one or more servicers failed to send any loss mitigation acknowledgment notices due to a repeated loss mitigation processing platform malfunction over a significant period of time.” Simply put, software malfunctions are responsible in many cases for the lack of loss mitigation notices that should have been sent to homeowners. Under RESPA if a homeowner submits a loss mitigation application, the bank is required within a few days of receiving the application to provide the homeowner with an acknowledgment of receipt. According to the CFPB this acknowledgment has too often not materialized.

- Loss mitigation offer letters and related communications - The CFPB also found that some servicers “engaged in a deceptive practice by misrepresenting to borrowers that it would defer such charges to the maturity date of the loan.” Basically, servicers told borrowers in writing that their homes would not be foreclosed on prior to the deadline date for submitting documents. Yet, frequently before the date was reached the servicer foreclosed on the home. This is a common theme among clients who have contacted me about loan servicing issues. Also, the CFPB uncovered many instances of loan servicers refusing to convert trial loan modifications to permanent modifications, despite borrowers having successfully completed the trial loan modification terms. Perhaps most importantly the CFPB acknowledged in its report that rejection of the permanent modification causes damages to borrowers because interest accrues at the original contract rate, which is higher than the trial modification rate, and late fees are tacked on as well.

- Loan modification denial notices – Loan modification denial letters continue to have errors. Among the errors is that “one or more servicers failed to state the correct reason(s) for denying a trial or permanent loan modification option as required.” Moreover, many servicers are failing to advise borrowers that they have the right to appeal the loan modification denial, a failure which often results in major consequences since under RESPA borrowers only have a limited time to appeal their denial.
- Servicing policies, procedures, and requirements – The CFPB found that servicers have failed to follow policies and procedures instituted to obtain the following objectives: “providing timely and accurate information; properly evaluating loss mitigation applications; facilitating oversight of and compliance by service providers; and facilitating transfer of information during servicing transfers.” RESPA requires that servicers maintain written policies and procedures for how they will comply with the above objectives. Yet, despite this requirement, many borrowers still are unable to acquire servicing records from lenders, even when the request is in the form of a QWR (Qualified Written Request). It seems clear from the CFPB report that banks are failing to provide their policies and procedures not because they fear revealing trade secrets, but because they don’t actually have policies in place to ensure compliance with federal law.

- Servicing transfers – According to the CFPB “one or more servicers failed to honor the terms of in-place trial modifications after transfer. Some borrowers who completed trial payments with the new servicer nevertheless encountered substantial delays before receiving a permanent loan modification.” This is among the biggest complaints voiced by homeowners. Repeatedly I have encountered situations where a borrower has honored a trial loan modification for six months, and then immediately following the final payment the borrower’s loan is transferred to a different servicer. And, lo and behold, that servicer announces that they will not honor the trial modification.

Attorneys such as myself who defend borrowers against loan servicing violations have encountered all five of the above issues addressed in the CFPB report. The benefit of the CFPB report is that it proves these violations are not "one-offs"; they are part of a systematic practice across the industry. The CFPB continues to apply pressure to the servicing industry, but it is clear that government oversight alone has not motivated loan servicers to be compliant with the law. The only way to ensure compliance and to prevent a loan servicer from causing injury to a home owner is to bring suit when violations occur. The consumer law landscape that includes RESPA is intended to be enforced by individuals. By exposing industry-wide abuses, the CFPB has provided consumers an excellent tool to fight for their own rights by exposing individual offenses in the context of macro-abuses.