

**MBA Legal Issues and Regulatory
Compliance Conference
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**Mortgage Servicing:
What are the Issues?**

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What do we face?

- » Non Traditional Guidance
- » Proposed Statement on Subprime Lending
- » Predatory lending now being linked to foreclosures – resets of low intro ARM's, hybrid ARM's
- » 4/4/07 joint call for a 6 mo freeze on foreclosure – Leadership Conference on Civil Rights, NAACP, National Fair Housing, National Council of La Raza and Center for Responsible Lending
- » April 26, 2007 letter to GAO from Frank and Bachus to investigate the high rate of foreclosure

What do we face

- » State emphasis on foreclosure – 40+ foreclosure-related bills in the states so far this year
- » Approximately 50 bills pending in 29 jurisdictions
- » Foreclosure taskforce set in many states (e.g. OH, MA, CO)

So what do we do now?

The Panel – How they will answer.....



- **Deborah Oakley, Senior Vice President Homeownership Preservation
National City Mortgage**

- **Working it out in the new environment**

- **Brad Blower
Relman & Dane**

- **Best Practices**

- **Todd Boothroyd, Associate General Counsel, Wells Fargo Law Department
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- **Servicing and Secondary – Working Together**

Working It Out In The “New” Environment

Deborah Oakley
Senior Vice President
Homeownership Preservation

National City[®]
Mortgage

What is the New Environment?



- » Media, Media, Media.
- » Congressional Hearings.
- » Formation of task forces by state and local governments to address the “foreclosure crisis”.
- » Introduction or consideration of legislation at state and federal levels to provide:
 - Rescue funds
 - Refinancing programs
 - Moratoriums
 - Enhanced disclosures
 - Borrower Education
 - Counseling programs
 - * Prohibited Practices/Terms
 - * Mandatory data reporting
 - * Plain English documents
 - * Native language documents
 - * Stricter licensing laws
 - * Mandatory modifications

What is the New Environment?



- » Foreclosure prevention workshops and forums sponsored by lenders, non-profits, public officials, advocacy groups.
- » Working groups to address (perceived or real) restrictions on workouts for securitized loans.
- » Working groups to develop new workout options to fit the needs of over-leveraged homeowners with non-traditional products in declining real estate markets.

A lot of bad data, and the absence of good data (when we need it most)!

Old State – Home Retention:

- » Workout options have been geared to handle temporary setbacks, allowing homeowners to reinstate their loans over time through repayment plans, temporary forbearances, and with FHA loans, partial claims that advance delinquent payments through an interest-free second mortgage.
- » For homeowners needing a longer term solution, loan modifications have been available to restructure debt.
- » These options have worked well for most homeowners with typical payment challenges.

Old State - Divestiture:

- » For consumers who could no longer afford their homes, or who not longer wished to keep them, a strong real estate market allowed them to sell before foreclosure.
- » Short Sales were available to over-leveraged consumers with hardships.
- » Deeds-in-lieu were more difficult to do, since so many consumers had multiple loans against their properties.
- » But again, with a strong real estate market, many were able to sell their way out of a financial problem.

New Environment

- » Due to the recent availability of low interest rates, reducing the rate further to create affordable payments has become a more limited option.
- » Restrictions in PSAs, REMIC rules, and FASB 140 appear to limit the availability of modifications and long term forbearances for subprime and non-traditional loans sold into securities
- » Tightened credit has made it difficult for consumers to refinance their way out of a problem.

The Servicing Challenge



- » Oversupply of housing in some markets has lengthened marketing time and depressed prices.
 - » Homeowners who bought at peak facing significant losses through resale, or inability to refinance due to appraisal issues.
 - Some consumers who bought “investment” properties using interest only or pay option ARMs unable to divest themselves of real estate.
 - » Prepayment penalties seen as a barrier to some refinances and/or home sales.
 - » Tapped out home equity lines
 - » Lack of savings or other resources to maintain payments.
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A Few of the Ideas Under Discussion



- » 40 year mortgages.
 - » HUD Refinancing of Conventional Loans.
 - Variations:
 - › Soft second to cover payoff of over-leveraged refinanced loan.
 - › Shared Appreciation Second.
 - » Return of the “Advance Claim”.
 - » Cram-downs of balances.
 - » Step Rate Loan Modifications.
 - » Address restrictions on loan modifications and forbearances through “model language” in PSAs and restrictions imposed through tax, accounting, and REMIC rules.
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- Ohio Housing Finance Agency (OHFA)
 - » Conventional Refinance funded through taxable bonds (\$100 million) for owner-occupied properties.
 - » Intended for consumers with high rate mortgages, ARMS, interest only loans, or non-traditional mortgage products.
 - » Income qualifications: No greater than 125% of median income by county.
 - » 2nd Mortgage (up to 4% assistance).
 - Rate is 2% over 1st mortgage rate.
 - Used for closing costs, escrow, prepayment penalties on loan being refinanced, attorney's fees, costs and late charges related to payoff of first mortgage.

- » LTV no greater than 100% on first mortgage and CLTV no greater than 105% if OFHA 2nd mortgage.
 - » FNMA “My Community” mortgage products and loan limits.
 - MI required per FNMA guidelines. Reduced coverage available similar to OHFA’s first time homebuyer program.
 - » Funds can be used to pay off non-purchase seconds if in place for at least 6 months and no draw in the prior 6 months.
 - » Requires 4 hours face-to-face counseling.
 - » Post-Purchase counseling required if borrower becomes 30 days past due.
 - » Credit-Challenged Borrowers – Some Issues.
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» Ohio Home Rescue Funds

- Forgivable loans of up to \$3000 each for lower income families facing foreclosure.
- \$1 million set aside by Ohio Department of Development.
- Funds available through 11 NW non-profits.
- Annual income has to be less than 65% of area's median income.
 - About \$42k a year for family of four.
- Requires 10 hours of financial fitness classes to learn to budget, handle credit.
- Must prove their ability to meet future mortgage obligations.

- HOPE/NeighborWorks Ad Council Campaign.
- 211 HelpLink (United Way) local programs.
- Consumer loss mitigation workshops sponsored by lenders/servicers.
- Local and State outreach/ consumer programs involving toll-free counseling resources, homeowner workshops:
 - › Dallas
 - › Indiana
 - › Columbus, Ohio
 - › Washtenaw County, MI
 - › Atlanta
 - › Chicago
 - › Houston
 - › Detroit
 - › Dayton
 - › Colorado
 - › Cincinnati
 - › Baltimore
 - › Minneapolis
 - › St. Louis
- The list keeps growing.

Mortgage Servicing Best Practices: Survival of the Fittest

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- Foreclosure spike
- Layoffs, bankruptcies, and distressed sale
- Loss of consumer and market confidence in subprime lenders' ability to adequately underwrite and service loans

- Foreclosures started in the last quarter of 2006 were at the highest level ever recorded by the MBA*
- California foreclosure starts in late 2005 were at the lowest ever recorded in the state but have now climbed to the highest levels since 1998*
- While subprime loans make up about 12% of mortgage loans outstanding, they represented about 40% of foreclosures started at the end of 2006*
- 53% of AA borrowers and 37.8% of Hispanic borrowers have subprime loans when only 8-20% of market (2003-2006)**

2006 Q4 Mortgage Delinquencies By Loan Type



Subprime ARM		Subprime Fixed		FHA		Prime ARM		Prime Fixed	
Highest Five:									
Ohio	19.03	Ohio	13.05	Michigan	10.70	Ohio	3.89	Ohio	1.95
Michigan	17.70	Indiana	10.68	Ohio	9.43	Oklahoma	3.82	Indiana	1.76
Indiana	16.70	Michigan	10.60	Indiana	8.06	Indiana	3.74	Michigan	1.29
Iowa	15.21	South Carolina	9.17	South Carolina	7.73	Michigan	3.63	South Carolina	1.25
Kentucky	13.08	Pennsylvania	9.09	Georgia	7.51	Iowa	2.79	Kentucky	1.20
US Total	9.16	6.04		5.78		1.45		0.69	
California	5.67	2.48		2.05		0.87		0.17	
Lowest Five:									
Hawaii	4.74	Oregon	2.22	Idaho	2.15	Washington	0.59	Wyoming	0.21
Washington	4.49	Arizona	2.10	California	2.05	Oregon	0.57	Montana	0.19
Utah	4.08	Wyoming	2.10	Montana	1.85	Arizona	0.53	California	0.17
Oregon	3.78	Hawaii	1.91	Wyoming	1.52	Idaho	0.53	Hawaii	0.13
Arizona	3.08	Alaska	1.17	Alaska	1.37	Hawaii	0.49	North Dakota	0.11

Seriously Delinquent loans defined as 3 or more payments late plus loans in foreclosure
 Excludes Louisiana and Mississippi

Source: MBA National Delinquency Survey

- NAHB/Wells Fargo Price Index dropped to 33 (April 07) from 41 (April 06)
- Lehman estimates 20-30% of 2006 borrowers will be unable to refinance when loans reset

- Banking agency guidance to servicers*
 - Design performance measures to determine early warning signs of risk
 - Track concentrations by type, third-party originations, geographic area, and property occupancy status
 - Provide clear payment statements to borrowers indicating amount paid, application, and remaining principal balance
 - Ensure actual practices are consistent with policies and procedures

*Interagency Guidance
(September 28, 2006 and March 1, 2007)

- Dodd Principles
 - Modify Loan Terms to Ensure Sustainability
 - Reduce interest rates
 - Adjust ARM to fixed rate
 - Collect escrows
 - Minimize damage to borrowers and communities
 - Dedicate Resources to Outreach and Solutions

- Center for Responsible Lending
 - Work out plans
 - Monitor distressed prepayments
- LCCR
 - 6-month moratorium on foreclosures

- Think Long Term: sustainable servicing
- Think Outside the Box: work with regulators and advocates
- Think about the Borrower

- Communication
- Monitoring
- Flexibility
- Dispute Resolution
- Investor Relations
- Fairbanks Quality Check

- Clear and concise statements to borrowers
- Outreach efforts by trained staff, incorporate counseling
 - » Borrower survey*:
 - 48% - rated lender's willingness to help low
 - 9% - rated lender's willingness to help high
- Servicing, legal, and compliance teamwork

*Partnership Lessons & Results, Three Year Final Report,
Neighborhood Housing Services of Chicago (July 17, 2006)

- Track by loan product, underwriting criteria, geography, and race
- Share monitoring results more widely with others
- Monitor insurance and escrow vendors regularly
- Track complaint trends to regulators through FOIA and examiner requests

- After a problem trend is detected, bring together stakeholders to change practice or procedure.
- Consult with advocates and regulators on issues of concern.

- Emphasis on servicing sustainability
- Track success, not just by metrics, but in quality of resolution
- Get management buy in to dispute resolution process

- Monitor impact of investor requirements on servicing
- Regularly inform investors of trends
- Push for greater flexibility for workouts and higher thresholds for default and foreclosure

- Fairbanks problems still common:
 - Update software to ensure that detects payment anomalies
 - Ensure that payments applied consistently with loan requirements
 - Monthly quality posting and accounting quality checks

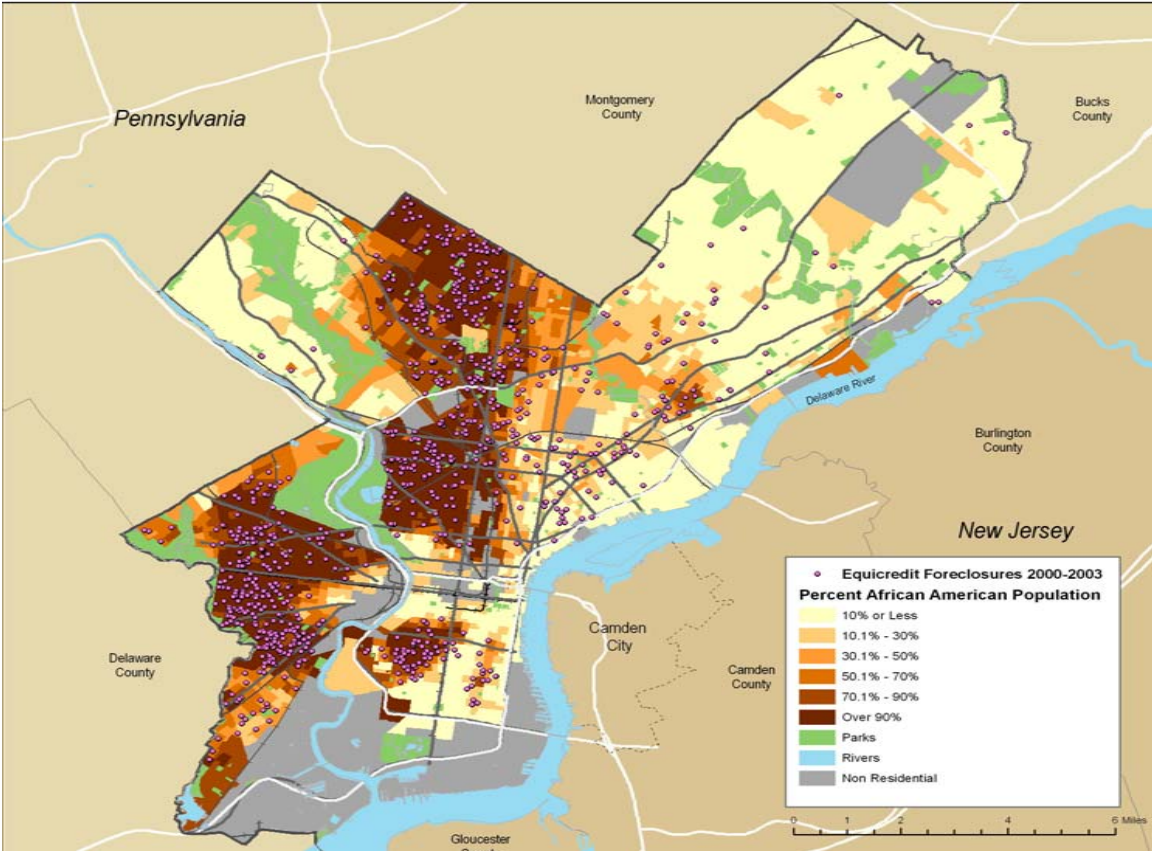
Philadelphia – Foreclosure Drivers (2000-2003)



Foreclosing Lender	Year	Loans in Foreclosure	Projected Loans in Foreclosure	Loans Made (from HMDA)	Pct of 98 Loans Foreclosed; 2000-2003
EQUICREDIT CORP/PA	1998	240	365.6307	854	42.81%
GELT FIN'L INC	1998	98	149.2992	NA	NA
COLUMBIA NAT'L INC	1998	81	123.4004	698	17.68%
EQUITY ONE INC	1998	70	106.6423	633	16.85%
PNC MTG CORP/AMERICA	1998	68	103.5954	1056	9.81%
BOULEVARD MTG/PA	1998	56	85.3138	405	21.07%
PACIFIC T&L	1998	50	76.1731	261	29.19%
UNITED COMPANIES LENDING CORP	1998	49	74.6496	345	21.64%
WMC MTG CORP	1998	48	73.1261	143	51.14%
CENTRAL MONEY MTG CO INC	1998	47	71.6027	316	22.66%
EASTERN MTG SVCS INC	1998	45	68.5558	NA	NA
ADVANTA NAT'L BK USA	1998	43	65.5088	472	13.88%
GATEWAY FNDG DIV MTG	1998	41	62.4619	543	11.50%
AVSTAR MTG	1998	37	56.3681	376	14.99%
LL FNDG CORP	1998	35	53.3211	NA	NA
AMERIQUEST MTG CORP	1998	35	53.3211	274	19.46%
UPLAND MTG CORP	1998	34	51.7977	478	10.84%
DELTA FNDG CORP	1998	31	47.2273	112	42.17%
PHOENIX MTG/PA	1998	31	47.2273	504	9.37%
NEW JERSEY MTG & INV CORP	1998	30	45.7038	NA	NA
FIRST UNION MTG	1998	30	45.7038	1308	3.49%

Source: Ira Goldstein

Philadelphia- Foreclosure Demographics



- FTC: servicing is still on radar screen
 - Several investigations open, including EMC Mortgage
- Predatory Servicing/Discrimination: reverse redlining cases by advocacy groups and municipalities
- Investor Cases: recent cases against lenders for lack of adequate controls could implicate servicing
- Consumer Protection: FDCPA and UDAP cases for inaccurate accounting and payment application

Servicing and Secondary: Working Together

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- Current media, legislative, and regulatory attention on non-prime foreclosures.
 - ARM Resets
 - Housing Market – declining values
 - Underwriting tightening – non prime
 - Modification as workout tool
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- The documents set parameters on types and amount of loan modifications servicers can undertake
 - Language varies, some sample provisions:
 - » Servicer should follow accepted servicing practices varying definitions:
 - In its good faith business judgment
 - Normal and usual in its general servicing activities
 - As it would employ for loans held for its own account
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- » Loan must be in default or default must be reasonably foreseeable/imminent
 - » Modification must be in best interests of the security holder/not materially adverse to security holder
 - » Other limiting language
 - Number of modifications to a particular loan
 - Number of modifications limited to a % of size of pool
 - Consents
 - › Rating agencies
 - › NIMS insurer
 - › Master servicer
-

- » Default definitions
 - » Reasonably foreseeable definitions
 - » Imminent definitions
 - » Considerations
 - Case by case
 - Documentation
-

- Best interests vs. not materially adverse
 - Some test for valuation and comparison
 - Aggregate vs. individual bondholders
 - Documentation
 - Liability
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- Tax implications
 - » 1099's
 - FAS 140
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