



Legal Issues and Regulatory Compliance Conference

Secondary Market Issues

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Key Threshold Concerns of Purchasers of Residential Mortgage Loans

- a) Exposure to assignee liability, especially if there are no defenses, and potential civil/criminal penalties are substantial.**
- b) A violation of law or regulation renders the loan unenforceable, usurious or subjects holder of the loan to possible rescission.**
- c) Reputation risks of being associated with a predatory lender, being viewed as enabling predatory lending.**
 - in many respects, the greatest concern of Wall Street.**

Pre-Purchase Corporate Level and Loan Level Due Diligence

- a) Corporate diligence is conducted prior to or immediately following loan purchase.**
 - encompasses physical site review of the loan seller's facilities and interviews with seller's management.**

- b) Sample of loans is reviewed prior to sale.**
 - goals of diligence are to ensure that loans comply with salient laws, seller's underwriting and credit guidelines.**

 - purchasers increasingly aggressive in conducting due diligence.**

 - recent focus on underwriting especially in light of Interagency Guidance on Non-Traditional Loan Products and promulgation of new state laws.**

The Standard Mortgage Loan Purchase Agreement

- a) Loan level representations and warranties feature:**
 - compliance with all applicable law.
 - no high cost loans.
 - caps on maximum amounts of negative amortization, loan to value ratios.

- b) Remedies for Breaches:**
 - “materiality” of breach.
 - seller’s obligation to cure and repurchase.

Early Payment Defaults

- **seller obligated to repurchase loan if mortgagor fails to make [first], [or] [second], [or] [third] scheduled monthly payment.**
- **strength of seller, ability to repurchase.**
- **other “redress” for purchaser of loans.**

Post-Closing “Due Diligence”

- a) **Purchaser wants to conduct diligence after sale to ascertain fraud, augment arguments for “material” breaches and put loans back to sellers.**
 - **the need is especially acute in early payment default situations.**

- b) **Seller wants to conduct its own diligence to better understand early payment default issues.**
 - **detecting fraud.**

- c) **Tricky issues in reviewing loans post-closing and contacting mortgagors/ employers.**
 - **Fair Credit Reporting Act and Gramm-Leach-Bliley issues.**
 - **but language in FNMA 1003 application can be helpful.**