<u>Mortgage Bankers Association</u>
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Unprecedented Attention to Servicing Helping Borrowers in Trouble, Investor Ramifications

The View from Inside

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Legal support for real estate secured consumer lending has morphed over recent years from a predictable and rather stoic existence to one of constant challenges. The everyday business of loan administration and customer service is no longer the only focus of loan servicing operations. Economic changes have brought an increase of requests from customers for assistance due to financial hardship. At the same time, loan servicers are struggling to adapt to an influx of legislation, increased scrutiny of regulators, questions by investors, and constant bad news in the press. As bad as it all sounds, it is a time in the life of each company when legal and compliance partners are valued and consulted more than ever.

The panel this morning will address the latest information compiled by the Mortgage Bankers Association indicating the extent of loans in default and the efforts of the industry to address the complex nature of loss mitigation.

A. **The Statistics**

B. **Unprecedented Attention to Servicing**
“Wrongful Servicing” seems to have crept in as an issue of concern for federal and state legislators. Consumer Advocates groups claim loan servicers play a major part in a consumers default. Public coverage of loan servicers who have not been careful or not followed industry best practices only increased this perception. The amount of time responding to pending legislation involving the servicing process has increased exponentially in the past few years. The North Carolina Mortgage Debt

Collection and Servicing Act (N.C.G.S. Chapter 45, Article 10) is one of the first comprehensive efforts by a state to further define how they think loan servicers should implement existing federal statutes. Don Lampe of Womble, Carlyle, Sandridge & Rice prepared a summary of this law that is in your material. Many states are focused on changes to the foreclosure process in an effort to force lenders and consumers to engage in discussions prior to a foreclosure sale. A copy of the Philadelphia effort to delay foreclosures is attached as an example of efforts by one city to curb an increase in foreclosures. The decision to implement, examine possible preemption options, or fight the legislation as unconstitutional has become an increased responsibility of loan servicers.

C. Helping Borrowers in Trouble – Loss Mitigation Strategies

In September 2007, the Agencies issued a Statement on Loss Mitigation Strategies for Servicers of Residential Mortgages #261. While many organizations had already begun to react to an increase in customer calls for assistance, this Statement helped focus attention on a common goal. The HOPE NOW Alliance has also supported a concerted effort on behalf of customers in need of assistance.

The complexity of in-house issues with respect to a Loss Mitigation Strategy increases with the size of the organization. Some of the issues listed below are common concerns inside an organization as we work towards meeting the Agency recommendations:

- **Do we have the appropriate stakeholders involved?** In order to develop a feasible plan, certain internal stakeholders must participate. In a large organization, we may be aware of different groups, but until now, rarely needed to join together in regular meetings to determine a plan of action. We have a large number of products, across different operating groups, servicing operations, investor relations, mortgage insurance relationships, accounting, and collections. Since many customers who call for help are current on their payments, we must ensure that any loss mitigation efforts do not result in an impossible situation for the Collections/Default partners if we are unsuccessful in our efforts.
- **Have we identified the Scope?** Within the limitations of safety and soundness, institutions must assess resources in terms of loss mitigation personnel, compliance and risk flexibility. It is important to identify the group of customers who will be able to access loss mitigation options. Some legislation pending in Congress specifies assistance is meant to benefit individuals living in their homes. Other legislation is focused on any loan heading towards

foreclosure. Each organization must determine where to start and how to control the assessment of factors to minimize instances where individuals game the system and to minimize fraud.

- **<u>Have we identified all product lines that may be involved</u>?** Purchase money, home equity, construction, small business, asset management, community lending. In a large organization, a variety of products come to the bank, through many channels. Customers may have more than one product with an organization. While different operational units internally are responsible for the administration of the products, the customer only knows one name and expects consistent options as a solution. Assistance with the first lien may require concessions by the second lien holder and that internal group must be involved. If options differ due to constraints inherent in loan products, we should be able to clearly communicate the reasons for such differences to the customer.
- **<u>Do we understand how loan documents interact</u>?** In large organizations, especially if they are older, the loss mitigation activity permitted under loan documents will not be uniform. Especially in light of the specific nature of second lien instruments, it is important to consult with the origination partners in legal and compliance to examine how much flexibility we have.
- **<u>Do we understand our responsibilities towards Investors</u>?** It is important to consult with Fannie/Freddie and Private Investor representatives as we develop plans that involve their loans. If established investor guidelines are not adapting to the current environment, there may be a reason why and it is important to engage in conversations early in the process to determine what flexibility exists.
- **<u>Do we understand our reporting responsibilities</u>**? In addition to reporting to investors, we are required to report losses through our Accounting function. There are specific time constraints with respect to borrower payments or the lack thereof. In attempting to work with customers, we must build in accounting requirements. It is not feasible to delay loss mitigation efforts indefinitely. [If a customer is no more than two months behind in payments, more flexibility is available than when they hit the third month]. The input of accounting partners helps determine how much time to give the customer to respond to letters, send in forms, etc.
- **<u>Do we understand the Fair Lending implications</u>?** In spite of public perception, the nature of loan servicers is to help people. In the past, loss mitigation efforts were few and far between. The customers involved tended to be experiencing a catastrophic life event. With Hurricane Katrina, the first large group of individuals

in need of loss mitigation efforts approached loan servicers seeking assistance. The danger is in creating a loss mitigation plan to help solve a problem for an individual borrower, without an overall consistent loss mitigation strategy throughout the organization. It is important to avoid "custom" solutions, or solutions targeting certain groups in an inappropriate manner. This is the most difficult aspect of developing a loss mitigation strategy because at some point, the solution must be at an individual loan level based on the individual financial picture. The approach however must be uniform across the entire organization. Each borrower, regardless of the product involved, must be communicated with in the same way, must provide the same information to the bank, be offered the same options based on an objective filtering criteria.

- **Have we established an efficient link with Collections/Default?** If all loss mitigation efforts fail, have we set up a process where documentation necessary for the foreclosure process, especially in light of new foreclosure legislation, is available for outside counsel?
- **Have we engaged Corporate Communications**? An integral part of any organization-wide effort must include participants from the Corporate Communications Office. In addition, it is important to develop talking points for Customer Service Representatives and Branch Personnel. The intention of a loss mitigation project is to increase communication with those in need of assistance. In spite of 800 numbers on letters, customers will walk to their nearest branch and ask all their questions of employees with whom they are familiar and comfortable. The employees must be prepared to answer preliminary questions and get the customer to someone who can actually help them. If they have multiple accounts, it may mean coordinating contacts in several groups. In addition, customers making their payments as agreed will ask why they are not also eligible for concessions, or why we are 'giving money away.' The more open the lines of communication within the organization, the more successful the loss mitigation project will be overall.