

MBA's National Mortgage Servicing Conference & Expo 2008

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Litigation Update

By

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I. ISSUES THAT POSE MATERIAL RISK OF LOSS TO SERVICERS

- A. Loss mitigation and loan modification
- B. Faulty loan set up on servicing system or incorrect/incomplete data provided by seller/prior servicer
- C. Inconsistent or inaccurate loan documents
- D. Unearned, unauthorized or illegal fees and charges
- E. Push back on federal preemption
- F. Renegade regulators imposing normative view of the world
- G. Unresponsive treatment of customer complaints
- H. Mishandling of monthly payments (e.g., timing of posting, suspense accounts, partial payments, application of payments)
- I. Enhanced statutory damages for seemingly immaterial violations
- J. Mistreatment of borrower in default
- K. Standardization of treatment despite lack of standardization of loan documents; failure to use lowest common denominator
- L. Payoff and lien release
- M. Identity theft/data security breach

II. TYPICAL CLASS ACTION CLAIMS (SEE ATTACHMENT)

III. K&L GATES MORTGAGE BANKING & CONSUMER FINANCE ALERT: HURRICANE SUBPRIME: WILL CONGRESS PROVIDE DISASTER RELIEF FROM HOME FORECLOSURE?

CLASS ACTION LAWSUITS AND ATTORNEY GENERAL INVESTIGATIONS BASED ON LOAN SERVICING ACTIVITIES BEING HANDLED BY K&L GATES AS OF 11/07

<u>COURT</u>	<u>NATURE OF SUIT</u>	<u>ISSUES OF INTEREST</u>
<p>Circuit Court of Cook County, Illinois</p>	<p>Putative Illinois class action alleging that loan servicer improperly used “suspend accounts” to hold borrowers’ funds instead of crediting them to amounts owed under the note and mortgage. Claims sounded in breach of contract (alleged violation of note and mortgage), unfair and deceptive practice in violation of the Illinois Consumer Fraud Act, and common law claim for unjust enrichment.</p>	<p>Settled on individual basis prior to ruling on motion for class certification or filing of dispositive motions.</p>
<p>United States District Court, Eastern District of Tennessee</p>	<p>Putative nationwide class action against loan servicer and its employees concerning whether the named plaintiffs’ mortgage loan was delinquent or in default, and whether loan servicer violated statutory and common law in connection with its efforts to collect their debt. Plaintiffs allege violations of the Fair Debt Collections Practices Act, the Racketeer Influenced and Corrupt Organizations Act, the Tennessee Consumer Protection Act, and common law claims for fraud and misrepresentation.</p>	<p>The District Court denied certification of plaintiffs’ FDCPA and TCPA claims pursuant to Fed. R. Civ. P. 23 where plaintiffs were not challenging any uniform conduct by servicer that applied to a class of borrowers and because putative class consisted of borrowers whose grievances against the servicer could not be resolved on anything other than an individualized basis. The Court also dismissed the RICO claims against the servicer.</p>
<p>Superior Court of the State of California in the City and County of San Francisco</p>	<p>Putative California class action alleging that servicer violated California’s Unfair Business Practices Act, Business and Professions Code, § 17200 <i>et seq.</i> for allegedly wrongful posting of late charges, force placing unnecessary casualty insurance and sharing excessive premiums, imposing and collecting escrow fees and attorney’s fees that were not actually incurred, imposing and collecting fees for property inspections, initiating unjustified foreclosure proceedings and by coercing borrowers to remit payments through an expedited payment system from which the servicer allegedly benefits.</p>	<p>After full briefing by the parties and oral argument before the court addressing whether the action was suitable for class treatment, plaintiffs’ withdrew their motion for class certification. The case is no longer a class action.</p>

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<p>United States District Court for the District of Nevada</p>	<p>Nevada putative class action brought under the federal Real Estate Settlement Procedures Act, Nevada law concerning non-judicial foreclosures, common law unjust enrichment, and slander of title. In particular plaintiffs' claimed that the servicer violated Nevada law concerning non-judicial foreclosures and federal notice requirements under RESPA by failing to properly notice, publicize and post the trustee's sale of the property.</p>	<p>Settled on individual basis prior to ruling on motion for class certification or ruling on dispositive motions.</p>
<p>United States District Court for the Northern District of Illinois</p>	<p>Putative nationwide class action alleging violations of the Fair Debt Collection Practices Act in connection with a servicer letter. Also alleged violations of the Cranston-Gonzales Amendment to the Real Estate Settlement Procedures Act for purportedly conditioning a response to a "qualified written request" by charging a fee.</p>	<p>Settled on individual basis prior to motion for class certification or filing of dispositive motions.</p>
<p>United States District Court for the Connecticut</p>	<p>Putative nationwide class action against loan servicer based on alleged improper conduct in connection with the servicing of the named plaintiff's mortgage loan, including debt collection and responding to plaintiffs' requests. Plaintiff alleges various statutory and common law claims including, claims under the Racketeer Influenced and Corrupt Organizations Act, the Fair Debt Collection Practices Act; the Real Estate Settlement Procedures Act, the Truth in Lending Act, the Fair Credit Reporting Act, the Connecticut Unfair Trade Practices Act, common law claims for unjust enrichment, constructive trust, negligence and negligent servicing, breach of fiduciary duty with respect to monies it held in escrow, breached of duty of good faith and fair dealing, intentional or reckless misrepresentation, claims under the Connecticut Corrupt Organization Racketeering Activity Act, and fraud.</p>	<p>Dismissed by court for non-compliance with court order awarding servicer its attorney's fees ordered pursuant to servicer's F.R.C.P. 41(d) motion for cost and fees in connection with the defense of a substantially similar predecessor action filed by plaintiff against servicer.</p>

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Superior Court of New Jersey	New Jersey class action note holder and servicer claiming that defendants improperly imposed excessive attorney's fees and costs in violation of contract/mortgage and as allowed by law, including the New Jersey Consumer Fraud Act.	Settled on individual basis prior to motion for class certification or filing of dispositive motions.
Circuit Court of Marion County, State of Tennessee	Tennessee class action against note holder and defended by loan servicer, in which borrower is seeking certification of defendant class through declaratory judgment and constitutional challenge to the Tennessee non-judicial foreclosure process.	Court dismissed class action count based on Tennessee statutory scheme of non-judicial foreclosure because of lack of "state action."
United States District Court for the Southern District of Ohio	Putative nationwide class against loan servicer arising from theft or misappropriation by unknown third parties of loan servicer's computer hardware containing certain borrower information and subsequent notice of same by loan servicer to affected borrowers. Plaintiff alleges causes of action for negligence; invasion of privacy; breach of the duty of confidentiality; fraud; unauthorized use of computer; and violations of the Ohio Consumer Sales Practices Act.	Court granted loan servicer's motion for summary judgment dismissing all of plaintiff's individual claims and denied plaintiff's motion for class certification as moot.
United States District Court, Central District of California	Putative nationwide class action against loan servicer alleging, among other things, that loan servicer engaged in a pattern and practice of assessing unfair, excessive and/or unlawful late charges and other fees, routinely misapplied customer payments, force placed hazard insurance on properties already known to be insured, improperly initiated default and foreclosure proceedings, and refused to answer questions and make corrections to plaintiffs' accounts. Plaintiffs allege violations of the Real Estate Settlement Procedures Act ("RESPA") and the California's Unfair Business Practices Act and asserts claims for breach of contract, unjust enrichment and declaratory and injunctive relief.	Court denied plaintiffs' motion for certification pursuant to F.R.C.P. 23(b)(2) and (b)(3) of a California-only breach of contract and unjust enrichment claims where the servicing practices at issue did not result from a general applicable policy or contract term and liability with respect to these servicing practices had to be determined on case-by-case basis. Issues related to the RESPA class continue to be litigated.

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United States District Court, Central District of Utah	Utah putative class action against loan servicer alleging among other things, that servicer charged excessive late fees, improper inspection fees, and failed to respond to qualified written requests. Plaintiffs allege violations of the Real Estate Settlement Procedures Act ("RESPA"), the Utah Consumer Sales Practices Act, the Fair Debt Collection Practices Act ("FDCPA"), and common law claims for breach of contract, negligence, implied covenant of good faith and fair dealing, and unjust enrichment.	Settled on individual basis prior to motion for class certification or filing of dispositive motions.
Superior Court of the State of California in the County of Orange	Putative California class action alleging that servicer violated California's Unfair Business Practices Act, Business and Professions Code, §§ 17200 <i>et seq.</i> and California Civil Code § 2954.4(b) for charging late fees where borrowers allegedly made timely payments.	Settled on individual basis prior to motion for class certification or filing of dispositive motions.
Supreme Court of the State of New York, Kings County	Putative New York class action alleging that loan servicer improperly charged excess fees ("release fees") in connection with loan payoffs. Plaintiff alleges violations of the New York Deceptive Practices Act, General Business Law § 349 and common law claims for unjust enrichment and restitution.	Dismissed by plaintiff after servicer filed a motion to dismiss plaintiff's claims arguing that servicer was permitted, as a matter of law, to assess the loan payoff fees at issue.
Superior Court of Washington in and for King County	Putative Washington class action alleging that loan servicer charged fees at loan payoff, including a "fax fee" and "quote fee" that were not authorized or permitted by the Deed of Trust. Plaintiff alleges violations of the Washington Consumer Protection Act, RCW § 19.86 and asserts claims for breach of contract, unjust enrichment and declaratory and injunctive relief.	In initial stages of litigation.

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<p>Office of the Attorney General of the State of Ohio and the Ohio Department of Commerce, Division of Financial Institutions (Joint Subpoena/Investigative Demand)</p>	<p>By letter dated November 9, 2007 (the "Joint Subpoena/ Investigative Demand"), the Office of the Attorney General of Texas ("Texas Attorney General") and the Ohio Department of Commerce, Division of Financial Institutions, notified loan servicers that it is investigating possible violations of the Ohio Consumer Sales Practices Act, the Ohio Second Mortgage Loan Act, and the Ohio Valentine Act (monopolies). The Joint Subpoena/ Investigative Demand states it has reasonable cause to believe, based upon its own inquires, consumer complaints, and information received from "other sources" that unfair and deceptive acts and practices in connection with consumer transactions has occurred in connection with the servicing of and foreclosure upon residential mortgage loan transactions in Ohio. The Joint Subpoena/ Investigative Demand also states that the conduct under investigation includes mortgage lending and servicing practices as they relate to the securitization of residential mortgage loans in Ohio and the rating of the securities, including the creation of trusts and/or monopolization or restraints of trade in connection with the creation and rating of subprime mortgage investment vehicles.</p>	<p>In the initial stages of production.</p>

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Hurricane Subprime: Will Congress Provide Disaster Relief From Home Foreclosure?

Regardless of whether the perceived increase in home loan foreclosures is due to non-traditional loan products and aggressive underwriting or traditional economic factors such as job loss, divorce and medical problems, Congress is focused on protecting borrowers from foreclosures resulting from subprime loan defaults. Home retention clearly is a major public policy priority. The question is how to achieve that goal.

Less than two years ago, disaster relief for victims of Hurricane Katrina had the attention of Washington public policy makers. Whether the government is prepared to bail out mortgagors with offers of temporary subsidies and cash grants as it did for mortgagors in Louisiana and Mississippi remain to be seen. Legislative enactment of a form of an unfunded mandate, which might limit the ability of loan servicers to enforce the terms of the loan documents and require the offering of loss mitigation alternatives to foreclosure, is another distinct possibility. Balancing the legitimate interests of consumers in distress and innocent loan servicers and loan holders will be the public policy challenge.

On March 16, 2007, Senator Chris Dodd released the following statement in connection with his announcement that the U.S. Senate Committee on Banking, Housing, and Urban Affairs would hold hearings on predatory lending:

In our America, it's critical for families to be able to buy a home. It's also critical in our America for families to keep their homes. Predatory lending practices put these goals at risk. As Chairman, I will use all the powers and tools at my disposal to keep families victimized by predatory loans in their homes and ensure that America's dream of homeownership remains alive.

Senator Dodd, who has announced his candidacy to be President, made this statement only two days after the Association of Community Associations for Reform Now ("ACORN") released a press release in which, among other demands, ACORN called for a foreclosure moratorium on all subprime loans "that were recklessly underwritten with inadequate consideration of the borrower's ability to repay." Examples cited by ACORN included "adjustable rate loans that used the initial rate to qualify the borrower, so-called stated income loans that had no income verification and loans that were made without escrows for taxes and insurance."

Note that neither Senator Dodd nor ACORN claimed that subprime loans were illegally originated. Indeed, underwriting adjustable rate mortgage loans at initially discounted rates with reduced documentation has been in the "plain view" of Congress for decades. Nevertheless, while a public policy goal of home retention is a laudable goal in and of itself, the backdrop for this new initiative is a concern that subprime borrowers should have been prevented from obtaining loans for which they had applied.

Investor Requirements

While Congress is considering whether and how to respond to the anticipated material increase in loan defaults, servicers are looking to their investors for guidance. As noted before, the government sponsored enterprises and the FHA already have loss mitigation tools in place to address alternatives to foreclosure. And they built upon those tools in their recent disaster relief response to Hurricane Katrina.¹ Within limits, they can adapt quickly to new developments.

Servicers of residential mortgage loans pooled in private securities, on the other hand, are not subject to these pronouncements. Instead, they are required to service strictly in accordance with the terms of the existing agreements; a trustee may have limited authority to waive these provisions depending on the agreement. A servicer may be contractually required to initiate foreclosure proceedings after a loan is in default for a specified period of time; it may not have the contractual authority to reduce the interest rate, forbear the collection of regularly scheduled payments, forgive a portion of the principal, or extend the maturity date. Responding to changing economic circumstances is not easy, because amending servicing agreements after the issuance of the related mortgage-backed securities usually requires the consent of the many securities holders. And, of course, REMIC tax laws may guide what is permissible even if the parties were to reach consensus on proposed changes...

Moreover, servicers of loans in non-agency securities lack industry wide, definitive guidance on the extent to which they can or must use loss mitigation tools as an alternative to foreclosure under their existing agreements. Perhaps GSE and agency guidelines may serve as an "accepted servicing practice" on which servicers may rely after accounting for the differences in the pooled loans.² But unlike the GSE and FHA models, it is not clear who pays for loss mitigation, unless the existing servicing agreements explicitly authorize the servicer to recover the related costs from the "waterfall" of available funds to be distributed to securities holders. Servicers are not inclined to self-fund these additional efforts as a charitable act.

Prior Legislative Initiatives

While perhaps not prevalent over the last twenty years, legislative proposals providing for foreclosure

moratoriums date back to the early days of the Republic,¹ and have cropped up from time to time during periods of economic stress—especially the Great Depression-- particularly with respect to the loss of family farms in the Midwest. Generally speaking, federal and state legislative proposals to limit foreclosure historically have followed one of two themes. One type of bill seeks to delay the ability of a lender to foreclose and resell the property of a borrower in default. These bills could be procedural in nature, such as requiring the foreclosing lender to provide various types of notices to the mortgagor as a condition to consummating the foreclosure, or they could be more substantive, such as requiring the lender to forbear for a specified period of time. The other type of bill provides a subsidy to a homeowner who has a temporary setback, such as the loss of a job or a medical condition, where it reasonably is anticipated that the borrower will be able to reinstate after the temporary crisis subsides. The servicer is not expected to provide the subsidy—the money comes from the government—but the servicer might be required to forego for a temporary period a portion of the amount that otherwise is due on the loan.

Interestingly, over the past 20 years, Congress has proposed few bills that would have limited a residential mortgage lender's right to foreclose, except in narrow circumstances such as protecting those serving in active military service. In 1985, for example, Representative Traficant from Ohio proposed the Emergency Home Foreclosure Relief Act of 1985.³ This bill would have imposed a moratorium on home mortgage foreclosures in each state or "home credit region" in which the Secretary of Housing and Urban Development determined a home credit emergency existed. The proposal never saw the light of day. Seven years later, in 1992, Representative Moran introduced the Homeowner's Equity Protection Act, which would have established a 1-year forbearance period on defaulted loans. During the forbearance period, homeowners would have been required to make interest payments on the mortgage; and the mortgage holder would have been able to foreclose on the loan if the mortgagor had not brought the loan current during the 1-year forbearance period.⁴ This bill

¹ Lee J. Alston, *Farm Foreclosure Moratorium Legislation: A Lesson from the Past*, 74 Am. Econ. Rev. 445, 445 (1984) (identifying an 1820 New York statute extending the grace period before foreclosure).

met a similar fate to the earlier Trafficant bill. Neither bill was proposed because of perceived unlawful or unfair loan origination practices.

Congress has, however, actively looked for alternatives to foreclosure, albeit not on a universal scale, without claims of wrongful lending. For example, Congress added Section 230 to the National Housing Act to require a mortgagee to engage in loss mitigation actions upon the default of any residential mortgage loan insured by the U.S. Department of Housing and Urban Development acting by and through the Federal Housing Administration ("FHA").⁵ Depending on an individual borrower's qualifications, such actions may include: (i) special forbearance or a temporary repayment plan; (ii) modification to reduce the monthly payment or extend the term of the loan; (iii) a partial claim to reinstate the loan; (iv) a pre-foreclosure sale; or (v) a deed-in-lieu of foreclosure. The goal is to prevent a rush to foreclosure if there are viable alternatives.

Underscoring the seriousness of its commitment to loss mitigation, in 1998 Congress authorized FHA to impose harsh penalties on servicers that do not follow FHA's loss mitigation requirements. Section 536 authorizes a penalty in the amount of three times the amount of any insurance benefits claimed by the mortgagee for any mortgage for which the mortgagee failed to uphold its duty to engage in loss mitigation.⁶ FHA defined such failure in its regulations "as a mortgagee's failure to evaluate a loan for loss mitigation before four full monthly mortgage installments are due and unpaid to determine which, if any, loss mitigation techniques are appropriate...or subsequent failure to take appropriate loss mitigation actions(s)."⁷ In order to benchmark compliance, HUD utilizes a "Tier Ranking System" to analyze a mortgagee's loss mitigation efforts on a portfolio basis in relation to its peers.⁸ In addition to negative consequences for a servicer's failure to engage in appropriate loss mitigation activities, FHA also provides financial incentives for servicers to undertake certain loss mitigation activities, presumably as a form of an additional servicing fee for the additional servicing activities.⁹ Thus, servicers are not supposed to bear the risk of loss on loss mitigation for FHA-insured loans. For example, it does not appear that FHA can force a lender to use its own funds to repurchase a defaulted loan out of a GNMA pool in order to modify the loan as an alternative to foreclosure.

The above referenced loss mitigation requirements apply only to FHA-insured loans. While not mandated by Congress, for years both Fannie Mae and Freddie Mac have maintained extensive loss mitigation requirements for their servicers.¹⁰ There is, however, no national federal law pertaining to loss mitigation activities.

States now are getting into the fray. As of the date of this alert, there are approximately 50 bills pending in 29 jurisdictions to address home foreclosures. For example, the proposed Home Equity Fraud Act in New York, among other provisions, would provide an affirmative defense to a foreclosure if, at the time of the loan origination, the mortgagor did not have the financial ability to repay the loan and the financial institution knew or should have known that the mortgagor would not be able to repay such loan.¹¹ This right would be limited to foreclosures of homes owned by a mortgagor for more than 5 years prior to the date of a refinancing in default.

A proposed bill in Connecticut that recently died would have amended existing law that requires the lender to give notice to the homeowner at the time the action is commenced of the provisions of the Protection from Foreclosure for Unemployed and Underemployed Persons Act; a court may issue an order staying the foreclosure action against eligible homeowners who did not receive the required notice for 25 days [15 under existing law] during which time the homeowner may apply to the court for protection from foreclosure.¹² The court determines the eligibility of a homeowner for protection from foreclosure considering all relevant facts, including the likelihood the borrower can make timely payments on a restructured mortgage and the presence of any substantial prejudice to the lender or any subordinate lienholder which would result from restructuring debt. The court can restructure the mortgage debt to eliminate any arrearage in payments and can order restructuring for a period not to exceed 24 months (six months under existing law). As a condition to granting the restructuring, the court may order the homeowner to pay to the lender during the restructuring period an amount not to exceed 25% of the homeowner's net income per month.

Constitutional Limitations

Bills at the state level seeking to delay a lender's right to enforce the terms of the loan documents may suffer a constitutional infirmity under a provision of

Article I, section 10 of the United States Constitution. Commonly known as the “Contracts Clause,” that provision prohibits any state from enacting a “Law impairing the Obligation of Contracts[.]” Simply put, the Constitution sharply limits states’ abilities to enact laws that retroactively modify existing contracts between private parties. States may, except to the extent otherwise limited by federal law or their own constitutions, regulate contracts prospectively—that is, they may enact a law that limits the terms of contracts made after the law goes into effect. However, with certain exceptions, a state government can not impair the ability of a private party to enforce the terms of a contract that was valid and enforceable when made. On its face, however, the Contracts Clause only applies to the states.

Two Supreme Court decisions from the 1930s establish the framework within which Contracts Clause challenges to foreclosure moratoriums will be evaluated. One of those cases, *Home Building & Loan Association v. Blaisdell*,¹³ acknowledged that the Contracts Clause did not absolutely prevent states from modifying foreclosure procedures and redemption rights with respect to mortgage contracts already in existence. In that case, the Court upheld a Minnesota law that allowed courts to stay the foreclosure of a mortgage for up to two years (or until the expiration of the economic emergency caused by the Great Depression, if sooner) provided that certain conditions were satisfied—including that the mortgagor pay rent to the mortgagee and that the mortgagee’s interest in the collateral be protected. One year later, however, the Court unanimously established in *W.B. Worthen Co. v. Kavanaugh*,¹⁴ that *Blaisdell* did not give states *carte blanche* authority to impair the obligations of contracts by substantially limiting the remedies available to creditors. In *W.B. Worthen*, the Court struck down an Arkansas law that purported to modify foreclosure and judicial remedy procedures to an extent that amounted to an “oppressive and unnecessary destruction of nearly all the incidents that give attractiveness and value to collateral security,” and that “render[ed] the remedy a shadow.”

Any new initiatives by the states focused on home retention will have to be appropriately circumscribed

if they are to survive a constitutional challenge. And while the Contracts Clause may not apply to Congress, there may be other constitutional limitations on the unfettered authority of Congress to allocate the risk of loss on mortgage servicers arising out of the enactment of new federal foreclosure laws.

Civil Actions

Of course, no new federal or state statutes may be required to prevent foreclosure of a loan originated in violation of applicable law. It is widely anticipated that mortgagors will assert defenses to foreclosure based on origination violations. This means that the emerging public policy on home foreclosures, at least prospectively, is inextricably tied to the issue of assignee liability in terms of whether a mortgagor under a non-high cost loan can assert claims and defenses against an innocent assignee.¹⁵

Consumer groups have ratcheted up the rhetoric recently on this topic, warning the industry that “aiding and abetting” claims against the secondary market are being readied for filing. The first prong of any such charge is proof that the loan holder had actual knowledge of an illegal act, and it will be hard for plaintiffs either to impute knowledge to purchasers that are far down the ownership chain or to prove that the origination practices cited by ACORN were illegal at the time the lender made the loan. Thus, regardless of whether or how Congress acts, the issue likely will play out in courts across the country.

If you have any questions about this Alert, please call Larry Platt (202.778.9034/larry.platt@klgates.com), Nanci Weissgold (202.778.9314/nanci.weissgold@klgates.com) or any member of the K&L Gates Mortgage Banking & Consumer Credit practice. If you would like assistance with legislative initiatives in this area, please call Bruce Heiman (202.661.3935/bruce.heiman@klgates.com) from the Public Policy and Law practice.

Endnotes

¹ See, Fannie Mae Single-Family Announcements and Letters, LL1-05, LL03-05; Freddie Mac Single-Family Bulletins and Industry Letters, Bulletin 10/07/05; FHA Mortgagee Letter 2005-33.

² See "Reliance on Accepted Servicing Practices May Authorize Servicers to Provide Disaster Relief to Non-Prime Mortgages", K&LNG Mortgage Banking/Consumer Finance Alert, Laurence E. Platt (November 2005). [ADD LINK]

³ See H.R. 4423 102nd Congress, 2nd Session—Homeowner's Equity Protection Act—Introduced in the House on March 11, 1992.

⁴ See H.R. 3306 99th Congress 1st Session—Emergency Home Foreclosure Relief Act of 1985—Introduced in House on September 9, 1985.

⁵ See 12 U.S.C. § 1715u(a); see also 24 C.F.R. §§203.501, 203.605, FHA Mortgagee Letter 2000-05.

⁶ See 112 Stat. 2461, 105 P.L. 276 (Oct. 21, 1998); see also 12 U.S.C. § 1735f-14(a)(1), (b).

⁷ See 70 Fed. Reg. at 21572; see also 24 C.F.R. § 30.35(a), (c), "HUD Strengthens and Streamlines its Requirements—the Department Finalizes Treble Damages for Failure to Engage in Loss Mitigation and Introduces New Electronic Payment and Reporting Obligations", K&LNG Mortgage Banking/Consumer Finance Commentary, Phillip L. Schulman, Holly M. Spencer (June 2005). [ADD LINK]

⁸ See "Tier Ranking System (TRS)" at <http://www.hud.gov/offices/hsg/sfh/nsc/trsovrw.cfm>.

⁹ FHA Mortgage Letters 2000-05, 2005-18.

¹⁰ Fannie Mae Single-Family Servicing Guide, Part VII, chapter 5; Freddie Mac Single-Family Seller Servicer Guide, Volume 2, Chapter 65.

¹¹ NY AB30

¹² Ct. 2007 HB7005

¹³ 290 U.S. 398 (1934).

¹⁴ 295 U.S. 56 (1935).

¹⁵ See "No Room for Robin Hood", K&LNG Mortgage Banking Commentary, Laurence E. Platt (July 2004). [ADD LINK]