

Mortgage Servicers Start Seeing Claims for Violations of the New Mortgage Servicing Rules

October 21, 2016

Mortgage Servicers Start Seeing Claims for Violations of the New Mortgage Servicing Rules Under the Dodd-Frank Act

As the three year anniversary of the new federal mortgage servicing rules approaches, the first wave of cases looking to hold servicers liable under the new rules is being decided by courts across the country. While many of these cases have found no violations of the new rules by mortgage servicers, there is a recent case from Ohio where the court found a servicer potentially liable for failing to comply with two of the new specific requirements. Mortgage servicers should review their practices in light of this case, which is discussed below.

I. Background

On January 10, 2014, amendments to Regulation X and Regulation Z, issued by the Consumer Financial Protection Bureau (“CFPB”), took effect that significantly impacted the federal rules for servicing residential mortgage loans (the “Mortgage Servicing Rule”). The Mortgage Servicing Rule addresses, among other things, the requirements for responding to borrower inquiries and notices of errors; loss mitigation; early intervention with delinquent borrowers; and force-placed insurance. “Small servicers” meeting certain criteria are subject to some, but not all, aspects of the Mortgage Servicing Rule.

Even before the Mortgage Servicing Rule was adopted, lenders and servicers faced claims from borrowers alleging violations of Regulations X and Z with respect to mortgage servicing practices. These claims would often arise in response to foreclosure actions commenced by the servicer. Because the Mortgage Servicing Rule imposes strict new requirements on servicers and provides borrowers with greater protections, it was inevitable that claims alleging violations of the Mortgage Servicing Rule would begin appearing. That time has now come.

While several cases have rejected borrowers’ allegations that their servicers have committed violations of the Mortgage Servicing Rule, a recent federal court case from Ohio has found that a servicer may face potential liability under the new requirements.

II. Ohio Federal District Court Case

In *Cole v. JPMorgan Chase Bank, N.A.*, the plaintiff filed a lawsuit against his mortgage servicer after what he described were numerous “failed loss mitigation efforts.” The lawsuit alleged two specific violations of the Mortgage Servicing Rule: (1) the failure of the mortgage servicer to properly post on its website an address for receipt of notices of error, and (2) the failure of the servicer to treat the borrower’s loan modification requests as “qualified written requests” requiring specific action by the servicer. The court found that the borrower had established the legal basis for these claims, and directed the lawsuit to continue so the borrower could support the claims on a factual basis. Each of the claims is discussed below.

Address for Notices of Error

Regulation X allows a servicer to establish an address that a borrower must use to submit a qualified written request (which includes a notice of error or a request for information). If the servicer designates a specific address, then the servicer must also post the designated address on any website maintained by the servicer if the website lists any contact address for the servicer. The borrower in the *Cole* case alleged that the servicer violated both the Real Estate Settlement Procedures Act (“RESPA”) and Regulation X by maintaining a website that disclosed a contact address for the servicer, but not the address the servicer had designated for receipt of notices of error.

The servicer did not refute the borrower’s claim but asserted that the borrower had been provided with a written notice of the required address to report a notice of error and that the required address is posted on a different website of the servicer. The court held that despite the letter sent to the borrower with the required address, and despite the fact that the required address might have been on a website of the servicer, Regulation X mandates that the required address is on any website of the servicer that otherwise lists a contact address. Accordingly, the court held that the borrower had stated a claim upon which relief could be granted, and refused to dismiss the borrower’s claim.

Given this case, mortgage servicers that have designated a specific address for qualified written requests (which include notices of errors and requests for information) should confirm that any website setting forth a contact address for that servicer also list the designated address for qualified written requests.

Loss Mitigation Requests

The second issue involving the Mortgage Servicing Rule was whether the borrower’s letters to the mortgage servicer requesting loss mitigation were deemed notices of error triggering certain response duties by the servicer. The servicer, citing case law decided before the Mortgage Servicing Rule took effect, argued that a request for a loan modification does not qualify as a notice of error or a qualified written request because such a request technically does not relate to the loan’s “servicing.” Although the court acknowledged that case law prior to the Mortgage Servicing Rule did support that argument, it found that the revised notice provisions under the Mortgage Servicing Rule result in a different conclusion.

The court went through a detailed analysis of the new notice of error provisions in RESPA and Regulation X and determined that a notice requesting loss mitigation is in effect a request to avoid foreclosure, which is one of the triggers for a servicer to respond to a notice of error.

As with the address issue discussed above, the court did not make a factual finding regarding whether the servicer complied with the error resolution requirements, just that the borrower had stated a claim for relief if the allegations were factually true. The court thus denied the servicer's motion to dismiss the claim.

Based on this case, mortgage servicers should treat any request for loss mitigation to constitute a notice of error and should follow the requirements for responding to such a notice.

III. Further Information

If you have any questions regarding this case or the Mortgage Servicing Rule, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, or Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com

Practices

- Banking and Financial Services
- Regulatory and Compliance
- Real Estate and Land Use Litigation

Industries

- Financial Institutions
- Real Estate

Attorneys

- Kevin Patterson
- Joseph D. Simon