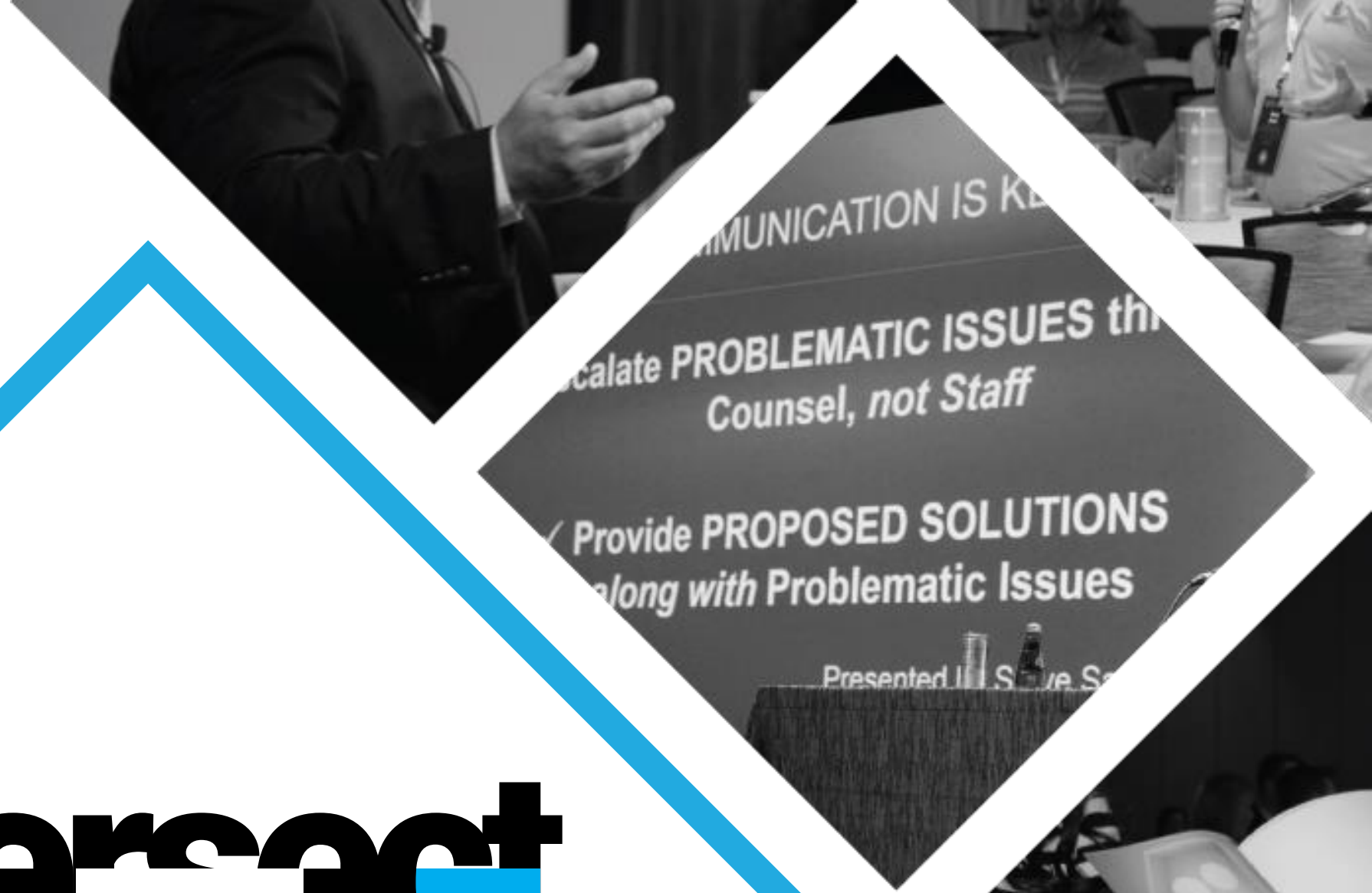
ALFN AMERICAN LEGAL & FINANCIAL NETWORK



intersect

servicing + foreclosure

intersect

BREAKOUT SESSION 6
Case Law & Legislation

MANDALAY WEST

Time 12:00-1:00pm

Case Law & Legislation Track

We will look at the latest case law and legislative updates that have a direct impact on mortgage servicing. This includes, but not limited to:

- New bill in CA that is resurrecting many provisions of the Homeowner Bill of Rights that had previously sunset.
- Recent case law in WA regarding the statute of limitations as well as updates on NY pending legislation and case law.
- Recent case out of Hawaii is making it increasingly more difficult to foreclose
- Florida continues to shape attorney's fees awards and define SOL Damages.
- Additionally, we will open discussion on the continuing HUD requirements and the recent FDCPA cases that have reaching implications on law firms and servicers.

INTERSECT | PRESENTERS

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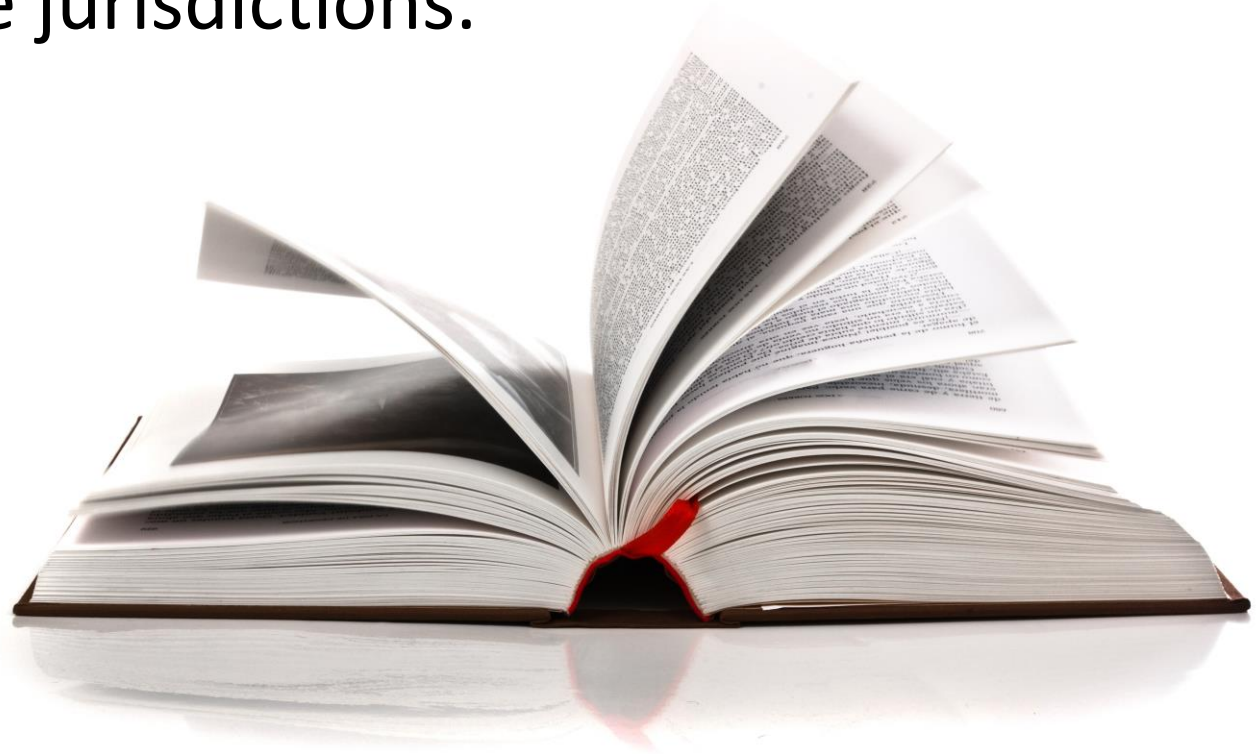
CASE LAW & LEGISLATION

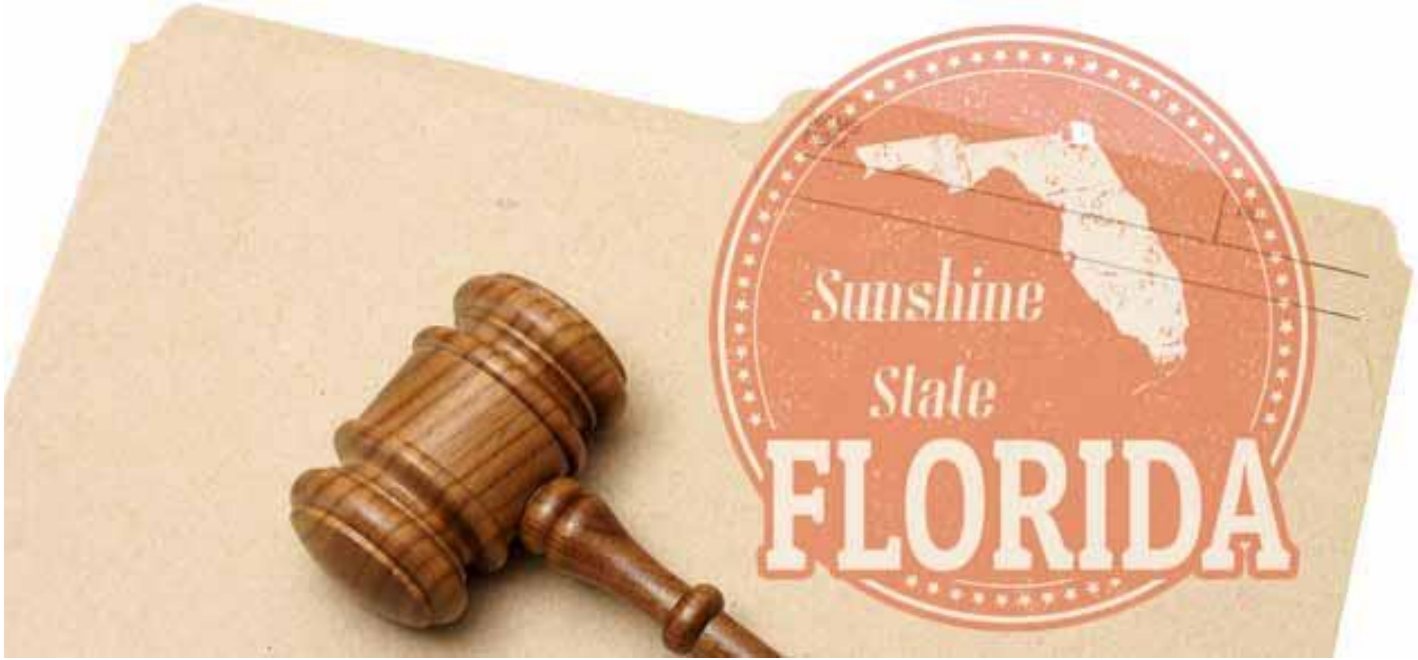
We will look at the latest case law and legislative updates that have a direct impact on mortgage servicing from our respective jurisdictions.



CASE LAW (FLORIDA)

Recent case law in Florida has had considerable effects on many different issues including:

- Admissibility of Default Letters/Third-Party Vendors
- Attorney's fees (No standing)
- HUD Counseling Requirements
- SOL Damages
- Surplus Funds- Timing



FLORIDA (CONT'D)

Default Letters and Third-Party Vendors:

- Must have independent evidence to prove breach letter was mailed i.e., letter log, return receipt or testimony as to routine business practice for mailing. ***Allen v. Wilmington Tr., N.A.*** **216 S0.3d 685, 687-88 (Fla. 2d DCA 2017)**

- Cannot rely on boarding process predicate to establish proof of mailing by prior servicer. ***Spencer v. Ditech Fin., LLC*****, 242 So.3d 1189, 1191 (Fla. 2d DCA 2018)**

- If mailing done by a third-party vendor, witness must be familiar with vendor's practices and procedures. ***Knight v. GTE Fed. Credit Union*****, 43 Fla, L. Weekly D348 (Fla. 2d DCA Feb. 14, 2018); and *Wells Fargo Bank, N.A. v. Balkissoon*, 183 So.3d 1272, 1277 (Fla. 4th DCA 2016)**

FLORIDA (CONT'D)

Attorneys Fees

"No Standing, No Fees"

- A party that prevails on its argument that dismissal is required because the plaintiff lacked standing to sue upon the contract cannot recover fees based upon a provision in that same contract. ***Nationstar Mortgage, LLC v. Glass*, 219 So.3d 896, 897 (Fla. 4th DCA 2017)**

- Note: Must be adjudicated and not prevail on standing issue. "Because the borrower did not prevail on his argument that dismissal was required because the bank lacked standing to sue on the contract, he is not precluded from recovering fees based on a provision in the same contract." ***Wells Fargo Bank, N.A. v. Elkind*, 43 Fla, L. Weekly D2063 (Fla. 4th DCA Sep. 5, 2018)**

FLORIDA (CONT'D)

HUD COMPLIANCE:

<u>What is required?</u>

1. Face-to-face interview with the mortgagor, or
2. Reasonable effort to arrange such a meeting

<u>What is a reasonable effort?</u>

1. Sending at least one letter, (and)
2. Making one trip to the see the mortgagor at the mortgaged property.

FLORIDA (CONT'D)

Five EXCEPTIONS to Face-to-Face Counseling:

1. The mortgagor does not reside on the property;
2. The property is not within 200 miles of the mortgagee, its servicer or a branch of either;
3. Mortgagor has "clearly" indicated that he/she will not cooperate with the counseling;
4. A repayment plan is entered into and payments thereunder are current; or
5. The reasonable effort to arrange a meeting is unsuccessful

FLORIDA (CONT'D)

STATUTE OF LIMITATIONS– DAMAGES

5th DCA: *Velden v. Nationstar (Jan 2018)*

"[W]e affirm the judgment as to liability, but reverse and remand for the trial court to exclude an award of damages for any defaults that occurred more than five years prior to the filing date of the current lawsuit, *nunc pro tunc* to the original date judgment was entered." (emphasis added)

FLORIDA (CONT'D)

STATUTE OF LIMITATIONS– DAMAGES

3rd DCA: *Gonzalez v Fannie Mae (Aug 2018)*

Gonzalez, 5th DCA held:

"If a borrower defaults, the note holder could choose to seek a judgment only for that missed installment payment. More typically, and as occurred here, the note holder can choose to exercise its contractual right to accelerate the entirety of the borrower's obligation under the note and mortgage and seek a judgment on that amount."

"It is that entire debt—not individual installments of it—that comes due upon acceleration and that is sought to be liquidated in a foreclosure action." (emphasis added)

FLORIDA (CONT'D)

Surplus Funds-- Timeframes

Supreme Court of Florida– Certified Conflict

Bank of New York v Glennville, 2018 WL 4327881 (Fla. 2018)

"If any person other than the owner of record claims an interest in the proceeds during the 60-day period or if the owner of record files a claim for the surplus but acknowledges that one or more other persons may be entitled to part or all of the surplus, *the court shall set an evidentiary hearing to determine entitlement to the surplus."* **§ 45.032(3)(b), Fla. Stat. (emphasis added).**

- We conclude that "60 days after the sale," as used in chapter 45 in the context of claims to surplus funds, means sixty days after the clerk issues the certificate of disbursements

STANDING/CONSTRUCTIVE POSSESSION

- Original Note filed in Prior Court Actions
  - Partridge v. Nationstar 224 So.3d 839 (Fla 2nd DCA 2017)
    - Prior action was in BANA's name.
    - Original note was filed in that action, case was voluntarily dismissed
    - New action filed in Nationstar's name, motion to transfer the note to new action was granted
    - Aom only transferred the mortgage
    - Court ruled that Plaintiff did not have standing

  - Deutsche v Noll, 2d16-5635 (Fla 2nd DCA 2018) (still in rehearing time period)
    - Prior action filed by Deutsche
    - Original note filed and MSJ granted in favor of Defendants
    - New action filed by Deutsche
    - Court ruled that Deutsche had standing as it had constructive possession of the note. It retained power to exercise control over the note. Accordingly, it was the holder
    - Surrender to clerk does not relinquish statutorily required status as a holder

STANDING/CONSTRUCTIVE POSSESSION

- Original Note filed with the Court when the Interest in the Note Transferred
  - Gweye v. Ventures Trust, 189 So.3d 231 (Fla 2nd DCA 2018)
    - Complaint filed by JP Morgan, who filed the note with the court
    - Interest transferred to Ventures Trust and Motion to Substitute Plaintiff was granted
    - The AOM only transferred the mortgage
    - Ventures did not establish that it was the holder of the note
  - Nationstar v. Johnson, 250 So.3d 808 (Fla 2nd DCA 2018)
    - Complaint filed by Wells Fargo, Original note filed with the court
    - Interest transferred
    - Wells Fargo and Nationstar moved to release the originals
    - Court ruled that Nationstar maintained standing as it had possession of the note at the trial and stepped into the shoes of the original plaintiff
- General Constructive Possession Cases
  - A party has constructive possession if they have the power to exercise control
  - Caraccia v. US Bank, 185 So.3d 1277 (Fla 4th DCA 2016)
  - FNMA v. McFayden, 194 So.3d 418 (Fla 3rd DCA 2016)

BANKRUPTCY SURRENDER

- Florida Statute 702.12
  - Allows for admission of bky document as an admission
  - Gives rebuttable presumption that defenses are waived, if
    - Property surrendered
    - Defenses were not withdrawn
    - Final order of bky discharged debt or repayment plan was confirmed
  - May take judicial notice under 90.203
  - Exception: may raise defense of lienholders action or inaction subsequent to the bky filing

- Supporting Case Law and Code
  - 11 USC 521
  - In Re Faille, 838 F.3d 1170 (11th Cir 2016)

Washington- Statute of

As an agreement in writing, the deed of trust foreclosure remedy is subject to a six-year statute of limitations, Wash. Rev. Code § 4.16.040.

Washington- Statute of Limitations

The *Edmundson* Case

Summary of the Case:

- Borrowers sought to restrain a trustee's sale of property encumbered by a deed of trust securing a debt for which their personal liability had been discharged in the bankruptcy proceeding. The plaintiffs also sought to quiet title to the property. The plaintiffs claimed that the lien of the deed of trust was no longer enforceable.

What the Court Decided:

- The court in *Edmundson* found when recovery is sought on an obligation payable by installments, the statute of limitations runs against each installment from the time it becomes due; that is, from the time when an action might be brought to recover it.

What Does this Mean for Me?

- The servicer can potentially waive installments outside of the SOL in order to proceed with foreclosure and avoid any FDCPA violations.

Edmundson v. Bank of Am., NA, 194 Wn. App. 920, 378 P.3d 272, 2016 Wash. App. LEXIS 1601

Washington- Statute of Limitations

The Jarvis Case

Jarvis v. FNMA (9th Circuit Court of Appeals) 2018 Unpublished

Summary of the Case:

- Borrowers filed a bankruptcy case. They did not reaffirm the debt nor did they make any payments after their bankruptcy. The beneficiary did not take ay foreclosure action. Seven years later the plaintiffs claimed that the lien of the deed of trust was no longer enforceable and filed a quite title action.

What the Court Decided:

- The court in *Jarvis* found that under Washington law the six-year period to foreclose runds from the time the final installment becomes due. The bankruptcy discharge coupled with no further payments essentially resulted in an acceleration of the loan at the time of the bankruptcy discharge. Thus the beneficiary was no precluded from commencing a foreclosure action as more than 6 years had passed from the discharge. Outcome = Free House.

What Does this Mean for Me?

- You better foreclose soon after a bankruptcy discharge if the borrower is not making payments.

Hawaii (Recent Case Law)

REYES-TOLEDO I:

In deciding whether the court erred in **granting judgment in favor of Bank of America**, the Hawaii Supreme Court held in *Bank of America, Etc. v. Grisel Reyes-Toledo, et al*. 390 P.3d 1248 (2017) ("Reyes-Toledo I") that: **the foreclosing mortgagee must prove that it was the holder of the note at the time the foreclosure complaint was filed**.

Hawaii (Case Law Cont'd)

- Prior to Reyes-Toledo I, there was no requirement to establish standing at the time a foreclosure complaint was filed and **defects in standing could be cured at the judgment stage**.
  - It did not matter whether the foreclosing mortgagee held the note when the complaint was filed so long as the foreclosing mortgagee could show the court at the hearing on the motion for summary and/or default judgment that the foreclosing mortgagee is currently in possession of the original note.
  - **See IndyMac Bank v. Miguel, 117 Haw. 506, P.3d 821 (ICA 2008), as corrected (July 17, 2008); see also Rule 17(a) of the Hawaii Rules of Civil Procedure.**
- As a result of Reyes-Toledo I, it has been very difficult to have judgment granted, especially in contested cases, as the foreclosing mortgagee must provide evidence that it held the note back when the foreclosure complaint was filed.
  - This is especially difficult in cases where there has been one or more change in the lender/servicer and/or change in the name of the foreclosing plaintiff.
  - Some servicers have been helpful in executing declarations to prove prior note possession even when they no longer servicing the loan. Other servicers have not been so helpful.

Hawaii (Case Law Cont'd)

Reyes-Toledo I was upheld in *U.S. Bank N.A. v. Mattos*, 398 P. 3d 615 (2017) ("Mattos"). In addition to upholding Reyes-Toledo I, Mattos establishes other additional requirements for judgment to be granted in favor of the foreclosing mortgagee making it far more difficult to prosecute judicial foreclosure actions in Hawaii:

1. Declarations filed in support of a motion for summary judgment must explain in detail how the declarant is qualified to attest to records of an entity other than the declarant's direct employer;
2. Allonge(s) to a note must be independently authenticated by the declarant;
3. Note possession should be established by providing a copy of the original note (not a copy of a copy); **and**
4. If an assignment of mortgage was executed using a power of attorney, the plaintiff must provide a copy of the power of attorney used to execute the assignment and the power of attorney must be in effect as of the date the assignment was executed.

Hawaii (Case Law Cont'd)

REYES-TOLEDO II:
In deciding whether the court erred in **dismissing the borrower's counterclaim**, the Hawaii Supreme Court held in *Bank of America, N.A. Etc. v. Grisel Reyes-Toledo, et al.* (2018) ("Reyes-Toledo II") that:

- Hawaii is a notice pleading jurisdiction and a complaint of claim need only set forth a short plain statement of the claim showing that the pleader is entitled to relief;
- A party may bring a claim for wrongful foreclosure before or after the foreclosure occurs; and
- A wrongful foreclosure action is not a compulsory claim to a foreclosure action.

Hawaii (Case Law Cont'd)

Difficult to determine the lasting impact of Reyes-Toledo II.

- Likely increase in the number of wrongful foreclosure claims and counterclaims, which may occur during **or after the completion of a foreclosure action**.
- Likely increase in demands from borrowers and others for the foreclosing mortgagee to pay the opposing party's fees and costs incurred defending an alleged wrongful foreclosure.
- Likely issues obtaining post-sale title insurance. Note: Hawaii title insurance companies have become increasingly strict and hesitant to offer title insurance after sustaining heavy losses providing coverage for defective non-judicial foreclosure actions.
- Lenders/servicers should thoroughly review all files prior to referring for foreclosure to ensure all elements necessary to prosecute a Hawaii foreclosure action are conclusively established.
- Unknown how statute of limitations, res judicata principals, and other defenses will be applied in wrongful foreclosure actions/claims following Reyes-Toledo II.

CALIFORNIA- SB 818

On September 14, 2018, the California governor signed **SB 818**, which permanently reinstates and amends certain provisions of California's *Homeowner Bill of Rights* ("HBOR"), which expired on January 1, 2018. The revised and restored provisions of HBOR will be effective January 1, 2019. Key updates and additions were made to:

1) preforeclosure borrower contact,
2) dual tracking
3) post-NOD notice
4) postponement notice
5) late fees (and)
6) service transfers and foreclosure prevention alternatives.

CALIFORNIA- SB 818

Preforeclosure Borrower Contact

- Requires all servicers to attempt to contact borrowers to discuss preforeclosure alternatives at least 30 days prior to recording the NOD; requires declaration to be attached to NOD; applies to first lien, owner occupied properties only.
  - 2923.5 applied to all servicers; will only apply to small servicers
    Reminder: small servicers conduct 175 or less foreclosures in the preceding year
  - 2923.55 reinstated and applies to large servicers. Also reinstated requirement that large servicers send notice of possible SCRA protections as well as the documents borrowers may request.
    Reminder: large servicers conduct more than 175 foreclosures in the preceding year

- **New provision applicable to both:**
  - A servicer satisfies the telephone contact if the borrower or an authorized agent notifies by writing to cease further communication with the borrower and must reference specifically the loan account.
  - Will be effective until either borrower or authorized agent rescinds in writing.

CALIFORNIA- SB 818

Dual Tracking

- Currently, a servicer cannot record the NOD, the NOS or proceed to sale if a complete application for any foreclosure prevention alternative has been submitted. The servicer must first provide to the borrower a written determination regarding eligibility for the requested foreclosure prevention alternative.

- New provision added to 2923.6 and 2924.18 provides that if a borrower submits a complete loan modification application at least five (5) business days prior to the scheduled trustee's sale, the servicer will be required to evaluate it and determine if the borrower is eligible.

    - A written denial letter will be required allowing the borrower a 30-day appeal period;
    - If an offer is made to the borrower, the borrower must be provided 14 days to accept it;
    - If the borrower appeals the denial, the foreclosure process may not continue until the later of 15 days after the denial of the appeal or 14 days after the borrower did not accept a loan modification offer;
    - If the borrower was offered and did accept a loan modification offer, the foreclosure cannot proceed unless the borrower fails to timely submit the first payment or otherwise breaches the terms of the agreement.

CALIFORNIA- SB 818

Dual Tracking (Cont'd)

An application is deemed complete when a borrower has provided the servicer all documents required by the servicer within the reasonable timeframe as specified by the servicer.

- New provision 2924.10 will require the servicer to send a written acknowledgment to qualifying borrowers within five business days of receiving a complete first lien loan modification application or any document in connection with a first lien loan modification application.
- In addition, portions of 2923.6 will be reinstated that will require servicers to provide specific information to the borrower if the borrower's application for a loan modification is denied, such as the how and when to appeal, the reasons for the denial, and what other foreclosure prevention alternatives the borrower may be eligible for.
- The borrower is currently able to submit multiple applications for foreclosure prevention alternatives. However, a servicer will only be required to review multiple applications if the borrower submits written evidence supporting the borrower's claim of a material change in financial circumstances.

CALIFORNIA- SB 818

Post NOD Notice

Servicers will again be required to send a written notice of foreclosure prevention options to borrowers within five business days of the recording of the NOD. The notice must inform the borrower if an application is required to be evaluated for a foreclosure prevention option and how to obtain an application.

CALIFORNIA- SB 818

Postponement Notice

Providing a written notice of postponement to the borrower if the sale has been postponed for a period of at least ten (10) business days has been revived.

CALIFORNIA- SB 818

Late Fees

New provision 2924.11 was added which prohibits servicers from collecting late fees during the period when a loan modification application is being reviewed or pending the outcome of an appeal or if the borrower is making the required modification payments.

CALIFORNIA- SB 818

Service Transfers and Foreclosure Alternatives

If a borrower is approved in writing for a first lien loan modification or other foreclosure preventive alternative, and the servicing of that borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer will be required to honor any previously approved first lien loan modification or other foreclosure prevention alternative.

LEGISLATIVE UPDATES – NY

Zombie Properties Act – 2018 Impact

- Recap
  - Signed by Governor Andrew Cuomo June 23, 2016; effective December 20, 2016
  - RPAPL Section 1308: Inspecting, Securing and Maintaining Vacant and Abandoned Residential Real Property
    - Applies to "vacant and abandoned 1-4 family residential real property"
    - Only applies to 1st lien mortgage holders; exception for small lenders
    - Must inspect for occupancy within 90 days of default
    - Must continue occupancy inspections every 25-35 days thereafter
    - If found vacant, must post notice within 7 days providing contact info
    - If no response to notice in 7 days, must secure and protect property
    - Cannot remove personalty unless health/safety issue or gov't. order
    - Servicer immune from liability if making reasonable effort to comply

LEGISLATIVE UPDATES – NY

Zombie Properties Act – 2018 Impact

- Recap
  - RPAPL Section 1310: Vacant and Abandoned Property; Statewide Vacant and Abandoned Property Electronic Registry
    - Department of Financial Services to create electronic database
    - Servicer reporting requirements; 21 business days to report
    - Obligation on servicer to update info within 30 days of learning of change

- What are we seeing?
  - Department of Financial Services is issuing fines
  - These fines are not liens on the property
  - They are not able to be recovered from the Borrower

LEGISLATIVE UPDATES - NY

Real Property Tax Law – Amended as to the City of Buffalo Tax Levy

- Passed May 9, 2018; already in effect
  - Authorizes the collection of unpaid housing code violations penalties, costs and fines to be levied on the annual tax roll
    - Must have been adjudicated and imposed through a judgment
    - Remained unpaid for one year after final adjudication
    - Placed on the tax roll that the City of Buffalo is currently in
    - Not applied to a residential dwelling that is owner-occupied or the primary resident of a homeowner

LEGISLATIVE UPDATES – NY

WHAT'S PENDING

- Bill No. A01498
  - Proposes to amend the Real Property Actions and Proceedings law to set forth that any defense based on Plaintiff's lack of standing in a foreclosure cannot be waived if a defendant fails to raise such a defense in a responsive pleading or pre-answer motion to dismiss.

- Bill No. A01371
  - Proposes to amend the Real Property Actions and Proceedings Law (RPAPL) 1302 to require that Plaintiffs to plead ownership of the note and mortgage
  - No longer applies to just subprime and high cost loans

- Bill No. A06762
  - Proposes to amend the Real Property Actions and Proceedings Law to require lenders, assignees, and mortgage loan servicers to submit an affidavit to the court prior to commencing foreclosure proceedings.
  - The filing of the affidavit would take place at least thirty days prior to the commencement of the foreclosure action, and advise the court that the lender, assignee, or mortgage loan servicer intends to commence such an action and has possession of the note secured by a mortgage on the property.
  - As proposed, a violation of the law by submitting a false statement would constitute a class E felony.

LEGISLATIVE UPDATES – NY

- Bill No. A03186
  - Proposes the creation of RPAPL 1304-a - requires the lender, assignee or mortgage loan servicer to provide a notice to the mortgagor by registered or certified mail to the mortgage property address no later than forty-five days after the mortgagor defaults on the mortgage.
  - The notice shall be in bold, fourteen-point font, and on colored paper different from that of any other letter accompanying the notice.
  - The content of the notice will need to include the name and contact information for no less than one legal service provider, approved by the Attorney General, and located within the county where the mortgage premises resides, as well as the name and contact information for no less than one housing counselor located within the county of the mortgagor.
  - The bill proposes the language to be included within the letter, similar to that required by the 90 day notice.

LEGISLATIVE UPDATES - NY

- Bill No. A1063
  - Amends the County Law by adding a new article 18-c, which would address the provision of legal representation to certain persons in eviction, ejectment, or foreclosure proceedings
  - Plan for providing legal representation to eligible persons shall conform to one of the following:
    - Representation by a public defender
    - Representation by counsel provided pursuant to a plan of the bar association in each counsel whereby services of private counsel are rotated or representation by an office of conflict defender
    - If option 2 has not been provided for, a Judge/Magistrate may assign any attorney, and the attorney will be compensated by the county/city
    - Any combination of the above

- Bill No. A01608
  - Amends RPAPL provide homeowners who are financially unable to obtain counsel to the right to assigned counsel
  - Expands similar court appointed counsel to foreclosure proceedings (currently provided for in family or surrogate court cases)
  - Amends the notices required per 1303 to include language alerting homeowners to the right to assigned counsel

- Bill No. A04291
  - Amend the RPAPL 1351 to require that the JFS directs that in the event the property is sold to more than one individual, the names of those individuals be disclosed to the referee conducting the sale
  - Justification - Codification of existing practice.

- Bill No. A04895A
  - Amends the RPAPL to require the Plaintiff to notify municipalities of the filing of the notice of pendency within 5 calendar days

CASELAW UPDATES

- Reasonableness of Attorney's Fees
  - Richmond County
  - Kings County
  - In determining reasonable compensation for an attorney, the court must consider such factors as the time, effort, and skill required; the difficulty of the questions presented; counsel's experience, ability, and reputation; the fee customarily charged in the locality; and the contingency or certainty of compensation
    - *531 Kosciusko v. Montesdeoca*, 2018 NYLJ LEXIS 3488 (Kings Cty. Sup. Ct. October 25, 2018)

CASELAW UPDATES

- Statute of Limitations
  - Where have we been? Where are we going? IT'S AS CLEAR AS MUD!
  - General agreement on the fact that SOL runs from 6 years of acceleration.
    - ISSUE: what is acceleration in light of the FNMA/FHLMC mortgage instrument.
      - Courts are divided on following the reasoning provided for in *Nationstar Mortg., LLC v. MacPherson*, 56 Misc.3d 339 (S. Ct. 2017)
    - Use of verified complaint could amount to acceleration – *HSBC Bank, USA, NA v. Margineanu*, 2018 N.Y. Misc. LEXIS 4483 (Suffolk Cty October 15, 2018)
    - Commencement of a prior action and that Plaintiff's standing to commence – may be able to raise a question of fact at a minimum to avoid dismissal – *U.S. Bank v. Garcia*, 2018 N.Y. Misc. LEXIS 2793 (Bronx Cty. June 19, 2018)

CASELAW UPDATES

- Statute of Limitations
  - Deceleration – what do the court's want?
    - To be effective in resetting the statute of limitations clock, such revocation or deceleration must satisfy a five (5)-prong test: 1) the revocation must be evidenced by an affirmative act; (2) the affirmative act must be clear and unequivocal; 3) the affirmative act must give actual notice to the borrower that the acceleration has been revoked; 4) the affirmative act must occur before the expiration of the six (6)-year statute of limitations period; and 5) the borrower must not have changed his or her position in reliance on the acceleration.

    - Courts have a difference in opinion on what each Judge will accept.
      - Cancellation of prior action
      - Letter of deceleration

- Result – seeing an increase in actions pursuant to RPAPL 1501 to cancel and discharge the mortgage of record.

FEDERAL LAW

FDCPA AND NON-JUDICIAL FORECLOSURES

***Obduskey v Wells Fargo*, U.S. Court of Appeals, 10th Circuit**

- Tenth Circuit held that the law firm was not a "debt collector" under the FDCPA because non-judicial foreclosure proceedings are not covered by the FDCPA.
- In doing so, the Tenth Circuit sided with the Ninth Circuit, holding that compliance with the FDCPA is not required during non-judicial foreclosure proceedings, contrary to the position of the Fourth, Fifth, and Sixth Circuits. This is the holding that the Supreme Court will consider.

FEDERAL LAW

Pending Legislation

Practice of Law Technical Clarification Act of 2018

- The House Financial Services Committee recently advanced a bill, H.R. 5082, that could have major implications for the default servicing industry, and most especially the law firms that work within it.
- The bill amends the definition of "debt collectors" under the Fair Debt Collection Practices Act to exclude "any law firm or licensed attorney engaged in litigation activities in connection with a legal action in a court of law to collect a debt on behalf of a client to the extent that such legal action is served on the defendant debtor, or service is attempted, in accordance with the applicable statute or rules of civil procedure."
- The proposed bill defines the "activities in connection with a legal action" as:
  1. Serving, filing, or conveying formal legal pleadings, discovery requests, or other documents pursuant to the applicable rules of civil procedure; or
  2. Communicating in, or at the direction of, a court of law, or in the enforcement of a judgment;
  3. any other activities engaged in as part of the practice of law, under the laws of a State in which the attorney is licensed, that relate to the legal action.

thank you.

QUESTIONS?

INTERSECT SERVICING + FORECLOSURE

BREAK TIME +
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