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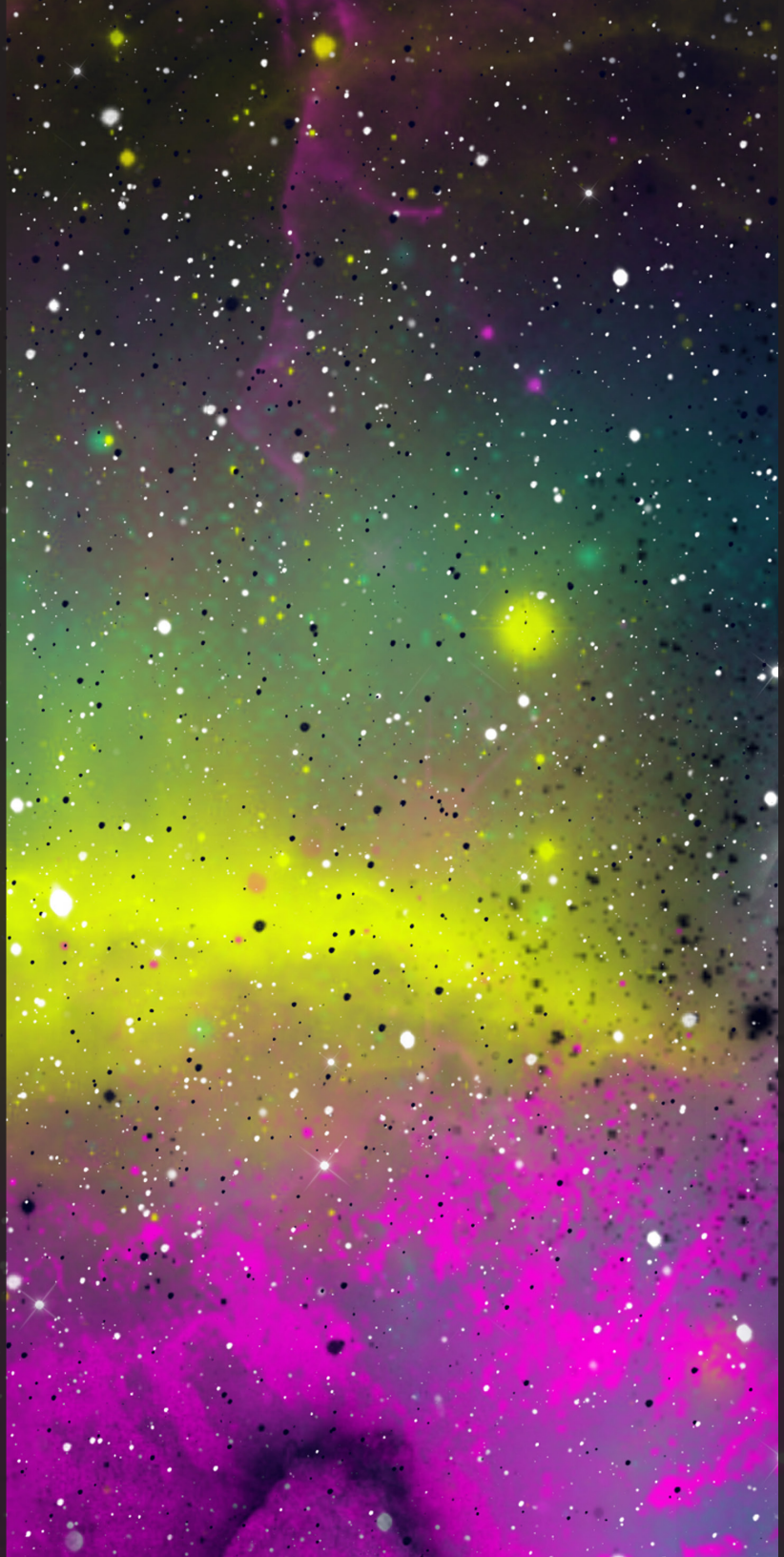
table of contents

On these pages you'll find every little thing you need to maximize, energize and specialize your ANSWERS experience. Plan your sessions and networking, bone up on the issues with our ANGLE content, find members in the updated directory and identify service providers with our advertisers. There's nothing little about this year's ANSWERS notebook, all designed so you can have the biggest experience possible.



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Schedule At-A-Glance

SUNDAY

ANSWERS Conference Registration Vanderbilt Registration
12:00 PM - 6:00 PM

New Member & First Time Attendee Welcome Reception Roosevelt KL
2:00 PM - 2:30 PM

MEMBER-ONLY MEETINGS
2:45 PM - 3:45 PM «

Attorney-Trustee Members Meeting Grand Ballroom A
Mortgage Servicer Members Meeting Grand Ballroom B
Associate Members Meeting Grand Ballroom C

Refreshment Break & Discussion Den One Grand Ballroom Foyer
3:45 PM - 4:15 PM

ANSWERS Opening Super Session: The Economics of Moderation Grand Ballroom ABC
4:15 PM - 5:30 PM

ANSWERS Opening Networking Reception & Dinner Mountain View Terrace
6:00 PM - 9:00 PM

Late Night Mixer With Women in Legal Leadership Mountain View Terrace
10:00 PM - 11:30 PM

MONDAY

Breakfast Buffet & WILL Power Breakfast Keynote (8 AM) Grand Ballroom B & C
7:30 AM - 8:45 AM
ANSWERS Conference Registration Open Vanderbilt Registration
7:30 AM - 5:00 PM
General Session 1: Bankruptcy Grand Ballroom B & C
9:00 AM - 10:00 AM
Refreshment Break & Discussion Den Two Grand Ballroom Foyer
10:00 AM - 10:30 AM
General Session 2: Compliance Grand Ballroom B & C
10:30 AM - 11:30 AM
Third Annual JPEG: Picture the Future Luncheon & Awards Ceremony Grand Ballroom ABC
11:45 AM - 1:15 PM

BREAK-DOWN SESSIONS
Servicing Break-Down Grand Ballroom A
Foreclosure Break-Down Grand Ballroom B
Bankruptcy Break-Down Grand Ballroom C
1:30 PM - 2:30 PM

BREAK-IN SESSIONS
Management Break-In Grand Ballroom A
Marketing Break-In Grand Ballroom B
Collections Break-In Grand Ballroom C
2:45 PM - 3:45 PM

BREAK-OUT SESSIONS
Witness Prep Break-Out Grand Ballroom A
Legal Ethics Break-Out Grand Ballroom B
Operations Break-Out Grand Ballroom C
4:00 PM - 5:00 PM

ALFN ASSURE Rewards Reception Invitation Only
5:00 PM - 6:00 PM (See Email Invite)

ANSWERS Networking Reception Vanderbilt Terrace
6:00 PM - 7:30 PM - DINNER ON YOUR OWN TONIGHT

TUESDAY

ANSWERS Conference Registration Vanderbilt Registration
7:00 AM - 1:00 PM
Breakfast Buffet & Amplify (ALFN PAC) Presentation (8 AM) Ballroom B & C
7:30 AM - 8:45 AM
General Session Three: Litigation Ballroom B & C
9:00 AM - 10:00 AM
Refreshment Break & Discussion Den Three Grand Ballroom Foyer
10:00 AM - 10:30 AM
General Session Four: Mock Trial Ballroom B & C
10:30 AM - 11:30 AM
Group Networking Activities
12:00 PM - 5:30 PM

ACTIVITY DETAILS

Shuttle Pick-Ups Atrium Foyer
Shuttle Drop-Offs Grove Park Main Entrance & Country Club
Lunches Provided

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FIND ALL THESE LOCATIONS WITH THE INTERACTIVE MAP AVAILABLE IN THE ANSWERS APP

ANSWERS Closing Networking Reception & Dinner Grove Park Country Club
6:00 PM - 9:00 PM
JPEG: Picture the Future Networking Reception Elaine's Piano Bar
10:00 PM- 11:30 PM

WEDNESDAY

Continental Breakfast & Special IGNITE Presentation (8 AM) Grand Ballroom B & C
7:30 AM - 8:45 AM
ANSWERS Conference Registration Vanderbilt Registration
7:30 AM - 10:30 AM
Closing Super Session: Servicing: An Industry Conversation Grand Ballroom B & C
9:00 AM - 10:30 AM
Special Award Recognition, Prizes and ANSWERS 2017 Give-Away Ballroom B & C
10:30 AM - 11:00 AM

11:00 AM CONFERENCE CONCLUDES

what | where | when

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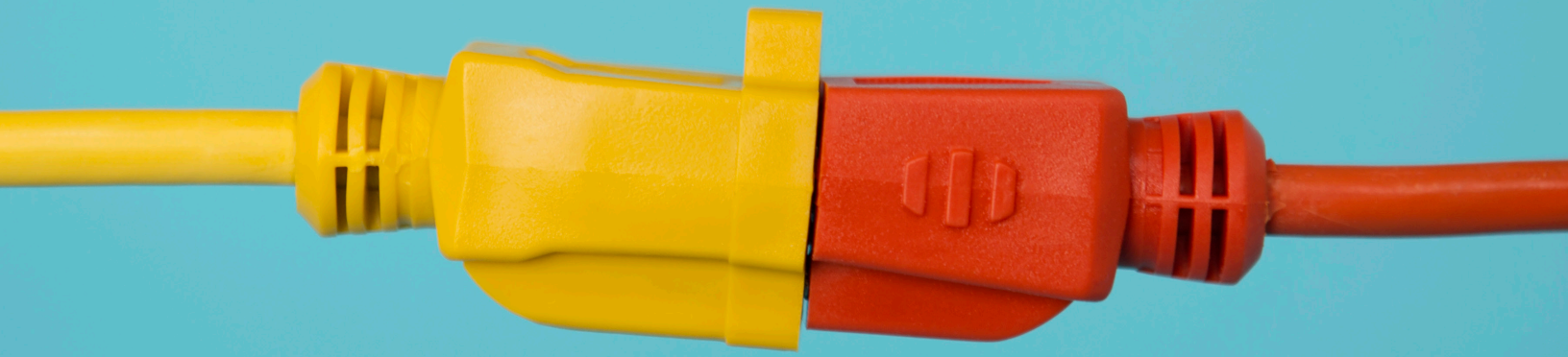

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REAL TALK

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ATTORNEY/ TRUSTEE MEMBERS ANNUAL MEETING

SUNDAY, JULY 17 | 2:45 - 3:45PM

Welcome back—it's been a year since we last saw each other and much has changed. Discuss organizational updates as well as our efforts to improve your membership experience with the new ALFN.org, ANSWERS refresh and much more. Join in a dialogue with fellow members, ALFN Executives and the Board of Directors to discuss the future of the ALFN and our industry.

conversation led by
ALFN EXECUTIVE TEAM & BOARD OF DIRECTORS

ALFN ASSOCIATE MEMBERS ANNUAL MEETING

SUNDAY, JULY 17 | 2:45 - 3:45PM

This brand-new member meeting is a closed-door session for Associate Members of the ALFN and designed to foster an open dialogue of like members. Reporting back to the ALFN Board of Directors will be the Associate Member Advisory Board on the discussion, needs and wants of ALFN Associate Members. Don't miss this new and exciting opportunity for dialogue.

conversation led by
ASSOCIATE MEMBER ADVISORY BOARD CHAIR & CO-CHAIR

MORTGAGE SERVICER MEMBERS ANNUAL MEETING

SUNDAY, JULY 17 | 2:45 - 3:45PM

Another brand-new opportunity to bring together mortgage servicing members of the ALFN for a closed-door, peer-to-peer discussion addressing the unique educational and membership needs of the ALFN's Mortgage Servicing class of membership. Each year we bring together top servicing executives and now it's your time to talk amongst yourselves.

conversation led by
WILL & JPEG MORTGAGE SERVICER CO-CHAIRS

rules of engagement

ATTENDEES MAY ONLY PARTICIPATE IN MEETINGS OF THEIR ALFN MEMBERSHIP TYPE.

The Team

MATT BARTEL

PRESIDENT & CEO

Matt Bartel is the President & CEO of the American Legal & Financial Network (ALFN). Matt has been with the association nearly since its inception in 2002. Previously, Matt has served in numerous roles touching every aspect of the Association's business and membership.

CONTACT MATT mbartel@alfn.org

LIZ POTTER

SENIOR VICE PRESIDENT,
BUSINESS DEVELOPMENT & MEMBER RELATIONS

Liz Potter serves as the ALFN's Senior Vice President of Business Development & Member Relations. She has been with the association since 2014 and has over 30 years of law firm management and industry experience.

CONTACT LIZ lpotter@alfn.org

CADE HOLLEMAN

VICE PRESIDENT,
GOVERNMENT AFFAIRS & COMMUNICATIONS

Cade Holleman is the Vice President of Government Affairs & Communications for the ALFN. Cade has been with the ALFN since 2012 and is an experienced association industry executive.

CONTACT CADE cholleman@alfn.org

CARA MCCONNELL

PROGRAM & EVENTS COORDINATOR

Cara McConnell is the Program & Events Coordinator for the ALFN. Cara joined the ALFN in 2016 and is responsible for member engagement and ALFN event coordination.

CONTACT CARA cmcconnell@alfn.org

THE MODERATORS

opening

SUPER SESSION

THE ECONOMICS OF MODERATION

SUNDAY, JULY 17 | 4:15 - 5:30PM

Our new opening super session brings together moderators and conversation leaders from some of the educational sessions to follow over the course of ANSWERS. Moderators will tease content in the session from their respective presentations, taking a broad look at the state of the industry before attendees drill down into more specific topics. This opening super session is moderated by an industry expert, adding a national, servicing and legal perspective and up-to-date information on volumes, trends and outlooks. Join us for this new introductory super session for a far-reaching conversation about the mortgage servicing industry and economic trends impacting legal practitioners, mortgage servicers and ancillary service providers.

conversation led by

MIKE BATES, ESQ.

LINDQUIST & VENNUM

Proudly Featuring These Conversation Leaders








FROM LEFT TO RIGHT: JOSEPH A. CAMILLO, JR., ESQ. , SHECHTMAN HALPERIN SAVAGE; ANDREW J. BOYLAN, ESQ., MCCARTHY HOLTHUS; MICHELLE GILBERT GARCIA, ESQ., GILBERT GARCIA GROUP; JEFFREY A. BACKMAN, ESQ., GREENSPOON MARDER; MICHAEL J. CATALIFIMO, ESQ., CARTER CONBOY; DEANNA WESTFALL, ESQ., WEINSTEIN & RILEY; ANDREA TROMBERG, ESQ., GLADSTONE LAW GROUP. ACCESS COMPLETE SPEAKER BIOS IN THE ANSWERS APP

GENERAL

BANKRUPTCY

NEW FORMS, RULES & PERIODIC STATEMENTS

This general session will interact with the audience as they discuss, at a high level, current hot topics in bankruptcy. Topics of discussion will include: (1) New developments from the Federal Bankruptcy Rules Committee; (2) New CFPB periodic statement rules (either interim or final, depending on CFPB progress) for consumers in bankruptcy; (3) can a debtor maintain a cause of action under the Bankruptcy Code and the FDCPA both during and after bankruptcy; (4) new ways that debtors are trying to surrender property and (5) what happens when a creditor fails to file a proof of claim.

GENERAL SESSION ONE

BANKRUPTCY: NEW FORMS, RULES AND PERIODIC STATEMENTS

MONDAY, JULY 18
9:00 - 10:00AM



FEATURING (L TO R): MICHAEL T. BATES, ESQ., LINDQUIST & VENNUM; MICHAEL J. MCCORMICK, MCCALLA RAYMER PIERCE; TIM O'BRIEN, WELLS FARGO & COMPANY. BIOS AVAILABLE IN THE ANSWERS APP

COMPLIANCE

NEW CFPB RULES & SERVICING CLARIFICATIONS

Join panelists for a high-level look at the CFPB's upcoming mortgage servicing amendments in Regulations X and Z. These amendments would require substantial changes to the way many mortgage servicers run their businesses. Significant changes are expected in the areas of loss mitigation, periodic billing statements, and successors in interest. This panel presents an overview of all the changes and discusses practical implementation tips that were learned from the 2013 implementation period.

GENERAL SESSION TWO

COMPLIANCE: NEW CFPB RULES & SERVICING CLARIFICATIONS

MONDAY, JULY 18
10:30 - 11:30AM



FEATURING (L TO R): JACQUELINE COMEAU, LOGS; ANDREW J. BOYLAN, ESQ., MCCARTHY HOLTHUS; J.P. SELLERS, MACKIE WOLF ZIENTZ & MANN BIOS AVAILABLE IN THE ANSWERS APP

SESSIONS

LITIGATION

KILLING THE CASE THAT WON'T QUIT

Join a panel of litigators with years of courtroom experience to discuss the latest trends in mortgage litigation across the country. Panelists will look outside of typical judicial foreclosures to provide information and tips on suits where clients have real exposure. Panelists will provide updated information on successful defenses to litigation threats and ways to minimize exposure and legal spend. This session offers added weight in a year where the percentage of files that are litigated has seen a significant uptick and firms must work more closely with their servicing clients to net desired and appropriate outcomes.

GENERAL SESSION THREE

LITIGATION: KILLING THE CASE THAT WON'T QUIT

TUESDAY, JULY 19
9:00 - 10:00AM



FEATURING (L TO R): JONATHAN E. GREEN, ESQ., BAKER DONELSON; JAMES MCPHERSON, CENTRAL MORTGAGE CO.; STEVEN P. WATTEN, ESQ., STRASBURGER & PRICE. BIOS AVAILABLE IN THE ANSWERS APP

MOCK TRIAL

ANSWERS IN ACTION 2ND ANNUAL MOCK TRIAL

The second annual ANSWERS in ACTION: Mock Trial will have a hypothetical problem created by the panel that address hot topic issues faced by the default servicing industry. This year's panel includes a role-play judge, plaintiff's counsel, defense counsel and a servicer witness. Expect issues to be built into this year's mock trial that will be further addressed in later break-ins, break-outs, and break-down sessions for deeper analysis and discussion. Attendees can expect to use the ANSWERS app as part of the 2016 jury trial and other interactive features throughout this year's mock trial.

GENERAL SESSION THREE

ANSWERS IN ACTION: 2ND ANNUAL MOCK TRIAL

TUESDAY, JULY 19
10:30 - 11:30 AM



FEATURING (L TO R, PICTURED): SASHA COHEN, ESQ., BAYVIEW LOAN SERVICING; KELLY GRING, ESQ., GLASSER & GLASSER; MELODY JONES, ESQ., MCCALLA RAYMER PIERCE. BIOS & MORE SPEAKERS IN THE ANSWERS APP

Are You Prepared?

ABOUT THE AUTHOR
CRAIG NAZZARO, ESQ.
BAKER DONELSON
CNAZZARO@
BAKERDONELSON.COM

CONTINUE THE CONVERSATION
AT OUR CFPB GENERAL SESSION ON MONDAY AT 10:30 AM

The CFPB began to revise their mortgage servicing rules almost immediately after they were released. As early as October 2013 the CFPB issued Bulletin 2013-12 which begins to address some of the below issues we will see codified in this proposed rule. On December 15, 2014 the Bureau then published "Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)" in the federal register. (Note: this is less than 12 months after the effective date of the initial 2013 servicing rules.) In their Fall 2015 rulemaking agenda they stated we "are working to develop the final rule for issuance in mid-2016." As this process is rapidly approaching the two year mark, we expect the final rules to be issued any day.

The CFPB has stated, "The Bureau believes that the majority of the provisions in this proposal will impose, at most, minimal new compliance burdens, and in many cases will reduce the compliance burden relative to the existing rules." Those of us in the industry, however, are aware of the high cost associated with any change in regulation. Although additional clarity will be welcomed in both Regulation X and Regulation Z, a lot of funds and time will be consumed on legal, compliance and audit functions when the new rules are implemented. To add insult to injury this is just when your institution was getting comfortable with the 2013 servicing rules. To lessen the cost, burden and regulatory risk associated with complying with the rule changes, this author suggests that get as familiar with the changes as soon as you can. You should begin to anticipate the scope of the changes and the needs of your institution in order to implement the required chnages efficienctly. As such, if you have not done so yet, now is the time to review what the CFPB has stated thus far regarding the looming final rules, and the best place to start is the proposal itself.

The proposal covers nine major topics; the changes proposed will have a wide impact and those described below are highlights which summarize the CFPB's intentions. With the amendments suggested by the CFPB coming in at 492 pages, what's provided here is far from an exhaustive list:

1. SUCCESSORS IN INTEREST

The CFPB is looking to apply the 2013 mortgage servicing rules to successors in interest "once a servicer confirms the successor in interest's identity and ownership interest in the property." Then providing standards around how a mortgage servicer "confirms a successor in interest's status." Then finally proposing that, "to the extent that the Mortgage Servicing Rules apply to successors in interest, the rules apply with respect to all successors in interest who acquire an ownership interest in a transfer protected from acceleration, and therefore foreclosure, under Federal law." You should note the CFPB states in the proposed rule, "The Bureau believes that a confirmed successor in interest's ownership interest in the property securing the mortgage loan is sufficient to allow the successor in interest to receive information about the mortgage loan." This language is welcomed as lenders and servicers have had to balance the benefits of giving successors in interest access to loss mitigation options while protecting the privacy rights of those associated with the loan.

2. DEFINITION OF DELINQUENCY

The CFPB proposes to add a general definition of delinquency that would apply to all the servicing provisions of Reg X and the provisions of Reg Z that address periodic statements for mortgage loans.

3. REQUESTS FOR INFORMATION

In the proposed rule the CFPB changes "how a servicer is required to respond to a borrower's request for information when said borrower requests ownership information for loans in trust for which the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac) is the trustee, investor, or guarantor." Under the proposed new rule for loans for which Fannie Mae or Freddie Mac is the trustee, investor, or guarantor, a servicer would be in compliance by responding to requests for information asking only for the owner or assignee of the loan by providing only the name and contact information for Fannie Mae or Freddie Mac, as applicable, without also providing the name of the trust. However, if a request for information expressly requests the name or number of the trust or pool, the servicer must still provide the name of the trust, and the name, address, and appropriate contact information for the trustee, regardless of whether or not Fannie Mae or Freddie Mac is the trustee, investor, or guarantor.

4. FORCE-PLACED INSURANCE

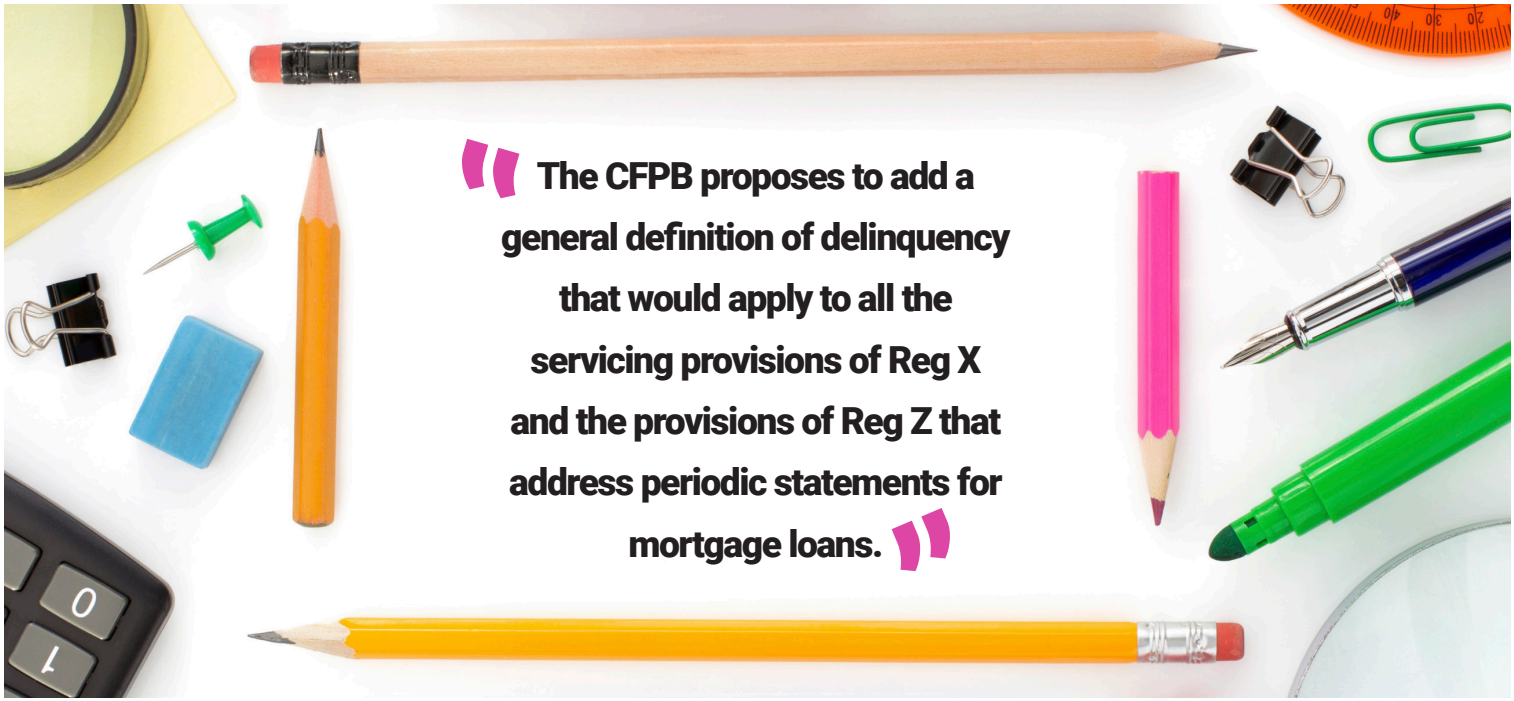
The Bureau is proposing to provide that force-placed insurance notices must "include a statement that the borrower's hazard insurance is expiring, has expired, or provides insufficient coverage, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date or evidence that the borrower has hazard insurance that provides sufficient coverage, as applicable." The current iteration of the rule does not provide language covering insufficient coverage.

5. EARLY INTERVENTION

The CFPB is attempting to build clarity around the early intervention and live contact provision of the 2013 servicing rules with this proposal. Most importantly, they are going "to require servicers to provide written early intervention notices to certain borrowers who are in bankruptcy or who have invoked their cease communication rights under the FDCPA." The Bureau is also attempting to codify certain guidance already issued, such as the aforementioned October 2013 bulletin which stated " that servicers are permitted to combine their live contact attempts with their attempts to contact borrowers for other purposes, including, for example, by providing a borrower with information about available loss mitigation options when contacting the borrower for purposes of collection."

6. LOSS MITIGATION

Loss mitigation procedures might be subject to the largest overhaul with these new rules.



The changes can be broken down into nine different updates to the 2013 servicing rules. The proposed rule will:

• modify the one and done rule of the past, meaning that if a borrower defaults, becomes current and defaults again servicers will be required to meet the loss mitigation requirements again for that same borrower.

• adjust the 120-day prohibition on foreclosure filing to permit a servicer to join the foreclosure action of a senior lienholder.

• "clarify that servicers have substantial flexibility in setting a reasonable date by which a borrower must return documents and information to complete an application, so long as the date maximizes borrower protections and allows borrowers a reasonable period of time to return documents and information."

• solidify what is required when it comes to necessary affirmative steps to delay a foreclosure sale, and require servicers that do not take the required affirmative steps to delay, to dismiss a foreclosure action if necessary to avoid the sale.

• require a written notice once servicers receive a complete loss mitigation application; said notice will have to indicate that the servicer has received a complete application; require that the notice provide the date of completion and state whether a foreclosure sale was scheduled as of that date, the date foreclosure protections began, a statement informing the borrower of applicable appeal rights, and a statement that the servicer will complete its evaluation within 30 days from the date of the complete application.

• include language that will speak to a servicers obligations to obtain information not in the borrower's control and how to evaluate a loss mitigation application while waiting for such third party information; the rule in its current form will also prohibit servicers from denying borrowers based upon delay in receiving such third party information; and create a requirement for servicers to provide a written notice to the borrower if the servicer is experiencing a delay in getting third party information 30 days after receiving the borrower's complete application.

• revise § 1024.41(c)(2)(iii) to allow servicers to offer short-term repayment plans based upon a review of an incomplete loss mitigation application.

• will make clear that "in the course of gathering documents and information from a borrower to complete a loss mitigation application, a servicer may stop collecting documents and information pertaining to a particular loss mitigation option after receiving information confirming that the borrower is ineligible for that option." This should decrease the occurrence of what many see as a common complaint; a borrower claiming they were solicited for options the bank knew were unavailable.

• attempt to further define and clarify proper practices for loss mitigation procedures and timelines when a loan is subject to a servicing transfer.

7. PROMPT PAYMENT CREDITING

The CFPB proposes that "periodic payments made pursuant to temporary loss mitigation programs would continue to be credited according to the loan contract and could, if appropriate, be credited as partial payments,

while periodic payments made pursuant to a permanent loan modification would be credited under the terms of the permanent loan agreement."

8. PERIODIC STATEMENTS

Here the Bureau is proposing to clearly define when certain periodic statements will be required. Addressing common industry concerns for which statements to send borrowers who 1.) are in a temporary loss mitigation programs, 2.) are permanently modified, 3.) are in bankruptcy, and 4.) those whose loans have charged off.

9. SMALL SERVICER

The CFPB proposal also calls for changes to the definition of "small" servicer. Currently, a servicer is considered "small" if it services less than 5,000 mortgage loans, all of which you as the servicer are also the creditor or assignee. In such instances, a servicer gain certain exemptions from the 2013 Mortgage Servicing Rules. Under this proposal, the CFPB will exclude certain seller-financed transactions from being counted toward the 5,000 loan limit.

It is worth noting that the CFPB believes that these changes "impose, at most, minimal new compliance burdens", again illustrating a common criticism of the CFPB which is that they do not appropriately weigh the impact their actions have on the industry. That said, mortgage servicers will need to re-review a plethora of policies, procedures, generate new training and escalation paths as well as new templates for correspondence, disclosures and statements all effected by this new rule. You should begin to form an implementation team and plan for these impending revisions. The proposed effective date for a majority of these rules will be 280 days post publication of the final rule in the Federal Register.

Counter Perspective

Time isn't the enemy on regulatory changes, says servicing professional

ABOUT THE AUTHOR
MARIANN A. FERRIN IS EMPLOYED BY ASSOCIATED BANK, N.A. IN STEVENS POINT, WI, WHERE SHE WORKS TO FACILITATE IMPLEMENTATION OF REGULATORY AND INVESTOR UPDATED GUIDELINES FOR THE RESIDENTIAL LOAN SERVICING DEPARTMENT. SHE CAN BE REACHED AT MARIANN.FERRIN@ASSOCIATEDBANK.COM

CONTINUE THE CONVERSATION
DON'T MISS OUR SERVICING TRANSFERS BREAK-DOWN SESSION ON MONDAY AT 1:30 PM OR OUR SERVICING SUPER SESSION ON WEDNESDAY AT 9:00 AM.

Many mortgage servicers look for that inside track to help them ensure compliance with regulations or investor guidelines, especially with the numerous mortgage servicing changes issued during the past several years. Believe it or not, the biggest advantage that servicers have on their side is time. Although some investor guidance is effective upon publication, they, along with federal regulatory updates typically provide notice months prior to an effective date. For example, the CFPB can release proposed rules a year or more prior to implementation. Servicers can take advantage of these lengthy timelines. As soon as the proposed rules are published, they can start proactive steps to analyze their processes and procedures and determine how they should be revised to reflect the changes. Although the final rules may be refined, many changes require minor adjustments once they go into effect.

If a servicer suffers from a weak or minimal compliance management system, they would be well advised by internal compliance staff or outside legal counsel to begin rigorous scanning of the regulatory environment to initiate steps toward implementation. Scanning the regulatory environment can include subscribing to electronic releases available

from individual states, AllRegs.com (Allregs), fanniemae.com (FNMA), freddiemac.com (FHLMC), occ.gov (OCC), consumerfinance.gov (CFPB), HUD.gov (HUD), FHA.gov (FHA), rd.usda.gov (RD), and VA.gov (VA), or perusing the websites themselves.

If a process or procedure can be updated and published in anticipation of changes, the trial period afforded for testing and working out the kinks, can be invaluable. If the change cannot be implemented prior to the effective date, at minimum, the servicer can take the necessary steps to prepare for implementation once effective. Experiences may vary, however, financial institutions that take the initiative and demonstrate their attempt to comply with requirements in good faith, will probably fare much better during their various external audits than those which wait to start their efforts. In addition, regulators may favorably weigh these efforts when considering formal action, if findings are made.

Another option, and potentially more effective, is to dedicate an embedded analyst (or team) within the servicing department to provide oversight and control over responses to regulatory and investor change notifications, updates to process and procedures, and to provide training. Often times, an internal servicing employee will have more knowledge of the actual business line functions than corporate compliance staff. Legal training, knowledge of the business line functions and an understanding of regulations and investor guidance in this analyst function can provide for a strong advocate and liaison between the business lines and compliance.
For many business lines, the idea of regulatory and investor guideline updates can be daunting. An embedded analyst can be instrumental in acting as a 'regulatory ambassador' to assist the business lines with implementing and understanding the changes. The guidance can be viewed as a way to encourage efficiency and to maintain customers' accounts uniformly and fairly.

This approach can result in a more coherent process to implement regulatory and investor updates; effective review and interpretation of the guidance, collaboration with operational subject matter experts, analysis and revision of the process and procedures, and training. These vital elements, along with testing outside the business unit, will help ensure compliance of the constantly changing requirements by regulators and investors. Benjamin Franklin's quote, "An ounce of prevention is worth a pound of cure," is truer today given our regulatory environment and the risk to reputation, non-compliance and its related fines. Creating the infrastructure to respond to the regulatory and investor guidance updates is most likely more cost-effective than fixing the many potential problems that may arise from non-compliance.

One more thing… If an institution's credit services originate within the scope of online marketplace lending and you think those practices will avoid less regulatory scrutiny, think again. The United States Treasury is calling for more oversight of online marketplace lenders. Although it may take some time to implement specific regulations and oversight processes, it may certainly have an impact on the industry long term. The Department of Treasury "acknowledges the benefits and risks associated with marketplace lending and highlights certain best practices applicable both to established and emerging market participants" through their recent publication, *Opportunities and Challenges in Online Marketplace Lending*. "Advances in technology and availability of data are changing the way consumers and small businesses secure financing." Companies that participate and plan to expand in this emerging industry will benefit by developing the framework within the regulatory environment that governs traditional institutions and can help ensure longevity and profitability.

BREAK-DOWN SESSIONS

DON'T HAVE A BREAK DOWN

BREAK DOWN THESE CHALLENGING ISSUES WITH GUIDANCE FROM INDUSTRY EXPERTS

Danette Oakley
BANKRUPTCY MANAGER
CENTRAL MORTGAGE

Charlotte Ritz, Esq.
ASSOCIATE GENERAL COUNSEL
FANNIE MAE

Natalie McClendon
AVP, LOSS MITIGATION & FORECLOSURE
SIMMONS BANK

Three incredible options.
One tough choice.

THREE CONCURRENT BREAK DOWN SESSIONS

MONDAY, JULY 18
1:30 - 2:30PM

SERVICING

BREAK-DOWN



AN

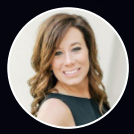
THE NITTY GRITTY OF TRANSFERS: FIRM TO FIRM & SERVICER TO SERVICER

This session builds on the varying perspectives of a large servicer, small servicer, law firms and vendors to address the particular challenges and best practices when servicing transfers of loans that are in foreclosure or bankruptcy status. Discuss which states are easy operationally even if not economically by clearly requiring a restart to the foreclosure, and strategies to overcome common foreclosure defenses based on historical or pending service transfers. **FEATURING** (L to R): Michelle Gilbert Garcia, Esq., Gilbert Garcia Group; Charlotte Ritz, Esq., Fannie Mae; Andrew Nelson, Esq., JP Morgan Chase & Co. Bios available in the ANSWERS app.

FORECLOSURE

BREAK-DOWN





TWO PROCESSES, TWO VERY DIFFERENT TANGOS

In the past year there have been major legal developments in the area of non-judicial foreclosures. Changes such as new assignment requirements, new notice requirements, sunset provisions to borrower friendly statutes, mandatory mediation and alterations in the HOA super priority lien scheme have all left servicers to deal with shifting processes and procedures while staying compliant with the law. Accordingly, the focus of this session addresses all of the recent changes to the country's non-judicial processes and provides best practices for servicers to ensure compliance. **FEATURING** (L to R): Joseph A. Camillo, Jr., Esq., Shechtman Halperin Savage; Courtney Miller, Esq., Wilson & Assoc.; Natalie McClendon, Simmons Bank. Bios available in the ANSWERS app.

BANKRUPTCY

BREAK-DOWN

KZ


THE NEW POC FORM AND OTHER CHALLENGES

The Proof of Claim (POC) form in Chapter 7 and Chapter 13 bankruptcy cases was updated as an initiative to streamline the submission process. This new updated form creates challenges for default servicers and law firms. During this session, panelists will discuss the new changes in the updated proof of claim document, the challenges that arise with the POC form and best practices for overcoming the technological complexities of maintaining compliance. Examples of problems will be reviewed and the impact of waiving arrears will be discussed in detail.

FEATURING (L to R): Kristen Zilberstein, Esq., McCarthy Holthus; Deanna Westfall, Esq., Weinstein & Riley; Nicole Noel, Esq., Kass Shuler; Danette Oakley, Central Mortgage Co. Bios avialable in the ANSWERS app.

State Spotlight Illinois

The federal Protecting Tenants in Foreclosure Act expired, but obtaining post-foreclosure possession in Chicago remains more difficult than ever

ABOUT THE AUTHOR
JILL SIDOROWICZ IS THE SUPERVISING ATTORNEY OF BANKRUPTCY AND EVICTIONS WITH ILLINOIS-BASED WEISS MCCLELLAND. SHE CAN BE REACHED AT JSIDOROWICZ@WMLEGAL.COM

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extrangle

Since 2009, the process of evicting tenants following the completion of a residential foreclosure has largely been governed by the Federal Protecting Tenants in Foreclosure Act (PTFA)[1]. The PTFA placed heavy burdens on the purchaser of a foreclosed property, requiring that existing leaseholds be honored and protecting tenants from being evicted when the property they lived in was foreclosed.

The PTFA expired on December 31, 2014 leaving state law to govern the eviction process. However, amendments to the Illinois Forcible Entry and Detainer Act (FEDA)[2] and the Illinois Mortgage Foreclosure Law (IMFL)[3] prior to the expiration of PTFA salvaged most of the protections afforded to tenants therein. The City of Chicago went a step further in enacting the Protecting Tenants in Foreclosed Rental Properties Ordinance.[4] These statutes and this ordinance significantly curtail the ability of an owner of foreclosed residential property to vacate occupied units and obtain possession.

TENANT PROTECTIONS UNDER THE PTFA STILL APPLY IN ILLINOIS

The most recent changes to the rules of possession under FEDA and IMFL came with the passage of P.A. 98-514, which became effective on November 19, 2013. P.A. 98-514 added entirely new sections to FEDA and IMFL, incorporating many of the tenant protections under PTFA into Illinois law.[5]

FEDA now requires a purchaser in a foreclosure sale of residential real estate to honor the full term of a "bona fide lease" and serve a written 90-day notice to vacate upon tenants with bona fide leases, even if the term of the lease is to expire in less than 90 days.[6] These protections mirror those that were afforded to tenants under the PTFA, requiring the owner to honor existing leaseholds and superseding the shorter notice requirement

1 *12 U.S.C. § 5201, et seq.*
2 *735 ILCS § 5/9-101, et seq.*
3 *735 ILCS § 5/15-1101, et seq.*
4 *Chicago Municipal Code § 5-14*
5 FEDA was amended by revising Sections 9-121, 9-205, and 9-207 and adding Section 9-207.5. IMFL was amended by revising Sections 15-12.205, 15-1501, 15-1506, 15-1508.5, 15-1701, 15-1702, and 15-1704 and adding Sections 15-1224 and 15-1225.
6 *735 ILCS 5/907.5(a)*

previously provided for under FEDA; which were 60-day notice for a one year lease; 30 day notice for a month-to-month lease; and seven day notice for a week-to-week lease.

P.A. 98-514 went a few steps further than the PTFA in recognizing that oral leases can be "bona fide" leases.[7] Oral leases are treated as having a month to month term and the same 90-day notice to vacate requirement applies.[8] In addition, whereas PTFA only applied to federally related mortgage loans, the amendments to FEDA and IMFL apply to all "residential real estate in foreclosure".[9]

THE CITY OF CHICAGO ATTEMPTS TO KEEP TENANTS RENTING

On June 5, 2013 the Chicago City Council passed the Protecting Tenants in Foreclosed Rental Properties Ordinance, generally known as the Keep Chicago Renting Ordinance (KCRO), with an effective date of September 24, 2013. The KCRO protects qualified tenants by requiring the owner of the foreclosed rental property in which they live to either; (1) offer to extend or renew their existing lease at no more than a 2% annual increase in rents and the right to renew until the property is sold or otherwise transferred to a bona fide third-party purchaser, or (2) pay a relocation assistance fee in the amount of $10,600 per unit within seven days of vacating.[10]

The owner of a foreclosed rental property in Chicago is required to make a good faith effort to ascertain the identity of all tenants within 21 days of becoming the owner and provide written notice advising qualified tenants of their rights under the KCRO. This written notice must be provided in four languages[11] and include a Tenant Information Disclosure Form,[12] which must be completed and returned by the tenant within 21 days of receipt.[13]

The owner must offer qualified tenants to extend or renew existing leaseholds or pay the relocation assistance fee no later than 21 days after the date upon which the tenant returns, or should have returned the Tenant Information Disclosure Form.[14] However, there is no penalty for the tenant's failure to return the form. Even more, there is no obligation on the tenant to provide the owner with any information. This often places the owner of a foreclosed property in the position of determining whether a tenant is a qualified tenant under the KCRO without having any information as to that tenant's interests and determining whether to offer to renew or extend the lease or pay the relocation assistance fee without having any information regarding their leasehold.

Additional obligations are imposed on the owner if a qualified tenant's unit is unlawfully hazardous or has been unlawfully converted.[15] In these cases the owner is required to pay the relocation assistance in the amount of $10,600 unless the owner offers, and the qualified tenant accepts, relocation to a replacement unit at no more than a 2% annual increase in rents and the right to renew until the property is sold or otherwise transferred to a bona fide third-party purchaser.[16]

Finally, KCRO requires that within 10 days of acquiring a foreclosed rental property, the new owner must register the property with the City of Chicago and pay a $250 registration fee.[17] The registration must name an authorized agent for the owner. If the registration fails to name an authorized agent, the owner is presumed to consent to notices of code violations by posting at the foreclosed rental property.[18]

The penalties for violating KCRO are steep. The ordinance imposes a fine of $500 to $1,000 per violation per day for non-compliance and civil damages of up to $21,200 per residential unit.[19] In addition, the ordinance creates a private cause of action and entitles a prevailing plaintiff to recover reasonable attorney's fees.[20] KCRO also prohibits any waiver of the rights or remedies granted by the ordinance mandating that any such agreements are unenforceable.[21]

CONCLUSION: BUYERS BEWARE!

Although PTFA has expired, many challenges remain in obtaining post foreclosure possession in Chicago. Implementing a process for obtaining possession of these properties in a time effective and cost efficient manner while minimizing the risk of liability under these statutes is a difficult balance. Knowing the many requirements and strict timelines as well as having open communication between all parties involved is more important than ever.

7 *735 ILCS 5/15-1224(c)*

8 *Id.*

9 Under P.A. 98-514, "residential real estate in foreclosure" for purposes of the FEDA was defined in the IMFL as "any real estate, except a single tract of agricultural real estate consisting of more than 40 acres, which is improved with a single family residence or residential condominium units or a multiple dwelling structure containing single family dwelling units for one or more families living independently of one another, for which an action to foreclose the real estate: (1) has commenced and is pending; (2) was pending when the bona fide lease was entered into or renewed; or (3) was commenced after the bona fide lease was entered into or renewed." *735 ILCS 5/15-1225*

10 The KCRO defines a "qualified tenant" as "a person who: (1) is a tenant in a foreclosed rental property on the day that a person becomes the owner of that property; and (2) has a bona fide rental agreement to occupy the rental unit as the tenant's principal residence". Chicago Municipal Code § 5-14-020 A rental agreement is considered "bona fide" under KCRO if: "(i) the mortgagor, or any child, spouse, or parent of the mortgagor residing in the same dwelling unit with the mortgagor, is not the tenant; (ii) the rental agreement was a result of an arms-length transaction; and (iii) the rental agreement requires the receipt of rent that is not substantially less than fair market rent for the property, or the rental unit's rent is reduced or subsidized due to a government subsidy". Id. The following are excluded from the KCRO requirements: "(a) an owner of a foreclosed rental property who was the owner prior to the effective date of this chapter; (b) any bona fide third-party purchaser; (c) a person appointed as a receiver and issued, or assigned, a Receiver's Certificate under 65 ILCS 5/11-31-2 or 765 ILCS 605/14.5 who becomes an owner due to the foreclosure on the Receiver's Certificate; (d) an owner who will occupy the rental unit as the person's principal residence; (e) a bona fide not-for-profit in existence continuously for a period of five years immediately prior to becoming the owner of the rental unit and whose purpose is provide financing for the purchase or rehabilitation of affordable housing." *Chicago Municipal Code § 5-14-030*

11 English, Spanish, Polish, and Chinese. *Chicago Municipal Code § 5-14-040(a)*

12 The Tenant Information Disclosure Form is prescribed by the commissioner of business affairs and consumer protection by rule. *Chapter 5-14 of the Municipal Code of Chicago Rules, Rule KCRO 1.01*

13 *Chicago Municipal Code § 5-14-040(b)*

14 *Chicago Municipal Code § 5-14-050(a)(3)*

15 "Unlawful conversion" is defined as "any dwelling unit that is an illegal or unlawful conversion, as that is defined in Section 17-17-0240.5." *Chicago Municipal Code § 5-15-020* "Unlawful hazardous unit" is defined as "a dwelling unit that is hazardous based on life safety or sanitation conditions, as prescribe in rules promulgated by the commissioner." *Id.*

16 "The replacement unit may be located either in the same foreclosed rental property or at another location." *Chicago Municipal Code § 5-14-050(a)(2)*

17 *Chicago Municipal Code § 5-14-060*

18 *Id.*

19 *Chicago Municipal Code § 5-14-100, Chicago Municipal Code § 5-14-050(f)*

20 *Chicago Municipal Code § 5-14-070*

21 *Chicago Municipal Code § 5-14-070*

BREAK-IN SESSIONS

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BUSINESS DEVELOPMENT MANAGER
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MANAGING ATTORNEY, ATTORNEY OVERSIGHT
CITIGROUP

Mark Dobosz
EXECUITVE DIRECTOR
NATIONAL CREDITORS BAR ASSOCIATION (NARCA)

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THREE CONCURRENT BREAK DOWN SESSIONS

MONDAY, JULY 18
2:45 - 3:45PM

MANAGEMENT

BREAK-IN




SIZE, SURVIVAL & SUCCESSION: NAVIGATING CHANGE

A discussion about change, expansion, mergers, succession, surviving downsizing and adding services to your existing business. Firms will discuss what they have seen, what works, failures, daily issues and succession. Servicers will weigh in on what they are looking for and how they are dealing with change. Vendors also need to change with the times, expand services and remain affordable. This session takes an honest look at what works and what has not worked, how firms are surviving and changing, and offers ideas on how to grow and improve during a downturn of files, but an uptick in compliance. **FEATURING** Daniel Chilton, Esq., Citigroup; Andrea Tromberg, Esq., Gladstone Law Group; Jim DeLoach, Esq., McCalla Raymer Pierce; Amy Cooper, MyMotionCalendar. Bios available in the ANSWERS app.

MARKETING

BREAK-IN




MARKETING: BIG MARKETING FOR SMALL FIRMS

This new session brings together several full-time business development professionals from large, multi-state firms to share their insights on how smaller, single state firms can have a big marketing impact without the accompanying budget or staff outlay. The target audience is the single-state firm who may not employ devoted marketing staff and who generally task attorneys with marketing and business development. Learn from the experts what works best with your marketing dollar, how to frame your competition, and the best strategies for earning and keeping brand awareness in a competitive market. **FEATURING** (L to R): Brian Vaughn, McCalla Raymer Pierce; Valerie Nelan, Baker Donelson; Tina Emerson, Rogers Townsend Thomas; Bernard J. LoVerde, Malcolm Cisneros. Bios available in the ANSWERS app.

COLLECTIONS

BREAK-IN



CONSUMER COLLECTIONS: IS THE GRASS ANY GREENER?

This breakout session is dedicated to reviewing hot legal and compliance issues in the area of consumer collections. Topics to be discussed will include: what can be learned from existing CFPB Consent Orders and, on the flipside, there are rules and regulations that a mortgage servicer must follow for that particular industry with some blur between mortgage default and consumer collections. With the changes in the portfolio's that have been placed with them are they aware of the moment in time when they become a debt collector? **FEATURING** (L to R): Mark Dobosz, National Creditors Bar Association; Jeffrey A. Backman, Esq., Greenspoon Marder; Brian G. Sayer, Klatt Law. Bios available in the ANSWERS app.

ABOUT THE AUTHOR
BY WILLIAM O. ROUNTREE, ESQ. AND STEPHANIE L. DURAN, ESQ., ROSENBERG & ASSOCIATES. THEY CAN BE REACHED AT WILLIAM.ROUNTREE@ROSENBERG-ASSOC.COM AND STEPHANIE.DURAN@ROSENBERG-ASSOC.COM

CONTINUE THE CONVERSATION
DON'T MISS OUR SERVICING TRANSFERS BREAK-DOWN SESSION ON MONDAY AT 1:30 PM OR OUR SERVICING SUPER SESSION ON WEDNESDAY AT 9:00 AM.

extrangle

State Spotlight Virginia

Analysis: Viriginia Supreme Court Renders Opinion About Unlawful Detainers

On June 16, 2016, the Virginia Supreme Court rendered a decision in *Brian D. Parrish, et al. v. Federal National Mortgage Association*, Record No. 150454, that could significantly impact post-foreclosure unlawful detainer proceedings in the Commonwealth and the general district courts' subject matter jurisdiction to adjudicate possession.

In *Parrish*, Federal National Mortgage Association (Fannie Mae) initiated an unlawful detainer proceeding in general district court to obtain possession of the property conveyed to it by trustee's deed. The Parrishes, owners of the property prior to foreclosure, challenged the validity of the foreclosure as a defense to Fannie Mae's possessory right. Fannie Mae was awarded possession and the circuit court affirmed, granting Fannie Mae's motion for summary judgment, which argued that the trustee's deed was facially valid evidence of its right to possession; that the circuit court was precluded from considering any defense contesting the validity of the foreclosure because the general district court lacked subject matter jurisdiction to try title in the unlawful detainer proceeding, and the circuit court's subject matter jurisdiction on appeal was derivative of the general district court's subject matter jurisdiction.

The Supreme Court affirmed that the circuit court had no more subject matter jurisdiction when exercising its de novo (anew) appellate jurisdiction than the general district court had in that court's original proceeding, finding the determinative issue to be the scope of the general district court's subject matter jurisdiction, and noting that it has routinely held that general district courts have no subject matter jurisdiction to try title to real property.

Nonetheless the Court found it problematic that some actions for unlawful detainer turn on questions of title, specifically in the context of post-foreclosure actions in which the plaintiff's right to possession is based on a claim of title acquired after Defendant's lawful entry. The Court noted that while a valid trustee's deed generally suffices as evidence of the plaintiff's entitlement to possession, where a homeowner can allege facts placing doubt as to the validity of the trustee's deed, the general district court's lack of subject matter jurisdiction to try title supersedes its subject matter jurisdiction to try unlawful detainer and the court must dismiss the case without prejudice.

The Court further noted that this exception is limited to bona fide claims sufficient to survive a demurrer had the homeowner filed a complaint in circuit court to set aside the trustee's deed, the determination of which to be within the general district court's discretion. While not explicitly defining what constitutes a bona fide or legitimate claim, the Court provided a non-exhaustive list of in-

stances where the court should divest itself of jurisdiction, such as cases involving fraud or collusion with the purchaser.

Holding that a de novo appeal in the circuit court is a continuation of the original case, the Court found no error in the circuit court's consideration of the pleadings filed in general district court, finding that the Parrishes raised a bona fide question of title in the unlawful detainer proceeding. The Court concluded that the general district court lacked subject matter jurisdiction to adjudicate the unlawful detainer and that the circuit court lacked the same in exercising its de novo appellate jurisdiction, limiting its authority to dismissal of the proceeding without prejudice.

The practical implication of the *Parrish* decision is the stripping of the general district court's jurisdiction to adjudicate possession, and the convergence of actions for possession with those to set aside deeds or quiet title. General district courts have historically rejected arguments challenging title or attacking a facially valid deed as beyond the scope of its subject matter jurisdiction, readily granting possession to the party appearing to hold the superior claim. The *Parrish* decision impedes the record owner's ability to obtain possession until after good title has been adjudicated. Borrower defendants no longer have the burden of initiating actions to set aside the deed in order to retain possession; they can merely assert that grounds exist to set aside the deed, forcing the record owner to pursue a remedy in circuit court while the defendant retains possession of the property without any obligation of payment.

While the defendant enjoys the benefit of a prolonged possession proceeding, the record owner plaintiff faces two possible circuit court actions. An overruled motion in general district court challenging a trustee's deed can be appealed to the circuit court, and a reversal in circuit court dismisses the action, thereby requiring a subsequent circuit action to quiet title. The result: additional time and expense for the record owner.

BREAK-OUT SESSIONS

BREAK OUT OF THE BASICS

AND BREAK THE MOLD WITH INNOVATIVE NEW IDEAS FOR A BETTER BUSINESS

Erica Fujimoto
DIRECTOR OF DEFAULT SERVICES
AFFINITY CONSULTING

Heather Greenberg
FORECLOSURE & BANKRUPTCY OPERATIONS MANAGER
BSI FINANCIAL SERVICES

Luke Bierman
CHAIR, SCHOOL OF LAW
NATIONAL CREDITORS BAR
ELON UNIVERSITY

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One tough choice.

THREE CONCURRENT
BREAK OUT SESSIONS

MONDAY, JULY 18
4:00 - 5:00PM

WITNESS PREP

BREAK-OUT



WITNESS PREP: ISSUES, PITFALLS AND WORK-AROUNDS

This session drills down on issues such as witness preparation prior to a trial with a focus on such topics as professional witnesses, knowledge and review of business documents, and other issues faced by witnesses when getting ready to come into court to testify. You saw it in action (ANSWERS in Action - Mock Trial) and how it can impact your case—now learn from those intentional mistakes to better prepare your witness, case and client before walking into another court-room. **FEATURING** (L to R): Natalie Grigg, Esq., Woods Oviatt Gilman; Cassandra Racine-Rigaud, Millennium Partners; Heather Greenberg, BSI Financial Services. Bios available in the ANSWERS app.

LEGAL ETHICS

BREAK-OUT



ISSUES & ETHICS: A DISCUSSION

This session will use an interactive roundtable and presentation style approach to identify, analyze and discuss various ethical conflicts and dilemmas faced by attorneys who practice in the mortgage foreclosure industry. Panelists will prepare and present scenarios that highlight ethical considerations and rules that mem-bers' face on a regular basis and each roundtable will be tasked with working through the respective issues to arrive at the most appropriate ethical conclusion. **FEATURING** (L to R): Michael J. Catalfimo, Esq., Carter Conboy; James V. Noonan, Esq., Noonan & Leiberman; Luke Bierman, Esq., Elon University School of Law. Bios available in the ANSWERS app.

OPERATIONS

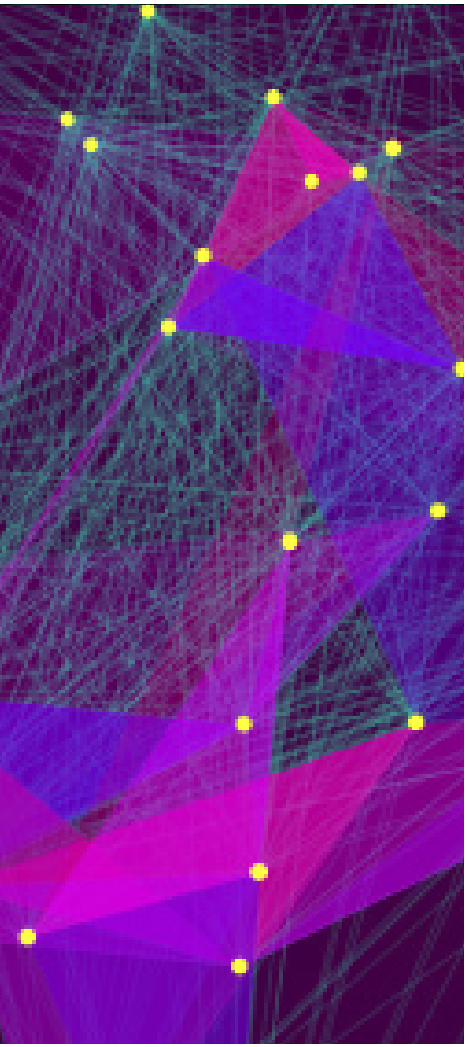
BREAK-OUT



HOW TO FIX A BROKEN BACK-OFFICE

The era of paper files is over, and electronic case management systems have been adopted by the country's most sophisticated creditors' rights firms. Regardless of the case management system that is utilized, firms now have a wealth of data available to them. The ability of a firm to evaluate and score their performance offers them the capability to reduce timelines and provide better services to their clients, as well as focus their time and resources with precision. The result is a powerful tool for law firm management. And there may be no better instrument for a firm to market the quality of its services than actual evidence. **FEATURING** (L to R) Robyn Padgett, Padgett Law Group; Erica Fujimoto, Affinity Consulting Group; Jennifer Warren, Rosicki, Rosicki & Assoc. Bios avialable in the ANSWERS app.

Dual Tracking Laws: Stop Everthing for Loss Mitigation Activity in Minnesota?



The Minnesota Mortgage Foreclosure Dual Tracking law was enacted in 2013 and codified as Minn Stat. § 582.043. The relatively new law is comparable to the CFPB rules on dual tracking with a large difference often initially overlooked by mortgage servicers—while the CFPB rules give borrowers a deadline to apply for loss mitigation of 37 days before the foreclosure sale to qualify for dual tracking protections, the Minnesota statute gives borrowers a more generous deadline of up to seven days prior to the date of the foreclosure sale. Unlike the Minnesota statute, the CFPB dual tracking rules also exclude more borrowers from protection, including borrowers who received bankruptcy relief or have already gone through the loss mitigation application process, among others.

Since the inception of the dual tracking law, the biggest question Minnesota practitioners have had was how far "dual tracking" activity would be limited. While some language of the statute is relatively clear, other provisions are more ambiguous. Recent cases may provide some clarification though for those latter provisions. Unfortunately, the trend among the cases analyzing the Minnesota dual tracking statute is unfavorable to mortgage servicers and contrary to their initial (and reasonable) interpretation of the statute's provisions.

The Minnesota dual tracking statute primarily addresses three different points in a foreclosure: (a) prior to the time a mortgage servicer refers a loan to an attorney for foreclosure, (b) after a loan has been referred to an attorney for foreclosure, but prior to the time a foreclosure sale has been scheduled, and (c) after a foreclosure sale has been scheduled by a foreclosure attorney, but before midnight on the seventh business day prior to a foreclosure sale date. During each of these periods, the statute prohibits a mortgage servicer from moving forward with foreclosure activity unless, (1) the servicer determines that the mortgagor is not eligible for a loss mitigation option, the servicers informs the mortgagor of this determination in writing, and the applicable appeal period has expired without an appeal or the appeal has been properly denied; (2) where a written offer is made and a written acceptance is required, the mortgagor fails to accept the loss mitigation offer within the time specified in the offer or within 14 days after the date of the offer, whichever is longer; or (3) the mortgagor declines a loss mitigation offer in writing. The statute also prohibits a mortgagor from conducting a foreclosure sale while the mortgagor is complying with the terms of a trial or permanent loan modification or other loss mitigation option, including if a short sale has been approved by all necessary parties and proof of funds or financing have been provided to the servicer.

ABOUT THE AUTHOR
BRIAN H. LIEBO, ESQ. IS A PARTNER WITH USSET, WEINGARDEN & LIEBO. HE CAN BE REACEHD AT BRIAN@UWLLAW.COM

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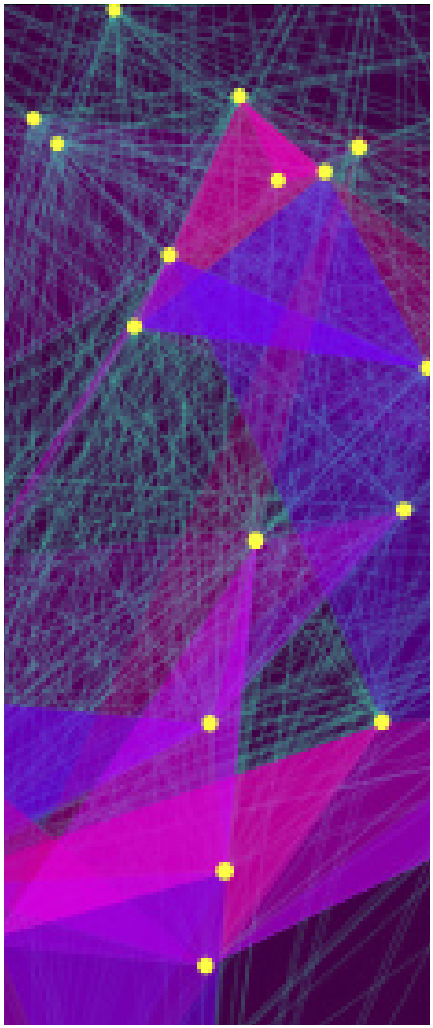

Parsing out the statutory language, it is clear that if a mortgage servicer has received an application before a foreclosure has been referred to an attorney, the mortgage servicer must not refer the foreclosure until the terms of the statute have been satisfied. In contrast, the statute appears less clear as to what steps the mortgage servicer can take after a loan has already been referred to an attorney for foreclosure once a loss mitigation application has been received. After that point, the statute provides that if loss mitigation activity is pending, the servicer "shall not move for an order of foreclosure, seek a foreclosure judgment, or conduct a foreclosure sale." Further, if the servicer receives a loss mitigation application after the foreclosure sale has been scheduled, but before midnight on the seventh business day prior to the foreclosure sale date, the servicer must "halt the foreclosure sale" and evaluate the application.

Although judicial foreclosures can occur in Minnesota, the predominant method of foreclosing mortgages in Minnesota is through non-judicial foreclosure by advertisement proceedings. That method involves serving various notices and publishing a notice of foreclosure sale for six consecutive weeks. The final point of the foreclosure sale can be postponed to later dates by publishing the postponements and serving additional notices.

The dual tracking statute contains the vague phrase "halt the foreclosure sale." That term is not contained in any other foreclosure statute and is undefined. However, the statute does appear to indicate that the operative point of a foreclosure where action must be taken to stop the dual activities of loss mitigation and mortgage foreclosure is the time of the foreclosure sale, rather than earlier in the foreclosure proceedings. That interpretation would be consistent with the other statutory provision prohibiting a servicer from "conducting a foreclosure sale" when a loss mitigation application is pending. Nowhere does the Minnesota dual tracking statute explicitly prohibit mortgage servicers from commencing or continuing "foreclosure proceedings" after referral while loss mitigation activities are occurring. Instead, the statutory language appears to focus solely on the point of the foreclosure sale with respect to non-judicial foreclosures. On the other hand, since Minnesota is a "stop and restart state" for foreclosures, halting the foreclosure sale could also mean that the foreclosure sale must be cancelled altogether and then foreclosure proceedings restarted later with a new foreclosure sale date. But, given that the legislature could have easily written language requiring that the mortgage foreclosure proceedings be halted in their entirety, instead of just the foreclosure sales, it would appear more reasonable to interpret the statute to allow mortgage servicers to postpone sheriff's sales if a loss mitigation application is received after a foreclosure referral, rather than require servicers scrap the whole foreclosure process during the application review period.

Based on the language of the statute, mortgage servicers believed they could delay the foreclosure sale by postponing it if they needed more time to complete a loss mitigation application review and denial process. Borrowers' attorneys also accepted the rationale that a foreclosure sale could be postponed for loss mitigation review, and would routinely request that postponement accommodation while citing the dual tracking statute, rather than demand that the entire foreclosure be terminated.

Recent cases, however, appear to defy this reasonable interpretation of the statute and indicate foreclosure proceedings must be cancelled in their entirety, rather than at just the point of foreclosure sales, if timely loss mitigation applications are submitted to mortgage servicers. In *Gray v. Bank of New York Mellon*, 2016 U.S. Dist. Lexis 66642 (D.Minn. 2016), a federal district court judge appeared to have misquoted the dual tracking statute in holding that non-judicial foreclosure proceedings must be stopped in their entirety once a loss mitigation application is timely submitted. In that case, the borrower submitted a loan modification application to the mortgage servicer and then received

CONTINUES ON PAGE 44 >>

The Dens

22 MINUTES OF CASUAL, OFF-THE-CUFF CONVERSATION. WE'RE EVEN PROVIDING THE COUCH AND CHAIRS. YOU JUST GRAB COFFEE AND JOIN IN THE DIALOGUE.

TECHNOLOGY

Maintaining compliance with the evolving industry standards has remained a challenge for mortgage default servicing law firms. With tools like IT risk assessments, network penetration testing and vulnerability assessments, weaknesses in a company's system can be found and fixed to prevent any data loss. Hansen will discuss the required network penetration testing and vulnerability assessments that need to be taken every year, the step-by-step process of these assessments and why it's important for firms to ensure their technology is up to date.

FEATURING ADAM HANSEN, COO/CIO, ASSURE360

DETAILS SUNDAY, JULY 17 | 3:45 - 4:15 PM BALLROOM FOYER

OUTSOURCING

Outsourcing has a very prominent place in every industry and properly leveraging this solution is paramount. The old model of outsourcing called for releasing complete control, whole departments. The new approach and one we deliver, is to provide a custom solution, with onshore and offshore presence, where clients gain flexibility, scalability, quality and value. I have presented at Five Star, Force Rallies and local business network groups on how to properly leverage outsourcing. This subject matter is scary, the term in the default industry comes with preconceived notions that can be dispelled during this presentation.

FEATURING BRIAN FLAHERTY, CEO, GLOBAL STRATEGIC

DETAILS MONDAY, JULY 18 | 10:00 - 10:30 AM BALLROOM FOYER

STAFFING

In times of shifting fortunes, consolidation, heightened compliance, increased costs, and lower file volumes – finding the right person is invaluable to your bottom line and overall success. In this Discussion Den, we will highlight key staffing issues from the search, to vetting, to salary negotiations – including what to do when you are in the market yourself looking for the best opportunities. Everyone wants the brightest talent, with the cultural fit, at the right price. It's complicated, but not impossible.

FEATURING JAN DUKE, CEO, FIRM SOLUTIONS

DETAILS TUESDAY, JULY 19 | 10:00 - 10:30 AM BALLROOM FOYER

THE SERVICERS

closing

SUPER SESSION

AN INDUSTRY CONVERSATION

WEDNESDAY, JULY 20 | 9:00 - 10:30AM

This session will unite servicers and law firms to find efficiencies as they work together to achieve a common goal. The session style invites open dialogue about the differences and similarities in the two organizational structures and provides insight as to suggested best practices. Topics such as information sharing, file transfers, contested escalation/litigation, invoicing, training, surveys, audits and solutions to typical snares associated with a default file will be discussed to give each side a better understanding of how the other functions operationally and organizationally. Panelists include high-level servicers with decades of experience working in the default servicing industry.

conversation led by

CANDICE ARCHIBALD, ESQ.

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Gina Gray
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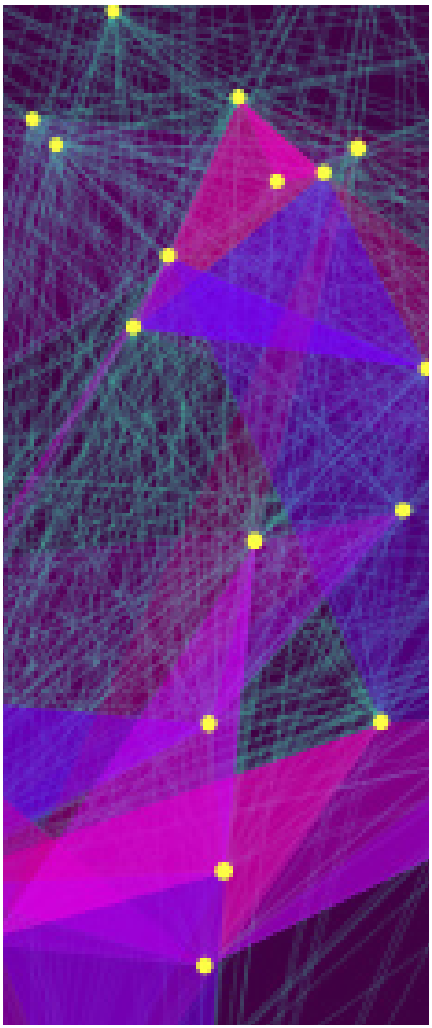
Minnesota State Snapshot Continued From p41



a notice of foreclosure sale two days later. Prior to the date of the foreclosure sale, the mortgage servicer denied the application and gave the borrower 30 days to appeal the decision. The borrowers filed an appeal with the mortgage servicer, and the mortgage servicer had the sale conducted during the appeal period. While the *Gray* court properly identified that "the statute states that servicers must 'halt' the foreclosure sale" after receiving timely loss mitigation applications, that court later identified that "the statute requires servicers to 'halt' the foreclosure, which means that all proceedings should be **suspended or stopped** pending an application review."(emphasis added). The *Gray* court ultimately held that the borrowers' allegation that the mortgage servicer "continued to pursue foreclosure" after receiving the loan modification application stated a viable claim for a violation of the dual-tracking statute. The broader holding of the *Gray* court and its analysis of the statute was surprising given that the court could have easily focused solely on the fact that the foreclosure sale was held during the alleged appeal period, in contravention of the plain language of the statute.

While the *Gray* decision appears to have resulted from a possible misreading of the Minnesota dual tracking statute, that court may not be alone in interpreting the statute to require the termination of foreclosure proceedings in their entirely upon the submission of a timely loss mitigation application by a borrower. The *Gray* court cited *Mann v. Nationstar Mortgage, LLC*, 2015 U.S. Dist. Lexis 87772 (D. Minn. 2015) in its decision. However, the borrowers in *Mann* did not even claim the mortgage servicer was required to stop all foreclosure proceedings after they submitted their loss mitigation application for review. Instead, the borrower in that case claimed that the mortgage servicer violated the dual tracking statute "based on its failure to postpone the Sheriff's Sale" despite having timely received a loss mitigation application. Despite that narrow claim, the *Mann* court made a ruling broader than the exact language of the dual tracking statue, writing that "the purpose of the dual tracking statute is to prevent mortgage servicers from having it both ways: a servicer cannot 'pursue mortgage foreclosure" while also considering a borrower's timely submitted application." Regardless, the *Mann* court ultimately focused on whether the foreclosure sale should have been halted or conducted, whereas the Gray court also focused on whether the entire foreclosure proceedings should have been stopped instead of just the point of sale.

The Minnesota Court of Appeals has also looked at this issue, and appears to be consistent with the federal district courts. In an unpublished decision, the Minnesota Court of Appeals wrote, "when a servicer receives a loss-mitigation application, it must halt 'foreclosure proceedings' until the application has been processed." *Wells Fargo Bank, N.A. v. Lansing*, 2015 Minn. App. Unpub. Lexis 132 (MN Ct. App. 2015). That court also appears to have disregarded that language of the Minnesota dual tracking statute requires the halting of the foreclosure sale, rather than the halting of the foreclosure proceedings. None of the foregoing cases are actually binding precedent in Minnesota, being that they are either federal district court level decisions or unreported. However, they are still highly illustrative of how the Minnesota courts are viewing the dual tracking laws. Although they may not always be precise in how they are citing the language of the dual tracking statute, the courts do have logical reasoning in how they are interpreting the more vague portions of the statute. Considering the title of the statute at issue, it is clear that the original purpose of the statute is to prevent mortgage servicers from doing two activities at the same time: processing loss mitigation applications and foreclosure proceedings simultaneously.

In the current environment, the safest approach for servicers would be to stop foreclosure proceedings in their entirety during the pendency of loss mitigation applications or other activities given the tone of the cited cases, and until binding precedent holds otherwise. Failure to take this conservative route could result in an invalidated foreclosure and an award of attorneys' fees to borrowers under the Minnesota dual tracking statute.

The *Messer* Effect in Ohio

ABOUT THE AUTHOR
CRAIG SPADAFORE IS AN ATTORNEY WITH MANLEY DEAS IN OHIO. HE CAN BE REACHED AT CJS2@MANLEYDEAS.COM

CONTINUE THE CONVERSATION
DON'T MISS OUR MOCK TRIAL GENERAL SESSION ON MONDAY AT 10:30 AM

A recent Ohio Supreme Court ruling brings good news to the residential mortgage industry in that state. Ohio's highest court has clarified the legal consequences of deficiently executed mortgages and has determined that the consequences are not severe. For years, bankruptcy trustees, debtors' counsel, and junior lienholders have attempted to avoid Ohio mortgage liens that were deficiently executed under R.C. 5301.01(A). Representative deficiencies included no signature or notary acknowledgment. However, the Ohio General Assembly made clear in 2002 via R.C. 5301.01(B) that bankruptcy trustees can't avoid mortgages because of a defect in the witness requirement. In 2013, the General Assembly went a step further by enacting R.C. 1301.401, which states that recording certain documents provides constructive notice that the recorded documents exist. Nevertheless, those trustees, debtors, and junior lienholders continued to challenge improperly executed mortgages to the detriment of mortgagees. But with its recent *In re Messer* decision, the Ohio Supreme Court clarified R.C. 1301.401's importance and shut down future challenges to any recorded mortgages that were deficiently executed under R.C. 5301.01.

IN *MESSER*, A FEDERAL DISTRICT COURT CERTIFIED TWO QUESTIONS OF STATE LAW:

1. Does R.C § 1301.401 apply to all recorded mortgages in Ohio?

2. Does R.C. § 1301.401 act to provide constructive notice to the world of a recorded mortgage that was deficiently executed under R.C. § 5301.01?

As to the first question, the court determined that the statute's clear and broad language indicates that it applies to any document described or referred to in R.C. 317.08, which in turn, explicitly includes "mortgages, including amendments, supplements, modifications, and extensions of mortgages, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered." Therefore, the court held that R.C. 1301.401 applies to all recorded mortgages in Ohio.

As to the second question, the court determined that recording a mortgage provides constructive notice that the mortgage exists regardless of the fact that it may have been deficiently executed under R.C. 5301.01. The court found that R.C. 1301.401 makes "no mention . . . of whether the mortgage has been properly executed, whether it was required to be filed, or whether it is free from defects. If it is a 'mortgage,' notice of the contents is provided."

The *Messer* decision has far-reaching impact on the residential default industry in Ohio. It overturns the well-established line of cases finding that an improperly executed instrument isn't entitled to be recorded, and that even if recorded, it fails to impart constructive notice to those dealing with the real estate.

In the bankruptcy context, the "strong arm" powers of the Bankruptcy Code have allowed bankruptcy trustees to avoid recorded mortgages for lack of proper execution on the alleged basis that such mortgages don't give the required constructive notice to the trustee. Mortgage avoidance damages mortgage lenders because they are treated as unsecured creditors and receive only a pro-rata share in repayment, if anything. However, R.C. 5301.01(B) and R.C. 1301.401, along with the Ohio Supreme Court's *Messer* decision, have shut the door on nearly all arguments a bankruptcy trustee might make to avoid a recorded mortgage based upon alleged execution deficiencies.

As to the foreclosure practitioner, *Messer* alleviates concerns that debtor's counsel will attack the validity of a deficiently executed mortgage. Likewise, junior lienholders will be unlikely to raise priority arguments based upon questions surrounding a mortgage's execution. At the front end, this means creditor's counsel can forego pleading equitable mortgage counts and might not need to submit title claims to the title insurer because of mortgage execution issues. At the back end, creditors can avoid protracted litigation and expenses related to improper mortgage execution.

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SPECIAL KEYNOTE

CARRIE EHINGER

SENIOR VICE PRESIDENT OF LIQUIDATION

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SUNDAY, JULY 17
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MOUNTAIN VIEW TERRACE
GROUP LATE NIGHT MIXERS OPEN TO ALL ATTENDEES

WILL POWER BREAKFAST
MONDAY, JULY 18
8:00 - 8:45AM
BALLROOM ABC
FEATURING CARRIE EHINGER SVP, BANK OF AMERICA

In early 2016, ALFN law firms self-reported that on average, 62% of their work forces were female. Around the same time, ALFN hosted its first-ever women's summit, WILLPOWER, in Washington, D.C.

We brought together female executives, partners, associates, regulators and a host of other women in the mortgage default and creditors' rights industries. These weren't just bright legal minds, they were women intent on building their careers, focused on their families, and determined to make a difference professionally, politically and personally. At ANSWERS this year, we're shining the spotlight on this incredible group with a special keynote and second annual WILL Power Breakfast featuring Carrie Ehinger, Senior Vice President, Liquidation Services, Bank of America. Next, join the women of WILL for a special late-night mixer on Sunday evening on the Mountain View Terrace from 10:00 - 11:30pm.

Women now represent over half of the individual's working in the mortgage default space and increasingly occupy key decision-making roles. Now it's time for them to shine.

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MONDAY, JULY 18 | 7:30 - 8:45 AM
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KEYNOTE AT 8:00 AM

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5:30 PM

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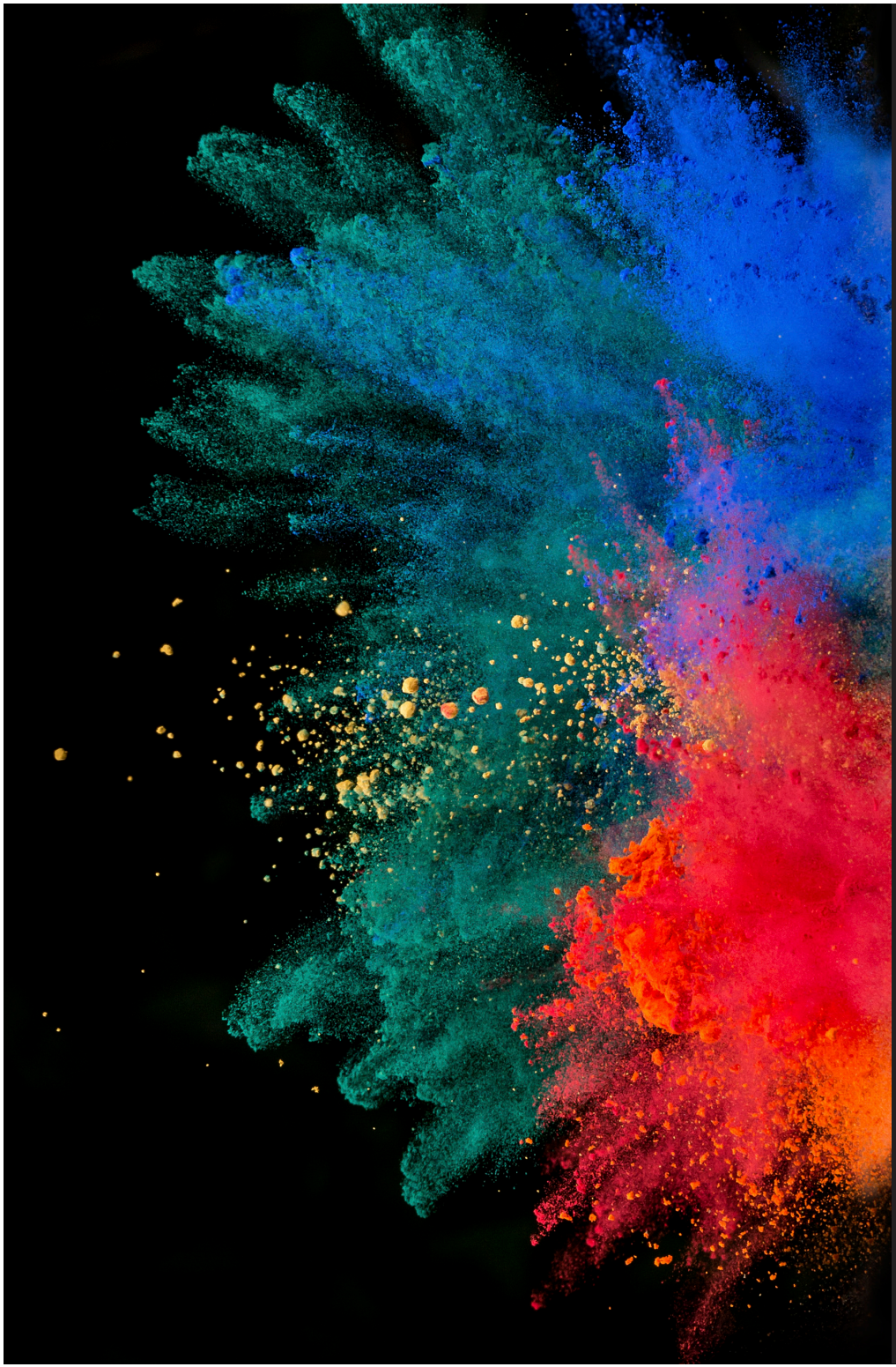
WEDNESDAY, JULY 20

GRAND BALLROOM ABC



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This experience has honed the firm's knowledge of industry standards, the legal processes and requirement for default-related services and REO-related services for Ohio. The firm's exclusive representation and experience in these areas have also developed a sophisticated understanding of the substantive legal issues lenders encounter in Ohio.

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ALFN membership: 4 years
Headquartered: Cleveland, OH
Member: National Lesbian & Gay Chamber of Commerce

Industry Practice Areas
Foreclosure
Bankruptcy
Loss Mitigation & Mediation
Eviction & REO matters
Real Property Litigation

Pictured:
(L to R) Antonio J. Scarlato, Esq.; Leslie Detmayer; and Mark Lembright, Esq.

Mark R. Lembright, Esq.
Partner & Vice President
1500 West Third St., Suite 400
Cleveland, OH 44113
Phone: (216) 588-1500
Fax: 216-771-4334
mlembright@feltyandlembright.com
www.feltyandlembright.com

ALABAMA

Jauregui & Lindsey, LLC
MICHAEL LINDSEY
244 Inverness Center Drive, Ste. 200
Birmingham, AL 35242
Phone: 205-909-6086
Fax: 205-970-3886
mlindsey@jandllawfirm.com
www.jandllawfirm.com

Longshore, Buck & Longshore, P.C.
BILLY LONGSHORE
2009 2nd Avenue North
Birmingham, AL 35203
Phone: 205-252-7661
Fax: 205-252-0812
billy3@longshorebuck.com
www.longshorebuck.com

McCalla Raymer Pierce, L.L.C.
MARTY STONE
1544 Old Alabama Rd
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Phone: 678-281-6500
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Stephens Millirons, P.C.
ROBERT J. WERMUTH
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Huntsville, AL 35802
Phone: 256-382-5500
Fax: 256-536-9488
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www.smpclaw.com

ARIZONA

Folks & O'Connor, P.L.L.C.
LARRY FOLKS
1850 North Central Avenue,
Suite 1140
Phoenix, AZ 85004
Phone: 602-256-5906
Fax: 602-256-9101
folks@folksoconnor.com
www.folksoconnor.com

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KEVIN MCCARTHY
1770 Fourth Ave.
San Diego, CA 92101
Phone: 619-685-4800
Fax: 619-685-4810
kmccarthy@mccarthyholthus.com
www.mccarthyholthus.com

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Dyke & Winzerling, P.L.C.
J. BENTON DYKE, JR.
415 North McKinley, Suite 1177
Little Rock, AR 72205
Phone: 501-661-1000
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jdyke@dhgw.net
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About Dyke & Winzerling, P.L.C.

Dyke & Winzerling, P.L.C. is a full service secured creditor oriented law firm providing cradle-to-grave foreclosure, bankruptcy, deed-in-lieu, eviction, REO, post-foreclosure and title resolution services throughout the state of Arkansas. Members, J Dyke and Mary Winzerling, both have been practicing in the field for over 25 years. CaseAware management system is employed to meet individual client and loan needs. Our smaller size makes us accessible and able to adapt and adjust quickly to client needs. The firm is a charter member of the ALFN.

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Contact this Law Firm

Dyke & Winzerling, P.L.C.
J. BENTON DYKE, JR.
415 North McKinley, Suite 1177
Little Rock, AR 72205
Phone: 501-661-1000
Fax: 501-661-1100
jdyke@dhgw.net
www.dhgw.net

Mackie Wolf Zientz & Mann, P.C.
KELLER MACKIE
14160 N. Dallas Parkway, Ste. 900
Dallas, TX 75254
Phone: 214-635-2650
Fax: 214-635-2686
kmackie@mwzmlaw.com
www.mwzmlaw.com

Mickel Law Firm, P.A.
JAMES SWINDLE
1501 North University Ave.
Suite 966
Little Rock, AR 72207
Phone: 501-664-4808
Fax: 501-664-0631
j.swindle@mickellaw.com
www.Mickellaw.com

Wilson & Associates, P.L.L.C.
JENNIFER WILSON-HARVEY
1521 Merrill Drive
Little Rock, AR 72211
Phone: 501-219-9388
Fax: 501-219-9458
jwilson@wilson-assoc.com
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BP Fisher Law Group, P.L.L.C.
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174 Waterfront Street, Ste 400
Oxon Hill, MD 20745
Phone: 301-599-7700 ext. 101
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jfisher@first-legal.com
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Malcolm Cisneros
BILL MALCOLM
2112 Business Center Dr., 2nd Fl
Irvine, CA 92612
Phone: 949-252-9400
Fax: 949-252-1032
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About Malcolm Cisneros

Malcolm Cisneros, formed in 1992, is a minority owned regional commercial and civil litigation firm with offices in California (corporate offices in Irvine), Arizona, Colorado, Nevada, Oregon, Texas and Washington. Malcolm Cisneros and Trustee Corps are two separate companies that have had a long-standing relationship spanning nearly two decades as the companies were affiliated under the Freddie Mac Designated Counsel Program and the Fannie Mae Retained Attorney Network before the programs were retired in June, 2013.

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Malcolm Cisneros
BERNARD J. LOVERDE, JR.
2112 Business Center Dr., 2nd Fl
Irvine, CA 92612
Phone: 949-252-9400
Fax: 949-252-1032
bernie@mclaw.org
www.malcolmcisneros.com

Marinosci Law Group, P.C.
PHILLIP A. NORMAN
2110 Calumet Avenue
Valparaiso, IN 46383
Phone: 219-462-5104
Fax: 219-548-2307
pnorman@mlg-defaultlaw.com
www.mcs-lawfirm.com

Prober & Raphael, ALC
LEE RAPHAEL
20750 Ventura Blvd., Suite 100
Woodland Hills, CA 91364
Phone: 818-227-0100
Fax: 818-227-0637
lraphael@pralc.com
www.pralc.com

The Wolf Firm, A Law Corporation
ALAN S. WOLF
2955 Main Street, Second Floor
Irvine, CA 92614
Phone: 949-480-1764
Fax: 949-608-0133
alan.wolf@wolffirm.com
www.wolffirm.com

Tiffany & Bosco, P.A.
OLIVIA TODD
2525 E. Camelback Rd.
Phoenix, AZ 85016
Phone: 602-412-5100
Fax: 602-264-6209
otodd@tblaw.com
www.tblaw.com

Gilbert Garcia Group

Diversity

In Florida with Gilbert Garcia Group

Entrepreneurship is at the heart of the story behind Gilbert Garcia Group, a women- and minority-owned and operated ALFN attorney member in Florida. It's also the impetus behind the firm's expansion and its focus on community. Often representing the firm publicly is principal and Managing Partner Michelle Gilbert, a woman who invests as much in her industry as she does in her own firm.

Gilbert Garcia Group maintains memberships and a high level of involvement in many major industry associations, often with leadership roles and substantial volunteer work on behalf of the industry.

As a collaborative leader, Gilbert works with practitioners from across the country, competition down the street, her lawmakers and regulators on Capitol Hill, and both the consumers and clients on each side of the legal issues she weighs everyday.

Gilbert's partners, Jennifer Lima-Smith, Managing Litigation/Risk Management Attorney, and Laura Layne Walker, Managing First Legal Attorney, manage key parts of the firm's business.

At-A-Glance Stats
Founded: 1991
ALFN membership: 6 years
Headquartered: Tampa, FL
Women-Owned Firm
Minority-Owned Firm

Industry Practice Areas
Foreclosure
Bankruptcy
Sales & Evictions
Litigation
Real Estate and REO

Pictured
(L to R) Laura Layne Walker, Esq.; Michelle Gilbert, Esq.; and Jennifer Lima-Smith, Esq..

Michelle Gilbert, Esq.
Managing Partner
2313 W. Violet St.
Tampa, Fl. 33603
Phone: 813-638-8920, Ext. 253
Fax: 813-443-5089
www.gilbertgrouplaw.com

CALIFORNIA CONTINUED

Wright, Finlay & Zak, L.L.P.
T. ROBERT FINLAY
4665 MacArthur Court, Ste. 280
Newport Beach, CA 92660
Phone: 949-477-5050
Fax: 949-477-9200
rfinlay@wrightlegal.net
www.wrightlegal.net

Zieve Brodnax & Steele, LLP
REYNA JOYNER
30 Corporate Park, Suite 450
Irvine, CA 92606
Phone: 714-848-7920
Fax: 714-848-7650
reyna@zievelaw.com
www.zievelaw.com

COLORADO

Hellerstein and Shore, P.C.
DAVID A. SHORE
5347 S. Valentia Way, Suite 100
Greenwood Village, CO 80111
Phone: 303-573-1080
Fax: 303-571-1271
Inquiries@shoreattys.com
www.shoreattys.com

Janeway Law Firm PC
LYNN JANEWAY
9800 S. Meridian Blvd.
Englewood, CO 80112
Phone: 303-706-9990
Fax: 303-706-9994
lynn@janewaylaw.com
www.janewaylaw.com

Weinstein & Riley, P.S.
DEANNA WESTFALL
11101 West 120th Ave.,
Broomfield, CO 80201
Phone: 206-438-1041
Fax: 206-269-3493
DeannaW@w-legal.com
www.w-legal.com

E

CONNECTICUT

Milford Law LLC
VINCENT AVERAIMO
250 Broad Street
Milford, CT 06460
Phone: 203-874-6773
Fax: 203-874-5765
vincent@milfordlegal.com
www.milfordlegal.com

WASHINGTON, D.C.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
LINDA FINLEY
Monarch Plaza, Suite 1600
3414 Peachtree Road NE
Atlanta, GA 30326
Phone: 404-589-3408
Fax: 404-238-9608
lfinley@bakerdonelson.com
www.bakerdonelson.com

E

BP Fisher Law Group, P.L.L.C.
JEFFREY B. FISHER
174 Waterfront Street, Ste 400
Oxon Hill, MD 20745
Phone: 301-599-7700 ext. 101
Fax: 301-599-2100
jfisher@first-legal.com
www.first-legal.com

E

About Gladstone Law Group

Gladstone Law Group, P.A. offers a comprehensive range of litigation and default servicing solutions for mortgage lenders, servicers, banks, and savings and loan associations. We proactively protect our clients' rights in foreclosure, bankruptcy, eviction, and real estate litigation. The law firm is committed to excellence in compliance, effective representation and innovative solutions. To assist with these solutions, Gladstone Law Group is composed of excellent and experienced attorneys and staff.

GLADSTONE
LAW GROUP

FL

Contact this Law Firm

Gladstone Law Group, P.A.
ANDREA TROMBERG
1499 West Palmetto Park Road,
Suite 300
Boca Raton, FL 33486
Phone: 561-338-4101
Fax: 561-338-4077
atromberg@gladstonelawgroup.com
www.gladstonelawgroup.com

Law Offices of Jeffrey Nadel
JEFFREY NADEL
4041 Powder Mill Road, Suite 415
Calverton, MD 20705
Phone: 240 473 5000
Fax: 240 473 0507
jeff@lojnlaw.com
www.lojnlaw.com

FLORIDA

A | Law
JONATHAN SAWYER
208 North Laura Street, Suite 900
Jacksonville, FL 32202
Phone: 904-356-4755
Fax: 904-356-4754
jsawyer@albertellilaw.com
www.albertellilaw.com

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
LINDA FINLEY
Monarch Plaza, Suite 1600,
3414 Peachtree Road NE
Atlanta, GA 30326
Phone: 404-589-3408
Fax: 404-238-9608
lfinley@bakerdonelson.com
www.bakerdonelson.com
E

Choice Legal Group, P.A.
MARSHALL WATSON
1800 Northwest 49th Street #120
Fort Lauderdale, FL 33309
Phone: 954-453-0365
Fax: 954-771-6052
marshall.watson@clegalgroup.com
www.clegalgroup.com

Clarfield Okon Salomone & Pincus, P.L.
ASHA SHRAVAH
425 RXR Plaza
Uniondale, NY 11556
Phone: 516-699-8902 x2154
Fax: 516-279-6990
ashravah@cosplaw.com
www.cosplaw.com

eXL Legal, PLLC
DOUGLAS M. BALES
12425 28th Street North, Suite 200
St. Petersburg, FL 33716
Phone: 727-536-4911
Fax: 727-539-1094
dmb@dczahm.com
www.dczahm.com

Gilbert Garcia Group, P.A.
MICHELLE GARCIA GILBERT
2313 W. Violet Street
Tampa, FL 33603
Phone: 813-638-8920
Fax: 813-443-5089
mgilbert@gilbertgrouplaw.com
www.gilbertgrouplaw.com

Gladstone Law Group, P.A.
ANDREA TROMBERG
1499 West Palmetto Park Road, Suite 300
Boca Raton, FL 33486
Phone: 561-338-4101
Fax: 561-338-4077
atromberg@gladstonelawgroup.com
www.gladstonelawgroup.com

Greenspoon Marder
REBECCA BRATTER
200 East Broward Blvd., Suite 1500
Fort Lauderdale, FL 33301
Phone: 954-491-1120
Fax: 954-343-6952
rebecca.bratter@gmlaw.com
www.greenspoonmarder.com

About Robert M. Coplen, P.A.

Robert M. Coplen, P.A. is a multi-attorney creditor's rights and real property litigation law firm that is located in Pinellas County, Florida. We represent both local and national clients, including lending institutions and title insurance underwriters. The firms practice area includes all aspects of creditor's commercial litigation, foreclosures, bankruptcy and real property title litigation for matters located throughout the entire State of Florida.

FL

Contact this Law Firm

Robert M. Coplen, P.A.
BOB COPLEN
10225 Ulmerton Road, Suite 5A
Largo, FL 33771
Phone: 727-588-4550 ext 24
Fax: 727-559-0887
bob@coplenlaw.com
www.coplenlaw.com

Out Front

With McCalla Raymer Pierce

Sound decision-making, whether it's hiring, geographic expansion, or building a new practice area, McCalla Raymer Pierce does nothing if not carefully, thoughtfully, and well-planned. That also makes execution the easy part—and why McCalla Raymer Pierce can effectively and efficiently execute on behalf of its clients throughout the firm's entire geographic footprint that now includes Florida, Georgia, Alabama, Mississippi and, most recently, Illinois.

The firm was in Georgia for 26 years before expanding and now, in it's 34th year, covers a significant portion of the southeastern United States along with its new footprint in the midwest. Brick and mortar locations as well as seamless IT solutions keep the firm integrated and cohesive. It also helps keep the firm's focus on compliance, quality control, time lines and cost-effectiveness top of mind for its dedicated, world-class workforce.

McCalla Raymer Pierce is exceptionally proud of its diverse, industry-leading people. Across the industry, you'll fine McCalla Raymer Pierce's employees volunteering, collaboration, educating and contributing in a broad spectrum of events, publications and other endeavors that improve the mortgage servicing industry and elevate the profession – because, simply put, that's how an industry leader leads.

At-A-Glance Stats
Founded: 1982
ALFN membership: 6 years
Headquartered: Roswell, GA
LGBT-Owned

Industry Practice Areas
Foreclosure
Bankruptcy
Sales & Evictions
Litigation
Real Estate Closings and REO

Pictured
(L to R) Robyn Katz, Esq.; Marty Stone, Esq.; Carl McGehee, Esq.; Jane Bond, Esq.; and Melody Jones, Esq.

Marty Stone
225 E. Robinson St., Suite 660
Orlando, FL 32801
Phone: 678-281-6500
Fax: 866-244-7960
marty.stone@mrpllc.com
www.mrpllc.com

McCalla Raymer Pierce

ENTERPRISE MEMBER

Florida

State Snapshot

from McCalla Raymer Pierce

JUDICIAL

DEFICIENCY JUDGMENTS
ALLOWED

REDEMPTION PERIOD
NONE. REDEMPTION EXPIRES AT SALE.

Analysis: State of the State

Florida, along with the rest of the nation, continues to recover from the peak of the foreclosure crisis however still remains a top five State for foreclosures. At the end of 2015, one in every 703 homes were in foreclosure, down from one in every 409 units according to data provided by RealtyTrac. The nationwide foreclosure rate is one in every 1,268 U.S. housing units. The current distribution of foreclosures based on the number of active foreclosure homes in Florida is down year over year 24.5% and properties going to foreclosure sale are down 58% from December 2014. Home sales are down 62% from last year and the median sales price of a foreclosure home was $109,100.00 or 29% lower than a non distressed home sale ($153,000.00). Pending Foreclosure Cases in the State of Florida have been reduced to approximately 78,900.00 cases as of September 2015 down from 377,707 in June 2012 according to data provided by the Florida State Court System. The loss of funds to Florida's Court system has resulted in delayed hearing times and the collapse of specific foreclosure divisions in some of the State's largest Counties. The County Clerks have laid off staff members and ministerial functions such as issuance of Certificate of Titles have also been delayed. However, the Courts are continuing to work through the backlog of lingering foreclosures with many cases still active and pending since 2009. Foreclosure starts have been delayed partially due to the Statute of Limitations issue which is currently before the Florida Supreme Court in the case of US Bank v. Bartram.

930 DAYS

Estimated Foreclosure Timeline

CONDITION PRECEDENT

Despite some trial Judges adopting a strict compliance standard for contractual condition precedent, Florida's Second, Third, and Fifth DCAs have adopted a substantial compliance standard. Most recently the opinion in *Bank of New York Mellon, etc. v. Donna D. Johnson*, 5D14-3626 (Fla. 5th DCA Jan. 29, 2016) holds that substantial compliance is the standard as to the terms of paragraph 22 in most residential mortgages and that in the absence of prejudice, the foreclosure should not be denied if the language "bring a court action" is used in the demand letter in lieu of the statement that the borrower can "assert defenses in the foreclosure proceeding". Where the letter omits an entire part of the five part paragraph 22 disclosure as required in the mortgage, prejudice may be assumed. Servicers are cautioned to have counsel review the demand letters prior to filing a foreclosure action to confirm compliance with the condition precedent.

DEFICIENCY JUDGMENTS

As of July 1, 2013, there is a one year post sale limitation on seeking a deficiency judgment. Pursuant to Florida Statute 702.06, deficiency judgment for owner occupied residential property is calculated by using the fair market value on the date of the foreclosure sale. To obtain a deficiency judgment against the borrower after the foreclosure sale, a motion for deficiency must be filed in which the property's market value on the date of the sale is specified and the amount of deficiency is set forth. At the hearing, evidence must be shown that the property value on the sale date was less than the note balance. This may require expert witness testimony. There is a rebuttable presumption that a residential property for which a homestead exemption for taxation was granted according to the certified rolls of the latest assessment by the county property appraiser, before the filing of the foreclosure action, is an owner occupied residential property.

Question Certified to the Florida Supreme Court: Is the provision of written notice of assignment under section 559.715 a condition precedent to the institution of a foreclosure lawsuit by the holder of the note?

FL Consumer Protection Act section 559.715 states, "This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect a debt. The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default." Defense attorneys are successfully arguing this statutory section creates a condition precedent the Plaintiff must comply with before bringing suit. This has become popular as a Motion to Dismiss allegation or as an Affirmative Defense in which some Judges agree and proceed to dismiss the case, deny summary judgment, or rule in favor of Borrowers. In a recent case from the FL Second District Court of Appeals, *Brindise v. U.S. Bank National Association*, a split court affirmed a circuit court decision that a failure to inform Brendan and Suzanne Brindise of the assignment of their Note does not bar the foreclosure action nor does it create a condition precedent. The Court held, "The giving of written notice of the assignment of mortgage loan pursuant to section 559.715 of the Florida Consumer Collection Practices Act is not a condition precedent to filing a mortgage foreclosure suit." The Judges held the statute includes no language holding that a written notice of assignment must precede a foreclosure suit. The opinion states, "the legislature, of course, knows how to create a condition precedent. Because the Legislature declined to be more specific when enacting section 559.715, we will not expand the statute to include language the Legislature did not enact." Due to the number of cases pending with this issue, the Second DCA chose to certify the question to the Supreme Court as one of great public importance: Is the provision of written notice of assignment under section 559.715 a condition precedent to the institution of a foreclosure lawsuit by the holder of the note? This is the first Court of Appeal in FL to address this issue; the Supreme Court will decide whether to accept the certified question to address the issue.

All eyes on Florida case law: Bartram and Beauvais

BARTRAM: Oral argument was held before the FL Supreme Court on November 4, 2015 in this important case regarding how the five year FL Statute of Limitations will apply in mortgage foreclosure cases. Florida's nine Supreme Court Justices heard the arguments of both U.S. Bank and the Bartrams in Tallahassee, FL before ruling in this landmark case. The Justices posed many questions to counsel including, "What does the statute of limitations bar your client from collecting?" and "Does the Borrower get a free house if the statute has run?" The content of the questions and the counsels' responses will be part of the Justices consideration in preparation of a final order in this case. The mortgage industry awaits the decision of the Justices, with predictions indicating the written order will be issued 6-12 months from the oral argument or May-October of 2016.

«FLORIDA STATUTE 559.715. CONTACT OUR EDITORS JANE BOND, ESQ. AND ROBYN KATZ, ESQ. AT JANE.BOND@MRPLLC.COM AND RRK@MRPLLC.COM

BEAUVAIS: On April 13, 2016, Florida's Third District Court of Appeal issued two important and much awaited statute of limitations opinions in regards to mortgage foreclosures in Florida. In the opinion on the en banc rehearing of the 3rd DCA case *Deutsche Bank Trust Co. Americas v. Beauvais,* 40 Fla. L. Weekly D1 (Fla. 3d DCA Dec. 17, 2014), the Appellate Court vacated the initial panel ruling that had held that a mortgagee, which had not taken any affirmative action to decelerate the underlying debt, was barred from refiling a foreclosure action more than five years after the filing date of a prior foreclosure action that had been dismissed without prejudice for failure to attend a case management conference. The 3rd DCA substituted a new opinion holding that a dismissal, with or without prejudice, of a foreclosure action does not bar a subsequent foreclosure action on a later default as long as the subsequent default occurs within five years of the new action. Following the Beauvais opinion, the 3rd DCA in *Collazo v. HSBC Bank USA, N.A.*, rejected a claim that a second foreclosure action filed more than five years after a prior foreclosure action on the same default was time-barred. The Court thereby reversed the final judgment of foreclosure with instructions for the trial court to determine the correct sum of principal and interest due under the note by excluding each monthly installment that came due more than five years prior to the commencement of the second action. Although these two cases provide mortgagees with some much needed clarification as to statute of limitations, the State of Florida awaits the pending Florida Supreme Court ruling in *US Bank v. Beauvais*.

FLORIDA CONTINUED

Kass Shuler, P.A.
CAROLYN RIVERS
1505 N. Florida Avenue
Tampa, FL 33602
Phone: 813-229-0900 ext. 1371
Fax: 813-229-3323
crivers@kasslaw.com
www.kasslaw.com

Kelley Kronenberg, P.A.
ADAM BARNETT
8201 Peters Road, Suite 4000
Fort Lauderdale, FL 33324
Phone: 954-370-9970
abarnett@kelleykronenberg.com
www.kelleykronenberg.com

Marinosci Law Group, P.C.
PHILLIP A. NORMAN
2110 Calumet Avenue
Valparaiso, IN 46383
Phone: 219-462-5104
Fax: 219-548-2307
pnorman@mlg-defaultlaw.com
www.mcs-lawfirm.com
E

McCalla Raymer Pierce, L.L.C.
MARTY STONE
1544 Old Alabama Rd
Roswell, GA 30076
Phone: 678-281-6500
Fax: 770-643-4062
Marty.Stone@mrpllc.com
www.mrpllc.com
E

Robert M. Coplen, P.A.
BOB COPLEN
10225 Ulmerton Road, Suite 5A
Largo, FL 33771
Phone: 727-588-4550 ext 24
Fax: 727-559-0887
bob@coplenlaw.com
www.coplenlaw.com

Robertson Anschutz & Schneid, PL
DAVID J. SCHNEID
6409 Congress Avenue, Suite 100
Boca Raton, FL 33487
Phone: 561-613-0120
Fax: 561-241-6606
djs@rasflaw.com
www.rasflaw.com

Shapiro, Fishman & Gache, LLP
BARRY FISHMAN
2424 N. Federal Highway, Suite 360
Boca Raton, FL 33431
Phone: 561-998-6700
Fax: 561-998-6707
bfishman@logs.com
www.shapiroattorneys.com/fl

SHD Legal Group, P.A.
ROY A. DIAZ
499 NW 70th Avenue
Suite 301
Plantation, FL 33317
Phone: 954-564-2050
Fax: 954-564-9252
rdiaz@shdlegalgroup.com
www.shdlegalgroup.com

Sirote & Permutt PC
KERRY P. MCINERNEY
2311 Highland Avenue South
Birmingham, AL 35205
Phone: 205-930-5197
Fax: 205-930-5101
jpack@sirote.com
www.sirote.com

The Gibson Law Firm, P.A.
AL GIBSON
9858 Clint Moore Rd., C111 #293
Boca Raton, FL 33496
Phone: 561-501-7858
Gibsonlawfirmfl@gmail.com

Padgett Law Group
TIM PADGETT
6267 Old Water Oak Rd, Suite 203
Tallahassee, FL 32312
Phone: 850-422-2520
Fax: 850-422-2567
tp@padgettlaw.net
www.padgettlaw.net

Topouzis & Associates PC
THEODORE A. TOPOUZIS
18851 NE 29th Ave., Suite 700
Aventura, FL 33180
Phone: 855-451-0841
Fax: 401-533-9889
ttopouzis@taclosinglaw.com
www.imperialtitlecompany.com

GEORGIA

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
LINDA FINLEY
Monarch Plaza, Suite 1600
3414 Peachtree Road NE
Atlanta, GA 30326
Phone: 404-589-3408
Fax: 404-238-9608
lfinley@bakerdonelson.com
www.bakerdonelson.com
E

Campbell & Brannon LLC
J. MICHAEL CAMPBELL
5565 Glenridge Connector, Suite 350
Atlanta, GA 30342
Phone: 770-396-8535
Fax: 770-392-0524
mcampbell@campbellandbrannon.com
www.campbellandbrannon.com

Lefkoff, Rubin, Gleason & Russo, P.C.
ANDREW GLEASON
5555 Glenridge Connector, Suite 900
Atlanta, GA 30342
Phone: 404-869-6900
Fax: 404-869-6909
agleason@lrglaw.com
www.lrglaw.com

McCalla Raymer Pierce, L.L.C.
MARTY STONE
1544 Old Alabama Road
Roswell, GA 30076
Phone: 678-281-6500
Fax: 770-643-4062
Marty.Stone@mrpllc.com
www.mrpllc.com
E

Richard B. Maner, P.C.
RICHARD B. MANER
5775 Glenridge Dr Ste D 100
Atlanta, GA 30328
Phone: 404-252-6385
Fax: 404-252-6394
rmaner@rbmlegal.com
www.rbmlegal.com

Shapiro Pendergast & Hasty, LLP
JAMES J. LAROTONDA, JR.
2872 Woodcock Blvd, Suite 100
Atlanta, GA 30341
Phone: 770-220-2535
Fax: 770-220-2978
jlarotonda@logs.com
www.swertfeger.net

The Geheren Firm, P.C.
PATRICK GEHEREN
4828 Ashford Dunwoody Rd
Second Floor
Dunwoody, GA 30338
Phone: 678-587-9500
Fax: 678-587-9098
pgeheren@geherenlaw.com
www.geherenlaw.com

Weissman, Nowack, Curry & Wilco, PC
BRENT WARDROP
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, GA 30326
Phone: 404-926-4500
Fax: 404-926-4700
brentw@wncwlaw.com
www.wncwlaw.com

HAWAII

Leu, Okuda & Doi, Attorneys at Law
LESTER K. M. LEU
222 Merchant Street, Main Floor
Honolulu, HI 96813
Phone: 808-538-1921
Fax: 808-523-9585
lester@leu-okuda.com
www.leu-okuda.com

ILLINOIS

Codilis & Associates, P.C.
ERNEST J. CODILIS JR.
15W030 North Frontage Road
Suite 100
Burr Ridge, IL 60527
Phone: 630-794-5300
Fax: 630-794-9090
ernie.codilis@il.cslegal.com
www.codilis.com

Heavner Beyers Mihlar
JULIE BEYERS
111 East Main Street, Suite 200
Decatur, IL 62523
Phone: 217-422-1719
Fax: 217-422-1754
juliebeyers@hsbatty.com
www.hsbattycom

Johnson, Blumberg & Associates, LLC
KENNETH J. JOHNSON
230 W. Monroe, Suite 1125
Chicago, IL 60606
Phone: 312-541-9710
Fax: 312-541-9711
ken@johnsonblumberg.com
www.johnsonblumberg.com

Kluever & Platt, LLC
MATTHEW ABAD
65 E. Wacker Pl., Suite 2300
Chicago, IL 60601
Phone: 312-236-0077
Fax: 312-236-0514
mabad@klueverplatt.com
www.klueverlpatt.com

McCalla Raymer Pierce, L.L.C.
MARTY STONE
1544 Old Alabama Road
Roswell, GA 30076
Phone: 678-281-6500
Fax: 770-643-4062
Marty.Stone@mrpllc.com
www.mrpllc.com

Noonan & Lieberman, Ltd.
JIM NOONAN
105 W. Adams, Suite 1800
Chicago, IL 60603
Phone: 312-431-1455
Fax: 312-431-1456
jnoonan@noonanandliberman.com
www.noonanandlieberman.com

Shapiro Kreisman & Associates, LLC
AMANDA GREEN
2121 Waukegan Rd., Suite 301
Bannockburn, IL 60015
Phone: 847-770-4223
Fax: 847-291-3434
avgreen@logs.com
www.shapirokreisman-il.com

Weiss McClelland
STEVEN WEISS
105 West Adams Street, Suite 1850
Chicago, IL 60603
Phone: 312-605-3500
Fax: 312-605-3501
sweiss@wmlegal.com

INDIANA

Burke, Costanza & Carberry, L.L.P.
PHILLIP PLUISTER
9191 Broadway
Merrillville, IN 46410
Phone: 219-769-1313
Fax: 219-769-6806
pluister@bcclegal.com
www.bcclegal.com

Doyle & Foutty, P.C.
BEN PADEN
41 E. Washington St. Suite 400
Indianapolis, IN 46204
Phone: 317-264-5000
Fax: 317-624-0390
benpaden@doylelegal.com
www.doylelegal.com

Marinosci Law Group, P.C.
PHILLIP A. NORMAN
2110 Calumet Avenue
Valparaiso, IN 46383
Phone: 219-462-5104
Fax: 219-548-2307
pnorman@mlg-defaultlaw.com
www.mcs-lawfirm.com

IOWA

Klatt, Augustine, Sayer, Treinen & Rastede, PC
BRIAN SAYER
925 E. 4th Street
Waterloo, IA 50703
Phone: 319-234-2530
Fax: 319-232-6341
BSayer@klatt-law.com
www.klatt-law.com

THE Carolinas

Rogers Townsend & Thomas

Speed, efficiency, agility and compliance are words commonly used in the mortgage servicing industry. At Rogers Townsend, we already know that our clients expect top performance from their business partners. We also know that it takes more than buzzwords to deliver the consistent excellence that our clients require of their default servicing legal team, and every detail makes a difference. With attorneys handling matters in North Carolina, South Carolina and St. Thomas, USVI, Rogers Townsend has represented the mortgage industry since 1984 in all areas of default services, title, REO, end-to-end, including complex litigation. Rogers Townsend is equally focused on avoiding foreclosures wherever possible, by rehabilitating the defaulted loans into performing assets, and otherwise mitigating losses. The firm's loss mitigation team was specifically designed to facilitate communications between mortgagors and the mortgage lenders and servicers.

As a full-service firm, we like to think that our approach is a little different. With the constant stream of data, and time lines that are ever-present, we take the time to get to know our clients and what makes them successful. We believe that immersing ourselves in the business is just as important as moving the files. It means we're not just your law firm; we're your resource for information that affects your bottom line. The mortgage industry is vast, with multiple layers of people and processes. Our attorneys do not operate behind the curtain – they are available to the client every step of the way as an ally and advisor. We keep an open dialogue with our clients. We anticipate challenges. We work as team to find resolutions. Speed? That's expected. Let us give you more.

At-A-Glance Stats
Founded: 1984
ALFN membership: 16 years
Headquartered: Columbus, SC

Industry Practice Areas
Foreclosure
Loss Mitigation
Bankruptcy
REO
Litigation

PIctured
(L to R): Robert Davis, Esq.; John Hearn, Esq.; and Michael Spicer, Esq.

John Hearn, Esq.
Department Head, Default Services
220 Executive Center Dr.
Columbia, SC 29210
Phone 803-744-1305
Fax 803-343-7017
John.Hearn@rtt-law.com
www.rtt-law.com

ALFN ATTORNEY/ TRUSTEE MEMBER IN NORTH AND SOUTH CAROLINA

Rogers, Townsend & Thomas

KENTUCKY

Clunk, Paisley & Associates
ANDREW PAISLEY
2360 Chauvin Drive, Suite 204 Lexington, KY 40517-3917
Phone: 330-436-0300
Fax: 330-436-0301
apaisley@clunkpaisley.com
www.johndclunk.com

Nielson & Sherry, P.S.C.
RICHARD M. NIELSON
639 Washington Avenue
Newport, KY 41071
Phone: 859-655-7000
Fax: 859-655-7001
rnielson@nsattorneys.com
www.nsattorneys.com

LOUISIANA

Jackson & McPherson, L.L.C.
CRIS JACKSON
1010 Common Street, Suite 1800
New Orleans, LA 70112
Phone: 504-581-9444
Fax: 504-588-2888
cjackson@jacksonmcpherson.com
www.jacksonmcpherson.com

Kizer, Hood & Morgan, L.L.P.
DON MORGAN
2111 Quail Run Drive
Baton Rouge, LA 70808
Phone: 225-761-0001
Fax: 225-761-0731
dmorgan@khmllp.com
www.khmllp.com

MARYLAND

BP Fisher Law Group, P.L.L.C.
JEFFREY B. FISHER
174 Waterfront Street, Ste 400
Oxon Hill, MD 20745
Phone: 301-599-7700 ext. 101
Fax: 301-599-2100
jfisher@first-legal.com
www.first-legal.com

Brock & Scott, P.L.L.C.
JAMES P. BONNER
5431 Oleander Drive
Wilmington, NC 28403
Phone: 910-392-4988
Fax: 910-392-8597
jim.bonner@brockandscott.com
www.BrockandScott.com

Cohn, Goldberg & Deutsch, L.L.C.
RON DEUTSCH
600 Baltimore Ave., Suite 208
Towson, MD 21204
Phone: 410-296-2550
Fax: 410-296-2558
RDeutsch@cgd-law.com
www.cgd-law.com

MASSACHUSETTS

Harmon Law Offices, P.C.
ANDREW S. HARMON
150 California Street
Newton, MA 02458
Phone: 617-558-8400
Fax: 617-244-7304
aharmon@harmonlaw.com
www.harmonlaw.com

Korde & Associates, PC
JEREMY LIPFORD
900 Chelmsford Street, Suite 3102
Lowell, MA 01851
Phone: 978-256-1500 x5221
jlipford@kordeassoc.com
www.kordeassoc.com

Shechtman Halperin Savage, L.L.P.
JOSEPH A. CAMILLO, JR.
1080 Main Street
Pawtucket, MA 02860
Phone: 401-272-1400
Fax: 401-272-1403
jcamillo@shslawfirm.com
www.shslawfirm.com

MICHIGAN

Potestivo & Associates, P.C.
BRIAN POTESTIVO
811 South Blvd, Ste 100
Rochester Hills, MI 48307
Phone: 248-853-4400
Fax: 248-853-0404
bpotestivo@potestivolaw.com
www.potestivolaw.com

Randall S. Miller & Associates
RANDALL S. MILLER
43252 Woodward Ave, Suite 180
Bloomfield Hills, MI 48302
Phone: 248-335-0800
Fax: 248-335-1335
rmiller@rsmalaw.com
www.rsmalaw.com

Schneiderman & Sherman, P.C.
NEIL R. SHERMAN
23938 Research Drive, Suite 300
Farmington Hills, MI 48335
Phone: 248-539-7400
Fax: 248-539-7401
nsherman@sspclegal.com
www.sspclegal.com

Trott Law, P.C.
JEFF WEISSERMAN
31440 Northwestern Highway
Suite 200
Farmington Hills, MI 48334
Phone: 248-341-4781
Fax: 248-642-4573
jweisserman@trottlaw.com
www.trottlaw.com

MINNESOTA

Peterson, Fram & Bergman, P.A.
MICHAEL T. OBERLE
55 East Fifth Street, Suite 800
St. Paul, MN 55101
Phone: 651-291-8955
Fax: 651-228-1753
moberle@pfb-pa.com
www.pfb-pa.com

Shapiro & Zielke, L.L.P.
LAWRENCE ZIELKE
12550 WEST Frontage Road
Suite 200
Burnsville, MN 55337
Phone: 952-831-4060 x 118
Fax: 952-831-4734
lzielke@logs.com
www.zielkeattorneys.com

Usset, Weingarden & Liebo PLLP
BRIAN LIEBO
4500 Park Glen Road, Suite 300
Minneapolis, MN 55416
Phone: 952-491-7709
Fax: 952-925-5879
brian@uwllaw.com
www.uwllaw.com

MISSISSIPPI

Jauregui & Lindsey, LLC
MICHAEL LINDSEY
244 Inverness Center Drive, Ste 200
Birmingham, AL 35242
Phone: 205-909-6086
Fax: 205-970-3886
mlindsey@jandllawfirm.com
www.jandllawfirm.com

McCalla Raymer Pierce, L.L.C.
MARTY STONE
1544 Old Alabama Rd
Roswell, GA 30076
Phone: 678-281-6500
Fax: 770-643-4062
Marty.Stone@mrpllc.com
www.mrpllc.com

Dean Morris, LLC
EMILY KAYE COURTEAU
2309 Oliver Road
Monroe, LA 71201
Phone: 318-330-9020
Fax: 318-340-7600
ecourteau@ms.creditorlawyers.com
www.creditorlawyers.com

Wilson & Associates, P.L.L.C.
JENNIFER WILSON-HARVEY
1521 Merrill Drive
Little Rock, AR 72211
Phone: 501-219-9388
Fax: 501-219-9458
jwilson@wilson-assoc.com
www.wilson-assoc.com

MISSOURI

Codilis, Stawiarski & Moody, P.C.
JOSEPH J. CIRCELLI
15 W 030 N. Frontage Rd. #200
Burr Ridge, MO 60527
Phone: 630-794-5200
Fax: 630-794-5277
joe.circelli@mo.cslegal.com
www.mo.cslegal.com

Kozeny & McCubbin, L.C.
HOLLY CASELLA
12400 Olive Blvd. Suite 555
St. Louis, MO 63141
Phone: 314-991-0255
Fax: 314-991-6755
hcasella@km-law.com
www.km-law.com

SouthLaw, P.C.
DAN WEST
13160 Foster, Suite 100
Overland Park, KS 66213
Phone: 913-663-7600
Fax: 913-663-7899
dan.west@southlaw.com
www.southlaw.com

MONTANA

Mackoff Kellogg Law Firm
CHARLES J. PETERSON
38 Second Ave East
Dickinson, MT 58601
Phone: 701-227-1841
Fax: 701-227-4739
cpeterson@mackoff.com
www.mackoff.com

NEVADA

Weinstein & Riley, P.S.
DEANNA WESTFALL
6785-4 South Eastern Ave
Las Vegas, NV 89119
Phone: 206-438-1041
Fax: 206-269-3493
DeannaW@w-legal.com
www.w-legal.com

NEW JERSEY

BP Fisher Law Group, P.L.L.C.
JEFFREY B. FISHER
174 Waterfront Street, Ste 400
Oxon Hill, MD 20745
Phone: 301-599-7700 ext. 101
Fax: 301-599-2100
jfisher@first-legal.com
www.first-legal.com

KML Law Group, P.C.
MICHAEL T. MCKEEVER
701 Market Street, Suite 5000
Philadelphia, PA 19106
Phone: 215-825-6303
Fax: 215-825-6403
mmckeever@kmllawgroup.com
www.kmllawgroup.com

Mattleman, Weinroth & Miller
GAYL SPIVAK
401 Route 70 East, Suite 100
Cherry Hill, NJ 08034
Phone: 856-429-5507 ext 326
Fax: 856-964-0156
gspivak@mwm-law.com
www.mwm-law.com

Phelan Hallinan Diamond & Jones, PC
ROSEMARIE DIAMOND
400 Fellowship Road
Mt. Laurel, NJ 08054
Phone: 856-813-5500
Fax: 856-813-5501
rosemarie.diamond@phelanhallinan.com
www.phelanhallinan.com

NEW MEXICO

Rose Little Brand & Associates, PC
TERRI VERRETTE
7430 Washington St.
Albuquerque, NM 87109
Phone: 505-833-3036
Fax: 505-933-3040
terri.verrette@roselbrand.com
www.roselbrand.com

Weinstein & Riley, P.S.
DEANNA WESTFALL
5801 Osuna Rd NE, Suite A103
Albuquerque, NM 87109
Phone: 206-438-1041
Fax: 206-269-3493
DeannaW@w-legal.com
www.w-legal.com

PROFILE

Shechtman Halperin Savage

ALFN ATTORNEY/ TRUSTEE MEMBER IN MASSACHUSETTS

YOUR Partners In Massachusetts

With a standing commitment to excellence, Shechtman Halperin Savage, LLP utilizes its 30 years of mortgage banking expertise to provide lenders and servicers a single-source for foreclosure, bankruptcy, eviction, REO, HOA, compliance and litigation services. As an AV-Rated regional law firm, our exceptional attorneys and staff possess the experience necessary to deliver the highest-quality legal services in an innovative and cost-effective manner. The Default Servicing Practice Group has handled thousands of commercial and consumer foreclosure, bankruptcy, eviction, REO, HOA and litigation matters throughout Massachusetts / New England and regularly services all types of GSE loans including FNMA and FHLMC.

The firm provides partner-level participation at the most critical stages of the servicing process to ensure accurate results and added value to the client. SHS also has an unparalleled litigation department with senior litigators who have practiced for decades handling all types of matters including complex lender defense litigation. The hallmarks of the firm's service philosophy include: enthusiastic analysis of clients' needs; responsiveness consistent with the client's sense of urgency and careful attention to the costs of legal services. Through the combined experience of our attorneys and the utilization of an exceptional professional staff and technology, we provide all of our clients with the experience, depth, and diversity necessary to deliver the highest-quality legal services.

At-A-Glance Stats
Founded: 1979
ALFN membership: 12 years
Headquartered: Pawtucket, RI
AV-Rated
FNMA & FHLMC Approved

Industry Practice Areas
Foreclosure, Bankruptcy Eviction, REO, Title Curative, Loan Closings, Complex Litigation, Loss Mitigation, Collection Actions

Pictured
Joseph A. Camillo, Jr., Esq. (L) and Stephen J. Shechtman, Esq. (R)

Joseph A. Camillo, Jr., Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
Phone (401) 272 1400
Fax (401) 272 1403
jcamillo@shslawfirm.com
www.shslawfirm.com

About Carter Conboy

Carter Conboy is a full-service AV-rated law firm with more than 90 years of experience. We represent a wide-variety of local, national, and world-ranked financial institutions including mortgage services, banks, and credit unions in the areas of foreclosure, bankruptcy, creditors' rights, collection, replevin, loss mitigation, real estate, and defense litigation. We are also a member of ALFA International and are ranked in the U.S. News & World Report, Best Law Firms, Best Lawyers, and Super-Lawyers. Practice areas include: Foreclosure, bankruptcy, creditors' rights, collection, replevin, loss mitigation, real estate, and defense litigation.

Carter Conboy
Attorneys at Law

NY

Contact this Law Firm

Carter, Conboy, Case, Blackmore, Maloney & Laird, P.C.
MICHAEL J. CATALFIMO, ESQ.
20 Corporate Woods Boulevard
Albany, NY 12211
Phone: 518-465-3484
Fax: 518-465-1843
MCatalfimo@CarterConboy.com
www.carterconboy.com

NEW YORK

Carter, Conboy, Case, Blackmore, Maloney & Laird, P.C.
MICHAEL J. CATALFIMO, ESQ.
20 Corporate Woods Boulevard
Albany, NY 12211
Phone: 518-465-3484
Fax: 518-465-1843
MCatalfimo@CarterConboy.com
www.carterconboy.com

Clarfield Okon Salomone & Pincus, P.L.
ASHA SHRAVAH
425 RXR Plaza
Uniondale, NY 11556
Phone: 516-699-8902 x2154
Fax: 516-279-6990
ashravah@cosplaw.com
www.cosplaw.com

Davidson Fink LLP
ROBERT L. GALBRAITH, JR.
28 East Main Street, Suite 1700
Rochester, NY 14614
Phone: 585-546-6448
Fax: 585-758-5084
rgalbraith@davidsonfink.com
www.davidsonfink.com

Fein Such Law Group
ALAN F. SUCH
7 Century Drive
Parsippany, NY 07054
Phone: 973-538-4700
Fax: 973-538-9917
afs@feinsuch.com
www.feinsuch.com

Knuckles, Komosinski & Elliott, LLP
MARK R. KNUCKLES
565 Taxter Road, Suite 590
Elmsford, NY 10523
Phone: 914-345-3020
Fax: 914-366-0080
mrk@kkselaw.com
www.kkelawfirm.com

Kozeny, McCubbin & Katz, LLP
JORDAN KATZ
40 Marcus Drive, Suite 200
Melville, NY 11747
Phone: 631-454-8059
Fax: 631-454-8169
jkatz@katz-law.com
www.katz-law.com

Rosicki, Rosicki & Associates, P.C.
CYNTHIA ROSICKI, ESQ.
51 East Bethpage Road
Plainview, NY 11803
Phone: 516-741-2585
Fax: 516-741-2589
Crosicki@rosicki.com
www.rosicki.com

Schiller, Knapp, Lefkowitz & Hertzel
WILLIAM B. SCHILLER
9050 New Loudon Road
Latham, NY 12110
Phone: 518-786-9096
wschiller@schillerknapp.com
www.schillerknapp.com

Shapiro, Dicaro & Barak, LLC
JOHN DICARO
250 Mile Crossing Blvd., Suite 1
Rochester, NY 14624
Phone: 585-247-9000
jdicaro@logs.com
www.shapirodicarobarak.com

Sheldon May & Associates, P.C.
TED ERIC MAY
255 Merrick Road
Rockville Centre, NY 11570
Phone: 516-763-3200
Fax: 516-763-3243
ted.may@maylawfirm.com
www.maylawfirm.com

Woods Oviatt Gilman LLP
NATALIE A. GRIGG
700 Crossroads Bldg, 2 State St
Rochester, NY 14614
Phone: 585-362-4521
Fax: 585-362-4521
ngrigg@woodsoviatt.com
www.woodsoviattgilman.com

NORTH CAROLINA

Brock & Scott, P.L.L.C.
JAMES P. BONNER
5431 Oleander Drive
Wilmington, NC 28403
Phone: 910-392-4988
Fax: 910-392-8597
jim.bonner@brockandscott.com
www.BrockandScott.com

Hutchens Law Firm
JANE OVERBECK
4317 Ramsey Street
Fayetteville, NC 28311
Phone: 910-864-6888
Jane.Overbeck@hutchenslawfirm.com
www.hutchenslawfirm.com
www.hutchenslawfirm.com

Rogers Townsend & Thomas, PC
JOHN HEARN
220 Executive Center Dr.
Columbia, SC 29210
Phone: 803-744-1305
Fax: 803-343-7017
JOHN.HEARN@rtt-law.com
www.rtt-law.com

Shapiro & Ingle, L.L.P.
GRADY INGLE
10130 Perimeter Parkway, Suite 400
Charlotte, NC 28216
Phone: 704-831-2217
Fax: 704-831-3217
gingle@logs.com
www.shapiroattorneys.com/nc

NORTH DAKOTA

Mackoff Kellogg Law Firm
CHARLES PETERSON
38 Second Ave East
Dickinson, ND 58601
Phone: 701-227-1841
Fax: 701-227-4739
cpeterson@mackoff.com
www.mackoff.com

OHIO

Carlisle, McNellie, Rini, Kramer & Ulrich Co., LPA
HERBERT J. KRAMER
24755 Chagrin Blvd., Suite 200
Cleveland, OH 44122
Phone: 216-360-7200
Fax: 216-360-7210
hjkramer@carlisle-law.com
www.carlisle-law.com

About The Law Offices of John D. Clunk, LPA

The Law Offices of John D. Clunk Co., LPA provides the most complete creditor representation available, managing the legalities of every type of real estate transaction, including foreclosure, bankruptcy, title resolution, litigation, evictions and loss mitigation. We offer mortgage lenders an unprecedented resource for single source solutions. Omega Title Agency (affiliated JDC company) is dedicated to title, curative matters and closings.

OH

Contact this Law Firm

Law Offices of John D. Clunk Co., LPA
JOHN CLUNK
4500 Courthouse Blvd.
Stow, OH 44224
Phone: 330-436-0300
Fax: 330-436-0301
johnc@johndclunk.com
www.johndclunk.com

Look West

With Weinstein & Riley

Weinstein & Riley, P.S., was founded as a litigation, bankruptcy and creditors' rights firm in 1991. The firm's commitment to technology has made it a leader in investor and servicer communication. The firm's founders have represented institutional and individual creditor clients for over 30 years. We provide every client personalized service to meet their financial goals.

As a member of the legal community, we emphasize good relationships with attorneys locally and nationally. We believe in a collaborative approach to providing excellent, expert service. By participating in legal education forums, the firm shares its knowledge and learns from other practitioners. The firm's attorneys write and edit publications for state bar associations as well as national publishers.

Weinstein & Riley, P.S., has extensive state and federal court litigation experience as well as an active compliance group. Our bankruptcy group delivers national bankruptcy services to our creditor clients on both secured and unsecured assets. Additionally, the firm provides GSE authorized services in eight states. Our attorneys have the training and expertise to handle any matter quickly and efficiently and within investor timelines. The firm's litigation group provides representation in complex litigation, avoiding the need for our clients to move files to new counsel once they become contested.

At-A-Glance Stats
Founded: 1991
ALFN membership: 1 year
Headquartered: Seattle, WA

Industry Practice Areas
Foreclosure
Bankruptcy
REO and Evictions
Real Estate Litigation
Title Curative

Pictured: (L to R)
Jason Bousliman, Esq.;
Charles Kennon III, Esq.;
Deanna Westfall, Esq.;
Daniel Ross, Esq.

Daniel Ross
Managing Director
2001 Western Avenue, Suite 400
Seattle, WA 98121
Phone: 206-438-1073
Fax:206-269-3493
DanielR@W-Legal.com
www.w-legal.com


Weinstein &
Riley
ENTERPRISE
MEMBER

OHIO CONTINUED

Felty & Lembright Co., L.P.A.
KRISS D. FELTY
1001 Lakeside Avenue, Suite 1300
Cleveland, OH 44114
Phone: 216-588-1500
Fax: 216-771-4334
kfelty@feltyandlembright.com
www.feltyandlembright.com

Gerner & Kearns, Co., L.P.A.
DAVID E. GERNER
215 West Ninth Street
Cincinnati, OH 45202
Phone: 513-382-6565
Fax: 859-292-5400
dgerner@gernerlaw.com
www.gernerlaw.com

Keith D. Weiner & Associates Co., L.P.A.
KIM M. HAMMOND
75 Public Square, 4th floor
Cleveland, OH 44113
Phone: 216-771-6500
Fax: 216-771-6540
khammond@weinerlaw.com
www.weinerlaw.com

Laurito & Laurito, L.L.C.
ERIN M. LAURITO
7550 Paragon Road
Dayton, OH 45459
Phone: 937-743-4878
Fax: 937-743-4877
elaurito@lauritolaw.com
www.lauritolaw.com

Law Offices of John D. Clunk Co., LPA
JOHN CLUNK
4500 Courthouse Blvd.
Stow, OH 44224
Phone: 330-436-0300
Fax: 330-436-0301
johnc@johndclunk.com
www.johndclunk.com

Manley Deas Kochalski, L.L.C.
TED MANLEY
P.O. Box 165028
Columbus, OH 43216-5028
Phone: 614-220-5611
Fax: 614-220-5613
TKM@mdk-llc.com
www.mdk-llc.com

Reimer, Arnovitz, Chernek & Jeffrey Co., L.P.A.
MIKE ARNOVITZ
2450 Edison Blvd.
Twinsburg, OH 44087
Phone: 330-425-4201
Fax: 330-405-1074
marnovitz@reimerlaw.com
www.reimerlaw.com

Sandhu Law Group
MANBIR SANDHU
1213 Prospect Avenue
Cleveland, OH 44115
Phone: 216-373-5530
Fax: 216-373-1002
msandhu@sandhu-law.com
www.Sandhu-law.com

Shapiro, Van Ess, Phillips and Barragate, LLP
CHRISTOPHER PHILLIPS
4805 Montgomery Road, Suite 320
Norwood, OH 45212
Phone: 513-396-8100
Fax: 847-627-8805
cphillips@logs.com
www.svpblaw.com

Weltman, Weinberg & Reis Co., L.P.A.
BRADY LIGHTHALL
965 Keynote Circle
Brooklyn Heights, OH 44131
Phone: 513-723-6082
Fax: 513-723-2239
blighthall@weltman.com
www.realestatedefaultgroup.com

OKLAHOMA

Baer & Timberlake, PC
SALLY GARRISON
4200 Perimeter Center Pl # 100,
Oklahoma City, OK 73112
Phone: 405-842-7722 x 263
Fax: 405-848-9349
sally@baer-timberlake.com

PENNSYLVANIA

KML Law Group, P.C.
MICHAEL T. MCKEEVER
701 Market Street, Suite 5000
Philadelphia, PA 19106
Phone: 215-825-6303
Fax: 215-825-6403
mmckeever@kmllawgroup.com
www.kmllawgroup.com

McCabe, Weisberg & Conway, P.C.
TERRENCE MCCABE
123 South Broad Street, Suite 2080
Philadelphia, PA 19109
Phone: 215-790-1010
Fax: 215-790-1274
tmccabe@mwc-law.com
www.mwc-law.com

Phelan Hallinan Diamond & Jones, LLP
ROSEMARIE DIAMOND
400 Fellowship Road
Mt. Laurel, NJ 08054
Phone: 215-563-7000
Fax: 215-563-5534
rosemarie.diamond@phelanhallinan.com
www.phelanhallinan.com

Purcell Krug & Haller
LEON P. HALLER
1719 N Front St
Harrisburg, PA 17102
Phone: 717-234-4178
Fax: 717-233-1149
lhaller@pkh.com
www.pkh.com

Richard M. Squire & Associates, LLC
PATRICIA SHAW
115 W Ave # 104
Jenkintown, PA 19046
Phone: 215-886-8790
Fax: 215-886-8791
pshaw@squirelaw.com
www.squirelaw.com

Shapiro & DeNardo, LLC
CHRISTOPHER A. DENARDO
3600 Horizon Dr., Suite 150
King of Prussia, PA 19406

Phone: 610-278-6800
Fax: 610-278-9980
cdenardo@logs.com
www.shapiroattorneys.com/pa

Stern & Eisenberg, LLP
STEVE EISENBERG
1581 Main Street Suite 200
The Shoppes at Valley Square
Warrington, PA 18976
Phone: 215-572-8111
Fax: 215-572-5025
seisenberg@sterneisenberg.com
www.sternеisenberg.com

Udren Law Offices, P.C.
MARK UDREN
111 Woodcrest Road
Cherry Hill, NJ 08003
Phone: 856-669-5400
Fax: 856-669-5399
mjudren@udren.com
www.udren.com

PUERTO RICO

Gladstone Law Group, P.A.
ANDREA TROMBERG
1499 West Palmetto Park Road, Suite 300
Boca Raton, FL 33486
Phone: 561-338-4101
Fax: 561-338-4077
atromberg@gladstonelawgroup.com
www.gladstonelawgroup.com

Millennium Partners
MARISOL MORALES
21500 Biscayne Boulevard, Ste. 600
Aventura, FL 33180
Phone: 305-698-5839
Fax: 305-698-5840
marisol.morales@millenniumpartners.net
www.millenniumpartners.net

SOUTH CAROLINA

Riley Pope & Laney, LLC
T. LOWNDES POPE
2838 Devine Street
Columbia, SC 29205
Phone: 803-799-9993
Fax: 803-239-1414
lpope@rplfirm.com
www.rplfirm.com

About Baker Donelson

Offering decades of experience, we work closely with lending and servicing clients to find creative, cost- and time-effective solutions. We manage large portfolios of litigation and are known for our ability to quickly resolve complicated legal issues and return loans to performing status. Recognizing today's industry climate, we develop strategies to resolve disputes and minimize exposure. With our 80+ lawyers across 19 southeastern offices, our attorneys know the courts, the issues, and the opposition. Baker Donelson is an ALFN Enterprise member in the District of Columbia, Florida, Georgia and Tennesse. The firm also operates in Alabama, Mississippi and Texas.

BAKER DONELSON

TN GA FL DC

Contact this Law Firm

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
LINDA FINLEY
Monarch Plaza, Suite 1600
3414 Peachtree Road NE
Atlanta, GA 30326
Phone: 404-589-3408
Fax: 404-238-9608
lfinley@bakerdonelson.com
www.bakerdonelson.com

Rogers Townsend & Thomas, PC
JOHN HEARN
220 Executive Center Dr.
Columbia, SC 29210
Phone: 803-744-1305
Fax: 803-343-7017
JOHN.HEARN@rtt-law.com
www.rtt-law.com

SOUTH DAKOTA

Mackoff Kellogg Law Firm
CHARLES PETERSON
38 Second Ave East
Dickinson, SD 58601
Phone: 701-227-1841
Fax: 701-227-4739
cpeterson@mackoff.com
www.mackoff.com

E

TENNESSEE

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
LINDA FINLEY
Monarch Plaza, Suite 1600
3414 Peachtree Road NE
Atlanta, GA 30326
Phone: 404-589-3408
Fax: 404-238-9608
lfinley@bakerdonelson.com
www.bakerdonelson.com

E

New York

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Woods Oviatt Gilman is a full-service law firm with a national and worldwide reach from our headquarters in Rochester, NY with offices in Buffalo, NY and Phoenix, AZ, and our colleagues in the Meritas global alliance. We represent a broad spectrum of clients, from publicly traded corporations and financial institutions to family-owned businesses and private individuals; from high-technology and industrial enterprises to construction firms; from real estate developers to educational institutions and charities.

Woods Oviatt Gilman has represented institutional and private lenders and servicers in residential and commercial foreclosure matters throughout New York State for over 25 years. Our team of attorneys and staff has extensive experience in judicial foreclosures, loss mitigation, mediations, litigation, title curative, bankruptcy, eviction, and REO matters.

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ALFN membership: 2 years
Headquartered: Rochester, NY
Member: Meritas Global Alliance

Industry Practice Areas
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Bankruptcy
Evictions
REO

Pictured
(L to R)
James P. Pronti, Esq.,
and Natalie A. Grigg, Esq.,

Natalie A. Grigg, Esq.
2 State Street
700 Crossroads Building
Rochester, NY 14614
Phone: 585-362-4521
Fax: 585-362-4621
ngrigg@woodsoviatt.com
www.woodsoviattgilman.com

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TENNESSEE CONTINUED

Brock & Scott, P.L.L.C.
JAMES P. BONNER
5431 Oleander Drive
Wilmington, NC 28403
Phone: 910-392-4988
Fax: 910-392-8597
jim.bonner@brockandscott.com
www.BrockandScott.com
E

Mackie Wolf Zientz & Mann, P.C.
KELLER MACKIE
14160 N. Dallas Parkway, Ste. 900
Dallas, TX 75254
Phone: 214-635-2650
Fax: 214-635-2686
kmackie@mwzlawfirm.com
www.mwzlawfirm.com
E

Rubin Lublin, LLC
GLEN RUBIN
3145 Avalon Ridge Place, Suite 100
Peachtree Corners, GA 30071
Phone: 770-246-3301
Fax: 404-601-5846
grubin@rubinlublin.com
www.rubinlublin.com

Wilson & Associates, P.L.L.C.
JENNIFER WILSON-HARVEY
1521 Merrill Drive
Little Rock, AR 72211
Phone: 501-219-9388
Fax: 501-219-9458
jwilson@wilson-assoc.com
www.wilson-assoc.com
E

TEXAS

Angel L. Reyes and Associates, P.C.
BRET ALLEN
5950 Berkshire Lane Ste 410
Dallas, TX 75225
Phone: 214-526-7900
Fax: 214-526-7910
bret@reyeslaw.com
www.angelreyesandassociates.com

Barrett Daffin Frappier Turner & Engel, LLP
JAY FRAPPIER
15000 Surveyor Blvd.
Addison, TX 75001
Phone: 972-341-0572
Fax: 972-386-7673
jamesf@bbwcdf.com
www.bbwcdf.com

Buckley Madole, P.C.
LARRY BUCKLEY
14841 Dallas Parkway, Suite 425
Dallas, TX 75254
Phone: 972-643-6744
Fax: 214-550-4117
Larry.Buckley@BuckleyMadole.com
www.buckleymadole.com

Codilis & Stawiarski, P.C.
MARY SPEIDEL
650 North Sam Houston Pkwy East
Houston, TX 77060
Phone: 281-925-5270
Fax: 281-925-5300
mary.speidel@tx.cslegal.com
www.tx.cslegal.com
E

Hughes Watters Askanase
CAROLYN TAYLOR
333 Clay, 29th Floor
Houston, TX 77002
Phone: 713-759-0818
Fax: 713-759-6834
ctaylor@hwa.com
www.hwa.com

Law Office of Michael J. Schroeder
MICHAEL J. SCHROEDER
3610 North Josey Lane, Suite 206
Carrollton, TX 75007
Phone: 972-394-3086
Fax: 972-394-1263
mike@lawmjs.com
www.lawmjs.com

Mackie Wolf Zientz & Mann, P.C.
KELLER MACKIE
14160 N. Dallas Parkway, Ste. 900
Dallas, TX 75254
Phone: 214-635-2650
Fax: 214-635-2686
kmackie@mwzlawfirm.com
www.mwzlawfirm.com
E

Marinosci Law Group, P.C.
PHILLIP A. NORMAN
2110 Calumet Avenue
Valparaiso, IN 46383
Phone: 219-462-5104
Fax: 219-548-2307
pnorman@mlg-defaultlaw.com
www.mcs-lawfirm.com
E

Strasburger & Price LLP
DEBRA INNOCENTI
2301 Broadway
San Antonio, TX 78215
Phone: 210-250-6127
Fax: 210-258-2734
debra.innocenti@strasburger.com
www.strasburger.com

UTAH

Scalley Reading Bates Hansen & Rasmussen, P.C.
MARLON BATES
15 West South Temple, Suite 600
Salt Lake City, UT 84101
Phone: 801-531-7870
Fax: 801-531-7968
marlon@scalleyreading.net
www.scalleyreading.com

VIRGINIA

Glasser & Glasser, P.L.C.
MICHAEL GLASSER
580 E. Main St., Suite 600
Norfolk, VA 23510
Phone: 757-625-6787
Fax: 757-625-5959
michael@glasserlaw.com
www.glasserlaw.com

Rosenberg & Associates, LLC
DIANE ROSENBERG
7910 Woodmont Avenue, Suite 750
Bethesda, MD 20814
Phone: 301-907-8000
Fax: 301-907-8101
diane@rosenberg-assoc.com
www.rosenberg-assoc.com

Sykes, Bourdon, Ahern & Levy PC
JON AHERN
281 Independence Blvd., 5th Floor
Virginia Beach, VA 23462
Phone: 757-499-8971
Fax: 757-456-5445
jfink@sykesbourdon.com
www.sykesbourdon.com

The Hunoval Law Firm, PLLC
MATT HUNOVAL
501 Minuet Lane, Suite 104 A
Charlotte, NC 28217
Phone: 877-399-7114
Fax: 704-612-4872
info@hunovallaw.com
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WASHINGTON

RCO Legal, P.S.
TAWNYA MIN
1355 SE 36th St., Suite 300
Bellevue, WA 98006
Phone: 425-445-6488
tmin@rcolegal.com
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Robinson Tait, P.S.
JENNIFER TAIT
710 2nd Avenue, Suite 710
Seattle, WA 98104
Phone: 206-676-9642
Fax: 206-676-9659
jtait@robinsontait.com
www.robinsontait.com

Weinstein & Riley, P.S.
DEANNA WESTFALL
5801 Osuna Rd NE, Suite A103
Albuquerque, NM 87109
Phone: 206-438-1041
Fax: 206-269-3493
DeannaW@w-legal.com
www.w-legal.com

WEST VIRGINIA

Golden & Amos, P.L.L.C.
R. VANCE GOLDEN, III
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vgolden@goldenamos.com
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Phone: 414-228-6700
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shawn@basmog.com
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DUNCAN DELHEY
16345 West Glendale Drive
New Berlin, WI 53151
Phone: 414-224-8404
Fax: 414-224-1279
ddelhey@gray-law.com
www.gray-law.com

J Peterman Legal Group LTD.
JIM PETERMAN
13700 W. Greenfield Ave.
Brookfield, WI 53005
Phone: 262-790-5719
Fax:262-790-5721
jim@jplegalgroup.com
www.jpetermanlegalgroup.com

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JANINE COLLETTE, ESQ.
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Milwaukee, WI 53212
Phone: 414-962-5110
Fax: 414-962-8725
mflannery@kmksc.com
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O'Dess and Associates, SC
M. ABIGAIL O'DESS
1414 Underwood Avenue, Suite 403
Wauwatosa, WI 53213
Phone: 414-727-1591
Fax: 414-727-1590
ckowalewski@odesslaw.com
www.odesslaw.com

New York State Snapshot from Woods Oviatt

JUDICIAL

DEFICIENCY JUDGMENTS
ALLOWED

REDEMPTION PERIOD
NONE

Analysis: State of the State

According to RealtyTrac, 1 in every 1472 units had a foreclosure filing as of May 2015, which is estimated to be 16% higher than the number of filings a year prior. As expected, the heaviest number of filings are in the downstate area. The issue of zombie foreclosures remains ever present within New York. While the national average has seen a decrease, New York has seen an increase of approximately 54% in areas such as Albany, Poughkeepsie, and the NY Metro area. Meanwhile, the courts continue to be backlogged in moving foreclosure actions towards sale. According to a recent report from the New York State Department of Financial Services, there continues to be a delay for both scheduling and completing the mandatory settlement conference process, with the entire process taking approximately 9 months. The longest delay in the process occurs between the release from settlement conference to the entry of the Judgment of Foreclosure and Sale, with the downstate courts taking on average 430 days and Upstate Courts taking on average 343 days.

934 DAYS

*Estimated New York State Foreclosure Timeline

REDACTION OF DOCUMENTS

22 NYCRR Section 202.5(e) was adopted, which requires attorneys to omit or redact certain confidential personal information from court filings in Supreme and County Court. The rule became effective January 1, 2015, though compliance was voluntary through February 28, 2015 and mandatory thereafter. The rule defines confidential personal information to include such information as taxpayer identification numbers, date of birth, full name of an individual known to be a minor, and financial accounting numbers, except the last four digits thereof.

DEBT COLLECTION REQUIREMENTS

Effective February 14, 2015, 23 NYCRR 1 was amended to address Debt Collection by Third-Party Debt Collectors and Debt Buyers. Included within this new provision is the requirement that a debt collector must maintain reasonable procedures for determining the Statute of Limitations applicable to a debt and whether such State of Limitations has expired. As part of this requirement, Debt Collectors who know or have reason to know that a Statute of Limitations may be expired must send a clear and conspicuous notice to the consumer before it accepts a payment on the debt.

THE SOL EVAL

1. Review dismissal orders and the reason for the dismissal. If the dismissal was for lack of standing, then the debt was never accelerated and remains on a monthly installment default.

2. Review restart reasons for the same standing issues. If an action needed to be restarted because it was commenced in the wrong plaintiff name, the loan was not properly accelerated as the prior entity would not have had the ability to do so.

3. Review whether the action voluntarily discontinued during the 6 year time frame and if the discontinuance constitutes a deacceleration.

Contact our Editor Natalie Grigg, Esq.
at ngrigg@woodsoviatt.com

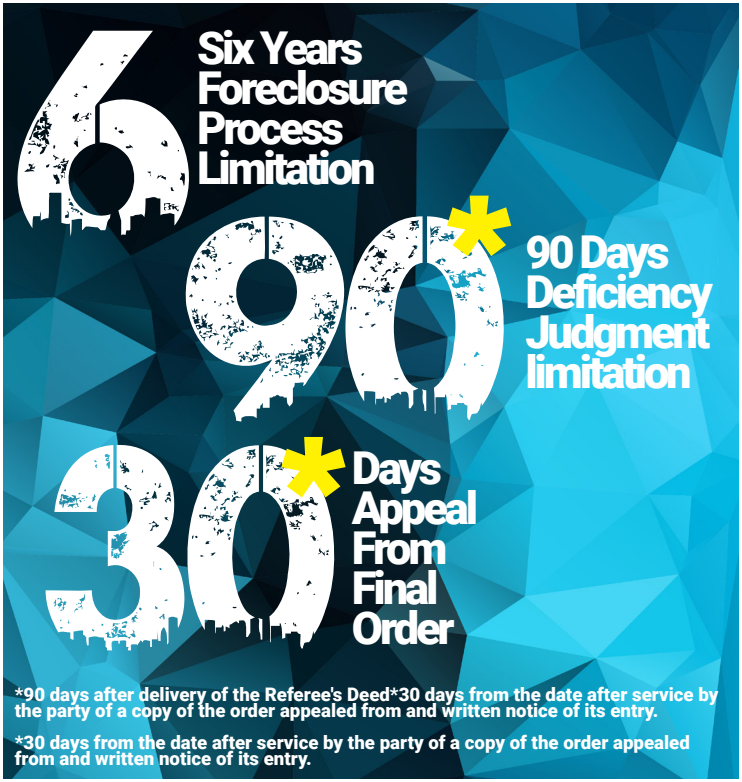
Keep your eye on the New York Case Law

AURORA LOAN SERVICES V. TAYLOR

Aurora Loan Services, LLC v. Taylor – On June 11, 2015, the Court of Appeals of New York issued a decision regarding standing to commence a foreclosure action. There, the Court held that the Plaintiff had standing to commence the note as evidenced by an Affidavit of one of its employees submitted in support of Plaintiff's Motion for Summary judgment, which set forth that the Plaintiff was in possession of the Note on a date prior to the commencement of the action and had not transferred the Note to any other person or entity. The Court stated that while a better practice would have been for the Plaintiff to state how it came into possession of the note, the representative's statements that she examined the original note personally and set forth the adjustable rate note attachments sufficiently demonstrated the notes chain of ownership.

LEGISLATION

For a second year in a row, the New York Attorney General proposed the Abandoned Neighborhood Relief Act, with the intention to address the growing number of vacant and abandoned residential properties by creating statewide registry for the properties and imposing a duty on mortagees and their loan servicing agents to identify, report, and maintain the properties earlier than what is currently imposed by existing law. The proposed legislation did not receive any votes during the past legislative session.



Hot in New York: Statute of Limitations

Currently, Staute of Limitations is a hot topic item in New York given the court delay in processing foreclosure actions. With respect to NY foreclosure actions, the Statue of Limitations begins to run six years from the due date for each unpaid installment, or the time the mortgagee is entitled to demand full payment, or when the mortgage has been accelerated by a demand or an action is brough. Importantly, if dealing with the situation where the Statute of Limitations is running on the monthly default, a Servicer can still commence a foreclosure on the monthly defaults that are within the six year time frame and is merely precluded from collecting on the monthly installments (principal and interest) outisde of the six years. However, once a mortgage debt is accelerated, the entire amount is due and the Statute of Limitations begins to run on the entire debt. Once accelerated, the loan can be deaccelerated with the six year time limitation by a servicer taking an affirmative action revoking or withdrawing the acceleration. **« New York CPLR 213**

4. Review for any tolling of time due to court orders and/or Bankruptcy filings.

5. Review for prior loan modifications or loss mitigation options that may have renewed the Statute.

6. Review for any affirmative act of deacceleration.

7. Review if a dismissal was with prejudice – if so, a new action may be able to commenced on a new default.

8. Review whether the loan is federal owned/insured as in New York, courts have recognized that state statutes of limitations do not apply to Federal Agencies or their assignees.

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www.crfservices.com

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contactus@mcs360.com
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500 Grapevine Hwy, Suite 400
Hurst, TX 76054
Phone: 800-346-2432 ext 4432
Fax: 800-428-0055
toni.bramley@msionline.com
www.msionline.com

National Field Representatives, Inc.
MARGIE SCHAGEN
136 Maple Avenue
Claremont, NH 03743
Phone: 800-639-2151 x2220
Fax: 603-543-1818
mschagen@nfronline.com
www.NFROnline.com

REO Nationwide Inc.
CJ GEHLKE
377 E. Coast Highway Suite 250
Newport Beach, CA 92660
Phone: 888-700-0868 X326
Fax: 888-700-0868
info@reonationwide.com
www.reonationwide.com

Safeguard Properties
ALAN JAFFA
7887 Safeguard Circle
Valley View, OH 44125
Phone: 800-852-8306
Fax: 216-739-2709
alan.jaffa@safeguardproperties.com
www.safeguardproperties.com

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Phone: 714-250-7417
Fax: 714-287-1316
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LenderLive Network, Inc.
DEB CARLILE
710 South Ash Street, Suite 200
Glendale, CO 80246
Phone: 303-715-2714
Fax: 877-516-8699
deb.carlile@lenderlive.com
www.lenderlive.com

Liberty Title & Escrow Company
JENNIFER L. CASALE
275 West Natick Road
Warwick, RI 02886
Phone: 401-751-8090
Fax: 401-541-3803
jcasale@libtitle.com
www.libtitle.com

About Omega Title Agency

Omega Title Agency, LLC was started in 1999, The Law Offices of John D. Clunk and Omega Title Agency, LLC provide the most complete creditor representation available anywhere, managing the legal aspects of every type of real estate transaction, from bankruptcy and foreclosure to win-win loss mitigation. Omega Title Agency, LLC, an affiliated JDC company, is dedicated to providing the highest quality search which streamlines the handling of your real estate closing. Together, JDC has a decided advantage over other law firms in completing the foreclosure and REO process.

OMEGA TITLE AGENCY, LLC

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Contact this Member

Omega Title Agency
DANNY CLUNK
4500 Courthouse Blvd #100
Stow, OH 44224
330-436-6700 x 4401
Phone: 330-436-6650
Fax: 855-577-5729
dclunk@omegatitlellc.com
www.omegatitlellc.com

Omega Title Agency, LLC
DANNY CLUNK
4500 Courthouse Blvd, Suite 100
Stow, OH 44224
Phone: 330-436-6650
Fax: 855-577-5729
dclunk@omegatitlellc.com
www.omegatitlellc.com

ServiceLink, A Black Knight Financial Company
MARCO BRENES
250 Commerce, 2nd Floor
Irvine, CA 92602
Phone: 949-307-2831
marco.brenes@servicelinkfnf.com
www.servicelinkfnf.com

Titleology, Inc.
JAY JACOBS
4100 Midway Road, Suite 1040
Carrollton, TX 75007
Phone: 469-208-0403
jay.jacobs@ titleology.com
www.titleology.com

Dimont Acquisitions Inc
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Attorneys On Demand
CLIFF UMANS
23801 Calabasas Road, Suite 102
Calabasas, CA 91302
Phone: 888-545-5775
Fax: 818-591-5854
cliff@attorneysondemand.net
www.attorneysondemand.net

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Shea Barclay Group
VERN BARCLAY
100 N. Tampa St., Suite 3530
Tampa, FL 33602
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6055 E. Washington Blvd., Suite 290
Los Angeles, CA 90040
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Steve@appearanywhere.com
www.AppearAnywhere.com

Firefly Legal
JENNIFER K. DLUGOLECKI
19150 S. 88th Ave.
Mokena, IL 60448
Phone: 631-764-5057
Fax: 708-478-5405
Jennifer.Dlugolecki@fireflylegal.com
www.fireflylegal.com

Firm Solutions, LLC
HARRISON TROPP
4002 West State St., Suite 200
Tampa, FL 33609
Phone: 813-397-1463
Fax: 813-333-7445
htropp@firmsolutions.us
www.firmsolutions.us

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Contact this Member

assure360
ADAM HANSEN
3000 Kellway Drive Suite 110
Carrollton, TX 75006
Phone: 847-770-4226
Fax: 847-627-4796
adam.hansen@assure360.com
www.assure360.com

MyMotionCalendar.com
JONATHAN BRODER
3363 West Commercial Blvd
Suite 115
Ft. Lauderdale, FL 33309
Phone: 1-877-670-6776
Fax: 305-402-3744
jbroder@mymotioncalendar.com
www.mymotioncalendar.com

National Bankruptcy Services, LLC
LARRY BUCKLEY
14841 Dallas Parkway, Suite 300
Dallas, TX 75254
Phone: 972-643-6744
Fax: 972-643-6699
LBuckley@NBSDefaultServices.com
www. nbsdefaultservices.com

National Business Institute (NBI, Inc.)
LYNNDA PETERSON
1218 McCanne Drive
Altoona, WI 54720
Phone: 800-777-8707 ext 2326
Fax: 715-835-1405
lynnda.peterson@nbi-sems.com
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PrintCOR Solutions
TED KOHN
826 Heatherhaven Dr.
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Phone: 636-891-9900
Fax: 636-891-0204
customerservice@printcorsolutions.com-
www.printcorsolutions.com

ProVest, L.L.C.
VIC DRAPER
4520 Seedling Circle
Tampa, FL 33614
Phone: 813-877-2844 ext. 1424
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vdraper@provest.us
www.provest.us

Servicing Management
VANESSA WILLIAMS
100 Willenbrock Road
Oxford, CT 06478
Phone: 203-262-4670, ext. 233
Fax: 972-495-2546
williams@zackin.com
www.sm-online.com

WALZ Group
MATT JOHNSON
27398 Via Industria
Temecula, CA 92590
Phone: 951-491-6800
Fax: 951-491-6599
mjohnson@walzgroup.com
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Debbie Foster
11370 66th Street North, Suite 132
Largo, FL 33773
Phone: 727-544-5400
Fax: 866-478-6510
dfoster@affinityconsulting.com

Nexus Consulting Consortium LC
PAUL KOOIMA
1456 3rd Ave SE Suite 100
Sioux Center, IA 51250
Phone: 314-821-8424
Fax: 314-821-8424
pkooima@nexus-cc.com
www.nexus-cc.com

Shea Barclay Group
VERN BARCLAY
100 N. Tampa St., Suite 3530
Tampa, FL 33602
Phone: 813-251-2585
Fax: 813-251-2585
Vbarclay@sheabarclay.com
www.sheabarclay.com

TECHNOLOGY PROFESSIONALS

assure360
ADAM HANSEN
3000 Kellway Drive Suite 110
Carrollton, TX 75006
Phone: 847-770-4226
Fax: 847-627-4796
adam.hansen@assure360.com
www.assure360.com

CaseMax
KEVIN TONOVITZ
6363 College Blvd., Suite 100
Overland Park, KS 66211
Phone: 913-663-7645
kevin.tonovitz@casemax.com
www.casemax.com

KMC Information Systems, L.C.
DANIEL CANNON
101 W. Argonne Dr, Suite 261
St. Louis, MO 63122
Phone: 314-961-9587
Fax: 314-961-9587
cannondr@kmcis.com
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NetDirector
HARRY BEISSWENGER
10951 Countryway Blvd., Suite 102
Tampa, FL 33626
Phone: 813-774-4797
Fax: 813-749-7130
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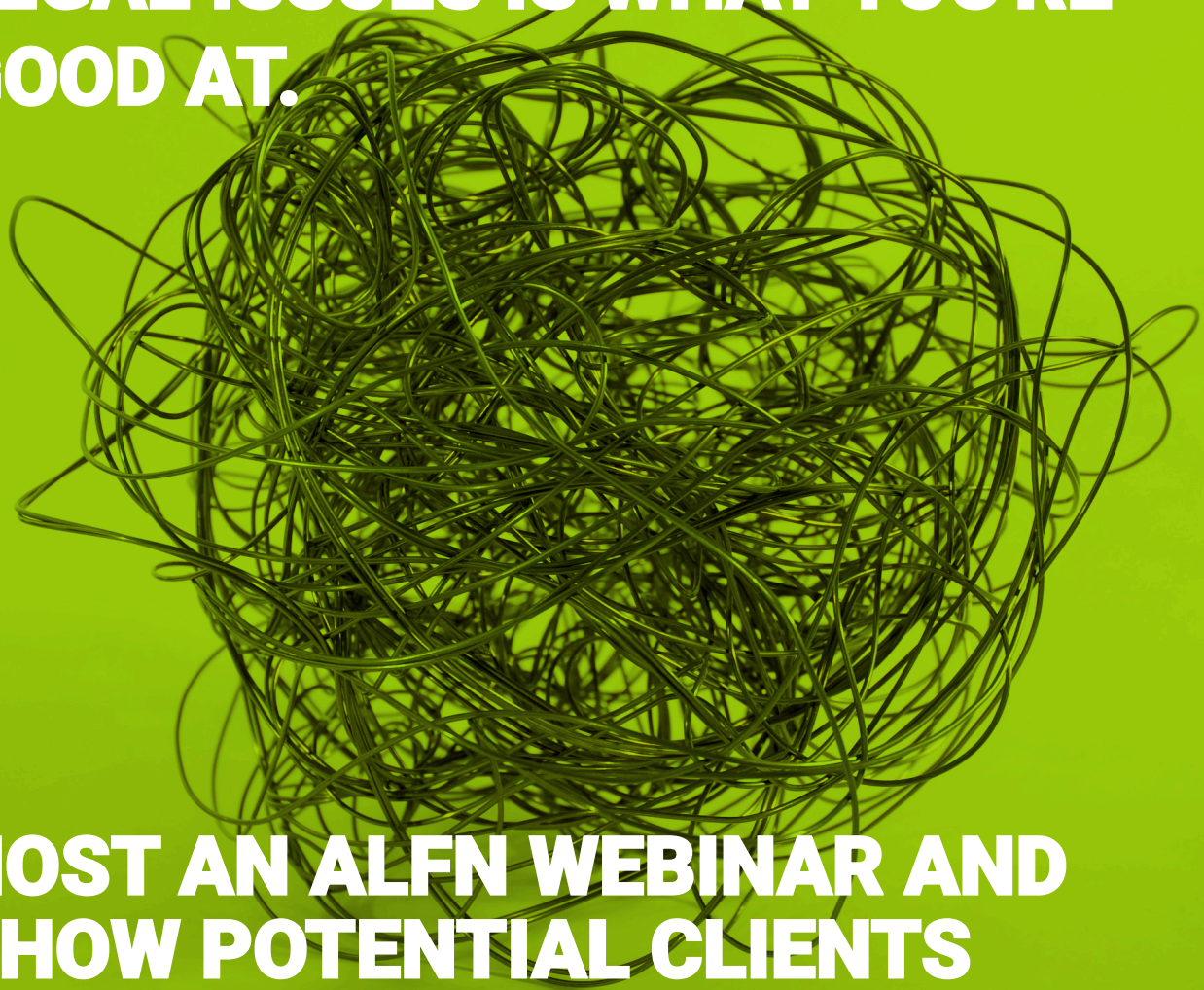

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PRINTED JUNE 27, 2016