

Foreclosures & Workouts Update 2011

Latest trends, decisions, legislation, and programs

Foreclosure practice in Massachusetts has changed significantly. While mortgage loan defaults remain at high levels, the number of foreclosures recently decreased as a result of increased government and court scrutiny. Lenders, borrowers, and counsel are examining the process, while consumer advocates and borrowers are pressing for more loan modifications under state, federal, and lender-based programs. State and federal legislatures and states' attorneys general have been closely examining mortgage servicing and foreclosure processes, and proposing new regulations that would significantly impact the process prior to and during a foreclosure. New proposals include regulations for revising servicing standards, judicially supervised foreclosures, and mandatory mediation. Federal, District, and Bankruptcy Court Judges continue to interpret foreclosure and title law in decisions such as *Ibañez* and *Bevilacqua*, as well those involving MERS, Inc. Title insurers are also changing the process through coverage decisions for third-party foreclosure sale and REO buyers. And the attorneys representing buyers, borrowers, lenders, servicers, and title insurers must know how to navigate these developments.

Agenda and written materials

- ▶ **Key State, Federal, and Bankruptcy Cases; Pending Legislation; and Changes in Foreclosure Practice**
- ▶ **Pre-foreclosure Claims and Remedies:** Incomplete interests, Errors in description, Unreleased homestead interests (after 3-16-11), and Undischarged liens in the chain of title
- ▶ **What Title Insurers Do in Response to Pre-foreclosure Claims:** When title insurance is effective, Title insurance and closing protection letter coverage, Claims evaluation, Determination of loss, Malpractice, and Subrogation
- ▶ **Post-foreclosure Claims and Remedies:** Defects in affidavits, *Ibañez*, *Bevilacqua*, Foreclosure deeds as assignments of mortgage, Insufficient notice to junior creditors
- ▶ **What Title Insurers Do in Response to Post-foreclosure Claims:** Claims evaluation, Determination of loss, Continuation of coverage, Undertaking to repair title defect, Malpractice, and Subrogation
- ▶ **Challenges Confronted:** Redefining loan servicing business around home ownership retention (HAMP, HAFA, etc.), Keeping pace with changes, Uncertainty about duration of crisis and impact on resource allocation
- ▶ **Current and Future Challenges:** Regulation (Dodd-Frank, etc.), FHFA, Fannie Mae/Freddie Mac servicing alignment initiative, Servicing compensation—impact to business model, National servicing standards
- ▶ **Foreclosure Mitigation:** Partnering with housing counseling agencies, Why making home affordable can still be a viable option, Strategies to help homeowners obtain loan work-outs

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