

CONSUMER FINANCIAL PROTECTION BUREAU BEEFS UP REGULATIONS TO PROTECT DISTRESSED HOMEOWNERS

BY LYNN DRYSDALE, ESQ., CONSUMER PROTECTION ATTORNEY, JACKSONVILLE AREA LEGAL AID, INC.

On January 10, 2014, powerful Consumer Financial Protection Bureau loss mitigation regulations went into effect. These regulations set out very specific duties, timelines and other requirements servicers must follow when a borrower falls behind in their mortgage. Examples include notifying a borrower of their loss mitigation options on or within the 36th day of delinquency and sending a letter setting out their loss mitigation options on or within the 45th day of delinquency.

These changes were created to facilitate the loss mitigation process for borrowers and to put an end to “dual tracking.” For example, a servicer is prohibited from filing a foreclosure lawsuit until a borrower is at least 120 days delinquent in their payments. If a borrower submits a complete loss mitigation application within the 120 days prior to the filing of a foreclosure, the servicer may not file the lawsuit until the loss mitigation application has been considered and a decision made. These notices and timelines are enforceable through litigation. In other words, a borrower may sue a servicer who does not provide the required notices or prematurely files a foreclosure case.

Another set of important “foreclosure prohibitions” provided by the new regulations sets limits on a servicer’s ability to go forward with obtaining a foreclosure judgment or conducting a foreclosure sale if a completed loss mitigation application is pending. If the application was completed after a foreclosure lawsuit was filed and at least 37 days before a foreclosure sale date no sale should

take place. If a sale date has not been set in a foreclosure judgment, the borrower is almost certainly “37 days before sale.”

While the “judgment/sale” prohibition is powerful, as a practical matter it comes up against equally powerful directives established by the court system to make sure foreclosure cases do not linger unnecessarily on trial dockets. As a result, often even when there is a loan modification or short sale agreement in place, a judge may still enter a foreclosure judgment or allow a foreclosure sale to go forward. This is true even if the servicer is attempting to avoid a judgment or sale in order to comply with federal law. Some judges have said that the federal law does not apply to state court proceedings or that they do not recognize the CFPB regulations as binding.

What does this mean for housing counselors, homeowners and homeowner attorneys? It means we must all work together to use these powerful tools we have. Just because there is a law, we cannot assume Plaintiffs and the courts will automatically follow it. It is up to us to be mindful of both loss mitigation and judicial deadlines and to keep good records of violations. These regulations will only have meaning through our aggressive monitoring, collaborating and enforcement. Housing counselors can file complaints with the CFPB and refer clients for potential litigation. If you do not have a relationship with your local legal services office or private foreclosure defense attorney, please contact me for an introduction. [HNN](#)

ABOUT THE CONSUMER FINANCIAL PROTECTION BUREAU

The Consumer Financial Protection Bureau (CFPB) was created in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The CFPB consolidates most Federal consumer financial protection authority in one place. The Bureau’s goal is to protect American consumers in the market for consumer financial products and services, including home mortgage loans. Key responsibilities of the CFPB include writing and enforcing consumer protection regulations, monitoring financial institutions’ compliance with these regulations, receiving consumer complaints, promoting financial education, and monitoring financial markets for new risks to consumers.

For more information:

CFPB’s Help for Struggling Borrowers

http://files.consumerfinance.gov/f/201402_cfpb_mortgages_help-for-struggling-borrowers.pdf

Lynn Drysdale: (904) 356-8371, lynn.drysdale@jaxlegalaid.org and Cathy Lesser Mansfield: (202) 435-7890, cathy.mansfield@cfpb.gov