

SCSL Digital Collections

Recent Issues in South Carolina Foreclosure Law

Item Type	Text
Publisher	South Carolina State Library
Rights	Copyright status undetermined. For more information contact, South Carolina State Library, 1500 Senate Street, Columbia, South Carolina 29201.
Download date	2024-10-16 12:25:34
Link to Item	http://hdl.handle.net/10827/13109

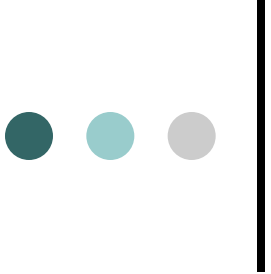


Recent Issues in South Carolina Foreclosure Law

Marti Phillips, Staff Attorney

South Carolina Department of Consumer Affairs





This presentation is not meant to serve as a substitute for reading any Act or case discussed, seeking administrative opinions, etc. The presentation merely serves as an introduction to, and overview of, the statutes, cases and interpretations discussed.

Roadmap

- SCDCA Overview
- SC Foreclosures - By the Numbers
- Judicial Foreclosure Process
- SC Supreme Court Administrative Order
 - (May 4, 2009 & May 2, 2011)
- Robo-Signers
- South Carolina Case Law
- Issues in Mortgage Servicing
- Senate Bill 702
- Resources



SCDCA Overview

- Consumer Services & Education
- Public Information
- Consumer Advocate
- Administration
- Legal Division



Foreclosure by the Numbers: South Carolina

- 1 in every 624 homes in S.C. received a foreclosure filing in August 2011 (the fourteenth highest foreclosure rate in the country)
 - Some rural areas are excluded from this data which could mean that this rate is actually higher
- Beaufort County posted the highest foreclosure rate in the state, with 1 in every 274 homes receiving a foreclosure filing.
- Greenville County posted the highest total number of foreclosures in the state, with 360 properties.



Foreclosure by the Numbers: National Trends

○ Second Quarter of 2011 (April – June):

- 8.32% of all mortgage loans were past due
 - Up slightly from 8.25% the previous quarter
- 3.62% were 90 days past due
 - Down slightly from 3.65% the previous quarter
- 1.08% entered foreclosure
 - Down from 1.27% the previous quarter
- For Subprime Loans
 - 24.01% were past due
 - 11.86% were 90 days past due
 - 3.08% entered foreclosure



Up Next: Foreclosure
Process

Foreclosure

- Default
- Notice
- A Hearing
- A Sale
- An Eviction?





Foreclosure - Default

- This generally means a homeowner is 90 or more days behind.
- S.C. is a Judicial Foreclosure State
 - Like 23 other states
- Judicial Foreclosure Requires Notice and a Hearing



Judicial Foreclosure States

- Connecticut
- Florida
- Hawaii
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Nebraska
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- **South Carolina**
- South Dakota
- Vermont
- Wisconsin



Foreclosure - Notice

- Notice: The Demand Letter/Acceleration
 - First Mortgages
 - The Mortgage Contract governs what notice is required.
 - Second Mortgages (and third, fourth, etc.)
 - Notice of Right to Cure as required by the S.C. Consumer Protection Code
 - Can give this notice on the 11th day after payment is due and not received
 - Notice has to give the consumer 20 days to cure the default



Foreclosure - Notice cont'd

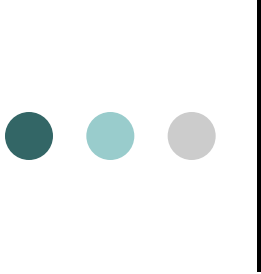
○ Notice: A Summons and Complaint

- The summons and complaint have to be served on the consumer
- For most people service means either
 1. Being personally served (hand-delivered), **or**
 2. Certified Mail, Return Receipt Requested, and Delivery Restricted to Addressee
 3. The summons and complaint is left at the consumer's usual place of residence with someone of suitable age and discretion who also lives there. (This generally means someone over 14)



Foreclosure - Notice cont'd

- The Homeowner gets 30 days after being served to respond to the complaint (may get 60 days under Servicemembers Civil Relief Act)
- **If the Consumer doesn't respond within this time, the plaintiff can move for an entry of default.**
 - **Careful**: With a few exceptions, the consumer doesn't have to be served with anything else after they're found to be in default (i.e., didn't answer the complaint w/in 30 days of service). Some things may be mailed to the consumer's last known address.
 - After an entry of default, the plaintiff can then move for a default judgment



Foreclosure - The Hearing

● Hearing

- This is usually conducted by a “Master in Equity” or “special referee” depending on which county the property is in.
- The consumer is given an opportunity to be heard.
- In most cases, the consumer doesn’t show up at all
 - So, the lender gets what they ask for by default
 - **Don’t do this!**
- The judge (or master/referee) may enter a judgment of foreclosure here. If this happens, a sale date will be set.
 - Sales often happen on the first Monday of the month, but this depends on what county the property is in.

● Appeal

- Homeowner has **30 days** after getting notice of the judgment to file a notice of appeal.

Foreclosure - The Sale

- How it works:
 - The property is sold by accepting bids.
 - The property is advertised once a week for three weeks prior to the sale.
 - Usually, the high bidder on the day of the sale wins.





Foreclosure - The Sale cont'd

- BUT, if the plaintiff has demanded a deficiency judgment, then the sale is held open for 30 days.
- During that 30 days, someone else can outbid the winner at the first bid (who will not be allowed to bid again).
- Deficiency Judgment: when the home sells for less than the amount owed on the mortgage, there is a deficiency. If the plaintiff gets a deficiency judgment, the homeowner will still owe the difference between what the house sold for and the amount of the debt even though the house was sold.



Foreclosure - After the Sale

- The Appraisal Statute

- When the plaintiff seeks a deficiency judgment against the consumer, the consumer can seek an appraisal of the property after the sale.
- Has to be sought w/in 30 days of the sale
 - The first sale if it's a non-deficiency case
 - The second "hold open" sale if it's a deficiency case
- Appraisals are made by three appraisers
 - One chosen by consumer, one by plaintiff, and one by the court
 - Two out of the three appraisers have to agree on a value

Foreclosure - After the Sale cont'd

○ The Appraisal Statute cont'd

- The value essentially becomes the sale price for the purpose of calculating the deficiency.
 - If the actual sale price is less than the appraised value, any deficiency is reduced by that amount.
- This protects the consumer from a lender who buys the house cheap at the foreclosure sale, and then still tries to recover the deficiency from the consumer.









Foreclosure - An Eviction?

- If the consumer stays in the house after the sale, they are essentially a tenant who hasn't paid rent.
 - The new owner of the house can try to have the consumer evicted
- The process
 - The new owner can request that the consumer leave, but can't use force or threats to make this happen
 - Plaintiff serves the consumer with a "Rule to Show Cause"
 - Consumer gets 10 days after service to respond to this.
 - If the consumer doesn't respond or doesn't show the judge that he shouldn't be evicted, the judge will issue a writ of ejectment.
 - The sheriff will then present a copy of the writ of ejectment to the consumer and give the consumer 24 hours to leave voluntarily. After this 24 hours, the sheriff can remove the consumer.



Foreclosure - The Timeline

- From default (90 days behind) to sale, the process usually takes somewhere between 3 and 6 months to complete.
 - This timeline is very dependent on how fast the new owner moves
- Generally:
 - Delinquency  Service: about 90 days
 - Delinquency is where payment is due and not made
 - Service  Hearing: 30-60 days
 - Hearing  Sale: 4-6 weeks
 - Sale  Eviction: 10 days to 6 months or more



Foreclosure - Deficiency Judgments

- As mentioned earlier, this is where the servicer tries to recover from the consumer if the house sells for less than the amount of the debt.
- After the sale, the servicer can try to enforce its judgment.
 - This is easiest if the consumer owns other real property (home, land, etc). The servicer can attach its judgment to the real property and have it sold to pay the judgment.
 - A little more difficult with personal property, but it too can be seized and sold to pay the deficiency judgment



Foreclosure - Deficiency Judgments

- Enforcing the judgment (cont.)
 - If the consumer doesn't have any other real property, the servicer can ask the sheriff to see if the consumer has any personal property that can be seized and sold (called levy and execution)
 - If the sheriff says there's nothing (called a "nulla bona return") then the servicer can file for supplemental proceedings to question the consumer about his/her assets and find out what can be used to pay off the judgment.
 - Nulla bona return is very common



Foreclosure – Loss Mitigation

- South Carolina (and a number of other states) required certain loss mitigation steps before a servicer can foreclose
- The S.C. Supreme Court issued an administrative order essentially requiring servicers to plead that they have made a good faith effort to modify the loan under HMP before they can foreclose
 - The consumer can contest this if it's not true
 - Of course, the consumer has to answer the suit and show up at the hearing to do this

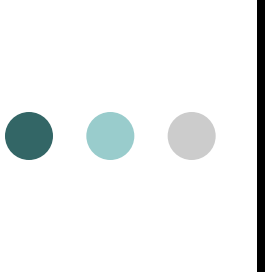
Up Next: Protecting Tenants
in Foreclosure



Protecting Tenants at Foreclosure Act of 2009 (PTAF)

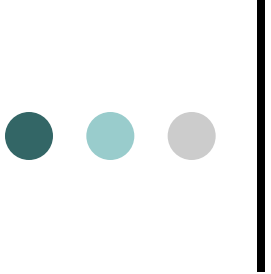
- Protects tenants where the property they live in is sold in foreclosure
- The tenant gets to stay in the property for the remainder of their lease or 90 days, whichever is longer.
- Exceptions:
 - The buyer of the property will live in it as their primary residence
 - There is no lease or the lease is terminable at will under state law
 - In these cases, the tenant still gets 90 days notice before they can be evicted
- Congress recently extended the PTFA until December 31st, 2014 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which the President signed into law on July 21, 2010.

Up Next: SC Supreme Court
Administrative Order (May 4th, 2009)



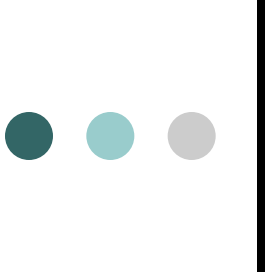
South Carolina Supreme Court Administrative Order (May 4th, 2009)

- Issued a temporary restraining order preventing the foreclosure sale of any property arising out of a loan owned or guaranteed by
 - Fannie Mae,
 - Freddie Mac, or
 - Any servicer that agreed to participate in the Home Affordable Modification Program (HMP).



South Carolina Supreme Court Administrative Order (May 4th, 2009)

- Before starting a foreclosure action, lenders must:
 - Prepare an affidavit to all parties that explains whether the loan can be modified under the Home Affordable Modification Program (HMP).
 - If the affidavit says the loan can be modified,
 - The loan will be restructured, and
 - The foreclosure action is dismissed.



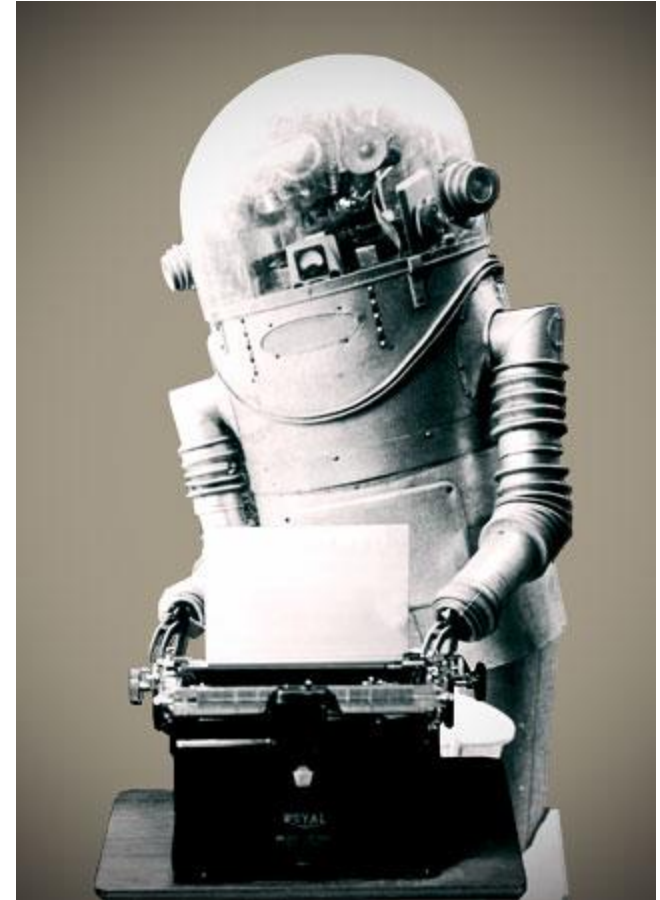
South Carolina Supreme Court Administrative Order (May 4th, 2009)

- If the affidavit says the loan can't be modified:
 - The temporary restraining order will be lifted, and
 - The foreclosure will proceed
- *But if the homeowner states that the loan can be modified under HMP in a counter affidavit:*
 - The restraining order will remain in place until the court decides whether the loan can be modified.
 - If so, the loan is modified and the foreclosure action dismissed.

Up Next: Robo-signers

Robo-Signers

- Judicial Foreclosure (and often non-judicial foreclosure) requires the filing of affidavits that state facts about the case:
 - How much is owed
 - Who owes
 - That loss mitigation has failed
 - Etc.
- An affidavit is a statement, under penalty of perjury, that the affiant has personal knowledge of the facts in the affidavit.





Robo-Signers

- The Problem:

- Some people were signing at least 8,000 – 10,000 affidavits a month
- These affidavits contained statements about the debt that the affiants didn't personally verify and couldn't possibly have verified given the number that they were signing.

Robo-Signers

○ The Problem cont'd

● This may just be a technical flaw:

- The information in the affidavit is correct, it was just verified by someone other than the person who signed it.
- This is what some servicers are saying

● The problem is that it's probably technically:

- Perjury
- Fraud on the Court
- Etc.





Robo-Signers

- The Problem (cont.)

- There are some cases that indicate that the information in these affidavits wasn't always correct
 - Servicers unable to support the amount they claim is owed
 - Servicers unable to justify the fees added on during foreclosure
 - Servicers unable to prove that the party bringing the foreclosure action actually has standing to do so
- Lots of litigation around these issues in FL and some other states

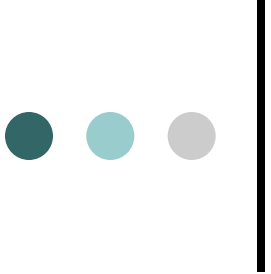


Robo-Signers

○ The Investigation

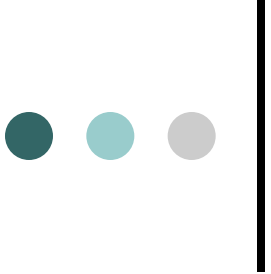
- On October 13, 2010, the attorneys general of all 50 states and a number of state banking and consumer finance regulators began an investigation into this issue.
 - This includes the S.C. Attorney General's office and The S.C. Dept. of Consumer Affairs
 - Some states had already begun individual investigations.
 - OH has brought an action against GMAC.
- You can see the press release at <http://www.naag.org/joint-statement-of-the-mortgage-foreclosure-multistate-group.php>

Up Next: SC Supreme Court
Administrative Order (May 2nd, 2011)



South Carolina Supreme Court Administrative Order (May 2nd, 2011)

- Why a second administrative order?
 - Since the last order (May, 2009), the number of foreclosures in South Carolina have continued to increase.
 - Trial courts are reporting that loss-mitigation efforts are failing or being delayed.
 - Many of these breakdowns are the result of poor communication between lenders and debtors
 - The last administrative order was limited to lenders that participated in the Home Affordable Modification Program (HMP).



South Carolina Supreme Court Administrative Order (May 2nd, 2011)

- Two purposes:
 - To ensure that eligible homeowners and lenders receive the benefits of loan modification, and
 - So these opportunities are handled uniformly throughout the state.
- Applies to:
 - Foreclosures pending on May 9th
 - Foreclosures filed after May 9th



Actions Pending on May 9th, 2011

- In all foreclosures pending as of May 9th:
 - Before any foreclosure hearing
 - Before any foreclosure sale
- The lender must provide every homeowner with notice of their right to foreclosure intervention.
- No foreclosure hearing or foreclosure sale may happen until the lender certifies five things...



Actions Pending on May 9th, 2011

- The lender must certify:
 1. The homeowner has been served with notice of their right to foreclosure intervention
 2. The lender has examined all documents and records required of the homeowner to evaluate their eligibility for foreclosure intervention
 3. The homeowner has received a fair chance to offer other information pertaining to their loan or personal circumstances for the lender to consider



Actions Pending on May 9th, 2011

- The lender must certify cont'd:
 - 4 The homeowner does not qualify for loan modification or other loss mitigation according to the rules, standards and guidelines of the mortgage and the parties have been unable to reach any other agreement
 - 5 Notice of failure of loss mitigation or denial of loan modification has been served to the homeowner



Actions Pending on May 9th, 2011

- If the homeowner doesn't respond within thirty days after being served notice of their rights,
 - The lender can certify this fact to the court
 - The foreclosure action may proceed
- If the homeowner and the lender agree to loan modification or another loss mitigation plan,
 - The agreement will be put in writing and served on all the parties
 - Any pending case will be stayed with no action for ninety days unless the borrower doesn't comply with the terms of the agreement
 - If the borrower complies with the terms of the agreement, the case will be dismissed after ninety days



Actions Filed After May 9th, 2011

- In mortgage foreclosures filed *after* May 9th, the lender must serve the homeowner with:
 - A summons and complaint
 - Notice of the homeowner's right to foreclosure intervention



Actions Filed After May 9th, 2011

- No foreclosure hearing may be held until the lender certifies:
 1. The homeowner has been served with notice of their right to foreclosure intervention
 2. The lender has examined all documents and records required of the homeowner to evaluate their eligibility for foreclosure intervention
 3. The homeowner has received a fair chance to offer other information pertaining to their loan or personal circumstances for the lender to consider



Actions Filed After May 9th, 2011

Lender must certify, cont'd:

4. The homeowner does not qualify for loan modification or other loss mitigation according to the rules, standards and guidelines of the mortgage and the parties have been unable to reach any other agreement
5. Notice of failure of loss mitigation or denial of loan modification has been served to the homeowner
- Same guidelines as those set up for foreclosures pending as of May 9th.



Actions Filed After May 9th, 2011

- If the homeowner doesn't respond within thirty days after being served notice of their rights,
 - The lender can certify this fact to the court
 - The foreclosure action may proceed
- If the homeowner and the lender agree to loan modification or another loss mitigation plan,
 - The agreement will be put in writing and served on all the parties
 - Any pending case will be stayed with no action for ninety days unless the borrower doesn't comply with the terms of the agreement
 - If the borrower complies with the terms of the agreement, the case will be dismissed after ninety days

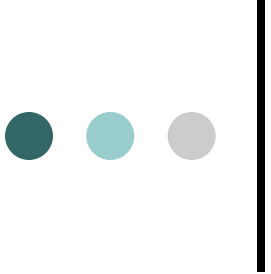
South Carolina Supreme Court

Administrative Order

(May 2nd, 2011)

○ A few other considerations:

- The lender and the homeowner shall communicate with one another through the lender's attorney. If the homeowner has an attorney, the lender's attorney shall work with this representative.
- No document, statement or evidence shared during foreclosure intervention may be used in any other subsequent proceeding.



South Carolina Supreme Court

Administrative Order

(May 2nd, 2011)

- When a lender's attorney proceeds to foreclosure
 - He or she is assuring the court that the lender has complied with the terms of this order
 - That the attorney and the lender have tried to reach a foreclosure intervention agreement in good faith
- The court shall hear and determine any dispute concerning a party's compliance with this order.
- If a lender or a lender's attorney has not acted in good faith
 - The Court may impose such sanctions as it determines to be reasonable and just under the circumstances
 - This may include the assessment of attorneys' fees and costs against the violating party

Up Next: SC Case Law

South Carolina Case Law:

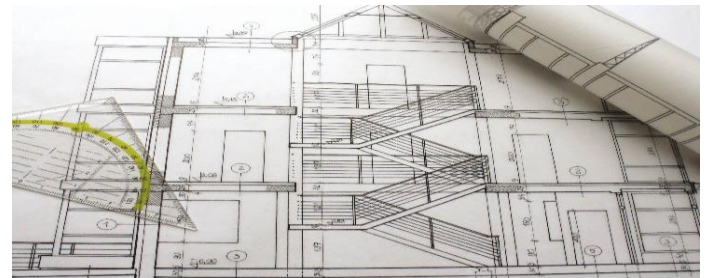
- *W&N Construction Company, Inc v. Williams*, 472 S.E.2d 622 (1996)
- *Wachovia Bank v. Coffey & Bank of America*, 698 S.E.2d 244 (Ct. App. 2010)
- *Matrix Financial Services Corp. v. Frazer*, Opinion No. 26859 (S.C. Sup. Ct. filed August 16, 2010)
- *LaSalle Bank National Association v. Edward M. Davidson*, Opinion No. 26753 (S.C. Sup. Ct. filed December 21, 2009)



W&N Construction Company, Inc. v. Williams

○ Facts:

- W & N Construction Co. contracted to do about \$60,000 worth of commercial work at Williams' building in Seneca
- After completion, W & N brought a mechanics lien action to collect the unpaid balance that remained owed to them, over \$30,481.89
- But it is illegal for contractors that undertake construction in excess of \$30,000 to do so without first getting a license in South Carolina.
- W & N was unlicensed in South Carolina but they commenced this action anyway.





W&N Construction Company, Inc. v. Williams

○ Issue:

- Is the contract with an unlicensed contractor enforceable?
 - The contractor did the work. Shouldn't they get paid?

○ Ruling:

- No. Since the contract is illegal, it is void and cannot be enforced.

○ Reasoning:

- A contractor can't sue to enforce a contract that they shouldn't have entered in the first place.
- The licensing requirement protects the public. By enforcing this contract, W&N would be allowed to profit from its unlawful act.

Wachovia Bank v. Coffey & Bank of America

○ Facts:

- Michael Coffey was diagnosed with terminal lung cancer and told that he had six months to live.
- So Mr. Coffey took out a \$125,000 equity line of credit with Wachovia in order to buy a sailboat.
- But he didn't tell his wife, Ann, about this equity line of credit.
- As it turns out, the couple's home was titled in Ann's name only.
- Wachovia's employees processed the home equity loan without an attorney and nobody checked to make sure Michael had the authority to mortgage the home.
- When Ann found out about the Wachovia home equity line of credit, she became upset and stopped making payments. So Wachovia filed for foreclosure.





Wachovia Bank v. Coffey & Bank of America

○ Issue:

- Can Wachovia sue for relief even though Michael lacked authority to mortgage the home?

○ Ruling:

- No. By processing the mortgage without an attorney present, Wachovia engaged in the unlicensed practice of law

○ Reasoning:

- Wachovia won't be allowed to recover damages for the consequences of its unlawful act
- The reasoning here is similar to W&N Construction case

Matrix Financial Services Corp. v. Frazer

○ Facts:

- In November 2001, The Frazers refinanced their mortgage with Matrix.
- Although Matrix hired a company to do the title search and prepare the loan documents, it closed without an attorney.
- The refinanced mortgage wasn't recorded until April 2002.
- When the Frazers filed for bankruptcy, Matrix began foreclosure proceedings.
- So what's the problem?



(facts continue)

Matrix Financial Services Corp. v. Frazer

○ Facts cont'd:

- It turns out that an earlier default judgment against the Frazers had been obtained in California.
- This default judgment was enrolled in Greenville County in October 2001, before Matrix would record its mortgage refinance in April 2002.
- Matrix asked for equitable subrogation, giving its refinanced mortgage priority over the judgment lien from California.





Matrix Financial Services Corp. v. Frazer

- Issue:
 - Can Matrix seek equitable subrogation?
- Ruling:
 - No. By processing the mortgage without an attorney present, Matrix engaged in the unlicensed practice of law.
- Reasoning:
 - Like the Wachovia case, the lender failed to close with an attorney like they should have.
 - South Carolina courts will not grant equitable remedies to parties that don't follow state rules.

LaSalle Bank National Association v. Davidson

○ Facts:

- LaSalle Bank initiated a foreclosure action against the Davidsons.
- When the Davidsons failed to answer, LaSalle filed an affidavit of default and scheduled a final hearing before the Master-In-Equity for March 6th, 2008. Notice of hearing was provided.
- At the scheduled hearing, LaSalle's attorney appeared along with the homeowner, Sheryl Davidson, who appeared on her own behalf...
- However, the Master-In-Equity failed to attend



(facts continue)



LaSalle Bank National Association v. Davidson

○ Facts cont'd:

- LaSalle's attorney attempted to proceed with the hearing against Davidson.
- On March 18, 2008, the Master signed and filed a judgment of foreclosure and sale referencing the "March 6 hearing" – and made findings *using phantom testimony and evidence*
- The Record of Hearing stated the March 6, 2008 hearing was held before the Master-In-Equity (who was not present) and that the only party attending was LaSalle's attorney (even though Sheryl Davidson was present)
- The Davidsons appealed, arguing that this order, which followed a hearing conducted without a presiding judge, was invalid.



LaSalle Bank National Association v. Davidson

- Issue:
 - Does the failure of a judge to attend the foreclosure hearing invalidate the resulting foreclosure order?
- Ruling:
 - Yes.
- Reasoning:
 - The absence of a judge at a court hearing is a structural defect.
 - “The purported hearing was a nullity, and the resulting order must be vacated. The judge’s absence from the hearing deprived the Davidsons of the opportunity to be heard and, thus violated their constitutional guarantee of procedural due process.”



Issues with Mortgage Servicers

- *Federal Trade Commission v. Countrywide Home Loans, Inc., and BAC Home Loans Servicing, LP*; FTC File No. 082 3205
 - Complaint by FTC alleged Countrywide deceived homeowners into paying inflated fees
- Two Countrywide mortgage servicing companies will pay \$108 million to settle charges by FTC (June 2010)
- Money from the judgment will be used to reimburse overcharged homeowners whose loans were serviced by Countrywide before July 2008.



FTC v. Countrywide

Complaint alleged:

- When loans in default, Countrywide ordered services meant to protect the lender's interest in the property (inspections, lawn maintenance)
- Countrywide created subsidiaries to hire the vendors, marked up the prices of the services, then charged the marked-up fees to the homeowners



FTC v. Countrywide

Complaint alleged:

- Countrywide made false or unsupported claims about amounts owed or status of loans to borrowers in Chapter 13 bankruptcy
- Failed to tell borrowers new fees/escrow charges were being added to loan and tried to collect those amounts once borrowers no longer had bankruptcy protection



Enforcement Action Against Mortgage Servicers

- Office of the Comptroller of the Currency (OCC) announced formal enforcement actions against eight national mortgage servicers and two third-party servicer providers
- “Major reforms” required in mortgage servicing operations



OCC Enforcement Action

- Improved communication with borrowers and “dual-tracking” – when servicers continue to pursue foreclosure during the loan modification process
- Establish a single point of contact for borrowers throughout modification and foreclosure processes
- Comprehensive “look-back” to assess foreclosure compliance for actions between January 1, 2009-December 31, 2010 and establish process for borrowers who were financially harmed



SC Senate Bill 702

- Introduced in SC Senate on March 17, 2011
- Senate Banking and Insurance Committee (SBI)
- Attempt (at state level) to address the problems borrowers experience with lenders and servicers while trying to save their homes
- Public hearings held in Greenville, Columbia, Charleston



SC Senate Bill 702

- To amend SC Code of Laws to provide requirements for a mortgage servicer
- Amend definitions applicable to high-cost and consumer home loans, so as to define the terms “**servicing agent**” and “**servicer**”



SC Senate Bill 702

- Servicer owes homeowner duty of utmost care, honesty, loyalty and full disclosure of all material facts:
 - Credit payments promptly and correct misapplication
 - Engage in loan mod. when homeowner can make reasonable payment
 - Be accountable for lost paperwork on loan mods. and for failing to suspend foreclosure



SC Senate Bill 702

- Servicer/servicing agent acts as agent of mortgage holder or investor of mortgage
- Mortgage holder or investor is liable for an action of the servicer that violates any provisions



SC Senate Bill 702

- Servicer must provide borrower written notice at least 15 days before date servicer begins accepting payments:
 - Contact information for state/federal agencies that regulate the servicer
 - Name/mailing address of owner of mortgage or loan investor
- Serviced before eff. date of this section – notice within 30 days of eff. date



SC Senate Bill 702

- At least 15 days before transfer of servicing, servicer must provide borrower written notice:
 - Contact info for new servicer (name, address, toll free phone number)
 - Detailed financial breakdown of loan
 - Date that new servicer will begin accepting payments from borrower
- Payment made by borrower to transferring servicer within 60 days of service transfer may not be treated as late payment!



SC Senate Bill 702

- At least 45 days before filing of foreclosure action on primary residence, servicer shall send written notice to borrower of availability of resources to avoid foreclosure:
 - Explanation of FC process – 5th grade reading level
 - Itemization (past due amts & “other charges” to bring loan current)
 - Options available other than FC
 - Contact info for lender/servicer – **and agent who is authorized to help borrower avoid foreclosure**
 - Contact info for HUD-approved counseling agencies, consumer complaint sections for Board of Financial Institutions or credit unions



SC Senate Bill 702

- Party bringing a foreclosure action must attach written notice to front of summons and complaint to explain that the documents commence a legal action against the homeowner and:
 - Consult attorney – contact info for legal services
 - Must answer within 30 days (format of response doesn't matter)
 - Failure to respond – may lose rights to defend self in court – even if negotiating with lender
 - Case may be referred by court to mediator



SC Senate Bill 702

- **MEDIATION** – a final hearing on the merits for a residential foreclosure action may not occur until the parties to the action participate in a mediation conference
 - If defendant homeowner has filed written response to the action, contacted the court concerning the action, or attended a hearing regarding the action OR
 - Court's discretion



SC Senate Bill 702

○ MEDIATION:

- Coordinated by counsel for servicer/mtg holder
- Payment of mediation fees divided equally
- Attorney for servicer shall make “reasonable effort to coordinate” and provide “reasonable advance notice of date, time, place” of mediation
- Defendant homeowner must furnish updated financial information to attorney for servicer/mortgage holder within 10 days after notice of mediation



Senate Bill 702 & Foreclosure Crisis Public Hearings

- A panel of Senators held foreclosure crisis public hearings throughout the state of SC:
 - To hear from homeowners facing foreclosure as a result of financial crisis
 - Interested in hearing problems borrowers have experienced with lenders and servicers in order to make sure all issues are addressed



Senate Bill 702 & Foreclosure Crisis Public Hearings

○ Common themes from homeowners:

- Homeowners submit documentation to servicers repeatedly: no response or servicer request them to send again; homeowner in limbo.
- Conflicting information
 - “you’re approved for a modification/workout” – homeowner pays, often for months/years – “oh, now you’re not approved.”
 - Servicer agrees to a workout, but foreclosure process continues
- Lack of notice/communication
- Payment histories – can’t get one or can’t understand it
- **FEES!**



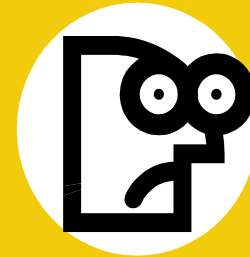
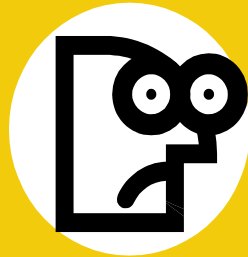
Resources

- Licensing of Mortgage Industry:
 - Mortgage Brokers & Lenders: <http://www.nmlsconsumeraccess.org/>
 - Appraisers: <http://www.llr.state.sc.us/POL/REAB/> (803) 896-4400)
 - Attorneys: <http://www.judicial.state.sc.us/discCounsel/> (803) 734-2038
 - Real Estate Brokers: <http://www.llronline.com/POL/REC/index.asp?file=> (803) 896-4400)
- <http://www.makinghomeaffordable.gov/index.html>
- South Carolina Bar referral line (800) 868-2284
- South Carolina Legal Aid at (888) 346-5592



Resources

- Frequently Asked Questions (FAQs) in South Carolina Master-in-Equity Court: 18 pages
- Approved by SC Supreme Court's Access to Justice Commission, 10/28/2011
- Posted on SC Judicial Department's website:
<http://www.sccourts.org/selfHelp/FAQMIE.pdf>



It's QUESTION TIME!!



Marti Phillips

803-734-4241

Darlene Dinkins

803-734-4209



Toll Free: 1-800-922-1594

Fax: 803-734-4229

www.sccoconsumer.gov