This treatise covers the law and provides practical advice related to mortgage servicing and mortgage loss mitigation alternatives. It examines federal and state regulation of mortgage servicing, identifies common abusive servicing practices and potential claims, reviews loss mitigation alternatives for borrowers in financial distress, and provides practical guidance on litigating claims against mortgage servicers.

Prior to the foreclosure crisis that began in 2007, federal regulation of mortgage servicers was limited to a few areas covered by the Real Estate Settlement Procedures Act (RESPA), primarily the handling of escrow accounts, borrowers’ qualified written requests for information, and transfer of servicing notices. State regulation was also limited. Today, in the wake of the foreclosure crisis, mortgage servicers are more highly regulated than they were before. New regulations apply to a wider range of servicer activities, including loss mitigation reviews, application of borrower payments, monthly account statements, and force-placed insurance.

This chapter presents an essential introduction to this nation’s mortgage market and the players involved in that market. It continues with more detailed information on the mortgage servicing industry and then takes a practical look at questions to consider when a client first walks through the door. The chapter also highlights questions to consider when a client has been denied a loan modification or when presented with potentially improper mortgage servicing conduct.

Chapter 2 [1] examines common mortgage servicing problems that can occur during the life of a loan including the misapplication of payments, escrow accounts errors, the improper assessment of fees, and the failure to consider loss mitigation alternatives. Chapter 3 [2] discusses federal mortgage servicing law under the Real Estate Settlement Procedures Act (RESPA). Chapter 4 [3] covers mortgage servicing requirements and potential claims under other federal laws such as the Truth in Lending Act (TILA) and the Fair Debt Collection Practices Act (FDCPA). Chapter 5 [4] examines state mortgage servicing laws and then reviews available state law causes of action. These include claims under state unfair and deceptive acts and practices statutes, contract claims, and tort liability.

Chapters 6 through 10 [5] examine loss mitigation alternatives available to borrowers. Chapter 6 [5] reviews general loss mitigation principles and provides practical advice for assisting clients with loan modifications or other workout options. This chapter also provides an overview of expired loss mitigation programs such as Home Affordable Modification Program (HAMP). Chapter 7 [6] considers loss mitigation options for Fannie Mae and Freddie Mac loans, including discussion of the current Fannie Mae and Freddie Mac loan modification programs and the “Flex Modification” program. Chapter 8 [7] covers loss mitigation alternatives for loans insured by the Federal Housing Administration (FHA), and Chapter 9 [8] focuses on loss mitigation options for loans insured by the Department of Veterans Affairs (VA) and the Rural Housing Service (RHS). Chapter 10 [9] discusses strategies and claims when litigating loss mitigation cases.

Finally, general litigation strategies and issues are discussed in Chapter 11 [10], including types of information to gather, choosing defendants, forum selection, arbitration clauses, tax issues, and preemption.

Source: National Consumer Law Center, Mortgage Servicing and Loan Modifications [1st ed.], updated at www.nclc.org/library

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