This treatise provides the law and practical advice for assisting borrowers facing foreclosure of their homes. It examines foreclosures not only in relation to traditional free-standing homes, but also with respect to manufactured homes and condominiums. It covers foreclosure upon private mortgages, government mortgages, condominium liens, tax liens, and reverse mortgages. Forfeiture of land installment contracts and a variety of foreclosure rescue scams from equity skimming schemes to phantom help are also addressed.

This introductory chapter provides a practical discussion of how to analyze and defend a foreclosure action. It outlines first steps to take when a client is facing foreclosure, provides an overview of claims and defenses available to homeowners, and just as importantly presents an essential introduction to this nation’s mortgage market and the players involved in that market.

Chapter 2 [2], infra, focuses on the basic concept of who has the authority to foreclose. With the prevalence of securitized mortgage debt, this issue has taken on great importance. The discussion includes an analysis of the critical role played by the laws governing negotiable notes and the relation of these notes to mortgages. Chapter 3 [3], infra, goes on to apply these legal concepts to challenge a party’s authority to foreclose in judicial and non-judicial foreclosure contexts.

Chapter 4 [4], infra, narrows the focus to special issues related to the authority of mortgage servicers to foreclose, including servicers of loans insured or owned by Fannie Mae and Freddie Mac. The chapter also analyzes the role of the Mortgage Electronic Registration System (“MERS”). MERS is a privately owned electronic database that records transfers of ownership of mortgage loans. The role of MERS in foreclosures and in transfers of mortgage loan documents has been the subject of considerable litigation.

Chapter 5 [5], infra, covers a wide range of challenges to foreclosures. The chapter begins with a discussion of statute of limitation and res judicata defenses to foreclosures. It then focuses on claims and defenses related to notices and other procedural requirements under state foreclosure laws. This chapter also discusses certain equitable defenses to foreclosure, available under both judicial and non-judicial foreclosures regimes. The chapter discusses the role of mediations and settlement conferences and litigation strategies related to these programs. Finally, Chapter 5 [5], infra, covers the protections against foreclosure available to servicemembers under the Servicemember Civil Relief Act.

Many courts have upheld challenges to foreclosures based upon failure to comply with rules for government-insured mortgage loans. These include loans insured by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), and the Rural Housing Service (RHS), a division of the Department of Agriculture. Chapter 6 [6], infra, gives practical tips for raising these challenges to bar judicial and non-judicial foreclosures.

Chapter 7 [7], infra, discusses claims and defenses that arise from the loan’s origination. Chapter 8 [8], infra, addresses litigation issues, including investigation into lender records, evidence issues, preemption and simultaneous proceedings in different courts. Bankruptcy’s role in preventing a foreclosure is covered in Chapter 9 [9], infra. Chapter 10 [10], infra, addresses a number of post-foreclosure issues, including setting aside completed sales, deficiency claims, evictions, and tax consequences of foreclosure.

Finally, Chapters 11 [11] through 16 [12], infra, cover specialized situations where a home may be seized. Chapter 11 [11], infra, examines foreclosure, replevin, and repossession of manufactured homes. Chapter 12 [13], infra, considers forfeiture of land installment contracts, and Chapter 13 [14], infra, covers the foreclosure of condominium and homeowner association liens. Chapter 14 [15], infra, considers foreclosure on reverse mortgages. Chapter 15 [16], infra, reviews tax lien foreclosures. Chapter 16 [12], infra, addresses foreclosure rescue and loan modification scams.