

PRELIMINARY CHECKLIST FOR FORECLOSURE DEFENSE AND OFFENSE:

We also have numerous possible stages at which a borrower can find him/herself

1. Loan not in default but TILA claims can still be made.
2. Loan approaching default.
3. Loan in default
4. Foreclosure suit filed or sale date published
5. Judgment entered
6. Sale occurred to either third party or the lender. I have advised people to go to the sale and inform all potential bidders that the matter is in dispute which usually stops anyone from bidding.
7. Notice to Vacate
8. Eviction notice from Sheriff
9. Evicted --- but TILA claims survive for (a) recovery of money and (b) possibly recovery of house from lender

Origination of loan:

1. REAL BANK THAT GIVES MORTGAGE AND HOLDS NOTE THEMSELVES. Direct relationship between the lender and borrower and it is not sold, migrated or otherwise transferred in any manner shape or form. Borrower gave honest information, tax returns etc. My guess is that the only claim here would be fraudulent appraisal but even that is weak because the bank is actually at risk.
2. Mortgage broker steering borrower to worst deal for highest fees. Inflated income and appraisals submitted. Lender is selling off or has entered agreements to provide "inventory" to mortgage aggregators who will sell the aggregated loan portfolio to investment bank who in turn will sell "derivative" securities (CMO - collateralized Mortgage Obligations or CDO --- Collateralized Debt Obligations) to investors who are defrauded by representations from the lender, appraiser, mortgage aggregator, investment bank, and intermediate sellers of securities. Bank is NOT in any relationship with borrower but that is not disclosed. Bank has no risk or interest in whether borrower pays on loan or not.
3. MOST COMMON: A "bank" that is actually a front for one of the major players. In actuality the bank is a mortgage broker steering customers to worst loans for highest fees.
4. While the "lender" takes the position that they were defrauded by the borrower, the mortgage broker and the appraiser, the truth is that they intentionally defrauded themselves by setting up the structure and giving themselves the position of "plausible deniability." Their intent was to create a plausible record for the mortgages and notes they were selling to mortgage aggregators and investment bankers.

Types of Loans:

1. Fixed rate 30 year mortgage fully amortized.

2. Fixed rate 30 year mortgage amortized but partially negative --- i.e. the borrower is paying less than the full payment and the balance owed on the note is going up. Possible TILA violation.
3. Fixed rate mortgage interest only, negative amortization. Clear TILA violations in most cases.
4. Adjustable rate mortgage fully amortized. First adjustment after teaser rate in 1, 3, 6, 12 or more months. Borrower "qualifies" for mortgage because income figures support paying the teaser rate. At the first or second adjustment however, they no longer qualify and the lender knows it by definition. TILA violation, fraud, etc.
5. Adjustable rate interest only, negative amortization --- OPTION ARMS, TEASER 2/28, 3/27 ETC.
6. Multiple mortgages and notes for multiple properties for speculators --- usually involves falsifying information that buyer is going to use the house as primary residence, falsifying income and falsifying appraised values. TILA, fraud etc.

Authority and ownership of loans --- Legal Standing and Jurisdiction

1. Originating lender still servicing the loan, holds note and mortgage. No assignment, sale or other fancy financial tricks.
2. Originating lender is actually mortgage broker, loan migrates to senior lending institution, to mortgage aggregator to investment banker to seller of securities to investor.
3. Trustee in non-judicial sale states posts notice of sale based upon information from a source that (a) does not service the loan and therefore does not know if the borrower is in default or not and/or (b) does not own the mortgage or cannot prove that it owns the mortgage and/or (c) does not own the note or cannot prove that it owns the note. IN most cases an investor owns the mortgage and note and the people involved in the foreclosure don't have a clue as to which bundle of mortgages went into which bundle of securities and how many investors bought into that bundle of securities, and there are no proper assignment documents that were designed much less signed in anticipation of being able to establish legal standing in sale, foreclosure or eviction.
4. Originating lender files foreclosure or posts notice of sale and does not have servicing rights, ownership of mortgage or ownership of note.

AUDITS:

1. DOCUMENTS AT AND BEFORE CLOSING
2. TILA COMPLIANCE AUDIT
3. FULL FORENSIC AUDIT --- POSSIBLY NEEDED FOR LITIGATION ONLY

Potential Pleadings:

1. Federal Claim for TILA, Respa, RICO, fraud etc.
2. QUIET TITLE AGAINST NOMINAL LENDER, ALL OTHER KNOWN PARTIES WHO MIGHT CLAIM INTEREST IN MORTGAGE OR NOTE AND ALL UNKNOWN (JOHN DOES 1-100) PARTIES WHO MIGHT CLAIM AN INTEREST IN MORTGAGE OR NOTE).
2. Memorandum of Law in support of complaint.

3. State Court claim for Fraud
4. State court action for stay of sale, eviction etc.
5. Emergency Petition for temporary Injunctions- State and Federal Courts and memorandums in support thereof.
6. Motion to expedite discovery.
7. Interrogatories
8. Requests for admission
9. Request to Produce
- 10 Notice of deposition duces tecum
11. Adversary proceeding in Bankruptcy Court
- 12 Memorandum and pleading in opposition to Motion for lifting stay
13. Demand letter to Originating lender -- for documents tracing where the mortgage went and for refunds and damages, enclosing TILA audit.
- 14 Rescission letter
15. Form retainer agreement for audit and checklist for retaining auditor
16. Form retainer agreement for attorney and checklist for retaining attorney