

During my last two Bankruptcy Boot Camps, one of the topics we have discussed has been the recent amendments to the Truth in Lending Act, brought about by Section 404 of Public Law 111-22. Specifically, our interest has been focused on the new statutory requirement that a consumer-borrower must be sent a written notice within 30 days of any sale or assignment of a mortgage loan secured by his or her principal residence. Violations of this Section provide for statutory damages of up to \$4,000 and reasonable legal fees. The amendments also clearly provide that the new notice rules are enforceable by a private right of action. *15 USC 1641*.

This amendment raises several issues. In a securitization context, it is challenging to figure out what the statute might require. First, if the note is sold from the originator to the sponsor for a securitized trust and then from the sponsor to the depositor and then from the depositor to the Trustee for the Trust how many notices must be given to the consumer? Since each transaction is alleged to be a "true sale," it would appear that 3 notices would have to be given. Second, what if the mortgage or deed of trust is also "assigned" from the originator to the sponsor and then to the depositor and finally to the Trustee for the Trust? How many notices are required in this situation? Again, 3 would appear to be the correct number. Third, can the notices be combined into a single document? Fourth, can a notice of the assignment of the mortgage or deed of trust be combined with a notice of the negotiation and transfer of the mortgage note? Fifth, what notice, if any, must be given to the consumer if the Trustee simply "transfers the note" to the mortgage servicer in an effort to create "standing" to enforce the note? Is this transfer one covered by the statute? It could certainly be characterized as a "temporary" assignment of possession of the note. Sixth, what is the real difference between a "sale or assignment." We know that mortgage notes are sold by negotiation under Article 3 of the UCC and the mortgages or deeds of trust are assigned. Was the statute drafted to deal with both instruments?

The amendments also for the very first time create a private right of action for violations of Section 131(f) of TILA (15 USC 1641(f)), which provides as follows: "Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address and telephone number of the owner of the obligation or the master servicer of the obligation." The statute does not provide a time period for compliance. And, it is not clear to me if the consumer has the power under the statute to require the response to list the Owner instead of the Master Servicer.

What is clear is that these amendments give consumers and their attorneys two new powerful tools to use in connection with the issue of "who owns and holds" my mortgage. Truth in lending may indeed now include Truth in Ownership with some serious financial penalties for non-compliance.