

## Resources on Mortgage Servicing

Prof. Katherine Porter, Iowa College of Law  
Tara Twomey, Esq.

- I. Relevant Causes of Action, Laws, or Rules (other than Bankruptcy Code)
  - a. Federal Rules of Bankruptcy Procedures 2016, 3001, and 9011
  - b. Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(b)-(e); 2609
  - c. Unfair or Deceptive Practices Act
  - d. State Debt Collection statute (maybe Federal Debt Collection Practices Act)
  - e. Breach of Contract
  - f. Duty/Covenant of Good Faith or Fair Dealing
  - g. Fraud or Misrepresentation
  - h. Negligent or Intentional Infliction of Emotional Distress
  
- II. Bankruptcy Court Cases
  - a. *In re Jacobsen*, 2009 WL 567188 (Bankr. W.D. Wash. 2009) (denying motion for stay relief because movant had not established either identity of holder of note or movant's authority to act on behalf of that party)
  - b. *In re Booth*, 2009 WL 81327 (Bankr. E.D. Ark. 2009) (sustaining in part creditor objection to plan language related to application of payments, post-petition fees, and notice of payment changes, and compliance with 524(i)).
  - c. *In re Hwang*, 396 B.R. 757 (Bankr. C.D. Cal. 2008) (servicer not real party in interest for purposes of pursuing motion for relief from stay).
  - d. *In re Zunner*, 396 B.R. 265 (Bankr. W.D.N.Y. 2008) (holding that broker price opinion in preparation of foreclosure was not allowable charge to protect mortgagees' interest in property).
  - e. *In re Nosek*, 544 F.3d 34 (1<sup>st</sup> Cir. 2008) (reversing sanctions and damage award for misapplication of payments where chapter 13 plan did not specify how lender should account for payments). Decision below: *Nosek v. Ameriquest Mortgage Company, et al.*, (*In re Nosek*), 386 B.R. 374 (Bankr. D. Mass. 2008) (imposing monetary sanctions on Ameriquest, Wells Fargo, and several attorneys for misrepresenting the holder of the note).
  - f. *In re Hayes*, 393 B.R. 259 (Bankr. D. Mass. 2008) (denying motion for relief from stay when mortgagee failed to show proper chain of title from loan originator).
  - g. *In re Haque*, 395 B.R. 799 (Bankr. S.D. Fla., Oct. 28, 2008) (imposing \$95,000 in sanctions under 11 U.S.C. §105 on law firm and creditor for filing false affidavits to support motions for relief from stay).
  - h. *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348 (5th Cir. Aug. 26, 2008) (holding that unpaid monthly escrow payments must be included in proof of *claim*; missed escrow payments may not be recouped by performing a new post-petition escrow analysis).
  - i. *In re Hight*, 393 B.R. 484 (Bankr. S.D. Tex. Aug. 13, 2008) (disallowing creditor's pre-petition attorney's fees for preparation of foreclosure sale when creditor failed to provide evidence pertaining to what work was done, who did the work, hourly rate and time spent).

- j. *Payne v. MERS*, 387 B.R. 614 (Bankr. D. Kan., May 6, 2008) (finding that creditor violated RESPA, which court held applies in bankruptcy and finding that creditors' misapplication of plan payments violated automatic stay).
- k. *In re Prevo*, 394 B.R. 847 (Bankr. S.D. Tex. 2008) (filing claim without supporting documents required by Rule 3001 resulted in loss of prima facie validity; disallowing all fees and costs and issuing show cause order to determine whether creditor must pay debtor's attorney's fee for objecting to claim).
- l. *In re Stewart*, 391 B.R. 327 (Bankr. E.D. La. 2008) (awarding damages and legal fees and sanctioning Wells Fargo for the abusive and negligent imposition of fees, and moreover, ordering Wells Fargo to conduct an audit of every proof of claim filed on its behalf in cases pending on or after April 13, 2007).
- m. *In re Schuessler*, 386 B.R. 458 (Bankr. S.D.N.Y. 2008) (ordering Chase Home Finance to pay attorneys fees and debtors' costs and barring recoupment of any costs to Chase of filing of unwarranted motion for relief from stay).
- n. *In re Parsley*, 384 B.R. 138 (Bankr. S.D. Tex. 2008) (ruling on order to show cause why sanctions were not warranted for motion for relief from stay allegedly filed without grounds that while Countrywide and its counsel engaged in poor practices that conduct did not rise to level of clear and convincing bad faith action).
- o. *In re Ezzell*, 07-34780 (Bankr. S.D. Tx. Jan. 14, 2008) (disallowing creditor's attorney's fees for failure to comply with Rule 2016)
- p. *In re Maisel*, 378 B.R. 19 (Bankr. D. Mass. 2007) (standing/ownership of creditor)
- q. *In re Waring*, No. 06-40614, Transcript of Hearing (Bankr. D. Mass. July 27, 2007) (requiring servicer to produce evidence that property inspections were conducted)
- r. *In re Dominique*, 368 B.R. 913 (Bankr. S.D. Fla. 2007) (holding that lender that failed to give debtor annual escrow analysis required under RESPA waived its right to collect such amounts).
- s. *In re Schwartz*, 366 B.R. 265 (Bankr. D. Mass. 2007) (creditor could not show it had right to undertake prepetition foreclosure)
- t. *Jones v. Wells Fargo*, 366 B.R. 584 (Bankr. E.D. La. 2007) (challenge to creditor's accounting and application of plan payments)
- u. *In re Allen*, 2007 WL 115182, No. 06-60121, (Bankr. S.D. Tex., Jan, 9, 2007) Mem. Op. re Sanction of Creditor's Attorneys (Jan. 9, 2007) (sanctions for erroneous objection to plan confirmation)
- v. *In re Berghoff*, 2006 WL 1716299 (Bankr. N.D. Ohio 2006) (violation of Rule 9011 to include impermissible fees in claim)
- w. *Litton Loan Servicing v. Garvida*, 347 B.R. 697 (9<sup>th</sup> Cir. BAP 2006) (servicer failed to comply with court order to provide accounting of loan balance)
- x. *In re Nosek*, 363 B.R. 643 (Bankr. D. Mass. 2006) (misapplication of plan payments), *rev'd* 544 F.3d 34 (1<sup>st</sup> Cir. 2008).
- y. *In re Rivera*, 342 B.R. 435 (Bankr. D.N.J. 2006) (pre-signature of pleadings by servicer without review)
- z. *In re Thompson*, 350 B.R. 842 (Bankr. E.D. Wisc. 2006) (RESPA action for failure to respond to debtor's request for clarification of account balance)

- aa. *In re Gorshtein*, 285 B.R. 118 (Bankr. S.D.N.Y. 2002) (motions for relief from stay without adequate factual investigation or legal basis)
- bb. *Maxwell v. Fairbanks Capital Corp.*, 281 B.R. 101 (Bankr. D. Mass. 2002) (miscalculation of amount owing)
- cc. *In re Slick*, No. 98-14378, Adv. No. 99-1135 (Bankr. S.D. Ala. Nov. 22, 2002) (class action for failure to file applications with court for attorneys fees)
- dd. *Tate v. NationsBanc Mortgage Corp.*, 253 B.R. 653 (Bankr. W.D.N.C. 2000) (Rule 2016 applies to attorneys fees of mortgage creditor)
- ee. *In re Wines*, 239 B.R. 703 (Bankr. D.N.J. 1999) (inability to explain calculation of amount allegedly due)

### III. Other Relevant Cases

- a. *Wells Fargo v. Byrd*, 897 N.E.2d 722 (Ohio Ct. App., Sept. 12, 2008) (upholding dismissal of foreclosure action because Wells Fargo was not owner of mortgage but ruling that dismissal should have been without prejudice).
- b. *In re Foreclosure Cases*, 521 F. Supp. 2d 650 (S.D. Ohio 2007) (J. Rose) (lack of standing/proof of ownership of mortgage)
- c. *In re Foreclosure Cases*, 07CV2282, 2007 WL 3232430 (N.D. Ohio. Oct. 31, 2007) (J. Boyko) (lack of standing/proof of ownership of mortgage)
- d. *Islam v. Option One Mortgage Corp.*, 432 F.Supp.2d 181 (D. Mass. 2006) (action against former servicer when acts to collect continued after refinancing)
- e. *Rawlings v. Dovenmuehle Mortgage, Inc.*, 64 F. Supp. 2d 1156 (M.D. Ala. 1999) (action against servicer for applying borrower's payments to wrong account)

### IV. Pending Litigation to Watch

- a. *Hill v. Countrywide (In re Hill)*, No. 01-22574, Show Cause Order (Bankr. W.D. Pa. Dec. 21, 2007) ("recreated" escrow letters produced in post-discharge dispute; settlement requires Countrywide to pay \$100,000 damages (Aug. 11, 2008).
- b. Selected Cases in which the Chapter 13 Trustee, Ronda Winnecour, seeks relief against Countrywide Home Loans, Inc., No. 07-00203 (Bankr. W.D. Pa., Oct. 8, 2008) (allegations by Chapter 13 trustee that servicer failed to credit debtors' accounts with trustee payments); Order Approving Settlement (Bankr. W.D. Pa. Oct. 22, 2008). UST continuing to pursue sanctions
- c. *Trevino v. MERS, et al.*, 1:07-cv-00568, Complaint (D. Del. Nov. 6, 2007) (class action alleging MERS and lenders overcharge borrowers above actual costs); Memorandum Opinion (D. Del. Sept. 30, 2008)(denying MERS and Washington Mutual motion to dismiss; granting motion to dismiss of Freddie Mac, GMAC and shareholder defendants).
- d. *Harris v. Fidelity Nat'l Information Serv.*, No. 03-44826, Adv. No. 08-03014, Complaint (Bankr. S.D. Tx. Jan. 16, 2008) (class action suit alleging that default servicers has impermissible and undisclosed arrangements with attorneys to retain portion of fees). Reference withdrawn, now case no. 4:08cv01243 in U.S. District Court in S.D. of Tex. Stipulated Dismissal entered Dec. 3, 2008.
- e. *In re Ocwen Federal Bank FSB Mortgage Servicing Litigation*, 04-CV-2714, MDL-1604 (N.D. Ill.) (class action challenging "proof of claim" fee in mortgage claims)

## V. Scholarly Articles

- a. Larry Cordell, Karen Dynan, Andreas Lehnert, Nellie Liang & Eileen Mauskopf, *The Incentives of Mortgage Servicers: Myths and Realities* (Fed. Reserve Bd., Fin. and Econ. Discussion Series, Paper No. 2008-46, 2008), available at <http://www.federalreserve.gov/pubs/feds/2008/200846/200846pap.pdf>.
- b. Alan M. White, *Rewriting Contracts, Wholesale: Data on Voluntary Mortgage Modifications from 2007 and 2008 Remittance Reports* (Aug. 26, 2008), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1259538](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1259538)
- c. Kurt Eggert, *Limiting Abuse and Opportunism by Mortgage Servicers*, 15 HOUSING POLICY DEBATE No. 3 (2007), <http://ssrn.com/abstract=992095>
- d. Kurt Eggert, *Comment: What Prevents Loan Modifications*, 18 HOUSING POLICY DEBATE No. 2 (2007), <http://ssrn.com/abstract=1081479>.
- e. Henry Hildebrand III, *The Sad State of Mortgage Service Providers*, 22 AM. BANKR. INST. L. REV. 10 (2003).
- f. Anthony Pennington-Cross & Giang Ho, *Loan Servicer Heterogeneity and the Termination of Subprime Mortgages*, Fed. Res. Board of St. Louis Working Paper No. 2006-024A (2006), <http://ssrn.com/abstract=897277>.
- g. Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 83 TEX. L. REV. 121 (2008), <http://ssrn.com/abstract=1027961>.
- h. Michael Stegman et al., *Preventive Servicing is Good for Business and Affordable Homeownership Policy*, 18 HOUSING POLICY DEBATE No. 2 (2007), <http://www.mi.vt.edu/web/page/950/sectionid/580/pagelevel/3/interior.asp>.

## VI. Industry Data

- a. U.S. FINANCIAL NETWORK, NATIONAL MORTGAGE SERVICER'S REFERENCE DIRECTORY (22<sup>ND</sup> ED. 2005)
- b. Freddie Mac Single-Family Servicing Guidelines (click on All Regs, then on Servicing Volume 2), <http://www.freddiemac.com/sell/guide/#>
- c. Fannie Mae Single-Family Servicing Guidelines (click on Access All Regs, then on Servicing Guides and Forms), <https://www.efanniemae.com/sf/guides/ssg/>
- d. Jay Brinkman, Mortgage Bankers Association, *An Examination of Mortgage Foreclosures, Modifications, Repayment Plans, and Other Loss Mitigation Activities in Third Quarter of 2007* (Jan. 2008), [http://www.mortgagebankers.org/files/News/InternalResource/59454\\_LoanModificationsSurvey.pdf](http://www.mortgagebankers.org/files/News/InternalResource/59454_LoanModificationsSurvey.pdf).
- e. Marina Walsh, Mortgage Bankers Association, *2007 Costs of Mortgage Servicing Study* (Sept. 2007), <http://www.mortgagebankers.org/files/ServicingOperationsStudyWalsh9-07.pdf>

## VII. Government Reports and Congressional Hearings

- a. Cordell, et al., *The Incentives of Mortgage Servicers: Myths and Realities*, Finance and Economic Discussion Series, Federal Reserve Board, Washington, D.C., <http://www.federalreserve.gov/pubs/feds/2008/200846/200846pap.pdf>
- b. State Foreclosure Prevention Working Group, *Analysis of Subprime Mortgage Servicing Performance*, Data Report Nos. 1 (February 2008) and 2 (April 2008)

[http://www.mass.gov/Cago/docs/press/2008\\_02\\_07\\_foreclosure\\_report\\_attachme nt1.pdf](http://www.mass.gov/Cago/docs/press/2008_02_07_foreclosure_report_attachme nt1.pdf) and

[http://www.mass.gov/Cago/docs/press/2008\\_04\\_22\\_sfpwg\\_report2.pdf](http://www.mass.gov/Cago/docs/press/2008_04_22_sfpwg_report2.pdf)

- c. Hearing on *A Review of Mortgage Servicing Practices and Foreclosure Mitigation*, U.S. House of Representatives Committee on Financial Services, 110<sup>th</sup> Cong., July 25, 2008, [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/hr072508.shtml](http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr072508.shtml)
- d. Hearing on *Policing Lenders and Protecting Homeowners: Is Misconduct in Bankruptcy Fueling the Foreclosure Crisis?*, U.S. Senate Committee on the Judiciary, 110<sup>th</sup> Cong. May 6, 2008, <http://judiciary.senate.gov/hearing.cfm?id=3327>
- e. Hearing on *H.R. 5679, The Foreclosure Prevention and Sound Mortgage Servicing Act of 2008*, U.S. House of Representatives Committee on Financial Services, 110<sup>th</sup> Cong. April 16, 2008, [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/hr041608.shtml](http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr041608.shtml)

#### VIII. News Stories and Miscellaneous

- a. Emily Flitter, *JPM Units to Settle FTC Counts*, Vol. 173, No. 175 AMERICAN BANKER, 13, Sept. 10, 2008.
- b. Kimberly Blanton, *Suit Blames Loan Servicer for Pending Foreclosure*, BOSTON GLOBE, Aug. 5, 2008.
- c. Amir Efrati, *Wells Fargo Is Sanctioned for Role in Mortgage Woes*, WALL STREET J. C5, Apr. 30, 2008
- d. Carrie Teegardin, *Couple loses home in Countrywide dispute but may yet win*, ATLANTA JOURNAL-CONSTITUTION, Mar. 30, 2008, [http://www.ajc.com/business/content/business/stories/2008/03/28/countrywide\\_0330.html](http://www.ajc.com/business/content/business/stories/2008/03/28/countrywide_0330.html)
- e. Amir Efrati & Kara Scannell, *Countrywide Draws Ire of Judges*, WALL STREET J. A3, Jan. 14, 2008
- f. Gretchen Morgenson, *Dubious Fees Hit Borrowers in Foreclosure*, NEW YORK TIMES, A1, Nov. 6, 2007
- g. Sacha Pfeiffer, *Hidden Legal Fees Push Some Into Foreclosure*, BOSTON GLOBE (Jan. 18, 2007).
- h. Mara Der Hovanesian, *When Mortgage Firms Don't Play Fair*, BUSINESSWEEK.COM, [http://realestate.msn.com/buying/article\\_busweek.aspx?cp-documentid=2133885](http://realestate.msn.com/buying/article_busweek.aspx?cp-documentid=2133885).
- i. Jack Guttentag, *Why is Mortgage Servicing So Bad?* (Feb. 3, 2003; updated Dec. 13, 2004), [http://www.mtgprofessor.com/A%20%20Servicing/why\\_is\\_servicing\\_so\\_bad.htm](http://www.mtgprofessor.com/A%20%20Servicing/why_is_servicing_so_bad.htm)
- j. *Credit Slips* blog, postings on mortgages and home loans, [http://www.creditslips.org/creditslips/mortgage\\_debt\\_home\\_equity/index.html](http://www.creditslips.org/creditslips/mortgage_debt_home_equity/index.html)
- k. *Mortgage Servicing News* website, <http://www.mortgageservicingnews.com/>
- l. John Rao, Odette Williamson, Tara Twomey, et. al, FORECLOSURES (Nat'l Consumer Law Center, 2d. ed. 2007) (Chapters 6, 7 & 8 address mortgage servicing abuse and are the best comprehensive resource for practitioners).