

Borrowers Misuse RESPA Notice of Error Letter

Effective January 10, the Consumer Financial Protection Bureau (CFPB) amended Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA). These provisions address, among other things, a servicer's obligations to respond to – and if appropriate, correct – errors asserted by borrowers regarding the servicing of their home mortgage loans.

As with many other consumer statutes however, borrowers have attempted to use the regulations as leverage for their otherwise futile claims against servicers. Because a servicer must respond to any Notice of Error/Qualified Written Request (QWR) for up to one year after servicing is transferred or the loan is discharged (12 CFR §1024.35(f)(v)), the ability to misuse the statute is virtually limitless. From attempting to revive time-barred claims or avoid the fate of *res judicata*, to simply inundating servicers with requests for information already known and in many cases, already obtained through similar requests for discovery in foreclosure proceedings, consumer lawyers are attempting to use RESPA and Regulation X for purposes Congress never intended.

In many cases, borrowers use the regulations and provisions to manufacture the basis for a new lawsuit against a servicer, either in anticipation of, or in response to, the filing of a foreclosure action. For example, a borrower may send a QWR to a servicer, and regardless of the detailed responses and documentation provided, claim the response is insufficient and/or that the results of the servicer's investigation are incorrect.

But in one recent Southern District of Florida case granting final judgment for the servicer on claims it failed to respond sufficiently to the borrower's five QWRs, the court observed the statute's potential for abuse. Quoting another district court, the court in *Russell v. Nationstar Mortgage, LLC*, stated, "RESPA exists to prevent abuse of borrowers by servicers—not to enable abuse of servicers by borrowers." (S.D. Fla. Oct. 6, 2015) (quotations omitted).

The *Russell* court further observed that "good faith – not borrower satisfaction – is the relevant standard for loan servicers to meet the substance of RESPA. Congress could not have intended for [the statute] to operate in hindsight as a 'gotcha' ..." *Id.*

Therefore, while servicers should certainly be mindful of ensuring compliance with the requirements of RESPA and Regulation X, when faced with a Notice of Error or QWR, they can at least take comfort that the inevitably unsatisfied borrower is not the threshold for servicer liability under RESPA.