

FIFTH CIRCUIT COURT OF APPEALS CLARIFIES **ABANDONMENT OF LOAN ACCELERATION**

The Fifth Circuit Court of Appeals recently clarified how mortgage lenders and servicers can abandon a loan acceleration under Texas law. Although Texas generally requires foreclosure actions to be brought no more than four years after a loan is first accelerated, the holding in *Boren v. U.S. National Bank* makes clear that in certain situations a lender can abandon a previous acceleration and thus reset the clock on the statute of limitations to foreclose.

In *Boren*, U.S. Bank first sent the borrowers a notice of default and notice of acceleration of their loan in early May 2009. When U.S. Bank then attempted to proceed with foreclosure, however, the borrowers brought suit to stop it. Over the course of the next several years, a pattern emerged: each time U.S. Bank tried to proceed with foreclosure, the borrowers filed lawsuits in order to prevent the foreclosure from moving forward.

In late May 2013, U.S. Bank initiated yet a fourth foreclosure proceeding. The borrowers brought suit again, this time arguing that U.S. Bank's right to foreclose was barred because more than four years had passed since the loan was first accelerated.

On appeal, the Fifth Circuit rejected the borrowers' argument. The court noted that after the loan was first accelerated in May 2009, U.S. Bank had sent the borrowers several notices of default indicating that the "total amount necessary to bring the loan current was less than the full balance of the loan." These notices of default further indicated that the loan "would be" accelerated again if the default were not cured.

The court did not address the effect of the borrowers' conduct in filing repeated lawsuits to stop the foreclosure. However, applying Texas law, the court held that a lender abandons its previous acceleration — and therefore resets the four-year statute of limitations to foreclose — when it sends a new notice of default requesting payment "on less than the full amount of the loan." U.S. Bank had sent the borrowers numerous such notices of default after it first accelerated the loan in 2009, and thus its attempt to foreclose in 2013 was not barred by the statute of limitations.