***Kavanagh v. Specialized Loan Servicing, LLC*, N.D.Ohio No. 3:17CV892, 2020 U.S. Dist. LEXIS 46255 (Mar. 17, 2020)**

In this case, the Northern District of Ohio granted in part and denied in part the loan servicer's and borrower's competing motions for summary judgment, finding that the servicer was a debt collector who failed to specifically advise the borrower of what documentation was needed to complete her loss mitigation application as required under the Real Estate Settlement Procedures Act (RESPA), while also finding that the servicer did not have a duty to respond to the borrower's qualified written request (QWR) as it was overbroad and did not relate to the servicing of her loan.

**The Bullet Point:** RESPA is a consumer protection statute that regulates the servicing of a mortgage loan. **In regards to loss mitigation applications, RESPA requires a servicer to "1) exercise reasonable diligence in obtaining documents and information needed to complete a borrower's loss mitigation application; 2) review the application and notify the borrower within five days after receiving it that the application is complete or incomplete; 3) if the application is incomplete, advise the borrower of 'the additional documents and information the borrower must submit to make the . . . application complete'; and 4) if the application is complete, 'evaluate the borrower for all loss mitigation options available to the borrower.'"**

In this case, the court determined that the additional documents a borrower submits in response to a servicer's determination that their loss mitigation application is incomplete do not themselves constitute loss mitigation applications. However, **the servicer must still provide notice to the borrower of what specific information must be submitted in order to complete their loss mitigation application.** The court further clarified that a servicer does not have a duty to respond to a borrower's QWR when the QWR seeks information concerning loan modification or loss mitigation, as such a QWR is a "request to alter the terms of a loan" and is not related to the servicing of the loan. Likewise, a servicer does not have a duty to respond to a borrower's notice of error that is overbroad. As explained by the court, **"if a servicer cannot reasonably determine from the notice of error the specific error that the borrower asserts has occurred", the servicer has no duty to respond.**

Under the Fair Debt Collection Practices Act, a servicer is not considered a "debt collector" if the borrower's loan is not in default at the time the servicer begins servicing the loan. However, the court determined that **a borrower's loan is in**

**default if they fail to fulfill any promise made under the loan agreement, including failing to pay taxes on the property.** Stated differently, **a servicer is considered a debt collector if the borrower fails to pay property taxes even if the principal and interest payments owed on the loan are paid in full.**