

USFN[®] Report

Updates on Mortgage Industry Trends

A New Year

New – and Not so New – Challenges

by Stephen Collins
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THE LEGAL ISSUES committee addressed numerous issues facing the industry in the past year. There continued to be many FDCPA cases filed against mortgage servicers in 2006. The committee analyzed them and provided guidance on the significant judicial opinions rendered. We also saw more situations where bankruptcy debtors' attorneys and bankruptcy

judges continue to closely scrutinize mortgage servicers' business practices and records. USFN was at the forefront in identifying these high-impact cases and, here again, imparted helpful analysis and counsel to the industry about them.

During the past year, the committee maintained its quarterly meetings with servicing and GSE in-house counsel, where many of the important 2006 cases and issues were discussed. In addition, USFN hosted its third Legal Issues Seminar. Held in Denver last July, we addressed many hot topics, including bankruptcy reform and the type of litigation the industry is seeing, as well as what it can expect in the future as a result of the Bankruptcy Code amendments. The USFN



S. Collins

see A New Year on page 21

Mis-“ID”ing or Lumping Advances

Losing the Right to Recover Them

by Michael Manniello
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ESCROW ADVANCES, reimbursable advances, recoverable advances, corporate advances, recoverable corporate advances — these are the various names given to monies paid or advanced

by mortgagees or servicers while servicing a mortgage loan. Certain advances, provided they are properly documented and tracked, are unquestionably recoverable from a borrower upon a reinstatement or satisfaction of the debt, or from the proceeds of a foreclosure sale.

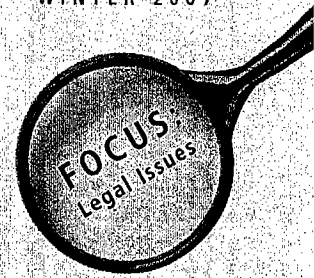
One type of advance that normally comes to mind is the true escrow advance; for instance, real estate taxes, a necessary “expense” out of the servicer's control that must be paid in order to avoid impairment of the mortgage lien on the property. Other expenses incurred by the servicer and associated with the default, such as attorneys' fees, property preservation, inspections, and the like, are viewed



M. Manniello

see Lumping Advances on page 10

WINTER 2007



Features

- A New Year** 1
New – and Not so New – Challenges
- Mis-“ID”ing or Lumping Advances** 1
Losing the Right to Recover Them
- The Law's Woodshed** 6
Using and Avoiding Sanctions
- Internet “Terrorism”** 7
Target: Mortgage Servicing

Departments

- State-by-State** 12
- Bankruptcy Update** 15
- Legal Issues Update** 16
- Manufactured Home Memos** 17

Connections

- From the President** 2
- Members Moves & News** 3
- Servicers Good News** 5
- Servicers Spotlight** 5
- Calendar** 22
- Member Directories** 22



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planning subcommittee is already hard at work developing the 2007 seminar. This next one will cover many current events, including the spike in litigation that will certainly occur as a result of the increase in mortgage defaults due to ARM resets, and the types of theories the plaintiff's bar is likely to pursue.

Here in the annual Legal Issues edition of the *USFN Report*, David Borrino writes about judicial sanctions under federal Rule 11 and related authorities, including under what circumstances lenders and servicers should file a motion for sanctions against a plaintiff or his lawyer. In *Internet "Terrorism" — Target: Mortgage Servicing*, Alan Wolf warns how the Internet is creating very serious public relations problems and headline risk for the mortgage industry.

He educates us on the need to counter the harm generated by these online attacks. In the front-page feature, Michael Manniello addresses the complications surrounding the use of certain accounting terminology, such as "corporate advances," and provides a reminder of the importance of transparency and detail when mortgage servicers make advances in connection with defaulted loans.

The Legal Issues Committee hopes that these important articles are helpful to you and your company. Comments or questions on any of these subjects, as well as suggestions for future article topics, are always welcome. Feel free to contact a committee chair listed on page 2 of this publication or send an email to info@usfn.org. We look forward to hearing from you in the New Year! ■

USFN Resource Center

PUBLICATIONS

The e-Update

The USFN e-Update is a monthly electronic newsletter designed to provide timely reports on current national topics and local servicing issues by region, as well as helpful articles and tips to boost productivity. Subscriptions free upon request to eligible professionals.

The USFN Report

This award-winning publication is a quarterly 24-page print newsmagazine focusing on industry trends, news, updates and other information. Each issue addresses a specific theme and usually contains four features on topics within that theme. Subscriptions free upon request to eligible professionals.

The NMSRD™

The National Mortgage Servicer's Reference Directory (NMSRD) is a resource used by virtually every major mortgage servicer throughout the country. With practical overviews of real estate-related laws in 50 states and the District of Columbia, it is a "first-stop" daily resource that many servicers keep close at hand.



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