



Foreclosure Outlook 2011

Tisha Black Chernine

The outlook for the New Year is grim if you own a home in Las Vegas and are not paying attention to your legal rights. Likely, you are one of the two-thirds of our valley's property owners who are in an underwater position, most being more than 50%. Since property values are expected to drop further in 2011 along with demand and ability to purchase, it seems that local property values are in a death spiral.

Pundits predict that nationally, 1 in every 5 mortgages could be foreclosed on in 2011. Though the foreclosure crisis has persisted for the last three years, they say we are only one-fourth of the way through the troubled loans. Using that statistic and the, until now, popular dead beat borrower argument, 20% of our home-owning population is an irresponsible sub-prime borrower who should have never bought a home in the first place! Seriously, should the blame and the cure all be loaded on the tax-paying borrower?

What about the suspicious loans that were handed out freely, the documents the originators botched or left out all together, the securitization process that created huge pools of loans to be sold to trusting investors, the fabricated

foreclosure fees and documents, and the filing of hundreds of thousands of false court documents? Is this the non-paying borrowers' fault as well? Will we never call on these banks to participate in the foreclosure crisis that they helped to create?

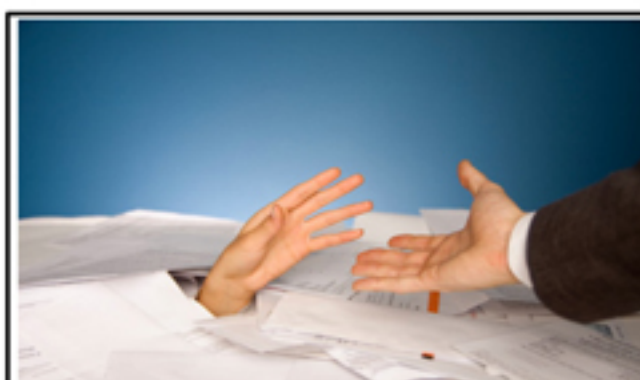
One can be optimistic only in the respect that there is beginning to arise a general understanding of how the banks function and why they are not incentivized to do anything other than position borrowers for foreclosure. As an originator bank (in charge of creating and processing the loan documents and sales), as well as the servicer bank, foreclosure serves several very important purposes: 1) it hides faulty and fraudulent documentation; 2) it avoids put-backs from investors who bought the securitized loans the banks sold; and 3) it creates default servicing revenue. In reality, the bank controls the process from start to finish and therefore, has opportunities to hide and avoid liability while earning a fee to do so.

The large number of foreclosures we are experiencing in Nevada does nothing other than breed more foreclosure and loss. Foreclosures must be avoided either through mutual consent between the lender and borrower or by enforcing legal foreclosure standards. The "dead beat borrower" argument is nothing more than an easy diversion from the real problems such as banks' reverse-engineering loan documents, "robo-signing", deliberately pursuing improper foreclosures, and manufacturing "junk fees" that cause or add to the pain of foreclosures. To date, the

the banks have enjoyed the diversion.

There is a ground-swell against these practices in small and large scale. Not only have borrowers begun to voice their disgust at bank practices, states have begun to take formalized action against the biggest offenders. Attorney General Mastro filed a lawsuit against Bank of America for misleading and deceptive trade practices, making Nevada the second state to take such a stand.

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Some Foreclosures Postponed For The Holidays

Carlos L. McDade

Freddie Mac and Fannie Mae are postponing foreclosure evictions on mortgage loans they own or back from December 20th to January 3rd. Wells Fargo will freeze foreclosure sales for the holiday. The lender's freeze will run the same two week period as that of Fannie Mae and Freddie Mac. It will only postpone sales of home loans that it owns. For other loans that it only services, which are owned by others ("owners" or "investors"), it will only postpone sales if authorized by the investor.

Bank of America may postpone foreclosure sales on loans it owns or that are owned by investors that give the bank delegated authority to act. Like Wells Fargo, Bank of America will postpone sales of homes whose loans are held by investors only if authorized by the investor. &

In This Issue

Foreclosure Outlook	1
Postponed Foreclosures	1
Nationstar Bank	2
Bank of America	2,3
Fair Debt Collection	3
Robo-Signing	3
Attorney Spotlight	3
Current Events	4
New Attorneys	4
About Us	4



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Nationstar's New Short Sale Requirements for Buyers

Carlos L. McDade

If a homeowner is "underwater" on their mortgage, meaning that the fair market value of the house does not equal the amount owed on the loan note, then the homeowner cannot sell the house through traditional means. A traditional sale recoups sufficient funds to pay off the amount owed to the homeowner's mortgage company or companies and hopefully make a little extra. In order to sell an underwater home, a homeowner must conduct a "short sale." In a short sale, the homeowner attempts to obtain the mortgage company's approval to sell the house for less than the amount owed on the note. The mortgage company must agree to release the lien on the deed in order for the buyer to purchase the house free and clear of the homeowner's mortgage loan.

By way of illustration, if the homeowner owes the bank \$200,000 on the note and can only sell the house for \$100,000, the homeowner must seek approval of a short sale. The mortgage company must agree to release the lien on the deed for \$200,000, or the buyer won't purchase the house. Next, the homeowner will want to convince the lender to waive the \$100,000 still owed on the note, called the "deficiency" on the note. Under Nevada law, for home sales made before 2009, a homeowner's assets are liable in court to be seized in order to pay back the bank the deficiency amount. Those homeowner assets include property, savings and income. Short sales take a long time to complete. If there are two loans on a home, it normally takes longer. The banks average between four to six months to complete a short sale. It is part of the mortgage company's normal processes to confirm that the buyer can afford to buy the house before proceeding to closing. The mortgage company will want proof that the buyer is prequalified to buy the property or proof of funds if the buyer intends to pay cash.

Nationstar Mortgage is imposing a new requirement on the buyer, one we are seeing for the first time. In order to obtain approval from Nationstar to conduct a short sale, the application states that "all Buyers requesting a "Short Sale" on a Nationstar property must submit an application for Loan Approval through Nationstar Mortgage before an offer can be accepted on a property." Applicants

are not required to use Nationstar to fund their loan. The buyer, however, does have to submit an application to confirm that they qualify for a loan and are in good credit standing.

Several buyers have already objected to the Nationstar requirement. They stated that they have no business relationship with Nationstar and do not want to share all their financial information with them, especially since they have their own mortgage lender. Some are refusing to participate and simply making offers on different properties.

Some buyers object to giving away all their financial information to a company they have no business with. Nationstar says that the buyer does not have to use Nationstar to fund the loan. So what is the problem if buyers can use their own lender? Well, sometimes they can't use their own lender.

The Nationstar application also states that "in the event that an outside lender is unable to close a loan by the scheduled deadline, an extension will be granted only if Nationstar Mortgage assumes the loan process so that we can be assured that the transaction will be closed in a timely manner."

Remember, short sales can take four to six months. That delay is completely within the control of the homeowner's mortgage company. It is the homeowners' loan holders that routinely cause delays in short sales, by taking too long to consider the application that the buyers withdraw their offers, losing documents, requesting new documents after the previously submitted documents have "expired" and constantly requiring submissions of new pay stubs, new bank statements and the like. When they finally approve a short sale and agree to release the lien, the lenders routinely set unrealistically short deadlines to close escrow, forcing homeowner's to request extensions in most instances.

This requirement has the potential to force buyers to drop their own mortgage company and take out a loan from Nationstar in order to close the deal. There is something about that idea that, so far, has caused several buyers to say "forget it" and drop the short sale. As buyer's object to this requirement, it has the potential to delay or kill short sales of properties with Nationstar mortgages. If it catches on to other lenders, it could make the already frustrating short sale process even harder to complete. &



What did Bank of America's Two Week Document Review Accomplish?

Carlos L. McDade
Kelle L. Kuebler

The nation watched and waited as GMAC, JPMorgan Chase, and Bank of America began announcing their plans to stop foreclosures in 23 judicial states. This freeze of the foreclosure industry came about largely as a result of the sworn deposition of a GMAC servicing executive who testified that he was signing off on foreclosures without actually checking the documents or having them signed by a notary, both of which are prerequisites to a proper foreclosure. The other lenders followed suit after realizing that what the media now refers to as "robo-signers" appeared somewhat commonplace. Bank of America even went so far as to announce that they were suspending foreclosures nationwide. Newspapers, internet posts, and the word on the street all voiced the same notion evidencing the overwhelming belief that foreclosures instituted by Bank of America near and far were at least temporarily at a standstill so that Bank of America could "do the right thing" and appropriately check their documents.

It seems rather odd then that Bank of America, less than two weeks later, issued a statement that they would be resuming foreclosures in all of the non-judicial foreclosure states. Did the lender truly review 130,000 foreclosure files in two weeks and fix all the errors? Further, in the absence of any errors and in consideration of a thorough check on the documents, wouldn't it make sense for Bank of America to resume foreclosures in all states? It could be argued that they aren't doing so because the foreclosure process in a non-judicial foreclosure state is rather simple and does not require a judge's

Continued on Page 3

Your Rights Under the Fair Debt Collection Practices Act

Randy M. Creighton

Debt collectors are becoming more aggressive and more brazen in their attempts to collect on delinquent debt. Many of the practices being used by some debt collectors are unethical or even downright illegal. That's why every debtor needs to know their rights as defined and enforced by the Fair Debt Collection Practices Act (FDCPA). The FDCPA is a federal law that protects consumers from harassment and abuse from debt collection agencies. The FDCPA requires debt collectors to validate debts and provides consumers with statutory damages and attorneys' fees for violations. Examples of violations of the FDCPA include:

1. Calling the consumer at work after the debt collector has been told that it's inconvenient or that the consumer's employer prohibits personal calls;
 2. Telling others such as family members, co-workers, and neighbors that the consumer owes money;
 3. Continuing to contact the consumer when the debt collector knows that an attorney represents the consumer;
 4. Calling repeatedly, or calling consumers before 8 a.m. or after 9 p.m.;
 5. Asking neighbors to deliver phone messages to the consumer;
 6. Falsely implying that a debt collector is an attorney;
 7. Falsely implying that the consumer has committed a crime and could go to jail for not paying a debt;
 8. Threatening to seize, garnish, attach, or sell the consumer's property or wages, unless there is already a legal judgment;
 9. Sending anything that looks like an official document from a court or government agency, when it isn't;
 10. Collecting any amount greater than the actual debt, unless allowed by law.
- If you have been harassed, sued by a debt collector or have experienced one of the above examples of violations of the FDCPA, then you may be entitled to statutory monetary damages. &



Robo-Signing Scandal Causes Dramatic Drop in Foreclosure Filings

Joshua D. Carlson

According to the latest figures by RealtyTrac, foreclosure filings nationwide in November dropped 21 percent from October. The total number of filings for that month dipped below 300,000 for the first time since February 2009. The recent robo-signing scandal and a seasonal drop are the likely reasons behind the lower foreclosure filing statistics. In November, most of the major lenders put a halt to their foreclosure sales while they inspected foreclosure paperwork or questioned office procedures. In non-judicial states, default notices decreased approximately nine percent. Meanwhile, default notices in judicial foreclosure states plummeted 31 percent from the previous month. The robo-signing scandal affected judicial foreclosure states to a greater extent because the foreclosing party must go before a judge and provide proper documentation prior to being permitted to foreclose on a property. Nevada posted the nation's highest foreclosure rate for the 47th straight month despite a 20 percent monthly decrease in foreclosure activity. In November, one in every 99 Nevada housing units received a filing—nearly five times the national average. &

Attorney Spotlight

Randy M. Creighton

Abe Geller, Editor for the YHBS! Newsletter, sits down with Mr. Creighton for an exclusive interview.

AG: What aspect of practicing law do you enjoy most?

RMC: I enjoy helping people through very difficult times. As a bankruptcy attorney, I can help people get that fresh start they deserve and this brings me great satisfaction.

AG: In all the cases you've been involved in, which one has affected you the most?

RMC: A recent case involved a ruthless debt collector who, even though my client had filed bankruptcy, would not stop harassing her. After a few phone calls and a lawsuit, the debt collector finally stopped. This case showed me how these debt collectors will go to all lengths to collect and how I need to protect my clients' best interests.

AG: What advice would you give to a new lawyer trying to build a career?

RMC: Practice an area of law you enjoy because this will give you the most satisfaction.

AG: What is the best part of the job for you?

RMC: Helping clients obtain the fresh start they deserve. &

To learn more about Mr. Creighton and other Black & LoBello attorneys, visit our website and click on the TEAM PROFILES tab.



Bank of America Continued from page 2

approval. In the absence of a 'trier of fact' the lenders' documents, correct or not, will never be looked at by a neutral party and over 100,000 homes will be back on the chopping block next week.

It appears that Bank of America started out with the right idea in postponing foreclosures nationwide. Unfortunately, some might argue that their rapid change

in course has left the American public looking for answers that the lender still cannot provide. After two weeks of document review can this lender tell you who owns your loan or who has the right to enforce a foreclosure judgment against you? Considering the aforementioned, all signs point to "no." &

Black & LoBello Welcomes



Steven Pacitti focuses on business entities and transactions, real estate, estate and tax planning, intellectual property and sports/entertainment law.

Mr. Pacitti has more than 20 years of broad-based commercial legal and business experience. In addition to individual transactions, Mr. Pacitti acts as outside general counsel for numerous businesses, across many industries. This breadth of legal and business acumen provides valuable insights and guidance to Mr. Pacitti's clients in legal, business, or transactional environments and cuts across several legal disciplines. In addition to traditional commercial and business transactions, Mr. Pacitti has developed a sophisticated concentration in negotiating and preparing trademark, copyright and rights of publicity licensing agreements for high-profile clients and organizations, such as Shaquille O'Neal,

Hulk Hogan, Andre Agassi, Stefanie Graf, the Andre Agassi Charitable Foundation, and Stefanie Graf's Children for Tomorrow. He has represented the Pure Management Group in its successful quest to bring Dick's Last Resort, Lucky Strike, Trader Vic's, and the Pussycat Dolls Lounge to Las Vegas. He negotiates celebrity appearances for various nightclubs and entertainment venues and was instrumental in finalizing agreements with Mariah Carey, Nicky Hilton, Adam "DJ AM" Goldstein, Nick Lachey, and many others.

In the field of sports and entertainment law, Mr. Pacitti represents world champion boxers, UFC Welterweight Champion Georges St-Pierre, Lightweight Champion Frankie Edgar, and WEC Featherweight Champion Jose Aldo, as well as several other athletes, managers, media, promoters, and sponsors in the growing mixed-martial arts industry. He also represents some of the world's most famous celebrity impersonators and has negotiated, documented, and overseen numerous television, movie, music, and theatre productions. Mr. Pacitti is a member of the advisory board for the University of Baltimore School of Law Center for Sport and the Law and speaker for the ABA Young Lawyers' IP and Sports section.

In addition, he has negotiated license agreements with the Ultimate Fighting Championship (UFC), World Extreme Cagefighting (WEC), the Professional Bull Riders Tour (PBR), World Series of Poker, Planet Hollywood, Elvis Presley Enterprises, and the Frank Sinatra Estate. Mr. Pacitti also handles hotel and private equity transactions. Over the course of his career, he has participated in well over \$1 billion in hospitality property acquisitions nationally, as well as an extensive array of

transactions affiliated with the hospitality industry.

Mr. Pacitti previously served as of counsel to one of Nevada's largest and most prestigious law firms; top legal officer at a dynamic fast-rising supplement and energy drink company during a period of unprecedented expansion in the supplement and beverage industries; a full spectrum sports and entertainment company; and a national hotel company. Mr. Pacitti joined Black & LoBello in 2010. He received his B.B.A. from St. Bonaventure University in New York, Juris Doctor from the University of Toledo, College of Law, an LL.M. from the University of Florida, College of Law. &

CURRENT EVENTS: Obama Pressures Fannie and Freddie to Reduce Principals

Joshua D. Carlson

The Obama administration is trying to convince Fannie Mae and Freddie Mac to join a program run by the Federal Housing Administration (FHA) that allows banks to hand over mortgages if the bank and investors agree to a write-down on the principal. The administration hopes that the participation of the mortgage giants would put additional pressure on other lenders to participate in the FHA program.

Currently, Freddie and Fannie rarely reduce principal balances. According to the Office of the Comptroller of the Currency, only 10 of the 120,000 loans modified during the second quarter of 2010 came with a principal reduction. It is of note that the FHA program is only available to homeowners who are current on their mortgage. &



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