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On Focus and In Depth

Next Buzzword for Mortgage Servicing May Be 'Remod'

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By [Kate Berry](#)

Lenore Albert, a plaintiff's lawyer in Huntington Beach, Calif., says the consent orders federal regulators recently issued against the largest mortgage servicers gave her "another tool" to fight foreclosures.

On April 15, two days after the enforcement actions came out, Albert won a court order blocking Aurora Loan Services from holding foreclosure sales on six homes in Orange County. In their request for a restraining order, her clients claimed they were harmed by so-called dual tracking, in which Aurora began foreclosure proceedings at the same time it was evaluating the borrowers for loan modifications. The consent orders bar this practice.

The borrower plaintiffs "acted diligently upon issuance of the [consent] orders," wrote Judge James V. Selna of the U.S. District Court for the Central District of California in Santa Ana in his restraining order.

Servicers can expect more such diligence nationwide.

One likely result of the orders, some industry observers say, is that thousands of borrowers, many of them currently in litigation against servicers, will get another shot at a loan modification.

"There will be a lot of remodifications for those [borrowers] that fell out of a modification the first time," said Art Tyszka, director of document services at Wolters Kluwer Financial Services, which has been hired by several of the largest servicers to conduct loss-mitigation efforts.

"Several hundred thousand loans at a minimum" will get one more chance, Tyszka said.

"The words 'loss mitigation' and 'loan modification' appear no less than a hundred times in the consent orders, so it's logical to assume that the regulators are keenly interested in as many borrowers as possible being put back into loan workouts."

Sean O'Toole, the chief executive of ForeclosureRadar.com, a Discovery Bay, Calif., data company, said cancellations of foreclosure actions are on track to increase 58% this month compared with the first three months of the year combined????.

But the reasons could be varied and not just because of the consent orders.

In California, for example, servicers can postpone a foreclosure notice for up to a year. Some of the cancellations may be attributed to short sales, or to a reluctance on the part of servicers to liquidate real estate assets while housing prices are still dropping, O'Toole said.

Albert filed her suit, which seeks class-action status, in January against Aurora and Deutsche Bank (the securitization trustee for the mortgages).

It claims Aurora did not apply the trial payments to the borrowers' mortgages but instead put them into a "suspense account" that incurred more fees, interest and expenses.

Aurora and its lawyers did not return calls seeking comment, but in court papers the servicer said it "made countless efforts to keep [the] plaintiffs in their homes, exploring loss-mitigation options with them, for sometimes years on end."

Albert estimated that 10 suits seeking class-action status have been filed against other servicers specifically for "dual-tracking."

The consent order is forcing servicers back to the negotiating table, she said.

"Some of these loans are now getting remodified."

Jeffrey Naimon, a partner at the law firm BuckleySandler LLP in Washington who represents banks, was skeptical about predictions of a remodification wave.

Servicers, he said, are more focused on understanding the consent order's myriad requirements, including the federal and state requirements for a foreclosure file review.

"The idea of remodifying loans has not come up," Naimon said. "What they're looking for servicers to do, is to see if they made appropriate loss mitigation available, and to provide remediation if consumers suffered financial harm."

Gerald Alt, the president of LOGS Group LLC, a Northbrook, Ill., network of foreclosure and loss-mitigation attorneys, said servicers may be hampered by the sheer scope of the consent orders.

"One problem is that if the consent orders say they haven't serviced the loans well enough, what is the standard?" Alt said. "To some extent, there is a little bit of head-scratching on what they're going to do, who are they going to pick for the third-party review, how are they going to staff it, and what are the standards."

More cynical industry observers say federal regulators issued the consent orders before a settlement was reached with state attorneys general, giving banks "cover," so they could ultimately provide third-party reviews showing borrowers were not harmed.

Whether a significant number of borrowers will be helped remains unknown.

Herb Blecher, a senior vice president at LPS Applied Analytics, a unit of Lender Processing Services Inc., said that even before the consent orders, servicers have been remodifying loans in significant numbers — but many have redefaulted, which has led to a buildup of loans that have not yet gone to a foreclosure sale.

"There is this churn going on, where it's in foreclosure, they pull it out and work on loss mitigation, and then they put it back in," Blecher said.

Through March, 1.9 million properties were 90 days or more delinquent but had not yet received a notice of foreclosure, LPS found.

Another 2.2 million properties were in the foreclosure pre-sale inventory.

A major problem is that for 30% of loans currently in foreclosure, borrowers have not made a payment in more than two years, Blecher said.

As Alt put it, "they may try to remodify borrowers but some are in foreclosure and have not made a payment in 24 months."

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