Servicers Continue to Wrongfully Initiate Foreclosures: All Types of Loans Affected

February 22, 2012

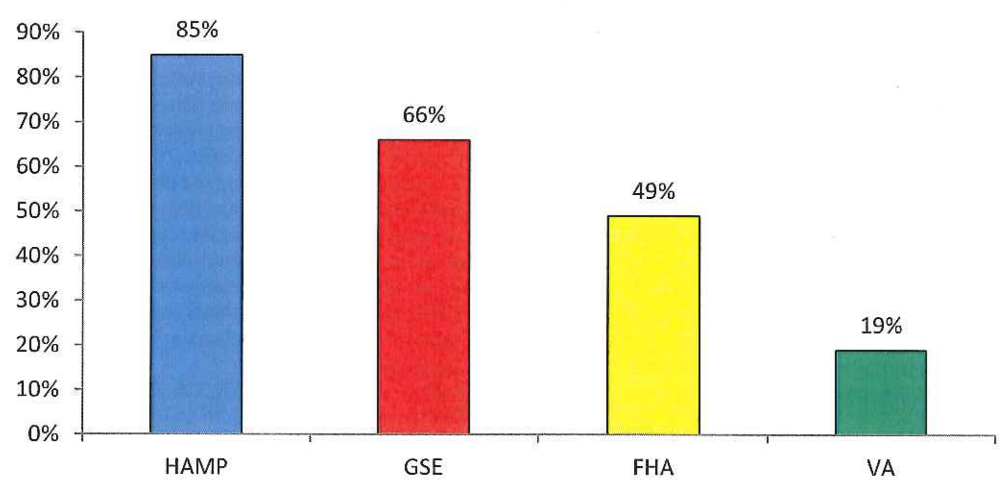
A February 2012 survey by the National Association of Consumer Advocates (NACA),[i] the National Consumer Law Center (NCLC)[ii] and the National Association of Consumer Bankruptcy Attorneys (NACBA)[iii] demonstrates that **mortgage servicers continue to initiate foreclosure proceedings improperly, either while a homeowner is awaiting a loan modification or due to improper fees or payment processing.** Consumer attorneys from 45 states reported representing thousands of homeowners improperly foreclosed on within the last year.[iv]

This survey follows a December 2010 survey by NACA and NCLC that found that servicers often wrongfully initiate foreclosure. A copy of the December 2010 survey results is available at http://www.nclc.org.

Foreclosure Initiation and Sale During the Loan Modification Process Is Still a Substantial Problem

- Over 90% of the respondents report representing a homeowner placed in foreclosure while awaiting a loan modification in the last year.
- *Homeowners were improperly foreclosed on while awaiting both HAMP and GSE loan modifications:* of the survey respondents that represent homeowners placed in foreclosure while awaiting a loan modification in the last year, 85% represent homeowners awaiting a HAMP loan modification; 66% represent homeowners with a loan owned by Fannie Mae or Freddie Mac.
- Over 80% of the respondents represent homeowners where the actual foreclosure sale was attempted while awaiting a loan modification in the last year.
- In total, survey respondents reported representing over *3,700 homeowners* placed in foreclosure while awaiting a loan modification in the last year.

Servicers Foreclose While Processing All Kinds of Loan Modifications



Of the respondents who report representing a homeowner placed in foreclosure while awaiting a loan modification in the last year, the percentage of attorneys representing homeowners awaiting loan modifications under HAMP or for a GSE loan are the highest.

Payment and Fee Abuses Fuel Foreclosures

In addition to abuses in the modification process, the survey also highlights abusive fees and improper payment processing. In the past year, consumer advocates have documented a pattern of shoddy, abusive and illegal practices in the mortgage servicing industry, including force-placing of expensive homeowner's insurance, wrongful application of payments, and inflated or baseless charging of property inspection and late fees. Improper fees frequently lead to foreclosure. Servicers often place homeowners who are current or making payments as agreed into foreclosure. *The survey results demonstrate these practices are current and widespread.*

- 80% of the respondents represent homeowners who were placed into foreclosure in the last year where there was a wrongful assessment of fees (e.g. late fees, broker-price opinions, inspection fees, attorney's fees and other fees).
- 79% of the respondents represent homeowners who were placed into foreclosure in the last year where there was a misapplication of payments.
- Almost 60% of the respondents represent homeowners who were placed into foreclosure in the last year where there was an improper assessment of force-placed insurance.
- In the last year alone, survey respondents reported representing over 700 homeowners with force-placed insurance; almost 2,500 homeowners with improper assessment of fees; and over 1,200 homeowners whose payments had been misapplied.
- Over 78% of the respondents represent homeowners who had been placed in foreclosure in the last year where the servicer did not properly accept the homeowner's payments.
- 73% of the respondents represent homeowners who had been placed in foreclosure in the last year while the homeowner was making payments as previously agreed upon.

Eliminate the Dual Track System

We must eliminate the two-track system in which banks proceed with foreclosures while evaluating borrowers for a loan modification. Homeowners should be properly evaluated for a loan modification before a foreclosure is initiated and that evaluation should be completed before any foreclosure fees are incurred. Because homeowners are so often placed in foreclosure improperly and without a loan modification evaluation, foreclosures must be stopped whenever a loan modification evaluation is commenced. Servicers must not be allowed to profit from improper fees and unnecessary foreclosure initiation.

For more information, contact: Jan Kruse, NCLC Director of Communications, jkruse@nclc.org; Ellen Taverna, NACA Legislative Associate, ellen@naca.net.

---

[i] The **National Association of Consumer Advocates** (NACA) is a nationwide membership organization of consumer protection attorneys who represent and have represented thousands of consumers victimized by fraudulent, abusive, and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA is actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

[ii] The **National Consumer Law Center, Inc.** (NCLC) is a non-profit organization specializing in consumer issues on behalf of low-income and other vulnerable people. Since 1969, NCLC has worked with legal services and nonprofit organizations as well as government and private attorneys across the United States, to create sound public policy for low-income and elderly individuals on consumer issues. NCLC also publishes a series of eighteen consumer law treatises and annual supplements. NCLC has provided oral and written testimony to Congressional Committees on foreclosure and numerous related topics.

[iii] The **National Association of Consumer Bankruptcy Attorneys** (NACBA) is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA now has more than 4,500 members located in all 50 states and Puerto Rico.

[iv] 260 attorneys were surveyed from the following 45 states & Washington, D.C.: AL, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, and Washington, D.C.