Mortgage Foreclosure Defense Training
Marquette Volunteer Legal Clinic Brown Bag CLE
October 14, 2010

Legal Aid Society of Milwaukee, Inc.
521 N. 8th Street
Milwaukee, WI 53222
(414) 727-5300

Addendum to Outline

1. Defenses / consumer protections under federal law related to mortgage lending

   A. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank),

NCLC Reports summarized the Dodd Frank Act as follows: (from the NCLC Reports, Vol 29, July August 2010)

   ...the most important change in consumer-protection law since the late 1960s, was signed into law on July 21, 2010. Most readers by now are familiar that it will create a new Consumer Financial Protection Bureau (CFPB) which will issue extensive new regulations and otherwise dramatically change lending practices for years to come. Perhaps less well known is that Dodd-Frank makes scores of important changes to TILA, RESPA, HAMP, EFTA, HMDA, CLA, FCRA, and other consumer laws, particularly changes related to mortgage originations and servicing. Federal preemption of state consumer law is also restricted.

2. Practical Tips for Homeowners

A. Find out who owns your mortgage debt.
Homeowners are entitled by law to know who owns their mortgage debt every time it gets transferred. (Helping Families Save Their Homes Act, 2009 S. 896, Sec 404, amending Section 131 of the Trust in Lending Act (15 USC 1641))
   • Notice must be made in writing within 30 days after the date of any transfer of the debt.
   • The notice must provide:
     o Identity, address, telephone number or new creditor
     o Date of transfer
     o How to reach an agent or party having authority to act on behalf of new creditor
     o Location of the place where transfer of ownership of the debt is recorded and
     o Any other relevant information regarding the new creditor
• If there is a transfer of servicing, the servicer will send out a separate notice. The servicer’s obligation to notify homeowner-borrower of a change is servicing is governed by RESPA.

B. Qualified Written Request to resolve disputes
Real Estate Settlement Procedures Act [12 USC section 2605(e)]

Section 6 of RESPA provides borrowers with important consumer protections relating to the servicing of their loans. Under Section 6 of RESPA, borrowers who have a problem with the servicing of their loan (including escrow account questions), should contact their loan servicer in writing, outlining the nature of their complaint. The servicer must acknowledge the complaint in writing within 20 business days of receipt of the complaint. Within 60 business days the servicer must resolve the complaint by correcting the account or giving a statement of the reasons for its position. Until the complaint is resolved, borrowers should continue to make the servicer’s required payment. Under the new Dodd Frank law, the timeline has changed. The servicer has 5 business days to provide notice of receipt; 30 business days to respond and an optional 15 day extension if notice is provided to borrower.

Servicer’s failure to timely respond can give rise to a cause of action under RESPA for damages.
Sample Written Complaint to Lender

The following is a sample qualified written request from you, the borrower, to a lender. Use this format to address complaints under the Real Estate Settlement Procedures Act (RESPA). Be sure to read more about RESPA, and your rights under this Act, elsewhere on the RESPA site.

Attention Customer Service:

Subject: [Your loan number]
[Names on loan documents]
[Property and/or mailing address]

This is a "qualified written request" under Section 6 of the Real Estate Settlement Procedures Act (RESPA).

I am writing because:

- Describe the issue or the question you have and/or what action you believe the lender should take.
- Attach copies of any related written materials.
- Describe any conversations with customer service regarding the issue and to whom you spoke.
- Describe any previous steps you have taken or attempts to resolve the issue.
- List a day time telephone number in case a customer service representative wishes to contact you.

I understand that under Section 6 of RESPA you are required to acknowledge my request within 20 business days and must try to resolve the issue within 60 business days.

Sincerely,

[Your name]

REMEMBER: This letter SHOULD NOT be included with your mortgage payment, but should be sent separately to the customer service address.

You SHOULD continue to make the required mortgage and escrow payment until the request is resolved.

You may bring a private right of action under Section 6, if you suffer damages due to the lender's servicing of the loan. See the RESPA statute and regulations.