

Alert: Oregon Department of Justice Sets Forth Proposed New Standards for Mortgage Loan Servicers

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McGlinchey Alert

In the wake of a continually increasing number of consumer complaints lodged against mortgage loan servicers in Oregon since 2008, the Oregon Department of Justice (“DOJ”) has proposed new rules based heavily on the National Mortgage Settlement Agreement previously entered into with the five largest national mortgage loan servicers. Although the rule parameters are not yet finalized, it is certain that the new rules would cover a large swath of (if not all) mortgage servicers conducting business in Oregon.

The Oregon DOJ has stated that the proposed rules are intended to establish certain mortgage servicer practices as unfair and deceptive, and to establish a uniform standard of conduct in the mortgage servicing industry with regard to the services offered to consumers. Importantly, in the event that a servicer fails to comply, the rules also provide consumers a private right of action under the Oregon Unlawful Trade Practices Act.

The rules would declare certain servicing practices to be an unlawful trade practice, including:

- the improper execution of sworn documents;
- misapplication of borrowers’ payments;
- failing to provide borrowers with certain information on monthly mortgage statements, including, but not limited to, the total amount due, how previous payments were allocated, a current escrow balance, and an explanation for a change in the borrower’s payment;
- referring a borrower to foreclosure while considering the borrower’s request for a loan modification;
- failing to inform the borrower of possible loss mitigation options before referring the borrower to foreclosure;
- failing to disclose and provide accurate information to borrowers relating to the qualification process and eligibility factors for loss mitigation programs;
- failing to conduct an independent evaluation of a loan modification denial before notifying the borrower of the denial;
- failing to permit the borrower at least 30 days to appeal a loan modification denial;
- instructing, advising, or recommending that a borrower go into default to obtain a loan modification;

- failing to respond to qualified written requests within the time period required by the Real Estate and Settlement Procedures Act;
- the improper imposition of fees; and
- imposing hazard insurance without providing a borrower adequate notice.

The Oregon DOJ has convened an advisory committee and invited comment. Advisory committee members have thus far recommended that the Oregon DOJ ameliorate the possible fiscal impact of the rules on small businesses by making the rules only applicable to institutions above a certain size, who had conducted a certain amount of foreclosures during the preceding year, who serviced a certain amount of mortgage loans, or make the proposed rules applicable to situations involving first liens.

The Oregon DOJ has also requested comment from businesses potentially affected regarding the likely fiscal and operational impact of the proposed rules. The second of two public hearings is scheduled for June 28, 2012, and public comment is open until July 17, 2012.