When It Comes To Transferring MSRs,
Communication Is Key

The most important issue to focus on is whether
a borrower is engaged in substantive loss mitigation.

By Jeffrey A. Bunda

As can be anticipated with the implementation of any new regulation, the mortgage servicing rules promulgated by the Consumer Financial Protection Bureau (CFPB) have altered the landscape for mortgage servicers. Coupled with these new regulations has been the ongoing transfer of mortgage servicing rights (MSRs) away from large financial institutions to smaller, mostly non-bank servicers. This change of scenery has led to many unintended consequences, some of which were foreseen by the regulators. These regulations should top the list of issues facing portfolio managers regardless of whether they are transferring or receiving a new book of mortgage loans.

The CFPB recently issued a bulletin outlining its expectations for servicers transferring and receiving loans, which can be found here.

Although this article doesn't explore the specifics of these regulations, it does discuss how they can expose both transferor and transferee to potential problems in the form of consumer complaints, litigation from borrowers and claims between those servicing the loans. When it comes to transfers, the most important issue to focus on, as per the CFPB's new rules, is whether a borrower is engaged in substantive loss mitigation.

The CFPB regulations require the transferring servicer to transmit all information relating to the mortgage loan in a form compatible with the recipient servicer's mortgage servicing platform. For basic loan-level information, such as payment amounts and account balances, a transfer is not that burdensome.

For more advanced scenarios involving intensive loss mitigation negotiations, spanning months and multiple submissions of information, transferring this information accurately can be difficult - but it is nonetheless critical. The CFPB has indicated that it will be giving these scenarios increased scrutiny, quite likely due to the high number of consumer complaints resulting from challenges in properly boarding loans in some stage of the loss mitigation process.

Practical experience shows that two scenarios, in particular, have caused the most headaches for servicers boarding loans in loss mitigation. The first involves the transmission of a borrower's loss mitigation package from the transferring servicer to the recipient. A borrower's frustration over contacting a new servicer

for an update - only to discover the new servicer has no knowledge of the loss mitigation efforts and is demanding the total amount due - will lead to complaints, contested foreclosures and litigation. It is understandably difficult, however, for the recipient servicer to know what the transferring servicer does or does not have.

Despite the CFPB's emphasis on servicer policies for ensuring the free flow of information, consumer frustration reveals that this remains an area in need of improvement. Although any "actual prejudice" to a borrower is easily cured by accepting and reviewing a new loss mitigation package (and delaying the foreclosure), borrowers are still using these hiccups to contest foreclosures and lodge complaints.

The more challenging scenario - and the one with the most exposure for lender liability - is where a borrower has been approved for a loss mitigation solution just before the transfer. While the CFPB regulations are clear that the recipient servicer is "properly applying, after transfer, payments due under an applicable loan modification agreement or other applicable payment modification agreement," they do not anticipate for certain situations.

For example, a borrower applies and is approved for a loss mitigation solution - let's say a trial modification plan - just days before the loan is scheduled to be service released. The borrower sends the first payment to the previous servicer in a timely fashion and submits the remaining two to the new servicer upon receipt of the welcome letter. The previous servicer, however, does not transmit the borrower's first payment to the new servicer until after the borrower's three-month trial period has elapsed. The new servicer, thinking the borrower made only two of three payments, denies the borrower for a permanent modification. How should the recipient servicer handle this situation, other than to sit back and wait for the borrower to contest the foreclosure and sue both servicers?

Recall that the Real Estate Settlement Procedures Act has a 60-day window for payments sent to a previous servicer to be credited and applied to the transferred loan without the borrower incurring a late charge.

The actual text of the statute, however, specifies that such a payment may not be treated as late "for any other purposes." Read together, the statutory and regulatory framework is clear that the new servicer should treat the borrower as having honored the trial period plan and proceed to offer the borrower a permanent modification.

This treatment is easier said than done because the new servicer will treat the borrower as having failed under the trial plan and require the borrower to submit all new loss mitigation documents. To avoid litigation and other negative exposure, servicers should implement "exception" policies and conduct prompt

investigations when a borrower brings this scenario to the attention of his new servicer.

The key to a smooth transfer of loans in loss mitigation is communication. Servicers should emphasize robust practices to ensure that when loans are transferred, the recipient receives all relevant information to pick up where the previous servicer left off. Likewise, recipient servicers should make diligent inquiry as to the status and posture of loans they receive to address borrower concerns with the loss mitigation process. This may include receiving more information than typically transmitted, such as a detailed communications log.

Such policies will lead to happier consumers, fewer complaints and less exposure to the parties involved in a service transfer.

Jeffrey A. Bunda is a Charlotte, N.C.-based associate attorney, litigation, with Hutchens Law Firm*, a Fayetteville, N.C.-based full-service law firm serving, among other markets, the mortgage banking industry. The firm also maintains offices in Wilmington, N.C., and Columbia, S.C.*
© Copyright 2014 Zackin Publications Inc. • All Rights Reserved.