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Letters

Foreclosures

In response to Mr. Ryan's letter in the August 1 *News* regarding the morass that is loan modification work, his letter serves to underscore the point that foreclosure defense is not a field for practitioners to take lightly.

Born primarily out of the banks' rush to profit and their rush to foreclose, there is now a new legal practice area for lawyers. Combining multi-state UCC and trust formation, securitization, RESPA, TILA, Sarbanes-Oxley, Dodd-Frank, United States Bankruptcy Code, Fair Credit Reporting Act, Fair Debt Collection Practices Act, Consumer Collection Practices Act, along with transfer of real property and mortgage law, service of process, the rules of civil procedure, the evidence code, and more, foreclosure defense is without a doubt its own new complicated specialty.

The approach about which Mr. Ryan wrote, corresponding with banks to ask for a modification, is unfortunately rarely feasible. First of all, there is a well-reasoned school of thought that most servicers have a conflict of interest in modifying loans. Additionally, divulging your client's financial history is not only irrelevant to any legal issue at hand, but it is also most often not in your clients' best interest.

The larger concern is that the servicers' repeated requests for financial information under the guise of a loan modification might instead just be a fishing expedition to see if your client has any assets which would be recoverable in a deficiency. The process of simultaneously foreclosing while reviewing an application for a loan modification is so widely utilized that it has been dubbed "dual track."

Instead, through leverage, primarily applied via the application of proper legal and ethical defenses, along with continually trying to educate the lender and their lawyer of the market value, we aim to demonstrate that the real party in interest is often better off in a workout than they will be post foreclosure.

The time involvement in these cases can be extensive, and in the end, the only guarantee you can make is that you will work very hard and do all that you can to help your clients achieve their goals.

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