July 7, 2017

CFPB Comment Letter re RESPA Assessment

David J Reiss
July 7, 2017

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW.
Washington, DC 20552

Re: Docket No. Docket No. CFPB–2017– 0012:
Request for Information Regarding 2013 RESPA Servicing Rule Assessment

Dear Ms. Jackson:

The Consumer Financial Protection Bureau issued a Request for Information Regarding 2013 Real Estate Settlement Procedures Act Servicing Rule Assessment. The Bureau is conducting an assessment of the Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), as amended prior to January 10, 2014, in accordance with section 1022(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Bureau is requesting public comment on its plans for assessing this rule as well as certain recommendations and information that may be useful in conducting the planned assessment. (82 F.R. 21952)

Before the RESPA Servicer Rule was adopted in 2013, homeowners had had to deal with unresponsive servicers who acted in ways that can only be described as arbitrary and capricious or worse. Numerous judges have used terms such as “Kafka-esque” to describe homeowner’s dealings with servicers. See, e.g., Sundquist v. Bank of Am., N.A., 566 B.R. 563 (Bankr. E.D. Cal. Mar. 23, 2017). Others have found that servicers failed to act in “good faith,” even when courts were closely monitoring their actions. See, e.g., United States Bank v. Sawyer, 95 A.3d 608 (Me. 2014). And yet others have found that servicers made multiple misrepresentations to homeowners. See, e.g., Federal Natl. Mtge. Assn. v. Singer, 48 Misc. 3d 1211(A), 20 N.Y.S.3d 291 (N.Y. Sup. Ct. July 15, 2015). The good news is that in those three cases, judges punished the servicers and lenders for their patterns of abuse of the homeowners. Indeed, the Sundquist judge fined Bank of America a whopping $45 million to send it a message about its horrible treatment of borrowers.
But a fairy tale ending for a handful of borrowers who are lucky enough to have a good lawyer with the resources to fully litigate one of these crazy cases is not a solution for the thousands upon thousands of borrowers who had to give up because they did not have the resources, patience, or mental fortitude to take on big lenders and servicers who were happy to drag these matters on for years and years through court proceeding after court proceeding.

The RESPA Servicing Rule goes a long way to help all of those other homeowners who find themselves caught up in trials imposed by their servicers that it would take a Franz Kafka to adequately describe. The Rule has addressed intentional and unintentional abuses in the use of force-placed insurance and other servicer actions.

The RESPA Servicing Rule Assessment should evaluate whether the Rule is sufficiently evaluating servicers’ compliance with the Rule and implementing remediation plans for those which fail to comply with the vast majority of loans in their portfolios. Servicers should not be evaluated just on substantive outcomes but also on their processes. Are avoidable foreclosures avoided? Are homeowners treated with basic good faith when it comes to interactions with servicers relating to defaults, loss mitigation and transfers of servicing rights? The Assessment should evaluate whether the Rule adequately measures such things. One measure the Bureau could look at would be court cases involving servicers and homeowners. While perhaps difficult to do, the Bureau should attempt to measure the Rule’s impact on court filings alleging servicer abuses.

The occasional win in court won’t save the vast majority of homeowners from abusive lending practices. The RESPA Servicing Rule, properly applied and evaluated, could.*

Sincerely,

David Reiss

* This comment letter is based in part on posts to the author's [www.REFinBlog.com](http://www.REFinBlog.com), which tracks developments in the real estate finance industry.