



MORTGAGE SERVICING: APPLICATION OF FDCPA AND UDAP, AND FTC ENFORCEMENT ACTIONS

ACI Mortgage Servicing Compliance

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Commission**

FTC ROLE IN MORTGAGE MARKET

- Primary Role is enforcement
- Enforce:
 - Section 5 of the FTC Act
 - Fair Debt Collection Practices Act
 - Truth in Lending Act
 - Fair Credit Reporting Act
 - Equal Credit Opportunity Act
 - Mortgage Acts and Practices (MAP) Advertising Rule
 - Mortgage Assistance Relief Services (MARS) Rule



FTC ROLE IN MORTGAGE MARKET

- Also: research, policy advocacy, consumer and business education
- Wide ranging jurisdiction



FTC MORTGAGE ENFORCEMENT

- 25 actions against mortgage lenders, brokers, and servicers
- Over \$420 million in consumer redress
- Focus: deceptive or unfair practices
- Practices at all stages of mortgage lending, by all types of actors



FTC ACT § 5: DECEPTION

- An act or practice is deceptive if there is a representation, omission of information, or practice that is likely to mislead consumers, who are acting reasonably under the circumstances, and the representation, omission, or practice is one that is material.



FTC ACT § 5: UNFAIRNESS

- Practice that causes or is likely to cause substantial injury to consumers;
- Injury is not outweighed by countervailing benefits to consumers or to competition; and
- Injury is one that consumers could not reasonably have avoided.



FDCPA & FTC ACT

- Fair Debt Collection Practices Act
 - Generally applies to “debt collectors,” not creditors
 - Debts that are in default when acquired
- Section 5 of the FTC Act: Unfair and Deceptive Acts or Practices
 - Not limited to debt collectors
 - Loans current or in default when acquired



COLLECTION ISSUES IN SERVICING

- FDCPA & FTC Act § 5 Deception:
 - Misrepresent fees owed
 - Caller is a process server
 - Caller is an attorney or from a law firm or law enforcement agency
 - False threats of arrest, seizure, garnishment, or attachment
 - False threats of litigation



COLLECTION ISSUES IN SERVICING

- FDCPA & FTC Act § 5 Unfairness:
 - Disclosure of a debt to employer or co-worker
 - Continuously calling consumer's place of employment
 - Unauthorized withdrawals



OTHER ISSUES IN SERVICING

- Credit Reporting
- False or Unsubstantiated Claims
- Unauthorized Fees
- Default Servicing Fees
- Loss Mitigation



ENFORCEMENT ACTIONS: FTC V. FAIRBANKS

- Joint FTC/HUD Settlement in 2003, modification of settlement in 2007
- Injunctive Relief + \$40 Million Redress
- Large third party servicer of subprime loans; name changed to Select Portfolio Servicing



ENFORCEMENT ACTIONS: FTC V. FAIRBANKS – CONDUCT ALLEGED

- FTC Act § 5
 - Unfairly failed to post consumers' payments in a timely manner
 - Unfair and deceptive placing of force placed insurance
 - Misrepresented fees owed
 - Misrepresented that fees were (a) allowed under the mortgage contract and (b) permitted by law
- Similar counts under FDCPA
- FCRA
- RESPA (alleged by HUD)



ENFORCEMENT ACTIONS: FTC v. EMC

- Settlement in 2008
- Injunctive Relief +\$28 Million Redress
- Serviced subprime and non-traditional mortgages
- Wholly owned subsidiary of Bear Stearns (then part of J.P. Morgan)
- During explosive growth of subprime market, acquired loans quickly



ENFORCEMENT ACTIONS: FTC v. EMC – CONDUCT ALLEGED

- FTC Act § 5
 - Misrepresented amounts owed
 - Unfair and deceptive assessment of fees (property inspections, loss mitigation fees)
 - Unsubstantiated claims (post-transfer): interest rate, fees, delinquency status, etc.



ENFORCEMENT ACTIONS: FTC v. EMC – CONDUCT ALLEGED

- FDCPA
 - Called repeatedly
 - Failed to meaningfully disclose identity
 - Misrepresented amount of debt or fees that can be collected
 - Threatened to communicate false credit information to CRAs
 - Collected amounts not authorized by contract or permitted by law
 - Failed to provide validation notice
- FCRA: failed to report disputes to CRAs
- TILA: failed to disclose cost of loan modification fees



ENFORCEMENT ACTIONS: FTC V. COUNTRYWIDE (BAC LOANS)

- Settlement in 2010
- Injunctive Relief & \$108 Million Redress
- Conduct Alleged:
 - Charged fees that were illegal or not authorized under loan contract for default-related services
 - Misrepresented that consumers owed more than a reasonable fee for default-related services
 - E.g., property inspections, maintenance services, title searches



ENFORCEMENT ACTIONS: FTC V. COUNTRYWIDE (BAC LOANS)

- Settlement in 2012
- Additional \$8 Million Redress of unremediated consumer loss (\$28 million already paid)
- Alleged BAC Loans violated consent order by:
 - Charged illegal/unauthorized fees
 - Charged more than reasonable fees



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PARTING THOUGHTS

- Collections activity substantially covered by FDCPA or UDAP law
- Financial/Performance incentives to collect
- Transfer issues

