Postponing Foreclosure Sale Dates

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Consumer Financial Protection Bureau (CFPB) Regulations

• New CFPB Regulations
  – Changed in Jan. 2014
    • Make sure to review them...
    • There is no substitute for the rules themselves
  – The website is full of information
    • Make sure to check the website to get more in-depth information
• If a foreclosure sale date is set and the homeowner submits a complete package 37 days or less before the sale date, the bank does NOT have to follow the loss mitigation requirements in 12 C.F.R part 1024.41
  – The Key is a COMPLETE package

  – See 12 C.F.R. part 1024 Supplement I, Comment 41 (g)-4
• BUT, if the investor has requirements for dealing with application packages received 37 days or less before a sale date, the servicer must maintain those requirements and have procedures that accommodate those investor requirements
• When the investor has these requirements, the servicer needs to properly evaluate and review a homeowner that has submitted a package for loss mitigation options where applicable and in accordance with §1024.41

— See 12 C.F.R §§ 1024.38 (a) & (b) (2) (v)
• AND that review can apply to homeowners that submitted a package 37 days or less before a sale date

– See 12 C.F.R part 1024 Supplement I, Comment 41 (g)-4
• Dual Tracking
  – A servicer cannot file for foreclosure if a homeowner submits a COMPLETE loan modification application before the foreclosure is filed
    • Applies if the complete package was received during the first 120 days that the homeowner is delinquent or any time after the first 120 days but before the foreclosure is filed
    • Small Servicers cannot foreclose within the first 120 days of delinquency
    • See 12 C.F.R. § 1024.41 (f) (2) & 12 C.F.R. § 1024.41(f)(2) (i)
However once one of the following has occurred, the servicer can move forward with foreclosure if:

- Homeowner was denied AND
  - There is no appeal process available
  - Time for appeal has expired
  - Appeal was denied
  - See 12 C.F.R. § 1024.41 (f) (2) (i)
- Homeowner rejects all loss mitigation options the bank offered
  - See 12 C.F.R. § 1024.41(f) (2) (ii)
Or the homeowner does not fulfill their responsibility under a loss mitigation agreement that was offered

- Modifications
- Short Sales

See:

- 12 C.F.R. § 1024.41 (f) (2) (iii)
- 12 C.F.R. part 1024 Supplement I, Comment 41 (g) (3) -1
- 12 C.F.R. part 1024 Supplement I, Comment 41 (g) (3) -2
Have a Plan

• Cases with sale dates should be assigned as soon as possible
  – Encourage homeowners to inform you if they receive a sale date before the case is assigned
  – Cases with sale dates should be escalated immediately

• Make sure you request the postponement of the sale in the escalation
  – Usually we ask for 90 days
Have a Plan

• Make sure the specialists/counselors who are on the front lines can identify if a homeowner has a sale date
  – People do not always volunteer that information
  – Discuss the questions they need to ask
Have a Plan

• Be Organized
  – Find a system that works for you

• Have a foreclosure calendar
  – Can just be a blank monthly calendar that you write in sale dates
  – Allows you to keep track of the sales at glance
  – Allows others to see the sales if you are out of the office
  – Make sure to cross off the ones that have been postponed

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What is an Imminent Foreclosure?

• Any foreclosure sale date that is within two (2) weeks or less
What is an Imminent Foreclosure?

- It is a rolling timeline: August

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What is an Imminent Foreclosure?

• For example:

  – If today is Aug. 4\textsuperscript{th} the following are imminent:
    • Aug. 6\textsuperscript{th}
    • Aug. 12\textsuperscript{th}
    • Aug. 18\textsuperscript{th}
What is an Imminent Foreclosure?

–Aug. 21\textsuperscript{st} is NOT an imminent foreclosure if today is Aug. 4\textsuperscript{th}

• It is outside the 2 week mark

• *However on Aug. 7\textsuperscript{th} it IS an imminent foreclosure*

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Is the “sale date” a *Real* SALE DATE?

- Can be difficult to tell...
Is the “sale date” a Real SALE DATE?

• Confirm that there is an actual sale date
  – Sounds obvious, however:
    • Homeowners in foreclosure are in crisis and under a lot of stress
    • They can get dates easily confused
      – When the bank officially puts them in foreclosure status
      – Application deadlines
      – 35b deadlines
      – Demand letter dates
      – Service Member Hearing date (SCRA)
Is the “sale date” a Real SALE DATE?

• Ask the homeowner how they know they have a sale date
  – Have them read the notice to you
  – Ask if they have received notices from the foreclosing attorney & what they said
  – Have they been served with a Service Member Hearing Notice?
  – Ask if they saw the public notice in the local newspaper
  – Ask them to send you any and all of the above to confirm the sale

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Is the “sale date” a *Real SALE DATE*?

- If all else fails, go online:
  - Search for the public notice or auction
  - Or go on the Registry of Deeds website and search for the Order of Notice

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Auctioneer’s Websites

– Check the auctioneer’s websites:
  • http://www.harmonauctions.com/
  • http://www.baystateauction.com/
  • http://auctionsri.com/
  • http://landmarkauctionco.com/
  • https://www.paineauctioneersonline.com/
  • http://www.sullivan-auctioneers.com/
  • http://towneauction.com/Auctions.aspx
  • http://www.djflynn.com/
Auctioneer’s Websites

• Cont.

  – http://www.pesco.com/
  – http://patriotauctioneers.com/
  – http://www.monroeauctiongroup.com/

  ▪ You can also use the sites to check up on the status of the sale
1. Confirm sale, again

2. Who is the person you are speaking with?
   – Are they on the mortgage?
     • If not make sure to discuss authorization issues and speak to the person actually on the mortgage

3. Ask who the foreclosing attorney is
   – Sometimes it is useful to contact them
   – They can confirm sales or postponements
4. When is the last time they spoke to the bank?
   - Depending on when it was, it can be helpful in evaluating the situation

5. Have they ever been reviewed or applied for a modification?
   - When?
   - Result?
6. How many months in arrears?
   - dollar amount is fine as well but can be relative

7. Gross monthly household income
   - source(s) of income

8. Mortgage payment
   - calculate DTI

9. Interest Rate

10. Hardship
11. Are they working with a private attorney?
12. Are they working with anyone else?
13. Is this their primary residence?
14. Have they ever had a sale previously?
15. Who is the Investor
   - Fannie/Freddie/FHA/VA?
**Remember: Adjust expectations accordingly!!!**

-Not everyone will get their sale postponed or a approved for modification
Division of Banks

• Regulates and oversees all banks and financial institutions in Massachusetts
• Homeowners/consumers can file complains with the Division of Banks
• Homeowners can contact the Division of Banks for additional assistance in requesting postponements of sale dates
Division of Banks

• When is it time to suggest that the homeowner contacts the Division of Banks??
Division of Banks

• The Division of Banks will NOT contact the bank to request postponement until the sale is within 7-10 days
The Division of Banks will only request one postponement, per person, per property.

One Bite

Make sure the homeowner is aware of this.
Escalation

• Get Authorization Form
  – Bank will not speak to you without one
  – Make sure whomever is on the mortgage has read, completed and signed the form
  – If the sale is very soon, as in a few hours, depending on the bank you may be able to escalate without the authorization form-however make sure to get it to the bank as soon as possible!
Escalation

• Escalation Email and/or Facsimile
  – Make sure to escalate in writing
    • Provide as much information as possible
  – Mark as “High Importance”
  – Place the actual sale date in the subject line as well
  – Make sure to reference the date again in body of email
  – DO NOT forget to actually request the postponement in the email
Escalation

- Escalation Email and/or Facsimile (Cont.)
  - Ask for 90 day postponement
    - Most banks will give a 30 day postponement
  - If sale is 48 hours or less away make sure to cc’ the highest contact you have at the bank
    - follow up with a phone call and reiterate request to postpone
  - Most banks acknowledge receipt within 24 hours
Small Servicer Sales

• If you do not have a contact established:
  – Check DOB website for contacts (http://license.dob.state.ma.us/in-choose.asp)
  – Ask the homeowner for correspondence from bank to check contact information
  – Contact foreclosing attorney and request bank contact
  – And Google can be your best friend for gathering contact information and most senior level contact or loss mitigation specialist/department
Small Servicer Sales

• If you do not have a contact established (Cont.):
  – After contact is obtained make sure to gather all contact information and confirm that this contact is the correct contact to speak with regarding imminent foreclosure situations involving MA homeowners
  – Also, while you have their attention ask for contacts for general non-imminent escalations for future reference
Post-Escalation

- Follow up with the bank as often as you need to reiterate request to postpone
- Check the auction websites
- And you can call the foreclosing attorney to check the status of the sale
Post-Escalation

• If the bank states that the homeowner has not submitted a package and that is why they will not postpone
  – Ask for postponement, again, to have time to get a package in
  – Or see if the bank will review the package if you can get it in ASAP before the sale
    • Sometimes investors requires a package in 10-14 days before the sale in order to postpone
      – Ask for an exception-you just might get it!
Post-Escalation

• Remember to advocate as much as possible...

But some battles you cannot win:
- legitimate denials
  - unaffordability
  - failing out of numerous mods.
  - many previous postponed sale dates

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No Postponement

• If you cannot get the sale postponed:
  – Explain to the homeowner what will happen on the date of the auction
    • Bidders can show up
    • The homeowner does not have to be there
  – Discuss what happens after the new owner takes title
    • It may be the bank/investor
    • The new owner may contact them to arrange move out
    • There may be a cash for keys offer
No Postponement

- Eviction
  - Notice to Quit
  - Summons & Complaint
  - Motions
  - Answer
  - Discovery
  - Trial
  - Appeal
  - Judgment
  - Execution

http://www.masslegalhelp.org/eviction-time-line
No Postponement

• Legal Aid referral?

• Remember that eviction may not happen right away

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Postponement!

• So you’ve reached the top of the “postponement tower” and postponed the sale!!

• Now what?
Postponement

• If the bank just postponed without requiring a package but now needs one, make sure the homeowner understands they need one in right away
  – Do not forget to stress the importance of getting docs. in since most servicers only grant 30 day postponements-especially since you just did all that work to get the sale postponed
Postponement

• If the file will not stay with you:
  – Get everything organized for the new specialist/counselor
    • Make sure all notes and docs. are up to date and understandable
    • Do not forget to update new sale date if there is one
    • Inform the homeowner of the transfer and provide contact information for the new specialist/counselor
    • We use transfer checklist sheets that show a step-by-step process so nothing is missed
Postponement

• If the file stays with you:
  – Work it!
  – Follow up with the bank and ask for the new sale date to be postponed if there is one until the homeowner gets a full and fair review
Other What If’s

• What if you get a call and the auctioneer is at the house and sale is happening NOW?
• What if the sale is in 45 minutes?
• What if you find out the auction already happened?
Other What If’s

• KEEP CALM
• Try to keep the homeowner calm
• Explain what is happening
  – Most people believe they are out on the street as soon as the auction is over
• Try to focus on moving forward and not what happened in the past
• Explain what you can do to help them going forward

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If you are feeling overwhelmed...

Ask for help!
The End

• Questions???
THANK YOU