54th Annual

William W. Gibson, Jr.

Mortgage Lending and Servicing Institute

September 17-18, 2020

AT&T Conference Center, Austin, TX

September 17-18, 2020

Live Webcast

Current Trends in Single & Multifamily Servicing Litigation: Examining the pre-COVID and current trends impacting single family and multifamily residential servicers

Bradley J. Purcell

Bradley J. Purcell
Reed Smith, LLP
Dallas, Texas

bpurcell@reedsmith.com
469-680-4224

08/31/2020 6:21 PM

I. Introduction

The COVID-19 pandemic has caused a dramatic and devastating blow to the world economy. The mortgage industry has not been immune to the recent economic downturn. However, mortgage services should take care to avoid an overly myopic view of the market. Several pre-COVID trends in mortgage litigation will continue through 2020 and beyond. At the same time, new trends have started based on COVID and the CARES Act. Finally, mortgage servicers must not forget that the current COVID market instability, while novel in its origin is not unique. Although caused by different forces, current market instability is likely to mimic past market instability. Mortgage servicers need to dust off the 2008 playbook to get ready to respond to the current market decline. Part of that response is likely to include a manifest increase in bankruptcy filings by borrowers. Pre-COVID bankruptcies were at historic lows for a number of years. The pandemic has already forced an unprecedented number of retail bankruptcies. Single and multifamily residential bankruptcies are likely to increase dramatically in the near term. Accordingly, servicers need to develop bankruptcy strategies to respond to the increase filings, especially in light of important changes to the bankruptcy code as part of the CARES Act.

This article will examine litigation and bankruptcy trends and strategies for multifamily and single family mortgage servicers. For both multifamily and single family mortgages we will examine (i) pre-COVID trends, (ii) new issues that COVID and related legislation have created, and (iii) strategies to handle borrower bankruptcies.

II. MULTIFAMILY SERVICING LITIGATION

A. Pre-COVID Trends in Multifamily Mortgage Servicing Litigation

Before the COVID pandemic of 2020, multifamily loan markets were performing at historically high levels with nearly historically low defaults.[1] Fannie Mae – which had a retained portfolio of over $9.6 billion in multifamily mortgage loans and multifamily mortgage-related securities in 2019 – reported an extremely strong multifamily housing market at the end of 2019.[2] Multifamily vacancy rates were estimated to be 5.5% as of the close of 2019, down from a 10 year average of 6%.[3] Effective rents increased by an estimated 2.5% during 2019.[4] At the same time, net absorption - a particularly important metric that measures the net change in occupied units – was positive in 2019, indicating that units were being rented at a faster rate than they were being constructed.[5] Not surprisingly, with a strong rental market, the multifamily mortgage market was also strong in 2019. Fannie Mae reported serious delinquencies (loans 60 days or more past due) remained historically low: .04% at the end of 2019 compared with .06% at the end of 2018.[6]

The combination of a strong rental market, low delinquency, and liquidity in the market resulted in relatively little multifamily servicing litigation in 2019. The majority of multifamily mortgage servicing litigation centered on non-payment defaults, the most common of which were property condition defaults. A property condition default occurs when an existing borrower fails

---

[1] To look at pre-COVID trends in multifamily mortgage servicing litigation, we must first define the "pre-COVID" period. For this discussion, we will consider anything before January 1, 2020 as the pre-COVID period. There are a number of metrics to be considered and a number of starting points that can be used. Because picking one will necessarily include some level of arbitrary line drawing, and because reporting from major institutions is done on quarterly and annual bases, anything before January 1, 2020 will be considered the pre-COVID period.
[2] Fannie Mae financial information taken from the third quarter 2019 10-Q or end-of-year 10-K which may be found at https://www.fanniemae.com/portal/about-fm/investor-relations/quarterly-annual-results.html
[3] Vacancy rate estimates are reported in the Fannie Mae 2019 10-K. *See id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*

Title search: Current Trends in Single & Multifamily Servicing Litigation: Examining the pre COVID and current trends impacting single family and multifamily residential servicers

First appeared as part of the conference materials for the
2020 Special Topics in Residential Mortgage Lending session
"Current Trends in Single & Multifamily Servicing Litigation"