

WANT TO SUE THE BANKSTERS? ASK WHERE IS THE NOTE

Remember WhereIsTheNote?

In the face of mounting evidence that the banks foreclosing on homes did not comply with legal requirements during securitization of mortgages and therefore don't have legal standing to foreclose, the SEIU and some community organizations teamed together last month to create an online tool that anyone can use to ask their mortgage servicer where their note is. By helping homeowners proactively check whether their bank has the right paperwork, it gives them more power in the event of a foreclosure.

The site launched just over three weeks ago. 200,000 people have visited the website; around 15,000 have used the tool to ask their bank for their note (I'll have a more exact number shortly).

What has happened since gets very interesting. In the first few days, some banks responded quickly and in apparent good faith, some admitting there was a problem, and others sending what they claimed was the note, but was either something else entirely, or clearly did not meet the requirements for transfer.

But as banks realized those first requests were not isolated requests, two things happened. Either banks have sent back a response saying the homeowner had no right to see their note. Or, banks have not responded at all.

Here's where things get interesting. The WhereIsTheNote-generated letters invoke the Real Estate Settlement Procedures Act (RESPA). Section 6 of RESPA dictates how loan servicers must reply to consumer complaints about their loan.

Section 6 provides borrowers with

important consumer protections relating to the servicing of their loans. Under Section 6 of RESPA, borrowers who have a problem with the servicing of their loan (including escrow account questions), should contact their loan servicer in writing, outlining the nature of their complaint. The servicer must acknowledge the complaint in writing within 20 business days of receipt of the complaint. Within 60 business days the servicer must resolve the complaint by correcting the account or giving a statement of the reasons for its position. Until the complaint is resolved, borrowers should continue to make the servicer's required payment.

A borrower may bring a private law suit, or a group of borrowers may bring a class action suit, within three years, against a servicer who fails to comply with Section 6's provisions. Borrowers may obtain actual damages, as well as additional damages if there is a pattern of noncompliance. [my emphasis]

In other words, RESPA says that if homeowners write their servicer and say, "I have a problem with the way you're servicing my loan," the law requires that the bank acknowledge that the homeowner has written that letter within in 20 days. And it requires that it resolve that complaint within 60 days. If banks don't do so, homeowners can sue.

So, as I said, just over three weeks after people started using this site, banks have been writing back and either telling homeowners that the complaint basically saying "I have doubts about whether you actually have legal standing to collect my mortgage payments" doesn't qualify as a "problem" under RESPA. Here's how IndyMac made such a claim in one response letter.

Although your fax references the response as RESPA Qualified Written

Response eligible, your request actually does not qualify. The statute and case law require that the correspondence disputes the servicing of the loan and requires the sender to provide the servicer specific facts that would enable the servicer to investigate and respond. For instance, a dispute may involve a misapplication of a payment or a miscalculation of a monthly escrow amount. The statement that you are concerned about what you may have heard on the news does not qualify as a dispute with the servicing of your loan. Consequently, we are not subject to the response requirements set forth in the Real Estate Settlement Procedures Act.

In other cases—such as Citibank in my case—the bank appears to have simply let the 20-day deadline pass without a response.

Now, the genius of the WhereIsTheNote campaign is twofold. First, for the first time, someone is collecting an independent set of data about whether banks have a right to collect payment on the loan or not (there is privately available data, but it's very expensive). WhereIsTheNote has already recognized, for example, that Bank of America and its subsidiaries have adopted a uniform claim that RESPA doesn't apply in this case (of course, Bank of America is one of the most suspect banks for note problems). And WhereIsTheNote is collecting information that will show that not just those houses in foreclosure, but performing loans have note problems, proving that this is not an issue of "deadbeat" homeowners, but rather banks that are playing fast and loose with private property rights.

But more interesting is enforcement. As the section I cited above makes clear, borrowers whose banks refuse to respond to a RESPA request can sue for damages.

And as it happens, the Attorneys General in all

50 states are already investigating whether the banks are engaging in foreclosure fraud to cover up securitization problems. Which means there are already lawyers out there ready to take on the banks that do things—like refusing to respond to homeowner RESPA requests.

WhereIsTheNote will be referring these RESPA non-responses to the AGs to respond accordingly.

If you haven't already done so, I encourage you to ask your servicer WhereIsTheNote. Because—on a day when all else seems hopeless—it may well be a means of holding the banks accountable for the shitpile they made of our nation.