Mortgage Servicing Fraud

When Can a Mortgage Servicer Face Criminal Charges?

Legal Definition

Mortgage servicers collect and apply buyer payments and manage loans for commercial and residential real estate financing. The original lending institution may service its own mortgages, or third-party companies may purchase the rights to service loans from original mortgage lenders. Mortgage services accept and record payments; calculate variable and adjustable interest rates; pay taxes and insurance from escrow accounts; negotiate mortgage modifications and supervise the process of foreclosure.

In each of the transactions performed by mortgage servicers, there are strict regulations in place designed to protect borrowers. When a mortgage servicer fails to fulfill any regulations, this can lead to legal action. If the servicer is believed to have engaged in intentionally deceptive, dishonest, or misleading behavior, the servicer could actually face criminal charges.

Examples of Mortgage Servicing Fraud

There are many different types of actions that can be considered mortgage servicer fraud. Some common examples include:

- **Misleading buyers about mortgage modifications:** Many buyers are told that their servicer is working with them to negotiate a mortgage modification. In reality,

the servicer may be working behind the scenes to move forward with foreclosure. In some cases, servicers actually "lose" documents in order to prevent a modification from occurring so the servicer can foreclose on a home.

- **Misapplying payments.** This can trigger late fees and penalties for the borrower while providing more money for the mortgage servicer.
- **Failure to honor mortgage modifications:** When a mortgage servicer purchases a mortgage loan, the loan buyer may sometimes improperly refuse to honor a mortgage modification agreement that was reached with the prior lender.
- **Charging illegal fees:** Mortgage servicers are not permitted to charge homeowners fees for the costs of obtaining price opinions for brokers or monitoring properties. Sometimes, these and other illegal fees are charged by mortgage servicers.
- **Refusal to provide necessary information for loan refinance:** Mortgage servicers may fail to provide loan payoff information and take other steps to prevent a refinance from occurring, since the refinance can cause the loss of revenues team from the loan.
- **Improper purchase of forced place insurance:** When a buyer does not have required insurance coverage on a home, a servicer can buy insurance (called forced place insurance). In some cases, homeowners are not properly informed of insurance requirements or were misled and mortgage servicers purchase very costly forced place insurance. This can sometimes force a borrower into default.
- **Falsifying documents:** When a servicer needs to foreclose, the servicer needs to have all documents in line including the original paperwork showing the right to collect on the mortgage loan. Many home loans were sold multiple times and the servicer ended up not having the necessary paperwork to prove a right to collect on the loan. Some servicers responded to this problem by backdating documents and falsifying documents. MERS, a database designed to track mortgage transfers, had quality control issues that made fraud easier, and MERS was supposed to be modified as part of a 2011 settlement but some evidence suggests that modifications have not been made.
- **Robo-signing:** Before the foreclosure process occurs, the documents are supposed to be reviewed by qualified parties. Some mortgage servicers had inexperienced and unqualified people rubber-stamping documents and singing off on hundreds of foreclosures.

These are just some of many different examples of mortgage servicer fraud. Some of the biggest mortgage lenders in the country have already paid billions of dollars to settle allegations of wrongdoing. If you are accused of fraud in mortgage servicing, your institution could be the next target of the Department of Justice and other federal and state investigators.