NEWS

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Mortgage

EXPAND YOUR EXPECTATIONS℠

Winter 2013

See You at the MBA National Mortgage Servicing Conference!

By Linda Finley, Chair, Mortgage Industry Practice, 404.589.3408, lfinley@bakerdonelson.com

We are looking forward to seeing you February 19-22, 2013 in Dallas, Texas! The theme of this year's MBA National Mortgage Servicing Conference is "Be Prepared." Certainly the theme reflects the rapidly changing regulatory climate as well as changes in other federal and state law. The MBA promises that the attendees will have access to the latest forecasts and authority on not only the upcoming federal regulations but also the latest news, information and updates on foreclosure, bankruptcy, REO/eviction and new GSE requirements.

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"I Knew You Were Trouble": Recent Trends in Lender Liability Litigation

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Lender liability claims generally arise in one of following contexts: (i) claims seeking recovery of damage or "leverage" to accept discounted payoffs; (ii) counterclaims to foreclosure/receivership/guarantor actions; or (iii) "first strike" lawsuits in anticipation of collection/foreclosure actions. Borrowers typically go after commercial lenders on one of the following grounds: (i) breach of contract/violation of obligation of good faith and fair dealing; (ii) tort claims (e.g., negligent servicing); (iii) deepening insolvency; and (iv) breach of fiduciary duties. Typically, lender liability allegations are about leverage.

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Will Actions of the CFPB Be Deemed Invalid?

Scott H. Michalove, 678.406.8744, smichalove@bakerdonelson.com

A recent decision of the United States Court of Appeals for the District of Columbia Circuit has brought into question the validity of actions taken by the Consumer Financial Protection Bureau (CFPB). The case in question, *Noel Canning v. National Labor Relations Board*, arose out of a labor dispute at a soft drink bottler. After an administrative law judge and a panel of the National Labor Relations Board (NLRB) ruled against it, Noel Canning took its dispute to the courts. Noel Canning challenged the validity of the NLRB's decision by arguing that three of the five members of the NLRB had not been validly appointed.

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See You at the MBA National Mortgage Servicing Conference!, *continued*

As part of Baker Donelson's promise to "EXPAND YOUR EXPECTATIONS" we have put together a group from our offices throughout the Southeast, including our newest offices in Texas and Florida, who will be on hand to learn, to meet and mingle and to generally have some fun with our clients and mortgage servicing colleagues. Attending will be Linda Finley, Scott Michalove, Cody Peterson, Lee Lott, Kari Robinson, Mike Starks, Sarah-Nell Walsh, Natalie Bolling, Jeff Sirolly, Jonathan Green, Katy Dysart and Dylan Howard, Carrie Rochester and Valerie Nelan. As a special way of saying "hello" and "thank you," we have a special treat in store! We will be looking for you to tell you "Thanks a Latte" and distributing Starbucks gift cards. Just say "hi" and get a card. See you in Dallas!

"I Knew You Were Trouble": Recent Trends in Lender Liability Litigation, *continued*

When it comes to alleged interference with or control of a borrower's business, we have seen claims relating to required lender approvals of material leases or renewals, allowing or refusing use of escrows and reserves (tenant improvement/leasing commissions, replacement reserves, etc.), cash waterfalls with hard lockbox that provide for disbursement of funds for operations, and conduct of due diligence by lender prior to exercise of remedies or by possible note purchaser, including the presence of third parties at property. It is important to consider the ramifications of these types of actions as it is critical that the lender comply with the contractual terms of the loan documents. Lenders can get into trouble when they start taking action that is not provided for in the loan documents.

Another area that borrowers have attempted to litigate is alleged oral modification of loan documents. These arguments typically take the form of either a course of conduct, where the borrower argues that the lender's actions have waived defaults due to lack of action or objection, or a borrower alleging that verbal or informal written communication constitutes a modification or extension of loan terms. The underlying loan documents should contain express provisions prohibiting any oral modification of the terms of the written documents and non-waiver provisions based on action or inaction. Assuming those type of provisions are in the documents, the lender should have a strong argument against these types of claims.

In order to avoid lender liability allegations in dealing with a defaulted loan, in our experience some of the best practices are:

1. Develop a strategy at the front end of the matter.
2. Do not "run" the borrower's business.
3. Do not become the borrower's advisor in any context.
4. Do not act suddenly or erratically in your dealings with the borrower.
5. Honor your agreements and act honorably in your interactions with the borrower.
6. Know your opposition, including opposing counsel.
7. Determine whether a guarantor claim is worth pursuing.
8. Follow the Golden Rule.

Will Actions of the CFPB Be Deemed Invalid?, *continued*

The three NLRB members had assumed their positions through recess appointments made by President Obama on January 4, 2012. The Court of Appeals agreed with Noel Canning, holding that recess appointments could only be made during "the Recess" between sessions of the Senate and not at any time the Senate is in recess. The Court of Appeals held that the appointments of the three NLRB members were invalid because the Senate was holding pro-forma sessions at the time they were appointed.

President Obama made one other recess appointment on January 4, 2012, that of Richard Cordray to be director of the CFPB. The appointment of Mr. Cordray can be challenged on the same basis as the appointments of the NLRB members. Such a challenge is already pending in the U.S. District Court for the District of Columbia, in which the *Noel Canning* decision will be controlling precedent.

The *Noel Canning* decision brings into question the validity of actions taken by the CFPB following the recess appointment of Mr. Cordray. This is due to the wording of the Dodd-Frank Act. Some of the powers of the CFPB were transferred to it from other agencies. The Act gave interim authority to exercise those powers to the Secretary of the Treasury until a director of CFPB was appointed. However, other powers of the CFPB were newly created by the Dodd-Frank Act, and the Act is silent about authority to exercise those powers before a director of CFPB is appointed. A court could rule that the CFPB lacked authority to exercise those powers if it did not have a validly-appointed director, meaning that any regulations issued or enforcement actions taken by the CFPB pursuant to a power created by Dodd-Frank in the last year could be void.

We will continue to monitor this situation and will issue further alerts when appropriate.

Tennessee Court of Appeals Confirms Foreclosures Cannot Be the Basis for a TCPA Claim

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On September 25, 2012, the Middle Section of the Tennessee Court of Appeals issued an opinion confirming that foreclosure proceedings cannot serve as the basis for a Tennessee Consumer Protection Act (TCPA) claim. See *David A. Pazczko, et al. v. SunTrust Mortgages, Inc., et al.*, No. M2011-02528-COA-R3-CV, 2012 WL 4450896 (Tenn. Ct. App. Sept. 25, 2012). While several Tennessee federal district courts have previously come to similar conclusions, this appears to be one of the first Tennessee state appellate courts to specifically find that a plaintiff cannot assert a TCPA claim based on a lender's alleged actions relating to a mortgage foreclosure.

In *Paczko*, the plaintiffs David and Barbara Paczko (collectively, "Paczkos") purchased property in Williamson County, Tennessee, in April 2008, at which time they executed a promissory note (Note) payable to SunTrust Mortgage, Inc. (SunTrust) and secured by a Deed of Trust, which named SunTrust as the lender and Mortgage Electronic Registration Systems, Inc. (MERS) as the nominee for the benefit of SunTrust. Three years later, in June 2011, after the Paczkos defaulted on the Note and Deed of Trust, MERS executed an

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Tennessee Court of Appeals Confirms Foreclosures Cannot Be the Basis for a TCPA Claim, *continued*

Assignment of the Deed of Trust to SunTrust, which in turn executed an Appointment of Substitute Trustee naming Nationwide Trustee Services (Nationwide), as the Substitute Trustee. Thereafter, Nationwide instituted foreclosure proceedings on the Paczkos' property.

On July 6, 2011, the Paczkos filed a lawsuit in Williamson County Chancery Court and asserted various claims against SunTrust and other defendants, including a claim for violation of the TCPA. The TCPA generally provides a right of action to any person who suffers an ascertainable loss of money or property as a result of the unfair or deceptive act or practice of another and allows for the recovery of treble damages and attorneys' fees. See Tenn. Code Ann. § 47-18-109. In support of their TCPA claim, the Paczkos alleged, among other things, that the defendants were "intentionally instituting a foreclosure against the [Paczkos] with full knowledge that [SunTrust] has no right, title and/or interest in the property upon which to foreclose," that "[t]he scheme, intentionally employed by Defendants with full knowledge that they had no legal right to foreclose upon the property, had the capacity and tendency to deceive Plaintiffs into believing that [SunTrust] had the right to foreclose upon their property," and that "[t]he acts of Defendants whereby they have purposely provided the Plaintiffs with conflicting information regarding the servicing and ownership of their loan constitutes 'unfair and deceptive' business practices as defined by [the TCPA]." *Paczko*, 2012 WL 4450896, at *2.

Upon the defendants' motions to dismiss, the Williamson County Chancery Court dismissed the Paczkos' TCPA claim for failure to state a claim upon which relief could be granted. Relying on several Tennessee federal district court opinions, the Tennessee Court of Appeals affirmed the dismissal of the TCPA claim and held that "the TCPA does not apply to allegedly deceptive conduct in foreclosure proceedings." *Id*. The federal district courts upon which the *Paczko* court relied for its conclusion had looked to the Tennessee Supreme Court's decision in *Pursell v. First American National Bank*, 937 S.W.2d 838 (Tenn.1996), where the Tennessee Supreme Court had held that the TCPA did not create a cause of action for alleged deceptive repossession of an automobile because the actions of a bank and its agent in carrying out a repossession "did not affect the 'advertising, offering for sale, lease or rental, or distribution of any goods, services, or property, tangible or intangible, real, personal, or mixed, and other articles, commodities, or things of value wherever situated.' *Paczko*, 2012 WL 4450896, at *2 (quoting *Pursell*, 937 S.W.2d at 841).

The Tennessee Court of Appeals' holding in *Paczko* is important because it confirms that lenders and servicers who are often involved in mortgage foreclosures do not have the threat of being hit with treble damages and attorneys' fees from a TCPA claim based on foreclosure proceedings.

Important Update on Georgia Foreclosures

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Last year, we alerted to you to a ruling by the Georgia Court of Appeals that altered the notice requirements for non-judicial foreclosure in Georgia. In that case, *Reese v. Provident Funding Associates*, the Georgia Court of Appeals held that Georgia law requires the foreclosure notice to disclose the identity of the secured creditor. The Court of Appeals defined "secured creditor" to mean the "owner of the loan," not the servicer. Provident has sought permission to appeal the ruling to the Supreme Court of Georgia. The Supreme Court has not yet ruled on Provident's request. However, another case recently argued before the Supreme Court of Georgia presents the same questions and may resolve this unsettled issue of Georgia foreclosure law.

In *You v. JPMorgan Chase Bank*, the U.S. District Court for the Northern District of Georgia acknowledged that there was a split of authority in Georgia as to whether the holder of a security deed who did not also hold the note could institute non-judicial foreclosure proceedings. Put another way, the issue is whether only the owner of the note may foreclose or if the servicer or another entity which holds the security deed may also foreclose under Georgia law. To resolve this newly disputed issue, the District Court certified three questions to the Supreme Court of Georgia.

The first question is whether Georgia law allows a party that holds the Security Deed, but does not hold the underlying note, to foreclose. The second and third questions deal with whether the secured creditor must be identified in the foreclosure notice and whether substantial compliance with the notice requirement is sufficient. The answer to these questions will resolve the primary issues raised in *Reese*. Thus, the resolution of *You* should determine whether the *Reese* decision will be overturned. The Supreme Court of Georgia held oral arguments in *You* on January 7, 2013. A decision is expected in two or three months.

The outcome of the *You* case has the potential to substantially change Georgia foreclosure law. Should the Georgia Supreme Court hold that note ownership is a prerequisite to foreclosure, a number of prior and pending foreclosures could be subject to challenge. An adverse ruling would mean that wrongful foreclosure cases in which standing to foreclose is raised could no longer be resolved by motion to dismiss. A factual determination as to whether the foreclosing entity held the note would be required in each case. In situations where the original note is lost, a lender could be forced to institute a proceeding to re-establish a lost note prior to foreclosure. Such a ruling would inevitably increase expenses and cause extensive delays in Georgia foreclosures.

Until the *You* case is resolved, Georgia foreclosure law will remain unsettled. Our mortgage team will continue to monitor these cases and will issue an alert as soon as a decision is issued.

A Federal Court's Lifeline to the Servicing Industry: No Physical Pain, No Negligent Servicing Claim

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Keith Andress, Natalie Bolling and Stephen Pudner of Baker Donelson's Birmingham office were recently successful in having a mortgagor's claims seeking punitive damages against a major mortgage servicing company dismissed from a federal lawsuit at the summary judgment stage.

In *Webb v. Ocwen Loan Servicing, LLC*, 2012 WL 5906729 (S.D. Ala. Nov. 26, 2012), the plaintiff-mortgagor filed claims against Ocwen and Freddie Mac in state court involving allegations of wrongful foreclosure, negligent and wanton servicing, defamation, and breach of mortgage agreement. The plaintiff alleged that numerous payments were not applied correctly and that property insurance was wrongfully force-placed on her account even though she allegedly provided proof that she had already obtained insurance.

After removing the case to federal court, Ocwen and Freddie Mac moved for summary judgment as to all claims, and the court granted summary judgment in favor of Ocwen as to all claims and in favor of Freddie Mac as to nearly all claims. The claim that survived summary judgment settled on terms favorable to Freddie Mac.

This federal court decision is particularly significant because the court unequivocally held that claims for negligence and wantonness in the servicing of a mortgage can never be successful unless the servicer causes physical injury to the plaintiff or to the plaintiff's property. "Pure economic loss–which is what [Webb] claims–does not suffice." For the same reasons, the plaintiff's claims for mental anguish damages against Ocwen likewise failed. The court also held that no claim for wanton servicing exists under Alabama law and that failure to comply with the terms of a note or mortgage does not give rise to a claim for negligent servicing.

Moreover, the court held that a servicer cannot be held to have breached a contract such as a mortgage or note when it is not a party to that contract. This is an important victory and this case will be relied upon by the servicing industry in defending against claims regarding improper servicing of a mortgage, which is a common allegation in these types of cases.

New TILA Section Expands Disclosure Requirements

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The Truth in Lending Act (TILA) is a consumer protection statute that imposes mandatory disclosure requirements on creditors who extend consumer credit to borrowers. *Brodo v. Bankers Trust Co.*, 847 F. Supp. 353 (D. Penn E.D. 1994); *Butler v. Fairbanks Capital*, 2005 U.S. Dist. LEXIS 44537 (D. D.C. 2005). TILA has dual purposes: "to facilitate the consumer's acquisition of the best credit terms available; and to protect the consumer from divergent and at times fraudulent practices stemming from the uninformed use of credit." *Yaldu v. Bank of America Corp.*, 700 F. Supp. 2d 832, 840 (D. Mich. E.D. 2010); see also 15 U.S.C. § 1601(a).

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New TILA Section Expands Disclosure Requirements, *continued*

In May of 2009, a new section of TILA was enacted, 15 U.S.C. § 1641(g), which requires certain disclosures to be provided to borrowers when there is a change in the ownership of their loan. The new requirements indicate that TILA was intended to provide consumers with information about the identity of the owner of their loan for a variety of purposes, and specifically so that consumers have the ability to assert an extended right to rescind the loan under TILA Section 125. See Restatement of Federal Consumer Financial Law Regulations.

Notably, however, Section 1641(g) "was not intended to require notice when a transaction 'does not involve a change in the ownership of the physical note.'" *Id.* (citing 155 Cong. Rec. S5099).

The new requirements require that consumers be provided notice of a new creditor, and that within 30 days of buying or being assigned the loan, the new creditor must notify the borrower in writing the following information:

- The identity, address and telephone number of the new creditor
- The date of transfer
- How to reach an agent or party having authority to act on behalf of the new creditor
- The location of the place where transfer of ownership of the debt is recorded
- Any other relevant information regarding the new creditor

The disclosure requirements, however, only apply if a party is a "covered person" as defined by 12 C.F.R. Section 226, also known as "Regulation Z." Regulation Z explains that a covered person:

> ...means any person, as defined in § 226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer, and who acquires more than one mortgage loan in any twelve-month period.

To further clarify, Regulation Z provides that under Section 1641(g), "a party servicing the mortgage loan is not treated as the owner of the obligation if the obligation was assigned to the servicer solely for administrative convenience." Restatement of Federal Consumer Financial Law Regulations, at 8. Thus, the disclosure requirements "do not apply to a loan servicer if the servicer holds legal title to the loan solely for administrative convenience." *Id.*

In the Summer of 2011, a new claim under Section 1641(g) was asserted by borrowers who were also involved in foreclosure litigation with a variety of different servicers. The borrowers alleged that because the servicer of their loan was "assigned" the mortgage in preparation to conduct the foreclosure of the property securing the promissory note and mortgage on the loan, that they were an "owner" of the loan under TILA and subject to the disclosure requirements under Section 1641(g). A series of recently issued decisions from the United States District Court for the Southern District of Alabama, however, have found that servicers are exempt from Section 1641(g).

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New TILA Section Expands Disclosure Requirements, *continued*

In each of the cases, the servicer was assigned the mortgage prior to the foreclosure sale because the servicer's contractual agreement with a government-sponsored entity (GSE) – the actual owner of the loan – required the assignment so that the foreclosure could be conducted in the servicer's name. Thus, the absence of any evidence demonstrating that the assignment occurred for any other reason than to allow the servicer to fulfill its obligations as servicer placed them within the "administrative convenience" exception. The servicers were entitled to a dismissal via summary judgment of the borrowers claims against them as a result.

Lender-Involved Condemnation Part 1: Principles of Condemnation

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This is the first installment in a series of articles related to lender-involved condemnation. This article provides an introduction to the principles of eminent domain and condemnation in a question and answer format. The next installment will discuss these principles as they apply to lenders. The final installment will develop a framework for managing lender risk and cost when the need to defend eminent domain litigation arises.

Eminent domain is the power of the government to take property. This power has been delegated to states, counties, municipalities, utilities and others. The Fifth Amendment of the United States Constitution and state constitutions require these entities to pay compensation and take property only for public use.

Condemnation is the exercise of the power of eminent domain. The laws that set forth the procedures to exercise the power of eminent domain are of special importance because they offer certain protections. They also set forth limitations that create certain challenges for property owners. Most condemnations occur under the authority of state law and the laws of each state vary, so it is very important to know the relevant procedures and limitations.

What is a valid public purpose?

Roads, airports, sewer stations, water towers, schools, police stations and public transportation projects are all clear examples of a reasonable public use where the courts will find a justifiable exercise of the power of eminent domain. However, many municipal development authorities have exercised the power of eminent domain to create industrial parks and other amenities whose benefit to the general public were not as obvious. The widely cited 2005 decision of the Supreme Court of the United States, *Kelo v. New London*, 545 U.S. 469, resulted in a slew of state legislation that refined the states' respective definitions of public use. As a result of *Kelo*, 28 states passed legislation that restricted the definitions of public use or public purpose in that state. The publicity and political fallout from *Kelo* served to reduce the instances of condemnation when the public use was questionable. While it does happen occasionally, it has not been common to successfully defend a condemnation from an unlawful public use in recent years.

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Lender-Involved Condemnation Part 1: Principles of Condemnation, *continued*

What can be taken?

Condemnations typically focus on interests in land. However, the loss of essential rights to real property can also result in the destruction or diminution of a business. Commonly taken interests in land include the entire fee interest, permanent easements, temporary easements and access rights. Permanent easements can be taken for the purpose of constructing and maintaining an embankment to a highway. Utility infrastructure can also be constructed on permanent easements. Permanent easements may feature drainage structures like flumes and pipes. Temporary easements are often taken for the purpose of disturbing an area during construction and they generally expire upon completion of the project or on a specified date. The taking of a temporary easement can be utilized to link private driveways to a public road or to use a particular area to stage equipment. Temporary easements are also taken to allow for the demolition of structures. The right to access a particular property can also be taken and a taking of access often can render property worthless.

Can a taking be stopped?

Attempts to stop a taking fall into two general categories: procedural and substantive. The statutes that allow governmental and nongovernmental entities to take property provide very specific procedures that must be followed to authorize a lawful taking. Failure to follow those procedures precisely can nullify the taking so long as a timely objection is filed. However, if there is a valid public purpose, a procedural roadblock to a taking will likely be cured. Procedural attacks can be helpful if there are deadlines related to federal funding that would provide a source of leverage for a negotiated settlement. While it is a good way to delay a taking and possibly obtain a source of leverage, a procedural defect is unlikely to permanently prevent a taking.

A substantive attack on the public purpose of a taking is more likely to permanently prevent the exercise of eminent domain and the taking of private property. However, if the purpose of a project is to construct a road, a school, or any other plainly public use, this alternative will not be successful and it will result in a waste of resources. Public purposes that are most suspect include the remedy of blight, urban redevelopment, industrial development, or any other instance where the end user of the property is a private entity who will have special interest in the property. In these instances, there is a much better likelihood of stopping the project completely. However, after the legislative reaction to *Kelo*, and as a result of the current economic climate, public entities have lost much of their appetite to exercise the power of eminent domain for suspect purposes.

When does title transfer?

The transfer of title varies by state. Even within some states, the date that title transfers varies by condemnation procedure. In Georgia, title to property transfers without a hearing or notice on the day the Georgia Department of Transportation files its declaration of taking and pays its deposit of estimated compensation into the registry of the court. If that same property is taken by an electric company through the "special master method," then title transfers on the day compensation is paid into court and a ruling is entered after a hearing before a special master. The transfer of title varies by jurisdiction and method but there is a common thread. The law typically allows the condemnor to obtain title to property and move forward with a public project so long as certain safeguards are met, because public policy dictates that a project be allowed to proceed with minimal delay for the good of the public.

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Lender-Involved Condemnation Part 1: Principles of Condemnation, *continued*

How much compensation will I receive?

An owner of an interest in condemned property is entitled to compensation according to the Fifth Amendment. A common standard for compensation is "just and adequate." Just and adequate compensation has been defined in different ways, but it typically focuses on a measure of marketable value that would be appropriate if the same property were sold among members of the public who had typical market motives. While property owners may be able to testify to value if they have had an opportunity to obtain an informed opinion, an expert real estate appraiser is often the expert who determines the amount of compensation available in the case. The appraiser may also be required to allocate the value among interested parties. The allocation may be based on market metrics in the case of a below-market lease or a contractual arrangement between the parties in the case of a borrower and a creditor.

Attorney fees and the costs of litigation are not included in the measure of market value even though some states allow property owners to recover fees in certain instances. The states that allow the recovery of attorney fees typically provide for recovery when the ultimate award is some percentage greater than the condemnor's estimate of compensation. In the states where no attorney fees can be recovered, a property owner's compensation will be limited to the market value of the property taken. Attorney fees and litigation costs must be deducted from that amount.

Conclusion

A working knowledge of the general principles of eminent domain is necessary when responding to a condemnation action. Failure to grasp these issues can result in needless expense and exposure to unnecessary risk. Financial institutions have specific set of risks when their secured interest is subject to a condemnation proceeding. The next article will apply these principles to specific circumstances where financial institutions are responding to a condemnation action.

Beware of Intervening Liens in Subordination Agreements

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Most lenders that service second mortgages or equity lines have received requests to subordinate their loan to a subsequent refinance loan. Many times these requests come years after the refinance loan was closed. Most servicers will agree to such requests to subordinate their loan without question. However, there is a danger in executing a subordination agreement that most servicers do not adequately consider: intervening liens.

"One who subordinates a first lien to a third lien makes his lien inferior to both the second and third liens." *Old Stone Mortgage & Realty Trust v. New Georgia Plumbing, Inc.*, 239 Ga. 345, 236 S.E.2d 592 (1977). Or, stated another way: "if a senior security deed becomes inferior to a junior security deed and the junior deed is inferior to a materialman's lien, then the senior security deed is inferior to the materialman's lien." *Id.* Courts have

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Beware of Intervening Liens in Subordination Agreements, *continued*

described this rule as being necessary to avoid destroying the rights of intervening lienholders. *Padgett v. City of Moultrie*, 229 Ga.App. 500, 494 S.E.2d 299 (1997). A lender that agrees to subordinate its loan to a subsequent loan may find that it has inadvertently subordinated its loan to any number of intervening liens.

There are simple things a servicer can do to avoid this problem:

1. The servicer can require a title search on the property at issue prior to agreeing to subordinate. If the title search reveals no intervening liens, the servicer can safely agree to the subordination. If the title search reveals that there are intervening liens, the servicer can refuse to subordinate or require that the intervening liens be satisfied before it will subordinate.

2. Additionally, the servicer can place language in its subordination agreement which makes its agreement to subordinate ineffective if there are intervening liens that would be elevated above its mortgage. See *Colorado National Bank v. F. E. Biegert Co.* 165 Colo. 78, 438 P.2d 506 (1968).

Use of these simple procedures when a subordination agreement is proposed can avoid large title problems down the road.

We're Growing our Dedication to the Mortgage Industry!

We're happy to announce seven new mortgage-focused attorneys have joined our Firm since our last newsletter. We've expanded our presence in Florida and Georgia, and are putting down deeper roots in Texas.

Jennifer Klos joined the Atlanta office as a staff attorney in August, adding to our mortgage-focused ranks. Jennifer has defended financial institution clients in a variety of business disputes, such as breach of contract and trade secrets matters. She also has extensive experience in matters related to e-discovery, and has helped clients to develop electronic information maintenance and retrieval programs. Licensed in Georgia and Michigan, Jennifer received her J.D. from Case Western Reserve School of Law in 2004.

Associate Alex Koskey joined our Atlanta office in August, bringing five years of litigation experience in mortgage servicing and financing issues, real estate matters, construction law and lender liability defense. Licensed in Florida, Alabama and Georgia, Alex also has experience with contractual and real estate issues including drafting and negotiating commercial leases, real estate transactions and management agreements. He received his J.D. from Cumberland School of Law at Samford in 2007.

Jeff Sirolly joined the Firm's Orlando office in September as an associate. He focuses on business litigation involving the mortgage lending and servicing industries, as well as litigation involving real estate, including landlord-tenant law and title insurance. Jeff frequently represents mortgage lenders and servicers in bankruptcy and foreclosure matters, and defends them against allegations of wrongful foreclosure and predatory lending charges. Jeff holds a J.D. received in 2006 from The George Washington University Law School, where he was a Thurgood Marshall Scholar.

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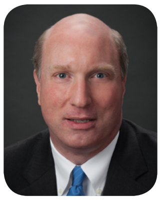
We're Growing our Dedication to the Mortgage Industry!, *continued*

Tara Maloney joined our Orlando office in October. She is devoted solely to the mortgage industry, handling files on lender liability defense, fair debt and collections practices claims and litigation, title clearance and title claims. She has a 2008 J.D. from the University of Florida.

Cody Peterson joined the Houston office in October as of counsel. He focuses exclusively on residential mortgage issues, representing lenders, mortgage servicers and investors during all phases of consumer disputes involving home equity loans and mortgage-related litigation. He also defends against mechanics' liens, title claims, homeowners association assessment liens and condemnation proceedings in state and federal court. Cody served in the Marine Corps, the Marine Corps Reserve and the Texas Army National Guard from 1993 to 2001, then received his J.D. from University of Houston Law Center in 2005.

Adam Hartley joined us as an associate in our Orlando office in November. Adam routinely defends mortgage lending and servicing clients against allegations of wrongful foreclosure and predatory lending. In addition to his mortgage work, Adam has represented other financial industry clients in general business-to-business litigation, including commercial landlord/tenant issues and commercial evictions. He is a 2007 University of Florida, Levin College of Law graduate.



Scott Michalove joined the Firm in November as of counsel. Based in the Firm's Atlanta office, Scott is a creditors' rights litigator with a long record of service to the mortgage industry. He advises lenders and servicers on regulatory compliance issues, represents them in title litigation, and defends them against charges of lender liability and wrongful foreclosure. Scott is especially experienced in regulatory issues and regularly advises clients on Regulations X and Y. He is a 1995 graduate of the Walter F. George School of Law at Mercer University Georgia.