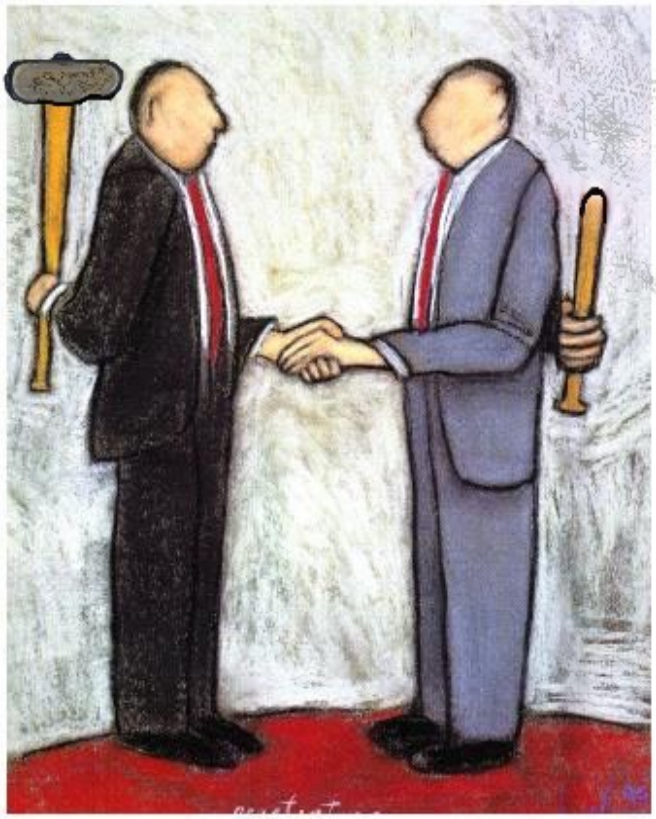
Here's the HAMMER You Need to Win a Mortgage Dispute



Law provides litigant settlement procedure

Florida statute 45.061 (see below text) might interest you with respect to settlement of a mortgage dispute (or any other injury lawsuit) in Florida. Similar statutes might exist in other states.

If you negotiate a settlement from a position of strength, such as by suing a lender or lenders with valid causes of actions revealed in a comprehensive mortgage examination report, the lender has a strong incentive to settle.

Ultimate Negotiating Hammer

Note that lenders seem most willing to settle when you have a case against them that they know will crush them in court, particularly in a jury trial in which the jurors probably have all suffered injury by (and hate) predatory lenders. Many lenders will not take you seriously till a competent injury/tort attorney files the complaint or counter/cross-claim against them. When that happens, they might beg the injured party to come to the negotiating table.

Thus, the mortgage examination report provides the tort attorney and injured client with a huge "Negotiating Hammer" with which to intimidate recalcitrant banks into settling "reasonably."

Notice of Grievance (NOG)

The mortgagor has a legal duty to the owner of beneficial interest in the note under section 20 of the Freddie Mac standard mortgage security instrument 3010 (Florida example), to wit:

--------- Excerpt From Standard Mortgage Security Instrument--------

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other

mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

---------- End Excerpt –----

First of all notice that this section defeats any argument that the mortgagor has a right to know in advance who shall receive beneficial interest in the note. And, servicers may play musical chairs without injury to the borrower.

Paragraph two imposes upon mortgagor and mortgagee the obligation to issue to one another a "Notice of Grievance" (NOG) and allow reasonable time to take corrective action.

Therefore, step ONE in any negotiation consists of sending a NOG to the servicer, lender, and present owner of beneficial interest in the note. RESPA requires the servicer to tell the mortgagor, upon request, the identity of the owner of beneficial interest for the purpose of such notices and of lawsuits. Note that the original lender might have gone out of business since making the loan. Either another bank would have purchased the assets and liabilities of that lender, or the FDIC might have administratively dissolved the original lender and transferred its assets and liabilities to another entity. Mortgagors can inquire about this to the FDIC if in doubt.

This means the mortgagor has potentially two targets of a NOG - the owner of the original lender's liabilities and the present owner of beneficial interest in the note. And, if in foreclosure, the NOG should go to the trustee (deed of trust states) or the court (judicial foreclosure states), and associated attorneys, of course.

Often the targets of the NOG will play dumb, act confused, treat it as a Qualified Written Request, or send a non-responsive letter back, try to discuss a loan mod, or dilate in some way. When that happens, the mortgagor can send another letter scolding the nonsensical behavior of the target, and demanding

correction again. I would not grant more than 30 days for corrective action.

Call in the Gubmunt Hammer - CFPB and OCC

In the event of a non-responsive answer as above, the mortgagor should write to the Consumer Financial Protection Bureau and Office of the Comptroller of the Currency, delineating the futile interaction, providing copies of the correspondence attached, and asking them to take action against the target and coerce the target to correct the grievance and settle in good faith.

This might suffice to get the negotiated settlement started in earnest. But the mortgagor might not at all feel satisfied with the offer. After exhausting administrative efforts to get an acceptable settlement, the mortgagor must sue. And during that lawsuit the Offer of Settlement statute of the state might come into play. The mortgagor might find it prudent to inform the adversaries of the statute, in case they don't know about it.

Grab the Biggest Hammer - Lawsuit

Generally, after filing the lawsuit, the mortgagee's lawyer will analyze chances of success and failure, and unless the lawyer decides to blow smoke up the mortgagee's behind, as in the Brown v. Quicken Loans case, the lawyer will recommend settlement. Some lawyers have such arrogant, cavalier attitudes that they will recommend fighting a case they will certainly lose, and some banks know their mortgagor adversaries have scant resources and little knowledge for such a fight.

But this constitutes the one fight Foreclosure Defense Attorneys would love if they had the competence to engage and win on the merits. Why? Because a mortgage examination will reveal salient causes of action in 90% of the single family home mortgages. And the mortgagor will not behave so stupidly as to fight when no causes of action exist (unless a corrupt foreclosure defender cons the mortgagor into it). Instead, the smart mortgagor will just walk from the house with a short sale, keys for cash, or deed in lieu of foreclosure deal. THAT will save the mortgagor's credit, compared to a foreclosure final judgment which will ruin the credit rating for TEN YEARS.

Put the Hammer in the Hand of the RIGHT Kind of Attorney

This shows why I recommend that mortgagors in foreclosure hire ONLY TORT/INJURY ATTORNEYS to help them with mortgage battles. At least THOSE attorneys have some experience in or moxy about negotiating settlements, and they KNOW the value of injuries and damages they can PROVE in mortgage-related paperwork.

The Only Hammer for ALL Mortgagors

Take note: a comprehensive professional mortgage examination has value to ALL mortgagors, not just those in foreclosure. If you doubt this, read the 15-page summary of the 2010 Financial Crisis Inquiry Commission Report. It shows the collusion between government and the mortgage industry to engage in widespread predatory lending. Mortgagors cannot use that in their case because it does not prove specific culpability of their lenders for injury to the mortgagor. But the mortgage examination can prove the injury, and that can lead to an analysis of the damages and a specific damages lawsuit. A jury

that hates lenders will surely award compensatory damages (TRIPLE damages for fraud) and might award punitive damages in case of egregious, wanton, intentional injury, just to punish the lender.

So visualize this: you bought a house at an exorbitant price the realtor claimed as a good deal for you, and the appraisal came back at full value of the selling price. And you suspected you didn't qualify for the loan, but somehow after providing your tax returns, the mortgage broker found a lender to let you borrow the money to buy that beautiful home. You get a mortgage examination and it shows that the appraiser compared your house in the bowels of a neighborhood to one on a lake, one on a golf course, and one with a bay front. You paid $500K, but the house has a value now of only $200K, and the appraisal showed it as having a value $100,000 more than it actually had. THAT appraisal fraud, underwritten by the lender, can bring you treble damages of $300,000. And it turns out that the mortgage broker falsified your loan application, making it seem that you have massively higher income and lower expenses than actual. THAT bank fraud, underwritten by the lender, constitutes a serious injury and a federal crime. Together those injuries justify a lawsuit against the appraiser, mortgage broker, and bank. ANY mortgagor, not just foreclosure victims, might have that kind of loan.

Mortgagor's ONLY Chance to Win MONEY

But get this: the mortgagor has ZERO CHANCE of winning financial compensation for mortgage-related injuries without a comprehensive professional mortgage examination that PROVES those injuries IN THE RELATED DOCUMENTS. Don't expect your lawyer to tell you this because the lawyer does not want you to know that he or she lacks the competence to do the mortgage exam.

Don't trust the lawyer to recommend this or support your decision to do it because most of them don't have a clue how to win a mortgage dispute. They don't have a clue because they built the foreclosure defense industry to scam frightened mortgoragors in foreclosure out of monthly payments till loss of the house becomes inevitable, and then to scam them into an abusive loan modification.

Lawyers NEVER win money for their foreclosure victim clients by defending against foreclosure. They only win it by attacking the lender or lender's agents for causes of action underlying the mortgage. And because they have not developed an industry for this, they don't even know that a mortgage examination gives them the key to victory and winning financial compensation (MONEY, CASH, OFFSET, LOAN BALANCE CRAM-DOWN, etc) for their hapless clients.

Don't ask your lawyer about this because your lawyer probably does not know and has Zero experience with it. Get the examination done yourself, then find a lawyer who will use it to hammer the bank into a settlement or sue the bank into paying you damages for injuring you.

Summary - Lose the Wrong Battle or Win the Right Battle

In summary, a mortgagor who fights a foreclosure battle for breaching a valid note ALWAYS LOSES. Any foreclosure defense becomes a scam because the lawyer knows the outcome in advance. Courts MUST give the injured lender redress of that injury according to the terms of the note and mortgage.

By contrast, a mortgagor who fights a mortgage validity battle against the lender or agents, because of injury by tortious conduct, contract breaches, or legal errors, ALWAYS WINS. The court must redress

that injury. And the banks and their lawyers know this. SO they nearly always cave in at the negotiating table to the extent warranted by the risk of loss through litigation.

Super summary:

1. Fight the foreclosure and LOSE.
2. Fight the mortgage and WIN.

If You Need Help and Don't Know Whom to Trust

If you need FREE help with your mortgage, whether or not in foreclosure, CALL (727 669 5511) or EMAIL ME. Since I work with you FREE, I have no vested interest in bilking you out of money or leading you astray just to con or scam you. I am not an attorney and I don't give legal advice. But I shall certainly explain the issues so they become crystal clear, take notes on your case, and refer you to competent professionals ready, willing, and able to help you, if you cannot handle it yourself.

See my full contact info below.

Don't hoard this message or keep it all to yourself. Spread it far and wide to fellow mortgagors whom the lenders or agents might have injured in the mortgage process. Tell them to write or call me free for a free no-legal-advice discussion of any issue of concern. If I don't answer the call, I'll return it using the caller-ID in my phone.

Florida Statute on Settlements in the Course of Litigation

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0045/Sections/0045.061.html

45.061 Offers of settlement.—

(1) At any time more than 60 days after the service of a summons and complaint on a party but not less than 60 days (or 45 days if it is a counteroffer) before trial, any party may serve upon an adverse party a written offer, which offer shall not be filed with the court and shall be denominated as an offer under this section, to settle a claim for the money, property, or relief specified in the offer and to enter into a stipulation dismissing the claim or to allow judgment to be entered accordingly. The offer shall remain open for 45 days unless withdrawn sooner by a writing served on the offeree prior to acceptance by the offeree. An offer that is neither withdrawn nor accepted within 45 days shall be deemed rejected. The fact that an offer is made but not accepted does not preclude the making of a subsequent offer. Evidence of an offer is not admissible except in proceedings to enforce a settlement or to determine sanctions under this section.

(2) If, upon a motion by the offeror within 30 days after the entry of judgment, the court determines that an offer was rejected unreasonably, resulting in unnecessary delay and needless increase in the cost of litigation, it may impose an appropriate sanction upon the offeree. In making this determination the court shall consider all of the relevant circumstances at the time of the rejection, including:

(a) Whether, upon specific request by the offeree, the offeror had unreasonably refused to furnish information which was necessary to evaluate the reasonableness of the offer.

(b) Whether the suit was in the nature of a “test case,” presenting questions of far-reaching importance

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affecting nonparties.

An offer shall be presumed to have been unreasonably rejected by a defendant if the judgment entered is at least 25 percent greater than the offer rejected, and an offer shall be presumed to have been unreasonably rejected by a plaintiff if the judgment entered is at least 25 percent less than the offer rejected. For the purposes of this section, the amount of the judgment shall be the total amount of money damages awarded plus the amount of costs and expenses reasonably incurred by the plaintiff or counter-plaintiff prior to the making of the offer for which recovery is provided by operation of other provisions of Florida law.

(3) In determining the amount of any sanction to be imposed under this section, the court shall award:

(a) The amount of the parties' costs and expenses, including reasonable attorneys' fees, investigative expenses, expert witness fees, and other expenses which relate to the preparation for trial, incurred after the making of the offer of settlement; and

(b) The statutory rate of interest that could have been earned at the prevailing statutory rate on the amount that a claimant offered to accept to the extent that the interest is not otherwise included in the judgment.

The amount of any sanction imposed under this section against a plaintiff shall be set off against any award to the plaintiff, and if such sanction is in an amount in excess of the award to the plaintiff, judgment shall be entered in favor of the defendant and against the plaintiff in the amount of the excess.

(4) This section shall not apply to any class action or shareholder derivative suit or to matters relating to dissolution of marriage, alimony, nonsupport, eminent domain, or child custody.

(5) Sanctions authorized under this section may be imposed notwithstanding any limitation on recovery of costs or expenses which may be provided by contract or in other provisions of Florida law. This section shall not be construed to waive the limits of sovereign immunity set forth in s.768.28.

(6) This section does not apply to causes of action that accrue after the effective date of this act.

History.—s. 1, ch. 87-249; s. 22, ch. 90-119.

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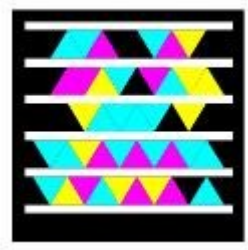

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