



Banking and Financial Institutions



CROWE & DUNLEVY
Attorneys and Counselors at Law

October 18, 2011



Scott Meacham
Practice Chair
405.235.7747
scott.meacham@crowedunlevy.com

Elliot P. Anderson
918.592-9844
elliott.anderson@crowedunlevy.com

Regan S. Beatty
405.235.7738
regan.beatty@crowedunlevy.com

Jennifer L. Berry
405.239.6638
jennifer.berry@crowedunlevy.com

Karen Y. Blakeburn
405.239.6682
karen.blakeburn@crowedunlevy.com

Brandee L. Bruening
405.235.7739
brandee.bruening@crowedunlevy.com

Joe E. Edwards
405.239.5414
joe.edwards@crowedunlevy.com

Sarah B. Edwards
405.239.6656
sarah.edwards@crowedunlevy.com

Eric S. Fisher
405.235.7719
eric.fisher@crowedunlevy.com

Lysbeth L. George
405.234.3245
lysbeth.george@crowedunlevy.com

Wendee D. Grady
918.592.9862
wendee.grady@crowedunlevy.com

Adam C. Hall
405.239.6690
adam.hall@crowedunlevy.com

In This Issue:

- [Relief for Banks in Complying with the Servicemember Civil Relief Act](#)
- [Mortgage Foreclosure Reviews: What is really required?](#)

Welcome to the inaugural edition of the Crowe & Dunlevy financial institutions e-newsletter. It is our hope to utilize this medium to pass along information that is timely and beneficial to Oklahoma banks. We intend to provide these updates periodically but not according to a set schedule. We pledge to provide you with timely and useful information and avoid space fillers to meet some quarterly or monthly deadline. If you do not wish to receive this information, please e-mail us and we will remove you from our database.



Relief for Banks in Complying with the Servicemember Civil Relief Act

by Sarah Edwards and Scott Meacham

With the recent \$22 million settlement of claims involving foreclosures in violation of the Servicemember Civil Relief Act (the "SCRA") by Bank of America and Saxon

Mortgage, the Department of Justice has shown just how serious it is about compliance with SCRA. In addition to the monetary relief, a consent decree required corrective measures including SCRA training for employees and agents, the development of modified SCRA policies and procedures, the referral of future SCRA complaints to the Justice Department, the abandonment of any remaining amounts owed under the mortgages, and the repair of any negative credit report entries related to wrongful foreclosure. The complaints with respect to these banks related to foreclosures against servicemembers in violation of SCRA.

Without a valid waiver or court order, any sale, foreclosure, or seizure of property for a breach of a mortgage obligation is invalid if made during or within 9 months after the period of a servicemember's military service and the obligation originated prior to the period of military service. In any foreclosure proceeding in which a defendant does not appear, the foreclosing bank is required to file an affidavit stating whether the defendant is in military service or that the bank is unable to determine military status. The requirement for

Joel W. Harmon
405.239.6637
joel.harmon@crowedunlevy.com

Jeffrey T. Hills
918.592.9817
jeffrey.hills@crowedunlevy.com

William H. Hoch
405.239.6692
will.hoch@crowedunlevy.com

Michael S. Laird
405.239.6623
michael.laird@crowedunlevy.com

James W. Larimore
405.239.6643
james.larimore@crowedunlevy.com

Brett D. Liles
918.592.9836
brett.liles@crowedunlevy.com

Gary R. McSpadden
918.592.9868
gary.mcspadden@crowedunlevy.com

Kenni B. Merritt
405.235.7746
kenni.merritt@crowedunlevy.com

Judy H. Morse
405.235.7759
judy.morse@crowedunlevy.com

Richard P. Propester
405.235.7784
richard.propester@crowedunlevy.com

Cherish K. Ralls
405.239.5411
cherish.ralls@crowedunlevy.com

Gary C. Rawlinson
405.292.6453
gary.rawlinson@crowedunlevy.com

Malcolm E. Rosser IV
918.592.9838
malcolm.rosser@crowedunlevy.com

Earl A. Skarky
405.235.7745
earl.skarky@crowedunlevy.com

Roger A. Stong
405.239.6614
roger.stong@crowedunlevy.com

John M. Thompson
405.235.7774
john.thompson@crowedunlevy.com

Christopher B. Woods
918.592.9848
christopher.woods@crowedunlevy.com

filing an affidavit arguably applies in every case where a foreclosing bank seeks to take default judgment. If a defendant is in military service, the court is required to stay proceedings for 90 days upon application by the defendant or upon its own if there may be a defense to the action. Judgment may not be entered without an attorney appointed to represent a defendant. If military service is unascertainable, the court may require a bank to file a bond for indemnification purposes to cover any possible damages.

The maximum interest rate (including fees, late penalties, and charges) that a bank may charge on a pre-service obligation during active military service and for one year thereafter is 6%. Any amount over the 6% rate per year shall be forgiven. However, the burden is on the servicemember to invoke this protection through written notice and a copy of military orders. The servicemember may do so up to 180 days after the date of termination or release from military service.

Any person claiming a violation of the Act may recover monetary damages as well as costs and a reasonable attorney fee, and "all other appropriate relief". Although the penalties for violation can be substantial, as seen with Bank of America, an effective compliance program can eliminate most, if not all, risk of liability. First and foremost, banks should check with the Department of Defense Manpower Data Center website and files for active military status in conjunction with any contemplated foreclosure action.

Mortgage Foreclosure Reviews: What is really required?

by Scott Meacham

The OCC recently issued Bulletin 2011-29 requiring national banks to complete a self-assessment of their mortgage management practices, including testing and file reviews, by September 30, 2011. National banks are required to assess the

following areas: foreclosure process governance, dual track processing, affidavit and notarization practices, documentation practices, legal compliance and third party vendor management. Examiners will follow up on the results of the self-assessment at the bank's next regularly scheduled examination.

Fellow Crowe & Dunlevy shareholder and director, Doug Tripp and I have been engaged by one of the largest mortgage servicers in the country (who also happens to be a national bank) since May to help in dealing with their Consent Order with the OCC relating to the review of their mortgage foreclosure activities for the 2009-2010 period. This experience gives us a unique perspective on this issue that perhaps no other firm in the state possesses. We predicted in May that once the OCC and other financial institution regulators had built the template with the biggest banks, they would soon roll out a one-size-fits-all version for the rest of the banks. The OCC was the first regulator out of the shoot with Bulletin 2011-29.

At Crowe and Dunlevy, we are always looking at ways to add value for our clients and our prospective clients. As Oklahoma banks struggle with complying with Bulletin 2011-29, hopefully our experience can be helpful. Although only national banks (and now federally chartered thrifts thanks to Dodd Frank) are subject to Bulletin 2011-29, we believe that state banks and other financial institutions will soon be invited to the party. As you work through your foreclosure self-assessment, a few points should be noted:

- The OCC is very serious about this issue. The OCC (and other financial institution regulators) are under extreme pressure by Congress, state attorney generals, and others with respect to the practices followed by financial institutions of all sizes in



their mortgage foreclosures during the recent recession.

- The OCC is interested not in just what your institution may have done or not done with respect to a particular foreclosure, but they also expect you to review the actions by your attorney. To the extent your foreclosure counsel made a mistake that violated state or federal law, you will be held responsible for any resulting harm to the borrower.
- You are expected to review your past foreclosures to ensure there are no instances of borrower harm. If there are, you are expected to fully compensate the borrower for any harm the borrower directly incurred as a result of any violation of state or federal law by your staff or your attorney.
- Bankruptcy stay violations and SCRA (Servicemembers Civil Relief Act) violations will be given particularly close scrutiny. It is felt that many banks (and their counsel) routinely violate stays in bankruptcy and the requirements of SCRA (including the affidavit of non-military service prior to taking default judgment). The OCC expects banks and their attorneys to be checking sources such as PACER for bankruptcy filings and the Defense Department Manpower Data Center for military service both before filing an action and before certain mile stones in the foreclosure action are undertaken such as the entry of judgment.

Please let us know if we can be of any assistance as you plan, complete or review your foreclosure self-assessment requirements under Bulletin 2011-29.

This memorandum is provided by Crowe & Dunlevy for educational and informational purposes only and is not intended and should not be construed as legal advice.

Copyright 2011 Crowe & Dunlevy

Oklahoma City
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
(405) 235-7700

Tulsa
500 Kennedy Building
321 South Boston Avenue
Tulsa, OK 74103
(918) 592-9800

Norman
The HiPoint Office Building
2500 South McGee
Suite 140
Norman, OK 73072
(405) 321-7317