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Consumer Financial Services Basics 2013

September 30 - October 01, 2013

University of Maryland

Francis King Carey School of Law

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Baltimore, Maryland

Facing the most comprehensive revision of federal consumer financial services law in 75 years, even experienced consumer finance lawyers might feel it is time to get back in the classroom. This live meeting is designed to expose practitioners to key areas of consumer financial services law, whether you need a primer or a refresher.

It is time to take a step back and think through some of these complex issues with a faculty that combines decades of practical experience with law school analysis. The classroom approach is used to review the background, assess the current policy factors, step into the shoes of regulators, and develop an approach that can be used to interpret and evaluate the scores of laws and regulations that affect your clients.


The Housing Finance Subcommittee of the Consumer Financial Services Committee launched a monthly call-in program in March 2013. The Subcommittee presents a different topic of interest to housing finance lawyers and consumer financial services practitioners. The program takes place on the second Wednesday of each month, from 2:00 p.m. to 3:00 p.m. Eastern time. After the speakers finish their presentation, callers submit questions that leads to further discussion.

Each of the programs is recorded and the program materials are placed on the Consumer Financial Services Committees’ website for later playback and review. This resource is open to all members of the Consumer Financial Services Committee and its friends. There is no charge for the program and we invite your participation.

This article will summarize the programs that have been presented and discuss future programs.

Lyne B. Barr: Shaping Consumer Financial Service Law from Electronic Banking to Dodd Frank

By Rachel Marin

Lyne B. Barr is a partner with Goodwin Procter LLP and chair of its Consumer Financial Services Practice and Banking Practice groups. She is highly respected for her extensive experience in electronic banking, and she helped establish the ABA’s position on The Dodd Frank Wall Street Reform and Consumer Protection Act. Barr has devoted her career to consumer financial
services, received prestigious awards, and has held many leadership positions in the American Bar Association ("ABA"), including Chair of the Consumer Financial Services Committee ("CFSC") and the Business Law Section. Read More...

**CFSC Legal Feature**

**Fair Debt Collection Practices Act - Not Just for Debt Collectors Anymore**

By Heather Thayer, Thayer Legal Services PLLC

The Consumer Financial Protection Bureau (CFPB) has signaled its interest in regulating the debt collection industry. For example the CFPB moved relatively quickly to assert its regulatory authority over larger debt collectors. In two bulletins issued on July 10, 2013, the CFPB has made it clear that its interest in collection practices is not limited to traditional debt collectors. Although the Fair Debt Collection Practices Act (the FDCPA) only applies to debt collectors and not to creditors collecting their own debts, in the first of the two bulletins the CFPB announced that it will apply many FDCPA standards to creditors. In the second bulletin, the CFPB put all regulated entities on notice that certain standard collection representations may be deceptive and that all persons collecting debts should take care to ensure that potentially deceptive statements are not being used in debt collection. Read More...

**So What Else Is There Besides the CFPB in Housing Finance?**

By Christine Acree, Ellie Mae Inc.

The biggest news in 2013 in Housing Finance has been the activities of the CFPB. Other players have also been active. Here are the highlights from the Housing Finance Subcommittee’s August 10, 2013 presentation at the ABA Annual Meeting in San Francisco. Read More...

**CFSC Pro Bono/Community Service**

**Street Law’s Legal Diversity Pipeline Program**

Recently members of the Pro Bono Subcommittee, in coordination with the CFPB Financial Literacy team, have been discussing ways that our members can apply their experiences and knowledge to provide pro bono assistance to our various communities. One possibility involves the possibility of partnering with an organization called StreetLaw. In years past, corporate law firms have helped promote financial literacy by conducting sessions explaining credit card rates, APRs, and late fees, helping students learn how lawyers think, and how the credit marketplace operates. StreetLaw presents another avenue for law firms and corporate legal departments to engage with their local communities. Street Law, Inc. is a 41-year-old nonprofit organization that creates classroom and community programs that teach thousands of people worldwide about law, democracy, and human rights. Street Law strives to provide accessible, engaging, and interactive programs that empower students and communities to become active, legally-astute contributors to society. The Legal Diversity Pipeline Program introduces students of color to the law and the legal profession by partnering law firms and corporate legal departments with local, diverse high school law classes. Read More...

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This year, however, marks the last ABA Annual Meeting in which CFSC will participate. A decision has been made by the Business Law Section to organize an Annual Meeting of the Section in which we will participate instead. Because the ABA Annual Meeting was so diffuse and held at so many locations around the host city, the thought was that members of the Business Law Section tended to focus on the Section programming, and would benefit more from another conference focusing on business law topics, rather than the broader ABA Annual Meeting. CFSC will continue to have three in-person meetings each year: the Winter Meeting (CFSC only), the Spring Meeting of the Business Law Section, and the new Annual Meeting of the Business Law Section. The first Business Law Section Annual Meeting will be held September 11-13, 2014, in Chicago.

As a reminder, our other upcoming meetings are

- Consumer Financial Services Basics 2013, September 30 to October 1, 2013, at Francis King Carey School of Law in Baltimore, MD
- CFSC Winter Meeting, January 11-14, 2014, in Park City, Utah
- Business Law Section Spring Meeting, April 10-12, 2014, in Los Angeles, CA

New CFSC Subcommittee Leaders

At the ABA Annual Meeting, the leadership for many of our subcommittees turned over, giving us an opportunity to welcome the new leaders, and to thank the departing leaders for their energy, contribution to the Committee, and the best programming that the ABA (or anyone else) has to offer:
• Retiring Leaders: Amy Salberg (Fair Access); Cathy Brennan and Jeffrey Naimon (Truth in Lending); Lauren Campisi, Alana Odom Williams, and Justin Hosie (Young Lawyers)

• Incoming Leaders: Brad Blower with Jonice Gray Tucker and Katherine Bryant (Fair Access); Stephanie Cohen with Joe Reilly and Jeffrey Rodgers (Truth in Lending); Daniel J. McKenna with Yasamine Christopherson, Marci VanAdestine (Young Lawyers)

New Women’s Event

At this year’s Winter Meeting in Park City, we are beginning what we hope will become a long and cherished tradition of our Committee: a special happy hour or breakfast event (we have not yet decided which it will be) for the women members of our Committee. Law firms and other professional organizations have recognized that women lawyers can benefit from specialized mentoring and learning from their peers. We have a number of dynamic women on our committee, and the women’s event is an opportunity for us to hear their stories: how they got to where they are and how they view the role of a woman in this practice. As more and more women lawyers practice in the area of consumer financial services, we believe our Committee will serve as an important resource and provide them with the support and encouragement they need to succeed.

Oral History Project

At the ABA Annual Meeting, the Leadership of our Committee decided to embark on an Oral History Project. There has been a dramatic change in consumer financial services regulation over the last two years, and a more extensive overhaul is promised as the CFPB regulates new industries, consolidates rulemaking authority from several agencies, and applies new technology and theories to policymaking.

Our Committee has been at the forefront of the development of consumer financial services legislation, regulation and policy. Our members have an exceptionally deep and broad understanding of consumer financial services law: how and why it developed, how it has changed over time, and the possible alternative paths for the future. CFSC leadership and several Committee members thought that some perspective might be helpful as the CFPB and other financial regulators embark on their new duties.

The Federal Reserve Board, Federal Trade Commission, and similar organizations regularly use oral history to develop and test their policymaking initiatives. Unlike the Federal Reserve Board and Federal Trade Commission, however, which have each existed for more than a century, the CFPB does not have a long history or institutional
memory. Our hope is that our Committee’s Oral History Project, by interviewing CFSC members who were “there at the inception” – whether in-house, a consumer advocate, private practitioner, legislator, or regulator – can serve as the collective institutional memory for the consumer financial services field.

According to the Columbia University Center for Oral History, http://library.columbia.edu/locations/cco.html, “oral history is an intellectual practice that requires extensive research and preparation and results in the creation of archives that can be mined for multiple purposes over time.” We welcome anyone who would like to assist with designing the Oral History Project; identifying, planning, conducting interviews; and the processing and evaluation of interviews.

We look forward to our new Committee initiatives, to the contributions of our new subcommittee leaders, and to seeing everyone in Park City in January.

Nikki Munro
Chair
Consumer Financial Services Committee
410.865.5430
nmunro@hudco.com
Lynne B. Barr is a partner with Goodwin Procter LLP and chair of its Consumer Financial Services Practice and Banking Practice groups. She is highly respected for her extensive experience in electronic banking, and she helped establish the ABA’s position on The Dodd Frank Wall Street Reform and Consumer Protection Act. Barr has devoted her career to consumer financial services, received prestigious awards, and has held many leadership positions in the American Bar Association (“ABA”), including Chair of the Consumer Financial Services Committee (“CFSC”) and the Business Law Section.

Barr’s colleagues describe her as someone who is always willing to share her knowledge to help others, including fellow attorneys. When she was Chair of the ABA’s CFSC, she gave back to consumers by organizing the creation of an ABA public service website to educate consumers on issues such as predatory lending. She is a former faculty member of the Boston University Law School Graduate Program in Banking Law, where she taught the school’s first basic consumer law course, which she enjoyed teaching. Some of her students came to work for her at Goodwin Procter, and other students became well-known in Washington, D.C. and in the ABA’s Business Law Section.

Barr acknowledges that her labor-negotiator father was an influence on her career and leadership style. She observed the techniques he used in interacting with people (including with his children), and she incorporated them into her own repertoire. Barr attended The University of California, Berkeley and The George Washington University and majored in anthropology. She considered attending graduate school to continue studying anthropology and also thought seriously about becoming a police officer. After graduating in 1972, she decided to pursue a career in law and enrolled at The George Washington University Law School.

During her first year of law school, Barr worked full time as a secretary in the human resources department at the University’s medical school and attended law school classes at night. She excelled at regulatory commercial law courses and graduated from law school with honors. After graduation, she accepted a job as a staff attorney for the Division of Consumer and Community Affairs of the Board of Governors of the Federal Reserve System in Washington, D.C., where she later became a senior attorney. The Fed sent Barr to attend her first consumer law class, which was taught by Professor Ralph Rohner, to whom she attributes “everything she knows” about the Truth in Lending Act. She worked on drafting the unfair trade practice rules for which the Fed was responsible and the rules implementing the Consumer Leasing Act. She spent her last two and a half years at the Fed focusing on the Electronic Fund Transfer Act, which
gave her a unique perspective on electronic banking that would have been difficult to get at a law firm.

After four years at the Fed, Barr decided to expand her practice beyond government regulatory work. She considered offers from private companies but chose to enter into private practice at the law firm Gaston Snow & Ely Bartlett in Boston. One of her early professional accomplishments in private practice was her work representing a group of banks that formed the Plus ATM network in the early 1980s, for which she helped to create the operating rules. Goodwin Procter LLP later recruited her to join its Boston office to build a practice group focused on consumer financial services. It was a novel move for both her and Goodwin Procter, because at that time it was highly unusual for partners to change law firms, and also because she joined the firm as its first female corporate partner. As Chair of two practice areas, she works to ensure lawyers in her groups are engaged and interested in their projects, to keep the team running efficiently, and to maintain client satisfaction.

In 2005, Barr received the prestigious Jean Allard Glass Cutter Award from the ABA’s Business Law Section, presented annually to an exceptional woman business lawyer who has made a significant contribution both to the profession and to the Section of Business Law. Her former colleague, Jackie Parker, was one of the attorneys who nominated her. Parker had been a student in Barr’s consumer law course. Barr is honored to be grouped with the “incredible business lawyers” who have received the award, and she considers it a “very important achievement.” She has been very involved with the ABA over the years, including serving as Chair of the ABA’s CFSC from the years 2000-2003. The position required a great deal of time and effort, but was “very rewarding.” She recognizes the CFSC as one of the most important Committees in the Business Law Section because it provides the best source of continuing education, networking, and companionship for consumer financial services lawyers in the country. She is “in awe” of how important the committee has been to her own career and that of her colleagues. “Get involved” she tells young lawyers who would benefit from the unique opportunities that the Committee and the Business Law Section present for attorneys to participate, think, write, and present on important issues.

Additionally, she was selected to be part of a ABA Presidential Task Force, which tasked lawyers with developing the Association’s position on what would become The Dodd Frank Wall Street Reform and Consumer Protection Act, for the purpose of lobbying Congress and for commenting on proposals issued by regulatory bodies. She faced the challenge of incorporating the disparate views of different constituents into the ABA’s official position. Barr currently serves as a delegate to the House of Delegates of the ABA. She is a former Chair of the ABA’s Business Law Section and is a member of its Council and was the Editor-in-Chief of *The Business Lawyer*, the Section’s scholarly journal. In addition, she is the former chair of the ABA’s Banking Law Committee’s Financial Holding Company Subcommittee and the ABA’s CFSC Subcommittees on Deposit Accounts and Programs.
“I was thrilled,” said Barr, to receive a phone call in 2010 from Alan Kaplinsky on behalf of the American College of Consumer Financial Services Lawyers, who informed her that she was the recipient of the Senator William Proxmire Lifetime Achievement Award. Given by the American College of Consumer Financial Services Lawyers, which Barr served as a past President, the award is granted to a person who has made significant contributions in the field of consumer financial services. She takes pride in being in the same company as the “amazing people who have won in the past.” She enjoys being a part of the “opinionated group,” and appreciates the members’ commitment to the organization and to the profession.

Barr enjoys knitting, spending time with her family, including her daughters, step-children, and many grandchildren, and visiting her home in a picturesque village in the Languedoc wine country region of France, where she has immersed herself in the language and cuisine.
Housing Finance Subcommittee - Monthly Call In Program

The Housing Finance Subcommittee of the Consumer Financial Services Committee launched a monthly call-in program in March 2013. The Subcommittee presents a different topic of interest to housing finance lawyers and consumer financial services practitioners. The program takes place on the second Wednesday of each month, from 2:00 p.m. to 3:00 p.m. Eastern time. After the speakers finish their presentation, callers submit questions that leads to further discussion.

Each of the programs is recorded and the program materials are placed on the Consumer Financial Services Committees' website for later playback and review. This resource is open to all members of the Consumer Financial Services Committee and its friends. There is no charge for the program and we invite your participation.

This article will summarize the programs that have been presented and discuss future programs.

Completed Programs

In March 2013, Joe Reilly and Shara Chang of Buckley Sandler, LLP presented the first webinar on the Consumer Financial Protection Bureau's final ability to repay and qualified mortgage rule. Reilly and Chang outlined the rule, discussed various issues associated with it, and responded to listeners’ questions concerning the rule and the directions given by the Bureau.

In April 2013, Len Bernstein and Bob Jaworski from Reed Smith discussed the Consumer Financial Protection Bureau's mortgage servicing rules. Here, the presenters discussed each of the Bureau's nine new mortgage servicing rules and how they would impact and change the servicing landscape. The discussion was spirited and reflected the impact that the Bureau’s new rules would have on mortgage servicing.

In May 2013, Laura Brown, Laura Greco, and Robert Savoie of McGlinchey Stafford, PLLC presented a summary of the Consumer Financial Protection Bureau’s TILA appraisal rule for higher-priced mortgages, ECOA appraisal rule regarding the disclosure and delivery of appraisals, the new escrow rules, and borrower counseling. A discussion of these rules occupied the majority of the hour, which are of importance to originators of mortgages.

In June 2013, Jon Jaffe and Kris Kully from K&L Gates discussed the Consumer Financial Protection Bureau’s loan originator compensation rule. The presentation focused on the breadth and scope of the rule, and how it will change mortgage origination practice.

In July 2013, the Subcommittee gave a presentation on putting the Consumer Financial Protection Bureau’s new mortgage rules together. Leonard Chanin and Thomas Noto of Morrison & Foerster discussed the Consumer Financial Protection Bureau’s
mortgage rules, how they interact, and how originators and servicers can implement the rules as the mortgage environment changes. The panelists responded to numerous questions concerning conflicts between the rules and apparent ambiguities in the rules.

In August 2013, the Subcommittee presented a litigation review of housing finance and consumer financial service issues. Brooks Brown, William Jay, and Matthew Sheldon gave an update on housing finance litigation. The panelists discussed such issues as developments in class action law, arbitration issues, emerging issues in consumer financial services litigation, and challenges to the Consumer Financial Protection Bureau. The topics also included issues related to the CFPB, government enforcement actions, RESPA, fair lending, and loan servicing issues.

In September 2013, the Subcommittee gave a presentation that looked at the government sponsored enterprises and their future. Robert Bostrom and Jerry Stouck from Greenberg Traurig led a discussion on the current regulatory, legislative, and public policy framework for the GSEs with a look to their future. The program also explored the current litigation environment against the United States government, Treasury Department, and FHFA by preferred and common shareholders of the GSEs.

Future Programs

In October, the Housing Finance Subcommittee will give a presentation on implementation issues of the Consumer Financial Protection Bureau’s mortgage rules. Many originators and servicers have modified their computer systems and are encountering difficulties or issues implementing the rules. Our panelist should be able to answer many of the questions asked or provide guidance on how to implement the rules.

In November, the Subcommittee will sponsor a program on debt collection efforts and the new debt collection rules, how they impact the industry and how they will affect the legal profession. The Consumer Financial Services Committee is partnering with NARCA for this presentation.

Other topics being considered by the Subcommittee for future programs include the RESPA/TILA integration, an update on the national mortgage settlement, a program on state actions in dealing with mortgage issues, and a look at MERS.

If you have an idea on which you would like the Subcommittee to present a program, or if you have a program idea that you would like to present, please contact Sanford Shatz at sshatz@mcglinchey.com.

Thank you very much for attending our programs and we look forward to joining you next month.

Sanford Shatz
Chair
Housing Finance Subcommittee
McGlinchey Stafford, LLP
(949) 381-5911
sshatz@mcglinchey.com
The Consumer Financial Protection Bureau (CFPB) has signaled its interest in regulating the debt collection industry. For example the CFPB moved relatively quickly to assert its regulatory authority over larger debt collectors. In two bulletins issued on July 10, 2013, the CFPB has made it clear that its interest in collection practices is not limited to traditional debt collectors. Although the Fair Debt Collection Practices Act (the FDCPA) only applies to debt collectors and not to creditors collecting their own debts, in the first of the two bulletins the CFPB announced that it will apply many FDCPA standards to creditors. In the second bulletin, the CFPB put all regulated entities on notice that certain standard collection representations may be deceptive and that all persons collecting debts should take care to ensure that potentially deceptive statements are not being used in debt collection.

CFPB Bulletin 2013-07 – Unfair, Deceptive and Abusive Practices in Debt Collection

The CFPB first quietly indicated that it would use its Unfair, Deceptive and Abusive Practices (UDAAP) authority to apply FDCPA principles to creditors in the “CFPB Supervision and Examination Manual” Version 2.0 issued in October 2012. Tucked in to the chapter on Unfair, Deceptive and Abusive Practices (UDAAP) was the requirement that examiners ensure that each examined “entity has policies to ensure compliance with the standards under the Fair Debt Collections Practices Act to prevent abusive, deceptive, or unfair debt collection practices.” Many noticed this at the time, but just in case anyone missed it, the CFPB issued Bulletin 2013-07 to make it clear that violation of certain FDCPA standards will be considered a UDAAP applicable to all regulated entities.

In the bulletin, the CFPB outlined its UDAAP authority to regulate debt collection practices. The CFPB noted that the FDCPA already proscribes conduct “the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt,” using “any false, deceptive, or misleading representation or means in connection with the collection of any debt,” and using “any unfair or unconscionable means to collect or attempt to collect any debt.” After noting that the FDCPA prohibits such activity with respect to debt collectors, the CFPB noted that its UDAAP authority is broader and applies to all persons covered by the CFPB regulations. Specifically, the CFPB noted that the following non-exhaustive list of actions prohibited under the FDCPA could be UDAAPs and that the CFPB will be monitoring closely for such activities:

- Collecting or assessing a debt and/or any additional amounts in connection with a debt (including interest, fees, and charges) not expressly authorized by the agreement creating the debt or permitted by law.
- Failing to post payments timely or properly or to credit a consumer’s account with payments that the consumer submitted on time and then charging late fees to that consumer.
- Taking possession of property without the legal right to do so.
- Revealing the consumer’s debt, without the consumer’s consent, to the consumer’s employer and/or co-workers.
- Falsely representing the character, amount, or legal status of the debt.
- Misrepresenting that a debt collection communication is from an attorney.
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government.
• Misrepresenting whether information about a payment or nonpayment would be furnished to a credit reporting agency.
• Misrepresenting to consumers that their debts would be waived or forgiven if they accepted a settlement offer, when the company does not, in fact, forgive or waive the debt.
• Threatening any action that is not intended or the covered person or service provider does not have the authorization to pursue, including false threats of lawsuits, arrest, prosecution, or imprisonment for non-payment of a debt.

In addition to these enumerated areas of concern, any practice that the CFPB considers unfair, deceptive or abusive in debt collection may be subject to CFPB enforcement. To ensure that this is understood, the CFPB issued a second bulletin regarding a common practice that it considers deceptive.

CFPB Bulletin 2013-08 – Representations Regarding Effect of Debt Payments on Credit Reports and Scores

The second bulletin issued on July 10 may have greater impact as it limits what has been a common debt collection practice: warnings about the impact of non-payment on credit reports and credit scores or encouraging payment by suggesting that payment will improve a consumer’s credit. The CFPB’s message is that unless the person collecting a debt knows for certain what the impact of payment of any particular debt will be on a consumer’s credit, the collector should not make representations about such impacts. The CFPB noted some areas of particular concern.

Statements regarding the relationship between paying debts in collection and improvements in a consumer’s credit report.

While broad statements that timely payment of debts generally improves a consumer’s credit may be allowable, care must be taken to ensure that both the content and the context of such statements are accurate. One example of a potentially deceptive representation is making statements about obsolete debt, defined as debt that the Fair Credit Reporting Act prohibits consumer reporting agencies from including on credit reports. A representation that payment on an obsolete debt will result in an improved credit report may deceive consumers because information about the account likely would not have been reported even if the debt were unpaid. Thus, collectors must take care to ensure that otherwise innocuous statements still remain correct in the context they are being used.

Statements regarding the relationship between paying debts in collection and improvements in a consumer’s credit score.

The CFPB regards most statements that debt payment will improve credit scores as potentially deceptive. In light of the numerous factors that influence an individual consumer’s credit score, paying a particular debt may not improve the credit score for any given consumer. Thus, any statement to the customer that payment of a debt will improve the consumer’s credit score is speculative at best, and the CFPB will generally regard these statements as deceptive.

Statements regarding the relationship between paying debts in collection and improvements in a consumer’s creditworthiness.
Representations about how paying debts in collection will improve a consumer’s creditworthiness may be deceptive. This also includes statements suggesting that payment of a particular debt will enhance the likelihood that a consumer will subsequently receive credit or better credit terms. The impact of payment of a particular debt on a prospective borrower’s creditworthiness may depend on all of the information potential lenders consider and how they weigh that information. It is the CFPB’s position that many representations that payment of a particular debt may improve creditworthiness are likely speculative and may be deceptive. It might be possible that a lender could make true statements about the impact of payment on future credit from that lender, but great care would need to be taken to ensure that the statements are truthful and remain so.

Given these bulletins, all entities and persons who collect consumer debts, including creditors collecting their own debts, should look carefully at their debt collection practices -- including collection letters, training, and scripting -- to ensure that their collection practices conform to CFPB expectations.
So What Else Is There Besides the CFPB In Housing Finance?

By Christine Acree, Associate Legal Counsel, Ellie Mae, Inc.

The biggest news in 2013 in Housing Finance has been the activities of the CFPB. Other players have also been active. Here are the highlights from the Housing Finance Subcommittee’s August 10, 2013 presentation at the ABA Annual Meeting in San Francisco.

National Mortgage Settlement

Background

In February 2012, 49 state attorneys general and the federal government announced a historic joint state-federal settlement with the country's five largest mortgage servicers: Ally/GMAC, Bank of America, Citi, JPMorgan Chase, and Wells Fargo.¹ This bipartisan settlement will provide as much as $25 billion in relief to distressed borrowers in all states, except Oklahoma who did not sign onto the settlement, and direct payments to these states and the federal government.²

The agreement settles state and federal investigations finding that the servicers routinely signed foreclosure related documents without a notary public present and without knowing whether the facts the documents contained were correct.³ Both of these practices are illegal.

The settlement provides benefits to borrowers in the 49 states whose loans are owned by the settling banks as well as to many of the borrowers whose loans they service.⁴

Panelist Katherine Porter is Professor of Law at the University of California, Irvine. In early 2012, she was appointed by California Attorney General Kamala Harris to be the state's independent monitor of banks in a nationwide $25 billion mortgage settlement.⁵ In this capacity, Professor Porter oversees the banks' implementation of the settlement reforms, conducts community outreach and education, and manages a program to assist homeowners.⁶ The Monitor Program reviewed and responded to over 3,300 complaints in its first year of operation and has intervened with the banks in hundreds of situations.⁷

Professor Porter shared a number of interesting facts:

Settlement statistics

- At $25 Billion, it was the largest consumer settlement outside of tobacco in United States history.
- The 49 states received cash and gave it to different groups. Some states choose to use the money to help homeowners but others used it for completely unrelated purposes.
- 960,000 people nationwide received approximately $1,400 each.
- In California, who had a standalone agreement, the average was a $200,000 first lien principal reduction on $400,000 to $500,000 homes.

² Id.
³ Id.
⁴ Id.
⁶ Id.
⁷ Id.
• Most of the work is done. Banks are highly motivated to deliver this relief and be certified as complete. As of the date of the presentation, no banks were certified yet but some were close.
• Servicing reforms included 303 changes in practice – most are very specific rules, e.g. loss mitigation, payment statement/accounting, etc. Some of these standards are hard to comply with.

**Automatic Opt In**

This settlement is different because in this case a consumer cannot apply for relief. Instead it is up to the banks to push the relief onto the consumer which is the opposite of how this normally works. For example, Bank of America sent consumers a one and a half page letter saying their second mortgage was forgiven and if the consumer did not want to ever pay their second mortgage again, the consumer could just do nothing.

**Recoupment?**

A member of the audience asked whether there was ever any discussion of including an element of recapture in the settlement. Professor Porter responded that she wasn’t part of the negotiation so she did not know. She said there were fairness issues at play. Even if a homeowner received a settlement check and eventually made a profit upon the sale of her home, this would still be ok because the homeowner had been wronged at some earlier point. Professor Porter stated that this settlement was done for a reason, even if it was rough justice. The real focus is on reforming the industry.

**California Homeowner Bill of Rights**

The California Homeowner Bill of Rights (“HBoR”) became law on January 1, 2013 to ensure fair lending and borrowing practices for California homeowners. Key provisions include

- Restriction on dual track foreclosure
- Guaranteed single point of contact
- Verification of documents
- Enforceability
- Tenant rights
- Tools to prosecute mortgage fraud
- Tools to curb blight

Panelist Sanford "Sandy" Shatz is of counsel in McGlinchey Stafford's Irvine, California office. Mr. Shatz shared a number of interesting points:

- The HBoR was enacted on an emergency basis, but it continues to go on.
- Enforceability is now a private right of action.
- Tenant protections include a 90 day notice to quit.
- Criminal fraud has been expanded.
- Blight remedies allow a municipality to fix the problem and then charge for this.
- The HBoR is fairly consistent with the National Mortgage Settlement.
- Most, if not all, settlement companies in California are covered by the HBoR.

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9 *Id.*
• A servicer cannot move forward with the foreclosure process if the homeowner has completed an application to secure a loan modification.
• Several other states have followed California in beginning to create their own versions of HBoR.

Here are a couple of points Mr. Shatz shared on behalf of Michael Troncoso, Senior Counsel with California’s Office of the Attorney General:

• HBoR does not seem to have had a big impact on origination so far.
• He thought there would be more injunctions.
  o Note that the Federal government is issuing injunctions when dual tracking occurs but the borrower must keep paying the mortgage during this time.

**States’ Approaches**

Here are some other thoughts and observations from the panelists regarding various states’ approaches to tackling the current mortgage situation:

• Professor Porter was surprised that states do not seem interested in building a better process from the ground up but instead have been using a more piecemeal approach.
• There has been a large transfer of servicing rights due to a rise in state actors doing foreclosures. Big nationwide players are generally getting out of the business. This seems to be an easy asset for banks to offload.
  o However, note that Nationstar and Ocwen are getting bigger.
• Any plan to pursue eminent domain on mortgages is foolhardy. Richmond, California was cited as an example.
• California:
  o It really easy to get a foreclosure sale postponed in California. Florida is the opposite.
  o Upfront fees cannot be charged for loan modifications. (SB 94).\(^1\)
    ▪ How does this work when HBoR allows for a private right of action?
      • For example, if an attorney takes a retainer to put HBoR into action, does this violate SB 94?\(^2\)
  o Every month the California Bar lists attorneys doing home loan modifications that it has gone after.
    ▪ We want to encourage the best attorneys to be involved but how is this possible in the current environment?

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Street Law’s Legal Diversity Pipeline Program

Recently members of the Pro Bono Subcommittee, in coordination with the CFPB Financial Literacy team, have been discussing ways that our members can apply their experiences and knowledge to provide pro bono assistance to our various communities. One possibility involves the possibility of partnering with an organization called StreetLaw. In years past, corporate law firms have helped promote financial literacy by conducting sessions explaining credit card rates, APRs, and late fees, helping students learn how lawyers think, and how the credit marketplace operates. StreetLaw presents another avenue for law firms and corporate legal departments to engage with their local communities.

Street Law, Inc. is a 41-year-old nonprofit organization that creates classroom and community programs that teach thousands of people worldwide about law, democracy, and human rights. Street Law strives to provide accessible, engaging, and interactive programs that empower students and communities to become active, legally-astute contributors to society. The Legal Diversity Pipeline Program introduces students of color to the law and the legal profession by partnering law firms and corporate legal departments with local, diverse high school law classes.

Street Law’s Diversity Pipeline Programs strive to widen the scope of diversity initiatives to include those often-overlooked future lawyers. “I think that both volunteer mentors and students get something truly valuable out of this program. Volunteer mentors have an opportunity to engage with students, talk about their profession, and learn more about the community where their offices are located, and students get to participate in a dynamic program that will open some doors that might have seemed closed.” said Lee Arbetman, Executive Director at Street Law, Inc.

When departments and firms first decide to participate, Street Law staff identify a nearby, diverse high school that is interested in the partnership. Street Law staff then train volunteers to use Street Law’s interactive teaching methods and work with them to select fun and engaging activities to use in the classroom. Then the volunteer lawyers visit their partner high school classes to teach several substantive law lessons. The lessons are student-centered, interactive, and focus on encouraging students to develop and employ the types of analytical skills that lawyers need.

The highlight of the program—for both volunteers and students—is a daylong field trip to the corporate or law firm headquarters to participate in career fair activities, interactive workshops, and mock legal proceedings, such as contract negotiations and mock trials.

Several participating companies and firms enhance their participation by creating opportunities for teens to further their interest and understanding of the legal profession through job shadowing and tours of nearby law schools. Others help students prepare for standardized tests and complete college applications, and some even offer summer internship opportunities.
The program has been extremely successful and has grown nationally. Street Law has teamed up with the Association of Corporate Counsel (ACC) and the National Association for Law Placement (NALP) to bring the program to more than 45 corporations and ACC chapters, as well as ten national law firms and six law schools nationwide. Collectively, over 1,000 participating volunteers reach more than 3,300 students per year.

After participating in the program one Miami high school student said “The most important thing I learned was that I want to be a lawyer, and I can become one if I work hard.” Law firms and in house law departments involved in the program find it to be a powerful way to build stronger relationships with their employees and communities while working to create a more inclusive legal profession.

Street Law and its corporate and law firm partners have also developed engaging practical law programs for teens aging out of the foster care system and for community college students. Information about all Street Law programs is available on its website, www.streetlaw.org.