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Practice Group:

Consumer Financial Services

New Obstacles on the Course: State Foreclosure Laws Continue to Complicate Mortgage Loan Servicing

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It is no secret that the housing crisis is a drag on the economy for which there appears to be no quick and easy fix. President Obama's recent announcement that his administration would revise the underutilized Home Affordable Refinance Program ("HARP") in the hopes of assisting underwater borrowers was the latest federal effort to assist homeowners during the ongoing financial crisis. As has been the case with each previous federal effort, the HARP announcement comes on the heels of ever more inventive – and, for servicers, expensive – state and local legislative initiatives with the same ends.

Three years ago, we first reported on state efforts to address the foreclosure crisis in our Alert "Make My Day: States Dare Servicers to Foreclose."[i] We provided an overview of the types of measures that jurisdictions were enacting, almost all of which were extending the foreclosure process. If that was the sole intent, those measures have been effective! Recent reports reflect that an average foreclosure takes over 986 days in New York; New Jersey, Florida, and Maryland also lead the pack of states with lengthy foreclosure timelines.[ii] However, legislators have recognized that a lengthened foreclosure timeline will not solve our crisis; in fact it may actually create new problems! Since that alert, 39 states have enacted more than 140 new foreclosure-related measures. Servicing practices, which have also come under increased scrutiny, were recently the subject of an Interagency Report of Foreclosure Policies and Practices.[iii] States have heightened their focus on these practices, and as a result have enacted more than 90 servicing-related measures during the past three years. Because of the loss of federal preemption resulting from the Dodd-Frank Wall Street Reform and Consumer Protection Act, these laws also have a greater impact on national banks and federally chartered thrifts.

In this alert, we provide a brief update on the types of measures that states and localities have enacted to combat the foreclosure crisis and how these efforts continue to complicate the residential mortgage servicing business.

Servicing Standards

In response to increased scrutiny of servicing practices, states are increasingly regulating the practices of servicers. In the last few years, states including Hawaii, Montana, Nevada, New York, North Carolina, South Carolina, Texas, Vermont, and Washington have enacted laws or adopted regulations requiring the registration or licensing of servicers.[iv] Some states, like New York, have regulated practices through agreements entered into with servicers. Although these laws, regulations, and agreements differ somewhat in their substance, they generally impose recordkeeping, reporting, and financial qualification requirements; prohibit servicers from engaging in certain conduct; and require servicers to fulfill certain duties to the borrowers whose loans they service, including with regard to the servicing of loans that are delinquent or in default and to communications with the borrower relating to loss mitigation requests and opportunities. Although federally regulated depository institutions do not have to comply with the licensing or registration requirements of these statutes,

they may be subject to certain of the general servicing practices arising thereunder. Approximately two-thirds of all states now license mortgage servicers of first and subordinate-lien mortgage loans (including third party servicers and entities servicing purchased mortgage loans held in portfolio), with some of these servicing licensing laws extending to entities that merely hold servicing rights to loans. Eventually, we anticipate this number to include every jurisdiction.

Mortgage loan servicers also are subject to a greater number of fee restrictions and procedural requirements. States have enacted new measures imposing restrictions on lien release and reconveyance practices, changing the timeline for provision of and content of payoff statements, and requiring servicers to respond to modification requests and short sale offers within a specific time period, among other topics.

Another subset of new requirements creates a regulatory barrier to loss mitigation requirements. Individual employees of servicers who are involved in loan modification activities are subject to licensing as mortgage loan originators under most state statutes implementing the requirements of the federal SAFE licensing act. In compliance with the SAFE Act, the states have enacted legislation to define and provide for the licensing and regulation of residential mortgage loan originators ("LOs"). Every state adopted a model LO definition minimally requiring licensing of individuals who, for compensation or gain, take a residential loan application or offer or negotiate terms of a residential mortgage loan. Based solely on that definition, and without further guidance as to the activities that constitute taking an application or offering or negotiating loan terms when modifying loans, regulators in more than half of the states have indicated, either informally or formally, that the licensing requirements of their respective LO statutes extend to an individual who, on behalf of a residential mortgage loan servicer, performs loan modifications or certain other loss mitigation activities. Other states have refrained from issuing guidance on the issue pending a determination by the Bureau of Consumer Financial Protection whether persons who only perform loan modifications qualify as LOs.

Foreclosure Procedural Requirements

The most popular vehicle for states to mitigate the impact of foreclosures remains measures that impose additional procedural requirements on the foreclosure process. Although the number of states imposing outright moratoria has decreased,[v] we continue to see new state laws requiring servicers to provide pre-foreclosure notices with detailed information about the default and about the availability of foreclosure prevention counseling services, loss mitigation alternatives and cure rights; the opportunity to engage in foreclosure mediation, or to satisfy other procedural requirements.

Notices of Default and Intent to Foreclose

States continue to emphasize the importance of contact between borrowers and their lenders or servicers, hoping to encourage parties to work out alternatives to foreclosure. Of course, by imposing timing requirements on such communications, measures requiring pre-foreclosure notices also significantly extend the timeline for foreclosure, relieving pressure on state regulatory and judicial resources and allowing borrowers to stay in their homes for a longer period of time.

One example of a measure that has had both impacts is the "Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011" (the "D.C. Foreclosure Act"),[vi] which applies to any foreclosure action involving a loan secured by a deed of trust or mortgage on a one- to four-family residential property. D.C. law previously prohibited a foreclosure sale from taking place without the provision of a pre-sale notice to the owner of the property at least 30 days before the scheduled sale. Now, the D.C. Foreclosure Act also requires a lender or servicer to send a notice of

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default and a notice of intention to foreclose, and to fulfill other procedural requirements related to foreclosure mediation (which we discuss in greater detail below). When issuing a notice of default, a lender must pay the District a $300 mediation fee; the fee is recoverable from any excess proceeds remaining after a sale under a power of sale. The D.C. Foreclosure Act and its implementing regulations extend the timeline for foreclosure on a residential mortgage loan by up to 132 days, by requiring the lender or servicer to: (1) at least 30 days before the scheduled sale date, provide the notice of intent to foreclose and receive written acknowledgment that the Mayor has received a copy of such notice; (2) wait 30 days after mailing a notice of default to provide the borrower an opportunity to elect to participate in foreclosure mediation; (3) upon election of the borrower, participate in mediation, which may be scheduled for no earlier than 45 days after the mailing of the notice of default (or 15 days after the borrower's election); and (4) receive a mediation certificate (which may be issued no earlier than 45 days and no later than 90 days after the mailing of notice of default, unless the mediation period is extended, which may be for up to 30 days) before proceeding to exercise a power of sale. Filing a notice of intent to foreclose on a residential mortgage without a mediation certificate will void the foreclosure sale.

Since the measure was first enacted on an emergency basis last November,[vii] the D.C. Department of Insurance, Securities, and Banking has engaged in rulemaking efforts to formalize the form and content of such notices; the resulting forms (of which there are many) require servicers to input a significant amount of individualized information. Furthermore, while the D.C. Foreclosure Act and the related forms appear to borrow elements from other state laws, the requirements differ enough to prevent servicers from adopting a "one size fits all" approach to compliance. Where the result of submitting a defective notice of default or notice of intention to foreclose is rejection of the form – which resets the timeline and involves additional financial investment by a lender or servicer – understanding exactly how to complete and submit these forms is crucial.[viii]

Mandatory Court Supervised Settlement Conferences and Mediation

A second legislative tactic that continues to be both popular and effective in extending the timeline for foreclosure is mandatory participation in foreclosure mediation.

For instance, beginning this month, any mortgagee initiating a foreclosure action on an owner-occupied, one- to four-family property in Delaware will have to provide the mortgagor with notice of the right to participate in the newly created Automatic Residential Mortgage Foreclosure Mediation Program (the "Delaware Program").[ix] The notice must advise the mortgagor of his or her right to participate in mediation, recommend that the mortgagor meet with a HUD-approved housing counselor in advance of the mediation, and provide contact information for available counseling resources (which information the Delaware State Housing Authority must make available upon request). In Delaware, mediation must be scheduled for a date that is at least 45 days (but not more than 75 days) after the mortgagor receives notice, and no judgment may be entered in a foreclosure action until the day after the date for which foreclosure mediation is scheduled. Thus, the impact of the Delaware Program is to extend the timeline for foreclosure by at least 46 days, if not more.

The Delaware Program incentivizes mortgagee participation in mediation by: (1) prohibiting recovery of attorney's fees for time spent in a mediation conference if the mortgagee does not fulfill certain obligations; and (2) preventing a mortgagee from seeking a default judgment against a mortgagor unless the mortgagor was properly served with all required notices. As a result, a mortgagee stands to suffer significant inconvenience and/or financial loss by failing to comply with the foreclosure mediation requirements. Within the past year, new foreclosure mediation programs also have taken

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effect for properties in the District of Columbia,[x] Hawaii,[xi] and even Springfield, Massachusetts[xii] – all with similar penalties for noncompliance.

In addition to participating in court-supervised mediation, some states require servicers to address loss mitigation options without a borrower's formal election. New York State's business conduct rules for mortgage loan servicers require a servicer to "make reasonable and good faith efforts consistent with usual and customary industry standards [and the requirements of the business conduct rules] to engage in appropriate loss mitigation options, including loan modifications, to avoid foreclosure."[xiii] Satisfaction of that obligation requires a servicer to: (1) have adequate staffing, written procedures, resources, and facilities to timely respond to borrower inquiries and complaints regarding loss mitigation; (2) provide information about available loss mitigation options and services when borrowers who are at least 60 days delinquent contact the servicer; (3) have designated contacts to handle borrower inquiries about loss mitigation options; (4) subject to any duties or obligations under the mortgage servicing contract, upon the borrower's request negotiate in good faith to attempt a resolution or workout of the delinquency; and (5) develop and implement policies and procedures so that its foreclosure attorneys and trustees are aware when a borrower is being evaluated for, or is currently in, a modification.

Stringent Proof of Ownership Requirements

In response to the "robo-signing" controversy that first came to light two years ago – and as a final hurdle to the foreclosure process – states also have imposed stringent documentation requirements on parties initiating foreclosure. Several state courts have since taken up issues relating to the assignment of mortgages, and state legislatures have begun acting to incorporate judicial holdings into state statutes. For instance, in a pair of cases considered last year, the Massachusetts Supreme Judicial Court held that language in securitization agreements that provides for the present conveyance of specifically identified mortgages is sufficient to effect assignments of mortgage under Massachusetts law. [xiv] The Massachusetts General Court is now considering legislation that would codify that holding.[xv]

Effective last July, Nevada enacted a measure prohibiting the exercise of a power of sale under a deed of trust until the beneficiary, the beneficiary's successor in interest, or the trustee has executed and recorded a notice of breach and of the election to sell, which must include a notarized affidavit of that party's authority to exercise the power of sale.[xvi] The affidavit, which must be based upon personal knowledge and be made under penalty of perjury, must include: (1) contact information for the trustee (or other party that will exercise the power of sale), the current holder of the note, the current beneficiary of record, the servicer of the obligation or debt that the deed of trust secures, and every prior known beneficiary of the deed of trust; (2) a statement that the party that will exercise the power of sale is in actual or constructive possession of the note secured by the deed of trust; (3) a statement that the party has authority to exercise the power of sale pursuant to instruction from both the beneficiary of record and the current holder of the note; (4) a statement of the amount in default, the principal amount of the obligation or debt secured by the deed of trust, a good faith estimate of all fees that have been or will be imposed because of the default, and the costs and fees that have been or will be charged to the debtor in connection with the exercise of the power of sale; and (5) the date, recordation number or other designation, and a description of each instrument that conveyed the interest of each beneficiary. A party who fails to comply with the affidavit requirement may be required to pay to the grantor or the title holder of record the greater of $5,000 or actual treble damages, plus reasonable attorney's fees and costs, and also may be subject to an injunction barring exercise of the power of sale until the party complies with the above requirements. Other states that

have recently enacted or adopted affidavit requirements relating to the foreclosure process are Delaware, Idaho, New York, and Tennessee.[xvii]

Tenants' Rights

Increasingly, foreclosure-related measures are creating protections not only for borrowers, but also for tenants of residential properties who may be subject to eviction from foreclosed properties. After the foreclosure and sale of a residential property, these measures may require the purchaser to provide notice to tenants and to permit them to remain in the property for 90 days or more. These measures generally follow the federal Protecting Tenants at Foreclosure Act, enacted in 2009, in requiring at least 90 days' notice before a tenant may be required to vacate a property and with regard to the rights of a successor in interest to a foreclosed property.[xviii] However, some laws have expanded on the federal protections by imposing penalties for failure to comply with notice requirements.[xix]

For example, last year Connecticut enacted a law that is effective until December 31, 2017, in connection with the foreclosure of any federally related mortgage or of any dwelling or residential real property.[xx] A successor in interest of such a mortgage assumes the property subject to: (1) the requirement to provide at least 90 days' notice before requiring a "bona fide tenant"[xxi] to vacate the property; and (2) the right of a bona fide tenant to remain on the premises through the end of his or her lease, subject to the notice requirement, unless the successor in interest intends to occupy the property as his or her principal residence. The measure does not specify penalties for failure to comply with these tenant protection provisions. Not including the numerous local ordinances, California, Illinois, Maryland, Massachusetts, Missouri, New Jersey, New York, Oregon, Rhode Island, and Washington are among the states that since our last alert have enacted laws expanding on the rights of tenants in foreclosed properties.[xxii]

Protections for Military Servicemembers

Another high profile issue in the foreclosure crisis is servicer oversight of the protections available to military servicemembers. Among other provisions, the federal Servicemembers' Civil Relief Act[xxiii] limits the interest rate that may be charged on, and extends the timeline for the initiation of a foreclosure action involving, a mortgage that a servicemember incurred prior to his or her period of service. There have been allegations that borrowers subject to protections under federal law have been wrongfully foreclosed.[xxiv]

Using that statute as a base, California, Illinois, Iowa, North Carolina, and Texas are examples of states that have enacted legislation conforming to or expanding on the protections available to servicemembers – whether extending the period during which a servicer may not initiate foreclosure, or applying the federal protections to a broader class of persons.[xxv] By way of example, effective January 1, California [xxvi] extends to all dependents of a servicemember the protections to which that individual is entitled – which include the reduction of the interest rate on any obligation incurred prior to a servicemember's entry into service to a maximum rate of six percent, unless a court believes that the servicemember's service has not materially impacted his or her, or the dependent's, ability to pay interest[xxvii] on the obligation at its original rate. This measure also clarifies that a servicemember must have incurred any obligation for which relief is requested prior to the effective date of the orders for his or her <u>most current period</u> of military service.[xxviii]

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Limitations on Deficiency Judgments

A number of other states (including Arizona, Hawaii, Nevada, and Oregon) now impose limitations on deficiency actions.[xxix] For instance, among other restrictions, Nevada law prohibits a financial institution holding a subordinate-lien obligation from bringing an action to enforce such obligation after a foreclosure or trustee's sale if: (1) the obligation is secured by a single family dwelling that the grantor or obligor owned at the time of the sale; (2) the obligation was a purchase money loan for that real property; (3) the grantor or debtor continuously occupied the property as his or her principal residence after securing the obligation; and (4) the grantor or debtor did not refinance the obligation after securing it.[xxx] It is debatable whether such measures encourage strategic defaults.[xxxi]

Although states generally encourage lenders and servicers to consider alternatives to foreclosure, some recent measures have made one such alternative – short sales – less attractive by eliminating the ability to recover any deficiency following such a sale. California, which has long prohibited a deficiency judgment in connection with a non-judicial foreclosure sale, now treats any short sale to which a lender consents as if it were a non-judicial foreclosure sale.[xxxii]

Assuming Responsibility for the Repair and Preservation of Abandoned Foreclosed Properties

The lengthened foreclosure process is intended to give borrowers more time to cure defaults and ultimately stay in their homes. However, many underwater borrowers have opted instead to abandon their properties, leading to neighborhood blight and even lower property values. As a result, in addition to the state-imposed procedural requirements related to the foreclosure of residential properties, states and localities also continue to hold lenders and servicers responsible for the maintenance of properties that are abandoned and/or foreclosed. At the time of our last update, more than 40 municipalities had enacted regulations or ordinances to that effect, and that number does not include otherwise existing municipal ordinances. Additionally, municipalities have become increasingly bold as to the parties upon whom they impose responsibility for property maintenance.

For instance, both Chicago, Illinois and Springfield, Massachusetts enacted property maintenance ordinances in September that broadly define an "owner" for purposes of imposing a maintenance obligation with regard to abandoned property.[xxxiii] Although we did not see as many property maintenance ordinances as other types of foreclosure-related measures in 2011,[xxxiv] the impact of these measures should not be underestimated. The manner in which Chicago and Springfield have defined the "owner" of a property emphasizes that municipalities – burdened with the cost of securing and maintaining abandoned foreclosed properties – are becoming increasingly creative in their approach to spreading the costs. Most recently, the City Council of Las Vegas, Nevada, enacted an ordinance imposing vacant property registration requirements on vacant properties that are subject to foreclosure and related proceedings.[xxxv]

Municipalities are not alone in imposing responsibility for the maintenance of abandoned and foreclosed properties. Since our last update, at least four states –Colorado, Connecticut, Minnesota, and Nevada – have enacted some form of statute relating to property maintenance.[xxxvi] Although these measures are not nearly as aggressive in the scope of the entities upon which they place responsibility, they are no less onerous in terms of increasing the compliance burden of those entities that become responsible for the maintenance of properties.

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Conclusion

Three years ago, servicers were just beginning to understand the extent to which state legislative efforts could complicate, extend, and expand the cost of the foreclosure process. Since that time, states have continued to enact new measures at a steady pace, adding new obstacles to the ever-changing course that is mortgage loan servicing regulatory compliance. The laws described above provide just a few examples of why lenders and servicers must keep abreast of legislative changes and constantly adjust their business practices.

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[i] *See* Nanci L. Weissgold and Morey Barnes Yost, *Make My Day: States Dare Servicers to Foreclose,* K&L Gates Mortgage Banking & Consumer Financial Products Alert, Nov. 4, 2008.

[ii] RealtyTrac, Third Quarter Top Foreclosure Timelines (Oct. 24, 2011), *available at*: http://www.realtytrac.com/content/news-and-opinion/third-quarter-2011-top-state-foreclosure-timelines-6892.

[iii] Interagency Report of Foreclosure Policies and Practices (April 2011), *available at*: http://www.federalreserve.gov/boarddocs/rptcongress/interagency_review_foreclosures_20110413.pdf.

[iv] *See* 2011 Mont. H.B. 90 (Ch. 317) (eff. Oct. 1, 2011); 2011 Tex. S.B. 17 (eff. Sept. 1, 2011); 2010 Wash. H.B. 2608; 2009 Haw. H.B. 1071; 2009 N.C. H.B. 1523; 2008 N.Y. S. 8143-A; New York Comp. Codes R. & Regs. tit. 3, §§ 418.1 et seq., §§ 419.1 et seq.

[v] Since our last alert on the issue, we are aware of only two states that have introduced new foreclosure moratoria. Most recently, Hawaii enacted Senate Bill 651, which from its effective date of May 5, 2011, until July 1, 2012, prohibits all new nonjudicial foreclosures in the state. During that period, no mortgagee may initiate a foreclosure by power of sale, and the Bureau of Conveyances may not record an affidavit or notice of sale for a power of sale foreclosure initiated pursuant to Section 667-5 of the Hawaii Revised Statutes. In May 2009, the Supreme Court of South Carolina issued a moratorium much more limited in scope and duration, which impacted only foreclosure sales involving properties securing loans: (1) owned or guaranteed by Fannie Mae or Freddie Mac, or (2) held by servicers participating in the federal Home Affordable Modification Program.

[vi] *See* 2011 D.C. Bill 19-57 (eff. March 12, 2011).

[vii] *See* Nanci L. Weissgold and Morey Barnes Yost, *The District of Foreclosure Limbo: New D.C. Foreclosure Law Creates Confusion,* K&L Gates Mortgage Banking & Consumer Financial Products Alert, Nov. 23, 2010.

[viii] In 2011 alone, at least ten states have enacted measures imposing or expanding upon pre-foreclosure notice requirements. *See* 2011 Ark. H.B. 1881 (eff. July 27, 2011); 2011 Cal. S.B. 4 (eff. Jan. 1, 2012); 2011 Del. H.B. 57 (eff. Jan. 19, 2012); 2011 Haw. S.B. 651 (eff. May 5, 2011); 2011 Idaho H.B. 331 (eff. Sept. 1, 2011); 2011 Md. H.B. 728 (eff. June 1, 2011); 2011 Nev. A.B. 388/S.B. 307 (eff. July 1, 2011); 2011 Tenn. S.B. 1451 (eff. April 25, 2011); 2011 Tex. S.B. 101 (eff. Sept. 1, 2011); 2011 Wash. H.B. 1362 (eff. July 22, 2011). This list does not include rulemaking efforts implementing pre-foreclosure notice requirements, nor does it include notice requirements relating specifically to: (1) opportunities to participate in foreclosure mediation, which we address separately; or (2) the rights of tenants of foreclosed properties (*see, e.g.,* 2011 Md. H.B. 842/ S.B. 516 (eff. July 1, 2011).

[ix] *See* 2011 Del. H.B. 58 (eff. Jan. 19, 2012).

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[x] *See* 2011 D.C. Bill 19-57. A lender may participate in mediation in person or through a representative with authority to address potential loss mitigation options and negotiate alternatives to foreclosure (*i.e.*, modification of loan terms), but in either case must participate in good faith (including by fulfilling requirements such as bringing certain documents to the mediation session). The civil penalties for non-compliance range from $500 (for failure to comply with the requirements for conduct of a mediation session) to $1,000 (for failure to abide by the terms of any settlement agreement the parties reach).

[xi] *See* 2011 Haw. S.B. 651.

[xii] *See* Chapter 7.60, Revised Ordinances of the City of Springfield, Mass. (eff. Sept. 13, 2011).

[xiii] N.Y. Comp. Codes R. & Regs. tit. 3, § 419.11.

[xiv] See *U.S. Bank National Association, as Trustee for the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-Z v. Antonio Ibanez* and *Wells Fargo Bank, N.A., As Trustee For ABFC 2005-OPT 1 Trust, ABFC Asset Backed Certificates Series 2005-OPT 1, v. Mark A. LaRace and Tammy L. LaRace* (No. SJC-10694). For a more complete discussion of these cases, *see* R. Bruce Allensworth, Phoebe S. Winder, Andrew C. Glass, and Robert W. Sparkes, III, *"The Reports of My Death are Greatly Exaggerated": Foreclosures in Massachusetts Following the Supreme Judicial Court Decision in Ibanez,* K&L Gates Mortgage Banking & Consumer Financial Products Alert, Jan. 12, 2011.

[xv] *See* 2011 Mass. S.B. 868.

[xvi] *See* 2011 Nev. A.B. 284 (Ch. 81).

[xvii] *See* 2011 Del. H.B. 57 (Vol. 78, Ch. 199) (eff. Jan. 1, 2012); 2011 Idaho H.B. 331; New York Comp. Codes R. & Regs. tit. 22, § 202.12a; 2011 Tenn. H.B. 1451.

[xviii] *See* Pub. L. 111-22.

[xix] *See, e.g.,* 2010 Mass. S.B. 2407 (Ch. 258, 2010 Sess. Laws).

[xx] *See* 2011 Conn. H.B. 6351 (Public Act 11-201) (eff. July 1, 2011).

[xxi] A bona fide tenant is one: (1) who is not the mortgagor or the mortgagor's child, spouse, or parent; (2) whose lease or tenancy results from an arm's-length transaction; and (3) whose lease or tenancy requires the payment of rent that is not substantially less than fair market value unless the rent is subsidized by a federal, state, or local subsidy.

[xxii] *See, e.g.,* 2011 Md. H.B. 842 (Ch. 246)/S.B. 516 (Ch. 245) (eff. July 1, 2011); 2011 Or. S.B. 491 (Ch. 510, 2011 Laws) (eff. Sept. 21, 2011); 2010 Mass. S.B. 2407 (Ch. 258, 2010 Sess. Laws); 2009 Ill. H.B. 3863.

[xxiii] 50 U.S.C. App. §§ 501 et seq.

[xxiv] Interagency Report of Foreclosure Policies and Practices (April 2011), *available at*: http://www.federalreserve.gov/boarddocs/rptcongress/interagency_review_foreclosures_20110413.pdf.

[xxv] *See* 2011 Cal. A.B. 713 (Ch. 105, Statutes of 2011) (eff. Jan. 1, 2012); 2011 Tex. S.B. 101 (eff. Sept. 1, 2011); 2010 Ill. H.B. 3762 (Pub. Act 96-901); 2010 N.C. S.B. 1400 (Sess. Law 2010-190); 2009 Iowa H.F. 706.

[xxvi] *See* 2011 Cal. A.B. 713 (Ch. 105, Statutes of 2011) (eff. Jan. 1, 2012). For another example of a 2011 measure extending the protections afforded to military servicemembers, see 2011 Tex. S.B. 101 (eff. Sept. 1, 2011).

[xxvii] For purposes of this provision, "interest" includes "service charges, renewal charges, fees, or any other charges, except bona fide insurance, in respect of any obligation or liability."

[xxviii] *See* 2011 Cal. A.B. 713 (Ch. 105, Statutes of 2011).

[xxix] *See* 2011 Haw. S.B. 651 (eff. May 5, 2011); 2011 Nev. S.B. 414 (Ch. 361) (eff. June 13, 2011); 2011 Or. H.B. 2916 (Ch. 480, 2011 Session Laws) (eff. June 23, 2011); 2010 Or. H.B. 3656; 2009 Ariz. S.B. 1004; 2009 Nev. A.B. 471.

[xxx] *See* 2011 Nev. A.B. 273 (Ch. 371) (eff. June 10, 2011).

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[xxxi] *See* 2011 Haw. S.B. 651 (eff. May 5, 2011).

[xxxii] *See* 2011 Cal. S.B. 458 (eff. July 11, 2011); *see also* 2010 Cal. S.B. 931. Until the enactment of Senate Bill 458, California prohibited a deficiency judgment in connection with a note secured by a first deed of trust or mortgage on a one- to four-unit dwelling. Senate Bill 458 expanded the existing provisions by prohibiting the holder of a residential mortgage loan from requiring the borrower to pay any additional compensation, aside from the proceeds of the sale, in exchange for the lender's written consent to the sale. We note that the new deficiency judgment prohibition is inapplicable to many commercial transactions, such as where the trustor is a corporation, limited liability company, or limited partnership.

[xxxiii] For more information on the Chicago and Springfield ordinances, and on others that have recently been enacted, see Nanci L. Weissgold, Phoebe S. Winder, and Ryan M. Tosi, *Breaking and Entering as a Legal Obligation: Amendments to Chicago Ordinance Continue Trend of Forcing Lenders to Maintain Vacant Property Even Before Assuming Title*, K&L Gates Mortgage Banking & Consumer Financial Products Alert, Nov. 4, 2011.

[xxxiv] In 2011, Connecticut and Indiana also enacted measures imposing obligations relating to the maintenance of foreclosed properties; however, these measures are narrower in scope. *See* 2011 Conn. H.B. 6351 (applicable provisions eff. Oct. 1, 2011); 2011 Ind. Sen. Enr. Act 582 (Pub. L. 170-2011) (applicable provisions eff. July 1, 2011).

[xxxv] *See* 2011 Las Vegas, Nev. City Council Bill 2011-39 (Ordinance No. 6169) (eff. Dec. 14, 2011).

[xxxvi] *See* 2011 Conn. H.B. 6351 (Pub. Act 11-201) (eff. July 1, 2011); 2010 Colo. H.B. 1118; 2009 Minn. S.F. 1147; 2009 Nev. A.B. 140.

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K&L Gates' Consumer Financial Services practice provides a comprehensive range of transactional, regulatory compliance, enforcement and litigation services to the lending and settlement service industry. Our focus includes first- and subordinate-lien, open- and closed-end residential mortgage loans, as well as multi-family and commercial mortgage loans. We also advise clients on direct and indirect automobile, and manufactured housing finance relationships. In addition, we handle unsecured consumer and commercial lending. In all areas, our practice includes traditional and e-commerce applications of current law governing the fields of mortgage banking and consumer finance.

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