

AUTHORS

Patrick J. Boyle
Jessie F. Beeber
Sarah S. Park

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Strategies for Handling Mortgage Repurchase Demands

Mortgage repurchase demands are par for the course in the world of mortgage lending, but they should not be ignored. Before you act, consider the following strategies for handling mortgage repurchase demands.

Mortgage repurchase demands have become quite common across the financial services industry, as investors, trustees and Government-Sponsored Enterprises (GSEs) continue to look for ways to remove defaulting loans from their pools. On the receiving end, reactions run the gamut from ignoring the demands completely to buying back mortgages even where there is no legal obligation to do so. It is important to understand and weigh your legal options before responding to any demands.

Background

After the Great Recession hit, causing widespread defaults, mortgage repurchase demands began to escalate as each buyer attempted to pass defaulting loans back down the chain so as not to be left holding the bag. In many cases, these demands were made years after loans were originated, so they could not qualify as early payment defaults. An industry was thus born to look for (often dubious) grounds to put back otherwise conforming loans, including claims of misrepresentations or other alleged breaches of loan purchase agreements.

Quick Facts

- Mortgage repurchase demands are very common. Any client involved in the origination, sale or securitization of mortgages (or that has acquired, insured or manages such a business) is likely to receive mortgage repurchase demands.
- Often a loan is being put back to the originator or seller only because the purchaser of the loan has itself been presented with a repurchase demand from a private trust or a GSE (such as Fannie Mae).
- The fact that a loan has been put back by a GSE to a seller in the chain does not mean that the original seller is liable as well. Financial institutions that served as conduits of loans to GSEs may be required to repurchase the loans either for commercial reasons or based on the terms of their agreements with GSEs, which often differ significantly from the terms of their agreements with the seller or originator of that loan.

Your best course of action is to:

- **Determine the proper initial response**
Mortgage repurchase demands are common, but they should not be ignored, as at the very least they may have to be reported on your balance sheet. It is important to consider the best initial response, which can include anything from a request for more information to an outright refusal of the claim.
- **Assess the extent of the exposure**
In many instances, the applicable statute of limitations can bar claims that are based on defaults or misrepresentations that allegedly occurred years ago. Other defenses based on the particular deal documentation may also be available. Often it is also possible to engage in early settlements to resolve large numbers of claims with little time or legal expense.
- **Evaluate the claims**
If early intervention does not resolve the claims, it is important to develop a loan-by-loan (or category-by-category) defense strategy to deal with them as efficiently as possible.
- **Manage the relationship with your auditors**
To the extent that claims must be reported, it is helpful to have defense strategies to employ in order to minimize the impact of these demands on your balance sheet.

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Patrick Boyle is an instrumental leader in the Mortgage Backed Securities (MBS) industry. Patrick, **Jessie Beeber** and **Sarah Park** have defended numerous mortgage repurchase claims from mortgage pool trustees, private companies and monoline insurers.

Please contact one of the authors if you have questions about this alert.