

## InfoBytes Client Alert, July 8, 2011

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### **Client Alert: OCC Issues Foreclosure Management Guidance and Requires File Reviews by September 30**

On June 30, 2011 the Office of the Comptroller of the Currency ("OCC") issued important supervisory guidance to communicate the OCC's expectations for the oversight and management of mortgage foreclosure activities by national banks. See OCC Bulletin 2011-29 (Jun. 30, 2011) (the "Guidance"). Most significantly, the Guidance requires that all national banks, by September 30, complete self-assessments of their foreclosure practices to ensure that the practices conform to the agency's expectations. The self-assessments must include "testing and file reviews" of foreclosure activity. (All quotations in this Alert are from the Guidance or the OCC's press release found here:

<http://www.occ.treas.gov/news-issuances/bulletins/2011/bulletin-2011-29.html>)

### **Background and Summary of the Guidance**

The Guidance follows the so-called "horizontal review" by all of the federal banking agencies, including the OCC, of foreclosure practices at 14 of the nation's largest depository institution mortgage servicers. As the Guidance explains, that review found weaknesses resulting in "unsafe and unsound practices and violations of applicable federal and state laws." In April of this year, the OCC and other banking agencies entered into Consent Orders with each of the 14 institutions. The Consent Orders impose strict standards on foreclosure governance and processes, and require each institution to conduct a substantial file review of loans in foreclosure during the 2009-10 period.

In the OCC's view, the results of the horizontal review "raise concerns that similar weaknesses may exist in other" institutions' servicing operations. The Guidance therefore is directed to those other institutions, and seeks "to ensure that all mortgage servicers under OCC supervision adhere to appropriate foreclosure management standards." The Guidance provides specific direction on the following six "Foreclosure Management Standards":

*Foreclosure process governance*, including board-level action to ensure that management is addressing all of the risks associated with foreclosure operations

*"Dual track" processing, i.e.*, ensuring fairness to borrowers when a servicer continues foreclosure proceedings while working with the borrower on a modification or other foreclosure alternative



*Foreclosure affidavit and notarization practices*

*Documentation practices, i.e.,* maintaining accurate records and ensuring that data in those records is properly reflected on foreclosure-related forms

*Legal compliance,* including compliance with the “additional foreclosure protections” afforded to certain borrowers through the Servicemembers Civil Relief Act and bankruptcy laws

*Third-party vendor management,* including most importantly the oversight of foreclosure counsel and trustees

As noted above, the Guidance also requires banks to complete self-assessments, including testing and file reviews, by September 30. Further, it directs banks to take “immediate corrective action” with respect to any weaknesses identified in the assessments. Banks also must determine if any weaknesses “resulted in any financial harm to borrowers and provide remediation where appropriate.” The Guidance also informs banks that OCC examiners will review the self-assessments and corrective actions during the agency’s next scheduled examination or review.

The full text of the Guidance may be found at <http://www.occ.treas.gov/news-issuances/bulletins/2011/bulletin-2011-29.html>

Questions regarding the matters discussed in this Alert may be directed to any of our lawyers listed below, or to any other BuckleySandler lawyer with whom you have consulted in the past on similar matters.

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