Dodd Statement on Problems with Mortgage Servicing From Modification to Foreclosure

Dodd Demands from Servicers Answers to Reported Flaws in their Modification and Foreclosure Practices to Ensure American Families Do Not Unfairly Lose Their Homes

WASHINGTON – Today Senate Banking Committee Chairman Chris Dodd (D-CT) held an oversight hearing investigating problems in the mortgage servicing industry. The Committee heard testimony from state officials, industry executives, and experts in law and consumer protection, and explored how mortgage servicing practices may have prevented modifications and even resulted in unjustifiable foreclosures.

"More than a month ago, the robosigning scandal hit the press," said Chairman Dodd. "Many in the industry were too quick to call these problems "technical," and to insist that nobody is losing a home to foreclosure without cause."

"However, the focus on the robosigning problem is too limited. Many believe that the robosigning errors are simply the tip of a much larger iceberg, that they are emblematic of much deeper problems in the mortgage servicing business, problems that have resulted in homeowners losing their homes in unjustifiable foreclosures. In fact, servicing practices may be putting homeowners at risk.

"Even the industry now acknowledges that the current mortgage servicing business model is broken and is simply not equipped to deal with the current crisis. Many observers point out that the interests of 3rd party mortgage servicers are not aligned with the interests of either homeowners or investors.

"Let me assure everyone here, I do not want this hearing to simply be about casting blame. It is extremely important to lay out the problems and challenges, and today's hearing is designed to do exactly that."

Below is Chairman Dodd's statement as prepared for delivery:

"Good afternoon. I want to welcome and thank the witnesses for appearing today, and for their testimony about the "Problems in Mortgage Servicing From Modification to Foreclosure." As many of you know, we have had numerous hearings on the problems in the mortgage industry, including one last year specifically on mortgage modifications. In addition to today's hearing, I intend to have another hearing with the regulators to better understand the servicing issues we are discussing today.

"First, let me explain what we mean by mortgage servicing**.** When a homeowner takes out a mortgage, that loan is often bundled with a pool of similar mortgages and sold in the secondary market as a mortgage backed security (MBS). After the origination, all processing related to the loan is managed by a mortgage servicing company. The 4 largest banks – JPMorganChase, Wells Fargo, Bank of America, and Citi – are also the largest mortgage servicers. Mortgage servicers bill and collect monthly payments, operate customer service centers, maintain records of payments and balances, and distribute payments according to the terms of a trust. Principal and interest are distributed to investors of the MBS through a trustee. Taxes and insurance are paid to local governments and insurers. Servicers retain a servicing fee.

“It is the problems that have arisen with this process that led me to call today’s hearing.

“It has not generally been my habit to quote from Wall Street Journal editorials in my Committee statements, but I thought the following from a column last month captured perfectly the essence of the issues we will examine today.

“The column, entitled “A Foreclosure Sitcom,” starts by saying: “First, we learned America’s biggest banks couldn’t properly lend.”

“It goes on to say:

> “Then we learned they couldn’t keep themselves solvent without taxpayer assistance. Then we learned they couldn’t effectively work with troubled borrowers in a bursting housing bubble. And now we’ve learned they don’t even know how to foreclose.”
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> “This is more than just a little paperwork problem. Ohio Attorney General Richard Cordray put it best: ‘This is about the private-property rights of homeowners facing foreclosure and the integrity of our court system, which cannot enter judgments based on fraudulent evidence.’”

“This editorial provides a sharp description of the situation in which millions of Americans find themselves today, whether we are talking about a homeowner facing possible eviction, an investor in MBS, or simply an average American family watching the value of their home drop as more and more homes go into foreclosure around them.

“I want to provide a bit more context to today’s proceedings.

“In April, 2007, after holding a number of hearings on predatory lending and the foreclosure crisis to which it would lead, I hosted a meeting of large mortgage servicers, regulators, civil rights and consumer groups, and others, to discuss ways we could better prepare for the wave of loan defaults and foreclosures many of us expected.

“That Summit resulted in a “Statement of Principles” to which all the participants agreed on May 2 of that year. Among the items to which the servicers agreed were:

- early contact and evaluation;
- modification to create longterm affordability; and
- providing dedicated teams or resources to achieve the kind of scale many knew would be necessary to face the coming tidal wave of foreclosures.

“Unfortunately, rather than living up to these commitments, many in the industry wasted a lot of time denying culpability for the mortgage problems, or arguing that the problems would not be as severe as they turned out to be.

“As a result, we see, even today, more than 2 years later:

- servicers struggling to keep up with demand;
- numerous and repeated cases of lost paperwork;
- serious allegations by investors (including the N.Y. Federal Reserve Bank) and advocates, of self-dealing at some of the largest mortgage servicers in the country; and
- people needlessly losing their homes, including, according to some press reports, people who have no mortgage on their home at all.

“More than a month ago, the robosigning scandal hit the press. Many in the industry were too quick to call these problems “technical,” and to insist that nobody is losing a home to foreclosure without cause.

“However, the focus on the robosigning problem is too limited. Many believe that the robosigning errors are simply the tip of a much larger iceberg, that they are emblematic of much deeper problems in the mortgage servicing business, problems that have resulted in homeowners losing their homes in unjustifiable foreclosures. In fact, servicing practices may be putting homeowners at risk.

“Even the industry now acknowledges that the current mortgage servicing business model is broken and is simply not equipped to deal with the current crisis. Many observers point out that the interests of 3rd party mortgage servicers are not aligned with the interests of either homeowners or investors.

“So, for example, a permanent modification might result in the homeowner keeping the family’s home, and the investor being assured of a better return. But that same modification could cause the servicer to lose money.

“The upshot is that there could be extensive problems throughout the servicing process that may have led to, in the words of Federal Reserve Board Governor Sarah Bloom Raskin, “a Pandora’s Box of predatory [servicing] tactics.”

“According to Governor Bloom Raskin, these tactics include: padding of fees; strategic misapplication of payments which can “sometimes caus[e] the loan to be considered in default,” which some people call servicer-driven defaults; and the inappropriate assessment of force-placed insurance, which is extremely costly to the homeowner.

“To her list, let me add other issues that have arisen, including:

- failure to properly record transfer and ownership of notes and/or mortgages;
- failure to maintain proper custody of title;
- failure to properly administer the Home Affordable Modification Program **(**HAMP);
- failure to meet the requirements of the foreclosure process, such as by the use of “robosigners;” and
- failure to establish or administer mortgage trusts in accordance with applicable law or contractual agreements.

“This hearing will explore these potential problems and their implications.

“In addition, the Congressional Oversight Panel has raised concerns today that the failure of servicers and others to correctly handle mortgage documents could create systemic risk for the financial system. Professor Levitin will also discuss this in his testimony this afternoon.

“This is a very important issue to explore, both here today and with the regulators at our next hearing. In my view, we created the Financial Stability Oversight Council (FSOC) to examine exactly this kind of issue. FSOC needs to really drill down and find out the scope of the problem and determine the steps that may need to be taken to prevent systemic problems, IF they conclude that there are systemic implications.

“Let me assure everyone here, I do not want this hearing to simply be about casting blame. It is extremely important to lay out the problems and challenges, and today’s hearing is designed to do exactly that.

“But I also hope we can work towards solutions. As we do so, we need to keep in mind that bad mortgage servicing is far more than a “technical” issue.

“At the same time, we must all acknowledge that not every delinquent borrower’s home can be saved.

“In my view, we need to strike a balance – we need more robust loan modifications, including loan modifications that result in real principal forgiveness, that will finally help put an end to our housing crisis.

“At the same time, I hope we can agree that we should expedite foreclosures that cannot be prevented. For example, a significant portion of homes awaiting foreclosure are vacant. There is no reason to slow down the process on these homes.

“We will need to work together going forward if we hope to finally put an end to this housing crisis. I look forward to the witnesses’ testimony.”