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**BANKING LAW**

## Borrowers Facing Foreclosure Often Overpay, Study Finds

Posted Nov 6, 2007, 06:00 am CST

By [Debra Cassens Weiss](#)

Bankruptcy court filings indicate that some lenders and loan servicers foreclosing on properties are charging questionable fees and misstating outstanding balances.

University of Iowa law professor [Katherine Porter](#) analyzed more than 1,700 Chapter 13 filings from April 2006 and found that questionable fees were tacked on to more than half of the loans, the [New York Times](#) reports. The fees were for items such as faxes, payoff statements, frequent property inspections and something called “demand fees.”

She also found that creditors failed to attach the required promissory note in 40 percent of the claims and the itemized charges in nearly 17 percent of the claims. And in most of the cases, the borrowers claimed they owed less than the amount sought by creditors, a wide-ranging discrepancy she attributes to possible overcharges rather than record-keeping errors. In one case, a lender sought \$1 million for what turned out to be a \$60,000 unpaid balance.

Bankruptcy trustees are finding similar problems, the newspaper says. In Texas, a trustee is seeking sanctions against Houston law firm Barrett Burke Wilson Castle Daffin & Frappier, allegedly for providing inaccurate information about mortgages held by Chapter 13 petitioners. The firm says it did nothing wrong.

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### Comments

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1. Posted by David E Sherman - 2 weeks, 1 day, 11 hours, 29 minutes ago

My experience here in NJ is that most foreclosure firms seek to impose, upon defaulting borrowers, counsel fees in excess of that provided for by Court Rule.

Then, when you question the amount and point out the limitations set forth in the Court Rules, you are met with resistance.

Pretty sorry state of affairs IMHO.

If you are representing a defaulting borrower, read the Note or Security Agreement, run your own

amortization of the loan history (or have borrower's accountant do it) and be fully familiar with the Court Rules and statutory law applicable to foreclosure.

It's pretty sad that there are those among us who seek to inflict more financial pain in an already difficult situation.

Best,  
David

2. Posted by Anthony P. Palaigos - 2 weeks, 1 day, 4 hours, 59 minutes ago

How about this for abuse. Mortgagor/Debtor dies. No cash in the Estate. Mortgage held by Countrywide Homes. I as the attorney for the Estate contact local Maryland counsel telling them and Countrywide that I will list to sell. I fax to each signed Contract of Sale. No return calls. I get pay-off statement from lawyers for Countrywide. Payoff instructs to send payoff directly to Countrywide. I settle. Send payoff to Countrywide who receives payoff. Next day Lawyers for Countrywide file foreclosure even though paid off. I call lawyers to tell them to dismiss foreclosure. To this day they have refused to do so. Go figure.

3. Posted by Alexander Paykin - 2 weeks, 1 day, 4 hours, 33 minutes ago

Well then there's the other end of the coin too. The amount the banks give away in negotiating short sales. I mean, first they overfund a property in a high market and give loans to people with no inquiry whatsoever, then when the market collapses, they act all shocked about it... So then companies like optionnext.com show up, and get payoffs on defaulting properties dropped by 30 to 50 percent, whisking the properties away to their investors with almost half the equity still there. The banks are ok with this, and yet they try to penny-pinch the people who are really in trouble... Another one for poor management! Or is it just pure evil on the banks' part?

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