

Law 257.2 (Brown)
Spring 2012
Day: Time: Room:

Mortgage Lending and Homeownership In The U.S.

Syllabus

Week 1 –

Introduction to Homeownership In The United States. Why do we care so much? What roles has homeownership played in the U.S. since the 1900s and for whom? Who has been able to become a homeowner, and what has it taken to walk that road? What steps have federal, state and local government taken to promote homeownership, and who has benefitted?

Week 2 –

The Anatomy of Mortgage Loans. Types of loans, their characteristics/pros and cons for consumers. Federal and state regulation of mortgage lending activity, in particular the Truth in Lending Act, California's Covered Loan Law, and Other Laws Intended to address Predatory or High-Cost Mortgage Loans Nationally. (Noah Zinner, Staff Attorney, Housing and Economic Rights Advocates.)

Week 3 –

The Mortgage Lending Process and Its Evolution: Who are the players in this transaction? Homebuyer/homeowner, the lender... who else? What is the role of mortgage insurance, the notary public, brokers, lenders, investors? How have these actors arisen and have their tasks changed over time? What are the nuts and bolts of becoming a homeowner and key documents in the transaction?

Week 4 –

Is There Really Such A Thing As Unfair Mortgage Lending? An examination of scholarship and data concerning disparities in home mortgage lending in the United States. What information is available? How do you determine whether disparities exist? (Kevin Stein, Associate Director, California Reinvestment coalition. Jesus Hernandez, PhD candidate, UC Davis)

First written assignment provided to class—probably involving pleadings, motion or legal memo drafting to apply legal theories to a set of facts from an actual case.

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Week 5 –

Predatory Mortgage Lending. What makes a mortgage loan predatory? Has that changed over time? Are there hard and fast rules or warning signs? If I looked at a set of documents would I know? Who has been affected most by predatory mortgage lending and how? What caused the subprime meltdown?

In addition to lecture and readings, students will break into teams and analyze one or more sample cases. Teams will argue for and against each other as to why the loans made were or were not predatory or unfair. Teams will suggest what causes of action may or may not be available, based on the first four weeks of class readings and lecture.

Spring Break- NO CLASS THIS WEEK

Week 6 –

FIRST WRITTEN ASSIGNMENT DUE.

Unfair Lending. How the Fair Housing Act, Equal Credit Opportunity Act related to predatory mortgage lending, with a look at fair lending enforcement activities, both governmental and private.

Second Written Assignment Given. Draft a legal memo that explains why five of the potential causes of action in the in-class case analysis from Week 5 are or are not appropriately available as legal theories for the homeowner.

Week 7 –

Mortgage Servicing—What It Is and Why We Care. It is not esoteric—it is about keeping your home as long as you choose to, and how much of a choice you actually have. What loss mitigation (foreclosure avoidance) tools look like in the private market versus government guaranteed market (such as Veterans Administration Loans, Federal Housing Administration or Rural Housing Services). What is right and what is wrong with the federal Home Affordable Modification Program. Legal challenges to servicing abuses and theories used for protection of homeowners from servicing abuses, including the federal Fair Debt Collection Practices Act, California's Rosenthal Act and a sampling of other state servicing related laws, as well as the application of the Fair Housing Act and Equal Credit Opportunity Act to servicing. (Housing and Economic Rights Advocates, Staff Attorney)

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Week 8 –

How Federal Regulators Interact With The Issue Of Homeownership. Which federal regulators cover one or more pieces of the homeownership market? How might a homeowner or homebuyer interact with regulators? How might the regulated entities interact with the regulators? (Federal Reserve Board Staff. Federal Trade Commission staff.)

Second written assignment, turn in.

Week 9 –

State Regulatory Efforts to Address the Foreclosure Crisis. From the Massachusetts Attorney General's statewide foreclosure injunction as to Fremont Investment and Loan to the multi-state, Attorney General coalition to address servicing problems, what is and has been the role of state enforcement agencies in addressing predatory lending and foreclosure problems? How is enforcement against foreclosure rescue scams playing out? (California Attorney General Staff)

Final written assignment—turn in outlines.

Week 10 – October:

Where The Rubber Meets The Road—The Application of Legal Theories to Origination and Servicing Problems. What are the challenges to pursuing legal claims on behalf of homeowners? How do a range of origination and servicing claims play themselves out in court? How do solo practitioners and smaller firms handle the work flow and pace? What types of legal claims and cases lend themselves to solo practitioner or small firm practice? What techniques for case vetting have been most useful? (Private practitioners/small firm/solos)

Week 11 –

Defending Against Wrongful Foreclosures. What makes a foreclosure wrongful? What defenses and affirmative claims do homeowners have and what steps must they take in a non-judicial foreclosure state versus a judicial foreclosure state? What are the pluses and minuses to different venues? Is bankruptcy ever useful? When is it too late to undo a foreclosure?

Final paper draft due __

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Week 12 –

Helping The Poorest Homeowners. How legal services programs are addressing the challenge of helping low-income homeowners keep their home. (Mona Tawatao, General Counsel, Legal Services of Northern California.)

Week 13 –

Presentations of final papers. (First half)

FINAL SEMINAR PAPER DUE: date TBA. ____ at 5:00 p.m. unless otherwise agreed.

Week 14 –

(LAST CLASS) Presentation of final papers. (Second half)