

Senate panel's focus: Foreclosures resulting from mortgage servicers' advice

By Ariana Eunjung Cha and Zachary A. Goldfarb

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Mortgage industry executives have argued for weeks that they are foreclosing only on borrowers who deserve it for missing their monthly payments.

But consumer groups and attorneys contend that many homeowners are being pushed into foreclosure because of errors or bad advice by the companies managing their loans - an issue that will be a core focus of a Senate banking committee hearing Wednesday.

Many borrowers, foreseeing financial difficulty ahead, were told by their mortgage servicers to miss payments in order to get a loan modification. But after doing so, homeowners were served foreclosure papers instead of getting a modification, the advocates say.

In other cases, borrowers accrued late fees without their servicer telling them about the fines. The company would then consider the borrower in default of the loan.

The hearing follows a similar one last month by the committee during which Diane Thompson, an attorney with the Consumer Law Center, estimated that over half of the foreclosure cases she defends involve servicer problems.

Lawmakers plan to probe the cause of such "servicer-driven foreclosures" - and question regulators over whether they are adequately watching the activities of mortgage servicers. Scheduled to testify are senior officials from the Treasury Department, Federal Reserve, Federal Deposit Insurance Corp. and Office of the Comptroller of the Currency.

"The problems currently in the news may be just the tip of the iceberg," said Sen. Christopher J. Dodd (D-Conn), the committee chairman. "The mortgage servicing industry may be plagued throughout with more systemic failures."

These "are problems that may result in homeowners being put at unnecessary risk of default and foreclosure," he added.

Several of the nation's largest mortgage companies have acknowledged problems with their servicing operations. The largest, Bank of America, has pledged to put an end to the "dual track" process of negotiating loan modifications with borrowers at the same time they are being foreclosed upon.

The hearing, the final one for Dodd before he retires from the Senate, will also feature testimony from senior Fannie Mae and Freddie Mac executives, who will be on the

witness stand for the first time since the uproar over foreclosures began.

Fannie and Freddie are expected to defend their practices while laying the blame for any problems in foreclosures on the law firm and mortgage servicers who oversee the process on their behalf. The companies have threatened financial penalties against these firms if they do not take corrective actions quickly.

Another issue that is likely to be raised this week on Capitol Hill is whether banks in many cases are trying to foreclose on borrowers when they lack the legal standing to do so. Besides Dodd's committee hearing, a separate hearing on the foreclosure debacle is being held Thursday by the House Judiciary Committee.

Doubts about the legal standing of banks are being raised amid allegations that they did not properly transfer paperwork proving the ownership of mortgages as they repeatedly traded the loans to investors.

In a case in New Jersey, for instance, a Bank of America executive, Linda DeMartini, testified that it was customary for the big lender Countrywide to hold on to the ownership documents even after the loans were pooled together, turned into securities and traded around the world. Bank of America bought Countrywide in 2008.

In a Nov. 16 decision that alarmed the mortgage industry, Chief Judge Judith H. Wizmur of U.S. Bankruptcy Court in Camden, N.J., denied a foreclosure against a homeowner based on Countrywide's failure to pass the documents to the proper party.

Bank of America has said that the situation was an aberration and disputed DeMartini's sworn testimony, saying she was mistaken.

cha@washpost.com goldfarbz@washpost.com