

Reducing Litigation and Regulatory Enforcement Risk by Prudent Review of Servicing Policies and Procedures

**Therese G. Franzen
Franzén and Salzano, P.C.
40 Technology Parkway South, Suite 202
Norcross, Georgia 30092
(770) 248-2882**

tfranzen@franzen-salzano.com

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Comprehensive Audit Procedure

- **Violation of Certain State Licensing Requirements**
 - Identify activities of employees who communicate in writing or orally with consumers.
 - Analyze whether activity constitutes licensable activity in relevant states.
 - Mortgage lender/broker and mortgage loan originator – “negotiate”.
 - Debt collector/credit services organization.



Comprehensive Audit Procedure

- **Unauthorized Practice of Law**
 - Identify activities which may constitute practice of law by non-lawyers.
 - Demand Letters.
 - Pre-foreclosure activity.
 - Drafting loan modifications without attorney oversight.
 - Evictions.
 - Bankruptcy.
 - Closing Modifications – witness only closings.



Comprehensive Audit Procedure

- **Unauthorized Fee Splitting**
 - Identify payment for activities which may constitute violation of RESPA, State Bar Ethical Standards, or state law.



Comprehensive Audit Procedure

- **Drafting and Executing Affidavits**
 - Require personal knowledge of facts.
 - Don't just sign a form.
 - Watch the dates – “effective date” vs. actual date signed.
 - Never sign a document with blanks.
 - Review facts/file before executing.
 - Execute in front of a notary (literally!)
 - No incentives for number of documents or speedy execution.



Comprehensive Audit Procedure

- **Violation of Requirements of State Foreclosure Laws**
 - New – local registration requirements.
 - Quirks in certain jurisdictions within state.
 - Issues with legal description – check, and check again!
 - Improper/late notice to IRS/State Revenue Agency.
 - Late HUD Occupancy Notice to Borrower.
 - Identify and document proper party to foreclose.
 - Execute and file required assignments before foreclosure/deed recorded.
 - Possession of original note/security deed or comply with applicable state law re: lost notes.
 - Calculation of foreclosure bids – check and re-check!
 - Drafting/executing foreclosure deeds prior to sale.
 - MERS compliant.



Comprehensive Audit Procedure

- **Loss Mitigation Simultaneously with Foreclosure**
 - **Who's on first?**
 - **Accepting reinstatement/modification and continuing foreclosure.**
 - **Single point of contact.**
 - **Toll free number.**
 - **2d/3d Look program for all mod denials.**

Comprehensive Audit Procedure

- **Payment Application**
 - Ensure no multiple late fees for same delinquency.
 - Review suspense account procedures; application of non-conforming payments.
 - Apply to interest principal, then other charges unless state law provides otherwise.



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- **Fees Properly Charged**
 - **In compliance with state laws and documents.**
 - **Reasonable.**

Comprehensive Audit Procedure

- **Force-placed Insurance**
 - Reasonable price in relation to claims.
 - Not with affiliate.



Comprehensive Audit Procedure

- **Property Valuation**
 - **BPO not more frequently than annually unless GSE or to facilitate non-f/c remedy.**
 - **Reasonable fee.**



Comprehensive Audit Procedure

- **Violation of the Bankruptcy Automatic Stay**
 - Check status frequently.
 - Filing claim – identifying the proper claimant.



Comprehensive Audit Procedure

- **Violation of Serviceman's Civil Relief Act of 2003**
 - **Check status frequently.**



Comprehensive Audit Procedure

- **Addressing Consumer Complaints**
 - **Establish protocol and dedicated group.**
 - **Document, document, document.**
 - **Servicer and third party providers.**



Comprehensive Audit Procedure

- **Violation of Fair Debt Collection Practices Act**
 - **Letters**
 - **Review before signing.**
 - **Wet/electronic/no signature.**
 - **Oral Communications**
 - **Message on phones.**



Comprehensive Audit Procedure

- **Violation of State Eviction Laws**
 - **Dealing with the repo man.**
 - **Protect yourself with appropriate agreements/indemnities/insurance.**



Comprehensive Audit Procedure

- **Violation of HAMP, MHA, HARP, HAFA, UF, etc.**
 - **New cause of action.**
 - **Procedures?**
 - **Dedicated team?**



Comprehensive Audit Procedure

- **Violation of State Laws Requiring Communication in Consumer's Native Language**
 - Interpreters?



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- **Communication with Visually/Hearing Impaired**
 - Accommodations?



Comprehensive Audit Procedure

- **Violation of State and Federal Laws Regarding Monitoring and Recording Calls**
 - **Verbal notice to participants including employees.**
 - **Visual notice to employees.**
 - **Employee Handbooks.**

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- **Violation of Servicing Agreements**
 - Fulfilling contractual requirements.



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- **Violation of State and Federal Privacy Laws**
 - **Employees talk.**
 - **Employees take files home.**
 - **Employees work from home electronically.**
 - **Off-shore outsourcing.**
 - **Protecting consumer's personal information – truncating ssn.**



Comprehensive Audit Procedure

- **Mortgage Fraud**
 - **Short sale fraud.**



Comprehensive Audit Procedure

- **Law Changes and Implementation**
 - Track changes.
 - Document implementation.



Comprehensive Audit Procedure

- **Policies/Procedures and Training**
 - **Document, document, document.**



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- **Paperless Offices**
 - Really????



Comprehensive Audit Procedure

- **HR policies/Procedures**
 - **Handbook.**
 - **Memos.**



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- **IT/System Review**
 - **Document**



Comprehensive Audit Procedure

- **Review of Third Party Providers**
 - **Periodic reviews to ensure compliance with state and federal laws and servicer's requirements, and properly licensed.**
 - **Termination of non-compliant providers.**
 - **Track sanctions.**



Comprehensive Audit Procedure

- **Do It All Again Next Year**