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## Borrowers Face Dubious Charges in Foreclosures



David Lienemann for The New York Times

In a study of foreclosures, Katherine Porter of the University of Iowa found questionable fees on almost half of the loans. Such fees can make the business of loan servicing even more lucrative.

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By [GRETCHEN MORGENSON](#)

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As record numbers of homeowners default on their mortgages, questionable practices among lenders are coming to light in bankruptcy courts, leading some legal specialists to contend that companies instigating foreclosures may be taking advantage of imperiled borrowers.

Because there is little oversight of foreclosure practices and the fees that are charged, bankruptcy specialists fear that some consumers may be losing their homes unnecessarily or that mortgage servicers, who collect loan payments, are profiting from foreclosures.

Bankruptcy specialists say lenders and loan servicers often do not comply with even the most basic legal requirements, like correctly computing the amount a borrower owes on a foreclosed loan or providing proof of holding the mortgage note in question.

“Regulators need to look beyond their current, myopic focus on loan origination and consider how servicers’ calculation and collection practices leave families vulnerable to foreclosure,” said Katherine M. Porter, associate professor of law at the [University of Iowa](#).

In an analysis of foreclosures in Chapter 13 bankruptcy, the program intended to help troubled borrowers save their homes, Ms. Porter found that questionable fees had been added to almost half of the loans she examined, and many of the charges were identified only vaguely. Most of the fees were less than \$200 each, but collectively they could raise millions of dollars for loan servicers at a time when the other side of the business, mortgage origination, has faltered.

In one example, Ms. Porter found that a lender had filed a claim stating that the borrower owed more than \$1 million. But after the loan history was scrutinized, the balance turned out to be \$60,000. And a judge in Louisiana is considering an award for sanctions against [Wells Fargo](#) in a case in which the bank assessed improper fees and charges that added more than \$24,000 to a borrower’s loan.

Ms. Porter’s analysis comes as more homeowners face foreclosure. Testifying before Congress on Tuesday, Mark Zandi, the chief economist at [Moody’s Economy.com](#), estimated that two million families would lose their homes by the end of the current mortgage crisis.

Questionable practices by loan servicers appear to be enough of a problem that the Office of the United States Trustee, a division of the Justice Department that monitors the bankruptcy system, is getting involved. Last month, It announced plans to move against mortgage servicing companies that file false or inaccurate claims, assess unreasonable fees or fail to account properly for loan payments after a bankruptcy has been discharged.

On Oct. 9, the Chapter 13 trustee in Pittsburgh asked the court to sanction Countrywide, the nation’s largest loan servicer, saying that the company had lost or destroyed more than \$500,000 in checks paid by homeowners in foreclosure from December 2005 to April 2007.

The trustee, Ronda J. Winnecour, said in court filings that she was concerned that even as Countrywide misplaced or destroyed the checks, it levied charges on the borrowers, including late fees and legal costs.

“The integrity of the bankruptcy process is threatened when a single creditor dishonors its obligation to provide a truthful and accurate account of the funds it has received,” Ms. Winnecour said in requesting sanctions.

A Countrywide spokesman disputed the accusations about the lost checks, saying the company had no record of having received the payments the trustee said had been sent. It is Countrywide's practice not to charge late fees to borrowers in bankruptcy, he said, adding that the company also does not charge fees or costs relating to its own mistakes.

Loan servicing is extremely lucrative. Servicers, which collect payments from borrowers and pass them on to investors who own the loans, generally receive a percentage of income from a loan, often 0.25 percent on a prime mortgage and 0.50 percent on a subprime loan. Servicers typically generate profit margins of about 20 percent.

Now that big lenders are originating fewer mortgages, servicing revenues make up a greater percentage of earnings. Because servicers typically keep late fees and certain other charges assessed on delinquent or defaulted loans, "a borrower's default can present a servicer with an opportunity for additional profit," Ms. Porter said.

The amounts can be significant. Late fees accounted for 11.5 percent of servicing revenues in 2006 at [Ocwen Financial](#), a big servicing company. At Countrywide, \$285 million came from late fees last year, up 20 percent from 2005. Late fees accounted for 7.5 percent of Countrywide's servicing revenue last year.

But these are not the only charges borrowers face. Others include \$145 in something called "demand fees," \$137 in overnight delivery fees, fax fees of \$50 and payoff statement charges of \$60. Property inspection fees can be levied every month or so, and fees can be imposed every two months to cover assessments of a home's worth.

- 1
- 2

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