

Use of Prior Servicer's Records at Trial Depends on Proper Foundation

March 25, 2015

Mortgage servicing duties are routinely transferred, requiring lenders, servicers and financial institutions to rely on the prior servicer's business records to prove their cases against borrowers – specifically, to prove the amount of the debt due at trial, since the assignee's records necessarily include and are based on the predecessor's records. Such records may also be used to demonstrate possession of the original note prior to the filing of the complaint, and other essential elements of a foreclosure case that go to standing. Several recent Florida appellate court decisions, however, have given borrowers some ammunition to counter reliance on prior servicer's records. For example, in both *Hunter v. Aurora Loan Services, LLC* and *Yang v. Sebastian Lakes Condo. Ass'n, Inc.*, the court found the prior servicer's records should have been excluded because the witness lacked sufficient personal knowledge to rely on a prior servicer's records. Nonetheless, reliance on a prior servicer's business records is still permissible with the proper foundation. For example, the court in *Bank of New York, as Trustee v. Calloway*, found the lender's witness sufficiently confirmed the trustworthiness of the third-party business records at issue by testifying that the prior servicer's records had been reviewed for accuracy prior to integrating them into the plaintiff's own records. The court further held that the circumstances of the loan transfer itself could have been sufficient to establish trustworthiness given the business relationships and common practices inherent among lending institutions acquiring and selling loans. **The pivotal difference in the cases: the foundation laid by the lender or loan servicer's trial witness.** Therefore, preparation of the trial witness to lay the appropriate foundation for reliance on a prior servicer's business records is key. With sufficient training regarding the policies and procedures in place to ensure the accuracy of records transferred from a prior servicer, a trial witness should be able to lay the proper foundation to allow the witness to rely on a prior servicer's records.

Authored By



Merrick L. Gross

Related Practices

[Consumer Finance](#)

[Real Estate](#)

Related Industries

[Real Estate](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.