

**Collaborative Efforts Help Protect Debtors
From Unscrupulous Mortgage Schemes**
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The most recent issue of the NACTT Quarterly featured excerpts from testimony by the Director of the Executive Office for U.S. Trustees, the NACTT's Debra Miller and others given at a May hearing entitled "Policing Lenders and Protecting Homeowners: Is Misconduct in Bankruptcy Fueling the Foreclosure Crisis?" That testimony detailed the efforts of the USTP, the NACTT and others to address misconduct by those who use the bankruptcy system to prey upon debtors for their own financial gain. Our efforts in this area continue. This article highlights a couple of recent developments in the USTP's collaborative efforts to protect debtors from unscrupulous mortgage-related schemes and to bring greater integrity to the bankruptcy system.

In June, Deputy Attorney General Mark Filip and FBI Director Robert Mueller held a news conference to announce the results of "Operation Malicious Mortgage," a nationwide enforcement effort undertaken by the Department of Justice and its law enforcement partners to combat mortgage fraud. The investigation led to the arrest, indictment or conviction of approximately 400 defendants in foreclosure-related fraud schemes. In his remarks, the FBI Director focused on three types of mortgage fraud schemes: lending fraud, foreclosure rescue scams, and mortgage-related bankruptcy schemes. The USTP participated in Operation Malicious Mortgage and was recognized at the news conference for its collaboration with law enforcement to combat mortgage fraud and abuse. Additional details about Operation Malicious Mortgage can be found

in the Department's press release, which may be obtained at the following link:

<http://www.usdoj.gov/opa/pr/2008/June/08-odag-551.html>.

Collaboration with our other enforcement partners has also been productive. In his recent remarks at the NACTT annual convention, EOUST Director Cliff White recognized the hard work the NACTT has undertaken to protect homeowners from falling prey to lenders who improperly inflate their claims or who seek to foreclose on property without a proper showing of arrearages. In furtherance of those efforts, Director White announced the formation of a joint USTP/NACTT proof of claim working group to develop enhanced guidelines and policies on the review of proofs of claim. Greater and more uniform scrutiny of proofs of claim will increase our ability to police the system and will guard against abuses of the system.

The working group consists of trustee members and USTP representatives who have a combined wealth of experience and knowledge of the mortgage industry and creditor practices. The group's first charge is to formulate guidance for trustees to follow when reviewing mortgage proofs of claim. Many trustees already are quite diligent in reviewing proofs of claim to ferret out inappropriate and overstated charges. However, local practice and local court rules make the claims review process inconsistent throughout the country.

The group held its first meeting in Washington, D.C., in late August. Over the course of that meeting, the group, using the NACTT Best Practices as its guide, agreed in principle that trustees should:

1. Verify that the mortgagee has filed a proof of claim.
2. Verify that a copy of the recorded mortgage/deed of trust is attached to the

proof of claim.

3. For proofs of claim that include a flat fee for review of the Chapter 13 plan prior to confirmation and for the preparation of the proof of claim, determine whether the fee is reasonable and fairly reflects the attorney's fee incurred.
4. Verify that there is an itemization of the pre-petition fees, costs and other charges attached to the proof of claim.

Other issues that were discussed at the initial meeting include how trustees are to determine whether fees, costs and other charges are reasonable and what accommodations, if any, will be made for small trustee operations.

Having served on the Handbook Committee from both the USTP side and the trustee side, I know firsthand that the scope of a trustee's responsibilities for reviewing proofs of claim has been the subject of animated debate among trustees and USTP employees alike. The progress that the joint mortgage proof of claim working group has made in just one meeting is a tribute to both the USTP's and trustees' commitment to protecting homeowners from unscrupulous practices. I am confident that our joint efforts will result in guidelines that benefit all stakeholders in the bankruptcy process and protect the integrity of the bankruptcy process.