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Default Attorney Group (DAG) Default Law Update

**Excellence Coast to Coast with
Representation in 25 States**

September 2010

State Updates - Links East to West

**Florida Mediation &
Bankruptcy**

**New York: Settlement
Conferences**

**North Carolina: Chapter 13
Claims**

Ohio: Receiver's Sales

Missouri: Mechanics' Liens

Arizona: New Bills Passed

DAG Firms Awarded for Service & Performance

Hughes Watters Askanase Named One of Two Law Firms to Receive Lender Processing Services Summit Award for Fourth Consecutive Year

For an unprecedented fourth consecutive year, Houston law firm Hughes Watters Askanase L.L.P. (www.hwa.com) received the Lender Processing Services (LPS) Summit Award for attaining the highest ratings in both bankruptcy and foreclosure among firms in the LPS attorney network.

The LPS Summit Award recognizes law firms that achieve consistently superior performance in bankruptcy and foreclosure practice. This year, HWA is one of only two firms in the national LPS attorney network to achieve this exceptional new distinction.

"We have a wealth of resources that allow our attorneys to leverage their experience with other practice groups in the firm," noted Carolyn Taylor, a partner with HWA and leader of the firm's default services practice area. "As a result, we provide our clients with a well-rounded, unique perspective on the myriad of complex issues and challenges currently plaguing the residential and commercial housing and mortgage industries."

[Read the full announcement.](#)

Links to Other Features DAG Default Symposia Schedule

**DAG Authors: Recent
Publications**

DAG Speaker: Five Star

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DAG's Mission

DAG Member Firms

Brock & Scott, PLLC
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Cal-Western

Reconveyance/Prommis
(CA, AK, AZ, NV, ID, OR, UT,
WA, HI)

Law Offices of Daniel C. Consuegra: Florida Firm Foreclosure Timeline 166 Days Shorter than State Average

The Law Offices of Daniel C. Consuegra recently received the top ranking score for the state of Florida on a client scorecard. The firm beat the state average from Service to Judgment by

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(NJ, NY)
HughesWattersAskanase
(TX)
Law Offices of Daniel C.
Consuegra (FL)
Martin, Leigh, Laws &
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(MO, KS)
Pite Duncan, LLP
(CA, AK, AZ, NV, ID, OR, UT,
WA, HI)
Weltman, Weinberg & Reis
Co., LPA
(IL, IN, KY, MI, OH, PA)

almost 150 days. The state average for that process is 329 days and the firm averaged just 180 in the period measured.

"We achieved this high score due to the efficient processes we have in place to meet the demands of the challenging Florida foreclosure environment," commented Daniel C. Consuegra, managing partner and founder of the firm. "By streamlining procedures to get affidavits completed and working proactively to schedule judgment hearings as quickly as possible, we can effectively manage timelines."

During the measured time period, the firm's overall foreclosure timeline was 166 days shorter than state averages, at 263 days vs. 429 days for the state.

[Read the full announcement.](#)

Florida Legal Update: Mediation, Condo Fee Legislation and Bankruptcy Issues



[Download your copy of the full Florida Legal Update for September.](#)

Summary Guide to Florida Mediation

The Florida Supreme Court approved a model mediation order, but individual circuits have adopted the order with some variation and on different schedules. Effective Aug. 2, 2010, all circuits do have Administrative Orders in place for mediation. To stay abreast of these changes, the Law Offices of Daniel C. Consuegra has compiled this comprehensive Guide to Florida Mediation by Circuit. This Guide is continually updated and available to you as a reference tool.

Contact Dan Consuegra at 813-833-7057 or dan.consuegra@consuegralaw.com for your copy.

Condo Fee Legislation Effective July 1 Increases Liability for Fees from 6 to 12 Months

Effective with new condominium legislation enacted July 1, 2010, the liability of a first mortgage holder that acquires title to property has increased. First Mortgage Holders are now liable for delinquent assessments of either 12 months of accrued fees, or 1% of the original mortgage debt, whichever is less. Servicers need to be mindful of this increased liability particularly with loss mitigation decisions and when the property is in REO. For more details on Senate Bill 1196 and how it impacts your cases, contact our office.

Contact Dan Consuegra at 813-833-7057 or dan.consuegra@consuegralaw.com.

Florida Bankruptcy: Orlando Division Employs New Mortgage Modification Mediation Initiative

In the Middle District of Florida/ Orlando Division, the judges are ordering mortgage modification mediation upon Motion by Debtor. Servicers and Lenders will find that mediation at this stage is more Creditor friendly. First, Servicers and their attorneys are permitted to appear by telephone. Second, because Debtor must supply the bankruptcy court with current financials, those documents and figures are easily obtainable by the Servicer making modification reviews smoother and mediation more fruitful. Third, Debtor is responsible for the cost of mediation, which has an ancillary benefit of limiting mediations to those Debtors truly interested in modifying. For more information on this new program, contact our office.

Contact Dan Consuegra at 813-833-7057 or dan.consuegra@consuegralaw.com.

Florida Bankruptcy: Southern District Chapter 13 Trustees Utilize New HAMP Confirmation Order

Judges in the Southern District of Florida are confirming plans where the Debtor asserts that they have applied for a mortgage modification. The Court then holds status conferences to review the progress of the modification. Servicers need to be aware that the automatic stay remains in effect during this time. For more information on this new practice, contact our office.

Contact Dan Consuegra at 813-833-7057 or dan.consuegra@consuegralaw.com.

Florida Bankruptcy: Southern District - Secured Claim Valuation is Binding without Objection

At least one trustee is beginning to use a modified form of the standard form confirmation order. This modified order provides that if a bankruptcy plan values a secured claim and no objections are filed to the plan, then the valuation is binding, without requiring a separate Motion. Servicers must make certain to object to any plan which improperly values their secured claim in order to protect their interest.

Contact Dan Consuegra at 813-833-7057 or dan.consuegra@consuegralaw.com.

New York: Mandatory Settlement Conferences

New York Courts, especially in New York City, are increasingly holding lenders to tight timelines and exacting requirements for loan modification reviews (especially HAMP). Under the mandatory settlement conference statute and Court rules, the Court can dismiss the foreclosure action and impose sanctions if the Court finds that the lender was not acting in good faith (which includes timely review of loan modification application). Servicers should make sure that loan modification applications are reviewed promptly and a loan modification offered or, if denied for failure to qualify, a denial letter be sent immediately to borrower and servicer's

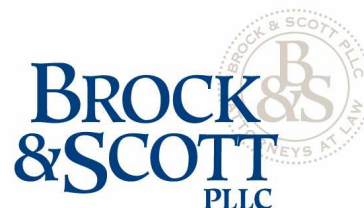


Counsel.

To discuss this matter further, please contact David P. Case, Esq., Fein, Such & Crane, L.L.P., (585) 232-7400 x. 218 or cased@rgcattys.com.

North Carolina: Chapter 13 Claims

Western District of North Carolina Chapter 13 Claims- Local Form Use Mandatory



Although the Western District's Administrative Order mandating the use of local forms for claims and payment change notices has been in effect for more than a year, the trustees are seeing a large increase of instances where servicers are failing to use the local form for payment/escrow changes. Failure to use the proper form results in the Trustee disregarding the change notice. We're seeing a corresponding increase in Show Cause Motions issuing from the trustees to rectify the problem.

Please contact Sean at sean.corcoran@brockandscott.com (704-369-0676) for more information or to request a copy of the local forms.

Eastern District of North Carolina- Chapter 13 Motions to Deem Current (In re Adams, EDNC 04-03875).

A servicer's post-discharge attempts to collect pre-discharge fees after entry of an order deeming the account current led to sanctions for (1) contempt of the order deeming current and (2) violation of the discharge injunction. The Court's seemingly arbitrary imposition of a \$65,000 sanction was influenced by the 22 month period during which the loan was in violation of the order deeming current.

Contact Sean at sean.corcoran@brockandscott.com (704-369-0676) for a copy of the opinion.

Ohio: Receiver's Sales as an Alternative to Foreclosure Sales

Ohio has a statutory scheme for foreclosures, which generally mandates a judicial action resulting in a public sale by the county sheriff or other officer of the court, or by a licensed auctioneer. The objective of having the property sold by public auction is to derive the maximum sale price, for the benefit of the creditors, who are seeking the maximum recovery, and also for the owner, who is entitled to the excess proceeds, if any, and who may be liable for a deficiency judgment.



In appropriate cases, the court may appoint a receiver to protect and manage the

property, and to collect rents from any tenants while the foreclosure is pending. Occasionally, while the case is pending, the receiver might identify a party interested in purchasing the property for a favorable price. Although the law states that a receiver may "generally do such acts respecting the property as the court authorizes," it does not expressly give the court the authority to circumvent the statutory scheme for foreclosures by authorizing the receiver to sell the property privately, free and clear of the interests of all parties. Would such a conveyance by a receiver, even with the express authority of an order of the court, nevertheless be vulnerable to attack?

[Read the full article](#) and for more information, please contact Larry Rothenberg at (216) 685-1135 or via email at lrothenberg@weltman.com.

Missouri: Mechanic's Lien Statute Amended

On August 28, 2010, a new law went into effect in Missouri amending the Mechanic's Lien statutes. It applies to "any



Martin, Leigh, Laws & Fritzen, P.C.

Kansas City St. Louis Overland Park

residential real property conveyance closing on or after November 1, 2010." While deemed a "minor" change by the Missouri legislature, it is viewed by mechanic's lien claimant attorneys as "major" and making it more difficult for material suppliers and contractors to obtain mechanic's liens against residential properties.

The law creates a new section to Missouri's Mechanic's Lien statute, section 429.016, the longest section in the statute. The most significant change is the notice requirement for all subcontractors. Rather than providing a ten day notice to owner before filing a mechanic's lien, subcontractors will now be required to file a Notice of Rights at least five calendar days before the closing on the sale of the property. The new law also specifies exactly what must be contained in a lien statement to constitute a "just and true account". The new law also strengthens and clarifies what exactly constitutes a final lien waiver.

Time will tell how Section 429.016 will effect Missouri Mechanic's Lien law. We expect there may be a fair number of appellate decisions in the next few years challenging or clarifying certain provisions.

[Read more details on the bill](#) and contact David Renovitch at Martin, Leigh, Laws & Fritzen, P.C, in St. Louis for further information at (314) 862-5200 or by email at dpr@mllfpc.com.

Arizona Legislature Passes New Bills

Several new bills were passed by the Arizona legislature



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this past session relating to lending and foreclosure. Please see the summaries below:

HB 2626 - Pre-foreclosure Avoidance Contact Requirement: Adds Section 33-807.01 to Arizona Revised Statutes, effective as of July 29, 2010. This bill requires lenders to "attempt to contact" borrowers in writing to discuss options to avoid foreclosure at least thirty (30) days prior to the foreclosure trustee recording the Notice of Sale. Such attempt shall be in the form of a written notice, and documentation of the notice shall be maintained in the lender's credit file.

To remain compliant, read more about this change [in the full article](#) and contact Michelle Mierzwa, Esq. at michelle.mierzwa@prommis.com for more information.

HB 2766 - Rental Agreement Provision if Property in Foreclosure: Adds Section 33-1331 to Arizona Revised Statutes, effective as of July 29, 2010. This bill is only applicable to an owner whose property is subject to a foreclosure proceeding at the time of the rental agreement to a tenant. Such owner is required to put written notice regarding the foreclosure, in the form set forth in the statute, in the rental agreement. This bill does not generally require any action on the part of lenders, servicers or foreclosure trustees.

However, in rare circumstances, if title to property reverts to a lender at a foreclosure of its deed of trust, the lender agrees to accept rent and/or enter into a rental agreement with the existing tenant, and another (senior) lien is in foreclosure, the lender would be required to include this new statutory language. However, it does not appear that this situation is very likely to occur.

Contact Michelle Mierzwa, Esq. at michelle.mierzwa@prommis.com for more information.

HB 2479 - Lender Contact Information on Deeds: Amends Section 33-401 of Arizona Revised Statutes, effective as of July 29, 2010. This bill gives instruction regarding deeds and conveyances in which the grantee is either a bank, financial institution, corporation, association, LLC or partnership subject to regulation by the State of Arizona and requires address and entity formation information for grantees to be included in trustee's deeds or warranty deeds. The purpose of the Bill is to ensure state and local governments or other interested parties can more easily contact the owner of property regarding its condition, maintenance and status.

For details on the instructions and recommendations, contact Michelle Mierzwa, Esq., Cal-Western Reconveyance/Prommis at michelle.mierzwa@prommis.com for more information.

SB 1202 - Foreclosure Surplus Funds Mailing Requirements: Amends Arizona Revised Statutes Section 33-812, effective as of July 29, 2010. This Bill gives additional instruction to trustees regarding the disposition of surplus trustee's sale proceeds.

For a summary of these changes, [read the full article](#) and contact Michelle Mierzwa,

Esq., Cal-Western Reconveyance/Prommis at michelle.mierzwa@prommis.com for more information.

DAG Default Symposia Schedule 2011

Central to DAG's mission is providing high quality default industry training to servicers and lenders. We are currently developing our 2011 schedule, including our annual visit to Dallas in June.

If you'd like more information on default training in your city, or in-house options in your office, please [contact any partner](#) or [email our Events Department](#) for more information.



[Read more about our 2010 Events.](#)

Recent Publication: When Does Communication Turn into Collection?



HughesWattersAskanase

[Read the full article](#) and contact author Carolyn Taylor of member firm HughesWattersAskanase (TX) for more information at cat@hwa.com.

Loss mitigation is the mantra of the mortgage industry. With no foreseeable end to the mortgage crisis, the environment has shifted from a paradigm where foreclosure made business sense in many cases to one in which loan resolution is necessary, suggested and often required to avoid negative consequences affecting our country's troubled economy.

However, loss mitigation works only in those situations where the borrower and the lender effectively communicate with each other and reach a mutually beneficial solution. The process presupposes a verbal or written dialogue between the borrower and the lender or servicer, and thus, falls squarely within the types of activities covered under the Fair Debt Collection Practices Act (FDCPA) and comparable state statutes. The federal and state debt collection practices statutes provide fertile ground for litigation. By July of this year, 2,542 such lawsuits have been filed.

In today's environment, creditors engaging in loss mitigation may be braving untested waters. Until loss mitigation is afforded a safe harbor, the tension between prohibited third-party disclosure and adequately informing the consumer that the communication is from a debt collector, among other issues, will continue to present significant challenges for the consumer mortgage industry.

[Read the full article.](#)

DAG Speaks: Partner to Speak at Five Star

Partner Carolyn Taylor of member firm HughesWattersAskanase (TX), will moderate a panel entitled, "Foreclosure Fundamentals: Learn the Basic Building Blocks Necessary for a Solid Business Foundation in Foreclosures," at The Five Star Default Servicing Conference and Expo on Sept. 20 in Dallas, Texas (www.fivestarconference.com). Taylor's presentation will focus on providing attorneys, agents and brokers with a working understanding of the vocabulary, paperwork, regulations and business dealings of foreclosure proceedings.



Questions? Contact any DAG Member Firm:

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For complete contact information [visit our website](#).

DAG's Mission: The Default Attorney Group (DAG) is an association of seasoned legal professionals united by their vision to fully serve the mortgage lending and servicing community. Committed to high business and ethical standards, DAG offers educational seminars and innovative solutions on Foreclosure, Bankruptcy and Litigation to the default industry across the United States. DAG firms offer representation in 24 states.

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