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EDITOR'S NOTE: NEW RULES?

Victoria Prussen Spears

WILL WE HAVE NEW RULES FOR CORPORATE BANKRUPTCIES?

RECENTLY PROPOSED LEGISLATION THAT COULD REFORM CHAPTER 11 PRACTICE

Matt Barr, Lauren Tauro and Furqaan Siddiqui

NON-PERFORMING LOANS THROUGH THE ESG LOOKING GLASS:

**APPLYING ESG CONSIDERATIONS TO THE CREATION OF A NEW TYPE OF
INVESTMENT OPPORTUNITY FOR CREATIVE INVESTORS**

Andrew Petersen and Anna Nolan

NEW YORK AMENDS CONTACT REQUIREMENTS FOR CERTAIN DELINQUENT BORROWERS

Morey Barnes Yost

COUNTRY DANCING IN THE BANKRUPTCY COURT: THE "TEXAS TWO-STEP"

Michael J. Lichtenstein

IN VACATING PURDUE PHARMA'S CONFIRMATION ORDER, DISTRICT COURT

**DETERMINES THAT PLAN'S NONCONSENSUAL THIRD-PARTY RELEASES ARE NOT
STATUTORILY AUTHORIZED**

Jessica Liou and Brian Morganelli

FIFTH AND SIXTH CIRCUITS REJECT INEXCUSABLE LATE FILINGS

Michael L. Cook

**TWO RECENT CHAPTER 15 CASES CLARIFY JUST HOW LOW THE BAR IS FOR
RECOGNITION**

Laura E. Appleby and Kyle R. Kistingner

BANKRUPTCY BRIEFS

Michael R. O'Donnell, Michael Crowley, Desiree McDonald and Kevin Hakansson



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NUMBER 4

June 2022

Editor's Note: New Rules?

Victoria Prussen Spears 151

Will We Have New Rules for Corporate Bankruptcies? Recently Proposed Legislation That Could Reform Chapter 11 Practice

Matt Barr, Lauren Tauro and Furqaan Siddiqui 154

Non-Performing Loans Through the ESG Looking Glass: Applying ESG Considerations to the Creation of a New Type of Investment Opportunity for Creative Investors

Andrew Petersen and Anna Nolan 163

New York Amends Contact Requirements for Certain Delinquent Borrowers

Morey Barnes Yost 173

Country Dancing in the Bankruptcy Court: The "Texas Two-Step"

Michael J. Lichtenstein 176

In Vacating Purdue Pharma's Confirmation Order, District Court Determines That Plan's Nonconsensual Third-Party Releases Are Not Statutorily Authorized

Jessica Liou and Brian Morganelli 183

Fifth and Sixth Circuits Reject Inexcusable Late Filings

Michael L. Cook 188

Two Recent Chapter 15 Cases Clarify Just How Low the Bar Is for Recognition

Laura E. Appleby and Kyle R. Kistingner 192

Bankruptcy Briefs

Michael R. O'Donnell, Michael Crowley, Desiree McDonald and Kevin Hakansson 195

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New York Amends Contact Requirements for Certain Delinquent Borrowers

*By Morey Barnes Yost**

The author recommends that loan servicers carefully review and coordinate their loss mitigation procedures to ensure the proper fulfillment of “single point of contact” obligations for delinquent borrowers in New York.

New York Governor Kathy Hochul has signed into law Assembly Bill 8771 (2022 N.Y. Laws 48),¹ amending single point of contact requirements for certain delinquent borrowers. What changes does the measure require for servicer protocols?

NEW YORK SPOC REQUIREMENTS

Effective January 2, 2022, Senate Bill 671 (2021 N.Y. Laws 565)² created Section 6-o of the New York Banking Law to require a lender to provide a single point of contact (“SPOC”) to a borrower who (1) is 60 or more days delinquent on a “home loan,” and (2) chooses to pursue a loan modification or other foreclosure prevention alternative. The SPOC requirement arose in connection with a request from a borrower (made in writing or by electronic communication); upon receipt of such a request, the lender (or a servicer acting on the lender’s behalf) had 10 business days to provide the borrower with an SPOC. In order to ensure that an assigned SPOC could maintain contact with a delinquent borrower, the section imposed on a borrower an obligation to provide an update to the lender within five days of any change to the borrower’s contact information.

As amended by AB 8771 retroactive to the date of its creation, the section applies the SPOC obligation to any borrower who is 30 or more days delinquent; further, it does not condition the obligation to provide an SPOC on receipt of an affirmative request from the borrower. The measure also authorizes the New York State Superintendent of Financial Services to establish rules and regulations relating to the SPOC requirement.

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¹ <https://legislation.nysenate.gov/pdf/bills/2021/a8771>.

² <https://legislation.nysenate.gov/pdf/bills/2021/s671>.

IMPACT OF AB 8771

The amendment brings Section 6-o of the Banking Law closer to the language of New York's Mortgage Loan Servicer Business Conduct Regulations,³ codified as Part 419 of the Superintendent of Financial Services Regulations. Since its adoption in final form in December 2019, Rule 419.7 has required a servicer to “assign a single point of contact to any borrower *who is at least 30 days delinquent or has requested a loss mitigation application* (or earlier at a servicer's option).”⁴

The requirements of Part 419—and, now, of Section 6-o of the Banking Law—diverge somewhat from the Consumer Financial Protection Bureau's Mortgage Servicing Rules, which set the industry standard for contact with delinquent borrowers. The continuity of contact requirements of Regulation X⁵ require assignment of an SPOC to borrowers in connection with the provision of an early intervention notice and mandate that such assignment occur no later than the 45th day of the borrower's delinquency. Beyond the distinction from federal requirements, there are a few notable differences between Part 419 and Section 6-o.

First, Section 6-o does not define a “single point of contact,” leaving open the question of whether only one individual may serve that role for any particular borrower. Part 419 provides the SPOC may be either “an individual or designated group of servicer personnel each of whom has the ability and/or authority to perform the responsibilities” of the SPOC as set forth in Rule 419.7(b) (and detailed below). Part 419 further clarifies, however, that if a servicer designates a group of personnel to fulfill the SPOC responsibilities, “the servicer shall ensure that each member of the group is knowledgeable about the borrower's situation and current status in the loss mitigation process, including the content and outcome of any communication with the borrower.”

Second, Part 419 specifies the obligations of a servicer and a designated SPOC for a delinquent borrower. Specifically, Part 419:

- Requires the SPOC to “attempt to initiate contact with the borrower promptly following the assignment of the single point of contact to the borrower”;
- Specifies the responsibilities of the SPOC for the borrower's participa-

³ https://www.dfs.ny.gov/system/files/documents/2019/12/bf419text_0.pdf.

⁴ Emphasis added.

⁵ 12 C.F.R. § 1024.40.

tion in loan modification or loss mitigation activities;

- Requires coordination with other servicer personnel (in particular, to ensure that foreclosure proceedings are halted when required by Part 419); and
- Requires the SPOC to remain assigned and available to the borrower until either the borrower's account becomes current or the servicer determines that the borrower has exhausted all loss mitigation options available from or through the servicer.

Section 6-o, by contrast, does not specify the responsibilities of the SPOC—but, by granting the Superintendent rulemaking authority, leaves open the possibility that such requirements will be established by rule.

Finally, the requirement under Rule 419.7 applies broadly to any mortgage loan serviced by a servicer within the scope of Part 419 (i.e., all first- and subordinate-lien forward and reverse mortgage loans). To be eligible for protection under Part 419, the borrower must be either 30 days or more delinquent or have requested a loss mitigation application. By contrast, the requirement under Section 6-o applies to a narrower subset of residential mortgage loans. The obligation extends only to a “home loan,” defined under Section 6-l of the Banking Law to be limited to forward mortgages secured by one- to four-family residential property that, at origination, do not exceed the Fannie Mae conforming loan limit (among other conditions).

Further, the obligation under Section 6-o requires both that the borrower meet the delinquency threshold (30 or more days) and have chosen to pursue a loan modification or other foreclosure prevention alternative. The use of the conjunctive, rather than the alternative, further narrows the subset of loans to which the requirements of Section 6-o apply.

LOOKING FORWARD

Given the distinctions between the obligations a lender is subject to under Section 6-o (and which it may delegate to a servicer) and those a servicer is subject to under Part 419, careful review and coordination of loss mitigation procedures to ensure the proper fulfillment of SPOC obligations for delinquent borrowers in New York is recommended. Further, given the retroactive effective date of the measure, the need for such review is urgent.