

Sample RESPA Request for Information About a Loss Mitigation Application

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Several courts had held in cases decided before the 2013 RESPA Servicing Rule, under the former qualified written request procedure, that a request for information about a loan modification application was not related to the servicing of a loan and therefore could not be a valid qualified written request.¹ Such requests sent after January 10, 2014 are now covered under Regulation X § 1024.36 and are clearly valid.

A servicer is required to respond to any written request for information from a borrower that “states the information the borrower is requesting with respect to the borrower’s mortgage loan.”² Unlike the earlier version of this regulation that applied to qualified written requests, the scope of an information request under Regulation X § 1024.36 is no longer tied solely to information that is “related to the servicing of the loan.”³ Rather, requests are effective if they seek any information concerning the borrower’s mortgage loan, which would include, but would not be limited to, the servicing of the loan. The validity of a request no longer turns on the narrow definition of “servicing” found in RESPA that focuses on the receipt of payments from the borrower.⁴ Requests are valid even if the mortgage loan is in default and the servicer is not “receiving” payments from the borrower.

In discussing a borrower’s right to assert a notice of error for a servicer’s failure to provide accurate information to a borrower about available loss mitigation options, the CFPB

¹ See, e.g., *Christenson v. Citimortgage, Inc.*, 2013 WL 5291947 (D. Colo. Sep 18, 2013) (determining that “servicing” does not include acceleration, loss mitigation or foreclosure issues); *Darlington v. Bank of Am., N.A.*, 2013 WL 1827739 (D. Minn. Apr. 20, 2013) (letter seeking information about available loan modification programs did not constitute a qualified written request); *Mitchell v. Reg’l Trust Serv. Corp.*, 2013 WL 556395 (N.D. Cal. Feb. 12, 2013); *Van Egmond v. Wells Fargo Home Mortg.*, 2012 WL 1033281 (C.D. Cal. Mar. 21, 2012); *Saucedo v. Bank of Am.*, 2011 WL 6014008, (D. Or. Dec. 1, 2011); *In re Salvador*, 456 B.R. 610, 623 (Bankr. M.D. Ga. 2011). See also *Foreclosures*, § 9.2.2.2.3.1 (4th ed. and 2013 Supp.).

² Reg. X, 12 C.F.R. § 1024.36(a) (effective Jan. 10, 2014). The request for information must also comply with the general requirements for borrower inquiries, such as by including the name of the borrower and information that enables the servicer to identify the borrower’s mortgage loan account. See *Foreclosures*, § 9.2.2.2.1 (4th ed. and 2013 Supp.).

³ Reg. X, 12 C.F.R. § 1024.21(e)(2)(i) (effective until Jan. 10, 2014).

⁴ See Section-by-Section Analysis, § 1024.36(f)(1)(iv), 78 Fed. Reg. 10,761 (Feb. 14, 2013) (“the final rule . . . does not limit information requests to those related to servicing”).

The term “servicing” is defined in RESPA § 2605(i)(3) to mean “receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts . . . and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.”

stated that “it is critical for borrowers to have information regarding available loss mitigation options,” and that this access should include “accurate information about the loss mitigation options available to the borrower, the requirements for receiving an evaluation for any such loss mitigation option, and the applicable timelines relating to both the evaluation of the borrower for the loss mitigation options and any potential foreclosure process.”⁵ The CFPB also noted that servicers are typically required to provide borrowers with information about loss mitigation options and foreclosure under the National Mortgage Settlement and servicer participation agreements with the Department of the Treasury, HUD, Fannie Mae and Freddie Mac, and that “providing such information to borrowers is a standard servicer duty.”⁶ The general servicing requirements set out in Regulation X § 1024.38(b)(2) require servicers to have policies and procedures designed to “provide accurate information regarding loss mitigation options available to the borrower from the owner or assignee of the borrower's mortgage loan.”⁷

For a detailed discussion of the RESPA requirements for requests for information, *see* § 9.2.2 of NCLC’s *Foreclosures* (4th ed. 2012 and 2013 Supp.) and NCLC *eReports*, Dec. 2013, No. 6.

Sample Language for the Request for Information

Advocates should check that the address they use in preparing and sending the request is one given by the servicer for requests for information, and not assume that the address used by the client to send monthly payments is the proper designated address.⁸ If the request is sent by an attorney on behalf of a client, it should include a written authorization from the client similar to that provided below.⁹ Appropriate alterations based on your client’s situation must be made before sending the following sample request.¹⁰ To avoid a servicer response that a request for

⁵ *See* Section-by-Section Analysis, § 1024.35(b)(7), 78 Fed. Reg. 10,742 (Feb. 14, 2013).

⁶ *Id.*

⁷ Reg. X, 12 C.F.R. § 1024.38(b)(2)(i).

⁸ Borrower written inquiries (including notices of error) under the RESPA must be sent to the “designated” address for receipt and processing of such inquiries, if the servicer has properly designated such an address. *See* Reg. X, 12 C.F.R. § 1024.35(c); § 9.2.2.3 of NCLC’s *Foreclosures* (4th ed. and 2013 Supp.). The servicer’s website should be checked for the designated address.

⁹ A servicer is required to respond to a request for information that is sent by the borrower or the borrower’s agent. 12 U.S.C. § 2605(e)(1)(A). However, a servicer may require that the borrower or agent provide documentation, such as an authorization, that the agent has authority to act on the borrower’s behalf. *See* Official Bureau Interpretation, Supplement 1 to Part 1024, ¶ 36(a)-1 (effective Jan. 10, 2014); § 9.2.2.4 of NCLC’s *Foreclosures* (4th ed. and 2013 Supp.).

¹⁰ No response is required by a servicer to a request for information that is irrelevant, which the regulation describes as information requested that is not directly related to the borrower’s mortgage loan account. *See* 12 C.F.R. § 1026.36(f)(1)(iii); § 9.2.2.2.3.3 of NCLC’s *Foreclosures* (4th ed. and 2013 Supp.).

information is overbroad or burdensome, only those specific request items that are applicable to your client and needed to assist in representing the client should be included.¹¹

[*date*]

[*Mortgage servicer*]

[*Address*]

Attn: Borrower Inquiry Department

Re: [*Borrowers' name, address, account number*]

To Whom it May Concern:

Please be advised that I represent [*borrowers*] with respect to the mortgage loan you are servicing on the property located at [*address*]. My clients have authorized me to send this request on their behalf (see Authorization below). As servicer of my client's mortgage loan, please treat this as a "request for information" pursuant to the Real Estate Settlement Procedures Act, subject to the response period set out in Regulation X, 12 C.F.R. § 1024.36(d)(2)(i)(B). Specifically, I am requesting the following information for the period beginning [*when account went into default or some other period*] until your receipt of this request (the "applicable period"):

1. Identify and briefly describe all loss mitigation options that were available to my clients from the owner or assignee of my clients' mortgage loan.
2. Provide any notices sent to my clients advising them of the availability of loss mitigation options.
3. For each loss mitigation application you have received from my clients during the applicable period, identify the following:
 - a. the date it was received;
 - b. the date you sent my clients an acknowledgment of receipt of the application;
 - c. the date you determined it was complete;
 - d. a description of your evaluation of it, including your determination of which loss mitigation options were or were not offered to my clients.
4. If any loss mitigation application you received from my clients is currently under review and is considered to be incomplete, provide a list of the additional

¹¹ A servicer is not required to comply with a request for information if the servicer reasonably determines that it is overbroad or burdensome. See 12 C.F.R. § 1026.36(f)(1)(iv); § 9.2.2.2.3.3 of NCLC's Foreclosures (4th ed. and 2013 Supp.).

documents and information my clients must submit to make the application complete, as well as any applicable deadline for returning such documents.

5. Identify any other documents or information not under the control of my clients needed to make the application complete.
6. [*For loan modification denial based on investor restrictions*] If you have determined that a loan modification option is not available to my clients because of a requirement or restriction imposed by the owner or assignee of my clients' mortgage loan, provide the following:
 - a. a description of the requirement or restriction and the identity of the owner or assignee, including the name of any applicable trusts and trustees;
 - b. the document, or provision within the document, that contains the requirement or restriction, and information identifying the document sufficient to locate the document if it is publicly available;
 - c. a description of your actions to seek a waiver of the requirement or restriction;
 - d. any documents relating to your efforts to seek a waiver of the requirement or restriction, and whether such waiver request was approved or denied;
 - e. any summary information created or retained by you pertaining to loan modifications available to my clients and investor restrictions applicable to my clients' loan or loans pooled with this loan; and
 - f. any guidance provided to you by the owner or assignee pertaining to modifications applicable to my clients' loan.
7. [*For loan modification denial based on NPV*] If you have determined that a loan modification option is not available to my clients because of a net present value calculation, provide:
 - a. the inputs used for the calculation; and
 - b. the date the calculation was done.
8. [*For loan modification denial based on excessive principal forbearance*] If you have determined that a loan modification option is not available to my clients because of excessive principal forbearance, provide the figures used in reaching this determination, including the current unpaid principal balance, value of the property, gross monthly income, and monthly escrow payment.
9. [*For FHA loan modification denial*] If you have determined that a loan modification option is not available to my clients, provide the figures and calculations used in reaching this determination, including the gross monthly income, monthly escrow payment, interest arrears, any other fees or charges to be capitalized, current unpaid principal balance, unpaid principal balance as of the date of any previous partial claim, and amount of any previous partial claim.

10. If you have determined that a loan modification option is not available to my clients for any other reason(s), describe in detail the reason(s) for denial and provide documentation of any reason(s) for denial.
11. Provide any notices or documents you sent to my clients in relation to loss mitigation of my clients' loan during the applicable period, including:
 - a. any notices acknowledging receipt of any loss mitigation application from them and stating whether the application was complete or incomplete;
 - b. any notices stating the outcome of your evaluation of their application;
 - c. any proposed written agreement that offered a loss mitigation option to my clients;
 - d. any written agreement signed by my clients that provided for a loss mitigation option; and
 - e. any notices stating the outcome of their appeal of your denial of a loan modification option.
12. *[If payments made on a loss mitigation option]* For any payments made by my clients pursuant to a temporary or permanent loan modification offer, trial period plan, forbearance, or any other loss mitigation offer during the applicable period, describe the following:
 - a. the date you received each payment;
 - b. the amount of each payment;
 - c. a breakdown showing the amount, if any, of each payment that was applied to principal, interest, escrow, fees and charges, and the amount, if any, sent to any suspense or unapplied funds account; and
 - d. the date, amount, and destination of any payment or amount that was applied from a suspense or unapplied funds account.
13. If you initiated a foreclosure proceeding against my clients during the applicable period, identify or provide the following:
 - a. the date the matter was referred to your attorney to begin the legal foreclosure process;
 - b. the date you or your attorney made the first notice or filing to begin the foreclosure process, and a description of the actions taken;
 - c. *[for judicial foreclosure]* a listing of any dispositive motions filed and the date filed;
 - d. any steps taken to schedule the foreclosure sale, and the date those steps were taken;
 - e. the date of any scheduled or rescheduled foreclosure sale; and
 - f. any notices sent to my clients about the foreclosure of their mortgage loan.
14. Provide any appraisal, broker's price opinion, automated valuation model analysis, or other assessment of the value of the property securing my clients'

mortgage loan that you obtained during the applicable period.

15. Provide any notes or logs created by your personnel reflecting communications with my clients about their request for loss mitigation assistance or about their default on the loan during the applicable period.

Thank you for taking the time to respond to this request for information.

Very truly yours,

[attorney]

Authorization to Release Information

To: [servicer]

Re: Borrowers: [name of borrowers]

Account No: [account no.]

Property Address: [address]

We are represented by the law office of [name of firm] and attorney [name of attorney] concerning the mortgage on our home located at [address]. We hereby authorize you to release any and all information concerning our mortgage loan account to the law office of [name of firm] and attorney [name of attorney] at their request. We also authorize you to discuss our case with the law office of [name of firm] and attorney [name of attorney].

Thank you for your cooperation.

Very truly yours,

[borrower 1]

[borrower 2]