

RODRIGUEZ LAW GROUP, INC.

www.attorneyprod.com

Internal Foreclosure Defense Seminar

Patricia Rodriguez, Esq.
Rodriguez Law Group, Inc.

Member of the State Bar of California
Admitted in Central, Northern and Eastern Federal District Courts of California
Temple University Law School - J.D.
Temple University Law School - Law Program in Japan
University of Southern California (USC) - B.S. in Business

Ms. Rodriguez obtained her Juris Doctor from Temple University. While there, she participated in their National Trial Team and received exceptional advocacy training from one of the best law school programs in the country. Ms. Rodriguez previously worked for the Camden Public Defenders Office, the Philadelphia Public Defenders Office, the Los Angeles District Attorney's Office and the Los Angeles Public Defenders Office. She currently runs her own boutique law firm in Los Angeles County specializing in Criminal Defense, Foreclosure Defense, and Bankruptcy Law.

I. Trial Techniques:

A. Courtroom Decorum

- i. Professional attire
- ii. Positioning
- iii. Verbal Communication
- iv. Knowing the judge
- v. Rising/Standing
- vi. Addressing the court

B. Opening Statement

- i. Structure
 1. Impact opener
 2. Clarity of explanation
 3. Strong ending requesting verdict for defendant/plaintiff
- ii. Substance
 1. Theory of case
 2. Broad brush strokes
 3. No first person
 4. Emphasize facts, not conclusions
- iii. Staging
 1. Clear logical organization
 2. Use of exhibits where appropriate
 3. Good “storytelling”

C. Direct Examination

- i. Structure
 1. No leading questions
 2. Witness introduction/background
 3. Background appropriate to witness and purpose of testimony
 4. Strong ending
 5. Diminish reliance on notes
- ii. Substance
 1. Organization
 2. Description of scene from occurrence and appropriate witness
 3. Description of events and damages
 4. Theory-developed and clear from questions
 5. Completeness
 6. Who? What? When? Where? Why? And How?
 7. Foundation questions
- iii. Staging
 1. Demeanor-professional but conversational
 2. Pace and delivery of questions

D. Cross-Examination

- i. Structure
 1. Form of question-single fact leading question throughout

- 2. Diminish reliance on notes
 - 3. Impeachment
 - ii. Substance
 - 1. Organization
 - 2. Good witness control – repeat questions to get answers when necessary
 - iii. Staging
 - 1. Demeanor – appropriate to witness
 - 2. Placement in courtroom – in jury’s line of vision
- E. **Closing**
 - i. Structure
 - 1. Impact opener
 - 2. Develops theory of case
 - 3. Strong ending requesting verdict for plaintiff/defendant
 - ii. Substance
 - 1. Clear forceful explanations of why facts prove theory
 - 2. Refutation of opponent’s case
 - 3. Repetition
 - 4. Alliteration
 - 5. Rhetorical questions
 - iii. Staging
 - 1. Appropriate use of rhetorical devices
 - 2. Use of exhibits where appropriate
- F. **Jury Selection**
 - i. Preemptory Strikes
 - ii. For Cause Strikes
 - iii. Race, Age, Ethnicity, Etc.
 - iv. Biases

II. Pre-Litigation

- A. **Loan Originators**
 - i. *See Redacted Hybrid Audit*
- B. **Securitization Audit Experts**
 - i. *See Redacted Hybrid Audit*

III. Non-Judicial Foreclosure (CA)

- A. **Notice of Default** – Bank is giving the Homeowner notice that according to the Bank HO owes the bank and hasn’t paid
- B. **Notice of Trustee Sale** – This is notice to the HO the bank is electing to sale the property under the allege authority of the Deed of Trust
- C. **Trustee Sale Date** – date the bank sales the house
- D. **California Civil Procedure 2932.5 – no longer valid claim**
- E. Delaying Trustee Sale Dates
- F. Advertisements of Trustee Sale Delays

IV. Litigation – Ownership/Title – CA

- A. Complaint – *See Redacted Markham Complaint*
 - i. When to file?
 - ii. Upon belief - Plaintiffs allege
 - iii. Summons; Civil Case Cover Sheet; Attachments; Complaint; Complaint Signature Page; Exhibits
 - iv. Filing/Serving Defendants – Jurisdiction Specific
- B. Temporary Restraining Orders/Preliminary Injunctions
 - i. Bonds
- C. Lis Pendens - two page document which attaches the lawsuit over title to the property; thus when its sold at a trustee sale date no one but the bank will buy the lawsuit – bank must buy it back
- D. Answer
 - i. Defendant has 30 days to Answer – unless Trustee files objection to non-monetary status – if Plaintiff objects – Defendant is given 30 days from proof of service of objection to non-monetary status
 - ii. Three choices: Admit, Deny, Demur (motion to dismiss in federal court)
- E. Demur Hearing
- F. Case Management Conference – CMC
 - i. Case Management Conference Statement
- G. Trial Set – 6 months out from
- H. Discovery
 - i. Form Interrogatories
 - ii. Special Interrogatories
 - iii. Request for Documents
 - iv. Depositions
- I. Trial – 4 to 5 Days

V. Litigation – Possession/Unlawful Detainer – CA

- A. Plaintiff must prove three issues
 - i. Defendant in possession
 - ii. Defendant properly served with three day notice to quit
 - iii. Plaintiff has a duly perfected security interest
 - 1. Issues when no evidence of securitization
- B. Temporary Restraining Order – temporary stop to the sell of the house
- C. Preliminary Injunction – permanent restraint from selling the house the entire duration of the litigation
- D. Unlawful detainer action
 - i. Complaint
 - 1. Three elements: proper notice; still in possession; plaintiff has right to possess
 - ii. Answer – 5 days for homeowner; 10 days for renter
 - iii. Motion to consolidate with matter involving Title

- iv. If judgment entered – motion to stay judgment until after Title matter decided – irreparable harm (for actually homeowner residing on premises)
- v. Not granted – must appeal BC by law MUST be granted

VI. Litigation in Bankruptcy Court

- A. Effect of Filing Bankruptcy
 - i. On Federal Title Case
 - ii. On State Title Case
 - iii. On State/Federal Appeals Case
- B. Automatic Stay
- C. Motion to extend automatic stay

VII. State Court – Title Action Substance

A. **Defendants** – Originator, Servicer, Trustee of Securitized Trust; Foreclosure Trustee (if applicable) and MERS (if applicable)

B. **Origination Documents** –

- i. Uniform Residential Loan Application
 - 1. Type of mortgage and terms of loan
 - 2. Property information and purpose of loan
 - 3. Borrower information
 - 4. Employment information
 - 5. Monthly income and combined housing expense information
 - 6. Assets and liabilities
- ii. Federal Truth-In-Lending Disclosure Statement
 - 1. Amount of payment
 - 2. Income v. payment
- iii. Buyer's Closing Statement
 - 1. New loan charges
 - a. Loan processing fee
 - b. Banking fee
 - c. Appraisal fee
 - d. Processing fee
 - 2. Breach of fiduciary duty
 - 3. Conspiracy to defraud
- iv. Settlement Statement
- v. Adjustable Rate Note
- vi. Balloon Rider
 - 1. Failure to disclose balloon payment Uniform Residential Loan Application
 - 2. Type of mortgage and terms of loan
 - 3. Property information and purpose of loan
 - 4. Borrower information
 - 5. Employment information
 - 6. Monthly income and combined housing expense information
 - 7. Assets and liabilities

8. Federal Truth-In-Lending Disclosure Statement
9. Amount of payment
10. Income v. payment
11. Buyer's Closing Statement
12. New loan charges
13. Loan processing fee
14. Banking fee
15. Appraisal fee
16. Settlement Statement
17. Processing fee

C. Origination Fraud

1. Fraud – Allegations need to meet specificity requirements
 - a. Actual Fraud - California Civil Code § 1572(3)(5)
 - i. Knowledge of borrower's lack of ability to afford monthly payments due to income
2. Violations of Business & Professions Code §17200 Unfair and Deceptive Acts and Practices (UDAP) [Fraudulently Procured Documents];
 - a. Robosigners – individuals who signed on behalf of companies they don't work for, never had any agency relationship, nor were they attorney-in-fact; many of these individuals have admitted publicly in deposition or otherwise that he/she signed 1000s of documents without knowing what the document was, who they were signing on behalf, etc.
 - b. Substitution of Trustees, Corporate Assignments, and Assignments are red flags for transfer problem
3. Violation of UDAP [Fairness Doctrine]
4. Intentional Misrepresentation
 - a. The misrepresentation of a material fact;
 - b. Knowledge of falsity (scienter);
 - c. Intent to induce reliance
 - d. Actual and justifiable reliance on the misrepresentation; and resulting damages
5. Negligent Misrepresentation
 - a. the misrepresentation of a material fact;
 - b. false statement is made without a reasonable ground for a belief in the truth of the misrepresented fact
 - c. intent to induce reliance;
 - d. actual and justifiable reliance on the misrepresentation; and
 - e. resulting damage
6. Fraudulent Concealment
 - a. affirmative duty to disclose all material facts;
 - b. concealment of facts in order to induce plaintiff to enter into a transaction or relationship;
 - c. resulting damage

7. Cancellation of Contract
 - a. California Civil Code §1670.5, §1689, §3412
 - b. Existence of written instrument
 - c. That is void or voidable
 - d. Grounds for rescission / when facts discovered
 - e. Reasonable apprehension if left outstanding may cause serious injury to Plaintiff
8. Violation of Finance Lender Law
 - a. California Finance Code §§ 4973, et seq., 22000, et seq. and 50000, et seq.
 - b. Plaintiff must allege that their loan is covered under this provision. A consumer loan more than \$417K is not covered. No exceptions to this rule have been identified.
9. Conspiracy to Defraud
 - a. Falsification of loan application
 - b. Set up borrower for certain default
10. Waiver/Promissory Estoppel
 - a. Contractual issue – bank has told HO to stop making payments to be considered for a modification; thus, the bank has waived any right to enforcement of the terms of the contract under the note; it gave that right up to enforce the contract by telling the home owner to stop making payments; homeowner relied on that waiver, stopped making payments for a modification, is denied modification, - bank cannot then come back and state it is entitled to enforce the payments
11. Intentional Infliction of Emotional Distress
 - a. Outrageous Behavior
 - b. Injury Breach of Contract
 - c. Make sure to allege all elements
 - d. What is the breach? Find a provision in the Deed of Trust to support the breach of contract claim
12. Breach of Oral Contract
 - a. Existence of a contract
 - b. Terms that establish obligation
 - c. Specify whether contract is oral, written or implied by conduct
 - d. Plaintiff's performance or excuse for non-performance
 - e. Defendant's breach
 - f. Resulting damage
13. Breach of fiduciary duty
14. Conspiracy to defraud
 - a. Falsification of loan application
 - b. B. Set up borrower for certain default

15. Statute of Limitations – The SOL has passed for most if not all of our claims. Therefore, we must allege that Equitable Tolling applies, otherwise, the court may dismiss without leave to amend.

D. Servicing Fraud

- i. Unjust Enrichment
 1. Unwarranted fees/overcharging
- ii. Violation of Buss. & Prof. Code Section 17200 (Overcharging of Fees – Unfair, Business Practices)
 1. Unlawful, Unfair, or Fraudulent business practice
 - a. Instituting improper or premature foreclosure to generate unwarranted fees
 2. NOD inflates default amount
 3. NTS shows balance owed which is too high
- iii. Violation of California Civil Code of Procedure 2923.5
 1. NOD filed without due diligence to contact borrower and assess financial situation and explore options to avoid foreclosure
 2. Certificate of compliance by agent
 3. Only applies to owner-occupied principal residence
 4. Only remedy is postponement of sale (*Mabry v Superior Court*)

VIII. California Homeowner Bill of Rights - SB 900

A. Procedural History

- i. Enacted by CA Senate and Assembly on July 2, 2012
- ii. Signed into law by Governor on July 12, 2012
- iii. Effective Date: January 1, 2013
- iv. Expires: January 1, 2018

B. Goals of the California Homeowner Bill of Rights

- i. Stabilize CA housing economy
- ii. Stop foreclosure abuse by lenders and servicers
- iii. Ensure meaningful foreclosure alternatives for borrowers

C. Meeting the Goals

- i. Expand existing foreclosure protections and add new protections to apply to broadly defined “mortgage servicers”
- ii. Prevent mortgage servicers from proceeding with a foreclosure until certain contact with or notice to the borrower
- iii. Prevent the recordation of a notice of default or notice of sale while a foreclosure prevention alternative is in process
- iv. Require a single point of contact for the borrower once they have requested a foreclosure prevention alternative; and
- v. Give borrowers the right to sue the mortgage servicer for injunctive relief, actual damages and treble damages, for violation of the Act and the right to recover their attorney’s fees and costs if they prevail

IX. Application of the Law

A. Eligibility

- i. First lien Mortgages and Deeds of Trust
- ii. Secured by owner-occupied residential property
- iii. Containing no more than four dwelling units

B. Large Lenders

- i. Most of the provisions of the Act only apply to lenders that foreclose on more than 175 residential properties per year.
- ii. Some provisions, including dual tracking, apply to smaller lenders, as well

C. Exclusions

- i. Entity Borrowers
- ii. Investment Property
- iii. Borrowers in default who are already in bankruptcy
- iv. Borrowers who have already surrendered their property to lender
- v. Borrowers who have contracted with someone or an entity whose primary business is advising people on how to extend their foreclosure and avoid their contractual obligations under the loan

X. Relevant Provisions

A. Mortgage Servicer Defined

- i. A person or entity who directly services a loan, or who is responsible for interacting with the borrower, managing the loan account on a daily basis either as the current owner of the promissory note or as the current owner's authorized agent, or subservicing agent to a master servicer by contract.
- ii. "Mortgage Servicer" does not include the trustee or the trustee's authorized agent acting under a power of sale in a deed of trust
- iii. Prevent lenders from contracting with separate entities to manage and service the loans to avoid application of the current laws

B. Dual Tracking

- i. The Act seeks to prevent a lender from proceeding with a foreclosure, while at the same time negotiating with a delinquent residential borrower on a loan modification
- ii. If Borrower submits a complete application for modification, the Mortgage Servicer may not record Notice of Default or Notice of Sale until loan modification process has been completed and the time for an appeal of any adverse decision has passed
- iii. NOD can be recorded:
 1. If borrower doesn't accept offer within 14 days
 2. If borrower doesn't appeal denial within 30 days
 3. If borrower accepts the offer but defaults

C. Changes to Loan Modification Process

- i. Mortgage servicer must provide a written acknowledgement of receipt within five days of the receipt of the document(s) or completed application
- ii. Written acknowledgment of receipt to the borrower must include a description of the loan modification process, its timeframes and any deadlines, any expiration dates for documents submitted, and specify any deficiencies in the application
- iii. Written response if the lender denies the application. This written notice must include the specific reasons for the denial and the deadline for the borrower to appeal the denial (30 days).
- iv. Mortgage servicer is not obligated to evaluate applications from borrowers who have already been evaluated or afforded a fair opportunity to be

evaluated for a first lien loan modification prior to January 1, 2013, unless there has been a material change in the borrower's financial circumstances

D. Single Point of Contact Established

- i. Single point of contact throughout the loan modification process and with at least one direct method to reach the point of contact.
- ii. The mortgage servicer must ensure that the single point of contact has the knowledge, responsibility and authority to:
 1. Communicate to the borrower the process by which the borrower may apply for available foreclosure prevention alternatives;
 2. Coordinate receipt of all necessary documents and notifying the borrower of any missing documents;
 3. Timely, adequately and accurately inform the borrower of the current status of the foreclosure prevention alternative;
 4. Ensure the borrower is considered for all of the foreclosure prevention options offered by the mortgage servicer; and
 5. Have access to persons with the power to stop foreclosure proceedings
- iii. Single point of contact can be a team of personnel, each of whom is knowledgeable about borrower's current situation
- iv. Does not apply to small lenders

E. Robo-Signing Eliminated

- i. Recorded Documents
 1. Any declaration, notice of default, notice of sale, assignment of a deed of trust, or substitution of trustee recorded in a foreclosure or filed in a court must be accurate and complete and supported by reliable evidence.
 2. Before filing or recording, the mortgage servicer shall have reviewed competent and reliable evidence that substantiates the borrower's default and the mortgage servicer's right to foreclose
 3. Civil penalties of \$7,500 for repeated violations
- ii. Beneficiaries
 1. No entity shall initiate the foreclosure process or record a notice of default unless and until it is the holder of the beneficial interest under the mortgage or deed of trust, the original or substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest.
 2. No liability for good faith error by trustees resulting from information provided by beneficiary regarding nature and amount of default

F. New Notice Requirements

i. After Notice of Default Recorded

1. Within 5 days of the recording of a notice of default, the mortgage servicer that offers foreclosure prevention alternatives must send a written notice to the borrower informing the borrower of foreclosure prevention alternative
2. Does not apply to any borrowers who have already exhausted the loan modification process described above in Civil Code section 2924.6.

ii. Postponed Trustee Sale Date

1. Postponement of at least 10 business days require written notice to the borrower of the new sale date and time within five business days of the date of the postponement.
2. Failure to comply does not invalidate an otherwise valid trustee's sale

G. No Application Fees or Late Fees

- i. Prohibits mortgage servicers from charging borrowers application fees for a first lien loan modification or other foreclosure prevention alternative.
- ii. Forbids a mortgage servicer from charging borrowers late fees under the loan for the period during which the loan modification is under consideration, while a borrower has filed an appeal of the denial of a loan modification, or the borrower is making timely modification payments.

H. Right to Sue Mortgage Servicers

- i. Borrowers can sue mortgage servicers for injunctive relief before the trustee's deed upon sale has recorded, or if it has already recorded, to sue for actual economic damages, if the mortgage servicer has not corrected any "material" violation before the trustee's deed upon sale recorded.
- ii. If a court finds that the violation was intentional, reckless or willful, the court can award the borrower the greater of treble (triple) damages or \$50,000.
- iii. A violation of the Act is also deemed to be a violation of the licensing laws if committed by a person licensed as a consumer or commercial finance lender or broker, a residential mortgage lender or servicer, or a licensed real estate broker or salesman.
- iv. Court may award reasonable attorney's fees and costs to borrower as the prevailing party.
- v. Lenders defense: Compliance

I. Selling Fraud

i. Securitization

1. Mortgage Backed Bonds – bonds are not created equal
2. Table Funding – illegal for a bank to NOT use its own money
3. Originator – bank that originated the loan
4. Sponsor/Seller – middle bank bought note from originator and sold it to depositor to package in the trust – most missed the closing date
5. Depositor – bank that sold the Note to the investor
6. Lack of Standing
 - a. Cause of Action – yes
 - i. Title doesn't matter – only substance
 - ii. Each court will determine differently whether or not it is a named cause of action
 - b. Injury – each time the note was illegal sold the equity in the home significantly decreased
 - c. **MERS – Mortgage Electronic Registry**
 - i. Every mortgage is supposed to registered on this system

- ii. Intended during the 1990s to cut recording costs/fees for the banking industry; also helped hide chain of title from the public
- iii. Approximately 65 million mortgages MERS is beneficiary or nominee
- d. Each time the NOTE was transferred by law there was supposed to be a duly signed assignment (from Originator to Sponsor/Seller to Depositor); this did not occur in most cases.
- e. Viable Causes of Actions Against MERS
 - i. Violation of CCP 2932.5 – not valid
 - ii. Violation of B&P Code 17200
 - iii. Wrongful Foreclosure (Lack of Standing) – for failing to transfer the loan to the trust by the closing date – See *Glaski v. Bank of America*
 - iv. Agent/Principal Issue

7. Current Law

- a. *Ibanez* – Massachusetts (*View Oral Arguments*)
- b. *Phyllis* – AL – Summary Judgment – Breach of Contract 3rd Party Beneficiary
- c. *In re Doble* (2011) WL 1465559 (Bkrtcy.S.D.Cal.)
- d. *Bank of New York v. Silverberg*, 2011 NY Slip Op 5002, 6.
- e. *In Re Jessie M. Arizmendi*, 09-19263-PB13, United States Bankruptcy Court, Southern District of California, 2011
- f. *Aguilar v, III v. Bear Sterans Resid. MTG., et. al.*,
- g. *Kanno v. First Liberty Mortgage*, Superior Court of California, County of Riverside, Case Number 539556, 2010
- h. *O'Dell v. Washington Mutual Bank FA et. al.*, United States Central District Court of California, CV 10-09195 GAF (PLAx), 2011
- i. *Javaheri v. JP Morgan Chase Bank, N.A., et. al.* , United States Central District Court of California, CV 10-09195 GAF (PLAx), 2011
- j. SB1259 – AZ statute requiring log of assignments – Passed House/Not Senate
- k. Nevada & Hawaii Statutes requiring assignment logs
- l. Orange County Ruling on 2932.5
- m. *Gomes v. Countrywide*
- n. *Robinson v. Countrywide*
- o. *Calvo v. HSBC Bank*
- p. *Lona v. Citibank*
- q. *Glaski v. Bank of America*

ii. Bloomberg Level Three Audit

1. Shows exactly how many times the note has been sold and into which trust (classes); in some instances the note has been sold multiple times as if it was the first time the Note was sold – CLEAR SECURITIES FRAUD
2. Shows the note has been paid off – answer to tender rule
- iii. **Violation of CCP 2932.5**
 1. Only applies to deeds of trust
- iv. **Truth In Lender Act Section 1641(g)**
 1. Best Cause of Action
- v. **Wrongful Foreclosure**
 1. Foreclosure based on fraud, deceit and unenforceable contract
 2. Offering alternatives to foreclosure
- vi. **Unjust Enrichment**
 1. Payments made to entity who is NOT the lawful note-holder
- vii. **Violations of Business & Professions Code §17200 Unfair and Deceptive Acts and Practices (UDAP) [Fraudulently Procured Documents]**
 1. Robosigners – individuals who signed on behalf of companies they don't work for, never had any agency relationship, nor were they attorney-in-fact; many of these individuals have admitted publicly in deposition or otherwise that he/she signed 1000s of documents without knowing what the document was, who they were signing on behalf, etc.
 2. Agency/Principal Relationship & Power of Attorney – violations of additional statutes to be used as underlying violations of Buss. & Prof. Code Section 17200
 - a. Express or implied agreement
 - b. Granting authority for one party to act on behalf of another
 - c. Actions of agent bind the principal
 3. Substitution of Trustees, Corporate Assignments, and Assignments are red flags for transfer problems
- viii. **Violation of Cal. Civil Code Section 2934a (Substitution of Trustee)**
 1. Trustee named in recorded Substitution acted as trustee prior to date of execution of Substitution = unlawfully initiated foreclosure
 2. Substitution is executed but not recorded prior to or concurrently with NOD
 - a. Notice of substitution NOT mailed to all interested parties
 - b. Affidavit NOT attached to Substitution confirming that such notice was given
 3. Substitution is effected AFTER NOTD recorded but prior to Notice of Sale
 - a. Notice of substitution NOT mailed to all interested parties (i.e. current trustee)
 - b. Affidavit NOT attached to Substitution confirming that such notice was given

4. Notice of Sale MUST be resent with substituted trustee information, otherwise sale is void.
5. Effective date drastically different from recordation date = evidence of robo signors attempts to comply with time-sensitive regulations/ back-dating of instruments

ix. **Security First Rule**

1. Lender must foreclose before looking to borrower's other assets
2. Either judicial foreclosure and seek deficiency judgment OR nonjudicial foreclosure
3. Violation of CCP 726 if lender accepts payments from Plaintiff WHILE foreclosing

x. **HAMP Guidelines – Breach of Contract**

1. Qualification under HAMP guidelines
2. Trial Period Modification Plan
3. Borrower complies with all requirements under trial mod
4. Lender nevertheless fails to provide permanent modification or fails to suspend foreclosure proceedings

xi. **Violation of California Civil Code of Procedure 2924**

1. Failure to comply with non-judicial foreclosure requirements
2. Notice of default, notice of trustee's sale not sent
3. Foreclosure sale held within 3 months of filing of NOD

xii. **Slander of Title**

1. Publication of disparaging statement about title to real estate; statement is false; made with malice; pecuniary damages

xiii. **Quiet Title**

1. Seeking court order to establish ownership of property; plausible claim to title

xiv. **Declaratory Relief**

1. Validity and enforceability of subject loan agreement (contract law)
 - a. Illegality
 - b. Public Policy
 - c. Unconscionability

J. Damages (Injury-in-fact)

- i. Down Payment
- ii. Payments
- iii. Improvements
- iv. Difference btw modified amount and non modified amount paid

K. Equitabel Estoppel

- i. Post Foreclosure

L. Governing Rules

- i. Individual clerk/judge rules
- ii. Local County/Court Rules
- iii. Civil Code of Procedure

- iv. Case Law
 - 1. Tender
 - a. We should be alleging that there is a tender exception in addition to the allegations that tender has already occurred
 - b. Lona v. Citibank

M. Analysis

- i. Facts of the case
- ii. Precedent – Stare Decisis
- iii. Elements – Many of the causes of actions do not allege ALL of the elements (e.g. duty, excuse form performance, provision in contract that was breached, etc.)

N. Conclusion

XI. Federal Court

A. Issues – See State Court Above

B. Governing Rules

- i. Judges Standing Order
- ii. District (Northern, Central, Eastern or Southern) Local Rules
- iii. Federal Rules of Civil Procedure

C. Analysis

- i. Facts of the case
- ii. Precedent – Stare Decisis

D. Conclusion

XII. Bankruptcy Court

A. Issues – See State Court Above

B. Governing Rules

- i. Judges Standing Order
- ii. District (Northern, Central, Eastern or Southern) Local Rules
- iii. Federal Bankruptcy Code

C. Analysis

- i. Facts of the case
- ii. Precedent – Stare Decisis

D. Conclusion

E. Adversary Proceedings

- i. Ch. 7 v. Ch. 13
- ii. Filing Solely for adversary proceeding
- iii. Conversion of BK from Ch. 7, Ch. 13, to Ch. 7 or (Ch. 13, to Ch. 7, to Ch. 13)
- iv. Post Non Judicial Foreclosure v. Pre Non Judicial Foreclosure
 - 1. Post Non Judicial Foreclosure issues
- v. Purpose of Adversary Proceeding in BK
 - 1. Negotiate the loan
 - 2. Rewrite the loan with new terms
 - a. 30 year, fixed interest, FMV TODAY

XIII. Forum Analysis

- A. Case Law
- B. Cost
- C. Strategic Decision

- i. Final Decisions

XIV. Protecting Tenants At Foreclosure Act

- i. Include Act
 - ii. Research Synopsis – Date Last Updated
 - 1. Plain Language
 - 2. Legislature’s Intent
 - 3. Pending Litigation
 - a. THIS FIRMS CASES – Answers based on PTFA – in pleadings
 - 4. Ethics
 - a. Conflict of Interest – Representation of Homeowner/Renter
 - iii. Fwd Email from Norberto – Emergency Statute
 - iv. Lease can be purchased through third party company

- B. Federal Emergency Statute – Federal Question – Federal Jurisdiction

XV. Ethics

- A. Federal Trade Commission For Consumers
 - i. Mortgage Assistance Relief Scams: *Another Potential Stress for Homeowners in Distress*
- B. Spring 2009 California State Bar Association Ethics Hotliner
- C. CA Senate Bill 94 – Foreclosure Consultants
- D. No Fee Splitting; No Unauthorized Practice of Law – Non-lawyers; Client Communications