

# CFPB, or Who Wants to Be a Millionaire?

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**The Fair Debt Collection Practices Act and  
the Fair Credit Reporting Act**

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**The Fair Debt Collection Practices Act and the Fair Credit Reporting Act**

I. Summary

- A. These materials address the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* (the "FDCPA") and the Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.* (the "FCRA")
- B. The FDCPA is broad in scope and extends, without limitation, to informal and formal payment demands, litigation activities, certain foreclosure proceedings, and all attempts to collect a "debt" as that term is defined in the statute.
- C. The FCRA is a statute that governs the reporting and furnishing of credit information about consumers. The overarching intent of this statute is to promote fairness, accuracy, and privacy for consumers.

II. The FCRA

A. Privacy Provisions of the FCRA

Access to a consumer's credit report is generally prohibited. A person shall not use or obtain a consumer report for any purpose unless it is obtained for an authorized purpose, and that purpose is certified by the prospective user. 15 U.S.C. §1681b(f).

The FCRA contains a short, exhaustive list of authorized purposes for obtaining a consumer report. These authorized purposes include the review of a credit application or existing credit account, for employment purposes, insurance underwriting, debt collection, application for a license or other government benefits, and the purchase of an existing credit obligation. 15 U.S.C. §1681b(a)(3).

B. Accuracy and Fairness

The FCRA mandates that whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. 15 U.S.C. § 1681e(b).

The FCRA also requires that furnishers of information to credit bureaus maintain high standards of accuracy, refrain from reporting false or inaccurate information, and correct any false or inaccurate information upon notice. 15 U.S.C. § 1681s-2(a). However, this provision of the FCRA cannot be enforced privately. 15 U.S.C. § 1681s-2(c).

C. Correction of False Information

The FCRA sets out a procedure for disputing false information in a credit report. This procedure is contained in 15 U.S.C. §§ 1681i and 1681s-2(b). The procedure is outlined as follows:

1. The consumer must notify the credit reporting agency of the dispute. §15 U.S.C. § 1681i(a)(1)(A).
2. Within 5 days of receipt of the dispute, the credit reporting agency must forward notice of the dispute and other relevant information to the furnisher of the disputed information. §15 U.S.C. § 1681i(a)(2)
3. After receiving notice of a dispute with regard to the completeness or accuracy of any information, the furnisher must, under §15 U.S.C. § 1681s-2(b):
  - a. conduct an investigation with respect to the disputed information;
  - b. review all relevant information provided by the consumer reporting agency;
  - c. report the results of the investigation to the consumer reporting agency;
  - d. if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and
  - e. if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified the furnisher must modify, delete, or permanently block that item.
4. The furnisher and the credit reporting agency must complete the reinvestigation with 30 days or 45 days with an extension. 15 U.S.C. §§ 1681i(a)(1)(A) -(C) and 1681s-2(b)(2).
5. The credit reporting agency must provide the consumer with notice of the results of the reinvestigation. 15 U.S.C. §1681i(a)(6).

**D. Remedies and Damages**

The FCRA contains private remedy provisions for negligent and wilful violations.

Any person who willfully fails to comply with any requirement of the FCRA is liable for actual damages – economic and non-economic– statutory damages up to \$1,000.00 and punitive damages along with costs and attorneys fees. 15 U.S.C. §1681n.

Any person who negligently fails to comply with any requirement of the FCRA is liable for actual damages – economic and non-economic– along with costs and attorneys fees. 15 U.S.C. §1681n.

### III. The FDCPA

#### A. Practice Note for Attorneys and Law Firms

Attorneys and their firms are not exempt from the FDCPA if they are debt collectors. Mere compliance with state court rules and the professional conduct rules is not necessarily enough to avoid liability. Lawyers engaging in debt collection must be familiarize themselves with the FDCPA, its requirements and prohibitions. It is a strict liability statute.

#### B. Debts covered.

A “debt” is “any obligation or alleged obligation of a consumer to pay money for goods or services that are primarily for personal, family or household purposes whether or not such debt has been reduced to judgment.” 15 U.S.C. §1692a(5).

Certain payment obligations such as taxes, criminal restitution, child support and other fines. The obligation at issue must arise from a voluntary, consumer transaction to be covered under the FDCPA. Business and commercial obligations are also not covered.

#### C. Debt Collector defined.

A “debt collector” is “any person who uses any instrumentality of interstate commerce in any business, the principal purpose of which is collection of debts owed to another, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be due to another.” 15 U.S.C. §1692a(6). Persons or entities collecting their own obligations are not included in this definition. However, parties which obtain a debt through purchase or assignment when that debt is in default are considered debt collectors.

The term “debt collector” also applies to lawyers and law firms which regularly collect debts. In cases where collection is a small percentage of a firm’s business, Courts have found that the firm or the attorney was, indeed a debt collector for purposes of the statute. Foreclosure firms, repossession agents, creditors holding themselves out as debt collectors, assignees and/or purchasers of defaulted debts are also debt collectors. The term also extends to individuals employed by the collecting entity, independent contractors acting at the direction of or under the actual or apparent

control of an agency, firm or attorney collecting a debt.

Excluded are persons attempting to serve legal process in connection with judicial enforcement of debts.

D. The FDCPA Protects Consumers

The term “consumer” is defined as “any person obligated or allegedly obligated to pay a debt.” 15 U.S.C. § 1692a(3).

E. The FDCPA Protects People Other Than Consumers

Protections may extend to the consumer's spouse, parents of a minor, guardians, executors and/or administrators. §1692c(d). As such, cease and desist requests from a spouse or legal guardian must be honored.

Other provisions of the FDCPA – *eg.* 15 U.S.C. §1692b (Acquisition of location information), §1692d (Harassment and abuse), §1692e (False and misleading communications), §1692f (Unfair practices) – all extend to all “persons.” In many cases, lack of legal standing does not constitute a viable legal defense to claims brought by persons other than the consumer or debtor.

F. The FDCPA Covers a Broad Range of Debt Collection Activities.

1. Communications

The term “communication” is broadly defined to include the conveying of information regarding a debt, directly or indirectly, to any person through any medium. 15 U.S.C. §1692a(2). If any purpose of a communication is to ask for money to be paid, the communication is covered by the FDCPA. Enforcing a security interest is generally excluded, unless there is no present right to do so. 15 U.S.C. §1692f(6).

A communication in the form of a formal complaint in a civil action is not an initial “communication” for purposes of 15 U.S.C. §1692g which requires written notice of the debt and corresponding validation rights. However, enclosure letters and other legal communications are not pleadings and, thus, the requisite disclosures set forth in 15 U.S.C. §1692g and 15 U.S.C. §1692e(11) must be provided.

2. Acquisition of Location Information

A debt collector may communicate with a third party to acquire the location of the consumer. 15 U.S.C. §1692b. However, this may not be done more than once, and the debt collector must not state that the consumer owes a debt, reveal in any way that it is a debt collector, and cease attempts to locate the consumer after notice of legal representation.

3. Communications with the Consumer, generally

A debt collector must not communicate with a consumer at inconvenient times. 15 U.S.C. §1692c(a)(1). Contact with a consumer who is represented by an attorney are prohibited. 15 U.S.C. §1692c(a)(3). Communications with a consumer at her place of employment when the debt collector knows or has reason to know that such activity is not allowed there are a violation of the FDCPA. 15 U.S.C. §1692c(a)(2).

Where a consumer asks the debt collector to cease communications or tells the debt collector that the debt is not his debt and he refuses to pay it, the debt collector must cease all attempts to collect. 15 U.S.C. §1692c(c).

4. Communications with Third Parties

The FDCPA provides a short, exhaustive list of third parties the debt collector may communicate with regarding the debtor or the collection of the debt. This list contains the consumer's attorney, a credit reporting agency, the creditor, the creditor's attorney, and the debt collector's attorney. 15 U.S.C. §1692c(b).

5. Harassment or Abuse

The FDCPA prohibits harassing, abusive or oppressive conduct. Examples include, but are not limited to, the following:

- a. Threats of violence. 15 U.S.C. §1692d(1).
- b. Use of obscene or profane language. 15 U.S.C. §1692d(2).
- c. Causing a phone to ring repeatedly for the purpose of annoying or harassing the recipient. U.S.C. §1692d(4).
- d. Placement of calls without meaningful disclosure of the caller's identity and the purpose for the call. U.S.C. §1692d(6).

6. False, Deceptive or Misleading Statements

The FDCPA prohibits the use of false, deceptive or misleading collection tactics. Such actions are viewed, objectively, through the eyes of the least sophisticated consumer – a very low threshold for liability. Examples include, but are not limited to, the following:

- a. Using false, deceptive or misleading statements in the collection of the debt. 15 U.S.C. §1692e(10).
- b. Falsely representing the character, amount or legal status of debt. 15 U.S.C. §1692e(2)(A).



- c. Falsely representing that garnishment proceedings or other remedies have or will be imposed unless the debt collector has both the legal right and intention to take such actions. 15 U.S.C. §1692e(4)-(5).
- d. Preliminary debt communications falsely suggesting attorney involvement or the imminent filing of suit – if untrue – are also actionable. 15 U.S.C. §1692e(3).
- e. Any false communication with a third party, including a credit reporting agency and including failure to note the consumer's dispute. 15 U.S.C. §1692e(8).

7. Unfair Practices

The FDCPA provides a general prohibitions against the use of unfair or unconscionable means to collect or attempt to collect a debt. Examples include, but are not limited to, the following:

- a. Collection of any amount – including interest, fees, charges or expenses – not authorized by the consumer, the underlying agreement, or law. 15 U.S.C. §1692f(1).
- b. Acceptance of a check post-dated by more than 5 days from any person unless written notification of the debt collector's intent to deposit such payment is provided to the consumer no more than 10, days, nor less than 3 days prior to depositing such payment. 15 U.S.C. §1692f(2).
- c. Taking or threatening to take property if there is no present right or intention to take possession, or the property is exempt by law. 15 U.S.C. §1692f(6).
- d. Filing suit against a consumer in the wrong judicial venue. 15 U.S.C. §1692i(a).

G. The FDCPA Mandates That Debt Collectors Make Certain Disclosures

1. Initial Communication

In the initial communication with a consumer, whether oral or written, the debt collector must provide, "This communication is from a debt collector in an attempt to collect a debt. Any information obtained will be used for that purpose." 15 U.S.C. §1692e(11).

Within 5 days of initial communication the debt collector must also provide, in writing:

- a. Amount of the debt, 15 U.S.C. §1692g(a)(1);
- b. Name of the creditor owed 15 U.S.C. §1692g(a)(2);

- c. Right to dispute validity within 30 days, as set forth in 15 U.S.C. §1692g(a)(3);
- d. Statement that if the debt is disputed by consumer within 30 days, collector will provide verification of the debt or a copy of judgment, as set forth in 15 U.S.C. §1692g(a)(4).
- e. Statement that the consumer may request the name and address of the original creditor in writing, 15 U.S.C. §1692g(a)(5).

2. Subsequent Communications

Each subsequent communication must contain the notice set forth in 15 U.S.C. §1692e(11).

H. Defenses

Debt collectors can avoid liability for violations if they can demonstrate by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error despite the maintenance of procedures reasonably adapted to avoid any such error. Such errors are generally clerical or procedural in nature and invoke good faith, factual mistakes. Mistakes of law cannot form the basis for a bona fide error defense.

I. Remedies and Damages

A debt collector who violates any provision of the FDCPA with respect to any person is liable to such person for any actual damage (economic and non-economic) sustained and such additional damages as the court may allow in an amount not to exceed \$1000.00, plus the costs of the action together with reasonable attorney's fees as determined by the court.

In the case of a class action, recovery includes amounts for each plaintiff as could be recovered in an individual action and such amounts as the court will allow for the other class members, not to exceed the lesser of \$500,000 or 1% of the debt collector's net worth, plus the costs of the action together with reasonable attorney's fees as determined by the court.

**RESPA  
ZOMBIE DEBT  
and the  
CFPB**

RESPA (12 USC 2601 *et. seq*) is the Real Estate Settlement and Procedures Act.

It was enacted to deal with mortgage company disclosure issues, in terms of closing costs, settlement statements, handling of escrow accounts, forced place insurance, proper allocation of mortgage payments, transfer of servicing rights, and such.

Congress passed the statute in 1974, but, effective July 21, 2011, the Real Estate Settlement and Procedures Act has been administered and enforced by the Consumer Financial Protection Bureau.

Why should bankruptcy practitioners care about RESPA?

Because it can help us in many ways.

Has anyone here ever reviewed a mortgage proof of claim that you could not quite understand?

Under the RESPA statute, a mortgagor, the debtor, in our world, has a right to a complete accounting of the mortgage payments, when received and how each payment was applied.

Not infrequently, the RESPA accounting will not match the proof of claim numbers.

Even more fun is when you submit a request for the payoff, and get yet a third number.

You can often get information enabling you to object to a claim in a Chapter 13, and/or overcome objections to plan confirmation.

One of the fun things about practicing law is how a regulatory agency can change a statute.

The CFPB regulations under Regulation X, effective January 10, 2014, define two categories of request: Request for Information(ROI), and, Notice of Error(NOE).

Of course, the CFPB notes indicate a letter denominated as a QWR could be an RFI, or, an NOE, or both, or neither.

And, the CFPB pronounced different rules for each, the RFI and the NOE.

**RFI**

**12 CFR 1024.36**

What has to go in your client's letter to the mortgage company/servicer:

1. Name (of the borrower)
2. "information that enables the servicer to identify the borrower's mortgage loan account," I think this is bureaucrat speak for address and account number)
- 3, and: "states the information the borrower is requesting with respect to the borrower's mortgage loan."

Kitchen sink requests will not fly.

Payoff balance requests are neither QWR, RFI nor NOE.

I think you can still request the complete mortgage accounting, but you should state a basis for that.

E.g., "Enclosed is my statement showing a late fee. My records show I have never been late. Please give me a complete accounting of payments and how they have been applied."

There is also a QWR letter attached as an exhibit to the Vannoy complaint at the end of my materials.

The RFI (QWR/NOE) must be sent to the correct place.

We all know that virtually all mortgage payments go to P. O. Box lockbox outfits, where the mail is opened, and all checks and money orders go into one box, and everything else is tossed.

So, how do you find the proper address?

From Regulation X:

(b) *Contact information for borrowers to request information.* A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to request information in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to request information. If a servicer designates a specific address for receiving information requests, a servicer shall designate the same address for receiving notices of error pursuant to § [1024.35\(c\)](#). A servicer shall provide a written notice to a borrower before any change in the address used for receiving an information request. A servicer that designates an address for receipt of information requests must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.

Or, just google “RESPA address for Widget mortgage company.”

The CFPB ratcheted down the response time allowed mortgage servicers: 5 business days to acknowledge receipt of the RFI, and, no more than 30 days to provide the information requested, or explain why it is not available.

More or less.

There are more provisions about not having to respond to requests that are overbroad or irrelevant, or that the servicer has already answered, or for privileged information, and so on.

And a provision for the servicer to extend the time limit, and shorter limits for a couple specific types of request.

There will not be a quiz; you can check the specific provisions in the Regulation.

The point is, your client has a right to this information, in a timely manner, if you include enough in the letter and sent it to the correct address.

But, The burden is on the servicer to show that the mortgagor was provided with the correct address. *McLean v GMAC Mortgage, Inc.*, 2008 WL 2741159 (N.D.Ill.

July 8, 2008)

And, basically, the servicer cannot charge a fee, or require any type of payment on the mortgage to be made, before providing the information.

**NOE**

**12 CFR 1024.35**

12 CFR 1024.35 repeats the same requirements for what the NOE letter says, and where it has to go.

And: “(a) . . . .A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of error for purposes of this section, and a servicer must comply with all requirements applicable to a notice of error with respect to such qualified written request.”

But: “ A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error.”

It gets better. Error is defined as;

- (1) Failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments.
- (2) Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.
- (3) Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt in violation of 12 CFR [1026.36\(c\)\(1\)](#).
- (4) Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner as required by § [1024.34\(a\)](#), or to refund an escrow account balance as required by § [1024.34\(b\)](#).
- (5) Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.

(6) Failure to provide an accurate payoff balance amount upon a borrower's request in violation of section 12 CFR [1026.36\(c\)\(3\)](#).

(7) Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by § [1024.39](#).

(8) Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer.

(9) Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of § [1024.41\(f\) or \(j\)](#).

(10) Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § [1024.41\(g\) or \(j\)](#).

But, don't worry, if your alleged error does not fit into any of the above, there is still #11: “(11) Any other error relating to the servicing of a borrower's mortgage loan.”

With #11, do we really need the rest?

The Regulations frequently reflect political compromises.

Don't push the envelope on these cases.

Don't try to nitpick the edges, and catch every little teeny-weeny technical violation.

That just hurts all consumer attorneys.

There are plenty of real cases out there.

The time limits to respond, as well as the exceptions, for NOE, mimic those for an RFI.

I have attached pleadings from a RESPA cases, in Federal District court, and the information on one I filed in the bankruptcy court for the Western District.

As with all consumer cases these days, the settlements are confidential.

The case is dismissed, with prejudice.

This is one reason CFPB settlements are helpful, they make a public record of what mortgage companies and other servicers have done.

**FEE SHIFTING STATUTE**

**AND**

**DAMAGES**

Like the FDCPA and FCRA that Adam will address, RESPA is a fee shifting statute.

The American Rule is, each side pays its own attorney, unless there is a statute or rule otherwise.

RESPA is one of those statutes:

“12 USC 2607 (d) Penalties for violations; joint and several liability; treble damages; actions for injunction by Bureau and Secretary and by State officials; costs and attorney fees; construction of State laws

(1) Any person or persons who violate the provisions of this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(2) Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

(3) No person or persons shall be liable for a violation of the provisions of subsection (c)

(4)(A) if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010 [[12 U.S.C. 5511](#) et seq.].



**(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees.**

(6) No provision of State law or regulation that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with this section.

It is a good idea to let your clients know, up front, that you may end up with a larger check than they get.

Clients do get other benefits.

So many of them are so mad at mortgage companies for errors that repeat, and never go away, that just getting their account straightened out is a big deal.

## **ZOMBIE DEBT**

Zombie debt is, of course, debt that comes back to life.

“More than 1 in 3 adults with credit reports have debt in collections, according to a 2014 report by the Urban Institute, and many of these debts are quite old. A 2013 study by the Federal Trade Commission (FTC) found that more than 30 percent of the debt purchased by the nation’s largest debt buyers from other debt buyers was over six years old. Smaller debt buyers often purchase and attempt to collect on even older debt. One-third of debt collection complaints to the CFPB also involved debts not owed by the consumer. “ <http://yubanet.com/usa/Zombie-Debt-How-the-CFPB-Can-Help-Consumers-Fight-Time-Barred-Debts.php#.VgSEj3t22YU>

Many are urging the CFPB to take action in this area.

In a recent CFPB lawsuit, Chase Bank was forced to pay out more than \$160 million in penalties and \$50 million in refunds to consumers for selling bad zombie debt to collection agencies.

Much zombie debt was killed in bankruptcy court, that is, discharged in a Chapter 7 or Chapter 13 bankruptcy case.

But that discharged account somehow made it into a batch of thousands, or, tens of thousands, of accounts sold to one of the debt buying companies.

So, you client is contacted, or, sued for a debt by a company he never heard of before.

Maybe, when she figures out who it is, it is a debt that was discharged in her bankruptcy case. And, she contacts you.

This is clearly a discharge violation, and you can re-open the bankruptcy case, have the filing fee waived, to file a motion to hold the offender in contempt.

If you can find the bad guy.

The FDCPA comes into play as well, see Adam's materials.

Maybe this potential client calls you and says, I got a letter from some company I don't know saying I owe them a bunch of money.

Here are some great examples of Zombie Debt abuse from the consent order entered September 9, 2015, in:

Administrative Proceeding File No. 2015-CFPB-0022, In the Matter of:

Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc. and Asset AcceptanceCapital Corp.,

“Other purchase agreements, such as one between Midland Funding and a large retailer, put Encore on notice that some of the accounts are likely past the applicable statutes of limitations for litigation or were previously disputed by Consumers: [Midland Funding] understands that Sellers believe but have not verified, that the statutes of limitations may have run on some but not all of the accounts.[Midland Funding] acknowledges that some accounts or certain transactions posted to some accounts may be subject to actual or potential claims or disputes by obligors against one or both of the Sellers or their affiliates.”

And:

“26. In another example, a purchase agreement between Asset and a large finance company informed Encore that:[S]ome Accounts, or certain transactions posted to some Accounts, may be subject to actual or potential claims or disputes by Obligors against one or both of theSellers or their affiliates ... [Asset] understands that Sellers believe, but have not verified, that statutes of limitation may have run on some, if not all, of theAccounts.”

And:

“58. Encore has routinely submitted affidavits without attaching supporting documentation, in which the affiant swears that he or she has reviewed account-levelbusiness records concerning the Consumer's account when that is not the case.”

Bankruptcy should be a last resort.

There are defenses for state court collection suits, such as, the statute of limitations.

Always review the pleadings.

Someone called me recently, a professional man, who said he had filed a pro per answer in a suit by Bank of America. I said, are you sure it is Bank of America?

Oh, yes.

When I got the paperwork, the Plaintiff was J.H. Portfolio.

In addition to the statute of limitations, when debt buyers are suing, they have to prove they did, indeed, buy the debt.

Frequently, as you can see by the consent order above, this cannot be done.

So check out the complaint before you recommend bankruptcy, maybe defending in state court is a viable option..

### **BONUS CFPB STUFF**

Check out their website:

<http://www.consumerfinance.gov/>

as the CFPB has solicited comments and/or taken action on student loan servicers, debt settlement companies, auto lenders, mobile phone cramming, violations of the Equal Credit Opportunity Act, and more.

As consumer bankruptcy attorneys, all of these areas concern impact our clients.

The CFPB is tasked with advocating for our consumer clients.

They are a great source of information, and, a place to refer clients with complaints.

### **JUDICIAL ESTOPPEL**

If your bankruptcy client has a claim under a consumer protection statute, like RESPA, or any other claim, that is an asset.

IT MUST BE LISTED ON SCHEDULE B.

And exempted.

*White v. Whyndham Vacation Ownership, et. al.* 2009 (6th Cir.)

This was a Chapter 13 case, in which it appears the Debtor's counsel, and Debtor, disclosed the omitted asset, a sexual harassment claim, to the Trustee at the equivalent of our status conferences in the Eastern District of Michigan, which are NOT officially recorded.

For those outside Detroit, we hold status conferences in the courtroom, as the first part of the confirmation hearing call, with the Trustee, Debtor's counsel, Debtors, any objecting or otherwise participating creditors, to resolve confirmation issues on Chapter 13 cases.

If everything is resolved, the paperwork is shuffled through and there is no actual hearing.

So, in the White case, Debtor and her counsel not only told the trustee of her claim, but also agreed that ALL the proceeds would be paid into the plan for the benefit of creditors.

However, they neglected to amend the schedules.

So, after the case was confirmed, the Debtor filed her lawsuit, defense counsel dutifully checked Pacer to find, lo and behold, no claim listed as an asset.

The defendant moved for summary judgment based on judicial estoppel, that she had sworn in her bankruptcy schedules that she had NO claim, and should be estopped from subsequently suing in state court and stating she DID have a claim.

Debtor lost, even though she herself would have received no money if there were proceeds from the lawsuit.

So, no point in learning all this stuff about other consumer claims for our clients if you lose the claim by not scheduling and exempting it.

**AN OVERVIEW OF THE ALPHABET SOUP OF  
CONSUMER PROTECTION AGENCIES, LAWS  
AND REGULATIONS AS THEY  
RELATE TO CONSUMER BANKRUPTCY**

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CONSUMER PROTECTION AGENCIES, LAWS AND REGULATIONS  
AS THEY RELATE TO CONSUMER BANKRUPTCY**

Over the years, the government has created and enacted a spider web of regulatory agencies, laws and regulations to protect consumers from deceptive and convoluted lending practices and financial schemes that have put many citizens in a state of financial hardship. The most recent of these is the Consumer Financial Protection Bureau or CFPB. So, what is it and what is its purpose?

The CFPB was created out of the Dodd-Frank Wall Street Protection Reform and Consumer Protection Act of 2010. Dodd-Frank was a legislative reaction to the financial crisis of 2008 and subsequent economic meltdown. CFPB is an independent government agency tasked with protecting consumers in the financial sector. The CFPB has jurisdiction over banks, credit unions, securities firms, payday lenders, mortgage-servicing operations, foreclosure relief services, debt collectors and other financial companies. The CFPB promulgates rules, examines the lenders for compliance with established requirements and rates them on a scale of one to five based on the strength of its compliance position. A one rating is the best. It means that the institution has an experienced management team that is capable of implementing changes in consumer statutes and regulations quickly into its own policies and procedures. The rules and regulations of the CFPB are constantly changing and evolving.

The CFPB also collects consumer complaints. If a consumer has an issue with a financial product or service, the CFPB provides an online complaint that may be submitted to them and the CFPB will forward your complaint to the company and

work to get a response from them. The goal being to resolve the issue before it becomes a big problem.

When the CFPB has reason to believe a lender or financial provider is violating any of the many rules and/or regulations governing its operation, it will issue a civil investigative demand (CID). When conducting a CID, the CFPB is investigating whether someone has engaged in activity that violates federal consumer financial law. A response is required and then the CFPB will decide whether to take enforcement action or close the investigation. If enforcement action is commenced, many times it results in consent orders setting out terms to resolve the violations by agreeing to cease the activity and to refund money to consumers harmed by the action. There may also be civil fines or penalties imposed.

The legal authority for the rules and regulations of the CFPB is based in federal acts and statutes. A few of these are listed and briefly explained below:

**FDCPA** – Fair Debt Collections Practices Act was enacted to eliminate abusive practices in the collection of consumer debts, to promote fair debt collection, and to provide consumers with a way to dispute a debt and obtain validation of a debt to ensure accuracy.

**FDCPA recent issues in bankruptcy:**

“Stale” Proof of Claim: A stale proof of claim is one for which the statute of limitations to collect the underlying debt has run. *In re Perkins*, 533 B.R. 242 (Bankr. W.D. Mich. 2015). The Court concluded the claims made by Plaintiff/Debtor that filing of a “stale” claim violates FDCPA, are not precluded by the Bankruptcy Code and that the FDCPA was not “impliedly repealed” by the Code.



In dismissing the adversary proceeding for failure to state a claim upon which relief can be granted, the Court further concluded:

...although the Defendants' proof of claim is an attempt to collect a debt, the proof of claim is by no means false, deceptive or misleading. The proof of claim is accurate, comports with all requirements of the Bankruptcy Code....  
*Perkins*, Pg. 262

...the mere filing of a proof of claim, an act endorsed by the Bankruptcy Code itself, cannot be said to cause any suffering and anguish to the Plaintiff.  
*Perkins*, Pg. 262

...attempting to collect amounts by using unfair and deceptive methods, including means proscribed by law. Based on the content of the Defendants' proof of claim and protections afforded to the Plaintiff under the Bankruptcy Code, the Plaintiff has failed to state a claim.... *Perkins*, Pg. 263

This court finds the Plaintiff's argument regarding verification to be without merit.... ...the Defendants filed the proof of claim only after the Plaintiff caused a notice and other documents in the bankruptcy case to be served on the Defendants. The proof of claim clearly provides sufficient information for the Plaintiff to dispute the debt, as it provides all information required under Fed. R. Bankr. P. 3001. Finally, if the Defendants had sent the verification as the Plaintiff claims was necessary, the Defendants, in all likelihood, would have subjected themselves to a motion for sanctions due to an alleged willful violation of the automatic stay. *See* 11 U.S.C. § 362(k). The Plaintiff's argument in this regard is therefore untenable. *Perkins*, Pg. 263

The Sixth Circuit has yet to address this issue specifically and there are conflicting rulings out of other bankruptcy courts, district courts and circuit courts.

Jurisdiction for violation of the discharge injunction as a claim under the provisions of the FDCPA lies in the district courts, not the bankruptcy courts.

The "vast majority" of courts that have addressed this issue have concluded that bankruptcy courts lack jurisdiction over post-petition FDCPA claims. *Marshall v. PNC Bank (In re Marshall)*, 491 B.R. 217, 230 (Bankr. S.D. Ohio 2012) (collecting cases); *see also Schramm v. TMS Mortg., Inc. (In re Schramm)*, No. 01-11026, 2006 Bankr. LEXIS 4470, at \*9-\*12 (Bankr. N.D. Ohio July 6, 2006). In *Marshall*, the bankruptcy court determined it lacked jurisdiction over a debtor's post-petition claim that a violation of the discharge injunction in turn violated the FDCPA, which is exactly how

defendant construes plaintiff's claim here. *Davis v. Weinstein & Riley, P.S.*, 2013 U.S. Dist. LEXIS 138482 (N. D. Ohio)

**FCRA** – Fair Credit Reporting Act regulates the collection, dissemination, and use of consumer information, including consumer credit information.

**FCRA recent issues in bankruptcy:**

Failure to report post-discharge payments on an account for which no reaffirmation agreement was filed and on which the debtor continued to make payments was not a violation of FCRA reporting requirements.

...the plaintiff did "not carr[y] his burden of showing that the information Wells Fargo furnished was inaccurate[,] incomplete, . . . [or] materially misleading" when the bank reported that the plaintiff's account was closed, the balance was zero, and no payments were made, because the bankruptcy extinguished the plaintiff's personal obligation on the note. *Ibid.* The court found that the report was accurate, and it found "no authority requiring [the bank] to report [the plaintiff's] post-bankruptcy mortgage payments." *Ibid.* *Groff v. Wells Fargo Home Mortgage, Inc.*, 2015 U.S. Dist. LEXIS 60398 (E.D. Mich.), citing *Schueller v. Wells Fargo & Co.*, 559 F.App'x 733 (10<sup>th</sup> Cir. 2014)

...any report of payments voluntarily made by the Groffs as relating to the discharged mortgage loan would suggest to anyone viewing the plaintiff's credit report that the bank was engaged in exactly the conduct prohibited by the bankruptcy discharge — collecting or attempting to collect money from Groff to satisfy a previously discharged debt. That reporting would itself have been inaccurate and false, because it would not accurately and completely reflect the truth that the plaintiff's debt had been extinguished. *Groff*, Pg. 12

**RESPA** – Real Estate Settlement Procedures Act was enacted to regulate companies associated with buying and selling real estate in response to problems with them engaging in undisclosed kickbacks to each other, inflating the costs of transactions and obscuring price competition by facilitating bait-and-switch tactics.

**RESPA recent issues in bankruptcy:**

A plaintiff/debtor must show he/she sent a Qualified Written Request (QWR) to the servicer at its established and published address to which QWRs need to be

sent. If the correspondence does not constitute a QWR, failure to respond is not a RESPA violation.

The Sixth Circuit has not yet decided whether a QWR must be mailed to a separate "QWR address" when a servicer establishes such an address. However, other courts within the Sixth Circuit have held that "the response obligation under RESPA is only triggered when the QWR is sent to the designated address." *See, e.g. Jestes v. Saxon Mortg. Servs.*, 2:11CV59, 2014 U.S. Dist. LEXIS 63715, 2014 WL 1847806, at \*6 (M.D.Tenn. May 8, 2014). [\*21] In other words, when a QWR address is established, any letter mailed to another address cannot be considered a QWR. *See. e.g., Moody v. CitiMortgage, Inc.*, 32 F.Supp.3d 869 (W.D. Mich 2014); *In re Patrick*, No. 13-61661, 2014 Bankr. LEXIS 5115, 2014 WL 7338929, (Bankr.N.D.Ohio Dec.22, 2014). *Johnson v. MidFirst Bank*, 2015 U.S.Dist. LEXIS 118256 (N.D Ohio)

**TILA** – Truth in Lending Act requires standard disclosures regarding the cost of borrowing and how those costs are calculated. Regulation Z of the TILA provides that a lender must disclose all particulars of a loan to protect the consumer.

**TILA recent issues in bankruptcy:**

15 U.S.C §1640(e) provides that TILA claims must be brought “within one year of the occurrence of the violation.” In *Jester v. Citimortgage*, 2014 U.S. Dist. LEXIS 96630 (N.D. Ohio), Mr. Jester completed a Chapter 13 case in which his mortgage debts to Citimortgage were paid through the Chapter 13 Trustee. Following discharge, Mr. Jester became concerned that his payments made during the bankruptcy case were not properly applied. In his complaint in the U.S. District Court, among other causes of action, he asserted the mortgage debts constituted consumer credit transactions subject to TILA and Regulation Z. He further asserted that he did not receive proper disclosures before the loans were consummated. The loans were executed in 2007 and the District Court case was filed in September 2013. The Court dismissed the TILA claims as they were time barred.

CFPB also provides educational information, guides, processes and suggestions for solutions to financial questions on its web site [www.consumerfinance.gov](http://www.consumerfinance.gov) under the “Get Assistance” tab. The CFBP offers this information to specific sectors of the market that may be more at risk than others. Specifically, the suggestions are directed to students, older citizens, service members and veterans. The CFPB web site also has a tab to access forms to file a complaint. Under that tab, a consumer chooses the type of loan, product or service they allege violated consumer protection laws and the “Get started” screen appears and instructions guide the consumer through the process.

The CFPB is constantly evolving. There are new rules and decisions effecting how lenders offer products, collect delinquent loans and implement internal procedures. Any attempt to succinctly summarize what the CFPB is and its purpose will miss many of its minutia. A complete source of information on the CFPB may be found at [www.consumerfinance.gov](http://www.consumerfinance.gov) .

## SAMPLE PLEADINGS CASE CITATIONS

There are lots of pleadings, briefs, case cites in the case of Pipe v Bank of America Home Loan Servicing LP (a/k/a Home Loan Servicing LP).

You can check Pacer for the United States Bankruptcy Court, Western District of Michigan, Adversary No. 11-80286.

The attached Vannoy case was settled before an answer was due, as I routinely grant deadline extensions to opposing counsel.

Helpful, for Plaintiffs, RESPA cases on emotional/mental distress damages:

*Rawlings v. Dovenmuehle Mortg., Inc.*, 64 F. Supp.2d 1156 (M.D, Ala., 1999)

*Dannie R. Carter and Dorothy M. Carter v. Countrywide Home Loans, Inc., et al*, CIVIL NO. 3:07CV651 (E.D. Va. 2009)

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ERIC VANNOY,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NUMBER
v.	)	
	)	2:14-cv-14163
OCWEN LOAN SERVICING, LLC	)	
	)	HON. DAVID LAWSON
Defendant.	)	
<hr/>		

**COMPLAINT FOR BREACH OF CONTRACT AND  
VIOLATION OF THE REAL ESTATE SETTLEMENT  
AND PROCEDURES ACT, DAMAGES, AND  
PETITION FOR AN ACCOUNTING**

COMES NOW Plaintiff Eric Vannoy through his Legal Counsel, and respectfully file Plaintiffs' Verified Complaint as following:

**JURISDICTION AND VENUE**

1. This action arises out of Defendant's violations of the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 *et seq.*, and the Defendant's breach of the mortgage modification agreement between the parties.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because the district courts shall have original jurisdiction of all civil actions arising under the laws of the United States; and concurrent jurisdiction pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to the claim occurred in this judicial district; and because the claims are centered around real property that is within this judicial district.
4. Plaintiff Eric Vannoy is the owner of the property located at [REDACTED] Midland Boulevard, Royal Oak MI 48073 purchased in 2002 with a mortgage from GMAC Mortgage, now Ally. hereinafter, residence.
5. Defendant Ocwen Loan Servicing, LLC is a foreign limited liability company, formed under the laws of Delaware; with their principal place of business located at 1661 Worthington Road, Ste. 100, in West Palm Beach, Florida 33409.

### **FACTUAL BACKGROUND**

6. Plaintiff purchased this property for his principal residence on February 12, 2002.
7. The mortgage loan at issue was a refinance which originated on October 11, 2011 for \$88,000 by Ally Bank.
8. Ocwen Loan Servicing, LLC ("Ocwen") received the loan servicing rights for the loan on Plaintiffs' residence.
9. Plaintiffs entered into a modification agreement of their Note on February 12, 2014, increasing their payment to \$849.26. After 6 month, that would bring Plaintiff current, and the regular monthly payments were to resume. That Modification Agreement is attached hereto as Exhibit A.
10. Plaintiff has never defaulted on the Modification Agreement

11. Plaintiff received a statement from Ocwen dated July 29, 2014, attached as Exhibit B, that was erroneous.
  - a) Past Due Fees/Other Charges of \$321.93 are listed,
  - b) Fees/Other Charges of \$48.07 are listed,
  - c) unapplied Funds of \$831.67 are shown,
12. Plaintiff contacted Ocwen on numerous occasions via telephone and by written correspondence in the form of a Qualified Written Request (hereinafter "QWR"), attached as Exhibit C, about the numerous alleged payments and errors reflected in the statement, and were eventually told that Ocwen would look into it.
13. Ocwen acknowledged receipt of the QWR by letter dated September 23, 2014, attached as Exhibit D.
14. Ocwen's response to the QWR request for an accounting is attached as Exhibit E. It is largely undecipherable, though also clearly inaccurate.
15. Ocwen's response does not list the complete loan history.
16. "Property Inspection Fees" of \$15.00 each are charged on April 28, June 3 and June 6, 2014, and apparently removed on June 26, 2014.
17. "Prior Service Fees" of \$242.47 appear out of nowhere on June 26, 2014.
18. Also on June 26, 2014, a Payment of negative 287.47 appears.
19. On July 28, 2014, "Prior Payment Shortage" of negative \$48.07 is charged. The entry immediately above that is a payment of 48.07.



-COUNT 1 – VIOLATIONS OF THE REAL ESTATE SETTLEMENT  
PROCEDURES ACT, 12 U.S.C. §§ 2601 *et seq.*

20. Defendant Ocwen, by failing to respond accurately to Plaintiffs' QWR in accordance with 12 U.S.C. § 2605(e) has demonstrated a pattern or practice of noncompliance with the requirements of RESPA, is liable to the Plaintiffs for additional damages in an amount not to exceed \$2,000.00. 12 U.S.C. § 2605(f)(1)(B).
21. Defendant Ocwen, by failing to respond to Plaintiff's QWR accurately in accordance with 12 U.S.C. § 2605(e) is liable to the Plaintiff for actual damages to be proven by competent evidence. 12 U.S.C. § 2605(f)(1)(A).
22. Defendant Ocwen, by failing to respond to Plaintiff's QWR accurately in accordance with 12 U.S.C. § 2605(e) is liable to the Plaintiffs for the costs of this action, together with any attorneys fees incurred in connection with this action as this Court may determine to be reasonable under the circumstances. 12 U.S.C. § 2605(f)(3).

-COUNT 2 – BREACH OF CONTRACT

23. Plaintiff applied for and received a modification of their Note on or about February 12, 2014.
24. Plaintiff began making his \$849.26 monthly payments to Ocwen pursuant to the Modification Agreement in a timely manner and in accordance with its terms and continued to make said payments.

25. Defendant Ocwen has breached the parties' agreement by refusing to record the mortgage as current.

Wherefore Plaintiff demands judgment that Defendant Ocwen be required to specifically perform pursuant to the terms and conditions of the modification.

26. Defendant has never provided Plaintiff with a proper accounting of their loan payments, have failed to properly apply the payments received from Plaintiffs, and have charged Plaintiffs improper late fees and other improper charges.

WHEREFORE, Plaintiff prays that this Honorable Court require Ocwen to comply with the law and provide Plaintiff with a complete and accurate accounting.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following:

- a) that Judgment be entered against Defendant Ocwen holding that Ocwen has committed violations of RESPA, 12 U.S.C. § 2605(e);
- b) the Judgment be entered against Ocwen for Plaintiffs' actual damages suffered due to Ocwen's violations of RESPA to be proven by competent evidence at trial;
- c) the Judgment be entered for additional damages as the Court may allow in an amount up to \$2,000 for Ocwen's pattern and practice of noncompliance with the requirements of RESPA;

- d) that Judgment be entered against Ocwen awarding attorney's fees and costs pursuant to 12 U.S.C. § 2605(f)(3);
- e) That Judgment be entered against Ocwen for breach of contract;
- f) That Ocwen be required to specifically perform pursuant to the Note and modification of said Note;
- g) That this Court require Ocwen to provide a complete and accurate accounting of the mortgage from the beginning, and

that Plaintiffs have such other further or equitable relief as this Court deems proper.

October 21, 2014

/s/ Kurt O'Keefe  
Kurt O'Keefe P30718  
Attorney for Debtor  
1593 Torrey Road  
G. P. Woods MI 48236  
313-962-4630  
kurt@stopcreditor.com

# AMERICAN BANKRUPTCY INSTITUTE

New Owen #  
800 746-2936

Repayment  
Plan

Ocwen Loan Servicing, LLC  
PO Box 780  
3451 Hammond Avenue  
Waterloo

IA 50704-0780

PAGE 1  
DATE 02/12/14

REPAYMENT AGREEMENT-

account #

MAIL

PROPERTY

ERIC VANNOY

MIDLAND BOULEVARD

1127 MIDLAND BOULEVARD

ROYAL OAK

MI 48073

ROYAL OAK

MI 48073

PMT NUM	PLAN DUE DATE	PMT AMOUNT	AMOUNT TO REG PMT	AMT TO LC/UNCOL	UNAPPLIED BALANCE	FIRST/LAST PMT APPLIED
01	03/01/14	849.26	439.87	0.00	409.39	10/13
02	04/01/14	849.26	879.74	0.00	378.91	11/13 12/13
03	05/01/14	849.26	879.74	0.00	348.43	01/14 02/14
04	06/01/14	849.26	879.74	0.00	317.95	03/14 04/14
05	07/01/14	849.26	879.74	0.00	287.47	05/14 06/14
06	08/01/14	831.67	879.74	239.40	0.00	07/14 08/14

PLAN TOTAL 5077.97

E - ESCROW CHANGE A - ALTERNATIVE LOAN P&I CHANGE B - BUYDOWN SUBSIDY CHANGE

740 COL 5365

# DETROIT CONSUMER BANKRUPTCY CONFERENCE 2015



Ocwen Loan Servicing, LLC  
PO Box 24738  
West Palm Beach, FL 33416-4738

www.ocwencustomers.com

7/28/14 10:15 AM 3 0015540 20140730 JGCH482A OCWSTAT 1 ne DGM JGCH48000P 148951 MS



ERIC VANNOY  
MIDLAND BLVD  
ROYAL OAK MI 48073-2890



## Mortgage Account Statement

Property Address Midland Blvd  
Royal Oak, MI 48073

Statement Date 07/29/14  
Account Number 0687796947  
Payment Due Date 09/01/14  
Amount Due **\$809.87**  
*If payment is received after 09/16/14, a \$17.59 late fee will be charged.*

Customer Care 800-746-2936  
Insurance 866-825-9265

Account Information		Explanation of Amount Due	
Principal Balance	\$83,946.56	Principal	\$133.81
Maturity Date	November 1, 2041	Interest	\$306.06
Interest Rate	4.37500%	<b>Total Regular Payment</b>	<b>\$439.87</b>
Prepayment Penalty	No	Past Due Fees/Other Charges	\$321.93
		Fees/Other Charges	\$48.07
		<b>Total Amount Due</b>	<b>\$809.87</b>

\* This is your Principal Balance only, not the amount required to pay the loan in full.

Activity Since Last Statement (07/16/14 to 07/29/14)										
				How Payments & Charges were Applied						
Date Applied	Date Received	Description	Transaction Total	Principal	Interest	Escrow	Optional Products	Late Charges	Fees/Other	Unapplied Funds
07/28/14	07/28/14	Forbearance Payment	\$831.67							\$831.67
07/28/14	07/28/14	Payment		\$132.84	\$307.03					\$-439.87
07/28/14	07/28/14	Payment	\$48.07	\$133.33	\$306.54					\$-391.80
07/28/14	07/28/14	Charge - Prior Payment Shortage	\$-48.07						\$-48.07	

Past Payments Breakdown			Special Notices	
	Paid Since Last Statement	Paid Year to Date		
Principal	\$266.17	\$1,053.16		
Interest	\$613.57	\$2,465.80		
Escrow (Taxes & Insurance)	\$0.00	\$0.00		
Fees/Other Charges	\$0.00	\$287.47		
Unapplied Funds**	\$0.00	\$0.00		
<b>Total</b>	<b>\$879.74</b>	<b>\$3,806.43</b>		

Important News	
<p>You must use this address for all qualified written requests, notices of error, and/or requests for information. Research Department, PO Box 24736, West Palm Beach, FL 33416-4736.</p> <p>Attention Military Families! We are committed to doing what we can to support our customers in the military. If you or a member of your family are in the military and are experiencing a financial hardship, please contact us at (800) 746-2936 or email us at <a href="http://www.ocwencustomers.com">www.ocwencustomers.com</a> to discuss your situation and identify possible alternatives.</p> <p>If you have any questions about your loan, please call 1-800-746-2936 and ask to set up an appointment with Jean Barron-Gard, your relationship manager, or schedule an appointment at <a href="http://www.ocwencustomers.com">www.ocwencustomers.com</a>.</p>	

See reverse side for important information and state specific disclosures.

AMERICAN BANKRUPTCY INSTITUTE

DATE: 9/3/2014

TO: Ocwen Customer Care  
P.O. Box 1330  
Waterloo, IA 50704-1330

RE: [REDACTED] Midland Blvd, Royal Oak, MI 48073    Loan # [REDACTED]

Dear Sir/Madam,

I have fulfilled the REPAYMENT AGREEMENT as established on 2/12/2014 and believe there is no basis for the fees on my last bill. Please treat this letter as a "qualified written request" under the Real Estate Settlement Procedures Act, codified as Section 2605(e) of Title 12 of the United States Code.

This request is made to get information about the fees, expenses, costs, accounting, escrow procedures, and the application of payments in connection with this loan. Specifically, the following:

- 1) A complete life of loan transactional history;
- 2) The Transaction Codes for the software platform of the Servicer;
- 3) The Code definitions in plain English;
- 4) The Key Loan Transaction history, bankruptcy work sheet, or any summary of all of the accounts in an XL spreadsheet format;
- 5) The MERS Milestone Reports and the Edgar website address for the Pooling and Servicing Agreement, Prospectus and Prospectus Supplement;
- 6) The name, address, name of a contact person and telephone number of the current holder and owner of the mortgage note;
- 7) Copies of all collection notes and communications files;
- 8) An itemized statement of the amount needed to fully reinstate the loan;
- 9) All communications with any non-lawyer third-party providers; and
- 10) All Form P-309 screen shots of all system accounts.
- 11) All records of any suspense or other accounts connected with this mortgage

Upon receipt of these items, me and my attorney will decide the next course of action. Thank you for your cooperation.

Eric Vannoy

# DETROIT CONSUMER BANKRUPTCY CONFERENCE 2015



OCWEN Loan Servicing, LLC  
P.O. Box 785063  
Orlando, FL 32878-5063  
(Do not send any correspondence or payment to the above address)

[WWW.OCWEN.COM](http://WWW.OCWEN.COM)

September 23, 2014

Eric Vannoy

1127 Midland Boulevard  
Royal Oak, MI 48073

RE: Loan Number: [REDACTED]  
Property Address: [REDACTED] Midland Blvd  
Royal Oak, MI 48073

Dear Eric Vannoy :

OCWEN would like to take this opportunity to thank you for your recent communication regarding the above referenced loan. We appreciate the time and effort on your part to bring your concern to our attention. Pursuant to your concern, we have reviewed the loan and below is the recap of our response to the concern raised:

**Concern#1** You provided us with a RESPA Qualified Written Request and requested us to respond to the queries outlined in the correspondence.

**Response** The loan originated on October 11, 2011 for \$88,100.00, by Ally Bank, with the first payment due on December 1, 2011. As we were not involved in the origination of the loan, we cannot comment further regarding any concerns arising from the loan origination.

We are obligated to service the loan according to the terms and conditions of the loan documents executed by you (Eric Vannoy). A review of the Note for the loan indicates that you are responsible for the debt and therefore, the above loan is valid.

We have submitted a request to send a copy of the loan documents to your attention, which you may receive it separately.

We have submitted a request for Ocwen's Payment Reconciliation History to be sent to your attention, which reflects all credits and disbursements made to the loan by Ocwen and the resulting loan status. It also reflects the escrow account activity of the loan and the details of late charges and fees / expenses, assessed on the loan. The payment history consists of the following components:

**Effective date:** This is the date that Ocwen received the payment or disbursed the funds on the loan.

**Description:** This shows the type of the transaction that took place on that particular date.

**Principal:** This reflects the actual amount that has been applied toward the principal balance reduction. If the payment is reversed there will be a negative sign on that transaction.

**Interest:** This reflects the actual amount that has been applied toward the Interest. If the payment is reversed there will be a negative sign on that transaction.

**Escrow:** This column reflects the actual amount applied toward the escrow account. The negative amounts are the disbursements made toward insurance or tax by Ocwen.

RRCMAINLTRM.13 1

*This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is not intended as and does not constitute an attempt to collect a debt.*

Loan Number: 687796947

NMLS # 1852

AMERICAN BANKRUPTCY INSTITUTE



OCWEN Loan Servicing, LLC

P.O. Box 785063

Orlando, FL 32878-5063

(Do not send any correspondence or payment to the above address)

[WWW.OCWEN.COM](http://WWW.OCWEN.COM)

section, regarding "information relating to the servicing of such loan", 12 U.S.C. Â§ 2605(e)(1)(A). Ocwen will not respond to questions that do not relate to the servicing of this particular loan.

For any further questions or concerns regarding loan, payment arrangements or if you wish to explore any other possible options, you may contact Customer Care Center at (800) 746-2936.

We trust the information provided has fully addressed your concern. Please visit our website ([www.ocwencustomers.com](http://www.ocwencustomers.com)) which is available 24 hours a day, seven days a week, as many of the answers to your account specific questions may be found there. However, should you have any further questions in regards to this issue, please contact our Research Department at (800) 241-9960. If after speaking with our Research Department you still have questions or concerns, please feel free to contact the OCWEN consumer advocate by email through OCWEN's website or by phone at (800) 390-4656. You may also send written correspondence to the following address:

Ocwen Loan Servicing, LLC  
Attention: Research Department  
P.O. Box 24736  
West Palm Beach, FL 33416-4736

Sincerely,

Nihayath Ulla Khan  
Research Department  
Ocwen Loan Servicing, LLC

RRCMAINLTRM.13 3

*This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is not intended as and does not constitute an attempt to collect a debt.*

Loan Number:687796947

NMLS # 1852



## DETROIT CONSUMER BANKRUPTCY CONFERENCE 2015



OCWEN Loan Servicing, LLC

P.O. Box 785063

Orlando, FL 32878-5063

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Suspense column: Please note that according to Ocwen's payment posting procedure, any payment received will be first applied to the payment that is contractually due and then for any outstanding fees due on the loan. If the payment is not sufficient to make a full monthly payment, then it will be applied to the suspense balance until additional funds are received so as to make a full contractual payment. Therefore, this column reflects that the balance placed in the suspense account as of that date and the negative amount indicates the reversal and reapplication of that amount from suspense account toward the loan.

Further, the transaction history consists of the following codes:

NLD: This code refers to the loan disbursement details. This code provides the details of the unpaid principal balance transferred and the details of the suspense (partial payment-credit) account balance transferred from the prior servicer.

EID/ETD: These codes provide the details of the insurance and tax disbursements.

EIC: This code provides the details of the amount credited to the escrow account assessed toward Lender Placed Insurance.

R/RSP/RMS: These codes provide the details of the mortgage payments received on the loan.

MSA: These codes provide the suspense (partial payment-credit) account balance adjustment details.

PAS: This code provides the details about funds removed from forbearance suspense and applied toward the loan.

AFB: This code provides details about the forbearance payments applied toward the loan.

OAA: This code provides you details about advances adjustments made on the loan.

EXP: This code provides you details regarding payments that we applied toward the expenses.

PRP: This code provides you details regarding the payments that were applied towards principal reduction.

PAP/MS: This code provides the details of the amount applied toward suspense (partial payment-credit) account.

LCW: This code provides you details regarding late charges that are waived on the loan.

EXW: This code provides you details regarding expenses that are waived on the loan.

As a result of the payment delinquency, fees were incurred by Ocwen that were then assessed to the loan for repayment. Had the loan not become delinquent, these fees would not have been incurred. All fees and costs associated with these actions were assessed in accordance with the terms and conditions of the original Mortgage and Note. The Ocwen Payment Reconciliation History reflects all the outstanding fees or expenses, and provides a breakdown of all the fees assessed to the loan.

Please note that the monthly payments on the loan are due on the first (1st) day of every month. However, according to Ocwen's late fee policy, borrower has fifteen (15) days grace period to make the monthly mortgage payments without being assessed a late charge. If the monthly mortgage payment is made after this grace period, a late charge equal to four (4%) of the overdue payment of principal and interest will be assessed on the loan.

The entity that currently owns the loan and holds the Note is Fannie Mae (Federal National Mortgage Association), Address: 3907 Wisconsin Ave, NW, Washington, DC, 20016-2892, phone number: (800) 732-6643. The entity that currently owns the loan is based upon Ocwen's review of its records as of the date of this letter and the ownership status may change throughout the life of the loan. Ocwen Loan Servicing, LLC is currently servicing your loan and all inquiries should be directed to our office.

Please note that Ocwen services loans in accordance with all applicable federal and state laws. Section 2605(e) of the Real Estate Settlement Procedures Act requires that Ocwen respond to "qualified written requests," as defined by that

RRCMALNLT.M.13 2

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Loan Number:687796947

NMLS # 1852

# AMERICAN BANKRUPTCY INSTITUTE

Check / Ref. Number	Date Payment Due	Date Payment Received	Date Assessed/ Transaction Date	Description	Amount Applied/ Assessed	Principal Application	Interest Application	Escrow Application	Options at Products	Late Charge	Fees/ Other (See Description)	Suspense Application	Principal Balance	Escrow Balance	Suspense Balance
				Beginning Balance							-388.50		84,999.72	0.00	0.00
			03/31/2014	Loan Disbursement	-85,009.31	-84,999.72	0.00	0.00	0.00	0.00	0.00	378.91	84,999.72	0.00	378.91
001177	04/28/2014			Forbearance Payment	849.26	0.00	0.00	0.00	0.00	0.00	0.00	849.26	84,999.72	0.00	1,228.17
001177	04/28/2014			Altplan Suspense Adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	84,999.72	0.00	1,228.17
	01/01/2014	04/28/2014		Payment	0.00	129.98	309.89	0.00	0.00	0.00	0.00	-439.87	84,869.74	0.00	788.30
	02/01/2014	04/28/2014		Payment	0.00	130.45	309.42	0.00	0.00	0.00	0.00	-439.87	84,739.29	0.00	348.43
			04/28/2014	Property Inspection Fee	-15.00	0.00	0.00	0.00	0.00	0.00	-15.00	0.00	0.00	0.00	0.00
001180	05/30/2014			Forbearance Payment	849.26	0.00	0.00	0.00	0.00	0.00	0.00	849.26	84,739.29	0.00	1,197.69
001180	05/30/2014			Altplan Suspense Adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	84,739.29	0.00	1,197.69
	03/01/2014	05/30/2014		Payment	0.00	130.92	308.95	0.00	0.00	0.00	0.00	-439.87	84,608.37	0.00	757.82
	04/01/2014	05/30/2014		Payment	0.00	131.40	308.47	0.00	0.00	0.00	0.00	-439.87	84,476.97	0.00	317.95
			06/03/2014	Property Inspection Fee	-15.00	0.00	0.00	0.00	0.00	0.00	-15.00	0.00	0.00	0.00	0.00
			06/06/2014	Property Inspection Fee	-15.00	0.00	0.00	0.00	0.00	0.00	-15.00	0.00	0.00	0.00	0.00
	06/26/2014			Prior Services Fees	242.47	0.00	0.00	0.00	0.00	0.00	242.47	0.00	84,476.97	0.00	1,167.21
	06/26/2014			Property Inspection Fee	15.00	0.00	0.00	0.00	0.00	0.00	15.00	0.00	84,476.97	0.00	1,167.21
	06/26/2014			Property Inspection Fee	15.00	0.00	0.00	0.00	0.00	0.00	15.00	0.00	84,476.97	0.00	1,167.21
	06/26/2014			Property Inspection Fee	15.00	0.00	0.00	0.00	0.00	0.00	15.00	0.00	84,476.97	0.00	1,167.21
001183	06/26/2014			Forbearance Payment	849.26	0.00	0.00	0.00	0.00	0.00	0.00	849.26	84,476.97	0.00	1,167.21

# DETROIT CONSUMER BANKRUPTCY CONFERENCE 2015

Cheek / Ref. Number	Date Payment Due	Date Payment Received	Date Assessment/Transaction Date	Description	Amount Applied/Assessed	Principal Application	Interest Application	Escrow Application	Optional Products	Late Charges	Fees/Other (See Description)	Suspense Application	Principal Balance	Escrow Balance	Suspense Balance
001183		06/26/2014		Altplan Suspense Adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	84,476.97	0.00	1,167.21
	05/01/2014	06/26/2014		Payment	-287.47	131.88	307.99	0.00	0.00	0.00	0.00	-727.34	84,345.09	0.00	439.87
	06/01/2014	06/26/2014		Payment	0.00	132.36	307.51	0.00	0.00	0.00	0.00	-439.87	84,212.73	0.00	0.00
001185		07/28/2014		Forbearance Payment	831.67	0.00	0.00	0.00	0.00	0.00	0.00	831.67	84,212.73	0.00	831.67
001185		07/28/2014		Altplan Suspense Adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	84,212.73	0.00	831.67
	07/01/2014	07/28/2014		Payment	0.00	132.84	307.03	0.00	0.00	0.00	0.00	-439.87	84,079.89	0.00	391.80
	08/01/2014	07/28/2014		Payment	48.07	133.33	306.54	0.00	0.00	0.00	0.00	-391.80	83,946.56	0.00	0.00
			07/28/2014	Prior Payment Shortage	-48.07	0.00	0.00	0.00	0.00	0.00	-48.07	0.00	0.00	0.00	0.00
			08/08/2014	Late Charge Waived	175.90	0.00	0.00	0.00	0.00	175.90	0.00	0.00	83,946.56	0.00	0.00
001189	09/01/2014	09/02/2014		Payment	439.87	133.81	306.06	0.00	0.00	0.00	0.00	0.00	83,812.75	0.00	0.00
				Ending Balance						175.90	-194.10		83,812.75	0.00	0.00

# AMERICAN BANKRUPTCY INSTITUTE



Ocwen Loan Servicing, LLC  
1661 Worthington Road Suite 100  
West Palm Beach, FL 33409

[WWW.OCWEN.COM](http://WWW.OCWEN.COM)

1. If your loan is past due or has recently been past due, additional fees and costs may have already been incurred on your loan but not yet billed to your account. These fees and expenses, if any, will be billed to your account once they are verified and paid by Ocwen.
2. If your account is past due, additional collection expenses and legal fees may be accruing.
3. All checks must be made payable to Ocwen.
4. If your loan is in foreclosure, all funds must be in one of the following forms: Cashier's Check, Bank Certified Check, Title Company Check or Attorney's Escrow Check or via Wire Transfer. All other forms of payment will be returned and the reinstatement will not be processed.
5. Payment remittance information (always include Ocwen loan number with payment):

**BY OVERNIGHT COURIER**  
Ocwen  
1661 Worthington Road, Suite 100  
West Palm Beach, FL 33409  
Reference: Ocwen Loan # 687796947  
Attention: Cashiering/HRC Payment Department

**BY WIRE TRANSFER**  
Wells Fargo Bank, NA  
San Francisco, California  
ABA: 121000248  
Account Name: Ocwen Loan Servicing, LLC  
Account Number: 4124823352  
Reference: Ocwen Loan # (Loan followed by loan #)

If you have questions regarding this reinstatement quote, please contact our Home Retention Department at

**(800) 746-2936**

If after speaking with our Home Retention department, you still have questions or concerns, please feel free to contact the Ocwen consumer advocate at the address above, by email at [Ombudsman@ocwen.com](mailto:Ombudsman@ocwen.com) or by phone at (800) 390-4656

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NMLS # 1852

# DETROIT CONSUMER BANKRUPTCY CONFERENCE 2015



Ocwen Loan Servicing, LLC  
1661 Worthington Road Suite 100  
West Palm Beach, FL 33409

[WWW.OCWEN.COM](http://WWW.OCWEN.COM)

9/18/14

## REINSTATEMENT QUOTE

Eric Vannoy  
Midland Boulevard  
Royal Oak MI 48073

Requestor Fax Number:  
Requestor Email Address:

Loan Number: [REDACTED]  
Customer Name(s): Eric Vannoy  
Property Address: Midland Blvd, Royal Oak, MI 48073

As Of: 10/17/14 Next Due: 11/01/14

Description	Amount
Principal Payment	134.30
Interest Due	305.57
Total Amount Due to Reinstate	\$439.87

If you are unable to pay the Total Amount Due to reinstate your loan, please contact our office at (877) 596-8580

Description	Amount
Late Charge Due	17.59
Prior Payment Shortage	48.07
Legal Filing Service	146.03
Total Other Amounts Outstanding and Due	\$211.69

*Please make note of the other amounts due on your loan. Repayment of these amounts is not necessary to reinstate your loan at this time; however, it is required to fulfill your debt obligation under the note and the mortgage. We strongly encourage you to contact us to make payment arrangements to repay the Other Amounts Outstanding and Due by calling (800) 746-2936.*

Jean Barron-Gard has been assigned as your relationship manager and will be your designated representative for resolution inquiries and submission of documents

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NMLS # 1852

**COMPLIANCE WITH CONSUMER FEDERAL  
PROTECTION BUREAU STANDARDS**

**Melissa Byrd**

**Encore Capital Group - Warren, Michigan**

## COMPLIANCE WITH CONSUMER FEDERAL PROTECTION BUREAU STANDARDS

Creditors attempting to comply with the CFPB's standards may find that there is a great deal of guidance, or very little guidance, depending on the relevant field and the timing of the creditor's inquiry. The CFPB is a relatively new organization and not all subject matters have governing regulations or guiding reference material to access. This section will address ways for creditors to attempt comply with the CFPB, both when there is applicable regulations, and also where the CFPB requirements are not available.

There are two primary types of situations for creditors. First, the more clear-cut situation is one in which the CFPB has initiated an action against the creditor. In these cases, the CFPB has the Office of Administrative Adjudication (OAA), which is an independent judicial office within the CFPB. Administrative Law Judges in the OAA conduct hearings and decide on formal charges and actions initiated by the Bureau, which they state are based on alleged violations of federal statutes and the regulations that carry out the statutes' mandates. If a creditor has been subject to such a hearing, it is typical that an Order will stem from that hearing. The creditor will then be responsible to follow the terms of the Order.

Second, for creditors who do not have an Order from the CFPB, it may be more complicated to attempt to comply with the CFPB requirements. However, the CFPB website has resources to assist creditors (<http://www.consumerfinance.gov/>) :

### 1. Supervision and Examination Manual

According to the website, the Manual is the guide that the examiners use to oversee companies that provide consumer financial products and services. The Manual "describes how the CFPB supervises and examines these providers and give [its] examiners direction on how to determine if companies are complying with consumer financial protection laws." The Manual is 924 pages and is updated frequently.

Please note the disclaimer: *"This examination manual provides internal guidance to supervisory staff of the CFPB. It does not bind the CFPB and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner. While every effort has been made to ensure accuracy, examination procedures should not be relied on as a legal reference."*

### 2. Supervisory Highlights

Another section of the website is the Supervisory Highlights, in which the CFPB periodically appraises the public and the financial services industry about its examination program, including the concerns that it finds during the course of its work, and the remedies that it obtains for consumers. The Supervisory Highlights have no reference to a particular institution, but are guidelines for all institutions regarding the kinds of activities that should be carefully scrutinized for compliance with the law.

### **3. Guidance Documents**

The website contains a section that provides guidance bulletins and compliance related supplements for CFPB-issued rules.

### **4. Notice and Comment period**

The website contains a section for the Consumer Bureau's Federal Register notices, and gives a period for public comment. The closed notices list the public comments received in response to previous notices.

### **5. Regulations**

The website contains access to the regulations that are already in effect. Some areas have clear regulations, while other areas are not yet developed.

### **6. Regulatory Implementation**

The CFPB website lists some of the regulatory implementations:

**Title XIV Rules:** As a result of Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB issued a number of mortgage-related rules: Ability to Repay/Qualified Mortgages, HOEPA, Loan Originator Compensation, Servicing, and more.

**TILA-RESPA integrated disclosure rule:** The new Loan Estimate and Closing Disclosure requirements will combine two existing disclosure regimes under TILA and RESPA.

**Remittance Transfer Rule:** The CFPB amended Regulation E, which implements the Electronic Fund Transfer Act and the official interpretation to the regulation.

### **7. Administrative Adjudication**

The CFPB website contains a section that lists the consent orders and stipulations it has entered into in various administrative proceedings. In areas of law and industry in which there is little guidance in the above sections, it is prudent to examine consent orders that stem from the adjudication of actions brought by the CFPB against like-situated creditors.

### **8. Amicus program**

The CFPB also files amicus, or friend-of-the-court, briefs in court cases concerning the federal consumer financial protection laws. These amicus briefs provide the courts with the views of the CFPB on significant consumer financial protection issues. Similar to the last section, these briefs may be used to gain guidance into the position of the CFPB on certain matters.