

FORECLOSURE REPORT

LATE CHARGES AND THE PROGRESS OF A FORECLOSURE

By Bruce J. Bergman

It can sometimes be astounding how the apparent "little things" will have a real monetary effect upon a mortgage investment once it is in the foreclosure process. Of course, the issue has more application to mortgage servicers, mortgage originators who occasionally must buy back a loan, and anyone else who holds mortgage paper—but the observation doesn't diminish the importance of the concept.

So, when a loan goes into default and the foreclosure remedy is chosen, no one needs to be told that moving the case along as swiftly as possible is as current an imperative as there could be. Potential roadblocks to even the best efforts, however, are some referees, court clerks and courts. In turn, the subject of late charges



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has recently been a source of delay and avoiding that hitch is the message here.

First, the ultimate suggestion (to be followed by an explanation): late charges should be accurately and completely computed at the inception and be sent to counsel with the other figures at the beginning of the case.

Now some quick principles to highlight the significance:

- Late charges usually (but not always) don't amount to much. But if they are to be collected, they must be requested and pursued.
- Despite some confusion, late charges are collectible in New York.
- Late charges can only be computed up to acceleration—not beyond. (After all, if you declared due the entire balance, no

monthly installment can be late because you don't want any monthly payments.) Now, here's the problem. The file is sent to counsel for foreclosure. One of the sums due is late charges, stated in the transmittal papers to be (for example) \$180, hardly a consequential sum in this instance. The complaint in the case dutifully recites late charges due at \$180.

The case eventually proceeds to referee's computation and when counsel requests figures from lender or servicer, the late charge is shown at \$310. (The reason could be either that additional or forgotten late charges were computed, or, late charges after acceleration were calculated.) This presents two problems:

- (1) Can you even get late charges in an amount greater than was pleaded in the complaint? (This is a gray area and although you can for sure if the complaint is amended, such a motion is much too time consuming to be worth the effort.)
- (2) Counsel now must clear up this discrepancy with the servicer and explain it to the referee who might otherwise be confused. This augurs unnecessary effort and delay.

Even assuming neither problem nor delay with the referee, what has happened on occasion is that when the court (the court clerks usually) review the computation as part of the judgment, they raise the discrepancy as an issue and refuse to process the judgment (or even reject it) absent explanation. Now the extra time readily becomes a problem—all over an amount which isn't worth the detainment!

So, when late charges are initially computed by lender or servicer, it helps—more than one might imagine—to have it clean and accurate at the outset. □

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NON-CONFORMING REPORT

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expand to new areas. You anticipate growth in the number of Web Sites to attract consumers and the continued sophistication of automated underwriting and computerized mortgage scoring.

6) Hot Products - More products to meet a diversity of need will be critical to success in 1997. Among those will be high LTV products and products for multi-family and small commercial properties. Watch for lenders adjusting their product mixes as rising delinquencies cause them to tighten credit guidelines in C minus and D credit areas.

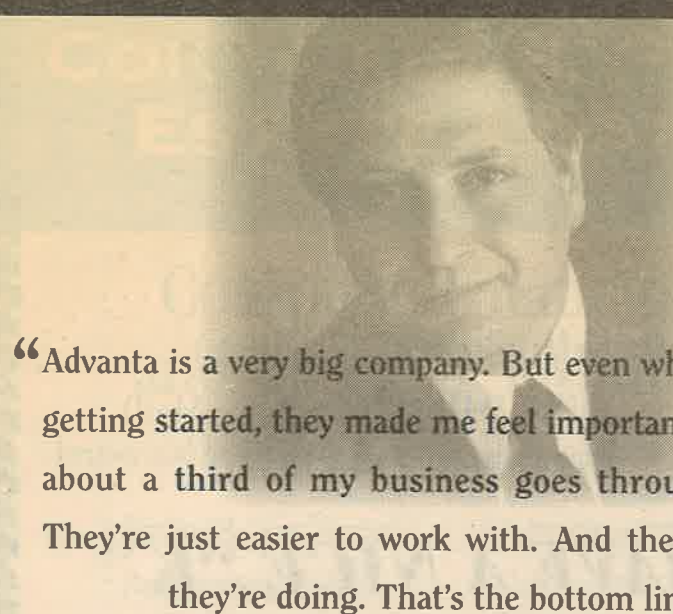
7) A Problem on the Horizon My optimism for the subprime lending market is tempered with one concern we foresee a substantial rise in delinquencies by late 1997 and 1998. This will cause major subprime lenders to experience a material jump in problem assets and charge-offs. This could lead to future problems in the asset-backed securitization market. There already are players out there preparing to make the most of this kind of development."

To some extent, the success of my company has mirrored the growth of the industry, but we expect 1997 to be a defining year for all of us in subprime lending. From now, you can expect to see a very different industry than the one you see today. In the meantime, let me wish all of the readers of this column a happy, profitable and non-conforming New Year.

Joe Amoroso is senior vice president of Fairbank Mortgage Corporation and its New York affiliate, Colony Mortgage Bankers. The companies provide first and second mortgages in Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia and the Washington, DC area. They will soon be expanding to other states in the Midwest and South.

Send your questions about non-conforming lending, to Joe at: Fairbank Mortgage, 61 Mattatuck Heights Rd., Waterbury, CT 06707. Or call (800) 346-5626. We will print common questions and their answers in upcoming columns.

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