

Resources

"The Home Affordable Modification Program and A New Wave of Consumer Finance Litigation"

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Member and leader of Dykema's Financial Services Litigation Practice Group, Tom Schehr, and financial services litigation associate, Matthew Mitchell, were published in the June 2012 edition of the *Michigan Bar Journal*. The article, "The Home Affordable Modification Program and A New Wave of Consumer Finance Litigation," discusses the nature of the Home Affordable Modification Program (HAMP), examines recent trends in HAMP litigation, and identifies significant HAMP cases from federal courts sitting in Michigan.

In the article, Schehr and Mitchell discuss the stated purpose of HAMP to financially assist homeowners by "encouraging modification of residential loans and avoid foreclosure where possible." The authors stress that HAMP is an administrative program—not a federal statute or regulation—and examine case law from around the country where courts have held that HAMP does not create a private cause of action in favor of borrowers. However, despite the near-universal rejection of borrowers' HAMP-based litigation theories, borrowers have not been deterred and continue to file HAMP-related lawsuits targeting mortgage servicers.

As identified by Schehr and Mitchell, some particular theories borrowers assert in these lawsuits include "violation of HAMP guidelines," contract claims, tort-based claims, Equal Credit Opportunity Act claims, and constitutional challenges. The authors observe that HAMP-related litigation is likely to continue while the program is in effect, particularly in Michigan where homeowners were hit especially hard by turbulent economic times and the unprecedented crash of the U.S. real estate market. Schehr and Mitchell comment that HAMP's effectiveness has been modest because HAMP guidelines assume that borrowers are only a few dollars away from being able to make their mortgage payments. This premise often conflicts with the reality that many borrowers have suffered a dramatic loss in income—something HAMP is ill equipped to address.

The authors conclude that "suits by unqualified borrowers solely to stall the foreclosure process discourage mortgage servicers [from entering into loan modification agreements with qualified borrowers] and thwart the intent of the program."

Click here to access a complete copy of "The Home Affordable Modification Program and A New Wave of Consumer Finance Litigation."

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