

# **Mortgage Servicing Fraud is REAL!**

## **Avoid being cheated out of your home before it's too late!**

Document version ~~1.5~~  
**1.9 1.7**

**DO IT THE WAY THEY DO IT: SUE FIRST, ASK QUESTIONS LATER!**

The mortgage servicing fraud scam is real. I personally have lived and litigated it in court from beginning to end. Your mortgage servicer will take thousands of dollars from you, lose or misapply your payments, and then kick you and your family right out of your home. I know that this scam is real because I have lived through it. I also know that the scam is real because in the course of my lawsuit against the mortgage servicer and their debt collector, I have read a lawsuit against the debt collector where the owners of the debt collection firm were sued by a former mortgage servicer employee that they promised an ownership interest in their business if she would teach them how to setup the "high-volume foreclosure" scam. The same debt collector also saw fit to brag on his company's own website that he "specialized in foreclosures and evictions... using specially-trained paralegals and computer technology." Their website also bragged that they would provide the mortgage servicer with a monthly status report on the number of foreclosures and evictions they had done for them.

### The scam from beginning to end...

I think this scam has grown out of the "real estate boom" that we're in. People are buying 3 or 4 houses at a time and getting the mortgages to go along with them. The homeowners buy the homes, get the mortgages, and the mortgage servicing companies are there waiting to get the servicing rights, skim fees off the top, and then eventually move in with foreclosures and forbearance agreements. The real estate broker gets paid, the mortgage processor gets paid, the lender gets paid, the mortgage servicer gets paid, the debt collector gets paid, and the consumer loses all their money and eventually their home.

The economics of this scam break down into two parts: the servicing part and the legal cost part.

- The servicing part of the scam is very straightforward. The servicer is buying your Note from the lender or previous servicer with their credit, but taking your real cash to make their payments. Nothing or next to nothing from each of your mortgage payments is going to your principal balance. So the mortgage servicer is just plain pocketing all that money. The mortgage servicer is pocketing the entire payment plus whatever other fees they can get you to pay. Over the course of five years as a customer, you'll have paid none of your principal, plus then they find a way to sell your home all at once for complete, immediate cash at a foreclosure sale auction. The mortgage servicer then recycles that money into their own business cash flow and for buying servicing rights for another loan and pulling the same scam on someone else. There is no risk at all for the servicer.
- The legal cost part of the scam is when you as a customer fight them in court to keep your house. You'll hear a lot of people say that these guys have infinite legal resources. The bottom-line is that they do have lawyers and debt collector that process so many of these foreclosures that they have the written forms, including the lawsuit forms, all prepared and do many, many of these foreclosures at once. The way it usually works, I believe, is that these debt collectors get paid by the debt they collect (by adding their own fees to the reinstatement amount) or by the foreclosure. If the debt collector doesn't get the homeowner to pay their fees or foreclose, then they don't get paid. If you can get the debt collector sued and into court, you'll hear a lot about how they want you to pay their fees. The bottom-line is that you can't get blood from a stone. Even if the debt collector could win the lawsuit, most homeowners don't have anything of value to satisfy a judgment and pay the debt collector anyway. As such, all through litigation the mortgage servicer ends up paying the debt collector themselves. Basic math shows that the more litigation costs the mortgage servicer, the less worthwhile it is to continue foreclosure proceedings and litigation against the homeowner.

**REMEMBER:** These guys pull this scam on many people every day. As a consumer, you only deal with it once. These guys make their money by pulling the scams as quick as possible. The goal is to get you foreclosed or to sign a forbearance agreement as quickly as possible. They want it resolved as quickly as possible. The homeowner survives and prevails by making the lawsuit and the process take as much time as it needs to be to get done properly and put the mortgage servicer and debt collector in their place. The house belongs to you, not them. They just made a written promise to finance the money to pay for the house. They break the promise when they try to sell your house.

### Scam 0 – You can't get away from us

Scam 0 is what sets up the scam. Your loan gets transferred or sold from the lender or some sort of “trustee” or a previous servicer. In addition, somehow there's also some other ‘attorney in fact’ company or trustee involved. The actual paperwork they would provide to the court if you were to sue them would say something like “<homeowner> executed a Note and a Deed of Trust for the benefit of <original lender>. The Note and Deed were assigned to <some company you've never heard of> as Trustee. <Current servicer> is the current servicer and attorney in fact for <Trustee>.” There's an old magic trick where someone puts a ball under one of three cups and then moves the cups around. This is the legal equivalent of that. The goal is to keep you from knowing who the hell to sue. It's also to set everything up where none of the companies has to take responsibility. It's also to keep you from getting away from them. Once your loan is obtained by the servicer, you only have three ways to get away from them: just plain let them foreclose on your house, refinance (and pay all the \$5,000 or \$10,000 refinancing fees), or sue them. There's no other way out. While you “belong” to them during their servicing, they can charge you whatever fees they feel like and you're in no position to argue.

### Scam 1 – Lose or misapply payments to charge fees and interest-on-top-of-the fees

First, the mortgage servicer will lose or misapply your payments or put them in an escrow. They will then charge you fees and interest-on-top-of-the-fees for the misapplied funds.

### Scam 2 – Fabricate a default to sell home or talk homeowner into forbearance

After losing or misapplying your payments, the mortgage servicer will fabricate a default. The default is intended to either sell your home and get all their money at once, or talk the homeowner into paying money they don't owe for fees and a forbearance agreement. **BE CAREFUL: THE FORBEARANCE AGREEMENT WAIVES YOUR RIGHT TO FUTURE NOTICES OF INTENT TO SELL YOUR HOME.**

### Scam 3 – Harass the homeowner, scare them with foreclosure, and don't follow legal guidelines for notices

Unable to talk the homeowner into paying money they don't owe or sign the forbearance agreement, the mortgage servicer hands off the debt to a third-party debt collector, whose job it is to harass and threaten foreclosure of the home. The goal is to provide as little notice as possible before foreclosure of the home so that the homeowner can't get his paperwork ready or file suit and they can just sell the home. The mortgage servicer and the debt collector have no intention of stopping during a dispute. Another goal is to keep leading the homeowner on long enough to prevent him from filing suit, getting a restraining order, or filing for bankruptcy. The goal is to make selling the homeowner's home as quick and efficient and “clean” as possible. As soon as it's sold, they've won and gotten their money. The homeowner can only argue a wrongful foreclosure after-the-fact. At that point, it's too late and the debt collector is moving in with procedures to get the homeowner and his family out of there and eventually the homeowner just plain gives up fighting them because they've already lost their home. Keep all the envelopes and letters you receive! Those postmark dates on the envelopes are VERY important. In Texas, the law (Texas Property Code section 51.002) requires the mortgage servicer to give the homeowner 20 days notice BEFORE posting public notice of intent to sell. The public notice of intent to sell must also be posted 21 days BEFORE the sell. So all in all, you legally have at least 41 days to find a way to deal with this situation.

### Scam 4 – Make homeowner think he has to keep making payments after filing suit

If the homeowner can get a restraining order or a preliminary injunction, the debt collector will send a litigator that won't let the homeowner get a word in edgewise. The main goal is to prevent the homeowner from getting a restraining order/injunction. The secondary goal if they can't get the tro/injunction is to make the homeowner feel obligated to keep making payments (the debt collectors and mortgage servicers have a name for this. The term is the “post-petition payments”). **THE HOMEOWNER DOES NOT HAVE TO KEEP MAKING PAYMENTS. THE GOAL WITH MAKING THE HOMEOWNER CONTINUE TO MAKE PAYMENTS IS TO FORCE THE HOMEOWNER TO GIVE UP HIS RIGHT TO SUE FOR TOTAL BREACH OF CONTRACT.**

The court has its own form of a bank called the “registry of the court”. The homeowner should argue to the court to NOT make payments at all until a trial can be held. If the homeowner can't convince the court for that, the homeowner should argue to place ALL subsequent payments until trial into the court's registry. To preserve your rights to sue the mortgage servicer for total breach, the homeowner MUST convince the court to either disregard payments until trial or put all payments into the registry of the court.

### Scam 5 – Create second default by making homeowner pay after filing suit

By making the homeowner continue to make payments even if there's a tro/injunction, the mortgage servicer and their debt collector can create a second default that trivializes the previous default. The mortgage servicer and their debt collector can put a foreclosure on the homeowner's credit report and mess up the homeowner's credit so that there's a second default even after the tro/injunction. Putting the foreclosure on the homeowner's credit also virtually guarantees that the homeowner can't do any sort of refinancing during this time. The mortgage servicer can then say "well, he's fallen behind again. Please dissolve the injunction and let us sell his home." Alternatively, the mortgage servicer or their "attorney" (the third-party debt collector) will tell the homeowner that they'll be thrown in jail or held in contempt of court for refusing to pay the mortgage company more money and try and convince the homeowner that they're "stealing" use of the home. Check your state laws. I would guess in ALL states, "debtor's prisons" are illegal. You can't be thrown in jail for refusing to pay a debt (except child support, which isn't actually considered a debt but an obligation). In Texas, Texas Constitution Article 1, Section 18 states specifically, "No person shall ever be imprisoned for debt." **REMEMBER: YOUR MORTGAGE IS NOT A RENTAL AGREEMENT. IT'S A PROMISE TO FINANCE THE PURCHASE OF YOUR HOME.**

### Scam 6 – Make homeowner think filing for bankruptcy gives up right to sue

If the homeowner files for bankruptcy during the injunction period, the mortgage servicer will argue for judicial estoppel to try and get out of the lawsuit and the injunction.

### Scam 7 – Debt collector's get-out-quick scam

The third-party debt collector and its officers are used to being sued constantly. As soon as the homeowner files suit, the debt collector will follow-up with a motion to dismiss the claims against them and get out of the lawsuit. The goal for the debt collector is to get out of the lawsuit permanently (with a "dismissal with prejudice") before the homeowner can prepare a response or know what the debt collector is doing. The debt collector will say that your issues are with the mortgage servicer and not them. That is wrong. You're entitled to sue everyone and every company that had involvement in selling your house. They'll say "we're the trustees and not liable." That's not true. Don't let them out of the lawsuit.

### Scam 8 – Make the homeowner think its his own fault

The actual lawsuit scam itself is to hope that the homeowner doesn't have any receipts or paperwork. "Sub-prime" homeowners are easy targets because they're not usually prepared or organized to produce paperwork fast enough (if at all). If the homeowner can prove the payments and can get the mortgage servicer to the trial, the goal is to show the jury (or judge, in bench trial) that the homeowner is at fault. If the homeowner can prove liability, the goal is to convince the jury that the homeowner is only entitled to applying the payments that the mortgage company should have applied in the first place. The truth is that the mortgage servicer broke the contract and tried to sell the plaintiff's home. When the mortgage servicer broke the contract, they stopped being entitled to more money. They try to sell the home to get their money. When they get caught and restrained before they get away with it, they try to still get more money from the homeowner as a backup plan or tell the homeowner that he can refinance. Trying to get more money from the homeowner or get the homeowner to refinance doesn't hold the mortgage servicer liable. It just insures that they get their money one way or another.

The mortgage servicer and their debt collector prey on the fears of the homeowner by using the lien that they have on the homeowner's house as "ransom" for more money. Most people can't afford to get a jury trial or adequate legal representation, so the homeowner gives in to the ransom even though at this point the mortgage servicer and debt collector are only entitled to NOTHING from the homeowner. The legal terms for this are "duress of property" and "unjust enrichment."

### Scam 9 – Make the homeowner think he has to post a bond to sue them

If the homeowner files suit, the mortgage servicer and their debt collector will want the homeowner to post a bond to maintain the suit. Texas law (Texas Civil Practice & Remedies Code section 65.041 & 65.042) specifically prevents the courts from making a homeowner post a bond in a lawsuit to prevent foreclosure of their home but the debt collector knows that most homeowners don't know that. Not being able to post the bond is another way that the servicer/debt collector can strong-arm the homeowner out of the lawsuit.

### Scam 10 – Make the homeowner think they have to deal with them

One of the debt collector's jobs is to draw the homeowner into dealing with them. They have to draw the homeowner into "working with" them to talk them into money or doing what they want. The entire time, the debt collector is planning on selling the consumer's home or working towards a forbearance agreement.

The goal in this scam is specifically to get the homeowner to feel like they have to answer to the debt collector and mortgage servicer and convince the homeowner that they owe the debt collector and mortgage servicer something. The other goal is to convince the homeowner that they need to work directly with the debt collector or mortgage servicer and that they need to answer to the servicer/collector and not go to the courts or deal with the courts. **DON'T DEAL WITH THESE DEBT COLLECTORS OR SERVICERS AT ALL COSTS. GO STRAIGHT TO THE COURT AND FILE SUIT AGAINST EVERYONE INVOLVED BEFORE YOUR HOME IS SOLD. GET A RESTRAINING ORDER. REFUSE TO SIGN ANYTHING THE DEBT COLLECTOR GIVES YOU TO SIGN.**

### Scam 11 – Make debt collector appear legitimate

The debt collectors hired by the mortgage servicer may contain attorneys to appear legitimate. The debt collector may even be owned by an attorney. These attorneys are shady characters that are the bottom of the barrel attorneys that got licensed simply so that they could find a way to rip people off and con them by telling them that they're lawyers. Check your state laws. Texas law (Texas Finance Code 392.101) requires debt collectors to have a bond on file with the secretary of state to engage in third-party debt collection. The secretary of state will provide any consumer with a "certificate of no record" if the debt collector does not have the bond on file. If the debt collector doesn't have the bond on file, then they have no right to be engaging in debt collection in the first place. If the debt collector is soliciting money from you and they don't have that bond on file, then they're engaging in illegal debt collection activity. Don't pay them anything and file a complaint with the attorney general's office.

In Texas, we have the Texas Deceptive Trade Practices Act. It's designed to protect consumers from false, misleading, and deceptive businesses. If a debt collector does not have a bond on file with the state to engage in debt collection, then that is specifically defined by law (Texas Business & Commerce Code section 17.46(b)(24)) as "failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed." Would you pay the debt collector if you knew they had no right to solicit money from you? Absolutely not.

### Scam 12 – Make the homeowner think he has to pay the legal fees

When the mortgage servicer and the debt collector get sued, they have a legal fees scam they use to con the homeowner into thinking the homeowner can't afford to fight the lawsuit. The mortgage servicer and debt collector will add a paragraph in every one of their filings with the court that asks the court to award them some giant attorney fee (like \$500 or \$700) for the filing of that pleading. No court in their right mind would ever award the attorney any money for filing a routine pleading, let alone a giant \$500 or \$700 fee for filing a pleading. But there's no law against requesting it, and the fee is only requested for the purpose of harassing the homeowner and scaring them into thinking they might have to pay it. Also, as a matter of law, the "winner" to a lawsuit doesn't pay the loser's fees. It's the opposite: the loser pays the winner's fees, but even then only if the court awards the winner the fees.

### Scam 13 – Prior breaches scam

When you sue a mortgage servicer or debt collector, they will argue that your prior breaches still allow them to sell your house. As a matter of law, it is a well-established principal of contract law that when one party to a contract honors a contract in any way, such as accepting your money as payment on the contract, they waive all breaches prior to that as a defense for breaking the contract later. In short, whenever the mortgage servicer accepts your money, they give up the right to sue or break the contract for anything before that moment.

### Scam 14 – Foreclosure bailout scam

When confronted with the scam, the mortgage servicer companies will say that they “saved thousands of homes from being foreclosed last year” or words to that effect. The truth is that the servicer companies pay good money to acquire those near-foreclosure loans. The loans are specifically called “foreclosure bailout” loans and are designed to get a loan from someone that’s already in default and that the servicer can almost be certain they can find a way to sell anyway just several months after they acquire it. The mortgage servicer companies may be “saving thousands of homes from foreclosure” each year, but they’re turning around and then foreclosing on those same homes just several months later.

### Scam 15 – Settlement offer scam

Once the debt is in the hands of the debt collector, the mortgage company just stops caring about it. The mortgage servicer just sits there and waits for the debt collector to come back with some money from them. If you sue the mortgage servicer and their debt collector, don’t think that the debt collector is taking your settlement offers to the mortgage servicer. Almost certainly, they are not communicating with the mortgage servicer at all about your case.

### Miscellaneous scams

At every point in the scam, the mortgage servicer and their debt collector are going to use psychological tricks to con the homeowner and even the courts. The debt collector will lie right to the judge if he can get away with it. They’ll tell the homeowner that the case will never make it to trial. They’ll tell the homeowner that they’re going to get people to go into court and lie. They’ll tell the homeowner that he can never win. They’ll tell the homeowner that it’s not a big deal and to just be nice and drop the lawsuit. They’ll con you into thinking you have to pay their legal fees. They’ll say things like “boy, these legal fees sure are adding up.” They’ll tell you that they’ll do multiple depositions of you and have video cameras on you the entire time. They’ll tell you they can find a way to sell your house anyway.

### Important: Always sue in district court, NOT federal court.

In many states, including Texas, disputes over land are handled in district court, not county civil court. Although there are federal laws including HUD and RESPA laws concerning land, your chances of being taken seriously or even heard at all in federal court are slim. If you want to be taken seriously, know your state laws and file your lawsuit in your local district court. Don’t bring federal issues, federal laws, or federal statutes into your lawsuit or else you’ll end up in federal court even if you started in district court. Limit your lawsuit to only arguing violations of your state’s laws.

### Important: Always request a jury trial.

Also, and this is VERY important, ALWAYS request a jury trial. In Texas, you can get a jury trial just by filing a “jury demand” and paying a \$30.00 fee to the district clerk. This has to be done more than 30 days before trial. If you pay a jury fee, there will be other homeowners and other people on that jury that totally don’t like debt collectors or the thought of being conned out of their houses. If you don’t request a jury trial, you’ll end up with a “trial by judge” (a “bench trial” it’s also called) where the judge does “findings of fact” and you’ll be out-lawyered by the mortgage company’s lawyers. Don’t be a victim of it. Pay the jury fee and get the jury trial.

### Important: File a lis pendens.

A lis pendens is a form you can file immediately after you file your lawsuit against the mortgage servicing company. You don’t need the court’s permission or anybody’s permission to file the lis pendens. It just can’t be filed before you file your lawsuit. The lis pendens is a form that specifically means “litigation pending”. You file a lis pendens with your county clerk. It has the lawsuit’s filing number, the names of everyone involved in the lawsuit, the name of the county and court the lawsuit is in, and most importantly, a full legal description of your legal property. Include ALL descriptions of your property, including the lot number and the subdivision name. The purpose of the lis pendens is for anyone that does any research on the property to know that the actual ownership of the Title is involved in a lawsuit. You need to file a lis pendens so that if the mortgage servicer or their debt collector tries to sell your house, anyone thinking of buying it will seriously reconsider it before making any sort of offer. Nobody wants to buy something, particularly a house, which they may have to give back.