

Loan assignments

A. California State Law (AB 489) limits the liability of assignees of covered high cost loans. The remedies of AB 489 are limited to damages, with no right to rescind the loan. To be effective, an anti-predatory lending ordinance in Los Angeles must include a provision allowing borrowers to rescind loans containing unlawful provisions, even as against assignees. (Letter from Ben Diehl, Bet Tzedek Legal Services, 5/10/02.)

B. According to *Held Up In Due Course: Predatory Lending, Securitization and the Holder in Due Course Doctrine*, (Kurt Eggert, Creighton Law Review, Vol 35, pp. 606-607, in West 2002, p.40) assignee liability is important. With the rapid growth in subprime and predatory lending and the securitization of subprime loans, the subprime industry greatly resembles the consumer credit industry of the 1970s before the FTC [Federal Trade Commission] eliminated the holder in due course doctrine for that industry through its regulation. There is a similar victimization of consumers by fly-by-night dealers who immediately assign their credit instruments to other business entities. Now, instead of home improvement contractors fleecing customers with shoddy siding, then selling their credit instruments to finance companies, mortgage brokers are tricking borrowers into signing overpriced and inappropriate loans, then selling those loans to securitizers...Like their dishonest predecessors, they are promising goods or services that are either never delivered or are delivered in a way contrary to the representations made to the borrower. And they are employing high pressure sales tactics, misrepresentations, and outright fraud...the core problem...is that the buyers of predatory loans bear too little risk of loss for fraud and misrepresentation committed by the originators of those mortgages. The surest solution to the problem of predatory lending is to force the markets that fund subprime lenders to police those lenders, and the surest way to force this private policing effort is to ensure that the buyers of predatory loans bear any risk of loss associated with the sharp practices by the lender, rather than having that loss borne by the borrower. Actions by regulatory agencies or prosecutorial bodies, though helpful, are too slow, as it can take months if not years before a regulatory body even notices a mortgage broker's deceptive practices...Because the best way to encourage the purchasers of loans to cut off the predatory lender's supply of capital is to force those purchasers to bear the risk of the fraudulent or misleading practices of that lender, the problem of predatory lending calls for the elimination of the holder in due course doctrine in all loans secured by residences of the borrowers.

C. "The lender's ability to sell loans reduces the incentive to ensure that the homeowner can afford the payments of the loan." (*Home Loan Protection Act: A Model State Statute*, p. 7.)

D. Until the secondary market exercises discipline by performing due diligence to weed out the purchase and securitization of predatory loans, all lenders, but especially predatory lenders, will have little incentive to ensure they are making loans that benefit their borrowers and that will likely be repaid. (*Stolen Wealth: Inequities in California's Subprime Mortgage Market*, p. 10.)

E. The [AARP] Model Act includes a provision of liability of assignees and other holders of high-cost loans, which will ensure that borrowers with high-cost loans can raise all claims regarding the loan against the original lender, the broker and any entity currently holding the note. It prevents lenders from avoiding liability for their bad acts by selling the loan, and will reduce significantly the amount of credit that is available to lenders who are not willing to ensure that loans they finance are made in accordance with the law. This language is similar to the extended liability language in HOEPA, which requires that all claims a borrower may have can be brought against the holder of the loan. Laws in the District of Columbia and Massachusetts extend liability to the assignee or purchasee of the loan. Without an extended liability provision in the Model Act, a number of the other provisions ultimately are unenforceable in many situations. (*Home Loan Protection Act: A Model State Statute*, p. 27.)

F. Barbara Jones, Staff Attorney in the Consumer Unit of the Legal Aid Foundation of Los Angeles (LAFLA) testified to the problem of the current lack of assignee liability. She recommends that a local ordinance make assignees liable for any violation of law that the original predatory lender committed. The ordinance should also require the predatory lenders, or the person/business who sells the predatory loan, to advise any purchaser of a predatory loan that they will be held liable for all claims and defenses that a borrower could assert against the original creditor. (H&CD Hearing, 4/17/02, p. 28 line 13 and p. 29, lines 1-6.)

G. Barbara Zeidman, of Fannie Mae, testified that Fannie Mae has very punitive practices for their lenders who may accidentally have sold them a predatory loan. They are required by law to review 3% of their loans, and they actually review 10% of their loans and all of the HUD-1 forms. When they find loans that do not meet their standards, for example those that have an excess of 5% fees, they require the lender to repurchase that loan. She suggested that asking lenders to do a more thorough review is a first step in addressing this issue. (H&CD Hearing, 4/17/02, p. 30, lines 12-20 and lines 22-23.)

H. Peter Kuhns testified that ACORN advocates for assignee liability (H&CD Hearing, 4/17/02, p. 39, line 4.)

I. Assignees are often able to evade liability for fraudulent misconduct in the making of a loan (Bet Tzedek letter, 5/10/02, p. 2.)

J. Lez Trujillo, Director of Housing Counseling for ACORN Housing, testified that state law does not cover assignee liability – if the loan is sold, the new company is not held to the restrictions. (H&CD Hearing, 9/12/02, p. 39, lines 16-20 and p. 40, lines 20-23.)