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THE QUESTION FACING MORTGAGE SERVING IS CLEAR:

Why would anyone bother to do this anymore?

THE STATE OF SERVICING UNDER CRUSHING REGULATIONS

IMAGINE PLAYING a sport where every 20 minutes or so, the referees, who don't really understand the game to begin with, change the rules, bench some of your teammates and award points to the other side just for the hell of it, based on whatever nonsense complaints they're hearing from the stands.

Now imagine that instead of a sport, it's your profession, the business you've put your heart and soul into, oh, and the dozens — maybe hundreds — of jobs you've created.

Welcome to mortgage servicing in 2015, because that was the attitude of a lot of people at the MBA Servicing Conference at the Gaylord Texan in February.

The Gaylord Texan, a sprawling complex established to help conference-goers pretend they live in opulence, was likewise frozen on the outside. It's appropriate that the first day of the conference, Texas got its first big bout of freezing weather. It's hard to come up with a better metaphor for the state of the industry.

Ice and snow battered North Texas during the panels, and the Mortgage Bankers Association, perhaps in fear anyone would think otherwise, asked HousingWire to be sure to include the weather, and the MBA members brave enough to bear it, in our coverage. We did, but only because it was true.

Mortgage servicing itself is a frozen industry — there was no sense of urgency inside the Gaylord Texan, to be sure. And it's dry on the inside. Literally, and figuratively.

Mortgage service professionals attending panels sat with eyes pulled back, the skin on hands cracked for lack of mois-

ture. Speakers' mouths were cottoned, bottles of water drained down. And the subject matter matched appropriately.

"Meh, um (eyes rolled)," responded one attendee when asked how he found the panels. The most attended event at the Gaylord Texan proved to be the line to buy coffee at The Cocoa Bean café.

Let's head back to the sports metaphor. We sat in a session (someone has to!) listening to Jean Healey, senior counsel for enforcement strategy, Northeast region of the Consumer Financial Protection Bureau, in a session laughingly titled "What to Expect from Enforcement Actions."

As if the CFPB, with its arbitrary enforcement and surface-level understanding of any industry, could possibly provide any kind of consistent, predictable behavior for an industry as complex as mortgage servicing.

And as Healey droned on about the Flagstar decision from two years ago, which supposedly established some kind of baseline — all we could think of was that guy from high school who 10 years later keeps talking about his catch in the big game.

Maria Moskver, chief compliance officer and general counsel for the Walz Group, put it best when she said that mortgage servicers face a world where state and federal regulations are continuing to evolve half a decade after Dodd-Frank was enacted.

"The CFPB is continuing to refine regulations," Moskver said. "There are amendments to the rule and a constantly shifting landscape in terms of complying with them."

Normally, lawyers and corporate counsels love regulations in the sense that it's job security. Not the ones we talked to — they

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said they'd find other things to bill for, they just wish their clients weren't being buried under mounds of regulations written by people who don't understand the mortgage industry to begin with.

This was something we heard from just about everyone we spoke to at the conference. We admit it plays to our own biases, but this was the sounding at every depth.

The regulations aren't just burying servicers — they are burying consumers. Consider the mortgage disclosure avalanche. In theory, the more information a consumer has, the better.

"I got news for you. Servicing was already subject to hundreds of regulations before the 2000s. Those regulations... and the unintended consequences that inevitably followed are what caused the crash."

— commenter 'Austrian'

But be honest — you've never even read the Apple licensing agreement you click on every time you update your software. The mortgage disclosure forms that are mandated today — people are about as likely to read those as Kanye is likely to read a book.

These regulations were written based on technology that was old a decade ago. (It really takes all that time and paperwork to verify income? You think so?)

This whole thing is like handing complex machinery over to monkeys. It's like watching Hansel look for files inside the computer.

These are laws written by law school graduates who don't understand business in general, or this business in particular.

Heck, the servicer lawyers who specialize in this business don't understand it completely. How well can some lawyer with no private-sector experience who couldn't find gainful employment in the private sector understand it?

These backwards rules are crafted where everything not forbidden is mandatory and everything not mandatory is forbidden. The laws are designed to protect the lowest common denominator, the kind of people who are the reason there are tags on hair dryers warning you not to use it while in the shower. No wonder the disclosure forms alone are as long as they are.

No one is saying we need *laissez-faire* in mortgage servicing. But there's no reason it has to be like this.

You need simple rules that prevent the worst kind of behavior. You need a system where consumers can bring grievances, and every grievance doesn't have to turn into a prohibition or statute. You need simple disclosure that people actually read.

That's not what we have now. Servicers — as well as lenders and, come to think of it, every other business in operation, shouldn't have to act by permission. They should only be sanctioned when they violate a clear set of basic rules.

A company shouldn't be presumed guilty until proven innocent. This micromanaging by people who don't understand the business is what's going to kill it.

What will you have then? Servicing will have to be taken over by the same people who run the post office.

There's no political will to fix this in Congress. It's not a sexy issue and any attempt to impose any sort of reason on the system is met with either pearl clutching about deregulation or moves to game the system for one interest or another.

Moskver says servicers need to be more proactive. But how much more does the industry have to give?

The regulatory bureaucracy is like Lennie Small in "Of Mice and Men" — a well-meaning giant, but the attic ain't been used in years, and you can't keep handing him rabbits.

David Vida of LenderLive sat in a roundtable closed to the press. For the record, this practice still seems old-fashioned. Closed to the press? We are just going to ask someone on the inside to write about it.

Vida went off:

"If past industry conferences are any indication, there'll be plenty of complaining about how unreasonable these demands are, given the current compensation levels; and how new regulations are focused on past issues that grew out of a once-in-a-lifetime event, rather than the kinds of loans we'll be servicing today.

What there probably won't be, however, are lots of new solutions to these problems. The obvious reason is that these challenges are hard to solve; but another is that we, as an industry, seemed to have stopped trying.

All we're focused on is: What do the regulators want? (Don't get me wrong. We should be focused on that, just not exclusively.)

Unfortunately, what the regulators and the GSEs want is perfection — zero defects. But realistically, servicers don't get paid nearly enough to produce a zero-defect product, and borrowers aren't widgets: lined up all nice and neatly on an assembly line.

Today's more-educated, more-skeptical customers definitely expect better service and real-time access to information. They want to transact immediately, even if that means checking their escrow balance at two in the morning.

And if they don't understand something, or they encounter the slightest error, they suspect the worst: their servicer is doing something underhanded. So customer service, and with it customer expectations, are certainly big factors in our cost dilemma.

But what are we doing about it?

One way to accommodate 24/7 queries is to have 24/7 workforces. But this would mean offshoring, which many companies, ours included, have determined have their own issues.

Technology certainly has a role to play. I'd argue that we need to be looking at world-class companies, like Amazon and Zappos, as examples of how to transact and delight customers. Similarly, we need to be looking closely at promising, new advances in telephony technology, particularly in areas like keyword recognition.

But rather than investing in these new approaches, our industry keeps imploring our legacy tech providers to give us more functionality. But how much more functionality can you tweak from green-screen systems and portals that were outdated before dotcom 1.0?"

Vida titled his take "Frozen: The state of mortgage servicing today." The image is becoming inescapable for the industry.

Not everybody agrees. Larry Roberts had this to say on a HousingWire discussion board about the topic:

“Given the behavior of the financial services industry during the 2000s, Dodd-Frank was necessary to police an industry that completely failed to police itself with disastrous consequences for the broader economy.

“The industry has lobbied at every opportunity to water down the regulations that didn’t go far enough to begin with. I imagine everyone in the industry would like to be completely unburdened by regulation and allowed to follow their own conscience as to what is right or wrong, but we tried that once, and it didn’t work out very well for the industry, for borrowers, or for everyone else indirectly effected by the fallout from the abuses during the 00s.”

But another commenter, Austrian, took Roberts to task and echoed what we’ve heard from many:

“I got news for you. Servicing was already subject to hundreds of regulations before the 2000s. Those regulations, the incentives they put in place, and the unintended consequences that inevitably followed are what caused the crash.

“No industry in this country has operated under true free market conditions for at least the last 100 years.”

This whole article may be considered a little unfair to some. Indeed, Sanjeev Dahiwadkar, CEO of technology developer IndiSoft, who has been in the mortgage technology industry since 1996, had this to say:

“All in all, despite the weather, the conference was very well attended and the MBA and hotel staff did an excellent job ensuring that attendees had what they needed to make it a successful event.

“And there were ample seats and tables for networking meetings. I am looking forward to going to next year’s conference. Maybe somewhere in Southern California. I hear it never rains there.”

Such eternal optimism, Sanjeev! Probably a life lesson in there for us all. Glass half full, half empty.

Whichever way it goes, it doesn’t change the fact that everyone would rather sit in the lobby of the hotel at the Gaylord Texan than go into a panel on mortgage servicing.

For mortgage servicing the question may become: “When is the big thaw coming?” One thing is for sure, it won’t happen if we sit around and wait for it. ■
