

Real Estate

Allegedly abusive mortgage insurance deals lead to class action settlement

By **Kenneth R. Harney** May 6 at 7:00 AM

Anyone who has taken out a home mortgage knows that one of the borrower's key responsibilities is to pay hazard insurance premiums on the property and not let the policy lapse.

But are you aware that if you fail to keep the insurance current, or if the premiums aren't paid from your escrow account, the lender or its mortgage servicer can obtain its own coverage, which may cost you more than the policy you originally chose?

How much more? Double the premium cost you had been paying? Triple? Even 10 times higher — sometimes for inferior coverage? Potentially any of the above.

A \$140 million national class-action settlement last week — one of a series of cases brought against major banks, mortgage servicers and insurers — shed fresh light on a controversial business practice in the mortgage industry: alleged kickbacks in connection with “force-placed insurance” policies.

Force-placed insurance has been a feature of mortgage contracts for years. It has a legitimate purpose: protection of the house, which is the lender's collateral for the loan, says Florida attorney Dennis Wall, who has written a new book on the subject for the American Bar Association. But when kickbacks and affiliate side deals drive premiums to abusive levels, he told me in an interview, “it's a bad game.”

[Low credit scores may mean higher homeowners insurance rates]

The latest settlement involves nearly 400,000 borrowers across the country whose mortgages were serviced by Ocwen Financial Corp. between January 2008 and January of this year. The plaintiffs, who filed suit in U.S. District Court in Miami, charged that Ocwen and Assurant, a large insurance company, and Assurant affiliates “entered into exclusive and collusive relationships” whereby the insurer or its affiliates allegedly paid Ocwen kickbacks, commissions and other compensation in exchange for force-placed coverage for lapsed policies at inflated premium costs to the consumer.

Ocwen and Assurant both denied wrongdoing as part of the settlement. In a statement provided to me, Ocwen said it settled the case to “avoid prolonged and distracting litigation.” Terms of the final settlement must be approved by a federal judge next month before the Ocwen clients can begin to file claims for recovery of overpayments.

According to the complaint, “the money paid [was] not given in exchange for any services” supplied by Ocwen. It was “simply grease paid to keep the force-placed machine moving.” Borrowers frequently had no idea what was going on.

One plaintiff in the class action had been paying around \$700 in premiums annually for his original hazard insurance policy, issued in 2006, but coverage lapsed in 2008 because of nonpayment. After his servicing was transferred to Ocwen in 2011, he received a note from the company saying that it had force-placed a new policy with an annual premium three time higher — \$2,180. A year later, the premium was raised to \$2,244.

[Just asking about an insurance claim can make your rate go up]

Another plaintiff alleged that when her servicing account was transferred to Ocwen from her original lender, the insurance premiums were not paid from her escrow account and, unknown to her, the coverage lapsed. At that point, she said, Ocwen force-placed coverage requiring much higher premium payments. Worse yet, the coverage amount in the policy was for more than double her outstanding loan balance — \$209,000 of coverage on a loan with a remaining balance of just \$80,000 — and it did not include personal property or liability.

Still another plaintiff alleged that Ocwen force-placed an expensive new policy despite having been informed by an independent insurer that it had already written coverage for the borrower and that force-placed insurance was not needed.

Adam M. Moskowitz, an attorney in Miami whose firm, Kozyak Tropin & Throckmorton, has filed 13 class actions in the past several years challenging banks’, servicers’ and insurance companies’ force-placed practices, said in an interview that consumers who filed for claims in settlements have received anywhere from \$100 to \$12,000 in cash relief, depending on how much they had allegedly overpaid. Total settlement amounts have ranged as high as \$1 billion in benefits and \$300 million in cash relief in a final settlement with one national bank.

While most defendants have agreed to modify their practices as part of settlement agreements, Moskowitz says force-placed insurance overcharges may still be widespread because companies find other ways to pay and receive kickbacks, such as by creative use of affiliates.

How to protect yourself against possible rip-offs like these? First, be aware of the problem. Keep an eye on the hazard insurance premium payments out of your escrow account. If you send in payments directly, never let your policy lapse. And challenge any demands for outrageous premiums.

Ken Harney's e-mail address is kenharney@earthlink.net.