Consumer Privacy: Foreclosures

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Is foreclosure information public?

• Notice of Trustee’s Sale
  – RCW 61.24.040(1)(a) Record a notice...in the office of the auditor in each county in which the deed of trust is recorded.

• Publication
  – RCW 61.24.040(3) The trustee shall cause a copy of the notice of sale...to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth and seventh day before the date of sale.
But, the information is getting out *pre-foreclosure*...

- **How?**
  - Credit Reporting Agencies
    - Receive notice of delinquency
    - Activity coded and flagged
  - CoreLogic Data Broker
    - Sells to companies like RealtyTrac
    - Studying trends vs. Individual data
    - Realty has Pre-foreclosure data
      - Subscription services
      - Advises how to “low ball”
      - Borrower contact information
What happens?

• Pressure to Sell
  – Short sale
  – If equity, value depreciation
    • Chilling effect on sale prices
  – Retention options not explored

• Scammers
  – Homeowners facing foreclosure are particularly susceptible to scammers.
  – Legitimizes scammers because they have accurate data, including: loan number, lender’s name, unpaid principal balance, months in default, etc.
Negative consequences?

• Homeowners unable to sell at fair market value and therefore do not maximize equity.
• Homeowners are not pursuing retention options, when they may be eligible.
• Homeowners are being scammed.
Is anyone looking into this?

• FTC’s *Data Brokers: A Call for Transparency and Accountability* (May 2014)
  – Check it out:
What are the current protections?

• The **Gramm-Leach-Bliley Act** requires financial institutions – companies that offer consumers financial products or services like loans, financial or investment advice, or insurance – to explain their information-sharing practices to their customers and to safeguard sensitive data and explain customers’ right to "opt out" if they don't want their information shared with certain third parties.
Next steps?

- Should there be more oversight?
- What type of regulation is appropriate?
- Are the mortgage servicers involved?
- Are the credit reporting agencies involved?
- Is the Fair Credit Reporting Act helpful?
- What is the true source of the data leak?
- Should we litigate more cases to get discovery?
- How best to do consumer (and industry) education?
Thank you

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