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# Why more homeowners aren't getting help

**The firms that service mortgages are central to whether or not efforts to prevent foreclosures work. But their role is shrouded in mystery.**

By Les Christie, CNNMoney.com staff writer  
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NEW YORK (CNNMoney.com) -- Drowning in a mortgage you can't afford? Whether or not you get a new one will be decided by someone you've probably never met at a company whose role is barely visible: the mortgage servicer.

Nationwide, as home prices plummet and foreclosures rise, thousands of Americans at risk of losing their home are trying to work out new loans. In Washington, Congress is debating a massive rescue aimed at 500,000 people.

And all of the efforts to keep people in their homes run through the mortgage servicers, who are responsible for deciding which troubled borrowers will get more affordable mortgages.

The problem is that servicers are being overrun by the foreclosure crisis: They were set up to process payments, not do loan workouts on a massive scale. As such, they lack the financial incentive to help homeowners workout new loans.

"The economics don't make sense for the servicers to do a workout," said Bruce Marks, chief executive of Neighborhood Assistance Corporation of America, a foreclosure prevention counseling group. "They're not set up to do restructuring."

Servicers collect payments and manage loans. Some, like Countrywide Financial or Wells Fargo, are also lenders; others are only in the business of servicing loans. All servicers are paid a piece of the monthly mortgage payment and funnel the rest to investors, such as hedge funds, that hold securities backed by mortgages.

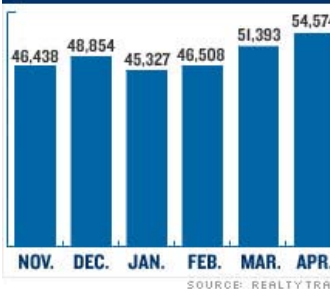
"Servicers are intermediaries, not the owners of the notes," said Katherine Porter, a professor of real estate law at the University of Iowa. "And their incentives are not the same as the owners."

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Markets	Last	Change
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U.S. Dollar	1 euro = \$1.547	▼ -0.000

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In fact, servicers have financial reasons for not helping homeowners who fall behind. As middlemen, they are paid a small percentage - usually 0.25% - of the principal of each loan they administer (0.5% for subprime loans). That's about \$250 for every \$100,000 borrowed, about \$21 a month. But when borrowers fall behind, late fees alone can be \$25 or more and exceed what a servicer may be paid to maintain an up-to-date loan.

And they get to keep much of the profits from these fees. In fact, some servicers have even been accused of pushing borrowers toward delinquency - by delaying the posting of checks until past their due date even, for example - so they could collect the extra charges.

Porter, who has testified before Congress on mortgage lending issues, said more than half of 1,700 foreclosures she has studied involved questionable servicer fees.

For sure, workouts are expensive. Porter estimates the cost of a full-fledged restructuring in which terms of the mortgage are modified to reduce their payments at between \$500 and \$1,000.

"The practical problem is that there's not much money being offered to servicers to do more mortgage modifications," said Max Gardner, a bankruptcy attorney in Shelby, N.C., who has worked with servicers.

It's not just the money. There are other considerations that may discourage servicers from doing workouts.

## What's the incentive?

None of the half dozen or so servicers contacted for this article would agree to speak on the record. Some have said publicly that they are diligently working to lower foreclosure rates.

"Servicers have contractual, fiduciary obligations to take actions which will maximize the return to the security holders," Steve Bailey, head of the servicing department at Countrywide, told a House panel on April 16. "Sometimes, that requires a servicer to pursue a foreclosure action."

One director of loss mitigation for a major mortgage servicer told CNNMoney.com that her company has added bonuses for its mitigation team for successful workouts.

And Brad German, a spokesman for Freddie Mac ([FRE](#), [Fortune 500](#)), the government sponsored enterprise created to add liquidity to mortgage markets, said incentives to work out Freddie-financed loans have increased. As of January, the payouts are \$400 for restructuring mortgages and \$250 for repayment plans.

But even if workouts were more profitable, servicers would still be wary.

In many instances, servicers are limited in the kinds of modifications they can offer because of their contracts, called pooling and servicing agreements, with the securities owners who are the ultimate holders of most mortgages these days.

Servicers are required to act in the best interests of the investors, and how to define "best interests" is often fuzzy.

For instance, writing down loans that would go bad might maximize return to investors, but the investors may object anyway as they see the values of their investments diminish. Servicers don't want to face lawsuits.

There are also tax issues, according to Gardner. He pointed out that the trusts that own loan pools are tax exempt. But if the percentage of loan modifications exceed 5%, that may jeopardize the trust's tax-exempt status.

## Heavy caseloads

Another factor slowing the pace of workouts is that servicers have not been prepared for the sheer

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volume of at-risk loans that emerged. Delinquencies are up [112% during the first three months of 2008](#), compared with the same period last year.

That has resulted in manpower shortages, according to Gardner. "I've been on site when they're doing modifications," he said. "The staffing [levels] left a lot to be desired at every place I've been."

The servicers have been hiring. Bailey testified that Countrywide has increased its mitigation department staffing about 85% in the past two years and now complete an average of 15,000 home-retention workouts a month. That's up from just 6,700 during the first nine months of 2007.

Hope Now - a coalition of mortgage lenders, servicers, investors and community foreclosure prevention groups - claims to have helped 1.2 million at-risk borrowers.

But the problem is growing just as fast. More mortgage holders than ever, 156,000, lost their homes during the first three months of 2008, and in April alone there were another 55,000 bank repossessions, according to RealtyTrac, an online marketer of foreclosed homes.

Until the servicers stop playing catch-up and start to get ahead of those numbers, the clamor to do more will likely continue. ■

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