



## The Attorney Scorecard: Accelerating the Foreclosure Process While Improving Compliance

Given the drawn-out process and wildly expensive legal fees associated with foreclosures, it is imperative for mortgage servicers to closely assess attorney performance to effectively manage costs and time and heighten operational efficiency.

### Executive Summary

In the U.S., foreclosure is pursued only after all collection alternatives have been exhausted by designated collection and/or loss-mitigation departments.

A foreclosure group initiates the foreclosure and monitors proceedings to help ensure that the loan is processed in a timely manner and in accordance with the guidelines established by state law, private mortgage insurance (PMI) carriers and investors.

Usually, after a mortgage servicer has run out of all possible alternatives to avoid foreclosure, the lender “refers” the paperwork to an attorney/trustee located near the property in question. Typically, the lender will refer files after three missed payments (a standard set by The Federal Housing Administration). The attorney then initiates a foreclosure action (see Figure 1, next page).

The foreclosure process for each state is governed by laws that define the proceedings.

There are two primary types of foreclosures: judicial and non-judicial (see Figure 2, page 3). Judicial foreclosure results when an attorney files a case in court. Non-judicial foreclosure does not require a court action, but does necessitate filing a document within the county where the property is located. This can be initiated either by an attorney or a trustee.

Mortgage foreclosure is a lengthy and expensive legal process. Depending on the state, the time it takes to process a foreclosure can vary. For example, in Texas, a foreclosure can be processed within as little as 27 days, whereas in New York, parties are allowed up to 445 days to complete a foreclosure.<sup>1</sup> From a compliance perspective, it is important to spend the minimum number of days allowed to complete the foreclosure process. However, trends suggest that the actual time it takes to complete most foreclosures is lengthy.

On average, loans in foreclosure in Florida, New Jersey, Hawaii and Maine remain delinquent for more than 500 days. In the case of California and

Nevada, the average is between 427 and 461 days. In Nebraska and Wyoming, the states with the shortest foreclosure timelines, loans in the foreclosure process remain delinquent an average of 358 days.<sup>2</sup>

The reasons for these delays can be attributed to judicial factors such as backlogged courts, antiquated systems and judges' schedules. Also, government-backed programs can slow the process due to temporary moratoriums, mandatory mediation sessions, loan modification, or assistance programs such as the Home Affordable Modification Program (HAMP). In some cases, borrowers hire attorneys as a foreclosure defense, which further slows the process. Adding to the delays are court filings like bankruptcy and loss mitigation.

**Mortgage foreclosure is a lengthy and expensive legal process.**

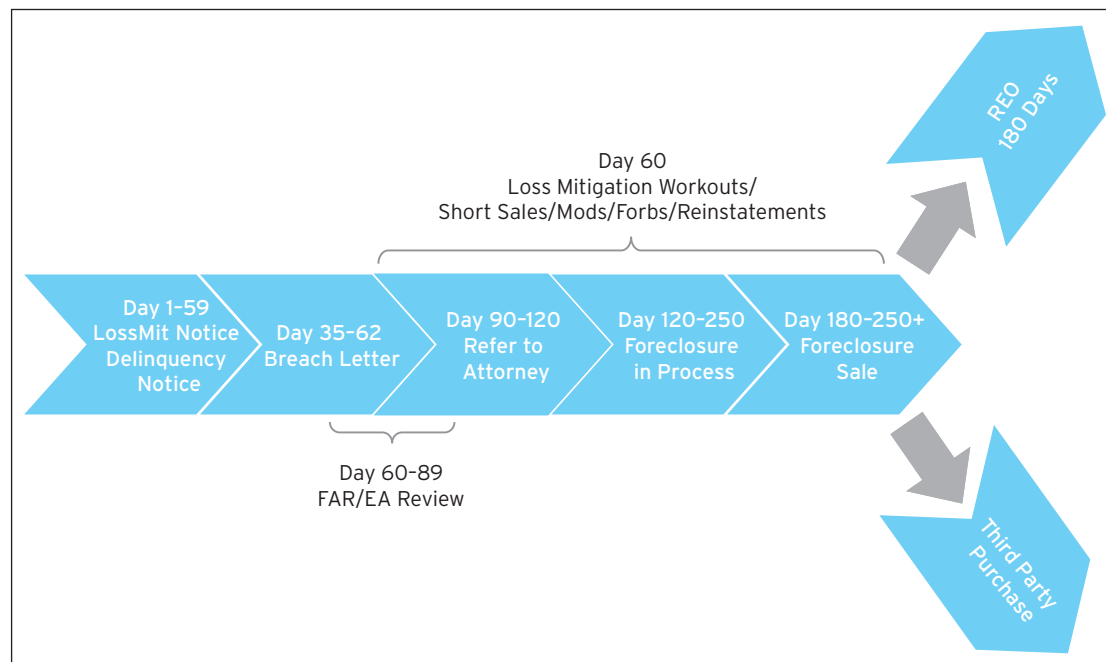
A monthly report highlighting attorneys' performance can allow servicers to reward the best performer while keeping the foreclosure process in compliance with various state and federal regulations. An attorney scorecard solution sets out the imperative task: It "slices and dices" the

incoming data to assess attorney performance in every foreclosure process, and identifies problem areas within the servicing system. In our analysis following several projects on attorney assessment, we reviewed the effects of introducing a dynamic monitoring system for foreclosure attorneys. Our findings concluded:

- The existing foreclosure system is mired in a tangled web of long-winded paper documents.
- The performance of mortgage attorneys plays a crucial role in determining the timeline of every foreclosure and avoiding unnecessary legal chaos.
- To improve and track the attorneys' performance, mortgage firms need to put in place a scorecard system.

This paper provides a brief overview of factors contributing to lengthy foreclosure timelines, which can result in higher expenditures and put mortgage firms at risk for non-compliance. We will also propose a solution for introducing an attorney scorecard to strengthen firms' legal resources.

## From Delinquency to Property Sale: How a Foreclosure Works



*Note: The above foreclosure timeline represents the average foreclosure process without any delays or the impacts of the current environment.*

Figure 1

## The Current Process

Typically, foreclosure files are processed in a structured environment. Each loan moves from desk to desk - monitored by a representative designated to ensure that state and investor guidelines are followed.

## Refining the Foreclosure Process

In the recent national mortgage settlement, the top five servicers had to pay US\$25 billion towards relief of distressed borrowers, and another US\$1.5 billion to compensate borrowers who lost their homes to foreclosure between January 1, 2008 and December 31, 2011<sup>3</sup>. If these staggering numbers are anything to go by, drawn-out foreclosure timelines translate into unnecessary expenditures for the mortgage servicers.

As stated earlier, foreclosure is a costly and lengthy process that comes with high attorney fees. Understandably, servicers push to complete foreclosures to avoid unnecessary delays and costs and comply with state regulatory norms.

At the same time, in order to avoid hefty penalties, servicers have to ensure that the processes they follow are compliant with the Department of Justice and the Office of the Controller of the Currency guidelines. This requires them to continuously monitor and measure their attorneys' performance.

## The Attorney Scorecard: Implementation and Challenges

An attorney scorecard solution can be integrated with an existing application for default process management. It can be used to help balance attorneys' workloads and control the number of referrals, based on the overall time spent by the firm in resolving a foreclosure case.

There are several ways to track an attorney's performance. One of our clients decided to integrate a scorecard solution with their existing application for managing business processes. Others have tried to implement an attorney scorecard as a utility sitting on top of servicers' technology

## Judicial and Non-Judicial Foreclosures: A Comparison

	First Legal Action	Service	Judgment Entered	Foreclosure Sale
Non-Judicial Foreclosure	<p>Varies by state-specific guidelines. Timelines can range anywhere from 30-90 days, with most states completing within 30 days.</p> <ul style="list-style-type: none"> <li>Colorado - NED Filed and Publication.</li> <li>Indiana - Notice of Sale and Publication.</li> <li>Michigan - Only Publication.</li> </ul>	N/A	N/A	<p>Varies by state specific guidelines. Sale is typically set within 30 days of Publication; however, some states can run 45-60 days.</p> <ul style="list-style-type: none"> <li>Colorado - 45 days to set sale.</li> <li>Wyoming - 58 days to set sale.</li> <li>Michigan - 48 days to set sale.</li> <li>Georgia - 26 days to set sale.</li> </ul>
Judicial Foreclosure	<p><b>Complaint/ Petition filed.</b></p> <ul style="list-style-type: none"> <li>Each state has their own timeline to complete. Generally, complaint is filed within 20-35 days. Attorney reviews File, PACER (for other information), and SCRA review, as well for servicer protection.</li> </ul>	<p>Typical timeline for service to complete is 30 days; however, if our attorney is not able to serve the borrower, we must serve by publication, which can take an additional 30-60 days. Attorney now files affidavit of indebtedness, mediation notice, track bankruptcy filing and confirms and sends payoff quote.</p>	<p>This action requires a date with the court. While the it has about a 30-60 day timeline, many courts are experiencing significant delays. Due to this delay, it can take up to 150 days to complete. Attorneys perform tasks like starting judgment motion, scheduling hearing if borrower is contesting and then updating judgment back to servicer setting up hearing.</p>	<p>Foreclosure Sale is set 30-60 days from judgment being entered. There are a handful of states that require the Redemption Period before the sale, which can add an additional 120-180 days to the foreclosure process. Attorneys perform tasks like schedule sale, bidding instruction to country, manage sale and then deed transfer.</p>

Figure 2

infrastructure. Either way, the scorecard should be integrated with the applications used for handling default loans and, most important, with the foreclosure module to monitor and speed up the process (see Figure 3).

A meaningful scorecard application should allow servicers to:

- Manage and configure the length of a reporting period for the attorneys.
- Generate the attorney scorecard report based on the performance of each attorney during the reporting period.
- Identify and designate key performance indicators (KPIs) in the foreclosure process, which can be used to provide a detailed evaluation of attorneys' performance. Monitoring progress

and the date/time of the completion of a task will be captured in the system through the scorecard application. Following are the milestones that most servicers would target to complete and use in the attorney scorecard report:

- » Foreclosure file received by attorney.
- » First legal action.
- » Completion of service.
- » Judgment entered.
- » Notice of sale.
- » Sale scheduled.
- » Foreclosure sale held.

## Fast-Tracking Foreclosures with an Attorney Scorecard

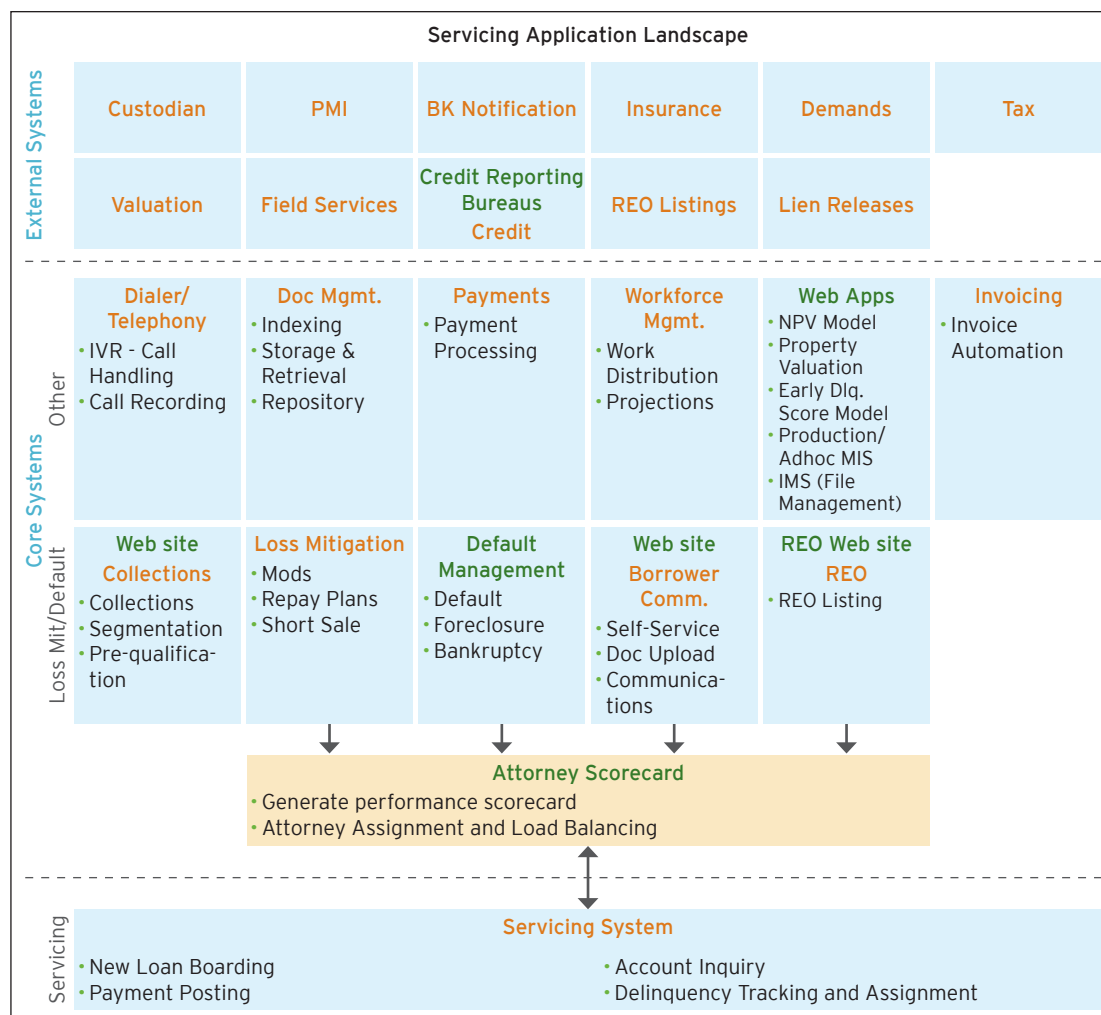


Figure 3

- The attorney scorecard can also provide servicers with the functionality they need to configure timelines for every stage of foreclosure, tailored to each state.

## Scorecard Output

The tasks of assessing the performance of individual attorneys and obtaining an exhaustive report on foreclosure proceedings become easier and more seamless with an attorney scorecard report (see Figure 4). The following components constitute the report:

- **Transition:** This reflects a major event transition within a foreclosure process. Servicers should be able to create and configure event transitions they would like to see in the report.
- **Servicer Benchmark Days:** This is a yardstick for measuring the performance of the attorneys. For certain key event transitions, servicers can set deadlines by referring to past data and guidelines issued by entities like Fannie Mae or USFN.
- **Attorney State Average:** This will show the average number of days it took for an attorney firm to complete the event within a state.
- **Servicer State Average:** This is the average number of days it took all attorney firms in the state to complete an event transition. This will be the simple average of the Attorney State Averages.
- **Standard Deviation:** Standard deviation tells how the time taken to complete each event

varies from the mean time. The standard deviation of Attorney State Average is:

- $STDEV.P = \sqrt{\frac{\sum (x - \bar{x})^2}{n}}$ , where “x” is Attorney Average in number of days,  $\bar{x}$  (statistical mean) is the average number of days taken to complete an event transition per attorney per state, and “n” is the number of attorneys that completed a given event transition in that state.

- **State Rank:** This reflects the numerical ranking of attorneys based on the Attorney Average. An attorney with the lowest Attorney Average will be placed first, and so on.

The key challenges in implementing an attorney performance scorecard are collecting data from various applications that support servicing and default processes, and charting the performance of each attorney against gross time frames or selected filters. To make this even more complex, the guidelines for tracking the foreclosure process vary by state. If collecting data is complicated, the greater challenge for servicers is standardizing the scorecard for all the attorneys. This is especially critical, given the absence of any published investor and/or guarantor-specific benchmark for measuring and comparing attorney performances.

## Conclusion

Servicers working on foreclosures walk a tight-rope. On one hand, they have to follow guidelines to make sure that the legal process is diligently followed, that required documentation is shared with defaulting borrowers and courts, and that

## Sample Attorney Scorecard

State: Alabama			Period: January 2013					
From	To	Attorney Firm Name	Servicer Benchmark Days	Attorney State Average	Servicer State Average	Standard Deviation	Volume	Attorney State Rank
File Received	Foreclosure Sale Held		78		108	60		
		Longhall Lawyers		48			10	1
		Feilwell Hathrof		168			20	2
File Received	First Legal Action		40		50	0.25		
		MLRP Lawyers		48			10	1
		Morrison & Associates		50			20	2
		Yarding & Associates		52			20	3

Figure 4

the state-specific deadlines are adhered to. When all options to address delinquency are exhausted, servicers need to focus on enabling speedier foreclosure sales to cut cost and mitigate the chances of increasing real estate-owned (REO) assets. Any oversight on the part of attorneys will turn into a liability for the servicers who hired them.

A periodic performance evaluation and reporting to management is the central idea behind implementing the scorecard. Also, implementation with rule-based workflow capability can create and allocate new work to a servicer's network of

attorneys, based on foreclosure cases open and pending, and with bandwidth available to each attorney. By identifying the most efficient attorneys, servicers can direct more work to them - thus strengthening servicer-attorney relationships. The result is better performance management and more productive attorneys in the network.

**A periodic performance evaluation and reporting to management is the central idea behind implementing the scorecard.**

## Footnotes

<sup>1</sup> <http://foreclosure.laws.com/foreclosure-by-state>.

<sup>2</sup> Ibid.

<sup>3</sup> <http://www.nationalmortgagesettlement.com/>.

## References

- <http://www.logs.com/resources/technology/asap.html>.
- [http://www.freddiemac.com/learn/pdfs/service/bp\\_avoid\\_fcl.pdf](http://www.freddiemac.com/learn/pdfs/service/bp_avoid_fcl.pdf).
- <http://www.usfn.org/Content/NavigationMenu/PUBLICATIONSANDPRODUCTS/Timelines/MatrixesStatebyState/default.htm>.

## About the Authors

*Vishal Bhardwaj is a Consulting Manager with Cognizant Business Consulting. He has over 14 years of experience working with leading banks on project management, product management and business process optimization. He can be reached at [Vishal.Bhardwaj@cognizant.com](mailto:Vishal.Bhardwaj@cognizant.com).*

*Avishek Bimal is a Senior Manager Consulting with Cognizant Business Consulting and has worked for over 13 years in the banking and insurance space on projects spanning business and IT strategy, business process optimization and complex project execution. His core focus area is consumer finance. He can be reached at [Avishek.Bimal@cognizant.com](mailto:Avishek.Bimal@cognizant.com).*

---

## About Cognizant

Cognizant (NASDAQ: CTSI) is a leading provider of information technology, consulting, and business process outsourcing services, dedicated to helping the world's leading companies build stronger businesses. Headquartered in Teaneck, New Jersey (U.S.), Cognizant combines a passion for client satisfaction, technology innovation, deep industry and business process expertise, and a global, collaborative workforce that embodies the future of work. With over 50 delivery centers worldwide and approximately 171,400 employees as of December 31, 2013, Cognizant is a member of the NASDAQ-100, the S&P 500, the Forbes Global 2000, and the Fortune 500 and is ranked among the top performing and fastest growing companies in the world.

Visit us online at [www.cognizant.com](http://www.cognizant.com) or follow us on Twitter: Cognizant.



**Cognizant**

### World Headquarters

500 Frank W. Burr Blvd.  
Teaneck, NJ 07666 USA  
Phone: +1 201 801 0233  
Fax: +1 201 801 0243  
Toll Free: +1 888 937 3277  
Email: [inquiry@cognizant.com](mailto:inquiry@cognizant.com)

### European Headquarters

1 Kingdom Street  
Paddington Central  
London W2 6BD  
Phone: +44 (0) 207 297 7600  
Fax: +44 (0) 207 121 0102  
Email: [infouk@cognizant.com](mailto:infouk@cognizant.com)

### India Operations Headquarters

#5/535, Old Mahabalipuram Road  
Okkiyam Pettai, Thoraipakkam  
Chennai, 600 096 India  
Phone: +91 (0) 44 4209 6000  
Fax: +91 (0) 44 4209 6060  
Email: [inquiryindia@cognizant.com](mailto:inquiryindia@cognizant.com)