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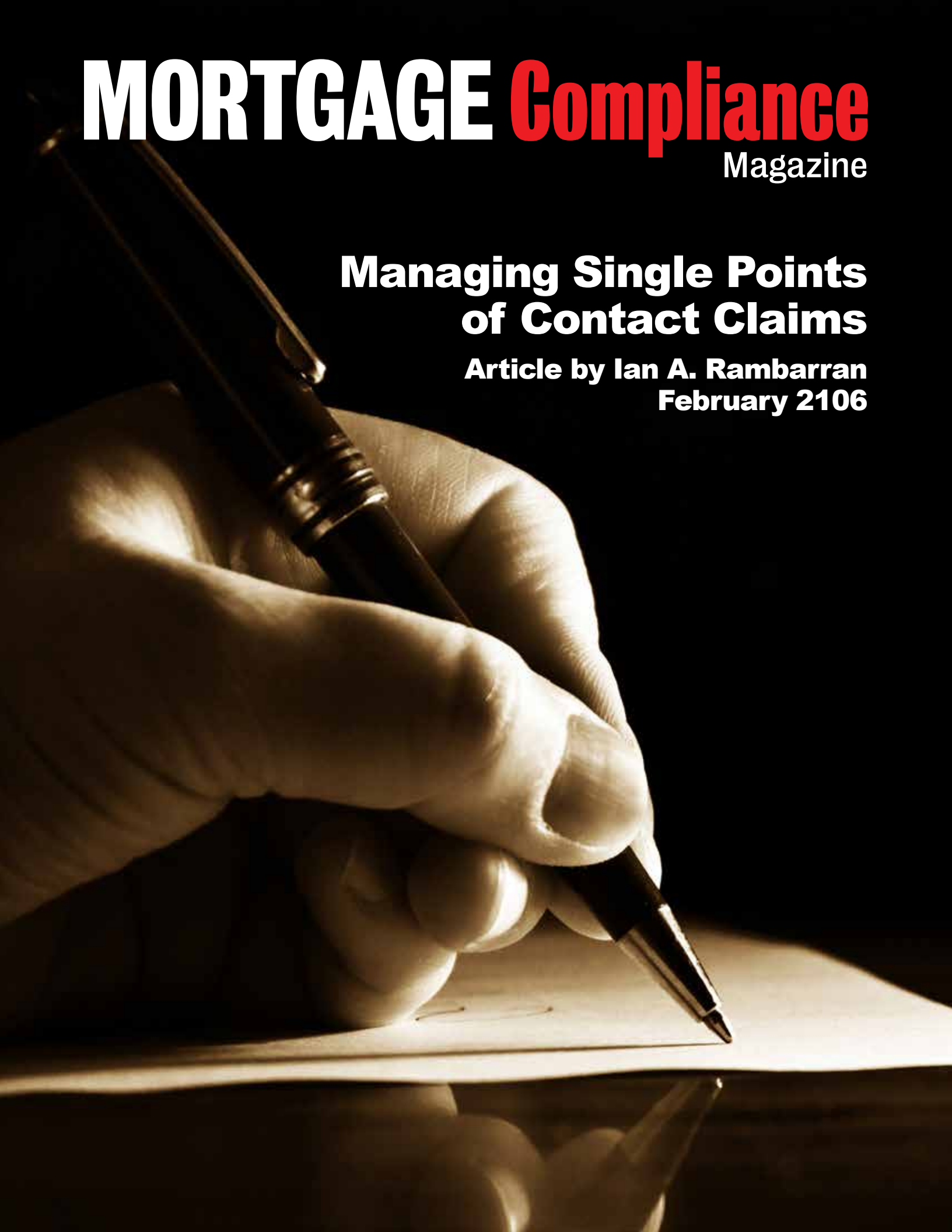

# Managing Single Points of Contact Claims

Article by Ian A. Rambarran

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# Managing Single Points of Contact Claims

BY IAN A. RAMBARRAN

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**Given the current environment, loan servicers would be best served by taking a conservative approach to pinning down issues of SPOC compliance.**

The old saying, "As California goes, so goes the nation," has never been truer than in the loan servicing industry. In particular, the Single Point of Contact (SPOC) statute sets the standard for customer service in the loss mitigation arena that should be used as the benchmark through the country. This is even truer because case law interpreting the Homeowner Bill of Rights is tipping in the borrower's favor. Given the current environment, loan servicers, whether in California or not, would be best served by taking a conservative approach to pinning down issues of SPOC compliance.

In its basic form, the SPOC rules, codified under Civil Code 2923.7, mandate that servicers promptly assign a SPOC to the borrowers and explore alternatives to foreclosure with them, if requested. This seems like a mutually beneficial arrangement because borrowers want to exhaust all options to keep their homes, and servicers wish to have the loan performing again. However, it is often a challenge for both parties because of timelines and documentation requirements.

The legislature enacted section 2923.7 to ensure more transparency in the loss mitigation process and to ensure all loss mitigation efforts were explored before a foreclosure occurred. The legislature also sought to address a common homeowner complaint about being handed off to multiple asset managers, who did not know the loan, which caused the homeowners to duplicate their efforts. At the same time, those borrowers felt there was the threat of a foreclosure looming and no assurance that the servicer would be able to stop the foreclosure while the borrower attempted to submit the required documentation.

## WHEN IS A SPOC NECESSARY?

Section 2923.7(a) states:

"Upon request from a borrower who

requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact."

Different courts have different views on when this section becomes operable. One court stated that a lender need only assign a SPOC when a borrower requests one be assigned. Williams v. Wells Fargo Bank, NA (2014, CD Cal) 2014 US Dist LEXIS 17215. Another court came to the opposite conclusion and held that the SPOC must be assigned if the borrower seeks a foreclosure prevention alternative. Hild v. Bank of Am., N.A. (2015, CD Cal) 2015 US Dist LEXIS 13419.

Though there are two opinions, the best option to remain compliant is to assign the SPOC when a borrower requests an alternative to foreclosure. That position is consistent with the plain reading of the statute and would be consistent with the purpose of the statute-- to offer options to the borrower about which he or she may not know.

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## WHAT IS THE SPOC REQUIRED TO DO?

The statute enumerates the SPOC's responsibilities. The SPOC must be able to:

- Communicate the loan assistance application process and explain the timelines under which both parties will operate;
- Coordinate the receipt of all necessary documents and notify the borrower of any required documents necessary to complete the application;
- Access the borrower's status with regard to the foreclosure prevention alternative;
- Ensure the borrower is considered for all foreclosure prevention alternatives offered by the servicer; and
- Communicate with those who have the authority to stop foreclosure proceedings. Civil Code § 2923.7(b).

The fundamental purpose of the SPOC is to be an entry point to the servicer's loss mitigation network, which often contains a distressed asset component, a foreclosure component, and an underwriting component. The SPOC is meant to be the one person that can lead the borrower through this network and ensure the borrower is considered for all options for relief.

In addition to the foregoing, the legislature has required a higher level of supervisory oversight. The statute expressly states that the SPOC must refer the borrower to his or her supervisor, if any, upon request. In other words, the SPOC may not be the last point of contact.

## WHO CAN SERVE AS A SPOC?

There seems to be an inherent conflict within the statute as to who must serve as a SPOC. One section states the SPOC must remain on the loan throughout the review process and another section states that it can be a team approach. Section 2923.7(c) states that "[t]he single point of contact shall remain assigned to the borrower's account until the mortgage servicer determines that all loss mitigation options offered by, or through, the mortgage servicer have been exhausted or the borrower's account becomes current." This language suggests that there can be no personnel change and, if there was, the servicer would be noncompliant. However, that interpretation would be unduly burdensome and does not account for the nature of the loan servicing business.

The practical reality of loan servicing is that asset managers handling the loan often change for a variety of reasons. New loan account managers may take over handling of a particular loan because of their experience, the nature of the delinquency, or department changes. The legislature tried to accommodate for this reality by defining the SPOC to mean "an individual or team of personnel each of whom has the ability and authority to perform the responsibilities described in subdivisions (b) to (d)." Civil Code 2923.7(e)(emphasis ▷

added) However, each member of the team must be "knowledgeable about the borrower's situation and current status in the alternatives to the foreclosure process."

California case law is only beginning to develop on this point. One court ruled that simply switching asset managers is not an actionable claim. Hild v. Bank of Am., N.A. (2015, CD Cal) 2015 US Dist LEXIS 13419. There needs to be something more. Namely, the borrower must allege specifics and identify the prejudice. Rahbarian v. JP Morgan Chase (2014, ED Cal) 2014 US Dist LEXIS 158719; Mann v. Bank of Am., N.A., 2014 U.S. Dist. LEXIS 15111, at *12-*14 (2014, CD. Cal.). For example, it would cause compliance issues if the SPOC requires the resubmission of a request for mortgage assistance (RMA) application for no other reason than the asset manager is new to the file. That scenario would be prejudicial to the borrowers because they would have to reinvent the wheel and could potentially waste time. Likewise, if the new SPOC fails to properly review the loan file and asks for the resubmission of documents that are already in the file that could be actionable because it causes additional delays in loan assistance consideration.

Avoiding claims of prejudice are not always going to be possible and a servicer cannot generally control what is said about it in a form complaint filed in court. However, a servicer can control what it is able to prove in terms of compliance and due diligence. For example, implementing a training program to assist the new asset manager on a new file review, using software to track past submissions and pending items, and ensuring supervisory review would help in supporting a defense. And, as will be discussed below, being able to prove that the proper customer service was provided will assist in defending against SPOC lawsuits.

## IS A BORROWER ENTITLED TO A MODIFICATION?

The short answer is, no. Lueras v. BAC Home Loans Servicing, LP, 221 Cal. App. 4th 49, 67 (2013). There is nothing in the Homeowner Bill of Rights statutes or case law that requires a servicer to provide a modification. As stated above, the SPOC statute requires that "all loss mitigation options offered by, or through, the mortgage servicer have been exhausted." Civil Code §2923.7(c). Thus, the focal point is not giving the borrower a modification, but rather considering the borrowers for an alternative to foreclosure. A servicer would be compliant with the statute if the servicer considered the borrowers for a deed in lieu or short sale, if those were the only alternatives available. A servicer would also be deemed to comply with the statute by considering a completed RMA application and denying the borrower a modification under the servicer's present guidelines. In fact, a SPOC need not necessarily consider multiple RMAs, if the borrower cannot show a material change in financial circumstances.

## DEFENSE FOCAL POINTS

Things move very quickly when lawsuits are filed, especially when borrower's counsel seeks a temporary restraining order to stop the foreclosure. To prepare for a defense against SPOC claims, counsel should be provided with documentation that show attempts to work with the borrower. The weight of the evidence can come in the form of RMA reviews, solicitation letters, loan comments, transcripts of telephone recordings, and correspondence to the borrowers about the status of the application. At the end of the day, SPOC claims are best defeated by providing enough evidence to convince the court that all alternatives to foreclosure were exhausted and a foreclosure is simply an inevitable result. MCM

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