



Featured Article

THE MITCHELL ROTH CHRONICLES

By T. Robert Finlay, Esq., Wright, Finlay & Zak, LLP

Many of you may have already heard of attorney Mitchell Roth. If not, I suspect you soon will. Through his law firm, MW Roth, PLC, Mr. Roth has been filing a series of lawsuits against the industry's trustees.

Prior to filing suit, Roth will generally send the trustee a Qualified Written Request asking for a variety of information, including the identity of the beneficiary and proof that the beneficiary has the original note. In a matter of days or hours, Roth will file suit, usually naming *only* the trustee. The complaint generally includes causes of action for Injunctive Relief, Unfair Debt Collection Practices, Predatory Lending and, more recently, RICO violations. Although he includes a Predatory Lending claim, Roth does not name the lender. Instead, he appears focused on the trustee's right to foreclose for a lender who allegedly does not have the original note in its possession. This creates an interesting dilemma for the trustee - while it is the named party, control over the allegations lies with the beneficiary or its servicer. Being the only named party also raises several questions:

1. Should the trustee postpone the sale?
2. Who should pay for defending the action?
3. Roth usually records a Lis Pendens, should the trustee move to expunge the Lis Pendens. It is the party with standing, but the bene/servicer is the one with the motivation and incentive to move to expunge it.

These are all questions that need to be addressed with the trustee's foreclosing client. But, they need to be addressed quickly as the apparent purpose of Roth's letter, lawsuit and Lis Pendens is to buy time for the borrowers. According to Roth's website, he gets paid a monthly fee by his borrowers - <http://trueforeclosurerelief.com/faq.html>. In other words, the longer

the borrower stays in the property, the more Roth gets paid. *Check the website out. It's a great read.*

While litigation to delay the foreclosure is not new, what makes Roth's cases problematic, is the number he is filing. In a few short months, we believe he has filed in excess of 50 different suits throughout Southern California. He also appears to be branching out into Central and Northern California. We have also started to see similar pre-litigation letters from an attorney in Nevada, Alda Anderson. We are not sure if she is affiliated with Roth or just a copy cat. But, be on the lookout for these same cases and issues in Nevada.

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While we continue to see more and more of these cases, we all need to work as an industry – trustees, lenders and eviction counsel – to share information on these types of cases. To that end, the UTA is working towards providing a mechanism to share information on these cases and on responses taken by trustees and their attorneys currently involved in the Roth cases. Please contact Richard Meyers, UTA Executive Director, for more information. In addition, please feel free to contact my office if you need any additional information on the Roth cases or if you have a question on a particular case.



Robert Finlay is a partner with Wright, Finlay & Zak, LLP and member of the UTA, CMBA, MBA and AFN. He specializes in representing lenders, foreclosure trustees and title companies in mortgage and title related litigation throughout California. Mr. Finlay can be reached at (949) 477-5050 or via email at rfinlay@wrightlegal.net.