

# THE FORECLOSURE DEFENSE HANDBOOK



By  
Vince Khan

Consumer Defense Programs

## Read Me First

This ebook is a culmination of thousands of hours of research by our team. We've read hundreds of articles and interviewed countless people and industry experts to compile this book. This is a very complicated web of deceit that the banking industry would rather not have you know about...because if you do, you'd be mad.

You have the right to be mad. **You've been conned. This is one of the largest frauds perpetrated in the history of mankind.**

This is why we decided to write this book and share our discovery with you so you can understand what is going on. Information is power. We want you to be informed.

You have no rights unless you know what your rights are. Education gives you power.

By all rights, we should be charging for this research. But because we want to share this information with as many people as possible, we decided to take a different approach.

[The American people have the right to know that they have been lied to.](#)

This is why we are making this ebook available free of charge. However, we have a condition.

This is an **honor bound contract.**

If you find that the information contained in this book is worth sharing, you are honor bound to **share this book with at least 3 other people.**

This is the cost of admission.

**DO NOT PROCEED WITH THIS BOOK IF YOU  
DO NOT AGREE TO THESE TERMS.**

Seriously, stop. Only proceed if you agree.  
Your word is your bond. Live in honor.

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The law is constantly changing. Information is fluid. We are constantly updating this book as new processes, new laws, and new research are discovered. Chances are, the copy you have may be out of date.

To make sure you have the latest copy of our book, please come to our site:

[www.consumerdefenseprograms.com](http://www.consumerdefenseprograms.com)

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The authors make no warranties, assurances or claims to the legitimacy, accuracy or completeness of the information contained within this work, explicit or implied. This is information that we want to present to you for your consideration. It is the result of thousands of hours of research and interviews with industry experts. We believe the information is accurate to the best of our knowledge.

**Seriously, this is not your standard disclaimer. Don't believe a word we say.** Do your own research and discover your own truth.

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## For the Record

This book is about exposing bank fraud and educating you on your rights in defending your home against foreclosure.

This is **NOT about ways to defraud a bank from what is rightfully theirs.**

This is **NOT about exploiting some weird procedural loopholes** so you can get your house free and clear.

This book is written using Uniform Commercial Code and Financial Account Standards and other applicable Federal Codes to articulate and expose bank fraud in a way that everyone can understand. It is the “Bank Fraud for Dummies,”<sup>TM1</sup> if you will.

This book cannot promise that you will win your home from the clutches of the banking cartel. All we can do is show you where the fraud is being perpetrated and allow you to come to your own conclusions. We provide you with practical things you can do to start challenging your lender to produce a valid proof of claim.

The aim of this book is to arm you with information so you can spot the fraud and argue your points. This book is designed so you can give it to your lawyer or anyone else so they can stop calling you a deadbeat homeowner trying to get a free lunch.

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<sup>1</sup> Copyright and Trademark acknowledged to the “Dummies” series publisher.

The use of the terms Mortgage, Mortgagor, and Mortgagee are, for purposes of this document, synonymous with Deed of Trust, Trustor, Trustee and Beneficiary

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## Introduction

By now, you should know that we are in the middle of a global economic depression that was caused by the collapse of the housing market. What you probably don't know is the all the events that led to the housing bubble collapse and the massive fraud committed by banks.

This book hopes to help you connect the dots; specifically, how it relates to foreclosure and how banks are committing fraud every single day by stealing homes from everyday people like you and me.

Until now, **this information was reserved only for the top echelon bankers.** *Bankers don't want you to have this information.* If more people knew about this fraud, then our banker friends would be in jail.

We are currently faced with ghost towns all over the country where entire subdivisions have been foreclosed. Many communities have collapsed as a result of this Depression. At the same time, we have thousands and thousands of families living in tent cities because they have nowhere else to go.

The worst part is this is only the beginning. It is projected that 2011 and 2012 will be even more devastating in terms of the number of foreclosures that are projected to take place as many of the adjustable mortgages are nearing the end of their *romance period*.

Tragically, over 85% of foreclosures have been and are being done fraudulently due to ignorance. We want to educate you so you can arm yourself with knowledge to defend your home.

This ebook was written because we got tired of banks getting away with murder. We decided to research this topic and expose bank fraud in a manner that the average person can understand. Too often, this sort of information is buried under too much technical jargon, double speak and mountains of noise.

Even if you are in good standing, this book is something you should know about. Who knows, you could be one of the people who might lose their jobs in the coming months as the global economic Depression worsens.

If you are one of those people trying to negotiate with your banks to do a loan modification, you must read this book. This is especially important if you are one of those people who have an upside down loan where you owe more than your house is worth.

This book applies to all home loans, whether it is a first, second or a home equity line of credit (HELOC). It applies whether you are in a judicial or non-judicial State.

We are going to show you where the fraud begins.

We just ask that you keep an open mind.

## **How to Use this Book**

The problem with the foreclosure crisis is everyone is in crisis mode.

The homeowners lost their job due to the economy...they are facing credit card companies chasing them, having to fight for a roof over their heads, and trying to keep it together at the same time.

The banks are in a rush to foreclose the homes at all costs, regardless of ethics, procedures, ownership or standings.

The courts are so buried by foreclosure cases they want to rubber stamp these cases and ignore their Oaths of Office...which is to afford justice to all...equally.

Amongst all this rush, no one ever stopped to talk about the gigantic white elephant in the room.

Remember Abbott and Costello's famous skit, "Who's on First?"

The same premise can be applied to many of these bank foreclosures. In other words, who has proper standing to enforce the promissory note? Everyone just assumes that the banks are in this position.

Judges are too busy to research this stuff.

Lawyers are too arrogant to acknowledge that there is something deeper at play here than a bunch of deadbeat homeowners trying to get out of their debt obligations.

Most frustrating of all, this sort of information is not readily available in layman's terms and concepts so that everyone can understand.

This is why we wrote this book. We have read thousands and thousands of pages full of information about this subject. It is only after one has immersed oneself enough in the subject and understands it intimately can one explain it in its most simplistic and elegant terms. We believe this book can be a good starting point for many people to help them understand the nature of bank fraud.

We hope that you can take this book and give it to your lawyer and have him/her read it and "get it."



We hope that you can send this to your local journalists so they can run a story about loan fraud so that more people will wake up.

We hope that you can pass this to as many of your friends as possible so they, too, can "get it."

We intend this book to be a simple tool to help open people's eyes to one of the biggest frauds perpetrated by bankers in the history of mankind.

We hope you will join us.

## Who is Vince Khan?

I am not a banker, lawyer, expert or anything. I am a real estate investor who got caught in the housing bubble like everyone else. I am just an average homeowner who discovered the fraud and wanted to share my discovery with you and allow you to come to your own conclusions.

I fell into default and started to challenge my bank to compel them to prove their standing.

After sending me a Notice of Default, and filling for a Trustee Sale, they issued a rescission of the Notice of Default and stopped their foreclosure proceeding indefinitely. You can see the notice on the next page.

I write this book **at great risk to myself. Honestly, I fear for my life.**

The fraud you are about to witness is something bankers have been trying to keep quiet for years. Court cases have been sealed because they do not want this information released and circulated into the general public. Homeowners have been given massive settlements on the condition of a gag order so that bankers can continue to do their dirty business. One expert witness we have interviewed even had his life threatened because of what he knows.

I do not exaggerate when we say **bankers will go to (and have gone to) any lengths to keep this information away from the general public.** If this information gets widely circulated, many bankers will go to jail. The information contained in this book will potentially cause trillions of dollars of damages to the banking industry.

**I feel that once this information has reached a critical mass, then it will be too late for the bankers to do anything to harm me.**

I got so tired of seeing people suffer from this fraud that I felt compelled to share my discovery to the public.

I hope I can make a difference.

I hope that you will join our movement and awaken others to bank fraud.

10/21

AFTER RECORDING RETURN TO  
FIDELITY NATIONAL TITLE INSURANCE  
COMPANY OF OREGON  
800 WILLAMETTE ST., #500  
EUGENE, OR 97401

RECONTRUST COMPANY  
400 COUNTRYWIDE WAY SV-35  
SIMI VALLEY, CA 93065  
TS No. 10-  
TSG No. 1

Division of Chief Deputy Clerk  
Lane County Deeds and Records  
2010-  
\$67.00

011790262010004992

RPR-RESC Cnt=1 Stn=9 CASHIER 06  
\$10.00 \$20.00 \$10.00 \$11.00 \$16.00

RESCISSION OF NOTICE OF DEFAULT

Reference is made to that certain Trust Deed in which [REDACTED], A MARRIED MAN was grantor, WESTERN TITLE & ESCROW COMPANY was Trustee and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was beneficiary, said Trust Deed recorded on [REDACTED] 2007 or as fee/file/instrument/microfilm/section No. 2007- of the mortgage of records of Lane County, Oregon and conveyed to the said Trustee the following real property situated in said county:

LO [REDACTED] LEA FIRST ADDITION, AS PLATTED AND RECORDED IN BOOK [REDACTED] PAGE [REDACTED]  
LANE COUNTY OREGON PLAT RECORDS, IN [REDACTED]

Commonly Known As: [REDACTED]

A notice of grantor's default under said Trust Deed, containing the beneficiary's or Trustee's election to sell all or part of the above described real property to satisfy grantor's secured by said Trust Deed was recorded on [REDACTED] 2010, in said mortgage records or as fee/file/instrument/microfilm No. 2010- thereafter by reason of the default being cured as permitted by the provision of Section 86.753, Oregon Revised Statutes, the default described in said notice of default has been removed, paid, and overcome so that said Trust Deed should be reinstated.

Now therefore, notice is hereby given that the undersigned Trustee does hereby rescind, cancel, and withdraw said notice of default and election to sell; said Trust Deed and all obligations secured thereby hereby are reinstated and shall be and remain in force and effect the same as if no acceleration had occurred and as if said notice of default had not been given; it being understood, however, that this rescission shall not be construed as waiving or affecting any breach or default (past, present or future) under said Trust Deed or as impairing any right or remedy thereunder, or as modifying or altering in any respect of the terms, covenants, conditions or obligations thereof, but is and shall be deemed to be only an election without prejudice, not to cause a sale to be made pursuant to said notice so recorded.

IN WITNESS WHEREOF, the undersigned Trustee has hereunto set his hand and seal: if the undersigned is a corporation, it has caused its corporate name to be signed and its corporate seal to be affixed hereunto by its officers duly authorized thereunto by order of its Board of Directors.

This instrument filed for record by  
Fidelity National Title Company as an  
accommodation only. It has not been  
examined as to its execution or as to  
its effect upon the title.

100- / 10-  
Page 1 of 2 ORRESCISNOD (07/07)

## Understanding the Securitization Process

To fully comprehend the arcane wizardry and myth that encompasses the securitization process in relation to the right to enforce a negotiable instrument (a promissory note), this chapter is designed to support the legal argument behind *who is the real and beneficial party of interest*.



### Background and Introduction

In 1933, the Glass-Steagall Act was enacted to regulate the FDIC and banking. Specifically, it governed the protection of depositors' monies so that banks were not allowed to gamble with the money in their safekeeping. This means banks could not trade their assets on Wall Street.

In 1999, the Glass-Steagall Act was repealed and another bill was introduced; known as Gramm–Leach–Bliley Act. This effectively allowed banks to package and *securitize* their loans onto Wall Street.

This means that suddenly the trillions of dollars from Wall Street could be used to fund loans. (*This is a good thing.*) This means that more loans were available to more people.

This means that Retirement Funds, Hedge Funds, and all sorts of institutional investors had a "safe" place to park their money...these safe places would come to be known as mortgage backed securities (MBS). (*This is also a good thing.*)

These institutions demanded banks make these mortgage backed securities packages available to them. These institutions rely on the following:

- 1) The bank's banking license
- 2) The bank's underwriting process
- 3) The bank's collections infrastructure

(*This is a good thing.*)

Things started to break down when banks realized that since they are not required to be left holding the bag at the end of the day, they could simply underwrite any old loan from any idiot who can sign their name to paper. Banks decided to change their underwriting guidelines around 2001-2002 (Bush era). *(This is where things started to go downhill.)*

This means any McDonald's burger flipper could go down to the bank and get a loan for \$1,000,000 with "no money down." *(No offense to those working in the fast food industry.)* These were commonly known as *liar loans* in the mortgage industries. This is great for low income earners as long as the housing market is in a boom growth curve. This gets really bad in a housing bubble where the price of housing is way beyond the affordability index of most households' median income.

### **Incentive and Motivation of Securitization**

When a bank lends you money, they traditionally get 2.5 times the face value of the loan over 30 years. Not bad, considering that they did not use a single red cent of their own money. It is all digitally created through the Federal Reserve System (read *Modern Money Mechanics* published by the Federal Reserve).

For example, if you borrowed \$100,000... over 30 yrs, you will have paid around \$350,000 to the bank. Look at the Truth in Lending disclosure statement from your loan documents.

Because of the Gramm–Leach–Bliley Act, banks are now able to sell mortgage backed securities. Some bright people at Goldman-Sachs and others in the financial industry came to the conclusion that they could make even more money if they could sell loans on Wall Street, and so they did.

This book is the story of what happened.

Instead of making 2.5 times over 30 years from money they did not put up, banks decided they could **make up to 1.5 times the face value of the loan immediately**. Just package these loans and sell them on Wall Street. As the market grew, they not only made money from the sale...but also from the appreciation of the stock (they are allowed to hold up to 10% of the security to qualify as a sale under Financial Accounting Standards).

## The Game of Greed

Under the Fractional Reserve System, a bank can lend up to 9 times the face value of their depositors' money or cash reserves.

Instead of receiving 2.5 times over 30 years for a loan, banks suddenly realized that they could make even more money if they sold the loan and received the CASH NOW.

### Fractional Reserve Banking Explained

Under the guidelines of the Federal Reserve, a bank can lend up to 9 times the amount of their depositors' money. In other words, if you deposit \$1 into your bank...they can lend up to \$9 out. Currently, in the US, the reserve ratio is 10:1 or 10%.

So, from that \$100,000 loan, they receive \$150,000 cash. This is treated as a deposit, which means they can now lend out \$1.35 million (9 times \$150,000). And do it again, and again. Lather, rinse and repeat. (*This is really good for the bank. This is really good for borrowers as there is a sudden glut of unlimited money to borrow from. This is really bad for the economy in the long run, as we will see.*)

If you study basic Economics 101 in high school, you will know that if you have too much money chasing limited goods, it leads to an increase in prices. Well, this is exactly what happened.

The banks threw their underwriting guidelines out the window. They had what's called a *fiduciary responsibility* to ensure that the loans were properly underwritten. This means that they were supposed to make sure loans they underwrote are backed by people who could actually afford to pay it back. Instead, they just ignored these underwriting guidelines in the name of greed.

The banks knew that these loans were destined for Wall Street, and that they were not going to keep the loans...so it suddenly became a game of hot potato, as "it became someone else's problem."

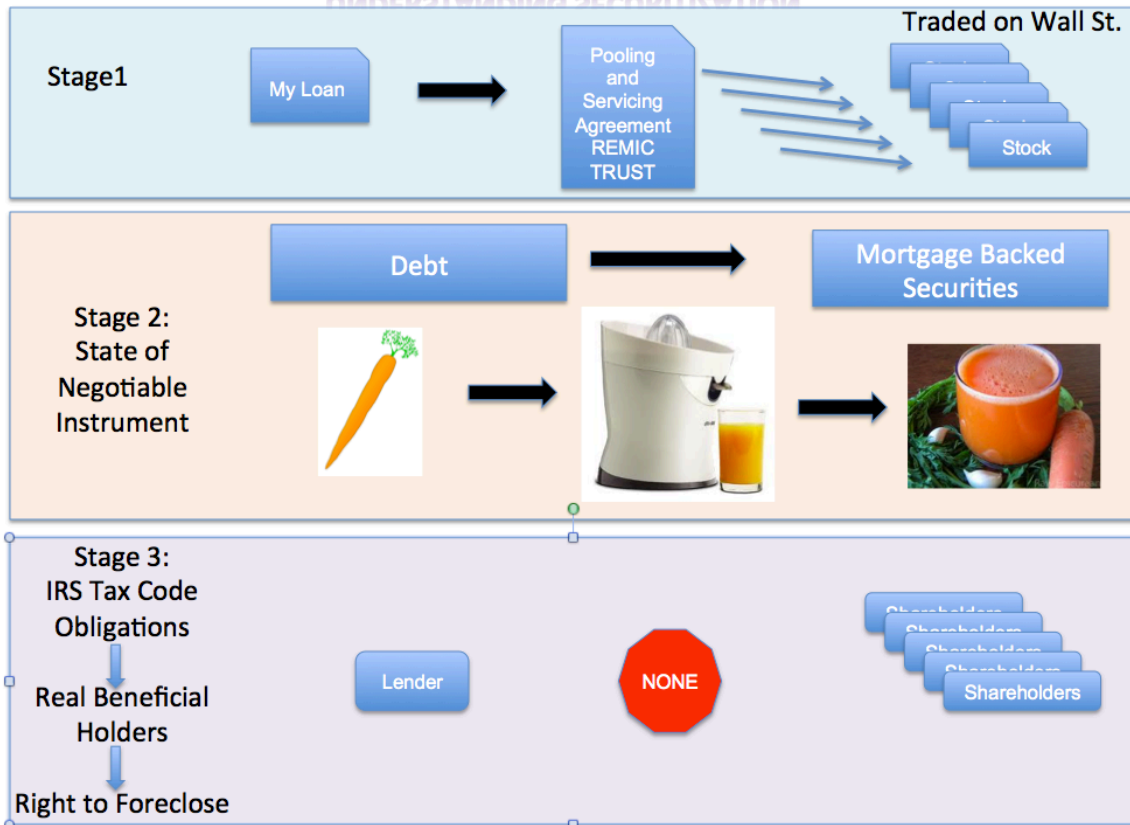
They basically stuck it to Wall Street.

This means they stuck it to your retirement fund, your stock portfolio and your life insurance portfolio.

It was the perfect set up for the biggest financial meltdown in the history of mankind. **It was the perfect storm.**

Before we go into the financial meltdown of 2008-2009, let's talk about the Securitization process and how it relates to your loan and bank fraud.

## UNDERSTANDING SECURITIZATION



### Stage 1: The Pooling and Servicing Agreement Process

Once a loan is closed, it quickly gets put into a Pooling and Servicing Agreement. This is then registered on the SEC as a REMIC Trust. REMIC stands for *Real Estate Mortgage Investment Conduit*. It is known as a Special Purpose Vehicle for the purpose of tax exemption purposes. I will explain why this is important in Stage 3.

They appoint a master servicer of the REMIC and a Trustee to manage the Trust. Normally, the Trustee of the Trust has the power and responsibility to administer the assets of the Trust.

For example, back in the Feudal Lord days, these Lords would create Trusts to put their assets (such as their land, their castle, and so on) into. In the event something happened to the Lord, the Trustee had the power to manage the estate/trust.

However, in the case of a REMIC, the Trustee does not have the power to manage the assets of the Trust. We will discuss in Stage 3 how this is different.

Once this REMIC is formed, it then gets converted into a security that is traded on Wall Street. This will make more sense later when I explain the relationship between an investor, a shareholder and a REMIC.

## Stage 2: The Changing of the State of the Negotiable Instrument



Imagine if you will, that your loan is a carrot. It gets thrown in with thousands of other carrots into a giant juicing machine called a REMIC. At the end of the process, you get gallons and gallons of carrot juice. This juice is then sold to hundreds of people.

This is what happens to your loan when it gets securitized. Your loan is now owned by thousands of shareholders all over the world.

Furthermore, the state of the loan is changed. **Your loan has been converted into a stock.**

This is **REALLY REALLY important**. Please spend a moment to understand this. Re-read this section several times if you need to.

**Your loan is no more. It is now and forever a stock.**

In other words, you cannot make a carrot from carrot juice. What's done can never be undone.

Once a loan has been securitized, it forever loses its security (i.e., the Deed of Trust, or the ability for the bank to foreclose on your house). This will be explained in Stage 3.

This is why I say that over 85% of foreclosures are done fraudulently.

A loan is what's called a *negotiable instrument*. There are specific laws governing negotiable instruments called the Uniform Commercial Code. Specifically, the right for a bank to enforce and foreclose on a property is subject to the claimant being a *real party of interest*.

If the loan has been sold, then the bank can no longer claim that they are a real party of interest.

Not only that, once a loan has been converted into a stock, it is no longer a loan. If both the loan and the stock exist at the same time, that is known as double dipping. Double dipping is a form of securities fraud.

A negotiable instrument can only be in one of two states when it undergoes securitization, **not both at the same time**. It can either be a loan (and treated and governed as such) or a stock (and treated and governed as such). Once it is traded as a stock, it is forever a stock. It is treated as a stock and regulated by the SEC as a stock.

On your Deed of Trust or Mortgage, it has language that says something like "This Deed of Trust secures a Promissory Note."

Listen, when that promissory note got converted into a stock...that promissory note no longer exists.

If a Trust was created to secure a promissory note, and that promissory note is destroyed...then that Trust is invalid. The Trust secures nothing.

The Deed of Trust is what your lender uses to give them the right to foreclose on your house. If the Deed of Trust is invalid, then the lender loses their right to foreclose on your home.

### **Stage 3: Real Parties of Interest**

Let's talk about accounting rules, specifically the rule governing a sale. To prevent accounting fraud, various governing bodies created Financial Accounting Standards (FAS). As you know, accounting is a very important area that needs to be regulated tightly to prevent companies from cooking the books.

Specifically, FAS 140 was created to govern the sale and securitization of a negotiable instrument. Look it up. Google FAS 140.

One of the things about FAS 140 is the rule governing a sale. A transaction can only be recognized as a sale if it is sold to a party at arm's length. In other words, you cannot sell an asset to yourself (this is what Enron did to hide their losses). Also, it says, (and I am paraphrasing) that once an asset is sold, the seller forever loses the ability to control the asset.

To illustrate this point, imagine if I were to sell you a brand new laptop. You took the laptop, and smashed it to a million bits with a sledgehammer. Because I sold the laptop to you, I have no say whatsoever about what you do with the laptop. It is yours.

This is really important to understand.

Once an asset has been sold, the seller forever loses control of the asset.

What that means is, if your lender sold your loan to a REMIC, then they forever lose their ability to enforce, control or otherwise foreclose on your property. Put simply, they are no longer the real party of interest. They are just a servicer.



## So Who Are the Real and Beneficial Parties of Interest?

Before we can properly answer this question, we have to discuss IRS tax codes.

You see, the real party of interest has to pay taxes on their earnings.

In other words, if your bank owns your note, they have to pay tax on the interest earned from that note. If a REMIC owns your note, then the REMIC has a tax liability.

### The Case of Double Taxation

Corporations have known for years about double taxation. This means, at a corporate level, at the end of the year they take all the revenue, and subtract the expenses; what's left are the profits. These profits are then taxed.

The corporation also has shareholders. The corporation typically distributes dividends to their shareholders. Once the shareholders receive their dividends, this is considered to be income to the shareholders. This is also taxed.

In other words, profits are taxed twice.

To avoid the problem of double taxation, banks put these loans into SPVs (special purpose vehicles) so they don't get taxed on them. This is covered under Internal Revenue Code 860.

This way, only the shareholders are taxed.

This means, **only the shareholders are the real parties of interest.**

In the previous section, I discussed the powers of the Trustee. Because of this special IRS rule, the Trustee is not the real and beneficial party of

interest because the REMIC does not own the notes, the shareholders do; therefore they cannot enforce the promissory note.

In other words, they can't have their cake and eat it too. They can either accept double taxation and let the REMIC hold the centralized power, or they can distribute the tax liabilities to the shareholders, in which case they have also distributed the parties of interest.

The bank chose to have a distributed party of interest scheme to avoid paying taxes twice. (*There is nothing wrong with this.*)

But now they have a real pickle. If no one entity is a real and beneficial party of interest, then each and every shareholder of the REMIC is.

So then the question is...who has the right to foreclose?

The answer is...**no one.**

If the thousands of shareholders each own a tiny part of your promissory loan, can any one of them foreclose on your house? No.

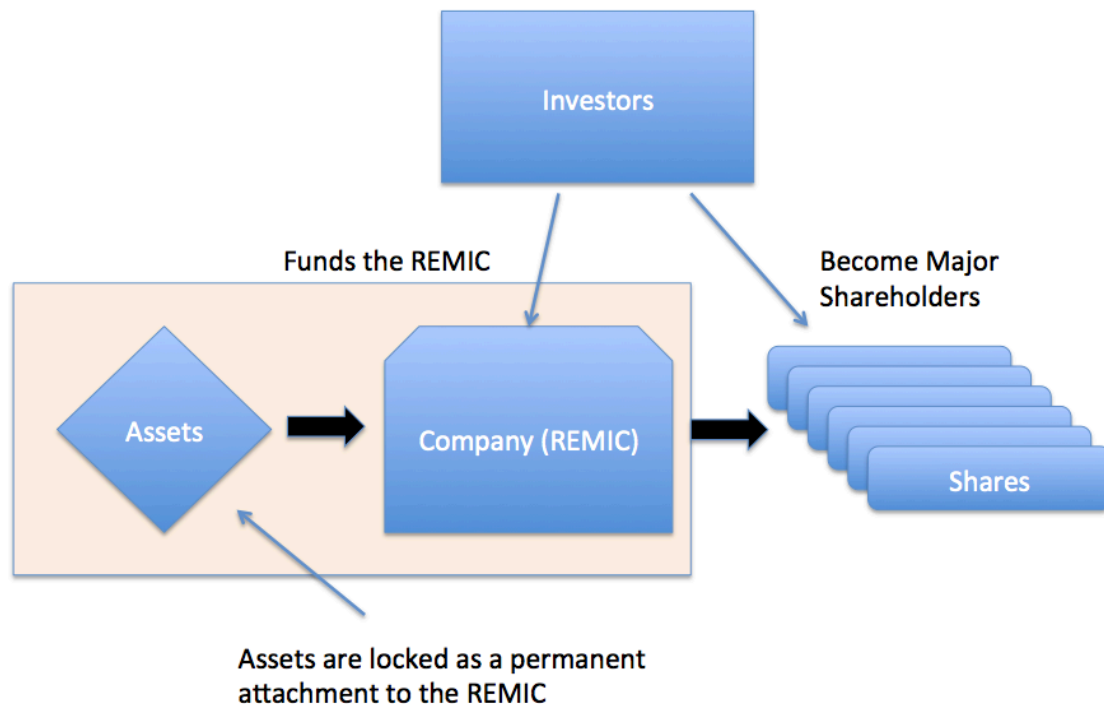
A promissory note is only enforceable in its whole entirety.

That is the nature of the fraud being perpetrated before the American public and worldwide.

## REMIC, Investors and Shareholders Explained

There is a lot of confusion around the concept of securities conversion, specifically around the various parties involved, such as the investor and the shareholder.

This chapter explains in greater detail how each of these entities tie in together.



To illustrate the point, let's use another analogy. Let's say I am Steve Jobs in the 1970's. I come to you asking for \$1000 to invest in my little company called Apple. Part of Apple's assets is the intellectual property and design of the Apple computer.

10 years later, we go public. Because you were my initial investor, your initial shares are now worth a lot of money. We then convert your percentage of ownership as an investor into publicly tradable stock.

Imagine, however, if immediately after I go public, I create another company and assign the intellectual property and design of the Apple computer to this new company. Is that legal?

The answer is no. That's commonly known as *bait and switch*. You cannot register one thing with the SEC and market the stock...and then after the money is transferred, switch out the asset.

How this relates to a REMIC is this: there are two pseudo government entities called Fannie Mae and Freddie Mac (these are actually privately owned companies). These two giants fund or invest in most of the REMICs created for the purpose of securitization. They are the investors.

Once the REMIC gets converted into stock, Freddie and Fannie get very rich because they are the majority shareholders of these publicly traded stocks.

When a REMIC is formed, its assets (your loan plus thousands of other people's loans) are declared a permanent fixture to the REMIC. (*This is like that intellectual property of Apple computer.*) This is registered with the SEC. It is public information. In other words, once an asset is registered and traded as part of the security, you can't just switch it out because it has become a permanent fixture of the traded asset.

The conclusion I want you to take away here is that an asset declared in an SEC filing is permanently attached. **This is a permanent conversion**. This means there is no doubt that your loan/promissory note is no more.

Let's take a case of double existence to illustrate the point. Let's say we have the stock traded on Wall Street (that supposedly contains the note). Next, we take the promissory note and we assign it to another bank, who takes it and securitizes it again.

If this situation were to happen, the same loan would be traded *twice* on Wall Street. In other words, the second set of investors got duped. They bought a lemon. They basically bought a forgery.

This is securities fraud. It cannot happen.

## Conclusion

So let's summarize our points. Since over 85% of loans have been securitized, we now know that banks are not the real parties of interest in any foreclosure transactions. Neither are the investors of the REMIC. No one can foreclose.

When a loan goes into default, it gets written off by the REMIC. Once an asset is written off, it gets tax credits from the IRS. **This means it is settled. The Note is gone.**

The only way a bank can foreclose on you is if they buy it back from the open market as an unsecured debt, just like a debt collector would. Remember, the debt has been written off. Tax credit has been given to the shareholders and the REMIC. It is no more. So, essentially, these banks are picking up the promissory note for pennies on the dollar and through deceit, they try to reattach the converted loan to the dead Trust/Mortgage. They then take these documents and represent them to the world as if they are the real parties of interest. They bring these documents into court, deceiving the court and their own counsel (who, for the most part, are ignorant of this scheme).

This is how banks steal your house, and the houses of millions of families around the country.

This means, if you are facing foreclosure, you need to learn the truth about your loan and learn how to fight for your rights.

This means that if you have lost your home due to foreclosure, you might be a victim of fraud and be entitled to punitive damages of up to 3 times the value of your loan.

This is why I want to share this document with you so you know you've been conned.

You have a right to be angry. You SHOULD BE!



## The Bubble Burst of 2008-2009

No one was complaining when things were going strong. Everyone was happy. Everyone had a home. Housing prices were growing in double digits. Until...the house of cards came tumbling down.



No one can pin it to a specific date, but sometime in 2008, things started going downhill. The bubble had gotten to a point where more and more homeowners were realizing they can no longer afford multi-million dollar (artificially inflated) homes on a minimum wage income. More and more homes were beginning to go into default.

As more and more loans went into default, this affected the value of the mortgage backed securities (MBS). You see, the shareholders and investors of these stocks made **three fatal assumptions** about what they bought:

- 1) They assumed that the bank did the right thing in their underwriting process. They didn't.
- 2) They assumed that once a loan in their portfolio went into default, they were able to foreclose and cover their losses. They were wrong.
- 3) They assumed that this ride would never end. It did.

Once Wall Street investors realized they could not cover their losses (by foreclosing on their underlying assets), they became very upset (and rightly so). They started suing the banks and stopped buying these toxic assets.

Investors stopped buying the MBS. Soon, the pool of money dried up. Soon, no one could get loans, not even those with 800 plus FICO scores.

Then house prices started to plummet...

## The 3 Trillion Dollar Bailout (TARP)

As more investors sued these banks, things got ugly. This is the Day of Reckoning for our banker friends. It's time to pay the Piper.



The banks got scared. All their greedy scams had finally caught up with them.

So, they got together and bribed Congress to bail them out, threatening that if Congress didn't, we would have a financial Armageddon; the Fall of Wall Street. Everybody's retirement funds would immediately be wiped out. Put simply, "they were too big to fail."

Donald Trump said it best. "When I borrowed \$100,000 and I defaulted, it was MY PROBLEM. When I borrowed \$100 million and

I defaulted, it became THEIR PROBLEM."

Faced with a no win situation, Congress quickly signed the TARP (Troubled Asset Relief Program) bailout which authorized the Federal Reserve to give over \$900 billion to the banks in the first round. We now know that the Federal Reserve Bank has since given over \$3.5 TRILLION dollars to the banks with very few strings attached.

**Let's be very clear here.**

**The banks were given "free money" from the Taxpayers to pretty much "do with as they see fit." They could give bonuses to top executives. Go to the Bahamas for a retreat. Buy jets. Buy up smaller banks. Invest in gold. Whatever they wanted, with no strings attached.**

As housing prices kept dropping, many low-income homeowners (as well as real estate investors) got caught. No one expected the bubble to happen. Everyone thought this ride would never end. Low income homeowners and investors alike would buy any property at almost any price, knowing that they could sell the property a few months later for more than what they bought the property for in a hot market.

Now, homeowners and investors find themselves with properties that are worth significantly less than what is owed.

Worse, many homebuyers and investors went into the game with negative cashflow business plans. Their expected exit strategy was through price appreciation in an appreciating market.

When the capital markets dry up, no one could get loans. Since housing prices are dependent on people's ability to secure loans, when people could no longer get loans, no one could afford to buy houses.

Thus we find ourselves in a housing crisis today. The markets that experienced the highest growths, specifically California, Nevada, Florida and Arizona are also the ones with the highest foreclosure problems.

Currently, millions of families are faced with an unrealistic burden for mortgage payments well beyond their income ratio. Added to this, millions of families are out of work due to the contraction in the economy as the market is correcting itself into a true equilibrium.

As more and more families find themselves in financial trouble, the rate of real bank defaults is much higher than what the banking industry would like us to believe. Many people are months, if not years behind on their payments but banks are not ready to foreclose and declare these loans delinquent.



As more and more loans go into default, more and more homeowners are fighting back. More people are learning about loan fraud and securitization, but until now, few people could fully comprehend the mechanics of how the fraud was being perpetrated.

This is the reason why this book is being given to you and why people are passing this book to everyone they know. I am exposing the fraud for the first time in simple English so people can understand.

## Bank Fraud Exposed

So, now that we've explained the securitization process, you are probably more informed about this problem than most judges and attorneys. You see, most people just don't know about this scam that is being perpetrated on the American public. I hope that you use this opportunity to get informed. Tell your friends about it. Talk about it to your neighbors. Write to your Congressperson. Next time you are at a social gathering, bring this up. This is the only way we wake up America.

So let's summarize in case you missed it:

When a loan has been securitized, it got converted from a debt into a stock. The real and beneficial parties of interest are the individual shareholders holding a fraction of the note. Therefore, no one person may foreclose on the property.

But wait a minute. If this is the case, why are there so many houses being foreclosed on every day? Even today, despite the robo-signer scandals?

The problem goes way deeper than robo-signers. Not only are loan assignments not properly assigned and recorded, they do not even have the right to do so.

Remember FAS 140? Once an asset has been sold, you forever lose control over that asset. If it is sold into a REMIC, how can the bank (who is no longer the real party of interest) foreclose?

They can't.

They get away with it every single day because they rely on our collective ignorance.

They rely on your ignorance.

The judge's ignorance.

The attorney's ignorance.

The foreclosure and mortgage industry personnel's ignorance.

It's time to wake everyone up.



## Give Me a Free iPod

Let's talk about the difference between an investor, a shareholder and a real party of interest.

When your loan is underwritten, the bank needs investors to initially provide the money to fund the transaction. Oftentimes this is Fannie Mae and Freddie Mac. They put up the initial cash so that the REMIC can buy these loans. This security is then traded on Wall Street. In other words, when the REMIC got converted into a stock, the investors make money because they got in on the ground floor investment. Buy low, sell high. In many cases, they became the majority shareholders of these REMIC Trusts.

So, let's talk about the rights of a shareholder by using Apple stocks as an example. Let's say you own 1000 Apple shares...and Apple advertises that they historically pay about \$1000 per month in dividends.

Let's say after a couple of months, Apple had a bad quarter and stops paying you your \$1000. And the next month, it doesn't get better. They now "owe" you \$2000.

Does this then give you the right to go into an Apple store and pick up a new Mac laptop and an iPod?



loans.

The answer is...you'll likely get arrested for theft.

This is the same thing with shareholders of a REMIC.

A shareholder of an asset cannot just go to the store and pick up goods as recompense. This means the individual shareholders cannot dip in and touch the loan/asset. Besides, they own "carrot juice," remember? This means they own a little bit of thousands of

So, let's look at the cast and crew of the heist. We have the following characters:

- The Lender
- The Investor
- The Shareholder
- The REMIC
- The Trustee of the REMIC
- The Servicer

### **The Original Lender Can Not Foreclose**

As I discussed earlier under FAS 140, the original lender sold it to the REMIC and forever lost their rights to enforce the note.

### **The Investor and Shareholder Can Not Foreclose**

As I illustrated with the Apple and iPod example, while the investors and shareholders as a whole are the real parties of interest, individually they cannot just come in and foreclose because they only own a tiny portion of your loan.

### **The REMIC and the Trustee**

Remember, the REMIC holds all the loans together in a pooling and servicing agreement. However, because they chose to avoid the IRS tax rules (I.R.C 860) for double taxing, they pass on the real party of interest/ownership of the asset to the individual shareholders. So neither the REMIC nor the Trustee may foreclose.

### **The Servicer is Not a Real Party of Interest**

The Servicer can only collect the money and pass it to the REMIC. That's the extent of their job.

### **So, Who Can Foreclose?**

The answer is: nobody.

Oftentimes you will hear the bank respond to enquiries as to who the real party of interest is by saying, "Fannie Mae is the investor." They are technically not lying. This is true. But, as I illustrated earlier, an investor becomes a majority shareholder of the traded stock...but they are not a) the holder in due course or b) the real party of interest.

**This is the lie that banks are bringing before the court every single day.**

Only the true and beneficial holder in due course is the real party of interest. Not the investor.

Again, if the bank is not the real party of interest, nor the holder in due course...what business do they have foreclosing on your house?

If Fannie Mae and Freddie Mac are not the true and beneficial holder in due course, how can foreclosures be done in their name?

This is the **scam bankers don't want you to know**.

### **The Great Pretender Lender Switch**

This is how the scam is perpetrated by your so-called lender. They advertise that they offer loans. They work with the mortgage broker network around the nation to get consumers to apply for the loan. Once the loan has been approved (I use the word "approved" very loosely because very little due diligence is actually done by the so called lender), they are pre-placed into a REMIC. The lender then waits for the paperwork to be signed. Once it is signed, it is immediately transferred into the REMIC.

Once a REMIC has enough loans to be packaged, it then gets registered onto the SEC database and then gets converted and traded as a stock.



All the while, unbeknownst to the consumer, the lender all of a sudden switches their position from lender to servicer of the note. Again, as you recall under the accounting rule FAS 140...

once an asset has been sold, the lender forever loses control of the asset. In other words, they no longer own or control your loan. They merely act as a servicer for your loan, with the proceeds going directly into the REMIC to be distributed to the shareholders.

Remember, since your lender is just a servicer, they do not own the note. They do not have the right to enforce the note. They can only act as a servicing agent.

Please refer to *U.S. Code Title 12: Banks and Banking, Part 226 - Truth in Lending (Regulation Z)*. This is enclosed in the Appendix for your convenience. These are codified laws of banking. It defines who a Lender is, and what the rights of a Servicer are. Specifically, it refers in 226 (a) 1 that a *servicer is not treated as the owner of the obligation*.

*(a) Scope. The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:*

*(1) A "covered person" means any person, as defined in §226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation.*

You will also note that the scope does not cover the servicer if the servicer was assigned the note for administrative convenience in servicing the obligation.

This means, the servicer is not treated as and does not have the rights of a lender (or owner of the obligation).

As I discussed earlier, even if the servicer was to buy the note back after it has been securitized, reattachment of the loan/note to the Deed of Trust/Mortgage is impossible.

## **You Can Not Make Carrots from Carrot Juice**

Once a loan has been written off, it is discharged. Once a loan has been securitized, reattachment is impossible.

Reattachment is impossible for the following reasons:

### **1) Permanent conversion**

The promissory note had been converted into a stock as a permanent fixture. Its nature is forever changed. It is now and forever a stock. It is treated as a stock and governed as a stock under the SEC.

Since the Deed of Trust secures the promissory note, once the promissory note is destroyed, the Deed of Trust secures nothing. Therefore, the Trust is invalid.

### **2) Asset has been written off**

Once an asset is written off, the debt is discharged since the owner of the asset has received compensation for the discharge in the form of tax credits from the IRS. The debt has been settled.

The servicer acts as a debt collector of an unsecured note. The servicer is deceiving the court, the county, and the borrower when it tries to re-attach the note to the Deed of Trust as if nothing has happened. It's called adhesion.

The funny thing about the law is, it is legal until or unless the other party objects. Since this scam is so devious, it is beyond the comprehension of most people...including that of lawyers and judges. It takes someone who has studied accounting, securities and law to unravel this deception. Most people in the legal profession only take the arguments on face value.

### **3) Broken chain of assignment**

Under the Uniform Commercial Code (UCC), the promissory note is a one of a kind instrument. All assignments (much like endorsements on the back of a check) have to be done as a permanent fixture onto the original promissory note. The original promissory note has the only legally binding chain of title. Without a proper chain of title, the instrument is faulty.



Rarely can a lender "produce the note" because by law, the original note has to be destroyed. Remember? The note and the stock cannot exist at the same time. Oftentimes, the lender would come into court with a photocopy of the original note made years ago.

Another popular method of deceit lenders prefer is to use the State Civil Code in non-judicial states to state that "there is no law requiring a lender to produce the note or any other proof of claim." THEY DON'T HAVE IT and CANNOT PRODUCE IT.

Oftentimes, the lender would do blank assignments of the original promissory note into the REMIC. Then, when they need the note to perform the foreclosure, they will magically produce a blank assignment. Again, this is not legal and is bringing fraudulent documents before the courts and the county records.

Let's be very clear here. Once a loan has been securitized, **the note is no more**. Anything the lender brings to court as evidence is prima facie evidence of fraud. The attorney for the lender is either an accessory to fraud through ignorance or willful intent. Either way, as an informed borrower, it is your job to bring this deception to light so these lawyers can be sanctioned.

So, your lender would close your loan, sell it to a REMIC and get paid.

Once your loan goes into default, the loan is written off. The loan is then bought by the same lender in the open secondary market as a dead/unsecured note. To be able to pull this stunt off, every lender involved in this scheme is required to act in collusion.

Once the servicer buys the dead note, they then claim to be the true holder in due course of a written off asset. They then present to the world that they are who they claim. They rely on the homeowner/borrower to be ignorant of this deception and clean up, allowing them to take possession of a house for pennies on the dollar.

This is the extent of the fraud done to the American public every single day.

As a homeowner defending your rights, it is imperative you understand the nature of this fraud so you can use these arguments to defend your home.

As a legal professional, it is imperative that you understand these arguments so you can raise the proper objections and interrogatories when representing your clients in a foreclosure defense.

## Loan Mods are a Scam

By now, you should wise up to this whole notion of who is the real party of interest. So, if your lender is not a real and beneficial party of interest, how can they give you a loan mod?

The answer is...they can't.

"What? It happens all the time," I hear you say.

The truth is, very few loan modifications are approved and they usually take months.

If you have ever tried to talk to your bank about getting a loan mod, you will likely hear something like, "I am sorry sir, we can only consider you for a loan mod if you are 60 days or more delinquent."

### WHAT??

That's just stupid.

Not really. Here's why.

Let's make it simpler for you to understand the scam. Remember FAS 140? Once an asset has been sold, the Lender/Servicer forever loses the right to enforce or control the asset...*except* when a loan is considered delinquent.

**After 60 days, your servicer becomes a debt collector and is governed under the Fair Debt Collections Practices Act.**

This is another scam they don't want you to know about.

If you have ever received a Notice of Default or anything else from the bank, you will see language like, "This is an attempt to collect a debt." This is required by law under the Fair Debt Collections Practices Act.



Under the Terms of the Pooling and Servicing Agreement, the REMIC can "set off" or write off the asset as non-performing. The servicer may then buy this asset back as a **non-performing, non-secured debt**, very much like the collections agencies that buy non-performing credit card debts.

Once a debt has been written off for tax purposes, it is discharged. The company may sell the asset to a debt collector



who will do anything and everything in its power to lie, cheat and steal to collect on the debt. This is why they must have the notice "This is an attempt to collect a debt." This is your clue that it is not an original creditor.

Once a debt is set off, the **FDIC comes in and covers 80% of the face value of the loan.**

Your bank then buys the bad debt for pennies on the dollar from the REMIC so that they can negotiate a loan modification.

Once they get you to sign the loan mod agreement, they have successfully renegotiated, recontracted and re-acquired the loan. Notice how hard it is to get a loan modification? Do you know why?

They can no longer dump their toxic assets on those "suckers on Wall Street." *Fool me once, shame on you. Fool me twice, shame on me.* Wall Street is getting wise. Now, strict underwriting standards must be applied because they have to keep the loan.

Furthermore, there are strict accounting rules about buying back toxic assets. The asset has to be bought on the open market. That is why it takes months for them to buy your note back.

Can you see the light now? Are you having an "aha" moment?

### **But If They Bought The Loan, Don't They Then Have the Right to Foreclose?**

Once a debt has been written off as a bad debt, the owners get tax credits for the asset. When this happens, the debt is discharged. Settled. Gone.

What these banks are doing is buying a discharged asset. They then try to convince the world; the borrower, the courts, and the Trustee, that they are the real party of interest. That is a lie.

As I discussed earlier, once a loan has been written off, it cannot be re-adhered and made whole again. Remember? **You cannot make carrots from carrot juice.** It's forever changed.

### **Enter Robo-Signers and Fraudulent Loan Assignments**

Let me ask you a question. If you could pick up a promissory note for pennies on the dollar, and all you have to do is to "convince" (con) the homeowners that you are the true party of interest...to what extent would you go to lie/cheat/steal to get the home?



The answer is...**whatever it takes**. At least that's what the banks are doing.

This brings us back to the Uniform Commercial Code. Under the law, the original promissory note is the only valid and legally binding chain of title for the note. Your original promissory note is like an original check. It's a one of a kind instrument.

To convince the court that they have the right to foreclose, banks have taken to:

- a) Forging documents
- b) Creating arbitrary loan assignments to suit their needs
- c) Bringing fraudulent documents before the court
- d) Recording fraudulent documents at the county

There is a company called Loan Processing Services (LPS), who for less than \$100, can fabricate any loan documents the bank needs to facilitate their foreclosure. It's called reverse engineering of title. Instead of following proper legal due process of proper chain of title assignment as required by law, these companies will reverse engineer a title to facilitate for the foreclosure, even if they have to bend the rules a little. *They then go under oath to testify that they have first hand knowledge of the fact that these loan documents are legitimate.*

I have depositions of employees from these foreclosure mills passing the notary stamp around and stamping signatures as they go. The literally pass around notary signatures like it was a rubber stamp. Often times, you can see signatures as notaries that do not match that registered with the State.

There was even an instance where one outfit had an "assignment table" where they would put a whole stack of paper and a manager would then rubber stamp the appropriate loan assignment as they saw fit with no verification, no firsthand knowledge of the fact, no confirmation, zip.

But as I discussed earlier, you cannot make carrots from carrot juice. If a loan has been securitized, any supposed original promissory note is nothing more than counterfeit at best; not to mention securities fraud.

Don't believe us? Just go to Youtube and search for the [Alan Grayson Foreclosure Fraud](#) and the [video deposition of nationwide title clearing bryan bly](#). These are but two of hundreds of such videos. Congressman Grayson is a Representative from Florida...one of the worst affected States in the US.

It's enough to make you sick.

## Legal Arguments

The issues around foreclosures are confusing, stressful and emotional.

This is made worst because the banks are committing open fraud but are trying to cover it up. Like I mentioned earlier, not even the bank's managers or their own counsel knows what's going on. By reading this book, you are more educated than 99% of the people out there facing foreclosure.

Take a read of these two great articles:

[http://www.usatoday.com/money/economy/housing/2010-12-21-mortgagenote21\\_CV\\_N.htm](http://www.usatoday.com/money/economy/housing/2010-12-21-mortgagenote21_CV_N.htm)

<http://www.bloomberg.com/news/2011-01-06/foreclosures-may-be-undone-by-massachusetts-ruling-on-mortgage-transfers.html>

With your newfound set of eyes, read the articles again. Seriously, click on the link and read it. You will now be able to spot the lies and say "aha" when you look at the problem through the loan fraud lens. It all makes sense.

Everyone is confused. The lawyers and the judges think that it's just a procedural error. It's not.

In this chapter we will go into more legal arguments to discuss the issue of subject matter jurisdiction (or Standing) as well as the Fair Debt Collections Practices Act as it applies to the foreclosure problem.

## **Beyond "Show Me the Note"**

Some of you may have heard of the argument "show me the note." Time and time again, these cases are tossed out of court. This scheme comes from well-intentioned people in the media who are ill-informed about the legal process.

Fundamental to the American jurisprudence system is the concept of standing.

Let me illustrate standing using another analogy.

Let's say a husband and wife are arguing in court over who should take the couch. All of a sudden, some guy shows up and says, "I want the couch." This third party is not a real party of interest and therefore has no standing to be in the controversy.

However, if that third party then shows up with a sales receipt from the wife proving that he paid for the couch, all of a sudden he has standing.

This is really important for us to understand. In building your case, you should study up on the securitization process and arguments. You have to be able to articulate and defend your allegation that the bank is not a real party of interest, and therefore, lacks subject matter jurisdiction on the controversy. In other words, **they lack standing**.

Under the *Federal Rules of Civil Procedure Rule 17*, "an action must be pursued by a real party of interest." (Google it up.) So, if it can be proven that the bank is not a real party of interest, then the bank cannot enforce the note. Don't take our word for it. Look it up yourself and consult counsel.

One of the ways a bank can obfuscate the problems of securitization is to present "the note" to the court. As I explained above, the note is invalid once it has been securitized, but, in order for the bank to perpetrate the theft of your house, they will do whatever it takes to complete the scam.

Under Uniform Commercial Code, a note is a one of a kind negotiable instrument that has the only legally binding chain of assignment. Oftentimes, your lender will show up with a photocopy of the note made years ago...again, obscuring the facts in order to steal your house. This is admissible unless you know how to object. Again, consult with counsel about the *Federal Rules of Evidence 1002 and 1003*.

Another way banks hide their fraud is to do what's called "blank assignments" so that the loan may be assigned many times amongst themselves that are tracked by MES (which we will explain later), while keeping a blank assignment of the note handy in the event a foreclosure is needed. This is blatant abuse of the law. The law is very specific here. The promissory note as well as the Deed of Trust must be together at all times and there must always be a clear and unambiguous chain of title that is traceable in public records for all parties of interest in real estate.

Remember, the argument we want to go by is not "show me the note," but instead "show me standing" or "show me that you are a real party of interest." One of the ways they can do this is to present the original promissory note. By understanding the argument of securitization, you may be able to refute the note.

## The Deed of Trust and Mortgage

When you sign to close on your loan, you signed a number of documents. Most importantly are the Deed of Trust or Mortgage (depending what State you live in) and the Promissory note.

The Deed of Trust/Mortgage secures the promissory note.

The Deed of Trust/Mortgage is the document that gives your lender the right to sell your house in a foreclosure action

Both the Deed of Trust/Mortgage and the Promissory note must always point to the same party at all times to have Perfection of Title.

## Perfection of Chain of Title

In every State (that I know of), the law is very specific in regards to recordation of public record at the County Hall of Records with regards to real property. Specifically all real parties of interest in real property must be recorded at the County. In other words, if someone has an interest in a piece of property, they **MUST** record this interest on public record.

When a promissory note is sold or assigned, it therefore must be recorded in public record to maintain perfected chain of title for the security.

If there is a break in a chain of title, then **bifurcation** occurs where the Deed of Trust points to one party, while the promissory note points to another party.

### Carpenter v Longan

Under a US Supreme Court ruling, it is stated that the Promissory Note is the object, and the Deed of Trust is the attachment.

Where the Promissory note goes, the Deed of Trust must follow, much like a dog and the tail. Where the dog goes, the tail must follow. Not the other way round.

Once bifurcation occurs, then the security has been broken. Under Carpenter v. Longan, the Deed of Trust/Mortgage must follow the promissory note, but if the promissory note is assigned to one party, while the Deed of Trust names another party, we have a break in the chain of title.

In every Deed of Trust/Mortgage, it states specifically that the instrument is subject to applicable State and Federal laws. Since an assignment of the promissory note occurs without the corresponding Deed of Trust, then the instrument has violated State law. Thus, violating the terms of the Deed of Trust/Mortgage, making the instrument invalid.

If it can be proven that your loan has been securitized, then we have a serious breach of the terms of the Deed of Trust/Mortgage.

If interest in the promissory note has been sold to a REMIC (Real Estate Mortgage Investment Conduit) and proper assignment was never done at the county, then the terms of the Deed of Trust has been violated, making it invalid. This will convert the debt from a **secured instrument to an unsecured instrument**. This means the lender might be able to sue you to collect the money, but can never sell your property to collect on the collateral.

However, this happens every day right in front of our eyes because the general public is too uninformed to argue these points and so the banks get away with this.

### **Who or What is MERS?**

In order to facilitate the tracking of the thousands of true shareholders who owns the promissory note, an electronic registration system must be developed. Bankers got together and created the Mortgage Electronic Registration Systems (MERS). As you can see from our previous arguments that due to IRS Code 860 governing tax pass through for Special Purpose Vehicles, the real parties of interest are the individual shareholders. This could be thousands of them...and it would be impossible to track these parties at the County Record. Furthermore, these parties change hands literally daily, so it would be impossible to track these using conventional means.

When you look at your Deed of Trust or Mortgage, if your loan mentioned MERS of the first or second page, then there is a good chance (100% actually) that your loan has been securitized.

MERS functions as a registry. Much like your County Recorder. However, what is unique about MERS is they are often named either as a Beneficiary or a Nominee on the Deed of Trust/Mortgage. There's a couple of problem with this.

- a) To be a Beneficiary, one has to put up the money to fund the loan. MERS never front up a single dim for the loan. They are solely there for the purpose of tracking transfers.
- b) MERS recordation is not official. The only legally recognized recordation on public record is with the County.
- c) MERS is never a Holder in Due Course. No promissory note was ever assigned to them.

MERS appoints loan assignments to mysterious parties every day for the purpose of foreclosure without actually having the authority to do so. If you have ever received a Notice of Default or Notice of Substitution of Trustee, you will likely see MERS appointing some entity you've never heard of or dealt with as the beneficiary of your Deed of Trust/Mortgage.

It makes as much sense as your local County Recorder going in, taking the Deed to your house and assigning it to his brother. He has no authority to do so.

The Recorder is just that...a keeper of record. He cannot appoint anyone to be anything. MERS functions just like a recorder. It is a registration system. It too does not have the authority to appoint anyone. MERS is not a real or beneficial party of interest. This has been validated in many Federal court decisions.

On your Deed of Trust/Mortgage, you will see language that says "From time to time, the Lender may appoint a Substitution of Trustee...", no where does it say "The Nominee or the Beneficiary may...". Only the Lender can do this. Yet MERS blatantly violates the terms of the Deed of Trust every single day.

The Terms of a Deed of Trust is like an "Article of Incorporation" or Constitution of your Trust, much like the Constitution of the United States. It is the underlying terms that binds the whole Trust together, and must not be violated.

So when we have a situation where State law is being violated through improper assignment, the Deed of Trust is made invalid. When the Trustee is being appointed by "some party" that is not given the proper authority to do so, this also casts issue to make the Deed of Trust defective.

## **The Issue of a Defective Instrument**

If the promissory note is owned by thousands of parties, then there is no one party that may come forth to lay claim on the promissory note. If no one party can be named "the beneficiary" or "the lender", then the promissory note is defective.

If no loan assignment was properly done, it cannot be "fixed". A lender cannot simply reverse engineer the title of the Deed of Trust or Promissory note to make it better. Once an instrument is defective, it cannot be used to collect the debt.

If the terms of the Deed of Trust/Mortgage can be shown to violate applicable State law, then it too is defective. If it is defective, then it cannot be used to give the lender the "due on sale" clause. The terms of the Deed of Trust must be respected in whole and one cannot pick and choose which part to respect and which part to ignore.

You have to understand how to read the terms of the Deed of Trust/Mortgage so you can articulate and defend your title against fraudulent claims. So, I would recommend that you bring out your Mortgage/Deed of Trust from your closing packet and take a careful look at them to see if there are any of the above defects I mentioned. You might be surprised at what you discover.

## The Fair Debt Collections Practices Act

As you recalled, your pretender lender becomes a debt collector after you are 60 days delinquent. This is the only way they can negotiate a loan modification with you because it gets discharged out of the REMIC. I have included a copy of the FDCPA in the Appendix at the end of this book. You can also simply Google [“Fair Debt Collections Practices Act”](#)

Let’s talk a bit more about debt collectors. It is a scam. Debt collectors depend on people’s ignorance to collect their ill-gotten gains. This is one of those dirty little secrets bankers have been hiding for years. They don’t want you to know this scam. We are blowing their dirty laundry out in the open because we are sick of seeing so many people suffer at the hands of bankers.

Let me give you an example to illustrate the point. Let’s say you are a farming supply shop owner and I come to you asking for credit. We’ve known each other for years, so you say, “sure”. I used your credit to buy some seeds and fertilizers for my farm. Sadly, we had a flash freeze this year and all my crops died. So, I owe you \$100 but I cannot pay you and go out of business. As a business owner, you can do one of two things.

- 1) Carry the debt as an asset.
- 2) Assign it to a third party through endorsement
- 3) Write it off as a loss

That’s it. So let’s look at each of these cases.

If you carry the debt as an asset...then you do not get tax credits for the loss. My purchase of seeds still counts as revenue for the purposes of taxes.

If you assign it to a third party endorsement, then I will owe the money to the third party. The requirement is that I signed a promissory note, and you physically endorse the note to the other party. In this instance, the debt between you and I are settled. I now owe the third party. You cannot write off the loss as a tax write-off.

If you write the debt off as a loss, then you not only do you not count my purchase as revenue, but the loss you suffered through the bad debt is offsetted against other income.

**A debt collector is someone who (is not the original creditor) buys an offsetted debt**, and attempts to collect it. This is very important for you to understand. This is why the government created a set of laws called the Fair Debt Collections Practices Act (USC Title 15 Section 1692) in order to minimize the deceit and protect people. Sadly, not many lawyers even understand this mechanic. They think debt collectors act legitimately.



Let's say it again. Once a debt has been written off, it is discharged. It cannot be collected again. Debt collectors use deception to convince people that they were assigned the debt.

So, how does this relate to a REMIC and a debt collector? As we discussed earlier, the individual shareholders are the real and beneficial interest holders. Since the individual shareholders cannot endorse and assign their portion of the loss, **then they have to write it off as a bad debt**. The Trustee of the REMIC cannot do it neither because the Trustee is not the real and beneficial holder of the promissory note. The REMIC has given up that right when it chose to structure itself as a Special Purpose Vehicle (SPV) for the purpose of a straight tax pass through.

The only way your lender can foreclose on you is they rely on the same deception tactics used by debt collectors. The Fair Debt Collections Practices Act governs the deceptive practices also. Remember, a debt collector pulls off their deception through people's ignorance. *This is what your "lender" is doing to you*. That is why in all their communication, you will see "This is an attempt to collect a debt". An original creditor is not required to disclose this.

So if you are in a court or if you are counsel representing your client, it is important for you to ask opposing counsel to stipulate the nature of their ownership of the note. Oftentimes, opposing counsel will come into the court room representing that their client has "repurchased the note", not realizing that they have in fact brought fraud before the court. If opposing counsel is ignorant, then they are not lying. It is up to you to get them to stipulate the true nature of the negotiable instrument through interrogatories and discovery; including subpoena of accounting records. If you do this, watch how quickly the blood drains from opposing counsel's face. It's quite a sight.

A defective instrument is not enforceable. An instrument that has been previously discharged and bought as a bad debt is not enforceable. **Don't be fooled**. It's like buying a cheap knock off Rolex watch in Mexico. It might look the same, but underneath the face, it is not.

## The Debt Validation Letter

Let's analyze the Fair Debt Collections Practices Act, and specifically the portion governing the validation of debt. Under USC Title 15 Section 1692(g), you are entitled to ask a debt collector for the verification of the debt. Upon dispute of the debt, all collection activities must cease until the debt collector can validate the debt. Sadly, the consumer has only 30 days to dispute the debt or else they admit to the debt.

If you have received a Notice of Default (NOD) from your "lender", you will see that there is language specifically that says "If you do not dispute this debt within 30 days, then you admit to owing this debt." Go on. Go grab your letter and take a good look.

If you have not received a Notice of Default letter (or if you have received it within 30 days), you can still send a Notice of Debt validation letter to your "lender" to dispute the debt. I have included a sample NOD Dispute letter on <http://www.consumerdefenseprograms.com>.

However, this does not mean you waive your rights to challenge your lender if you are more than 30 days past default. You can still do it. You can write your lender and your Trustee (in a non-Judicial State) demanding that they produce proof of claim under the FDCPA under USC Title 15 Section 1692(g). Your "lender" is required to respond within 30 days. Failure to do so results in a violation of the FDCPA which carries a penalty of up to \$1000 per violation (you simply have to sue them to collect). The FDCPA also has special damage provisions for class actions. 15 U.S.C. §1692k. Recovery of statutory damages for the class is limited to 1% of the debt collector's net worth or \$500,000, whichever is less.

You will know when the debt collector doesn't have the note when a response is sent back giving the Borrower either a "We don't recognize your request" or stating the information is "Proprietary". Don't let them get away with that. The FDCPA rules are clear! In most cases, the Lender/ Servicer will send you anything but the items requested. Most of the time, debt collectors will send the following:

- Some papers printed from a computer, not sure what they are
- Nothing certified (notarized) and especially not dated recently
- Nothing showing the name and signature of the original lender or past note holder
- Nothing proving the notification of a transfer
- Simple copies of some kind of billing statement etc.

**All of which are unacceptable!** The Lenders, Servicers and Debt Collectors **ABSOLUTELY know what the legal requirements are.** They will

challenge anyone who disputes a debt to see if you know the law. This is why this is so important for you to know what the law are as well!

Under the **Uniform Commercial Code Section 3-204**, the name and the signature of both the beneficiary and the original creditor must be disclosed in the same document § 3-204 (d). The signature of the borrower must be included as well into the assignment or transfer; unless a clause in the deed of trust/mortgage waives that (most deeds of trust disclose this at clause #20).

### **FTC, HUD COMPLAINT and Comptroller of the Currency**

If you believe your mortgage servicer has not responded appropriately to a written inquiry, you should contact your State's **Attorney General Consumer Protection Office**. You should also should contact the **Department of Housing and Urban Development** (HUD) to file a complaint under the RESPA regulations.

It is important that you issue complaints to these authorities because they can not act on their own. They need a damaged party to give them the authority to prosecute a case. The more people complain to these authorities, the more likely they will take notice and investigate.

In your complaint, explain to them what you have asked, provide copies of your communication and where they broke the law. Specifically, under the Fair Debt Collections Debt Section 1692g.

Write to:

Office of RESPA and Interstate Land Sales,  
Department of Housing and Urban Development,  
451 Seventh Street, S.W., Room 9154,  
Washington, DC 20410,

You might also want to contact the Federal Trade Commission (FTC). The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them.

The FTC's address is:  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
(202) 326-2222  
[www.ftc.gov](http://www.ftc.gov)

You should also write to the Office of Comptroller of the Currency. This is the organization that oversees banking and banking practices.

You can write to the Office of the Comptroller of the Currency at:

Comptroller of the Currency  
Administrator of National Banks  
Washington, DC 20219  
<http://www.occ.gov/>

## What About My Debt Obligations?

*"But I have been brought up to be honorable. I am a man of my word. I signed the promissory note, promising that I would pay. I got my house. I am now in default. The bank has the right to foreclose on my house..."*

Most of us are decent, honest folks. We believe in paying our debts. Millions and millions of people echo the above sentiment. You are not alone.

I am not talking about a free lunch.

I am not talking about scamming the system, nor am I talking about taking advantage of some bizarre loophole in the law.

What we're talking about is fairness, equity and giving the everyday homeowner a fair shake.

### **Heads I Win, Tails I Win**

The beauty with the capitalist system is that it encourages free enterprise. It encourages people to take risks. With high risks come high rewards. Oftentimes you win, and sometimes you lose.

However, in the situation where "heads I win (and keep all the money), tails I get bailed out"...it gets down to a question of fairness and equity. Remember, the bailout comes from taxpayer money (YOUR MONEY). They received over 3.5 TRILLION dollars of free money. Pretty much with no strings attached, to do with as they see fit.



On the other side of the spectrum, millions of homeowners are being kicked out of their homes. No loan modifications to compensate for being "upside down" (i.e., they owe more than their house is worth).

Where's the fairness in that? Particularly when they can use that same bailout money to pay their top executives millions in bonuses (for the number of homes they can foreclose and how quickly they can process them).

I don't know about you, but this sort of behavior is enough for the pitchforks to come out.

Enough is enough.

## **Being Paid Not Once, But At Least 3 Times**

Being in a capitalist society, making money is not only OK, but is encouraged. But where does making a profit end and extortion/greed begin?



### **1) The Banks Risked None of Their Own Money**

One of the rules of capitalism is risk vs. rewards. With high risks come high rewards. If they were able to create money out of thin air (through the fractional reserve banking system) and make 2.5 times the face value of a loan...we're talking about 10,000% return on cash. This is an awesome return. Sign me up any day.

### **2) The Bank Got Paid When They Securitized The Loan**

As I discussed, they got paid between 1.05 to 1.5 times the face value of the loan when they securitized...within days of closing your loan.

### **3) They Got Paid for Stock Value Appreciation**

The Lender also owns stock in the REMICS. They can own up to 10% of these Trusts. So when the market went up, they profited from the appreciation of the asset.

### **4) They Got Paid by TARP**

They got paid over 3.5 TRILLION dollars of taxpayer money to do as they see fit, including buying up other banks.

### **5) They Get to Keep Your House**

To add insult to injury, they also get to kick you out of your home. Keep the house and sell it again to the next sucker so they can repeat the scam.

I don't know about you, but I am tired of being screwed. No one ever looks after the little guy.

This is why I wrote this book in the hopes that you will share it with your friends and neighbors so more Americans can wake up to this scam.

I am sure there are some people who disagree with what we are saying. But thank God, that's still legal in this country. We each have the right to our own opinion.

All I am saying is, enough is enough.

When they threaten our homes, they threaten our families. The home is one of our most sacred assets. Without it, we are lost. Once they own our homes, they can use that to leverage us and further enslave us.

To paraphrase Sun Tze (*The Art of War*): "never back a rat into a corner. Always leave a hole for the rat to escape, else the rat will bite back." The bankers have backed us into a no win situation. I hope that by educating you about this scam, you will decide to fight back.

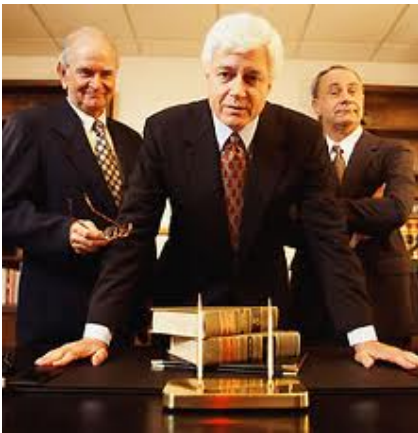


## The Bloody Road Ahead

By all indications, 2011 and onwards will be even worse than before. More and more loans known as option ARMs (adjustable rate mortgages) will come due as many of these loans have a romance period of 3 to 5 years. Once these come due, and people's interest rates get hiked up, more people will get into trouble with their loans.

As of the middle of 2010, the general American public started learning about robo-signers and improper loan assignments. This has been all over the news. But, as you have seen, this deceit goes much deeper than just procedural errors. It is massive and willful fraud committed by the banking cartel.

It is anticipated that there will be a massive boom in the legal profession in the next 5 to 10 years in the area of foreclosure defense and litigation, because as more and more homeowners learn about loan fraud, they will likely seek out legal professionals to seek relief from our predatory friends in the banking industry.



Not only that, there will be more and more homeowners who have already lost their homes wanting to have their grievances redressed as they discover that their foreclosure was done fraudulently. There is no statute of limitations on fraud. This will mean more and more lawyers will

have plenty of opportunities to pursue civil actions against these lenders for real and punitive damages.

This is a problem that will haunt the banking industry for years to come. I expect there will be a massive rise in advertising across the nation for "wrongful foreclosure contingency attorneys" in which attorneys will pursue clients who have lost their homes due to fraud for a big chunk of the settlement.

This is why the people in the know in the banking industry are doing everything they can to keep the truth from coming out. This problem will result in very significant and long lasting implications to the banking industry for years to come.



## The Collapse of the Banking Industry?



If homeowners around the country start awakening to the fraud committed and start suing banks en mass, could this lead to a collapse of the banking industry?

As much as I dislike the fraud that is being committed by our banking buddies, I do not relish the thought of the

collapse of the banking industry. It's like a child behaving badly. I disapprove of the poor behavior, but I do not dislike the child.

Let's not forget that we in the Western world have a lot to be grateful for thanks to our banking friends. Much of our current luxury and way of life is, in part, due to the banking system.

A collapse of the banking system will hurt everyone and ruin any chance of economic recovery.

That said, Congress will never let this happen. There will likely be additional free bail out monies issued to cover our banking friends against any possible harm done to them. As we recall, they are simply "too big to fail" and beyond reproach. They hold too much sway in government and fund most of the political contributions to our representatives.

## Free Lunch for Homeowners?

Another argument I have heard is that this is just another way for deadbeat homeowners to get away with a free lunch and "stick it to the banks" at the expense of other homeowners who pay their dues "like everybody else."

Nothing can be further from the truth.

Most people who cannot afford to pay for their mortgages are people who have lost their jobs as a result of the economy. Bad things sometimes happen to good people. This does not make them bad people. These are your friends, your neighbors, or your relatives who are suffering.

The grievances we want to address are:

- 1) The housing bubble was caused by the banking industry out of greed

- 2) The banks have enjoyed record profits from the boom
- 3) The banks have been paid by Wall Street as well as by taxpayer money
- 4) The banks are not the real parties of interest in foreclosure actions
- 5) The notes bought from the secondary markets are unsecured. Re-adhesion of an asset that has been written off is illegal, immoral and unconscionable.
- 6) Haven't the people suffered enough?

The point is, even if every homeowner decides to stop paying their mortgages, the lenders are not harmed directly because they are nothing but a servicer. The people who are potentially harmed are the shareholders of the REMICs. But their losses are covered by the FDIC. The banks have the TARP money set aside for this purpose. They have already been covered for this loss.

The **law is the law**. Banks cannot pick and choose which laws to use when it is convenient for them, and which laws to ignore when it isn't. They cannot reattach an unsecured note (that has been written off), and con the homeowners into thinking that it is *Perfect* (without defects).

What these so called lenders (servicers) are doing is actually taking this opportunity to reap massive profits by acquiring people's houses for very little. They will then manipulate the market again to re-stimulate the economy and wait for the prices of these houses to rise so they can sell them for even more profits.

I feel this is unethical and repugnant. All I am saying is, enough is enough.

What I am saying is that the fraud must stop. A foreclosure action must be done by a real party of interest. Period. If it isn't, then it is nothing more than theft and extortion.

## Opportunity for Peace

I hope that by awakening more and more homeowners and people in the legal profession of the extent of loan fraud that our banking friends might decide to come clean.

All we are asking is a fair deal. People all around the country are suffering. All we're saying is, enough is enough. Let the greed stop and let the compassion for each other begin.

I hope to avoid the blood bath of litigation ahead as it will not be good for the banking industry and ultimately, it will come back to haunt everyone. Like I said, we need a strong and reliable banking system.

I hope that banks will feel that they can come back to homeowners and proactively renegotiate home loans to make housing more affordable for everyone to keep people in their homes.

If the people in the banking industry can see that they are exposed to a massive amount of litigation damages if they continue with this fraud and change their predatory ways, perhaps we might see some economic recovery as more people can actually afford to stay in their homes and spend money to support the economy instead of feeding the banking system.

I hope that both the people, the media, the government and the banks can all work out an amicable accord to allow homeowners to stay in their homes. If not, then this country is heading towards a legal blood bath.



## What Are My Options?



The purpose of this book is to share some information with you. We hope that this is just the beginning of your educational journey.

Again, please don't believe a word we say. Do your own research.

Whatever you do, don't go to your bank manager and demand justice. He is likely to be as ignorant as everyone else. This is a scheme that only a few people at the highest level of the banking and finance industry are aware of.

Don't go in half-cocked and demand that your bank show you that they are a real party of interest. Arm yourself with more information.

If this book has inspired you to take action, then the next step is for you to learn more about this process so you can properly articulate and defend yourself.

If you are facing foreclosure, time is not on your side. Playing the ostrich game of hiding your head in the sand is not going to make the problem go away. The banks are going to steal your home and kick your family to the curb.

We understand that many of you facing foreclosure are facing crippling depression so that it is a struggle to even wake up and get dressed every day. We know. We have been there.

But really, your choices **are very simple**.

**Option 1. Give up.** Continue to feel sorry for yourself. Wallow in your depression. Lose your home.

**Option 2. Learn to fight.** Defend your rights. Educate yourself. Force your lender to prove standing.

If you are inclined to learn more and educate yourself further, we've put together a series of videos to help you get up to speed quickly about foreclosure defense. People have paid a lot of money to come to our seminars (including lawyers) to learn this information. We've invested thousands and thousands of hours researching this information so you can cut to the chase. Like we said, if you are facing foreclosure, time is not on your side.

To learn more about foreclosure defense strategies, come to:

<http://www.consumerdefenseprograms.com/resources/videos/>

## Do Your Own Research

If you are interested in fighting foreclosure, then you need to arm yourself with more information. Do not rely on the information contained in this book. This book should be used as a starting point and a framework only.

Verify the facts. **Don't believe a word I say**. Consider this a work of fiction. Discover your own truth. Seriously, I could be talking out of my backside and feeding you rubbish.

You have no rights until you learn your rights. I want you to own the process.

Research the laws.

Start reading up on the laws around securitization. Interview a number of attorneys in town to see if there are any that would be willing to work with you and support you in this matter.

## Suing Your Lender

Oftentimes, challenging your lender to call them on their bluff will invariably lead to litigation. For most people, the idea of suing a big corporation is enough to make them vomit. Most would rather eat maggots than to show up in a courtroom. Before you freak out, take a deep breath. It's not as bad as you think.



Most of us fear the courtroom because of our mental association with courts. We tend to think people only need to show up in court because they are criminals or they are being sued. It sucks being on the receiving end of a civil action.

The tables turn when you are the one doing the suing. It is the other side (the bank) that will be squirming. However, you can't just go about suing the bank for no reason. Courts have rules.

If you are going to accuse someone of something, you better have proof. That's it in a nutshell. In other words, the Plaintiff (the person doing the suing) has the burden of proof.

The second rule of court is that evidence is everything. Allegations are cheap. Anyone can accuse anybody of anything. But imagine if I had a picture of a guy holding a gun, pointing at a teller with a bag of money in his hands, plus 10 other people at the scene testifying to the fact. This is something that is convincing enough to get the person convicted.

Another thing you need to know about the court system is, judges do not know the law.

**“WHAT?!”**

That's insane.

No it's not. There are literally millions of laws out there. Criminal law, family law, contract law, intellectual property law and so on. There is no way a judge could know every law that has ever been written. It is the responsibility of the litigants to bring the law before a judge so he/she can make a ruling based on evidence and law.

So, if you were to come to court showing the judge where your lender is breaking the law by bringing the appropriate laws before the court, would you feel a little better about going to court?

If you were then able to come to court with 10 reams of paper full of evidence showing where the bank lied, cheated and stole money, and you were backed up by an expert witness who used to be an ex-banker, would you feel a little better?

Would the bank feel a little squirmy?

See the difference? You just need to learn to build your case.

Imagine if you have done all your research, built your arguments, gathered a bunch of evidence about the fraud and presented this argument to a lawyer. Do you think it is more likely she will be on your side rather than tell you to take a hike? I would hope so.

The problem is, most people think the bank is the Lender and that they do have the right to foreclose. Now we know better.

The key in successfully defending against foreclosure is building and gathering your evidence.

## Communicating With Your Lender

Under the Truth in Lending Act, you are entitled to demand full disclosure from your lender.

Before jumping off the deep end, the best place to start is to write your lender to discover who they are. That might sound strange...but they are not who you think they are. You will often discover that they are, in fact, not a lender at all, but they are a servicer pretending to be your lender.



Try writing to your lender and ask them the following, pointblank:

"Under the Truth in Lending Act, I have a right to know who the true party of interest in this transaction is. Please stipulate whether you are the holder in due course for my promissory note. If you are not the holder, then you admit to being the servicer of this obligation. I demand that you tell me who the holder in due course is.

Please also stipulate for the record whether or not my loan has been securitized, and if so, what the name of the REMIC/Trust my loan is bundled with."

This will give you a lot of surprising information and will help you towards getting proof of their fraud.

You might have to write two or even three letters before you get a valid response.

Many times, banks will not want to reveal their fraud. They will likely respond with a standard form letter created by a no name, minimum wage employee to the effect of:

"Your request is denied. There is no law that requires us to produce the note. Your request is frivolous. We will continue to enforce the obligation."

These letters are not signed. There is no name on the response.

You might have to copy your letter to the FTC as well as the Comptroller to the Currency (the body that governs banking in the US).

It is absolutely insulting.

However, it is imperative you document and have proof that you sent these letters as they can be used as evidence in a court of law. It is often a good idea to have a "silence through acquiescence clause" in your letter.

For example, "If you do not respond with an answer within 30 days, then you admit that this loan has been securitized and that you are merely a servicer of the obligation and not a real party of interest."

To help you get started, **I have included a sample letter on our website at <http://www.consumerdefenseprograms.com>** for you to use to initiate your pre-litigation discovery with your lender. Look under the Resources tab.



## Getting a Securitization Audit

One of the things banks hate most is a securitization audit, as it blatantly exposes their fraud. If banks hate it, then we love it.

A securitization audit is an audit done by a third party researcher who scours through EDGAR (the SEC's database for all public placements) looking for your loan. This is tedious and grueling work, as they have to literally find a needle in a haystack of a few thousand loans.

What an auditor would provide you at the end of a securitization audit is a document and an affidavit that is admissible in court as evidence. The document will show which REMIC your loan has been securitized to. Since this information is publicly available through the SEC, the affidavit is a simple statement of fact (given with firsthand knowledge) that backs up the fact that the loan has, in fact, been securitized.



### Forensic vs. Securitization Audits

What is the difference?

A forensic examination or audit will audit your loan documents to make sure your lender followed the law under TILA (Truth In Lending Act) and RESPA (Real Estate Settlement Procedures Act).

Some people have used the Forensic audit to stop a foreclosure claiming the lender did not do the right thing. Or did not give them appropriate disclosures, or notices of their rights, for example, the rights of rescission.

As you recall, as a Plaintiff, we have the burden of proof. This is the Holy Grail of proof that is needed to prove that the bank is committing fraud.

Sadly, getting a good and reliable securitization audit can be tricky. Some companies **charge as much as \$4000** for one because they know the power and value of what it can do for a case. It's pretty much like that picture of a guy holding a gun at the bank. If your bank is caught with that smoking gun, it's a bad day to be a banker.

If you are interested in **getting an affordable securitization audit**,

come to <http://www.consumerdefenseprograms.com>. We have searched far and wide for the best and most cost-effective auditors in the country.

## Learning the Rules of Court

If you are considering taking action to defend your home, then it will be imperative that you learn how courts work. We found a fantastic resource called [Jurisdiction by Dr. Frederic Gray](#). He is an attorney who has a lot of experience with litigation cases.

As Dr. Gray points out, "going to court is like going into a knife fight. Don't go in it with a potato peeler. Bring the biggest and baddest hatchet you can find."

Don't you dare try to go to court and "wing it." Go in prepared. This is your house we're talking about.

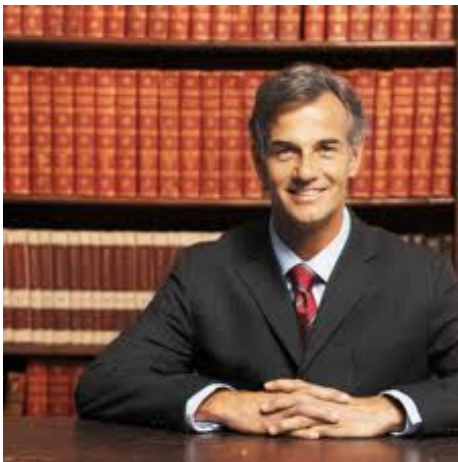
Most of us are not trained nor versed in the workings of the court. We do not have any experience in the courtroom. If you are going to take on your lender to defend your home, we recommend you learn how to fight to win. For more information about *Jurisdiction*, visit: [www.consumerdefenseprograms.com](http://www.consumerdefenseprograms.com).

## How to Deal with Liars Lawyers

For the record, I think the legal profession is one of the noblest in existence and they have the potential to do the most good for the people. I have the highest respect for good lawyers who fight for the rights of the people.

Many people have asked me for recommendations of good lawyers who know foreclosure defense. Sadly, lawyers who know this stuff are few and far between.

Unfortunately, most of the time, lawyers are arrogant and deceptive. They call people without a law degree *laymen*. The idea that a layman knows something they don't know is beyond the comprehension of most lawyers.



Most lawyers (and sadly, judges, too) buy into the whole bank scam. "You borrowed the money. You enjoyed the house. You can't pay. The bank is foreclosing. What's the problem here? You're just trying to get out of the debt. This is another one of those internet scams." If they don't say as much, then their body language says it all.

I saw one situation where a person had all the evidence, and prepared a pleading. They presented it to a lawyer. The lawyer told him that he needed to put up \$2000 before he would even read the documents. Two weeks later, after taking the

person's money, the lawyer came back and told him, "This is crap. If you want me to handle this, I will need a \$5000 retainer (and that's only to get started)." I was informed that he wanted \$25,000!

I see this time and time again.

That is not to say that there aren't any good lawyers. Sadly, they are the exception rather than the rule.

Before engaging the services of a lawyer, I recommend that you buy and study up on the rules of court ([buy Jurisdiction](#)). Even though your case might be handled by a lawyer, it is imperative you know what the lawyer is doing (or not doing, for that matter).

I also recommend that you do as much of the homework as possible to build your case. Gather the evidence. Do the securitization audit. Take your first crack at building your own pleading. Do a Google search on the Internet. Look for a template for a *quiet title action* or *wrongful foreclosure*. Start reading up on what others have done.

This will save you money and several headaches...and increase your chances of success.

It is hard enough dealing with the stress of losing your home and the prospect of fighting the bank. You don't need to fight your own counsel. Interview any lawyer you intend to work with. See if they have done any previous litigation or know about commercial law. Most importantly, see if the person is someone who is open minded and someone you can trust. Use your gut. If you don't like the guy, then I don't care how good he is—run.

When working with a lawyer, you should be a thorn in his side (in a good way). Don't just leave it to him. You should always be on top of your lawyer. Make sure he is accountable for how many hours he spends on your case. If you are going to pay someone \$250/hour, you have the right to know what he is working on and when. A common tactic lawyers use is to have paralegals do their work for them. They would charge you their lawyer's rate and have the paralegal do the work. Make sure you get clear distinctions between these rates.

My main concern with lawyers is that they see their clients not as people suffering from bank fraud, but as buckets of money. You pay them a retainer. You are hard on your luck. You barely have a roof over your head, and you need help. Yet these people see a retainer as an invitation to rip you off. Their objective is to do anything and everything they can to spend that retainer as quickly as possible and hit you up for more. If you run out of money, their response is "Sorry. Tough luck." It seems like once these people get their Bar

certificate, they made a deal with the Devil and traded their humanity and soul away. Some people have taken to calling them "Bar flies."

**Here's why you may not want the most experienced and sharpest one you can find.** They are often in high demand, they don't need the work, and they don't have the time to properly prepare and research your case. Instead, it might be better to find a friendly attorney and bring him a case with solid arguments, solid evidence and solid laws to back it up. All he has to do is to massage it. All you have to do is to make sure he IS actually REPRESENTING (talking on your behalf, using your arguments) you.

One way to weed out crappy lawyers is to give them this book and ask them to read it. We have written this book with the purpose of not only exposing the fraud, but also showing lawyers how to argue the case. A good lawyer can take what we have presented here and do their own research to support the arguments presented here. If they are not willing to read it or demand that you pay them for THEIR EDUCATION, then they might not be someone you want to work with.

One key point you want to enlighten potential lawyers you intend to work with that this is a major growth area of law. If they learn the arguments of foreclosure defense, they will likely have a lot more business and a huge competitive advantage over other lawyers in town.

Again, there are likely good lawyers out there. Unfortunately, many of them are often booked up and are hard to find.

The advantage of a good lawyer is that they can prepare your arguments, make sure they are legally sufficient and be able to represent you in court. Since he should have experience in the courtroom, he would know what to say and do.

As boring and as weird as it may sound, learn to love the law. It is there for you.

If you are looking for a lawyer or know of a good one you can refer other members to, please come to our site and check our referrals under the Resources tab: <http://www.consumerdefenseprograms.com>.

By the way, REPRESENT actually means RE-PRESENT. Your lawyer re-presents you into the court system as a legal fiction (and not a person of flesh and blood). They talk because you can't. They call people like you "incompetent," in the same way a quadriplegic or a 6-year-old child is incompetent.

Your Legal Fiction is your name spelled in ALL CAPS. It is not you. But it is a representation of you (much like a drawing).

All governments, banks and legal entities around the world can only interact with the legal fiction of you.

is



## Do It Yourself

If you can't afford a lawyer or can't find a good one to work with, the next option is to do it yourself. This is known as pro se (or pro per in California).

More and more homeowners are choosing to do it on their own. Frankly, this information is so exotic and so new that few people can rely on lawyers to support them.



**Let's be clear. This is not easy. This could be one of the most demanding things you have ever been asked to do in your life.**

### Don't Do This.

Seriously, this is not a standard disclaimer. **Don't do this.** The litigation process is not for the weak of heart.

It is better that you find other solutions than to litigate against your lender half cocked. It's like a fly hitting a windshield. It is not pretty if you don't know what you are doing.

That said, your home is everything. Without it, you are lost. You are ungrounded and uprooted. Your family is unsettled.

Now that you know about the fraud, you have to decide whether you are willing to fight for your rights. However, if you do decide to do this, you will have to commit to doing it to the very end.

As Yoda says "Do, or do not. There is no try."

We have put together a coaching membership program to help homeowners with resources so they can do this on their own.



Our membership program allows you to connect with other homeowners so that you can support each other, share and collaborate on ideas. As a benefit of the membership program, you will also receive sample documents you can use to challenge your lender and fight for your rights. Other benefits include:

- **Access to sample responses.** Once a lender responds, we have samples used by others in our program that you can use to craft your own responses.
- **Legal Resources.** We will show you where to go to look for local laws as it applies to you and where you can find people to help prepare documents who understand this process and more.
- **Group Conference Calls** where you can ask and collaborate with members on a weekly basis.
- **Guest speakers.** We bring experts from around the country to talk about mortgage defense successes to give you ideas to help you with your situation.
- **Access to our Archives.** We have over 40 hours of archive content that will be available exclusively to members of our community.
- **Drip Delivered Content.** Instead of dumping you with hours and hours of content, we give you day by day automated content delivery so that you are never lost. Our automated system will tell you when to send out letters, when to order a securitization audit, when to go to the county recorder's office for research, and more.

Let's be clear. This is a membership to a homeowner's support club, and is not a substitute for good competent legal advice. You should seek competent legal counsel where possible. (Sorry, I am required to tell you this. The Bar Association has a monopoly on the legal franchise.)

For more information about our foreclosure defense membership program, come to: <http://www.consumerdefenseprograms.com/coaching-program/intro/>. It is more affordable than you think.

## Help, My House is Up for Sale Next Week!

If you find yourself in a situation where you are about to lose your home, you have two options legally.

One is to file a civil action against your lender followed by a motion for a Temporary Restraining Order (TRO) and Injunctive Relief. The other is to file for bankruptcy protection with an automatic stay.



Firstly, in order for a TRO and/or an Injunctive Relief to be granted, the petitioner has to show a strong likelihood of success. This means that as a Plaintiff, you will need to bring compelling evidence to convince the judge that you deserve a stay of the sale. It is your job to bring significant controversy that brings doubt as to who the real party of interest is in the foreclosure action.

Obviously, having a securitization audit would be hugely beneficial as well as a pleading/complaint that argues the points and authority that the lender is not the real party of interest. However, this takes time. Time you might not have.

Crafting a pleading takes time and requires great care. It is not something that can be rushed. You should consult your lawyer as to the proper method and process for this.

If you are a member of our [foreclosure defense membership program](#), we have included sample TROs, Injunctive Reliefs as well as sample pleadings that others have used. It is then up to you to customize the arguments as it applies to your own situation. Be warned. You do so at your own risk. These sample documents do not come with any assurances whatsoever.

Sadly, **TROs are RARELY granted**. The Plaintiff has to bring an **overwhelming** amount of evidence to cast significant doubt to the judge for one to be granted.



## The Bankruptcy Automatic Stay Method

To buy time, some homeowners declare bankruptcy. When you declare bankruptcy, you receive an automatic stay from all creditors, including the lender.

Many homeowners feel this is the best and most assured way to stop the sale from happening.



Be warned. Bankruptcy is not for the weak hearted. Do not enter bankruptcy lightly.

You will need to declare all your assets, income and financial details. It is like having a permanent anal probe of your financial details. It is not pleasant.

**Never ever lie, especially in bankruptcy court. You will go to jail.** As great as the temptation to hide the precious little money you have from your creditors is, don't do it.

The other down side of bankruptcy is that it is a mark in your public credit score. But frankly, having a bankruptcy or a foreclosure these days is not as big a deal as it once was. Almost half the country has been through it. It's like being a leper in a leper colony. It's not as big a deal anymore.

The fact is, however, for most homeowners **this might be the only way to keep their house from the auction block** while they buy time to build their case for their foreclosure defense.

The other thing about bankruptcy is that in my experience, I have found that most of the wins come from the bankruptcy courts. The thing about bankruptcy is that it has the nice Rule 3001(d).

### ***Federal Rules of Bankruptcy 3001 (d) Evidence of perfection of security interest.***

***If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.***

It requires the lender to provide proof of claim.

This means that the table is suddenly turned. It is now the lender who has to come up with the proof of claim. And if you know how their fraud is being perpetrated, then you know how to object and deflect their deception.

What many people do after they file for bankruptcy is to file an *adversary proceeding*. As a debtor, this is absolutely free. An adversary proceeding is like a normal civil action, but done under bankruptcy court, and under bankruptcy rules. It allows the debtor to challenge the bank to provide proof of standing.

The other thing many home-owners do is file their house as an unsecured debt.

Please note, **you cannot file an adversary proceeding under Chapter 7**. **This is very important to remember.**

This will then prompt the lender to complain. But in doing so, they are then required to provide proof of claim, which they often are unable to.

Navigating the bankruptcy process is not for the weak hearted. Even for someone who has a lot of experience in legal procedures. I **highly** (seriously, HIGHLY) **recommend** that you get competent help. Look, I am here to save you money. If I HIGHLY recommend something, I mean it. Some things you can cut corners with, but bankruptcy is something I don't recommend that you do on your own. Trust me when I tell you that I tried to do it myself. It was a disaster. I wished I had professional help.

Normally, hiring a law firm to handle your bankruptcy costs from \$2000 to \$4000 for Chapter 13. We found a company (not related to us) that specializes in preparing bankruptcy documents for foreclosure defense who can do it for less than \$1000. There are many specific details a bankruptcy specialist who knows about foreclosure defense can help you with that a normal bankruptcy attorney cannot. They will be able to help you with such things as specific methods for declaring your assets and how to keep you in your house for months, if not years, while you go through your legal procedures.

If you are interested in this service, come to [www.consumerdefenseprograms.com](http://www.consumerdefenseprograms.com). It is listed under Resources.

In the next chapter, we go into the practical matter of “now I know that there is fraud going on with my house, what can I do about it?”

## Practical Matters

In this chapter, we go through specific practical things you can do right away to challenge your lender.

At its heart, there are four classes of people that are affected by foreclosures.

1. Someone who is about to lose his or her home in a **Non-Judicial State** (California, Nevada, Arizona, Oregon, Washington, etc)
2. Someone who is about to lose his or her home in a **Judicial State** (New York, New Jersey, Ohio, Florida, etc)
3. Someone who has already **lost his or her home**
4. Someone who is hanging by their teeth, who is upside down or can no longer pay their mortgage trying to get a **loan modification or someone in good standing**.

Each class of person has different options and procedures available to them. This chapter will outline in brief some of these options. Of course, this is just a book and is no substitute for competent legal advice, so please consult counsel before doing anything that could affect your home.

### Non-Judicial State Homeowners

Most Western States of the US are Non-Judicial States. In these States, foreclosures are governed by State Civil Code.

These homeowners have it the toughest. Being in a judicial state, Lenders need not prove anything. They can simply notify the homeowner of the default, then after a certain number of days as defined under State Civil Code, the property then proceeds to a Trustee sale at a public auction.

The only option available to you if you are a non-Judicial State resident is for you to file a civil action against your lender to compel them to provide proof of claim, and therefore standing.

The other option is to declare bankruptcy (also known as BK). In bankruptcy, generally speaking, you have two options, Chapter 7 (no asset BK) or a Chapter 13 (asset BK). What some homeowners do is to declare Chapter 7 and list their property as an unsecured asset and wait for the lender to object. This then puts the burden of proof on the lender. If your loan was closed with Lender A and is being foreclosed on by Lender B or C....there must be (by law) a valid chain of assignment to show that Lender C is the real and beneficial party of interest. As we discussed, because of the problem of securitization, this is never done. This

creates a real problem for the Lender (who is frankly doing this in fraud anyway).

For those with a lot of assets (such as equity in their homes), they can do a Chapter 13. Under a Chapter 13 bankruptcy, you can file an Adversary Proceeding where you sue your lender to compel them to produce valid proof of claim. The beauty with Bankruptcy Court is that you have the law on your side. Rule 3001(d) of the Federal Code of Bankruptcy requires that your lender provide evidence of "perfected title".

If you choose to file a civil action against your lender, you better have proof as we discussed earlier. The best proof you can bring is a securitization audit to prove that your loan has been securitized. Then, work with your lawyer to build an argument around the points outlined in this book. Unfortunately, this will set you back at the minimum \$5000, and more likely closer to \$10,000 to \$25,000.

Alternatively, if you cannot afford a lawyer, you could try to do this yourself. A great place to start is [LivingLies.com](http://LivingLies.com). This is a blog created by a lawyer with lots of articles, sample pleadings and lots of other resources.

Another option is to join our foreclosure defense membership program. We realized that there are SO MANY homeowners needing help. That is why we developed a coaching membership program with specific information and resources to help homeowners with their foreclosure defense. Our membership program has sample pleadings, sample responses, forms and procedures others have used in their foreclosure defense. You will also be able to network with other homeowners local to you...meet with them to have coffee, and support each other. For more information about this program, come to our website at: <http://www.consumerdefenseprograms.com>

A good place to start if you are in a non-Judicial State is to start writing to your lender to demand that they produce valid proof of claim. You can find a couple of sample letters on our site. This will be a good place to get started.

## **Judicial State Homeowners**

In a Judicial State, your lender has to sue you to get a judgment before they can foreclose on your house. As we discussed earlier, the burden of proof is on the plaintiff. This means that if you are in a Judicial State, you have the advantage of requiring the lender to produce proof of claim.

The problem in most cases is that homeowners in Judicial States do not know the nature of foreclosure fraud. They either don't show up or if they show up, don't know how to argue their points and thus end up losing their homes anyway.

The other problem in Judicial States is that because there are so many cases, judges end up forgoing their Oath of Office to the people they serve. Instead of dispensing justice fairly to all, they rubber-stamp judgments without a second glance. This is not fair to the homeowners, but if homeowners don't know their rights, nor know how to argue their points, then sadly, there's little justice for them. As they say, you have no rights unless you know what those rights are.

So, the best thing to do if you are a resident of a Judicial State then is to arm yourself with education. Learn the nature of loan fraud. Learn the procedure of rules of court, and how to defend yourself in answering a summons and complaint.

You should know by now that your best course of action is to push the Federal Rules of Civil Procedure 17, "an action has to be taken in the name of a real party of interest"...in other words, you are to challenge your lender's Standing and their right to foreclose. If they are not a real and beneficial party of interest, then they do not have the right to foreclose. In allowing them to proceed with their foreclosure without Standing amounts to nothing more than theft and extortion. Both of which are illegal.

Other homeowners in Judicial States choose to take a more proactive approach. Instead of waiting to be sued by their lender, they do a forensic audit, gather evidence of loan securitization, and then sue their lender to get a Quiet Title Action to remove the Mortgage from their property since no one can come forth to produce valid proof of claim.

For members of our foreclosure defense membership program, we have sample templates that homeowners can use to take matters into their own hands.

## Homeowners Who Have Lost Their Homes

For those homeowners who have already lost their homes, there are two situations. There are those who have lost their homes due to a sale but are still staying in their homes, and there are those who have been forced to move out.

Many lawyers and people in the media are advising homeowners who have lost their homes but are still living in them to **stay in their homes**. It could take months sometimes for the lender to come around to actually force the homeowner out.

Typically, in order for a lender to force a homeowner to move out, they will need to file for an "unlawful detainer". This takes a while to be granted, and this gives the homeowner additional time. Staying another month or three at home means another few more months they do not have to pay rent elsewhere.

Another technique homeowners do is to challenge the lender's standing to foreclose even after the fact to fight the unlawful detainer. This is something you will likely need to consult with an attorney for more information.

## The Wrongful Foreclosure Action

Homeowners who have already lost their homes but believe their loans have been securitized might want to see if they can do a Wrongful Foreclosure civil action against their "pretender lenders".

Here are some hints that your loans have been securitized are:

- There is a company called MERS (Mortgage Electronic Registration Systems) involved in the Notice of Substitution of Trustee, or on the original Deed of Trust/Mortgage (this is usually on the first 2 pages of your documents).
- Your loan is with one of the following institutions: GMAC, Countrywide Home Loans, Bank of America, Wells Fargo, or Chase.
- You closed with a small no name bank, and you are now being serviced by a more well known institution like the ones named above.

If you can gather sufficient evidence that your loan has been securitized, then you might be able to build a case using the arguments presented in this book to bring a civil action against your lender for a wrongful foreclosure and/or fraud. Essentially, you are accusing your lender of committing fraud in that they did not have Standing to foreclose on your property.

In a civil action in which you have suffered damages as a result of something the other party have done against you, **typically you are entitled to three times the damages(three times the value of your loan)**. This is typically called "punitive damages". It means it is damages other than documented real financial/physical

harm. This includes stress, torment, humiliation, etc. Again, this is something you should bring up with your attorney.

Before talking to an attorney (and wasting a lot of money), you ought to make sure you have a case. In court, the truth is irrelevant. Evidence is everything. It's a sad fact of the system. It is your job to bring a strong case with plenty of strong evidence of wrong doing before you can even begin accusing your lender of any wrong doing.

The best way to start is to get a securitization audit. Look in the "What are my Options" chapter for more information about getting a securitization audit.

Next, you would want to do more research about the problems of securitizations and build your case and arguments. Good places to start include:

- [ConsumerDefensePrograms.com](http://ConsumerDefensePrograms.com)
- [LivingLies.com](http://LivingLies.com)
- [stopForeclosureFraud.com](http://stopForeclosureFraud.com)
- [4closureFraud.com](http://4closureFraud.com)
- [MyPrivateAudio.com](http://MyPrivateAudio.com)

Remember, you have no rights unless you know what your rights are. Your "lender" is not about to volunteer information that will allow you to burn them with. It's your job to dig these up.

### **Getting a Contingency Lawyer**

Look, most of us have our backs against the wall. We are barely surviving. We don't have money, and we don't have the time to study up on the law to take on the bank by ourselves. And, hiring a lawyer on a "maybe" is not money necessarily well spent.

Getting a contingency lawyer might be a really good option for many people.

However, there is no shortage of opportunities for Contingency lawyers. These lawyers get their choice as to what cases they want to take. It is your job to bring them a case that is worth a lot of money, delivered on a silver plate. Make it a "no brainer" for these lawyers to want to work with you. The best way to do this is to have everything prepared, ready to go. This means that you have a securitization audit, a basic pleading and argument already in place, any applicable laws that can be used in support of your case.

Be warned. A contingency lawyer will likely eat up a large percentage of your

settlement. I have heard of cases where they eat up as much as 70% of your settlement. That said, there is a proverb I want to share with you.

***100% of nothing is still nothing.***

A 20% to 40% of a multi-million dollar settlement is still a good deal, especially you didn't know you had a case in the first place.

But, I would advise that you do your homework and bring your case on a silver platter.

Honestly, the most dangerous position for a banker is a determined homeowner who has already lost their home. It's like having a photo of a guy holding a gun, pointing at a teller with a bag of cash under his arms. All the evidence is already there. It just takes determination to assemble the evidence forensically to build a case.

For help with a post foreclosure coaching, we have another membership program that supports homeowners through the process with sample pleadings and other resources at <http://www.consumerdefenseprograms.com>.



## Loan Modification Applicants

For those of you in the middle of a loan modification, chances are good that you will not be given a loan modification. As we outlined earlier in this book, loan modifications are a scam. Your lender does not own the note. Frankly, there is no real incentive for them to grant you a loan modification. **It is your job to push the issue and make it in your lender's best interest to deal with you fairly before you bring them to court.**

How do you do this?

Imagine if we were playing a three shell game. Let's say I am a scammer and I have very swift hands. Somehow, I was able to swipe the ball (and there are no balls in play at all). The typical rule of the game is for you to point to where the ball is, I will then lift that cup. If the ball is under the cup you pointed, then you win. If not, I win. Now, imagine if you point at the two OTHER CUPS...forcing me to lift those two cups. By a process of elimination and deduction, the ball therefore **MUST BE UNDER THE REMAINDER CUP**. Because we both know the scam, you are going to give me an out. You are going to give me a wink (as to say, I know your scam), and I will read the hint and will then say "congratulations, you won. Now go away kid, you are hurting my business." ie. I know that you know that there is no ball, but in order to maintain the illusion, I am forced to admit that the ball must be under the last cup.

What we're saying is, you will basically build all the arguments to prove to your lender that you know their fraud. You bring all the evidence to prove that they don't own the note. You build your pleading as if you are going to sue them, and send them a letter informing of your intention to file suite. You then tell your lender that to save the pain of litigation, you propose that they deal fairly with you for a fair loan modification and principle reduction.

You see, if you present them an offer they cannot refuse, then you are coming into the negotiation from a position of power.

You always want to negotiate from a position of power, not from a position of weakness. Most homeowners approach loan modifications from a position of desperation. As in "please. I am begging you. I desperately need you to give me a loan modification before I go into foreclosure."

I am just showing you a different approach. This process works because in one instance, one of my friends sued the CEO of Bank of America. It was AMAZING how fast the offer for a loan modification came in because the CEO personally pushed for the loan modification to be approved no matter what.

Good luck. I know these are desperate times. But we need to be persistent. Don't be a sheeple. Wake up. Take proactive action.

## **I'm Not In Default Yet**

Let's be clear. In no way do I advocate that you stop making payments and deliberately go into default now that you have discovered this fraud.

If fact, if you are in good standing, your chances of fighting foreclosure fraud is even greater because of the following:

- 1) In a Non-Judicial State, once you are in default, the State Civil Code takes over and your rights are greatly diminished. The "lender" does not need to prove anything and if you fight them in court, they will tell you (and the judge) so. And it's true.
- 2) The real and beneficial parties of interest are the individual shareholders of the REMIC. Your debt has not been passed around in the secondary market. This makes the allegations very specific in your Quiet Title Action and the other side has very little place to hide.

If you are in good standing, the best place to start is to start writing your "lender" (aka servicer) and demand to know full disclosure of the real parties involved. Use the sample letters on the website at <http://www.consumerdefenseprograms.com>. Have your "lender" disclose whether your loan has been securitized and to which REMIC.

Then get a securitization audit (of if you can figure out how to do one on your own through looking at the SEC database).

Next, start a litigation process against your "lender" under a Quiet Title Action. You are advised to best get a lawyer to work with you in this process.

If you choose to do it on your own, you might want to consider joining our foreclosure defense membership program where we provide you with sample Quiet Title Action pleadings others have used in the past as well as other support resources to help you fight foreclosure fraud.

## Start Local Groups

Look, this problem affects everyone. When sections of houses are foreclosed on, it affects local communities. We have situations where there are literally hundreds of houses sitting empty, while thousands of families live in tent cities around the country.



All the while our banker friends are getting millions of dollars in bonuses from OUR TAXPAYER MONEY.

We encourage you to get together with people in your community to talk about this. Raise each other's awareness.

We are in the middle of a global economic depression. Everyone is suffering. And it isn't getting better. One of the ways we can change it around is by claiming our homes possibly free and clear (or otherwise, get a fair loan modification that we can actually afford). Imagine if instead of paying \$2000 a month on your mortgage, you can use that towards a new car, or towards your children's education. Start injecting money back into the economy to create real local jobs again.

Together, we can each make a difference. But you have to get off the couch and take action.

## Where's The Proof?

*"This is all fine and dandy, but where's the proof? Who else has done this? Have you done this yourself?"*

As I mentioned at the beginning of the book, I am not an industry insider or some ex-banker with a story to tell. I am just an average guy who decided not to go down without a fight. I just kept digging deeper and deeper until I found the truth.

For my story, I challenged my lender. Wachovia was the bank in question on three of my properties in State court. However, in order to stop the sale, I had to file for bankruptcy. Opposing counsel then moved my three cases into Federal Bankruptcy Court, where my case became an Adversary Proceeding.

Opposing Counsel made a motion to have my case dismissed for lack of evidence. We went to court and at the last minute; **the bank produced my three original wet ink signature promissory notes**...completely original and unaltered except there were two holes punched at the top. Sadly, this resulted in my case being dismissed. I live in a non-judicial state where the lender does not have to prove anything before they foreclose.

Let's be very clear. **This was never a scheme to defraud the bank.** It is about challenging the bank's standing to enforce, and consequently foreclose on a property. If, in fact, the bank is the real and beneficial party of interest, then more power to them. **Foreclose away.**

The law is the law. Process and procedures (as much as they are a pain in the ass) were put in place for a reason. The beauty with the American jurisprudence system is that we have an absolute respect for the Due Process of the Law. This is what makes this country great.

Just because I lost my case does not mean that my arguments are flawed. Thousands and thousands of homeowners have challenged the bank and won. You just don't hear about it because most people are happy just to be able to stay in their homes, unmolested. Sure, their friends and neighbors hear about it, and that's it. In some instances, banks settle with homeowners under a gag order. Or they order the court to seal the records. These cases will not see the light of day.

The most wins occur in Judicial States. This means, the bank has to take the homeowners to court before they can foreclose. As you recall, the Plaintiff has the burden of proof or else the case gets dismissed. We have the largest number of case laws coming from these States. Sadly, in Non-Judicial States, judges are required to take judicial notice of their arguments but are not bound by them. In other words they can say, "I can see the argument, but it doesn't apply in this State. I will keep that in consideration but I will come to my own conclusion."

In Non-Judicial States, most of the wins come from homeowners in Bankruptcy courts, particularly in California. Californian Superior Courts are notorious when it comes to the rights of homeowners. In the cases I have witnessed, judges simply roll over the arguments and rights of the homeowner. But that said, every case is different, and everyone's level of competency is different.

I have enclosed a list of cases that have been won by the homeowners (or dismissed for lack of standing) in the Appendix.

## Taking On The Fight

If what I have written speaks to you and have inspired you to take action then I have done my job. However, that said, I am advising you to **slow down**.

### ***Don't Do This.***

As cruel as it sounds, **I am again advising you against doing** this process as I have outlined. It is a lot of work and frankly is very painful. **This process is not easy**. You will not be able to sleep. Every time the phone rings, you feel like vomiting because you think it might be your lender or their lawyer calling you. Every time you receive a letter from the lender or their lawyer, you feel like someone has punched you in the guts.

To file a civil action against your lender is not something for the weak of heart.

However, if you do decide to do something about it, then welcome to the movement. You should commit to doing it all the way.

Never approach a lion's den and halfway during the fight drop your shield and run. You will be eaten. The same goes to this process. If you decide to do this process, then you should commit to finishing it. As they say, "never start a fight you are not willing to finish".

This is perhaps the hardest thing you will have to do in your lifetime. It is the classic epic battle of life and death. David vs. Goliath. This is the fight to save your family. It is worth fighting for. It means that your children will have a roof over their heads instead of living in a tent city.

It is for this reason we created our membership program so homeowners can support each other. We've made it affordable so everyone can join...but like any organization, it takes money to maintain. We have staff to feed, and servers to maintain. Your support means we can continue to do this research and support our members.

For more information, come to our site at <http://www.consumerdefenseprograms.com>.

## **Please Spread the News**

Our mission is to awaken people to the problem of foreclosure fraud. If you know someone in the press, send a copy of this book to them. Please help us by forwarding this ebook to as many people as possible.

**Pass this on to someone.** Make a difference. Give this book to someone who can benefit from the information contained in this book. We are all connected. What happens to one of us affects us all.

If you are on Facebook, please tell your friends about it. Post a link to our site.

I hope you will join us.



Vince Khan

and

Your friends at Consumer Defense Programs.

# Appendix



## Appendix A: U.S.Code Title 12: Banks and Banking

### [PART 226—TRUTH IN LENDING \(REGULATION Z\)](#)

#### **§ 226.39 Mortgage transfer disclosures.**

[Link to an amendment published at 75 FR 58501, Sept. 24, 2010.](#)

(a) *Scope.* The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

(1) A “covered person” means any person, as defined in §226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment, or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan or it is assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

(2) A “mortgage loan” means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(b) *Disclosure required.* Except as provided in paragraph (c) of this section, any person that becomes a covered person as defined in this section shall mail or deliver the disclosures required by this section to the consumer on or before the 30th calendar day following the acquisition date. If there is more than one covered person, only one disclosure shall be given and the covered persons shall agree among themselves which covered person shall comply with the requirements that this section imposes on any or all of them.

(1) *Acquisition date.* For purposes of this section, the date that the covered person acquired the mortgage loan shall be the date of acquisition recognized in the books and records of the acquiring party.

(2) *Multiple consumers.* If there is more than one consumer liable on the obligation, a covered person may mail or deliver the disclosures to any consumer who is primarily liable.

(c) *Exceptions.* Notwithstanding paragraph (b) of this section, a covered person is not subject to the requirements of this section with respect to a particular mortgage loan if:

(1) The covered person sells or otherwise transfers or assigns legal title to the mortgage loan on or before the 30th calendar day following the date that the covered person acquired the mortgage loan; or

(2) The mortgage loan is transferred to the covered person in connection with a repurchase agreement and the transferor that is obligated to repurchase the loan continues to recognize the loan as an asset on its own books and records.

However, if the transferor does not repurchase the mortgage loan, the acquiring party must make the disclosures required by §226.39 within 30 days after the date that the transaction is recognized as an acquisition in its books and records.

(d) *Content of required disclosures.* The disclosures required by this section shall identify the loan that was acquired or transferred and state the following:

(1) The identity, address, and telephone number of the covered person who owns the mortgage loan. If there is more than one covered person, the information required by this paragraph shall be provided for each of them.

(2) The acquisition date recognized by the covered person.

(3) How to reach an agent or party having authority to act on behalf of the covered person (or persons), which shall identify a person (or persons) authorized to receive legal notices on behalf of the covered person and resolve issues concerning the consumer's payments on the loan. However, no information is required to be provided under this paragraph if the consumer can use the information provided under paragraph (d)(1) of this section for these purposes. If multiple persons are identified under this paragraph, the disclosure shall provide contact information for each and indicate the extent to which the authority of each agent differs. For purposes of this paragraph (d)(3), it is sufficient if the covered person provides only a telephone number provided that the consumer can use the telephone number to obtain the address for the agent or other person identified.

(4) The location where transfer of ownership of the debt to the covered person is recorded. However, if the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person complies with this paragraph by stating this fact.

(e) *Optional disclosures.* In addition to the information required to be disclosed under paragraph (d) of this section, a covered person may, at its option, provide any other information regarding the transaction.

## Appendix B: Dissecting a Fraud in Action

The following notice from WESTPAC Australia might seem innocent enough. It's just a public notice...right?

Let's dissect the fraud that is happening right in front of your eyes.

### PUBLIC NOTICE

#### WESTPAC MORTGAGE SECURITISATION DISCLOSURE

In the interest of public awareness and to ensure that Mortgage Holders with Westpac are given full disclosure of the details of their loans, please be advised of the following announcement:

Westpac Banking Corporation in association with JP Morgan (Australia) Limited, Perpetual Trustees, Waratah Receivables Corporation and Westpac Securitisation Management Pty Limited have been involved with a number of Residential Mortgage Securitisation programs including:

Series 2002-1 G WST Trust  
Series 2007 - 1G WST Trust  
Progress 2010-1 Trust (AMP Bank)  
REDS Trust Series 2010-1 (Bank of Queensland)  
Torrens Series 2010-1 (Bendigo and Adelaide Bank)

**Each of the Trusts are comprised of a pool of Residential Mortgages that Westpac originates and sells to a Trustee such as JP Morgan Trust Australia Limited, Perpetual Trustees Limited or Waratah Recievables Corporation.** [Color variations and bolding are mine to show several named companies.]

In each instance, **the Trust gains equitable title to the Residential Mortgages** as a result of the assignment.

The Mortgages are **then pooled into Tranches**, within what are **termed "SPV's"** or Special Service Vehicles and **then Notes** or Commercial Paper are **offered to Investors** on the **Secondary Market backed by these securities.**

**You will not have received notice of the sale or assignment of your Mortgage, as that could create a Title Perfection Event and collapse the Trust.**

To prevent this, **the Trusts have hired Westpac as the Servicer of the Loans**, under a **Pooling and Servicing Agreement** so **that we may continue collecting mortgage repayments and interest from you, to pass onto them.**

**In that way, you will not realise that there is any material change.**

**We have ensured that at a branch level, our staff will not be aware of any assignment of your Mortgage, and as such will not be able to offer any assistance in the matter.**

Thank you for your business.

**WESTPAC BANKING CORPORATION**

for further enquiries, please contact:

Manuela Ad IWestpac Securitisation Management Pty Limited  
Chief Operating Officer Level 20, 275 Kent Street, **Sydney NSW 2000, Australia**  
Westpac Banking Corporation +612 8253 3589  
575 Fifth Avenue, 39th Floor  
**New York, New York 10017**  
**J.P. Morgan Trust** Australia Limited  
(ABN 49 050 294 052)

This is a notice that was sent to Australian homeowners who had their loans with WESTPAC (a major bank). The laws in Australia require that they notify the creator of the promissory note of changes to their negotiable instrument.

You've got to love how they cleverly crafted the letter like you've got nothing to worry about.

First, notice that they tell them that the loan is going to be pooled into a SPV (for the purpose of tax pass through).

Second, notice the sentence: **"You will not have received notice of the sale or assignment of your Mortgage, as that could create a Title Perfection Event and collapse the Trust."**

Knowing what we know about securitization, it is true. They DID NOT do a formal assignment (therefore, the title is not Perfected).

Perfected title, according to Black's Law dictionary, means that the title of an instrument has been properly recorded in public record reflecting the proper and true owner of the instrument.

**So, monetarily and accounting-wise, they sold and assigned the note. Procedurally and legally, the note was never sold.**

Next, pay attention to this:

**"that we may continue collecting mortgage repayments and interest from you, to pass onto them."**

They are then collecting the proceeds and interests and passing it onto (and directly) to the shareholders of the REMIC (SPV).

Finally, this is the clincher:

**"In that way, you will not realise that there is any material change."**

What they are saying is, "we've just created an unlawful assignment, but we don't want you to realize that we did it."

And, by the way, this fraud happens at the highest level of banking...don't worry about talking to your branch staff about it, they wouldn't know.

**"We have ensured that at a branch level, our staff will not be aware of any assignment of your Mortgage, and as such will not be able to offer any assistance in the matter."**

## Appendix C: Homeowner Wins: Case Law Successes

**Patton v. Diemer**, 35 Ohio St. 3d 68; 518 N.E.2d 941; 1988). A judgment rendered by a court lacking subject matter jurisdiction is void ab initio. Consequently, the authority to vacate a void judgment is not derived from Ohio R. Civ. P. 60(B), but rather constitutes an inherent power possessed by Ohio courts. I see no evidence to the contrary that this would apply to ALL courts.

.  
"A party lacks standing to invoke the jurisdiction of a court unless he has, in an individual or a representative capacity, some real interest in the subject matter of the action. **Lebanon Correctional Institution v. Court of Common Pleas** 35 Ohio St.2d 176 (1973).

.  
"A party lacks standing to invoke the jurisdiction of a court unless he has, in an individual or a representative capacity, some real interest in the subject matter of an action." **Wells Fargo Bank, v. Byrd**, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722 (2008). It went on to hold, "If plaintiff has offered no evidence that it owned the note and mortgage when the complaint was filed, it would not be entitled to judgment as a matter of law."

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(The following court case was unpublished and hidden from the public) **Wells Fargo, Litton Loan v. Farmer**, 867 N.Y.S.2d 21 (2008). "Wells Fargo does not own the mortgage loan... Therefore, the... matter is dismissed with prejudice."

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(The following court case was unpublished and hidden from the public) **Wells Fargo v. Reyes**, 867 N.Y.S.2d 21 (2008). Dismissed with prejudice, Fraud on Court & Sanctions. Wells Fargo never owned the Mortgage.

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(The following court case was unpublished and hidden from the public) **Deutsche Bank v. Peabody**, 866 N.Y.S.2d 91 (2008). EquiFirst, when making the loan, violated Regulation Z of the Federal Truth in Lending Act 15 USC §1601 and the Fair Debt Collections Practices Act 15 USC §1692; "intentionally created fraud in the factum" and withheld from plaintiff... "vital information concerning said debt and all of the matrix involved in making the loan."

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(The following court case was unpublished and hidden from the public) **Indymac Bank v. Boyd**, 880 N.Y.S.2d 224 (2009). To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and the mortgage note. It is the law's policy to allow only an aggrieved person to bring a lawsuit . . . A want of "standing to sue," in other words, is just another way of saying that this particular plaintiff is not involved in a genuine controversy, and a simple syllogism takes us from there to a "jurisdictional" dismissal:

.  
(The following court case was unpublished and hidden from the public) **Indymac Bank v. Bethley**, 880 N.Y.S.2d 873 (2009). The Court is concerned that there may be fraud on the part of plaintiff or at least malfeasance Plaintiff INDYMAC (Deutsche) and must have "standing" to bring this action.

(The following court case was unpublished and hidden from the public) **Deutsche Bank National Trust Co v. Torres, NY Slip Op 51471U (2009)**. That "the dead cannot be sued" is a well established principle of the jurisprudence of this state plaintiff's second cause of action for declaratory relief is denied. To be entitled to a default judgment, the movant must establish, among other things, the existence of facts which give rise to viable claims against the defaulting defendants.

"The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and punish them for violations of their corporate charters, and it probably is not invoked too often..." **Zinc Carbonate Co. v. First National Bank, 103 Wis. 125, 79 NW 229 (1899)**. Also see: American Express Co. v. Citizens State Bank, 181 Wis. 172, 194 NW 427 (1923).

(The following court case was unpublished and hidden from the public) **Wells Fargo v. Reyes, 867 N.Y.S.2d 21 (2008)**. Case dismissed with prejudice, fraud on the Court and Sanctions because Wells Fargo never owned the Mortgage.

(The following court case was unpublished and hidden from the public) **Wells Fargo, Litton Loan v. Farmer, 867 N.Y.S.2d 21 (2008)**. Wells Fargo does not own the mortgage loan. "Indeed, no more than (affidavits) is necessary to make the prima facie case." **United States v. Kis, 658 F.2d, 526 (7th Cir. 1981)**.

(The following court case was unpublished and hidden from the public) **Indymac Bank v. Bethley, 880 N.Y.S.2d 873 (2009)**. The Court is concerned that there may be fraud on the part of plaintiff or at least malfeasance Plaintiff INDYMAC (Deutsche) and must have "standing" to bring this action.

Lawyer responsible for false debt collection claim Fair Debt Collection Practices Act, 15 USCS §§ 1692-1692o, **Heintz v. Jenkins, 514 U.S. 291; 115 S. Ct. 1489, 131 L. Ed. 2d 395 (1995)**. and FDCPA Title 15 U.S.C. sub section 1692.

In determining whether the plaintiffs come before this Court with clean hands, the primary factor to be considered is whether the plaintiffs sought to mislead or deceive the other party, not whether that party relied upon plaintiffs' misrepresentations. **Stachnik v. Winkel, 394 Mich. 375, 387; 230 N.W.2d 529, 534 (1975)**.

"Indeed, no more than (affidavits) is necessary to make the prima facie case." **United States v. Kis, 658 F.2d, 526 (7th Cir. 1981). Cert Denied, 50 U.S. L.W. 2169; S. Ct. March 22, (1982)**.

"Silence can only be equated with fraud where there is a legal or moral duty to speak or when an inquiry left unanswered would be intentionally misleading." **U.S. v. Tweel, 550 F.2d 297 (1977)**.

"If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." **Menominee River Co. v. Augustus Spies L & C Co., 147 Wis. 559 at p. 572; 132 NW 1118 (1912)**.

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Federal Rule of Civil Procedure 17(a)(1) which requires that "[a]n action must be prosecuted in the name of the real party in interest." See also, *In re Jacobson*, 402 B.R. 359, 365-66 (Bankr. W.D. Wash. 2009); *In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. Cal. 2008).

.  
**Mortgage Electronic Registration Systems, Inc. v. Chong, 824 N.Y.S.2d 764 (2006)**. MERS did not have standing as a real party in interest under the Rules to file the motion... The declaration also failed to assert that MERS, FMC Capital LLC or Homecomings Financial, LLC held the Note.

.  
**Landmark National Bank v. Kesler, 289 Kan. 528, 216 P.3d 158 (2009)**. "Kan. Stat. Ann. § 60-260(b) allows relief from a judgment based on mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence that could not have been timely discovered with due diligence; fraud or misrepresentation; a void judgment; a judgment that has been satisfied, released, discharged, or is no longer equitable; or any other reason justifying relief from the operation of the judgment. The relationship that the registry had to the bank was more akin to that of a straw man than to a party possessing all the rights given a buyer." Also In September of 2008, A California Judge ruling against MERS concluded, "There is no evidence before the court as to who is the present owner of the Note. The holder of the Note must join in the motion."

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**LaSalle Bank v. Ahearn, 875 N.Y.S.2d 595 (2009)**. Dismissed with prejudice. Lack of standing.

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**Novastar Mortgage, Inc v. Snyder 3:07CV480 (2008)**. Plaintiff has the burden of establishing its standing. It has failed to do so.

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**DLJ Capital, Inc. v. Parsons, CASE NO. 07-MA-17 (2008)**. A genuine issue of material fact existed as to whether or not appellee was the real party in interest as there was no evidence on the record of an assignment. Reversed for lack of standing.

.  
**Everhome Mortgage Company v. Rowland, No. 07AP-615 (Ohio 2008)**. Mortgagee was not the real party in interest pursuant to Rule 17(a). Lack of standing.

.  
In **Lambert v. Firststar Bank, 83 Ark. App. 259, 127 S.W. 3d 523 (2003)**, complying with the Statutory Foreclosure Act does not insulate a financial institution from liability and does not prevent a party from timely asserting any claims or defenses it may have concerning a mortgage foreclosure A.C.A. §18-50-116(d)(2) and violates honest services Title 18 Fraud. Notice to credit reporting agencies of overdue payments/foreclosure on a fraudulent debt is defamation of character and a whole separate fraud. A Court of Appeals does not consider assertions of error that are unsupported by convincing legal authority or argument, unless it is apparent without further research that the argument is well taken. FRAUD is a point well taken! Lambert Supra.

.  
No lawful consideration tendered by Original Lender and/or Subsequent Mortgage and/or Servicing Company to support the alleged debt. "A lawful consideration must exist and be tendered to support the Note" and demand under TILA full disclosure of any such consideration. **Anheuser-Busch Brewing**

**Company v. Emma Mason, 44 Minn. 318, 46 N.W. 558 (1890).**

National Banks and/or subsidiary Mortgage companies cannot retain the note, "Among the assets of the state bank were two notes, secured by mortgage, which could not be transferred to the new bank as assets under the National Banking Laws. **National Bank Act, Sect 28 & 56" National Bank of Commerce v. Atkinson, 8 Kan. App. 30, 54 P. 8 (1898).**

"A bank can lend its money, but not its credit." **First Nat'l Bank of Tallapoosa v. Monroe, 135 Ga 614, 69 S.E. 1123 (1911).**

It is not necessary for rescission of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations." **Whipp v. Iverson, 43 Wis. 2d 166, 168 N.W.2d 201 (1969).**

"A bank is not the holder in due course upon merely crediting the depositors account." **Bankers Trust v. Nagler, 23 A.D.2d 645, 257 N.Y.S.2d 298 (1965).**

"Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." (The seller or lender) "He is liable, not upon any idea of benefit to himself, but because of his wrongful act and the consequent injury to the other party." **Leonard v. Springer, 197 Ill 532. 64 NE 299 (1902).**

"If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." **Menominee River Co. v. Augustus Spies L & C Co., 147 Wis. 559 at p. 572; 132 NW 1118 (1912).**

"The contract is void if it is only in part connected with the illegal transaction and the promise single or entire." **Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis. 550, 279 NW 79 (1938).**

**Moore v. Mid-Penn Consumer Discount Co., Civil Action No. 90-6452 U.S. Dist. LEXIS 10324 (Pa. 1991).** The court held that, under TILA's Regulation Z, 12 CFR §226.4 (a), a lender had to expressly notify a borrower that he had a choice of insurer.

**Marshall v. Security State Bank of Hamilton, 121 B.R. 814 (Ill. 1990)** violation of Federal Truth in Lending 15 USCS §1638(a)(9), and Regulation Z. The bank took a security interest in the vehicle without disclosing the security interest.

**Steinbrecher v. Mid-Penn Consumer Discount Co., 110 B.R. 155 (Pa. 1990).** Mid-Penn violated TILA by not including in a finance charge the debtors' purchase of fire insurance on their home. The purchase of such insurance was a condition imposed by the company. The cost of the insurance was added to the amount



financed and not to the finance charge.

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Nichols v. Mid-Penn Consumer Discount Co., 1989 WL 46682 (Pa. 1989). Mid-Penn misinformed Nichols in the Notice of Right to Cancel Mortgage.

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McElvany v. Household Finance Realty Corp., 98 B.R. 237 (Pa. 1989). debtor filed an application to remove the mortgage foreclosure proceedings to the United States District Court pursuant to 28 USCS §1409. It is strict liability in the sense that absolute compliance is required and even technical violations will form the basis for liability. Lauletta v. Valley Buick Inc., 421 F. Supp. 1036 at 1040 (Pa. 1976).

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Johnson-Allen v. Lomas and Nettleton Co., 67 B.R. 968 (Pa. 1986). Violation of Truth-in-Lending Act requirements, 15 USCS §1638(a)(10), required mortgagee to provide a statement containing a description of any security interest held or to be retained or acquired. Failure to disclose.

.  
Cervantes v. General Electric Mortgage Co., 67 B.R. 816 (Pa. 1986). creditor failed to meet disclosure requirements under the Truth in Lending Act, 15 U.S.C.S. § 1601-1667c and Regulation Z of the Federal Reserve Board, 12 CFR §226.1

McCausland v. GMAC Mortgage Co., 63 B.R. 665, (Pa. 1986). GMAC failed to provide information which must be disclosed as defined in the TILA and Regulation Z, 12 CFR §226.1

.  
Perry v. Federal National Mortgage Corp., 59 B.R. 947 (Pa. 1986) the disclosure statement was deficient under the Truth In Lending Act, 15 U.S.C.S. § 1638(a)(9). Defendant Mortgage Co. failed to reveal clearly what security interest was retained.

.  
Schultz v. Central Mortgage Co., 58 B.R. 945 (Pa. 1986). The court determined creditor mortgagor violated the Truth In Lending Act, 15 U.S.C.S. § 1638(a)(3), by its failure to include the cost of mortgage insurance in calculating the finance charge. The court found creditor failed to meet any of the conditions for excluding such costs and was liable for twice the amount of the true finance charge.

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Solis v. Fidelity Consumer Discount Co., 58 B.R. 983 (Pa. 1986). Any misgivings creditors may have about the technical nature of the requirements should be addressed to Congress or the Federal Reserve Board, not the courts. Disclosure requirements for credit sales are governed by 15 U.S.C.S. § 1638 12 CFR § 226.8(b), (c). Disclosure requirements for consumer loans are governed by 15 U.S.C.S. § 1639 12 CFR § 226.8(b), (d). A violator of the disclosure requirements is held to a standard of strict liability. Therefore, a plaintiff need not show that the creditor in fact deceived him by making substandard disclosures. Since Transworld Systems Inc. have not cancelled the security interest and return all monies paid by Ms. Sherrie I. LaForce within the 20 days of receipt of the letter of rescission of October 7, 2009, the lenders named above are responsible for actual and statutory damages pursuant to 15 U.S.C. 1640(a).

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Porter v. Mid-Penn Consumer Discount Co., 961 F.2d 1066 (3rd Cir. 1992). Porter filed an adversary proceeding against appellant under 15 U.S.C. §1635, for failure to honor her request to rescind a loan secured by a mortgage on her home.

Rowland v. Magna Millikin Bank of Decatur, N.A., 812 F.Supp. 875 (1992) Even technical violations will form the basis for liability. The mortgagors had a right to rescind the contract in accordance with 15 U.S.C. §1635(c).

New Maine Nat. Bank v. Gendron, 780 F.Supp. 52 (1992). The court held that defendants were entitled to rescind loan under strict liability terms of TILA because plaintiff violated TILA's provisions.

Dixon v. S & S Loan Service of Waycross, Inc., 754 F.Supp. 1567 (1990); TILA is a remedial statute, and, hence, is liberally construed in favor of borrowers. The remedial objectives of TILA are achieved by imposing a system of strict liability in favor of consumers when mandated disclosures have not been made. Thus, liability will flow from even minute deviations from the requirements of the statute and the regulations promulgated under it.

Woolfolk v. Van Ru Credit Corp., 783 F.Supp. 724 (1990) There was no dispute as to the material facts that established that the debt collector violated the FDCPA. The court granted the debtors' motion for summary judgment and held that (1) under 15 U.S.C. §1692(e), a debt collector could not use any false, deceptive, or misleading representation or means in connection with the collection of any debt; Unfair Debt Collection Practices Act.

Jenkins v. Landmark Mortg. Corp. of Virginia, 696 F.Supp. 1089 (W.D. Va. 1988). Plaintiff was also misinformed regarding the effects of a rescission. The pertinent regulation states that "when a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge." 12 CFR §226.23(d) (1).

Laubach v. Fidelity Consumer Discount Co., 686 F.Supp. 504 (E.D. Pa. 1988). monetary damages for the plaintiffs pursuant to the Racketeer Influenced and Corrupt Organization Act, 18 USC §1961. (Count I); the Truth-in-Lending Act, 15 USC §1601.

Searles v. Clarion Mortg. Co., 1987 WL 61932 (E.D. Pa. 1987); Liability will flow from even minute deviations from requirements of the statute and Regulation Z. failure to accurately disclose the property in which a security interest was taken in connection with a consumer credit transaction involving the purchase of residential real estate in violation of 15 USC §1638(a)(9). and 12 CFR §226.18(m).

Dixon v. S & S Loan Service of Waycross, Inc., 754 F.Supp. 1567, 1570 (S.D. Ga. 1990). Congress's purpose in passing the Truth in Lending Act (TILA), 15 USC §1601(a). was to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him. 15 USC §1601(a). TILA is a remedial statute, and, hence, is liberally construed in favor of borrowers.;

Cervantes v. General Electric Mortgage Co., 67 B.R. 816 (E.D. Pa. 1986). The court found that the TILA violations were governed by a strict liability standard, and defendant's failure to reveal in the disclosure statement the exact nature of the security interest violated the TILA.

Perry v. Federal National Mortgage, 59 B.R. 947 (E.D. Pa. 1986). Defendant failed to accurately disclose

the security interest taken to secure the loan.

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Porter v. Mid-Penn Consumer Discount Co., 961 F.2d 1066 (3rd Cir. 1992). Adversary proceeding against appellant under 15 U.S.C. §1635, for failure to honor her request to rescind a loan secured by a mortgage on her home. She was entitled to the equitable relief of rescission and the statutory remedies under 15 U.S.C. §1640 for appellant's failure to rescind upon request.

.  
Solis v. Fidelity Consumer Discount Co., 58 B.R. 983 (Pa. 1986). Any misgivings creditors may have about the technical nature of the requirements should be addressed to Congress or the Federal Reserve Board, not the courts. Disclosure requirements for credit sales are governed by 15 U.S.C.S. § 1638 12 CFR § 226.8(b), (c). Disclosure requirements for consumer loans are governed by 15 U.S.C.S. § 1639 12 CFR § 226.8(b), (d).

.  
A violator of the disclosure requirements is held to a standard of strict liability. Therefore, a plaintiff need not show that the creditor in fact deceived him by making substandard disclosures. Rowland v. Magna Millikin Bank of Decatur, N.A., 812 F.Supp. 875 (1992),

.  
Even technical violations will form the basis for liability. The mortgagors had a right to rescind the contract in accordance with 15 U.S.C. §1635(c). New Maine Nat. Bank v. Gendron, 780 F.Supp. 52 (D. Me. 1992). The court held that defendants were entitled to rescind loan under strict liability terms of TILA because plaintiff violated TILA's provisions.

Google:

“The Boyko Decision”

“Rickie Walker Case”

There are so many others, we can publish a whole Bible sized handbook, but frankly, it's pretty boring...

## **Appendix D: Fair Debt Collections Practices Act - Debt Validation Letter**

USC Title 15 § 1692g. Here is the Fair Debt Collections Practices Act in regards to validation of debts.

### **§ 809. Validation of debts**

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or

any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section

## Appendix E: Explanation of Securitization

Here is another document that explains the securitization process and problem from another source.

### Introduction

Securitization takes a commonplace, mundane transaction and makes very strange things happen. This explanation will show that, in the case of a securitized mortgage note, there is no party who has the lawful right to enforce a foreclosure, and the payments alleged to have been in default have, in fact, been paid to the party to whom such payments were due.

Additionally, in the case of a securitized note, there are rules and restrictions that have been imposed upon the purported debtor that are extrinsic to the note and mortgage as executed by the mortgagor and mortgagee, rendering the note and mortgage unenforceable.

This explanation, including its charts, will demonstrate how securitization is a failed attempt to use a note and a mortgage for purposes for which neither was ever intended.

Securitization consists of a four way amalgamation. It is partly 1) a refinancing with a pledge of assets, 2) a sale of assets, 3) an issuance and sale of registered securities which can be traded publicly, and 4) the establishment of a trust managed by third party managers. Enacted law and case law apply to each component of securitization. However, specific enabling legislation to authorize the organization of a securitization and to harmonize the operation of these diverse components does not exist.

Why would anyone issue securities collateralized by mortgages using the structure of a securitization? Consider the following benefits. Those who engage in this practice are able to...

1. Immediately liquidate an illiquid asset such as a 30 year mortgage.
2. Maximize the amount obtained from a transfer of the mortgages and immediately realize the profits now.
3. Use the liquid funds to enter into new transactions and to earn profits that are immediately realized... again and again (as well as the fees and charges associated with the new transactions, and the profits associated with the new transactions... and so on).
4. Maximize earnings by transferring the assets so that the assets cannot be reached by the creditors of the transferor institution or by the trustee in the

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The use of the terms Mortgage, Mortgagor, and Mortgagee are, for purposes of this document, synonymous with Deed of Trust, Trustor, Trustee and Beneficiary

event of bankruptcy. (By being “bankruptcy-remote” the value to investors of the illiquid assets is increased and investors are willing to pay more.)

5. Control management of the illiquid asset in the hands of the transferee by appointing managers who earn service fees and may be affiliated with the transferor.
6. Be able to empower the transferor by financially supporting the transferred asset by taking a portion of the first losses experienced, if any, from default, and entering into agreements to redeem or replace mortgages in default and to commit to providing capital contributions, if needed, in order to support the financial condition of the transferee [In other words, provide a 100% insured protection against losses].
7. Carry the reserves and contingent liability (for the support provided in paragraph 6) off the balance sheet of the transferor, thereby escaping any reserve requirements imposed upon contingent liabilities that would otherwise be carried on the books.
8. Avoid the effect of double taxation of, first, the trust to which the assets have allegedly been transferred and, second, the investor who receives income from the trust.
9. Insulate the transferor from liability and moves the liability to the investors.
10. Leverage the mortgage transaction by creating a mortgage backed certificate that can be pledged as an asset which can be re-securitized and re-pledged to create a financial pyramid.
11. Create a new financial vehicle so mind numbingly complicated that almost no one understands what is going on.

The obvious benefit of the above #11 is that courts are predisposed to *disbelieve* the allegation that a securitized note is no longer enforceable. To a reasonable person, the claim that a mortgage note is unenforceable merely because it has been securitized does sound somewhat outlandish. And frankly, the more complex and difficult the securitized arrangement is to explain and perceive, the more likely a judgment in favor of the “lender” will be in litigation.

Simply stated, the vast majority of litigants – and judges – have not been properly informed as to the true nature of this type of transaction. This is said not to insult anyone. Quite to the contrary, this is just to say that the true identity of the real party in interest is able to be obfuscated in the labyrinth of the securitization scheme such that whoever steps forward claiming to be that party and showing documentation appearing to be legitimate is assumed to have standing, and there are too few knowledgeable challengers of that mistaken assumption.

So much more so in the case of the “layman” homeowner. Most homeowners have no idea that the transaction being referred to as a debt and as an obligation that they must pay or be subject to foreclosure, has actually already been paid. And not just once! In cases where a default has been alleged, the securitized note has likely already been satisfied (not just sold and/or assigned) four or five times over.

Securitization is a product of the genius of capitalism. As long as profits continued to be made, all participants did very well from this creative new financial arrangement, and bliss reigned supreme. Then the other shoe dropped.

There is a mortgage default crisis underway in the United States and a credit crisis caused by toxic assets in the secondary mortgage market. Goldman Sachs estimates that, starting at the end of the last quarter of 2008 through 2014, 13 million foreclosures will occur. The Center for Responsible Lending, based on industry data, predicted 2.4 million foreclosures occurred in 2009, and that there would be a total of 9 million foreclosures between 2009 and 2012. At the end of the first quarter of 2009, more than 2 million houses were in foreclosure. Mortgage Bankers’ Ass’n, Nat’l Delinquency Survey Q109 at 4 (2009) reporting that 3.85% of 44,979,733, or 1.7 million, mortgages being serviced were in foreclosure. Roughly half of these were serviced by national banks or federal thrifts. Over twelve percent of all mortgages had payments past due or were in foreclosure and over 7% were seriously delinquent—either in foreclosure or more than three months delinquent.

These spiraling foreclosures weaken the entire economy and devastate the communities in which they are concentrated. According to *The Subprime Lending Crisis: The Economic Impact on Wealth, Property Values and Tax Revenues, and How We Got Here*, foreclosed home owners are projected to lose \$71 billion due to foreclosure crisis, while neighbors will lose \$32 billion, and state and local governments will lose \$917 million in property tax revenue.

### **What is a Securitization?**

In the mortgage securitization process, collateralized securities are issued by, and receive payments from, mortgages collected in a collateralized mortgage pool. The collateralized mortgage pool is treated as a trust. This trust is organized as a special purpose vehicle (“SPV”) and a qualified special purpose entity (“QSPE”) which receives special tax treatment. The SPV is organized by the securitizer so that the assets of the SPV are shielded from the creditors of the securitizer and the parties who manage it. This shielding is described as making the assets “bankruptcy remote”.

To avoid double taxation of both the trust and the certificate holders, mortgages are held in Real Estate Mortgage Investment Conduits (“REMICs”). To qualify for the single taxable event, all interest in the mortgage is supposed to be transferred forward to the certificate holders.

The legal basis of REMICs was established by the Tax Reform Act of 1986 (100 Stat. 2085, 26 U.S.C.A. §§ 47, 1042), which eliminated double taxation from these



securities. The principal advantage of forming a REMIC for the sale of mortgage-backed securities is that REMIC's are treated as pass-through vehicles for tax purposes helping avoid double-taxation. For instance, in most mortgage-backed securitizations, the owner of a pool of mortgage loans (usually the Sponsor or Master Servicer) sells and transfers such loans to a QSPE, usually a trust, that is designed specifically to qualify as a REMIC, and, simultaneously, the QSPE issues securities that are backed by cash flows generated from the transferred assets to investors in order to pay for the loans along with a certain return. If the special purpose entity, or the assets transferred, qualify as a REMIC, then any income of the QSPE is "passed through" and, therefore, not taxable until the income reaches the holders of the REMIC, also known as beneficiaries of the REMIC trust.

Accordingly, the trustee, the QSPE, and the other parties servicing the trust, *have no legal or equitable interest in the securitized mortgages*. Therefore, any servicer who alleges that they are, or that they have the right, or have been assigned the right, to claim that they are the agent for the holder of the note for purposes of standing to bring an action of foreclosure, are stating a legal impossibility. Any argument containing such an allegation would be a false assertion. Of course, that is exactly what the servicer of a securitized mortgage that is purported to be in default claims.

The same is the case when a lender makes that same claim. The party shown as "Lender" on the mortgage note was instrumental in the sale and issuance of the certificate to certificate holders, which means they knew that they were not any longer the holder of the note.

The QSPE is a weak repository and is not engaged in active management of the assets. So, a servicing agent is appointed. Moreover, *all legal and equitable interest in the mortgages are required by the REMIC to be passed through to the certificate holders*. Compliance with the REMIC and insulating the trust assets from creditors of third parties (who create or service the trust) leads to unilateral restructuring of the terms and conditions of the original note and mortgage.

The above fact, and the enormous implications of it, cannot be more emphatically stressed.

A typical mortgage pool consists of anywhere from 2,000 to 5,000 loans. This represents millions of dollars in cash flow payments each month from a servicer (receiving payments from borrowers) to a REMIC (QSPE) with the cash flow "passing through", tax-free, to the trust (REMIC). Those proceeds are not taxed until received as income to the investors. Only the investors have to pay taxes on the payments of mortgage interest received.

The taxes a trust would have to pay on 30, 50, or 100 million dollars per year if this "pass through" taxation benefit didn't exist would be substantial and it would, subsequently, lower the value of the certificates to the investors, the true beneficiaries of these trusts. Worse, what would be the case if a trust that was organized in February 2005 were found to have violated the REMIC guidelines outlined in the Internal Revenue Code? At \$4 million per month in cash flow, there would arise over \$200 million in income that would now be considered taxable.

It is worth repeating that in order for one of these investment trusts to qualify for the “pass through” tax benefit of a REMIC (in other words, to be able to qualify to be able to be referred to as a REMIC), *ALL LEGAL AND EQUITABLE INTEREST IN THE MORTGAGES HELD IN THE NAME OF THE TRUST ARE VESTED IN THE INVESTORS*, not in anyone else *AT ANY TIME*. If legal and/or equitable interest in the mortgages held in the name of the trust are claimed by anyone other than the investors, those that are making those claims are either defrauding the investors, or the homeowners & courts, or both.

So, if the trust, or a servicer, or a trustee, acting on behalf of the trust, is found to have violated the very strict REMIC guidelines (put in place in order to qualify as a REMIC), the “pass through” tax status of the REMIC can be revoked. This, of course, would be the equivalent of financial Armageddon for the trust and its investors.

A REMIC can be structured as an entity (i.e., partnership, corporation, or trust) or simply as a segregated pool of assets, so long as the entity or pool meets certain requirements regarding the composition of assets and the nature of the investors’ interests. No tax is imposed at the REMIC level. To qualify as a REMIC, all of the interests in the REMIC must consist of one or more classes of “regular interests” and a single class of “residual interests.”

Regular interests can be issued in the form of debt, stock, partnership interests, or trust certificates, or any other form of securities, but *must provide the holder the unconditional right to receive a specified principal amount and interest payments*. REMIC regular interests are treated as debt for federal tax purposes. A residual interest in a REMIC, which is any REMIC interest other than a regular interest, is, on the other hand, taxable as an equity interest.

According to Section 860 of the Internal Revenue Code, in order for an investment entity to qualify as a REMIC, all steps in the “contribution” and transfer process (of the notes) must be true and complete sales between the parties and must be accomplished within the three month time limit from the date of “startup” of the entity. Therefore, every transfer of the note(s) must be a true purchase and sale, and, consequently the note must be endorsed from one entity to another. Any mortgage note/asset identified for inclusion in an entity seeking a REMIC status must be sold into the entity within the three month time period calculated from the official startup day of the REMIC.

Before securitization, the holder of an enforceable note has a financial responsibility for any possible losses that may occur arising from a possible default, which means that holder also has the authority to take steps to avoid any such losses (the right to foreclose). Securitization, however, effectively severs any such financial responsibility for losses from the authority to incur or avoid those losses.

With securitization the mortgage is converted into something different from what was originally represented to the homeowner. For one thing, since the party making the decision to foreclose does not actually hold any legal or equitable interest in any securitized mortgage, they have not realized any loss or damages resulting from the purported default. Therefore, it also follows that the foreclosing party avoids the

liability which could result if a class of certificate holders claimed wrongful injury resulting from a modification made to achieve an alternate dispute resolution.

Securitization also makes the mortgage and note unalienable. The reason is simple: once certificates have been issued, the note cannot be transferred, sold or conveyed; at least not in the sense that such a transfer, sale, or conveyance should be considered lawful, legal, and legitimate. This is because the securitized note forever changes the nature of that instrument in an irreversible way, much in the same way that individual strawberries and individual bananas can never be extracted, in their “whole” form, from a strawberry banana milkshake once they’ve been dropped in the blender and the blending takes place.

It might appear that the inability to alienate the note has no adverse consequences for the debtor, but recent history disproves this notion. Several legislative and executive efforts to pursue alternate dispute resolution and to provide financial relief to distressed homeowners have been thwarted by the inability of the United States government to buy securitized mortgages without purchasing most of the certificates issued.

An SPV cannot sell any individual mortgage because individual mortgages are not held individually by the certificate holders; the thousands of mortgages held in the name of the REMIC are owned *collectively* by the certificate holders. Likewise, the certificate holders cannot sell the mortgages. All the certificate holders have are the securities, each of which can be publicly traded.

The certificate holders are, in no sense, holders of any specific individual note and have no legal or beneficial interest in any specific individual note. The certificate holders do not each hold undivided fractional interests in a note which, added together, total 100%. The certificate holders also are not the assignees of one or more specific installment payments made pursuant to the note.

For the certificate holder, there is no note. A certificate holder does not look to a specific note for their investment’s income payment. Instead, the certificate holder holds a security similar to a bond with specific defined payments. The issuer of trust certificates is selling segments of cash flow.

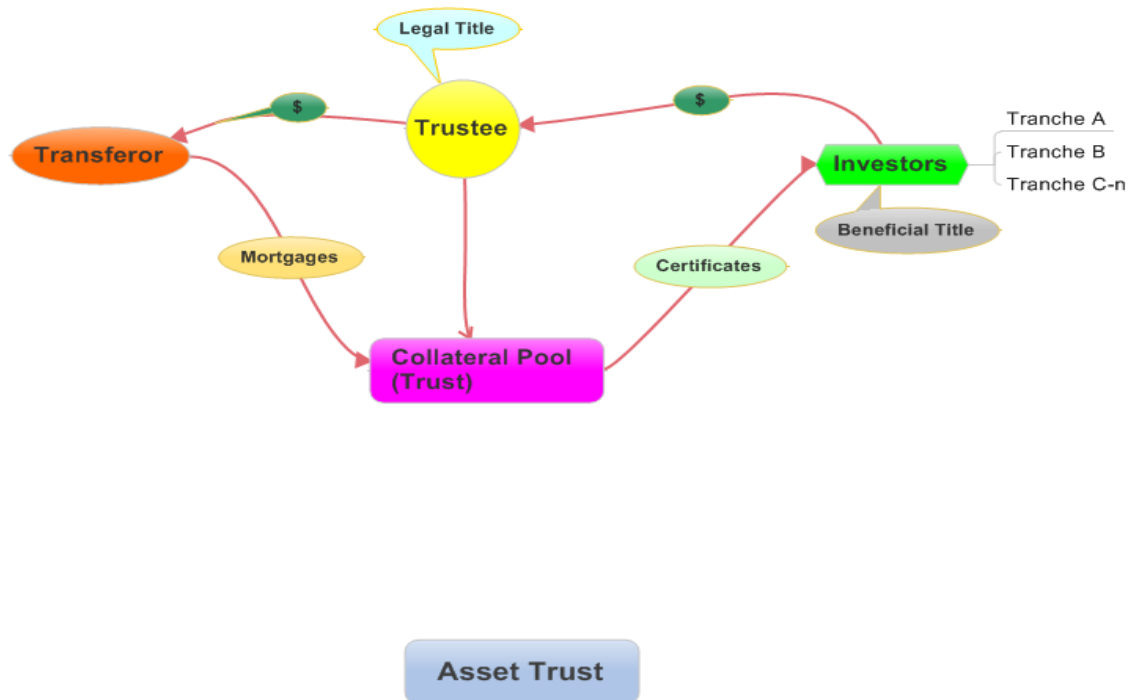
The concept of securitization is brilliant. It began as a simple idea; a way to convert illiquid, long term debt into liquid, tradable short term debt. It cashes out the lender, allowing the lender to make new “loans” while realizing an immediate profit on the notes sold.

### **The Charts**

In order to more easily identify the parties and their relationship to the securitization arrangement, it is useful to view it in diagram form. The parties to a securitization and their relationships to each other, including the duties and obligations one party owes to another party, is referred to on Wall Street as “The Deal”. The Deal is created and defined by what functions as a declaration of trust, also known as “the master servicing and pooling agreement”, hereafter “pooling agreement”.

Chart 1 below shows a Net Asset Trust created to convert long term mortgage debt into short term, publicly traded securities.

Chart 1



The transferor purchases a portfolio of mortgages and sells them to a trust. The trust purchases the mortgages. The trustee holds the mortgages and becomes the holder of legal title. The trust then issues a bond to the investors; debenture-like certificates. The bond issues different classes of certificates, called tranches.

The certificate entitles the certificate purchaser to certain stated, repeated segments of cash flow paid by the trust. The certificate holders do not hold fractional, undivided interest in the mortgages. Instead, each tranche is entitled to an identified, segmented pool of money payable in an order of priority. A senior tranche will get paid before a junior tranche. A junior rate provides a higher promised rate of return because it has a higher risk than a senior tranche. Another tranche exists that pays interest, but does not pay out principal.

The type and variety of tranche that is created is limited only by the limits of financial ingenuity. Tranches have been created which pay only a portion of principal repaid on the mortgages but no interest.

The investors buy the mortgages from the transferor by paying cash to the trustee who pays the transferor. The investors purchase securities (certificates) which are collateralized by the mortgages held in trust in the collateral pool. Legal title to the mortgages is held by the trustee and beneficial title is owned by the investors.

Only the extremely savvy debtor in this arrangement would know that he should perhaps begin to become concerned upon learning that his mortgage note had been

sold to a trust and exchanged for certificates that are issued to unknown beneficiaries (investors) whose certificates were issued under one of many different types of tranches. However, the debtors – the homeowners; the people who provide the income that funds the entire securitization scheme – have no say in the matter because they are never told what will be done with their note. It is never disclosed in the transaction.

So, whereas it would take an extremely savvy person to understand why this arrangement is potentially troublesome to the homeowner whose note has been used in this way, it would take an omniscient homeowner to know that securitization is even going on in the first place. For reasons already stated above, it is not only disingenuous to suggest that securitization does not affect the rights of the debtor, it is downright dishonest.

Nevertheless, for purposes of breaking down the topic into bite-sized pieces: suffice it to say that the trust purchased mortgages and sold certificates. Another way to describe it: the trust bought cattle and wound up selling ground beef.

This then raises questions suitable for a law school examination or law journal article: *Are the purchasers of these certificates really beneficial holders of the note, or are they merely purchasers of a contract right to payment from the trust?* In other words, *Is the trustee limited to being the holder of legal title, or does the trustee also hold the beneficial title?* While these may be good questions for an academic exercise, they aren't germane to defending the debtor being sued in foreclosure. The reason is that under either case, the trustee has standing to foreclose.

More germane is the fact is that an asset trust is likely *not* the type of securitization vehicle to hold a debtor's mortgage. This is because Wall Street decided to improve the "asset trust paradigm". If the Deal could be made safer for, and more lucrative to, the investor, the investor would pay more for the investment. This was accomplished by adding objectives 2-11 to the list already referred to above, shown again below:

1. Immediately liquidate an illiquid asset such as a 30 year mortgage.
2. Maximize the amount obtained from a transfer of the mortgages and immediately realize the profits now.
3. Use the liquid funds to make new loans and earn profits that are immediately realized... again and again (as well as the fees and charges associated with making loans, and the profits associated with liquidating the new loans as quickly as practicable... and so on).
4. Maximize earnings by transferring the assets so that the assets cannot be reached by the creditors of the transferor institution or by the trustee in the event of bankruptcy. (By being "bankruptcy-remote" the value to investors of the illiquid assets is increased and investors are willing to pay more.)

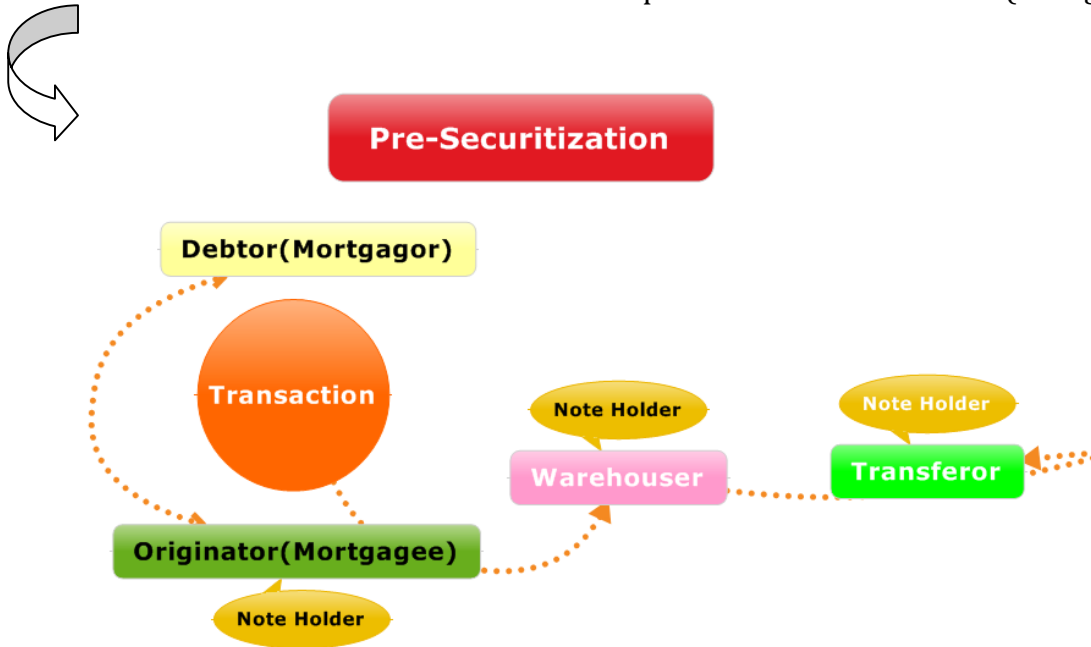
5. Control management of the illiquid asset in the hands of the transferee by appointing managers who earn service fees and may be affiliated with the transferor.
6. Be able to empower the transferor to support the transferred asset by taking a portion of the first losses experienced, if any, from default, entering into agreements to redeem or replace mortgages in default and commit to providing capital contributions, if needed, in order to support the financial condition of the transferee.
7. Carry the reserves and contingent liability for the support provided in paragraph 6 off the balance sheet of the transferor, thereby escaping any reserve requirements imposed upon contingent liabilities carried on the books.
8. Avoid the effect of double taxation of, first, the trust to which the assets have allegedly been transferred and, second, the investor who receives income from the trust.
9. Insulate the transferor from liability and moves the liability to the investors.
10. Leverage the mortgage transaction by creating a mortgage backed certificate that can be pledged as an asset which can be re-securitized and re-pledged to create a financial pyramid.
11. Create a new financial vehicle so mind numbingly complicated that almost no one understands what is going on.

The net asset trust structure does not provide the additional 10 benefits of securitization listed above (items 2 through 11). For instance, under the net asset trust, the income received by the collateral pool from the mortgage debtors is taxed and the interest paid to each investor is taxed again.

To achieve the goals listed above, it became necessary to structure the Deal to create a pass through trust and replace the net asset trust. As shown in Chart 2 shown below, the Deal starts off on straight forward easily charted path. The path of the mortgages identifies the note holder at each stage...

Chart 2

1. **ORIGINATOR.** The Transaction takes place between the debtor (mortgagor)



and the creditor here called the “originator” a.k.a. the mortgagee. The transaction consists of the mortgage note and the mortgage. The originator becomes the note holder.

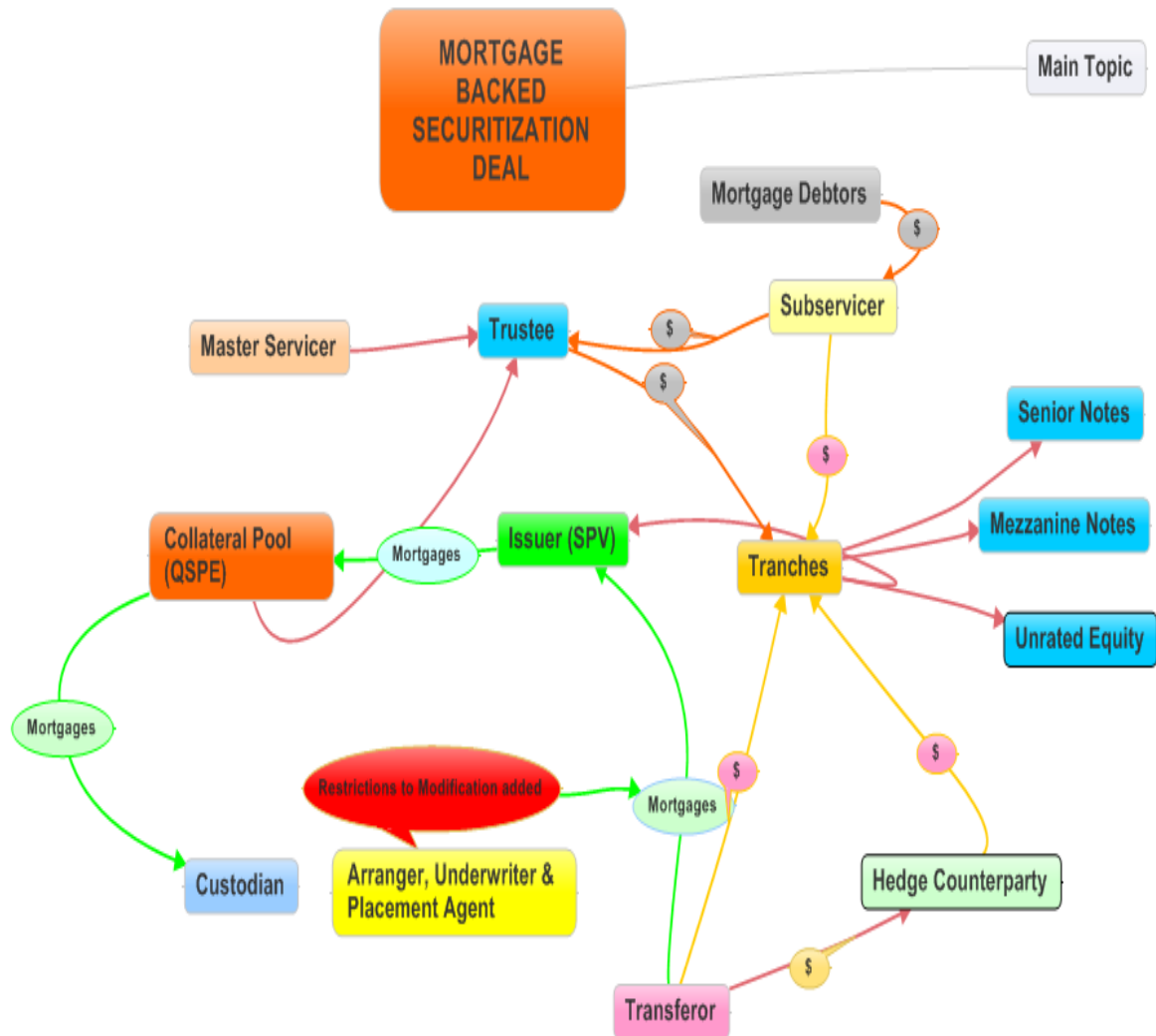
2. **WAREHOUSER.** The originator sells the transaction to the warehouse. The warehouse then becomes the note holder.

3. **TRANSFEROR.** The warehouse buys the mortgage and also buys other mortgages to assemble a portfolio of mortgages. The portfolio is then sold to the transferor who is the initiating party of the securitization. The transferor then becomes the note holder. The transferor creates the securitization.

As previously stated, a portfolio for securitization typically contains from 2,000 to 5,000 mortgages.

There are many different structures for securitization but the potential negative impact of securitization on the debtor is the same. The chart on the following page shows a typical securitization.

Chart3



The structure seen above is called the “Deal”. The Deal is created through a complex instrument that, among other things...

1. Serves as a declaration of trust,
2. Identifies the parties who manage the Deal and describes their duties, responsibilities, liabilities and obligations,
3. Defines the different classes of investment securities, and
4. Is called the Master Pooling and Servicing Agreement.

The instrument is filed with the Securities and Exchange Commission and is a public record. This document is the most important source for discovery as it provides the *who*, the *how*, the *where*, and the *when* of the Deal.



Chart 2 shows the mortgage portfolio in the hands of the transferor who *was* the note holder.

**The Transferor.** In the “new and improved” securitization process (shown in Chart 3), the transferor transfers the mortgages to the underwriter. In addition, the transferor may arrange for credit enhancements to be transferred for the benefit and protection of investors. Such enhancements may include liquid assets, other securities, and performing mortgages in excess of the mortgage portfolio being sold. NOTE: *the transferor also usually obligates itself to redeem and replace any mortgage in default.*

**The Underwriter.** The underwriter creates the securities and arranges to place the various tranches of securities (different classes of certificates) with investors. The underwriter then transfers the mortgage portfolio and securities to the issuer.

**The Issuer.** The issuer is organized as a Special Purpose Vehicle (SPV); a passive conduit to the investors. The issuer issues the securities to the investors and collects payment from the investors. The payments from the investors are transferred through the underwriter to the transferor.

**The QSPE.** The mortgage portfolio is conveyed from the issuer to the collateral pool which is organized as a Qualifying Special Purpose Entity (“QSPE”). As previously stated, what makes the entity “qualified” is strict adherence to a set of rules. Among other things, these rules make the QSPE a passive entity *which has no legal or equitable title to the mortgages in the mortgage portfolio and restrict modification of the mortgages in the portfolio.*

As a result, the QSPE provides to the investors the benefit of its earnings (paid to it by the mortgage debtors) not being taxed. These earnings flow through the QSPE to the investors. Only the investors are taxed at the individual level.

**Custodian.** The QSPE transfers the mortgage portfolio to the custodian who acts as a bailee of the assets. The custodian is a mere depository for safekeeping of the mortgages.

**Tranches.** The investors invest in different classes of securities. Each class is called a tranche. Each tranche is ranked by order of preference in receipt of payment and the segment of cash flow to be received and resembles a bond. The basic stratification by order of priority of payment from highest to lowest is categorized as follows: senior notes, mezzanine notes and unrated equity.

**Parties described in the Master Pooling and Servicing Agreement.** The Deal establishes a management structure to supervise the investment. The specific parties for a Deal are identified in the master Pooling and Servicing Agreement which states their duties and obligations, their compensation, and their liability. Typically the managers include: the Master Servicer, the Trustee, the Subservicer, and the Custodian.

**Master Servicer.** The Master Servicer is in overall charge of the deal and supervises the other managing parties.

**Trustee.** The day to day operations of the collateral pool is administered by the trustee. However, the trustee does very little since the trust must remain passive. The trustee does not have a legal or equitable interest in any mortgage in the portfolio because the trust is a mere passive conduit.

**Subservicer.** The Subservicer is responsible for dealing with the property owners; collecting monthly payments, keeping accounts and financial records and paying the monthly proceeds to the trustee for distribution to the investors by order of tranche.

The Subservicer may also be responsible for foreclosure in the event a mortgage is in default or some deals call for the appointment of a special subservicer to carry out foreclosure. Usually the subservicer is obligated to make monthly advances to the investors for each mortgage in default. In addition, the subservicer may also have undertaken to redeem or replace any mortgage in default.

**Counterparty.** Finally, there is a counterparty to make sure that investors get paid on time. The counterparty is like an insurer or guarantor on steroids; a repository of all kinds of financial arrangements to insure payment to the investors. Such financial arrangements include derivatives, credit default swaps and other hedge arrangements.

The term “counterparty” is frequently associated with “counterparty risk” which refers to the risk that the counterparty will become financially unable to make the “claims” to the investors if there are a substantial number of mortgage defaults. The counterparty may guarantee the obligation of the transferor or servicer to redeem or replace mortgages in default. The counterparty may also guarantee the obligation of the subservicer to make monthly payments for mortgages that are said to be in default.

**Questions worth asking.** We now know that an examination of the Master Servicing and Pooling Agreement filed with the SEC will reveal substantial barriers to a lawful foreclosure. We also know that there are parties involved in this arrangement, as well as insurance products in place, intended to financially “cover” certain “losses” in certain situations, such as an alleged default.

In light of this, there are a few questions the Subservicer and/or the Successor Trustee and/or the foreclosure law firm who claims to have the legal right and authority to conduct a foreclosure, ought to be prepared to answer before the foreclosure goes forward:

- *Have you read, and are you familiar with, the Master Servicing and Pooling Agreement relating to this mortgage that was filed with the SEC?*
- *The Servicer, Subservicer, or some other party (counterparty) likely made a payment to the party who allegedly owns the purported debt obligation. This payment, if made, was intended to cover sums that are alleged to be in default. Therefore, the party who allegedly owns the purported debt obligation has, by virtue of that payment, not been damaged in*

- any way. Therefore, if any sums have thusly been paid, how is it being truthfully stated that a default has occurred?*
- *If the investment trust that ostensibly owns the mortgage obligation is a REMIC, the trustee, the QSPE, and the other parties servicing the trust, have no legal or equitable interest in the securitized mortgages. Therefore, any servicer who alleges that they have the right, or that they have been assigned the right, to claim that they are the agent for the holder of the note for purposes of standing to bring an action of foreclosure, are stating a legal impossibility. In light of this, by what authority can you show that you can administer a lawful foreclosure?*

There are many more questions that can and should be asked in such a situation. They all stem from one central fact: a note that has been securitized and submitted to an entity qualifying as a REMIC and organized as a Qualifying Special Purpose Entity, is not enforceable. That is an incontrovertible fact that servicers of securitized mortgages will have to cope with as more and more homeowners discover the truth.

## **Conclusion**

Previously, it was stated that, in order for the investment entity to be a REMIC (in other words, in order for the entity to be able to qualify for the single taxable event as a pass through entity), all interest in the mortgage is supposed to be transferred forward to the certificate holders.

Well, in fact, *such a transfer never occurs*. Either that is the case, or the parties who state that they have a right to foreclose on a securitized note are not being truthful when they present themselves as the real party in interest.

In any case, they cannot have it both ways. The servicer cannot claim to hold legal and/or equitable interest in the mortgages held in the name of an investment trust that also provides the (REMIC) pass through tax benefit to its investors.

Does the Master Servicing Agreement – made public through its filing with the Securities and Exchange Commission – show that the entity is a REMIC? If so, the note has become unenforceable because the unnamed parties who are receiving the pre-tax income from the entity are the real parties in interest. They hold the legal and/or equitable interest in the mortgages held, but they do not have the ability to foreclose on any one individual mortgage because the mortgages held by the REMIC have all been bundled into one big income-producing unit.

The Introduction explains that securitization consists of a four way amalgamation. It is partly 1) a refinancing with a pledge of assets, 2) a sale of assets, 3) an issuance and sale of registered securities which can be traded publicly, and 4) the establishment of a trust managed by third party managers.

Also discussed is the fact that enacted law and case law apply to each component of securitization, but that specific enabling legislation to authorize the organization of a securitization, and to harmonize the operation of these diverse components, *does not exist*. This bears repeating even more explicitly because this is central to the

rights of a homeowner facing foreclosure whose underlying mortgage has been securitized: *specific enabling legislation to authorize the pass through structure of a trust holding a mortgage portfolio does not exist.*

Many unresolved legal issues could be addressed if the Uniform Commercial Code Commissioners added a chapter for securitization. However, that has yet to happen.

So as it now stands, a lawful foreclosure cannot occur against a mortgage whose note has been securitized because of the lack of an actual damaged party who has standing to state a claim.

## Recommended Products

### Jurisdictionary

Can't afford a lawyer? Then this product is for you.

This is the complete Pro Se guide to litigation. If you want to go to court, you must absolutely understand the rules of court. Jurisdictionary offers you a quick introduction to help you understand the framework of court.

What is a Motion?

What is a proper Cause of Action to be considered Legally sufficient?

How do you make the Judge follow the law?

If you don't know the answers to these, how will you stand a chance in court?

Even if you hire a lawyer, how do you know they are doing a good job for you? How do you know what questions to ask your lawyer to make sure that he is representing you properly if you are ignorant? Your lawyer could be taking you to the cleaners.

If you plan to go to court, don't you dare go without [Jurisdictionary](#).

## **Affordable Securitization Audits**

Having a Securitization audit is like having a picture of your banker in the vault, stuffing money into his bag after hours (ie. Caught in the act of stealing). Bankers absolutely hate these as it exposes their fraud.

There are many so called “securitization auditors” out there who promise the world. Unless you actually know what to look for, you could be wasting your money. We’ve investigated quite a number of auditors, and many of them are scams or are simply way too expensive for the average homeowner. Some charge as much as \$2000, while some attorneys charge as much as \$4000 for an audit because they know the power an audit can have.

Before you can bring a civil action against your lender, you will need to have proof. Without sufficient proof, your case is subject to dismissal.

Having a securitization audit will ensure that your case will be able to survive a Motion to Dismiss to get into the Discovery phase of the civil action.

To order a securitization audit, come to:

<http://www.consumerdefenseprograms.com/resources/securitization-audit/>

## **Bankruptcy Preparation Service**

Preparing paperwork for a bankruptcy is very complicated and is not recommended that you do this on your own.

Our specialty Bankruptcy Preparation Service is designed for the homeowner in foreclosure in mind. Our Specialists have been helping foreclosure clients file bankruptcy paperwork for over 5 years and can give you more personalized assistance with your paperwork than a traditional lawyer (whose job is to get you done with your bankruptcy as quickly as possible with zero regard to your rights as a homeowner and victim of bank fraud).

For more information about our specialty Bankruptcy Preparation Service, come to:

<http://www.consumerdefenseprograms.com/resources/bankruptcy-preparation-services/>