Foreclosure - Why Robo-Signing and AG Investigator Firings Don't Matter

http://bobhurt.blogspot.com/2011/07/foreclosure-why-robo-signing-and-ag.html

To: Kimberly Miller, Real Estate Reporter, Palm Beach Post - kimberly_miller@pbpost.com

Re: http://www.palmbeachpost.com/money/foreclosures/foreclosure-fraud-investigators-forced-out-at-attorney-generals-1603854.html

We can deplore the AG's firing of top investigators into mortgage foreclosure fraud, and the banks' continued robo-signing in spite of OCC's punishment. But I'll tell you why none of that really matters with respect to the core issue of foreclosure.

Foreclosure Happens Because it Should

The note and mortgage bind the borrower to repay the loan or forfeit the house to foreclosure sale, and still remain subject to a judgment lien for the balance.

Why do I write you?

I believe the public ought to question foreclosure defenses that delay the inevitable foreclosure while costing tens of thousands of dollars. On the bright side, they keep their clients in their homes a few months to couple of years longer. On the dim side, few if any of them EVER actually win a case to the extent of permanently undoing the foreclosure. Even if the court dismisses the foreclosure complaint for an error, the foreclosure plaintiff either appeals or refiles, and ultimately WINS the foreclosure.

From this you can see why the courts give short shrift to robo signing or AG attacks on foreclosure mill law firms. They will grant the foreclosure because the borrower signed the note and mortgage, bought the house with the loan, paid for a while, and stopped paying. The mortgage grants the right to force an auction of the realty to pay the note balance.

Foreclosure Victims Can Delay Foreclosure without a Lawyer's Help

Foreclosure victims have three ways to delay foreclosure for months to a year.

Loan Modification – Haggle ONLY

Foreclosure victims can stop the foreclosure by haggling over a crooked loan modification. The Loan Mod typically leaves the balance at its present value in spite of the collapse of the value of the realty. That means the lender will get a fraudulent appraisal to support the new loan. It also allows payment at

the 40-year rate, and requires a big balloon payment in 5 or 10 years, a payment the typical borrower will not have the ability to make.

Short Sale

Then, the foreclosure victim can stop haggling and reject the loan mod at the moment before signing, and do a short sale. Most lenders hate short sales because they get more money by foreclosing. But a foreclosure sale will produce less revenue than the short sale, and that will end up cheating the mortgage insurer. So, the foreclosure victim should ask the servicer for the contact info on the mortgage insurer and ask the insurer to hammer the lender into approving the short sale, thereby avoiding a federal crime. The lender must, by law, mitigate the insurer's loss.

Keys for Cash

At the last minute, the foreclosure victim can stop the short sale and ask the lender for or deed for cash in lieu of foreclosure. In this arrangement, the lender gives the foreclosure victim $5,000 or $10,000 to leave the house "broom-clean" and hand over the keys to the servicer. Short Sale and Deed in Lieu both go much easier on the credit rating than out-and-out foreclosure.

Use Savings to Buy an Auction House

The foreclosure victim can execute the above three stall tactics without the assistance of an attorney. Meanwhile, the victim can save the money the victim would have paid to the attorney, the same money the victim would have given to the mortgage servicer as house payments. After taking those savings of $20,000 to $30,000, plus the Keys-for-Cash money, the typical foreclosure victim will have enough money to buy a nice house for cash at a foreclosure auction. Properties sell at auction for 1/5 to 1/6 of their 2007 values. In effect, the crafty foreclosure victim can walk away from a nasty foreclosure mess with no mortgage, a house free and clear, and sufficient collateral to qualify for small loans even with bad credit.

HOW TO WIN and Permanently Defeat the Foreclosure.

With proof of torts or breaches underlying a mortgage, the defender attorney can negotiate for a settlement with the lender. Lenders avoid public attention on such offenses because they know the public would otherwise RUSH to uncover the violations and sue accordingly. This would make the lender go broke because of exposure of years of predatory lending policies. Such policies tolerated lies by mortgage brokers (who falsify loan applications to make unqualified borrowers appear to qualify) and appraisers (who, throughout the USA have jacked up realty prices unjustifiedly). Appraisers and mortgage brokers functions as agents of the lenders, making lenders culpable for those errors.

If you want to see an example of what happens when a lender does not settle, look here:

- Quicken Loans on losing end of $3 million predatory lending verdict - http://www.wvrecord.com/news/233771-quicken-loans-on-losing-end-of-3-million-predatory-lending-verdict

See more facts supporting the truth of my comments:

- FDIC Sues LPS and CoreLogic Over Appraisal Fraud; Shows Investors Leaving Money on the Table http://www.ritholtz.com/blog/2011/05/fdic-sues-lps-and-corelogic-over-appraisal-fraud-shows-investors-leaving-money-on-the-table/

- Confusing lawyer fees complicate foreclosure battles - http://www.tampabay.com/news/confusing-lawyer-fees-complicate-foreclosure-battles/1173271
  '"I fight like hell for people, but I'm also constantly telling my clients that at the end you're probably going to lose it," says Mark Stopa, a Tampa Bay defense lawyer.'

- Jury returns guilty verdict on all counts against appraiser in mortgage - http://blog.cleveland.com/metro/2009/02/jury_returns_guilty_verdict_on_1.html

- Mortgage Banking Giant, Deutsche Bank Agrees to Pay Homeowner $30,000 as Part of Settlement Agreement Reached in a New Jersey Foreclosure Court - http://www.prnewswire.com/news-releases/mortgage-banking-giant-deutsche-bank-agrees-to-pay-homeowner-30000-as-part-of-settlement-agreement-reached-in-a-new-jersey-foreclosure-court-123804609.html

- FBIMortgage Fraud Report 2006 - http://www.fbi.gov/stats-services/publications/mortgage-fraud-2006

- Foreclosure Scams Up as 'Piranhas' Circle - http://abcnews.go.com/Business/Economy/story?id=6966576&page=1

- Mortage-fraud case shows how real-estate insiders scammed the system for profit http://seattletimes.nwsource.com/html/localnews/2008791870_brooks27m.html

How to Make Courts Hold Lenders Accountable for the Realty Value Collapse

The US Government's own Financial Crisis Inquiry Commission report (http://fcic.law.stanford.edu/) explained in detail how government and the financial industry colluded to bring about the financial crisis and the consequent collapse of jobs and realty values. In point of fact, lenders brought on the crisis by preying on incompetent borrowers whom the lending industry had lured for a decade with irresistible television ads to borrow money, money which millions of borrower could not repay.

Courts should hold lenders generally accountable for collapsing the value of realty through bogus lending practices.

Courts WILL do that if foreclosure defenders sue for the RIGHT reason:

Tortious conduct and contract breaches underlying the mortgage.

If you want hard core details on how to make this happen, contact the ONLY fraud examiner I know of who does a proper discovery of the torts and breaches:

Storm Bradford
MortgageFraudExaminers.com
703 622 5181

I have written considerably on this topic in these:

- Lawmen Google Group - http://groups.google.com/group/lawmen; and
- Bob Hurt Blog - http://bobhurt.blogspot.com.

Many so-called forensic auditors run a computer program into which they enter information from the mortgage documents, and then produce a report showing useless violations of TILA (Truth in Lending ACT) and RESPA (Real Estate Settlement Procedures Act) laws. Most such violations will produce little or no benefit for the foreclosure victim, and the victim thereby wastes money on the phony audit.

EVEN IF an audit justifies a rescission for recent TILA violation on a refinance loan on a victim's home, if the house has collapsed in value (and it has, as much as 40%), the court will not rescind the mortgage and restore the lender and borrower to pre-loan conditions. Why? Because the borrower does not have the money to repay the lender the borrowed amount, even after the lender returns ALL the borrower's payments and fees.

Bradford's service produces a report, optionally styled as a complaint, revealing all relevant TILA, RESPA and OTHER relevant violations, plus contract breaches, appraiser fraud, mortgage broker fraud, and lender fraud evident in the documents related to the mortgage. And he delivers the report within7 to 10 business days.

Mortgage-Related Issues of Serious Concern to All

As a real estate reporter, you really ought to bring up other shifty characteristics of the typical mortgage loan:

1. Pressure to sign – the purchase agreement requires closing of the loan IF the buyer obtains funding. Most buyers have no time to preview the closing documents and have to read and discuss them at the closing table, which they almost never do.
2. No contract with the lender – The lender and borrower should sign an agreement in which the lender agrees to lend money and the borrower agrees to borrow and repay money, and which

states the various terms of the note and mortgage, well in advance of closing, to give the borrower the chance to review the documents with a qualified title/loan attorney. Without such privity of contract, a lender actually has only limited right to enforce the note and mortgage.

3. No money – US law makes Federal Reserve Notes (FRNs) into legal tender unconstitutionally. Article I Section 10 provides that "No State shall make any Thing but Gold and Silver Coin tender in payment of debt." Even though the US 5th Circuit ruled that a "dollar is a dollar," it costs $35 in FRNs to buy a US Minted Silver Eagle dollar. US Law makes FRN's redeemable in lawful money, but does not set the redemption rate, leaving people confused about its ever changing value in gold or silver coinage. Use of FRNs has become a custom, one that makes it difficult to evaluate the effect of lack of real circulating money on real estate purchases or loan repayments in the several states. A FRN does not constitute "money." As a note with no definite terms written on it, such as silver certificates used to have, which most Americans have never seen, it does not even constitute a valid note.
4. Unconscionability – few borrowers would sign the note and mortgage under the standard terms if they knew the implications. The lender never signs these unilateral adhesion agreements, and never actually covenants with the borrower.
5. In the Note, the borrower agrees "For a loan I have received" even though the borrower at the time of signing has not received any loan.
6. In the Mortgage, the borrower agrees "I am seised of the estate" even though the borrower at the time of signing has NO seisin of the estate.
7. In the Mortgage, the borrower transfers the realty and associated items to the lender. This is unconscionable because it means the borrower does not own the realty; the lender owns it.
8. At closing the closer hands the check to the seller, not to the borrower. The bank account of the closer has no funds in it from the lender to cover the check, so it is a "hot" check, in spite of wet/dry funding laws.
9. The above facts seem to mean that the borrower borrows only the realty, and not the money for purchasing the realty. Nothing in the Mortgage or Note asserts or implies that the lender has no possessory right to the realty. But language in the mortgage allow the lender to enter the realty to verify repairs made.
10. The Mortgage provides a non-refundable loss reserve fund into which the borrower's mortgage insurance premium goes if the mortgage decides to drop the insurance. This amounts to an extra cost of the loan which does not appear on the HUD-1 Settlement Report, and it thereby seems to anticipate a RESPA violation.
11. The borrower signs a Mortgage provision waiving right to notice in the event of assignment of the note. This prevents the borrower of knowing who benefits from the mortgage payment.
12. The note actually belongs to the maker unless the maker transfers ownership or sells it to another party, like the lender. The holder in due course merely holds, and does not own, the note, and must return it to the maker (borrower) upon satisfaction of the note's terms. The mortgage allows the lender to sell the note, but that does not mean the owner gets to keep the proceeds of the sale, since the note belongs to the borrower. This messed up language in the mortgage constitutes a fraud. It seems to mean the lender owns the note, but it actually mans the lender owns the beneficial interest in the note, the right to receive the payment stream.

Attorneys around America have allowed this insane language to creep into the mortgage to imply an untruth and non-fact. The lender does not own the note. The lender owns ONLY the right to receive payments of principal and interest, and the right to assign that right in whole or part to others. Read Article III of the UCC (Uniform Commercial Code).

13. Any note with a term longer than 9 months becomes a security, invoking the provisions of Article VIII of the UCC.
14. Securitization, when it earns money for the lender-trustee chain of note holders, constitutes conversion of the chattel of the borrower (the note) to the lender-trustee chain's personal use, thereby entitling the borrower to all the profit earned. Attorneys for borrowers ought to sue for such profits in a trover action.

You also ought to bring up crookedness in the typical foreclosure, such as

1. Phony loan modifications which the servicer offers even though the servicer does not own the loan and therefore cannot modify it. Usually, the securitization trustee owns the loan, and when it goes into default, the trustee assigns it to a bank willing to foreclose. Such an assignment goes for much less money than normal because all know that the defaulted loan will lose a lot of its value in legal fees, lost interest, and other expenses over time, and possibly require multiple lawsuits. The servicer lobbies to buy the "bad paper" from the trustee, and sometimes wins. Then and ONLY THEN can the servicer make a loan mod. Until then, the servicer strings the foreclosure victim along with hopes of a loan mod, and most of the time forecloses anyway because of failure to buy the loan or because of some advantage in foreclosing, such as getting money from the auction, the mortgage insurer, AND the FDIC.
2. Putting a shill at the auction to buy the foreclosed realty for 1/6 of the loan amount of less, and then "flip" it back to the lender for a few thousand dollars. Now the lender can collect the mortgage insurance and FDIC benefits, and add the foreclosed realty to its REO (real estate owned) cache, or flip it a fast profit to another investor.
3. Lenders who knowingly put bad loans in the trust CHEATED the buyers of the security certificates (often big banks). See this example.
    - European financial group Dexia SA (DEXI.BR) sued Deutsche Bank AG (DBKGn.DE) for losses on $1 billion of bonds that it bought from the German lender, which it accused of simultaneously betting against home loans backing the securities.
      http://www.reuters.com/article/2011/07/14/us-dexia-deutschebank-lawsuit-idUSTRE76D5GC20110714

I won't get into the missing note, robo-signing, phony notarizations and assignments, and securitization fraud or irregularities. While such arguments have legal validity, they only prolong the inevitable foreclosure and waste everybody's money. Courts allow lenders to enforce or replace lost or destroyed notes, and accept copies along with a payment trail and other evidence of the debt as proof of validity of the debt, And securitization fraud cannot even delay foreclosure. I can think of only one remotely practical reason for delays – to stall for foreclosure victims who have no means of income. And, as I have pointed out, such victims can stall without paying an attorney.

Why This Should Matter to Foreclosure Defense Attorneys

In the final analysis, attorneys owe their clients the very best "WIN" possible for the money. For far less than $5000, IFF they go to the right service provider, they can purchase a mortgage fraud examination and receive a report styled as a finished complaint within 10 business days, ready for negotiating a settlement or filing with the court, regardless of the state of the USA. I have recommended Storm Bradford, but *any* who give service of quality, completeness, and legal sufficiency equal to or better than his should suffice. Most attorneys cannot or will not do such an investigation, and most will charge $5,000 to $10,000 to draft such a complaint. Thus, Bradford's service fits easily into their pricing structure with room for them to profit from it.

A Little Extra Help for Foreclosure Defender Attorneys if Needed

I recently spoke on the phone with Bradford about helping new or inexperienced attorneys settle or sue. He said that he has coached defense counsel for 35 years in beating their opponents in litigation. I found more details about that service at http://instantlawpartner.com. It follows that he can help foreclosure defenders win foreclosure battles just as he has for decades helped criminal defense lawyers beat prosecutors.

Why Foreclosure Victims Need a COMPETENT Attorney

Unfortunately, nothing can replace practical, actual experience in court and the litigation process that an actual attorney receives. This experience teaches the attorney about the "legal landscape," knowledge akin to that of Indian Scouts in the days of the Wild West, or today's Reconnaissance Marines. With this experience and knowledge of working with judges and related procedures and evidence rules, a competent attorney will usually beat the incompetent attorney or unskilled pro se litigant every time, regardless of the merits of the case. In other words, having a good case, one that will win on the merits in an honest court with evenly matched opposing litigants, just does not suffice to produce a win. Foreclosure victims NEED a competent attorney.

To make sure your attorney has the requisite competence, ask the prospective attorney for

- the number of similar cases litigated
- their outcome (who won, and what "win" means)
- special qualifications for dealing with such cases, and
- proof of malpractice insurance.

It makes little sense to hire an attorney who has no winning experience in your kind of case. However, even a bad lawyer gives you a better chance of winning than going it alone.

Note that foreclosure defense constitutes a relatively new field in litigation, so you will find few truly qualified litigators. Just as many criminal defense attorneys don't develop litigation competence because they plea-bargain so many cases, foreclosure defenders don't become competent by simply delaying the foreclosure which eventually happens, and bilking their clients for the privilege. They develop competence by WINNING, not delaying, and they WIN by finding the tortious conduct, contract

breaches, and other serious violations that will convince a court to rescind the mortgage altogether, compensate the foreclosure victim for losses, and punish the lender for predatory practices.

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