Your Home Really is Yours! Tools To Stop Foreclosure

This book was assembled from several manuscripts and a variety of credible sources to help you understand how you can fight and win. It is a layman's explanation of what has been happening in the foreclosure and home mortgage arena. It gives you an overview of Mortgage Fraud in this country that has reached epic proportions and provoke action to eradicate this outright Fraud upon America. Depending on what your situation is, you may react with disbelief, fear, anger, or outright disgust at what you are about to learn. The cases below could help whatever you are trying. The following information is supported with facts.

 How would you like to find out if you could approach your mortgage company and convince them to release their debt and lien on your title?

 What if you found out how the mortgage company actually tricks you on every loan they make?

 Wouldn't you like to know the key phrase in mortgage contracts that lets you know you're being taken?

 What if you could prove to yourself that you are the actual "creditor" in every loan transaction?
Which means YOU created the money (it is yours), yet get tricked into paying it back to someone else with interest?

We're going to be covering these and other items related to mortgage foreclosure and mortgage lien cancellations. First, we'd like to cover developments days having to do with the loan or Note and mortgage contract. With additional study and some support, you can learn **how you can immediately prove up the funds and standing to settle your mortgage,** and how you can use an "Administrative Process" and a little known courtroom procedure to turn the tables on the bank, and actually put them in the debtor's position where you take over the creditor's chair, all due to their dishonor, default and Bank Fraud.

How You Can Protect Your Real Estate Holdings

In the past couple of years, the economy has headed south, and mortgage delinquencies are at record levels and climbing. What has exacerbated the problem is the fact that a lot of these loans have been repackaged and resold, many times without your knowledge. Of course, you're talking about highly leveraged situations that put us all at risk and severely crashed worldwide capital markets. Consequently, there has been a huge rash of foreclosures.

The big problem is that you may think that there's not much you can do. It's a well-known fact that in certain neighborhoods, when foreclosure notices go out, the home owners don't even bother to try to fight it. You simply give up and leave. In the process of leaving, many times you leave everything there. You leave your TVs, beds, computers, you name it. You simply just walk

out and abandon things that took a long time to acquire. It's almost like you've been hit with despair.

Wouldn't it be a great thing to know that you can actually protect your real estate holdings? How can you possibly do that?

The fact is that many people today are upside-down in a mortgage as compared to their home's value. For example, your current property value may be worth $400,000, and when you got the loan, it was worth $600,000 or $700,000 and perhaps the loan was for $600,000. Today, you still have that $600,000 loan, but you're upside-down to the tune of about $150,000 to $200,000. You don't see any other option except to walk away. Most people do so, without realizing that your equity really belongs to you.

One of the best options that would prevent you from having to walk away is to eliminate the mortgage company's false claim against your property. How can you possibly go about doing that? The answer is actually very simple.

Everybody assumes that, because a bank or mortgage company is involved, there must be a valid contract. What we'd like to show you is that *most contracts are merely presumed to be valid.* Yet the basis of a valid contract is completely missing. Therefore, there is no contract at all! Wouldn't it help to know what the "basis" for a "valid contract" is? Most people think that contracts are the paper that they're written on with a signature affixed. They think that constitutes a contract. The good news is a contract is actually a "meeting of the minds". A meeting of the minds means that there was FULL disclosure, understanding, and there was a consideration to both parties.

What if you found out, and it was provable, that there was no consideration **from the bank at all?** What if you found out that the bank **never actually disclosed** what they were doing? Do you think you might be able to turn the situation around? If you are ready to fight to keep your home it is very possible.

Actually, hundreds, if not thousands of people, already have quietly done just that. They have done it, in most cases, through the courts. But that is doing it the hard and risky way. There's a much better way to go, which does not need to involve going to court except as a brief time of up to about 2 hours.

Let's review some of the issues that we've raised. First, what does the mortgage company do to "take you" on every loan they make? What is the key phrase that most mortgage company contracts have that when you read it, should let you know that you're being taken?

If you read through your mortgage or deed of trust contract line by line you will come to the key phrase which states, "The borrower warrants that he is "**fully seized**" of the property. **These papers are presented to you before you even have a loan, apparently before you've bought the property.** So how is it that you're "fully seized" of the property?

Wouldn't you like to know how it's possible to be, fully seized of the property, according to the

mortgage company, and yet you haven't even gotten a loan yet? Let's go back to why mortgage companies take you on every mortgage loan. We're not talking about hard-money loans. We're talking about the typical situation where a mortgage company is actually **not** lending you money at all, but they're trading off of your credit and your signature.

Do you remember the good old days when you used to do banking and you'd get all of your checks back in the mail from the bank? Have you noticed that banks don't do that anymore? Have you ever wondered why? They do not return the checks, because your signature and those documents, even on a cancelled check, is a valuable asset and can bring the bank more money. That's the reason why.

In point of fact, the reason you know the companies are taking you is, because it's not hard to discover that the key phrase we were just talking about is a big clue on how you're paying for your mortgage. When you buy something with Federal Reserve notes, you might assume that you're using money. If you take a look at what the Federal Reserve has to say, they claim that a $1 or even a $100 bill is just a piece of paper. When you ask them why people consider it **money**, it's because they're accustomed to doing so. That's - the Federal Reserve's answer.

Here's the real fact. **Today, there really is no money**. Today, what passes for money are so-called notes, such as Federal Reserve notes and your promissory note to your pretender lender. There is no hard asset behind that note (no gold or silver). Just a promise to pay. They are promissory notes (and actually backed by YOU "the creditor" by the use of your birth certificate and Social Security Number as collateral). The real question becomes what's the difference between a Federal Reserve note and my own note? The answer is essentially: very little difference, when properly used.

When you get a mortgage, what are you doing? You're signing a "promissory note". The question then becomes, "What happens to that note?" Would you be surprised to hear that the mortgage company takes your note and makes money from it? They get paid in full and many times over! Up to 30 times over!!!!!

When you purchased your house, **you bought it with your own signature on a note**. Free and clear at that moment. Did you know that? **Did they tell you that? NO**. They take the note, slap an "allonge" on the front or back, and turn your note into a "draft". It's called an illegal conversion. A draft is an "order to pay", not a promise to pay, just like a regular check from your checking account at your bank or credit union. **The lender got Paid-In-Full** when your new check was cashed or endorsed at the secret, second closing with the banks.

So how come you still have to pay them anything? Good question.

Guess what else a draft is? A draft is a "security". A security, of course, is something the bank can write to their books and turn around and sell. So, effectively what they're really doing is taking your assets and credit and trading on it, monetizing it, and selling it off in Securitization.

They're tricking you into believing you're the "debtor" when in fact you're actually the "creditor" that gave them the "credit" loan. Works great for them, and you end up giving them both the house and paying a note for 30 years plus the interest on it, that was totally

unnecessary and this process was not disclosed to you. There are Federal laws that state this about non-disclosure.

You just made a deposit when you handed them your promissory note. They wrote it to their books, and their books show that the note is a liability, not just an asset, because it's owned back to you. They refer to this as double entry book keeping, and only banks have laws protecting them which allow them to do this. **But the Non-Disclosure is the answer**.

Do banks disclose these sorts of things when they give their so-called loans? No, of course they don't. That means **there was no meeting of the minds**. Without a meeting of the minds, **do we have a contract?** The answer is NO!

If you know that, the contract you've been paying on for the past "X" number of years is actually void for fraud. Don't forget **fraud vitiates all contracts**. It even vitiates judgments and has no expiration date.

How can you possibly turn the tables and get the bank to admit on public record that they actually defrauded you and never "loaned" you anything?

If you can do that successfully, you know what that means. That means you can get your property free and clear, no bank loan. That's the answer to our first question.

How do we protect our real estate holdings? That's easy. Eliminate the bank's claim and it's all free and clear to you. You could actually at that point sell it for half off and still have a windfall profit, couldn't you? If you wanted to, that's better than giving it to the bank that doesn't really own it.

Again, how are you the "creditor" in every loan transaction?

The truth is the bank doesn't have any money to lend. They lend you "ledger money" from the treasury. They have to. The truth is Federal Reserve notes aren't really money, and Congress has admitted to it. The truth is that since there is no real money, in circulation we have been using a substitute for money, what passes as money. What passes as money? *"Debt Instruments"* do. That's what Federal Reserve notes are. They ARE debt instruments.

Debt is a negative. Money is a positive. What can we use this information for?

Here's what we recommend. You are actually the creditor not only in every loan transaction, because they're taking your note and monetizing it, but you are also the Creditor of the United States which went into bankruptcy in 1933. You, in fact are the creditor, because your wealth, your credit, is backing up the currency. Your birth certificate and your SSN were monetized to create an instrument to back that currency. **YOU are the GOLD**, you are the creditor. The *serial number* on every federal reserve note represents *your bond* to back the United States Corporation. This number starts with the letters "A" through "N" and
followed by eight (8) digits or numbers with maybe another letter at the end showing your indebtedness to the United States Corporation (take a look at any dollar bill now).

Summary of how it all works: remember YOUR promise is the collateral for all currency.

You are tricked into a mortgage contract, where you end up paying someone else a note for 30 years (a Bank), who used YOUR account to fund YOUR contract. How could you possibly owe anything? *You are essentially paying yourself*. But the contract process tricked you into paying the bank instead. They sell off this asset, several times, and **never disclosed all of this to you.**

How can you take advantage of this? Actually, it's pretty simple.

What you want to do is use standard operating procedure for getting to the truth. Why is that so important? Because today everything is done "in commerce", that means that everything is determined by contract this includes government bills, the courts, and in the business world. The best way to get the contracts operating in your favor, instead of against you is to prove up funds based on the fact that you're the Creditor of the United States. Once you get this inside your head, you will never be the same and a whole new world will open up to you. You will experience a life of financial control and independence as a Creditor vs. financial dependence as a lifetime Debtor.

That effectively means that every single time you write a note, it becomes an obligation of the United States to Pay You!

In terms of proving up your funds, that's simple. There's nothing to prevent you from properly writing up $400,000 or $500,000 (correctly structured) **bonded promissory note** and handing it over to the bank, saying "here's my promissory note to hold as collateral". People do that every day in fact, don't the banks monetize those notes and collect their ill-gotten gains and cut you out? YES THEY DO!

What instead you go ahead and present to them a prove-up of funds for all of what you owe whether it's one, two, three, four or a dozen mortgage companies, or on a dozen mortgage loans? Of course the way you do this is through an instrument such as a **promissory note or an international promissory note, held in escrow until the prove their position.**

The prove-up of funds is the exciting part because if you turn that over to the bank directly we already know from experience that most banks will steal your note from you.

That's why you must use an Escrow agent. The escrow agent will contact the bank and say, *"I have the funds, where is the original note and other certain documents indicating they actually gave you money and a loan (remember they did not give you any money)?"* Have they disclosed what they were doing with your note? The problem is we already know that they bundled the note up and securitized it and have sold it off so they can't prove up the note.

We have all heard the phrase "Possession is nine-tenths of the law". You are in possession of your property, your name is on the title what's the other tenth? The other tenth is attachment that's the note they can't produce.

If your escrow agent is holding your promissory note for however many millions are due on however many contracts, and he lets the bank know that it's time to produce the note you can actually slam-dunk the bank, catch them in their fraud and use that to turn the tables on them and keep your property.

Produce The Note: Fight Foreclosure: Make Them Produce The Note (the right way)!

Plan A: Using the "produce the note" strategy is something all homeowners facing foreclosure can do. If you believe you've been treated unfairly, fight back. Special note: In some states, a lender can foreclose on your home without going to court. These are called non-judicial foreclosure states. You can still use the "Produce the Note" strategy in these states, but it takes a few more steps on your part.

Produce the Note – Steps To Follow:

WHO OWNS THE NOTE?

Your goal is to make certain the institution suing you is, in fact, the owner of the note (Securitization Audit). There is only one original note for your mortgage that has your blue inked signed signature on it. This is the document that proves you owe the debt.

During the lending boom, most mortgages were flipped and sold to another lender or servicer or sliced up and sold to investors as securitized packages on Wall Street. In the rush to turn these over as fast as possible to make the most money, many of the new lenders did not get the proper paperwork to show they own the note and mortgage. *This is the key* to the produce the note strategy.

Now, many lenders are moving to foreclose on homeowners, resulting in part from problems they created, and don't have the proper paperwork to prove they have a right to foreclose.

THE HARM

If you don't challenge your lender, the court will simply allow the foreclosure to proceed. It's important to hold lenders accountable for their carelessness. This is the biggest asset in your life. It's just a piece of paper to them, and one they likely either lost or destroyed. When you get a copy of the foreclosure suit, many lenders now automatically include a count to re -establish the note. It often reads like this: "...**the Mortgage note has either been lost or destroyed and the Plaintiff is unable to state the manner in which this occurred**." In other words, they are *admitting they don't have the note* that proves they DO NOT have a right to foreclose.

If the lender is allowed to proceed without that proof, there is a possibility another institution, which may have bought your note along the way, will also try to collect the same debt from you again.

A Tennessee borrower recently had precisely that happen to her. Her lender, Ameriquest, foreclosed on her in July of 2007. About three months later, another bank sent her a default notice for the mortgage on the house she just lost. She called to find out what was going on. After being transferred from place to place and left on hold for lengthy periods of time, no one could explain what happened. They said they would get back to her, but never did. Now, she faces the risk of having her credit continually damaged for a debt she no longer
ows.

FIGHT FOR FAIRNESS

Despite all the hype about lenders wanting to help homeowners avoid foreclosure, most borrowers know that's not the reality. Too many homeowners have experienced lender resistance to their efforts to work out a payment structure to keep them in their homes. Many lenders bear responsibility for these defaults, because they put borrowers into unfair loans using deceptive, hard-sell practices, and then made the problem worse with predatory servicing.

Most homeowners just want these lenders to give them reasonable terms on their mortgages, many of which were predatory to begin with. With the help of judges who see through these predatory practices, lenders will feel the pressure to work with borrowers to keep them in their homes. Don't forget lenders made incredible amounts of money by using irresponsible practices to issue and service these loans. That greed led to the foreclosure crisis we're still paying for today.

Allowing lenders to continue foreclosing on home after home, destroying our neighborhood s and our economy hurts us all. So, make it hard for your lender to take your home. Make them produce the note!

"The most important thing to understand about money is that money is artificial ---that is to say, that **money is entirely a man-made creation**. It isn't an element of nature (such as gold or silver). It is simply a creation of civilized man: it always has been and it always will be."
It is also important to understand that all "artificial" money, better known as "Bank Credit", is **created by the commercial banks**, first in the form of "checking account", "deposit credits"—either as bank expenditures, bank loans, or bank investment monies —and most Bank Credit money remains and circulates in that *deposit credits* form by means of checks – until some is (temporarily) converted into physical cash currency notes.

The Treasury's Engraving and Printing Bureau tailor-prints the Federal Reserve notes cash currency for the 12 Federal Reserve banks at the cost of printing, 1.9 cents per note. The Federal Reserve banks then distribute the cash currency amongst the commercial banks by charging it to their (Fed provided) reserve accounts. The banks then distribute the cash currency amongst the general commerce and public, by *exchanging* their obtained cash currency for the public's checking or savings account "deposit credits". In other words, the general public gets its cash currency from banks, or from someone who got it from some bank by having it charged, either to his checking or savings account.

PRESIDENT OF THE BANK OF ENGLAND... Quoting Sir Josiah Stamp at the time he was president of the Bank of England and president of the English Railway System. His directorates filled several pages of WHO'S WHO. In the late 1920s, in an informal talk to about 150 history, economics and social science professors, at the University of Texas Josiah Stamp explained the following: *"Banking was conceived in iniquity and born in sin... The bankers own the world. Take it away from them, but leave them the power to create money and control credit, with a flick of the pen they will create enough money to buy it back again... Take this power away from bankers and a ll great fortunes like mine (he was the second richest man in Great Britain) will disappear, and they ought to disappear, for this world would then be a happier and better world to live in. My sons should not object. They are well educated, and should be willing to take their*

places in the business world and forge their own fortunes... But, If you want to continue to be slaves of bankers and pay the cost of your own enslavement, then let the bankers continue to create money and control credit... However as long as governments will legalize such things, a man is foolish not to be a banker."

From:LEGALIZED CRIME OF BANKING By: S.W. Adams, Money Analyst

Banks Lose to Deadbeat Homeowners as Loans Sold in Bonds Vanish
By Bob Ivry Feb. 22 (Bloomberg) –

Joe Lents hasn't made a payment on his $1.5 million mortgage since 2002.

That's when Washington Mutual Inc. first tried to foreclose on his home in Boca Raton, Florida. The Seattle based lender failed to prove that it owned Lents's mortgage note and dropped attempts to take his house. Subsequent efforts to foreclose have stalled because no one has produced the paperwork.

If you're going to take my house away from me, you better own the note," said Lents, 63, the former chief executive officer of a now-defunct voice recognition software company. Judges in at least five states have stopped foreclosure proceedings because the banks that pool mortgages into securities and the companies that collect monthly payments haven't been able to prove they own the mortgages.

The confusion is another headache for U.S. Treasury Secretary Henry Paulson as he revises rules for packaging mortgages into securities. "I think it's going to become pretty hairy," said Josh Rosner, managing director at the New York- based investment research firm Graham Fisher & Co. "Regulators appear to have ignored this, given the size and scope of the problem."

More than $2.1 trillion, or 19 percent, of outstanding mortgages have been bundled into securities by private banks, according to Inside Mortgage Finance, a Bethesda, Maryland-based industry newsletter. Those loans may be sold several times before they land in a security. Mortgage servicers, who collect monthly payments and distribute them to securities investors, can buy and sell the home loans many times.

Housing Boom

Each time the mortgages change hands, the sellers are required to sign over the mortgage notes to the buyers. In the rush to originate more loans during the U.S. mortgage boom, from 2003 to 2006, that assignment of ownership wasn't always properly completed, said Alan White, assistant professor at Valparaiso University School of Law in Valparaiso, Indiana. "Loans were mass produced and shortcuts were taken," White said. "A lot of the paperwork is done in the name of the original lender and a lot of the original lenders aren't around anymore."
More than 100 mortgage companies stopped making loans, closed or were sold last year, according to Bloomberg data. The foreclosure rate, at 1.69 percent of all U.S. homeowners, is the highest since the Mortgage Bankers Association began tracking it in 1993. The foreclosure rate

for subprime borrowers, who have bad or incomplete credit and whose mortgages typically are securitized by private banks rather than government-sponsored entities Fannie Mae and Freddie Mac, is at a four-year high, according to the mortgage bankers.

750,000 Homeowners

More than 1.5 million homeowners will enter the foreclosure process this year, said Rick Sharga, executive vice president for marketing at RealtyTrac Inc., the Irvine, California-based seller of foreclosure information. About half of them, 750,000, will have their homes repossessed, Sharga said.

Borrower advocates, including Ohio Attorney General Marc Dann, have seized upon the issue of missing mortgage notes as a way to stem foreclosures. “The best thing to do is to keep people in their homes and for everybody to take steps necessary to make that happen”, said Chris Geidner, an attorney in Dann's office. “These trusts are purchasing these notes, and before they even get the paperwork, they foreclose on people. They become foreclosure machines.”

Lost-Note Affidavits

When the mortgage servicers and securitizing banks that act as trustees of the securities fail to present proof that they own a mortgage, they sometimes file what's called a lost-note affidavit, said April Charney, a lawyer at Jacksonville Area Legal Aid in Florida. Nobody knows how widespread the use of lost-note affidavits are, Charney said. She's had foreclosure proceedings for 300 clients dismissed or postponed in the past year, with about 80 percent of them involving lost-note affidavits, she said. “They raise the issue of whether the trusts own the loans at all," Charney said. `Lost-note affidavits are pattern and practice in the industry. They are not exceptions. They are the rule." State laws generally make it difficult to foreclose because they favor the homeowner, said Stuart Saft, a real estate lawyer and partner at the New York firm Dewey & LeBoeuf LLP.

All these loan documents are being sent to the inside of a mountain in the middle of America and not being checked very carefully," Saft said. `The lenders can't find the paper. We're dealing with a lot of paper produced in a mortgage closing."

`Waste of Time'

Requiring banks to produce the paperwork at a foreclosure hearing is a nuisance, said Jeffrey Naimon, a partner in the Washington office of Buckley Kolar LLP. It's a gigantic waste of time," Naimon said. `The mortgage may have transferred five, six, eight times. It's possible that you don't have all the pieces of paper, but it was enough to convince the next guy in the chain. There's no true controversy over whether the owner owns the loan."

Judges are becoming increasingly impatient with plaintiffs who produce no more proof of ownership than a lost-note affidavit or a copy of the note, said Michael Doan, an attorney at Doan Law Firm LLP in Carlsbad, California. “Things are heating up," Doan said.
In Ohio, where RealtyTrac reported an 88 percent jump in foreclosures last year, Dann, the

attorney general, is now arguing 40 foreclosure cases that challenge ownership of mortgage notes, according to his office.

Cavalier Approach

U.S. District Judge David D. Dowd Jr. in Ohio's northern district chastised Deutsche Bank National Trust Co. and Argent Mortgage Securities Inc. in October for what he called their "cavalier approach" and "take my word for it" attitude toward proving ownership of the mortgage note in a foreclosure case.

John Gallagher, a spokesman for Frankfurt-based Deutsche Bank AG, said the bank had no comment. Federal District Judge Christopher Boyko dismissed 14 foreclosure cases in Cleveland in November due to the inability of the trustee and the servicer to prove ownership of the mortgages.

Similar cases were dismissed during the past year by judges in California, Massachusetts, Kansas and New York.

"Judges are human beings," said Kenneth M. Lapine, a partner at the Cleveland law firm Roetzel & Andress LPA. "They no doubt feel the little guy needs all the help he can get against the impersonal, out of town, mega-investment banking company."

Warning Plaintiffs

U.S. Bankruptcy Judge Samuel L. Bufford in Los Angeles issued a notice last month warning plaintiffs in foreclosure cases to bring the mortgage notes to court and not submit copies. "This requirement will apply because developments in the secondary market for mortgages and other security interests cause the court to lack confidence that presenting a copy of a promissory note is sufficient to show that movant has a right to enforce the note or that it qualifies as a real party in interest," the notice said.

Quick foreclosures benefit communities, because properties in default lose value and homeowners in financial distress don't maintain their houses or pay real estate taxes, said Saft of Dewey & Leboeuf.

Painted as the Enemy

"When banks originally made the loans they used people's money from pension funds and savings accounts and they should be allowed to foreclose the loan as quickly as possible before the property depreciates in value any more," Saft said. "The mortgage industry has been painted as the enemy when all they did was make loans to enable people to buy homes. Now there's less money available for new borrowers to buy homes and that's what's causing the value of homes to go down."

Lents is former CEO of Investco Inc., a Boca Raton, Florida-based developer of voice recognition software. In 2002, the U.S. Securities and Exchange Commission sanctioned Lents and others for stock manipulation, according to the SEC Web site. He lost his job, was fined and his assets were frozen. That's the reason he couldn't pay his mortgage, he said.

"**If the homeowner doesn't object to the lost-note affidavit, the judge rubber-stamps it**," Lents said. "Is it oversight, or are they trying to get around the law?" Washington Mutual spokeswoman Geri Ann Baptista said the bank had no comment.

Looking for Loopholes

"I can't believe the handling of notes is worse than it was five years ago", said Guy Cecala, publisher of Inside Mortgage Finance. "What we didn't have back then were armies of attorneys out there looking for loopholes. People are challenging foreclosures and courts are paying a lot more attention to foreclosures than they ever did before."

American Home Mortgage Investment Corp., the Melville, New York-based lender that filed for bankruptcy last August, said it was paying $45,000 a month to store loan paperwork and petitioned U.S. Bankruptcy Judge Christopher Sontchi in Wilmington, Delaware, for the right to toss it all. Sontchi ruled last week that American Home Mortgage could charge banks from $3 to $13 a file to retrieve documents.

The home-loan industry has had a central electronic database since 1997 to track mortgages as they are bought and sold. It's run by Mortgage Electronic Registration System, or MERS, a subsidiary of Vienna, Virginia based MERSCORP Inc., which is owned by mortgage companies.

No Tracking Mechanism

MERS has 3,246 member companies and about half of outstanding mortgages are registered with the company, including loans purchased by government-sponsored entities Fannie Mae, Freddie Mac and Ginnie Mae, said R.K. Arnold, the company's CEO. For about half of U.S. mortgages, there is no tracking mechanism. MERS rules don't allow members to submit lost-note affidavits in place of mortgage notes, Arnold said.

"A lot of companies say the note is lost when it's highly unlikely the note is lost," Arnold said. "Saying a note is lost when it's not really lost is wrong." Lents's attorney, Jane Raskin of Raskin & Raskin in Miami, said she has no idea who owns Lents's mortgage note.

"Something is wrong if you start from what I think is the reasonable assumption that these banks are not losing all of these notes," Raskin said. "As an officer of the court, I find it troubling that they've been going in and saying we lost the note, and because nobody is challenging it, the foreclosures are pushed through the system."

To contact the reporter on this story: Bob Ivry in New York at bivry@bloomberg.net.

LANDMARK DECISION PROMISES MASSIVE RELIEF FOR HOMEOWNERS AND TROUBLE FOR BANKS

By Ellen Brown, September 19th, 2009

http://www.webofdebt.com/articles/mers.php

A landmark ruling in a recent Kansas Supreme Court case may have given millions of distressed homeowners the legal wedge they need to avoid foreclosure. In Landmark **National Bank v. Kesler,** 2009 Kan. LEXIS 834, the Kansas Supreme Court held that a nominee company called MERS has no right or standing to bring an action for foreclosure. MERS is an acronym for Mortgage Electronic Registration Systems, a private company that registers mortgages electronically and tracks changes in ownership. The significance of the holding is that if **MERS has no standing to foreclose**, then nobody has standing to foreclose – on 60 million mortgages. That is the number of American mortgages currently reported to be held by MERS. Over half of all new U.S. residential mortgage loans are registered with MERS and recorded in its name. Holdings of the Kansas Supreme Court are not binding on the rest of the country, but they are dicta of which other courts take note; and the reasoning behind the decision is sound. Eliminating the "Straw Man" Shielding Lenders and Investors from Liability The development of "electronic" mortgages managed by MERS went hand in hand with the "securitization" of mortgage loans – chopping them into pieces and selling them off to investors. In the heyday of mortgage securitizations, before investors got wise to their risks, lenders would slice up loans, bundle them into "financial products" called "collateralized debt obligations" (CDOs), ostensibly insure them against default by wrapping them in derivatives called "credit default swaps," and sell them to pension funds, municipal funds, foreign investment funds, and so forth. There were many secured parties, and the pieces kept changing hands; but MERS supposedly kept track of all these changes electronically. MERS would register and record mortgage loans in its name, and it would bring foreclosure actions in its name. MERS not only facilitated the rapid turnover of mortgages and mortgage- backed securities, but it has served as a sort of "corporate shield" that protects investors from claims by borrowers concerning predatory lending practices. California attorney Timothy McCandless describes the problem like this:

"[MERS] has reduced transparency in the mortgage market in two ways. First, consumers and their counsel can no longer turn to the public recording systems to learn the identity of the holder of their note. Today, county recording systems are increasingly full of one meaningless name, MERS, repeated over and over again. But more importantly, all across the country, MERS now brings foreclosure proceedings in its own name – even though it is not the financial party in interest. This is problematic because MERS is not prepared for or equipped to provide responses to consumers' discovery requests with respect to predatory lending claims and defenses. In effect, the securitization conduit attempts to use a faceless and seemingly innocent proxy with no knowledge of predatory origination or servicing behavior to do the dirty work of seizing the consumer's home. . . .

So imposing is this opaque corporate wall, that in a "vast" number of foreclosures, MERS actually succeeds in foreclosing without producing the original note – the legal sine qua non of foreclosure – much less documentation that could support predatory lending defenses."
The real parties in interest concealed behind MERS have been made so faceless, however, that there is now no party with standing to foreclose. The Kansas Supreme Court stated that MERS' relationship "is more akin to that of a straw man than to a party possessing all the rights given a buyer." The court opined:

"By statute, assignment of the mortgage carries with it the assignment of the debt. Indeed, in the event that a mortgage loan somehow separates interests of the note and the deed of trust, with the deed of trust lying with some independent entity, the mortgage may become unenforceable. The practical effect of splitting the deed of trust from the promissory note is to make it impossible for the holder of the note to foreclose, unless the holder of the deed of trust is the agent of the holder of the note. Without the agency relationship, the person holding only the note lacks the power to foreclose in the event of default. The person holding only the deed of trust will never experience default because only the holder of the note is entitled to payment of the underlying obligation.

The mortgage loan becomes ineffective when the note holder did not also hold the deed of trust." [Citations omitted; emphasis added.] MERS as straw man *lacks standing to foreclose*, but *so does original lender*, although it was a signatory to the deal. The lender lacks standing because title had to pass to the secured parties for the arrangement to legally qualify as a "security." The lender has been paid in full and has no further legal interest in the claim. Only the securities holders have skin in the game; but they have no standing to foreclose, because they were not signatories to the original agreement. They cannot satisfy the basic requirement of contract law that a plaintiff suing on a written contract must produce a signed contract proving he is entitled to relief.

The Potential Impact of 60 Million Fatally Flawed Mortgages

The banks arranging these mortgage-backed securities have typically served as trustees for the investors. When the trustees could not present timely written proof of ownership entitling them to foreclose, they would in the past file "lost-note affidavits" with the court; and judges usually let these foreclosures proceed without objection. But in October 2007, an intrepid federal judge in Cleveland put a halt to the practice. U.S. District Court Judge Christopher Boyko ruled that Deutsche Bank had not filed the proper paperwork to establish its right to foreclose on fourteen homes it was suing to repossess as trustee. Judges in many other states then came out with similar rulings.

Following the Boyko decision, in December 2007 attorney Sean Olender suggested in an article in The San Francisco Chronicle that the real reason for the bailout schemes being proposed by then- Treasury Secretary Henry Paulson was not to keep strapped borrowers in their homes so much as to stave off a spate of lawsuits against the banks. Olender wrote:

"The sole goal of the [bailout schemes] is to prevent owners of mortgage-backed securities, many of them foreigners, from suing U.S. banks and forcing them to buy back worthless mortgage securities at face value – right now almost 10 times their market worth. The ticking time bomb in the U.S. banking system is not resetting subprime mortgage rates. The real problem is the contractual ability of investors in mortgage bonds to require banks to buy back the loans at face value if there was fraud in the origination process.

". . . The catastrophic consequences of bond investors forcing originators to buy back loans at face value are beyond the current media discussion. The loans at issue dwarf the capital available at the largest U.S. banks combined, and investor lawsuits would raise stunning liability sufficient

to cause even the largest U.S. banks to fail, resulting in massive taxpayer-funded bailouts of Fannie and Freddie, and even FDIC....

"What would be prudent and logical is for the banks that sold this toxic waste to buy it back and for a lot of people to go to prison. If they knew about the fraud, they should have to buy the bonds back." Needless to say, however, the banks did not buy back their toxic waste, and no bank officials went to jail.

As Olender predicted, in the fall of 2008, massive taxpayer-funded bailouts of Fannie and Freddie were pushed through by Henry Paulson, whose former firm Goldman Sachs was an active player in creating CDOs when he was at its helm as CEO. Paulson also hastily engineered the $85 billion bailout of insurer American International Group (AIG), a major counterparty to Goldmans' massive holdings of CDOs. The insolvency of AIG was a huge crisis for Goldman, a principal beneficiary of the AIG bailout.

In a December 2007 New York Times article titled "The Long and Short of It at Goldman Sachs," Ben Stein wrote: "For decades now,. . . I have been receiving letters [warning] me about the dangers of a secret government running the world.... [T]he closest I have recently seen to such a world-running body would have to be a certain large investment bank, whose alums are routinely Treasury secretaries, high advisers to presidents, and occasionally a governor or United States senator."

The pirates seem to have captured the ship, and until now there has been no one to stop them. But 60 million mortgages with fatal defects in title could give aggrieved homeowners and securities holders the crowbar they need to exert some *serious leverage* on Congress – serious enough perhaps even to pry the legislature loose from the powerful banking lobbies that now hold it in thrall.

Here Are Just A Few 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."

(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."**

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

(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".

(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 (7thCir. 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, **Heintzv. 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 un -severable 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). Federal Rule of Civil Procedure 1 7(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.”

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

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

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. Firstar 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. § 18-50-11 6(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). "It has been settled beyond controversy that a national bank, under Federal law, being limited in its power and capacity, cannot lend its credit by nor guarantee the debt of another. All such contracts being entered into by its officers are ultra vires and not binding upon the corporation." It is unlawful for banks to loan their deposits.

Howard & Foster Co. vs. Citizens National Bank, 133 S.C. 202, 130 S.E. 758 (1926), "Neither, as included in its powers not incidental to them, is it a part of a bank's business to lend its credit. If a bank could lend its credit as well as its money, it might, if it received compensation and was careful to put its name only to solid paper, make a great deal more than any lawful interest on its money would amount to. If not careful, the power would be the mother of panics. Indeed, lending credit is the exact opposite of lending money, which is the real business of a bank, for while the latter creates a liability in favor of the bank, the former gives rise to a liability of the bank to another. I Morse. Banks and Banking 5th Ed. Sec 65; Magee, Banks and Banking, 3rd Ed. Sec 248."

American Express Co. v. Citizens State Bank, 181 Wis. 172, 194 NW 427 (1923). I demand under TILA full disclosure and proof to the contrary. UCC § 2-106(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance. "There is no doubt but what the law is that a

national bank cannot lend its credit or become an accommodation endorser."

National Bank of Commerce v. Atkinson, 55F. 465; (1893). 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 atp. 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).
"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, 279 N.W. 79(1938). In a Debtor's RICO action against its creditor, alleging that the creditor had collected an unlawful debt, an interest rate (where all loan charges were added together) that exceeded, in the language of the RICO Statute, "twice the enforceable rate." The Court found no reason to impose a requirement that the Plaintiff show that the Defendant had been convicted of collecting an unlawful debt, running a "loan sharking" operation. The debt included the fact that exaction of a usurious interest rate rendered the debt unlawful and that is all that is necessary to support the Civil RICO action.

Durante Bros. & Sons, Inc. v. Flushing Nat 'l Bank, 755 F.2d 239 (1985). Cert. denied, 473 U.S. 906 (1985). The Supreme Court found that the Plaintiff in a civil RICO action need establish only a criminal "violation" and not a criminal conviction. Further, the Court held that the Defendant need only have caused harm to the Plaintiff by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the Plaintiff need not demonstrate that the Defendant is an organized crime figure, a mobster in the popular sense, or that the Plaintiff has suffered some type of special Racketeering injury; all that the Plaintiff must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to affect the congressional purpose as broadly formulated in the Statute.

Sedima, SPRL v. Imrex Co., 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985).
A violation such as not responding to the TILA rescission letter, no matter how technical, it has no discretion with respect to liability. Holding that creditor failed to make material disclosures in connection with loan. Title 15 USCS § 1605(c)

Wright v. Mid-Penn Consumer Discount Co., 133 B.R. 704 (Pa. 1991).

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 § 1 638(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.

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

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).

Johnson-Allen v. Lomas and Nettleton Co., 67 B.R. 968 (Pa. 1986). Violation of Truth-in-Lending Act requirements, 15 USCS § 1 638(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. § 160 1 -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. § 163 8(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. § 163 8(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.

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. 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).

Lewis v. Dodge, 620 F.Supp. 135, 138 (D. Conn. 1985); **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 USCs § 163 8(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 USCs § 160 1(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 USCs § 160 1(a). TILA is a remedial statute, and, hence, is liberally construed in favor of borrowers.;

Shroder v. Suburban Coastal Corp., 729 F.2d 1371, 1380 (11th Cir. 1984). disclosure statement violated 12 CFR §226.6(a).,

Wright v. Mid-Penn Consumer Discount Co., 133 B.R. 704 (E.D. Pa. 1991) Holding that creditor failed to make material disclosures in connection with one loan; Cervantes v. General Electric Mortgage Co., 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.

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 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.

Legitimate Issues: Where is the Note?
by Prof, Judge Roy Bean
from http://www.quatloos.com/Q-Forum/viewtopic.php?f=37&t=3827

LEGITIMATE ISSUES - The legitimate problems faced by lenders and — to a lesser extent — borrowers include the problems of missing notes and missing endorsements. Some of you may find this article interesting; it will be presented to the UCC Section of the American Bankruptcy Institute at the Annual Meeting in DC in April.

WHERE'S THE NOTE, WHO'S THE HOLDER:ENFORCEMENT OF PROMISSORY NOTE SECURED BY REAL ESTATE HON. SAMUEL L. BUFFORD UNITED STATES BANKRUPTCY JUDGE CENTRAL DISTRICT OF CALIFORNIA LOS ANGELES, CALIFORNIA (FORMERLY HON.) R. GLEN AYERS LANGLEY & BANACK SAN ANTONIO, TEXAS AMERICAN BANKRUPTCY INSTUTUTE APRIL 3, 2009 WASHINGTON, D.C.

WHERE'S THE NOTE, WHO'S THE HOLDER INTRODUCTION
In an era where a very large portion of mortgage obligations have been securitized, by assignment to a trust indenture trustee, with the resulting pool of assets being then sold as mortgage backed securities, foreclosure becomes an interesting exercise, particularly where judicial process involved. We are all familiar with the securitization process. The steps, if not the process, is simple. A borrower goes to a mortgage lender. The lender finances the purchase of real estate. The borrower signs a note and mortgage or deed of trust. The original lender sells the note and assigns the mortgage to an entity that securitizes the note by combining the note with hundreds or thousands of similar obligation to create a package of mortgage backed securities, which are then sold to investors.

Unfortunately, unless you represent borrowers, the vast flow of notes into the maw of the securitization industry meant that a lot of mistakes were made. When the borrower defaults, the party seeking to enforce the obligation and foreclose on the underlying collateral sometimes cannot find the note. A lawyer sophisticated in this area has speculated to one of the authors that perhaps a third of the notes "securitized" have been lost or destroyed. The cases we are going to look at reflect the stark fact that the unnamed source's speculation may be well- founded.

UCC SECTION 3-309

If the issue were as simple as a missing note, UCC §3 -309 would provide a simple solution. A person entitled to enforce an instrument which has been lost, destroyed or stolen may enforce the instrument. If the court is concerned that some third party may show up and attempt to enforce the instrument against the payee, it may order adequate protection. But, and however, a person seeking to enforce a missing instrument must be a person entitled to enforce the instrument, and that person must prove the instrument's terms and that person's right to enforce the instrument. § 3-309 (a)(1) & (b).

WHO'S THE HOLDER?

Enforcement of a note always requires that the person seeking to collect show that it is the holder. A holder is an entity that has acquired the note either as the original payor or transfer by endorsement of order paper or physical possession of bearer paper. These requirements are set out in Article 3 of the Uniform Commercial Code, which has been adopted in every state, including Louisiana, and in the District of Columbia. Even in bankruptcy proceedings, State substantive law controls the rights of note and lien holders, as the Supreme Court pointed out almost forty (40) years ago in **United States v. Butner**, 440 U.S. 48, 54-55 (1979).

However, as Judge Bufford has recently illustrated, in one of the cases discussed below, in the bankruptcy and other federal courts, procedure is governed by the Federal Rules of Bankruptcy and Civil Procedure. And, procedure may just have an impact on the issue of "who," because, if the holder is unknown, pleading and standing issues arise.

BRIEF REVIEW OF UCC PROVISIONS

Article 3 governs negotiable instruments – it defines what a negotiable instrument is and defines how ownership of those pieces of paper is transferred. For the precise definition, see § 3-104(a) ("an unconditional promise or order to pay a fixed amount of money, with or without interest... .") The instrument may be either payable to order or bearer and payable on demand or at a definite time, with or without interest.

Ordinary negotiable instruments include notes and drafts (a check is a draft drawn on a bank). See § 3-104(e). Negotiable paper is transferred from the original payor by negotiation. §3 -301. "Order paper" must be endorsed; bearer paper need only be delivered. §3-305. However, in either case, for the note to be enforced, the person who asserts the status of the holder must be in possession of the instrument. See UCC § 1-20 1 (20) and comments.

The original and subsequent transferees are referred to as holders. Holders who take with no notice of defect or default are called "holders in due course," and take free of many defenses. See § § 3- 3 05(b).

The UCC says that a payment to a party "entitled to enforce the instrument" is sufficient to extinguish the obligation of the person obligated on the instrument. Clearly, then, only a holder – a person in possession of a note endorsed to it or a holder of bearer paper – may seek satisfaction or enforce rights in collateral such as real estate.

NOTE: Those of us who went through the bank and savings and loan collapse of the 1980's are familiar with these problems. The FDIC/FSLIC/RTC sold millions of notes secured and unsecured, in bulk transactions. Some notes could not be found and enforcement sometimes became a problem. Of course, sometimes we are forced to repeat history.

For a recent FDIC case, see Liberty **Savings Bank v. Redus,** 2009
WL 41857 (Ohio App. 8 Dist.), January 8, 2009.

THE RULES

Judge Bufford addressed the rules issue this past year. See In re Hwang, 396 B.R. 757 (**Bankr. C. D. Cal.** 2008). First, there are the pleading problems that arise when the holder of the note is unknown. Typically, the issue will arise in a motion for relief from stay in a bankruptcy proceeding.

According F.R.Civ. Pro. 17, "[a]n action must be prosecuted in the name of the real party in interest." This rule is incorporated into the rules governing bankruptcy procedure in several ways. As Judge Bufford has pointed out, for example, in a motion for relief from stay, filed under F.R.Bankr.Pro. 4001 is a contested matter, governed by F. R. Bankr. P. 9014, which makes F.R. Bankr. Pro. 7017 applicable to such motions. F.R. Bankr. P. 7017 is, of course, a restatement of F.R. Civ. P. 17. In re Hwang, 396 B.R. at 766. The real party in interest in a federal action to enforce a note, whether in bankruptcy court or federal district court, is the owner of a note. (In securitization transactions, this would be the trustee for the "certificate holders.") When the actual holder of the note is unknown, it is impossible – not difficult but impossible – to plead a cause of action in a federal court (unless the movant simply lies about the ownership of the note). Unless the name of the actual note holder can be stated, the very pleadings are defective.

STANDING

Often, the servicing agent for the loan will appear to enforce the note. Assume that the servicing agent states that it is the authorized agent of the note holder, which is "Trust Number 99." The servicing agent is certainly a party in interest, since a party in interest in a bankruptcy court is a very broad term or concept.

See, e.g., **Greer v. O'Dell**, 305 F.3d 1297, 1302-03 (11th Cir. 2002). However, the servicing agent may not have standing: "Federal Courts have only the power authorized by Article III of the Constitutions and the statutes enacted by Congress pursuant thereto. ... [A] plaintiff must have Constitutional standing in order for a federal court to have jurisdiction." In re Foreclosure Cases, 521 F.Supp. 3d 650, 653 (S.D. Ohio, 2007) (citations omitted).

But, the servicing agent does not have standing, for only a person who is the holder of the note has standing to enforce the note. See, e.g., In re Hwang, 2008 WL 4899273 at 8. The servicing agent may have standing if acting as an agent for the holder, assuming that the agent can both show agency status and that the principle is the holder. See, e.g., In re Vargas, 396 B.R. 511 (Ban kr. C.D. Cal. 2008) at 520.

A BRIEF ASIDE: WHO IS MERS?

For those of you who are not familiar with the entity known as MERS, a frequent participant in these foreclosure proceedings:

MERS is the "Mortgage Electronic Registration System, Inc. "MERS is a mortgage banking 'utility' that registers mortgage loans in a book entry system so that ... real estate loans can be bought, sold and securitized, just like Wall Street's book entry utility for stocks and bonds is the Depository Trust and Clearinghouse." Bastian, "Foreclosure Forms", State. Bar of Texas 17th Annual Advanced Real Estate Drafting Course, March 9-10, 2007, Dallas, Texas. MERS is enormous. It originates thousands of loans daily and is the mortgagee of record for at least 40 million mortgages and other security documents. Id. MERS acts as agent for the owner of the note. Its authority to act should be shown by an agency agreement. Of course, if the owner is unknown, MERS cannot show that it is an authorized agent of the owner.

RULES OF EVIDENCE – A PRACTICAL PROBLEM

This structure also possesses practical evidentiary problems where the party asserting a right to foreclose must be able to show a default. Once again, Judge Bufford has addressed this issue. At In re Vargas, 396 B.R. at 5 17-19. Judge Bufford made a finding that the witness called to testify as to debt and default was incompetent. All the witness could testify was that he had looked at the MERS computerized records. The witness was unable to satisfy the requirements of the Federal Ru les of Evidence, particularly Rule 803, as applied to computerized records in the Ninth Circuit. See id. at 5 17-20. The low level employee could really only testify that the MERS screen shot he reviewed reflected a default. That really is not much in the way of evidence, and not nearly enough to get around the hearsay rule.

FORECLOSURE OR RELIEF FROM STAY

In a foreclosure proceeding in a judicial foreclosure state, or a request for injunctive relief in a nonjudicial foreclosure state, or in a motion for relief proceeding in a bankruptcy court, the courts are dealing with and writing about the problems very frequently. In many if not almost all cases, the party seeking to exercise the rights of the creditor will be a servicing company. Servicing companies will be asserting the rights of their alleged principal, the note holder, which is, again, often going to be a trustee for a securitization package. The mortgage holder or beneficiary under the deed of trust will, again, very often be MERS.

Even before reaching the practical problem of debt and default, mentioned above, the moving party must show that it holds the note or (1) that it is an agent of the holder and that (2) the holder remains the holder. In addition, the owner of the note, if different from the holder, must join in the motion. Some states, like Texas, have passed statutes that allow servicing companies to act in foreclosure proceedings as a statutorily recognized agent of the noteholder. See, e.g., Tex. Prop. Code §51.0001. However, that statute refers to the servicer as the last entity to whom the debtor has been instructed to make payments. This status is certainly open to challenge. The statute certainly provides nothing more than prima facie evidence of the ability of the servicer to

act. If challenged, the servicing agent must show that the last entity to communicate instructions to the debtor is still the holder of the note. See, e.g.,

HSBC Bank, N.A. v. Valentin, 2l N.Y. Misc. 3d 1123(A), 2008 WL 4764816 (Table) (N.Y. Sup.), Nov. 3, 2008. In addition, such a statute does not control in federal court where Fed. R. Civ. P. 17 and 19 (and Fed. R. Bankr. P. 7017 and 7019) apply.

SOME RECENT CASE LAW

These cases are arranged by state, for no particular reason. Massachusetts In re Schwartz, 366 B.R.265 (**Bankr. D. Mass**. 2007) Schwartz concerns a Motion for Relief to pursue an eviction. Movant asserted that the property had been foreclosed upon prior to the date of the bankruptcy petition. The pro se debtor asserted that the Movant was required to show that it had authority to conduct the sale. Movant, and "the party which appears to be the current mortgagee..." provided documents for the court to review, but did not ask for an evidentiary hearing. Judge Rosenthal sifted through the documents and found that the Movant and the current mortgagee had failed to prove that the foreclosure was properly conducted.

Specifically, Judge Rosenthal found that there was **no evidence of a proper assignment** of the mortgage prior to foreclosure. However, at footnote 5, Id. at 268, the Court also finds that there is no evidence that the note itself was assigned and no evidence as to who the current holder might be.

Nosek v. Ameriquest Mortgage Company (In re Nosek), 286 Br. 374 (Bankr D Mass. 2008). Almost a year to the day after Schwartz was signed, Judge Rosenthal issued a second opinion. This is an opinion on an order to show cause. Judge Rosenthal specifically found that, although the note and mortgage involved in the case had been transferred from the originator to another party within five days of closing, during the five years in which the chapter 13 proceeding was pending, the note and mortgage and associated claims had been prosecuted by Ameriquest which has represented itself to be the holder of the note and the mortgage. Not until September of 2007 did Ameriquest notify the Court that it was merely the servicer. In fact, only after the chapter 13 bankruptcy had been pending for about three years was there even an assignment of the servicing rights. Id. at 378.

Because these misrepresentations were not simple mistakes: as the Court has noted on more than one occasion, those parties who do not hold the note of mortgage do not service the mortgage do not have standing to pursue motions for leave or other actions arising from the mortgage obligation. Id at 380. As a result, the Court sanctioned the local law firm that had been prosecuting the claim $25,000. It sanctioned a partner at that firm an additional $25,000. Then the Court sanctioned the national law firm involved $100,000 and ultimately sanctioned Wells Fargo $250,000. Id. at 382-3 86. In re Hayes, 393 B.R. 259 (Bankr. D. Mass. 2008).

Like Judge Rosenthal, Judge Feeney has attacked the problem of standing and authority head on. She has also held that standing must be established before either a claim can be allowed or a motion for relief be granted.

Ohio

In re Foreclosure Cases, 521 F.Supp. 2d (S.D. Ohio 2007). Perhaps the District Court's orders in the foreclosure cases in Ohio have received the most press of any of these opinions. Relying almost exclusively on standing, the Judge Rose has determined that a foreclosing party must show standing. "[I]n a foreclosure action, the plaintiff must show that it is the holder of the note and the mortgage at the time that the complaint was filed." Id. at 653.
Judge Rose instructed the parties involved that the willful failure of the movants to comply with the general orders of the Court would in the future result in immediate dismissal of foreclosure actions.

Deutsche Bank Nat'l Trust Co. v. Steele, 2008 WL 111227 (S.D. Ohio) January 8, 2008. In Steele, Judge Abel followed the lead of Judge Rose and found that Deutsche Bank had filed evidence in support of its motion for default judgment indicating that MERS was the mortgage holder.

There was not sufficient evidence to support the claim that Deutsche Bank was the owner and holder of the note as of that date. Following In re Foreclosure Cases, 2007 WL 456586, the Court held that summary judgment would be denied "until such time as Deutsche Bank was able to offer evidence showing, by a preponderance of evidence, that it owned the note and mortgage when the complaint was filed." 2008 WL 111227 at 2. Deutsche Bank was given twenty-one days to comply. Id.

Illinois U.S. Bank, N.A. v. Cook, 2009 WL 35286 (N.D. Ill. January 6, 2009). Not all federal district judges are as concerned with the issues surrounding the transfer of notes and mortgages. Cook is a very pro lender case and, in an order granting a motion for summary judgment, the Court found that Cook had shown no "countervailing evidence to create a genuine issue of facts." Id. at 3. In fact, a review of the evidence submitted by U.S. Bank showed only that it was the alleged trustee of the securitization pool. U.S. Bank relied exclusively on the "pooling and serving agreement" to show that it was the holder of the note. Id. Under UCC Article 3, the evidence presented in Cook was clearly insufficient.

New York

HSBC Bank USA, N.A. v. Valentin, 21 Misc. 3D 1124(A), 2008 WL 4764816 (Table) (N.Y. Sup.) November 3, 2008. In Valentin, the New York court found that, even though given an opportunity to, HSBC did not show the ownership of debt and mortgage. The complaint was dismissed with prejudice and the "notice of pendency" against the property was cancelled.
Note that the Valentin case does not involve some sort of ambush. The Court gave every HSBC every opportunity to cure the defects the Court perceived in the pleadings.

California

In re Vargas, 396 B.R. 511 (Bankr. C.D. Cal. 2008) and In re Hwang, 396 B.R. 757 (Bankr. C. D. Cal. 2008). These two opinions by Judge Bufford have been discussed above. Judge Bufford carefully explores the related issues of standing and ownership under both federal and California law.

Texas In re Parsley, 384 B.R. 138 (Bankr. S.D. Tex. 2008) and In re Gilbreath, 395 B.R. 356 (Bankr. S.D. Tex. 2008). These two recent opinions by Judge Jeff Bohm are not really on point, but illustrate another thread of cases running through the issues of motions for relief from stay in bankruptcy court and the sloppiness of loan servicing agencies. Both of these cases involve motions for relief that were not based upon fact but upon mistakes by servicing agencies. Both opinions deal with the issue of sanctions and, put simply, both cases illustrate that Judge Bohm (and perhaps other members of the bankruptcy bench in the Southern District of Texas) are going to be very strict about motions for relief in consumer cases.

SUMMARY

The cases cited illustrate enormous problems in the loan servicing industry through securitization. These problems arise in the context of securitization and illustrate the difficulty of determining the name of the holder, the assignee of the mortgage, and the parties with both the legal right under Article 3 and the standing under the Constitution to enforce notes, whether in state court or federal court. The Securitization Audit shows that the chain of title is broken and the Note and Mortgage/Deed of Trust were separated against Federal Law that you can enter as evidence along with the Administrative Process - Court cases are won by evidence.

Interestingly, with the exception of Judge Bufford and a few other judges, there has been less than adequate focus upon the UCC title issues. The next round of cases may and should focus upon the title to debt instrument. The person seeking to enforce the note must show that:
(1) It is the holder of this note original by transfer, with all necessary rounds;
(2) It had possession of the note before it was lost;
(3) If it can show that title to the note runs to it, but the original is lost or destroyed, the holder must be prepared to post a bond;
(4) If the person seeking to enforce is an agent, it must show its agency status and that its principal is the holder of the note (and meets the above requirements).

Then, and only then, do the issues of evidence of debt and default and assignment of mortgage rights become relevant.