

Shadow Housing and ForeclosureGate: Banks Are Stuck Between a Rock and a Hard Place

April 05, 2011 by [Rosa Schechter](#)

The inventory of homes held by financial institutions in Florida and across the country was labeled by writer Carla Fried for CBSMoneyWatch last week as one of the main reasons for the housing market to be in a much more serious condition than many realize. In her article entitled, "[Why the Housing Market is Three Times Worse Than You Think](#)," Ms. Fried discusses the [Shadow Housing Inventory](#) currently held by banks but not officially up for sale. It's bad news.

Held in Limbo: the Shadow Housing Inventory

According to the [CBSMoneyWatch](#) article, which relies in part on information from [CoreLogic](#), almost 2,000,000 homes (1.8 million is the estimate) are sitting on bank books in some kind of limbo. These are properties that have been foreclosed upon already, as well as those that are somewhere in the legal process of being foreclosed upon, or home loans where the mortgage has gone at least three months without a mortgage payment, but the bank hasn't started the foreclosure paperwork yet. None of them are up for sale. They're just sitting there, on the bank's balance sheets in various categories.

Fear of Litigation Balancing Against Financial Burden of Unprecedented Real Estate Inventory

Meanwhile, in courthouses across the country, judges are mad and getting madder about the documentation that they are being asked to approve by bank lawyers. Consider this article in the *SunSentinel* yesterday, "[Fed-up judges crack down on foreclosure disorder in courts](#)," where reporters Christine Stapleton and Kimberly Miller of the Palm Beach Post summarize the exasperation of judges in dealing with ForeclosureFraud issues.

Here in Florida, judges are actually penalizing banks for flawed foreclosure documentation by issuing court orders cancelling the mortgages and essentially giving the defaulting homeowners their real estate free and clear. It's winning the lottery for folks who have been sitting in homes and not making mortgage payments for months and months.

Banks Trying to Handle Massive Amounts of Reneged Mortgages Getting Labelled the Bad Guys

Read these media reports and others, and you get the idea that for many, these banks are wrongdoers because they have failed to file formally correct foreclosure lawsuits, or they are blocking a future economic recovery because they are holding these 2,000,000 homes from the seller's marketplace.

You can't win for losing in the mortgage arena. And this isn't good for anyone.

Banks relied on lawyers to get foreclosures completed in record numbers not because they saw this as their optimal choice. Mortgages were not being paid. People stopped paying the banks on their notes, and this ultimately left banks with little alternative but to try and get the collateral to lessen the losses they were accumulating. That collateral was a home.

In this unprecedented wave of unpaid notes -- breached contracts -- the banks were doing their legal duty to minimize their vulnerability by foreclosing on the homes that backed the notes. This is what the contracting, breaching homeowner agreed would happen if they failed to pay their mortgage. No surprise, draconian tactics here.

Now, because of reliance on legal foreclosure farms like David Stern, the idea that banks are hesitant to sell that Shadow Inventory shouldn't surprise anyone. This is the risk-averse thing to do, and until banks get some relief here, it's what we should expect financial institutions to do.

Answer? Recognize that this problem started with loanholders breaching their deal, not with banks donning black hats and capes. Work to help these vital financial institutions out of this Catch 22.