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The Massachusetts Supreme Judicial Court gets the foreclosure fraud problem and has strongly stated that parties filing foreclosure actions must have title to the mortgages they attempt to foreclose and must be able to prove that the chain of title supports that assertion. It is a new day in Massachusetts and dawn is spreading across the nation. Now what?

First the background...

The Court's first shot across the bow of the mortgage banks in Massachusetts occurred approximately a year ago in a case commonly know as Ibanez. The case actually involved two mortgage foreclosure sales in Springfield. Neither of the banks that foreclosed on the properties were the original lenders from which the homeowners obtained their mortgages. In the Ibanez case, U.S. Bank filed a foreclosure complaint in April of 2007 claiming to be the owner, holder, or assignee of the mortgage. A judgment from the Land Court issued in June and the foreclosure sale was held on July 5, 2007. U.S. Bank purchased the property as Trustee at the sale. The foreclosure deed was not recorded until May 2008. It was not until September 2008 that an Assignment of the Mortgage to U.S. Bank was recorded.

The second foreclosure involved Wells Fargo's foreclosure of the LaRace mortgage. Wells Fargo represented to the Land Court that it was the owner, holder, or assignee of the LaRace mortgage in April 2007. Wells Fargo received a judgment from the Land Court in July 2007 that permitted the foreclosure, which took place promptly thereafter. The property was sold to Wells Fargo as Trustee at the foreclosure sale. The Foreclosure Deed was not recorded until May, 2008 and it was not until a few days after that Deed went on record that an Assignment of the LaRace mortgage to Wells Fargo was recorded.

After these completed foreclosure sales in late 2008 the two banks, in separate actions, went to the Land Court and sought a declaration that they had clear title to the foreclosed properties. The Court ruled otherwise, finding that there was a lack of evidence of the mortgage assignments because the banks were unable to produce key pieces of paper to support their claims to ownership of the mortgages.

The cases finally made their way to the Massachusetts High Court and on January 7, 2011, the Supreme Judicial Court held that the statutory power of sale that is part of the Massachusetts foreclosure law can only be exercised by "the mortgagee or his executors, administrators, successors, or assigns." Since these banks were unable to prove that they owned the mortgages at the time of the foreclosure sales, the sales were void.

Then the other shoe drops...

Purchasers of foreclosed properties with inadequate documentation of title do not have standing to “quiet title” to those properties. So says the Massachusetts S.J.C. in the case of *Bevilacqua v. Rodriguez* decided by the Court on October 18, 2011.

In the *Bevilacqua* case an individual that bought real estate at a foreclosure sale asked the Land Court to declare that he had title to the property. The Court not only refused to do so, it dismissed the case for lack of standing. In order to ask the court to “quiet title” and establish that you are the owner, you must actually have a claim to ownership and this litigant did not since he did not received title to the real estate at the foreclosure sale because the foreclosing party had no title to convey. The Court found that U.S. Bank had no assignment from Mortgage Electronic Registration Systems, Inc. at the time of the foreclosure sale and therefore U.S. Bank had nothing to convey to Mr. Bevilacqua.

Conclusion and solutions...

Clearly in Massachusetts, foreclosures that have been begun or completed without evidence of mortgage assignments to the foreclosing party are not likely to transfer title to a purchaser at a foreclosure sale. Contact a Springfield Massachusetts Bankruptcy Attorney for assistance.

It may be my Springfield Massachusetts trial lawyer bias showing but I believe the solution may be in the hands the trial bar. My law firm and other like-minded firms are preparing and filing lawsuits against banks that have completed or begun foreclosures without adequate documentation. Our mortgage recording and title system requires that this mess be cleaned up.