

PAUL MCMORROW

## Banks' sloppiness makes foreclosure a stolen property

By Paul McMorrow | GLOBE COLUMNIST | OCTOBER 24, 2011

THE SKY is falling on banks that trade heavily in Massachusetts foreclosures. It's that way because they yanked it down on themselves. State courts are littered with accounts of big banks seizing people's homes with staggering carelessness. Some folks on the receiving end of that carelessness and arrogance have sued, and the legal blowback has been fierce.

The state's Supreme Judicial Court sent shock waves through the real estate industry last week, when it ruled that an investor who had bought a foreclosed property in Haverhill five years ago doesn't actually hold title to the property. The investor, Francis Bevilacqua, doesn't own the foreclosure he bought from U.S. Bank, because the bank had illegally seized the property from its former owner. Thousands of other Massachusetts homeowners could be in the same situation because big banks have had to be cajoled into following the most basic, common-sense aspects of the law.

Some states require lenders to go to court before seizing a borrower's home. Massachusetts doesn't. The state lets mortgage contracts govern how loan defaults get handled, which means that when borrowers go months without paying their mortgages, lenders don't have to wait in line at the courthouse to get their loan collateral back. This lets banks cut their foreclosure losses more quickly. But it also puts a heavy legal burden on them: Since the law presumes the right to seize people's homes, it demands that banks follow foreclosure law exactly - a much more demanding requirement, it turns out, than it should be.

In August, the SJC clarified that since Massachusetts doesn't have judges sign off on foreclosures, homeowners can challenge foreclosures in court, and it's up to banks to prove they actually had the right to take away a borrower's home. The ruling came

when K.C. Bailey of Mattapan lost the home he'd been living in since 1979 after he couldn't pay off a predatory loan. Bailey wasn't able to stop the Bank of New York from taking his home, and the SJC's August decision didn't overturn Bailey's foreclosure. But it did dismiss the claim that Bank of New York shouldn't even have to defend its foreclosure deed in court. That's a bigger point of contention than it seems, thanks to banks' own foreclosure corner-cutting.

Two Springfield foreclosures from 2007 first thrust this corner-cutting into the spotlight. U.S. Bank and Wells Fargo each seized a Springfield home on the same day in July 2007. The banks were acting as agents for investors in mortgage securities sold by Lehman Brothers and Bank of America. Each bank went to court to clear its title after the foreclosure auction, and each was told it never had the right to foreclose on the homes' previous owners. Last January, the SJC agreed.

Banks sliced up mortgages and traded them like baseball cards during the housing boom. It was common for banks to store good mortgages in a virtual trading warehouse that enabled them to flip mortgages more quickly. Rapid-fire trading caught up with banks when mortgages soured, though. Foreclosure agents seized homes before actually receiving troubled mortgages from the banks' trading warehouse, papering over the transfers after the fact. That's what happened with the Springfield homes U.S. Bank and Wells Fargo foreclosed on. The mortgages were in default and ripe for foreclosure. But because a home is only collateral to the holder of that home's mortgage, and the two banks only took ownership of the Springfield mortgages after foreclosing, the SJC ruled that the banks never had the right to foreclose. If banks have seized homes without owning the mortgages that let them foreclose, then they don't actually own those foreclosed homes. And if the banks then turn around and sell something they never owned, those sales can't be allowed to stand up, either. It puts Bevilacqua, the Haverhill investor on the losing end of last week's SJC decision, in an awful spot.

The court didn't have a choice. Bevilacqua basically bought stolen property from the bank that sold him his foreclosure. And the only reason he was on the receiving end of stolen property was the sloppy, arrogant, and ultimately illegal way the mortgage investment industry has behaved since the housing boom began.

*Paul McMorrow is an associate editor at CommonWealth magazine. His column appears regularly in the Globe.*

