

OPINION

# Banks won't get off that easy in Mass.

By [Paul McMorrow](#) | DECEMBER 06, 2011

Nobody at the White House got served when Attorney General Martha Coakley announced a blockbuster lawsuit against five of the biggest mortgage banks in Massachusetts last week. But it's the folks whose continued employment hinges on next year's election, and not the banks who were hit with allegations about rampant foreclosure fraud, who should really be worried about the suit.

Massachusetts isn't suing Bank of America, JP Morgan, Citigroup, Wells Fargo, and GMAC because a couple lawyers in the AG's office just discovered that banks have been using shoddy paperwork to seize Bay State residents' homes. Coakley sued because the homeowners who've been bearing the brunt of the foreclosure crisis shouldn't also get abused by a nationwide legal settlement that will end most of the banks' foreclosure liabilities.

The Obama administration has been pressing the states to sign a broad foreclosure settlement with the same five banks Coakley is now suing. Massachusetts and California bolted from those settlement talks in October. The AG's tough stance makes the White House's support for bank immunity more fraught than it already was. There are moments when it's politically safe to appear to be siding with moneyed interests over the landless or soon-to-be landless masses. This isn't one of them.

CONTINUE READING BELOW ▼

The evidence of widespread foreclosure fraud has been swelling for years, and the sloppy paperwork hasn't been confined to Massachusetts. Homeowners across the

## Related

- **Boston Capital: Mortgage lenders can't blame Coakley**
- **12/3: GMAC stops**

country have been losing their properties when the law says they shouldn't. Things are especially ugly in political battleground states like Nevada, Florida, Ohio, and Michigan.

**purchasing mortgage loans in Mass.**

- **12/2: State sues five big US lenders**

Banks want as much immunity from botched foreclosures as they can wrangle, since they processed foreclosures with the same assembly line mentality that they used when they were cranking out and trading bad mortgages: They built widgets that favored speed and volume over veracity.

When mortgages were flying out the banks' doors five years ago, trifling matters like credit scores and income verification were the enemies of profitable quarters. And when those mortgages blew up, banks turned to foreclosure mills to quickly seize properties. Foreclosure paperwork was routinely signed by people who never bothered to read the legal documents. That's a major problem in states where banks have to file foreclosure paperwork with judges, and in states like Massachusetts, where banks file affidavits swearing that they've complied with state foreclosure laws. Coakley's lawsuit targets such robo-signing habits.

“

*Banks want as much immunity from botched foreclosures as they can wrangle.*

The lawsuit alleges rampant corner-cutting in areas that should invalidate foreclosures. Since Massachusetts judges don't sign off on banks' seizure of distressed properties, the onus is on lenders to follow state foreclosure statutes. The state Supreme Judicial Court has handed down a pair of rulings this year that said banks can't legally seize homes when they don't follow the rules. The SJC overturned a pair of Springfield foreclosures because the foreclosing banks didn't hold defaulted mortgages - and thus weren't owed the collateral on those mortgages - until after they took hold of the properties. In October, the court overturned the sale of a foreclosed Haverhill property for the same reason.

Coakley's suit doesn't say how many of the state's 50,000 recent foreclosures were executed with similarly flawed paperwork, saying the exact number will be determined in court, but the complaint rattles off 14 examples, from Hancock to Milford to Dorchester. Eleven of the 14 properties have been resold by banks that may have never owned the properties in the first place, to buyers who may not actually have title to

their new homes; three properties have changed hands twice.

The harder anyone kicks the foreclosure machine, the more legal headaches spill out. That's why banks are willing to pay a large lump sum to the 50 states (the latest offer stands between \$25 billion and \$29 billion), cap their exposure to the mess, and move on. A few attorneys general have been skeptical of the nationwide foreclosure settlement talks for this reason.

No one has been able to quantify how many wrongful foreclosures have taken place, or how many homeowners have been squeezed out of mortgage modifications they should qualify for. It's impossible to put a price tag on banks' liability without knowing the extent of their wrongdoing. Lawmakers who believe otherwise do so at their own peril.

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