



The Due Process Advocate

"No Person shall be . . . deprived of life, liberty, or property without the due process of law"
- Fifth Amendment of the United States Constitution

Vol. 1 No. 1

New Hampshire / Massachusetts

March 2015 - FREE

ABOUT THIS PUBLICATION

Black's Law Dictionary, 6th Edition defines due process rights as follows:

All rights that are of such fundamental importance as to require compliance with due process standards of fairness and justice. Procedural and substantive rights of citizens against governmental actions that threaten the denial of life, liberty, or property.

Currently, there is overwhelming evidence that due process rights are being compromised, suppressed, and/or just blatantly denied to serve a host of political and private agendas at the cost of justice in our courts.

It is the express purpose of this publication, therefore, to expose and stop the proliferation of "government endorsed" actions and policies designed to remove due process rights from the common person to serve private interests.

The immediate, public demand for the restoration of due process rights throughout this nation's legal arena may be the real key to future prosperity in America. Without the return of the constitutionally-guaranteed due process rights that are the foundation of American justice, we risk economic and social chaos.

You be the judge as you read this edition, and future editions, of The Due Process Advocate - and please contact me if you have a personal experience that you'd like to share with our readers.

Ed Smith, Publisher of The Due Process Advocate
816 Elm St. Box 296, Manchester NH 03101
thedueprocessadvocate@gmail.com

ARCHIVE

*Every edition of The Due Process Advocate is archived and may be viewed online at:
www.DueProcessAdvocate.com*

DISCLAIMER & COPYRIGHT NOTICE - Nothing contained in this publication is intended to be, or should be construed as, legal advice or any other advice which requires state or federal professional licensing of any kind. © 2015 by Edward H. Smith. All Rights Reserved.

In this edition, The Due Process Advocate takes a close look at the operation of foreclosure mills and the attorneys that run them.

HOW DO ATTORNEYS RUNNING FORECLOSURE MILLS STRIP HOMEOWNERS OF THEIR DUE PROCESS RIGHTS?

The basic answer to this question is that the attorneys running foreclosure mills know that they are part of a "pro-bank" political agenda.

But the plot thickens:

The banking system wants everyone (especially the courts) to believe, and buy into, the disingenuous notion that the homeowner was the primary and proximate cause of the mortgage crisis and collapse of the housing market. The truth, however, is that the typical homeowner was lured into the "mortgage-free-for-all" by the bankers and their Wall Street counterparts who were making mind-boggling profits from derivative financing arrangements based on the highly speculative "securitization" of collateralized debt obligations.

Now that (a) these billions of dollars of fees that were enjoyed by the banking community and Wall Street crowd at the ultimate cost to unsuspecting investors in mortgages and mortgage backed securities are long gone, (b) over half of homeowners' equity in their properties has been wiped out as (c) consumer costs sky-rocketed out of control and credit is unmercifully tight or restricted, (d) there is high unemployment, (e) the national debt is in excess of an unsustainable \$18 trillion, (f) pension funds all over the country are under-funded, (g) social security is operating in the red, and (h) the banks and Wall Street are making record profits; the banks still want to pin all the blame for mortgage defaults on the homeowner!

The homeowner certainly has to share some of the blame, but the real story here is the extraordinary fraud that is being covered up by the foreclosure mills conducting a vast majority of the foreclosures across the country. These foreclosure mills are hired by the banks to deal with the fact that the pooling, securitization, and sale of mortgage derivatives on Wall Street has, in many cases, actually compromised the legal ability to foreclose on the securitized mortgages. To facilitate the foreclosure on such compromised mortgages, a "cover-up" is typically orchestrated by forcing the homeowner to first apply for a modification or some other type of forbearance; thereby

admitting to the legitimacy of a mortgage loan that has been "sliced and diced" on Wall Street. Then, while the homeowner thinks his or her mortgage is going to get modified, that homeowner finds out that a foreclosure is imminent - often by a party (perhaps some trust or government sponsored enterprise) that the homeowner hadn't ever done any business with. Inevitably, the homeowner cannot begin to afford to defend against the sophisticated and complex frauds that often set the stage for the foreclosure on a toxic asset. These hidden frauds often include foreclosures taking place without proper legal standing or based on illegal or missing mortgage assignments (especially in connection with mortgage transactions where Mortgage Electronic Registration Systems, Inc. (MERS) is acting as the mortgagee by being named a nominee for the lender and/or the lender's successors and assigns); the knowing lack of debt validation through improper, missing, or deficient note endorsements; and the concurrent conflicts of interest by foreclosing attorneys who are running the particular foreclosure mill (that sometimes represents the mortgage servicer, foreclosing bank, and buyer at auction - all at the same time!). One of the primary reasons that foreclosure mills are able to "get away with the fraud" is that the financial community has been successful, for the most part, in convincing many judges that, if a given mortgage is in default, it "really doesn't matter" whether the foreclosure is legal or illegal. However, many of the courts around the country are starting to take a closer look - but there is still a long way to go in getting many courts to even acknowledge the legal short-comings and greed-driven motives of the almighty and all-powerful banks.

In any event, foreclosure attorneys know that many judges will just "look the other way" when a homeowner "dares" to challenge the rights of a financial power-house brings his case into court. These attorneys also know that many of the foreclosures in the United States are non-judicial foreclosures and don't even require a formal court proceeding.

Therefore, the reality of the current situation is that thousands of illegal foreclosures have taken place by and through robo-signed or non-existent documents, false mortgage assignments, lack of legal standing and/or debt validation, and a host of other legal deficiencies (as irrefutably evidenced, for example, by the recent \$25 billion national mortgage settlement - and other settlements by the big banks); all orchestrated, in part or whole, by foreclosure mills.

These illegal practices by foreclosure mill attorneys are made easy given their status as so-called "officers of the Court;" and their abuse of that privileged status is exactly their game plan.

A crucial element in the course of the foreclosure and eviction proceedings is that a foreclosing attorney knows that his or her representations in the course of a foreclosure action will usually be taken at face value - and that the result will be a foreclosure or eviction that is assumed to be

legally valid when, in fact, it is not.

However, it is exactly the recognized status as licensed attorneys that gives the attorney-operators of foreclosure mills the ability to suppress, or deny, a homeowner's due-process rights; often in a deceptive, unfair, and abusive manner.

In fact, the well-established foreclosure mills are able to render a homeowner all but "defense-less" by setting themselves up to represent, or control, most or all of the following parties at the same time:

- (a) the current lender (bank);
- (b) the current mortgage servicer;
- (c) Mortgage Electronic Registration Systems, Inc.;
- (d) any assigns and/or successors of the original lender;
- (e) the "investor" as applicable (i.e. Freddie Mac, Fannie Mae, etc.);
- (f) the auctioneer;
- (g) the seller at a foreclosure auction sale; and
- (h) the buyer at a foreclosure auction sale.

The law firm's concurrent representation or control of all of these players in the foreclosure process sets the stage for the following sequence of events to occur:

- (a) the law firm sends a notice to the homeowner on behalf of the bank or servicer saying that the law firm has been retained to foreclose;
- (b) the law firm sends the homeowner a notice of foreclosure sale;
- (c) the law firm arranges a transfer of the mortgage from the original lender (and/or the original lender's successors and assigns) by and through the law firm's capacity as an officer of Mortgage Electronic Registration Systems, Inc. ("MERS");
- (d) the law firm records the assignment (transfer of the mortgage) at the same time, or shortly before scheduled date that the foreclosure notice is published in the newspaper;
- (e) the law firm refuses to negotiate any mortgage modification, or other foreclosure alternative, in good faith and tells the homeowner to contact the lender or servicer;
- (f) the law firm already knows that, in a vast majority of cases, the lender or servicer will not stop the foreclosure (especially if the lender has already committed to pay the law firm to foreclose and foreclosure notices have already been sent to parties of interest and to the newspaper).

for publication.

(g) the law firm conducts the foreclosure by and through itself and/or its auctioneer;

(h) the law firm then executes and records a foreclosure deed;

(i) the law firm then commences a possessory (eviction) action against the homeowner; and

(j) the law firm completes another one of hundreds, if not thousands, of "pre-targeted" foreclosures and even, in many cases, takes possession of the property (even the personal property that wasn't foreclosed!); all of which can be worth many thousands of dollars to the law-firm.

The net objective of the operation of a foreclosure mill is to mass-liquidate "toxic assets" (people's homes with mortgage debt that exceeds the value of the homes) without being impeded by homeowners who (a) may choose to assert their due-process rights in order to (b) save their homes and/or recover losses they sustained as the proximate result of the housing crisis.

In the context of foreclosure and eviction actions, the following are three crucial, constitutionally-guaranteed, due process rights which are often pushed aside by the unfair and deceptive operation of foreclosure mills:

- the right of a homeowner to fair legal proceedings conducted in a competent manner;

- the right of a homeowner to be heard in his own defense; and

- the right of the homeowner to his or her personal property that was not foreclosed.

Consider the following:

On March 12, 2012, the United States Justice Department, the Department of Housing and Urban Development (HUD) and 49 state attorneys general (all but Oklahoma) announced "the filing of their landmark \$25 billion agreement with the nation's five largest mortgage servicers to address mortgage loan servicing and foreclosure abuses." This settlement was precipitated by a Complaint filed a year earlier.

The FACTUAL ALLEGATIONS portion of that precipitating Complaint was conceptually outlined as follows (in paragraphs 47 through 101 of the Complaint):

A. The Banks' Servicing Misconduct

1. The Banks' Unfair, Deceptive, and Unlawful Servicing Processes

2. The Banks' Unfair, Deceptive, and Unlawful Loan Modification and Loss Mitigation Processes

3. Wrongful Conduct Related to Foreclosures

B. The Banks' Origination Misconduct

1. Unfair and Deceptive Origination Practices

2. The Direct Endorsement Program

3. Failure to Comply with Underwriting Requirements

4. Failure to Comply With Quality Control Requirements

C. The Banks' Bankruptcy-Related Misconduct

1. Violation of Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501-597b.

As you can see, the banks (and certainly not the homeowners) were the ring-leaders in the business practices and schemes that caused the sub-prime mortgage crisis and resulting collapse of the housing market.

Finally, forced evictions (by a sheriff) often present another debacle with respect to the homeowner's ownership rights associated with his personal property. Often (especially in New Hampshire), a post-foreclosure "lock-out" is directed, or orchestrated, by a foreclosing attorney without regard to the homeowner's due process rights related to his or her personal property; which personal property was not foreclosed and belongs to the homeowner after foreclosure. In one particular New Hampshire case, the foreclosing attorney directed a sheriff's eviction which included the forced eviction of the foreclosed homeowner's mother (who was given 5 minutes to leave the premises with no prior notice whatsoever from any party whatsoever). The foreclosing attorney later made the lame excuse that he didn't know the homeowner's mother was residing at the property. In any event, this attorney made absolutely no effort, or took any step whatsoever, to mitigate the extraordinary damages; despite his representation of Fannie Mae in obtaining the Writ of Possession that was used to physically evict the homeowner's mother. This is a prime example of the self-serving denial of due process rights by the reckless operation of a foreclosure mill.

The bottom line here is this:

The operation of foreclosure mills is supported by a national, political agenda which has been aligned with the interests of the nation's financial power-houses. Because these financial institutions are "too big to fail or jail," they are not accountable for their wrong-doing in the mass-foreclosure of mortgages to "re-cycle" the nation's millions of toxic assets. Part of that wrong-doing is the elaborate and sophisticated denial of the core due process rights of homeowners facing foreclosure; especially with respect to (a) their right to the discovery of material facts and circumstances related to their mortgage transactions, (b) their right to be heard after such discovery, and (c) their right to their own personal property after foreclosure.