



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*

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FORECLOSURE MILLS AND COURTS IGNORE NEW HAMPSHIRE LAW THAT PROHIBITS THE RECORDING OF FRAUDULENT FORECLOSURE DEEDS

In New Hampshire, real property must be conveyed by a deed. Therefore, when a homeowner loses his or her property by foreclosure, a "foreclosure deed" must be recorded in the county where the property is located. It stands to reason, and makes all the sense in the world, that such foreclosure deeds be accurate and filed in accordance with all the statutory requirements for such filings. In other words, the foreclosure deed must be executed and recorded in strict compliance with formalities required by law.

Recently (in 2014), New Hampshire enacted RSA 478:42; a law that addresses Fraudulent Filings and made it a felony to record a fraudulent foreclosure deed. Section I of that law declares that "I. A person may not knowingly present for filing or cause to be presented for filing in a registry or other public office, any type of document that fraudulently purports to be a judgment or other document to memorialize or evidence an act, order, directive, or process of creating a lien without having been authorized under state law, the Constitution, or the laws of the United States. The last Section of the new law states: "V. Any person who knowingly files a document or instrument to fraudulently create a lien on real or personal property shall be guilty of a class B felony."

Despite its recent passing, it appears that this relatively new law is being all but ignored by the foreclosure mills that continue their reckless campaigns to re-cycle toxic assets through foreclosures while the courts "look the other way."

Consider these facts (evolving from the foreclosures conducted by just one of the major "banks") and you be the judge:

1. In many recent New Hampshire foreclosure cases, US Bank, N.A. has conducted MANY foreclosures in New Hampshire and recorded MANY foreclosure deeds.
2. US Bank has conducted these foreclosures in their capacity as a "Trustee" for various Real Estate Mortgage Investment Conduits (called "REMICs") which are large pools of mortgages that are formed as investment vehicles.
3. As of the writing of this article, there are foreclosure deeds that have been recorded by US Bank, N.A. by and through their attorneys who, astonishingly, have totally ignored the fact that US Bank has declared that it has absolutely NO AUTHORITY WHATSOEVER to initiate a foreclosure or manage a foreclosure property!
4. In fact, US Bank, N.A. released a publication in 2013 entitled "Role of the Corporate Trustee" stating SPECIFICALLY that US Bank as Trustee: "Does not initiate nor has any discretionary authority in the foreclosure process, does not manage or maintain properties in foreclosure." You can review US Bank's publication in its entirety here:

"Any person who knowingly files a document or instrument to fraudulently create a lien on real or personal property shall be guilty of a class B felony."

- NH RSA 478:42(V)

<https://www.usbank.com/pdf/community/Role-of-Trustee-Sept2013.pdf>

Given these circumstances, how in the world (and why in the world), would a New Hampshire Court "rubber stamp" the many foreclosures and post-foreclosure eviction actions that have already taken place, and are taking place, in New Hampshire by or through US Bank, N.A. operating as the "Trustee" of a REMIC trust?

If you can believe it, in one current case (in Rockingham County, NH Superior Court), Richard Ellsey, Jr. of Sandown, NH is trying to save a family home (that he's more than willing to pay for) that his deceased parents have left to him and his siblings. No less than three attorneys have entered appearances to participate in a foreclosure action initiated by US Bank against the mortgage given by his deceased parents, and defeat Mr. Ellsey's counter-action to stop the foreclosure, all despite the fact that the property is the sole asset of Mr. Ellsey's deceased mother's estate which is currently being probated. These attorneys are Marina V. Plummer, Esq. of Marinosci Law Group (Warwick, RI); Richard C. DeMerle, Esq. of Sassoon and Cymrot (Boston, MA); and William Philpot, Jr., Esq. of Haughey, Philpot & Laurent, PA. (Laconia, NH).

The principal balance of the original mortgage on the Ellsey property was less than \$75,000 as of a year ago and the property has an assessed value in the \$150,000 range. Mr. Ellsey was able to temporarily enjoin the recent foreclosure sale scheduled for March 10, 2017 but, despite the equity in the home, he is concerned that legal fees and costs will erase the equity in the property and the attorneys will be the only ones who get anything. He is also at a loss to understand why the Court has not yet declared this foreclosure action to be blatantly illegal. Hopefully, this case will not result in yet another blatantly fraudulent foreclosure deed being recorded while the New Hampshire courts "look the other way."

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