COMMON LAW CLAIM

A good friend, a man of 86 years and a faithful servant of the people, as a New Hampshire State Representative, brings this common law claim against; the wrongdoers/lebellees; the fraudsters; the negligent; the derelicts; in breach of their fiduciary duty.

Common Law is above the foreign, bankrupt, private de facto's STATUTORY COMMERCIAL CODE, written by those who are not lawfully allowed to hold offices of trust. The Crown Temple B.A.R. Attorners are purveyors of fraud and piracy, and whatever they do is null and void on its face.

"US Supreme Court held that state officials acting by "color of law" may be held personally liable for the injuries or torts they cause and that official or sovereign immunity may not be asserted."; *Scheuer v. Rhodes*, 416 US 232 (1974), 94 S. Ct. 1683, 1687 (1974), "When a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."; *Warnock v Pecos County, Texas*, 116 F. 3d 776 – No.96-50869 Summary Calendar. July 3, 1997.

The de facto is foreclosed from parity with the tangible. Their STATUTES and CODES are color of law, not law. They can control only that which they create. They are a CORPORATION, not a government. They, as TRUSTEES are all in breach of their fiduciary duty and many are guilty of HIGH TREASON.

These public servants have taken over so that we are their servants. This is what happens when the general population is hoodwinked into thinking they're supposed to be acting as U.S. citizens. It's the exact opposite of the truth! It's imperative to correct that tragic, mortal error mentally and in your political status. Many years ago, when Dick Marple was a young man, he and many others quit and resigned from the State Police because they learned they weren't law enforcement at all, in that they were CODE ENFORCEMENT OFFICERS acting as RE-VENUE generators for the Bankruptcy by fleecing living people as if they were DEAD entities/PERSONS/JOHN H. DOEs under Color of Law. That is a serious crime and hangable/punishable by death.

Dick figured this out 60 years ago, yet still to this day, the general population doesn't know that they're supposed to be free and unencumbered by their servants. Their STATUTES and CODES are to govern them, not us. Today, the Police are trained chimpanzees who go about kidnapping people for the foreign B.A.R. maggots in black robes who have no jurisdiction over us. Read *Jordan vs. New London*. That man couldn't get a job as a Policeman because he scored too high on the test. The last thing the B.A.R. wants is a Cop with a brain capable of critical thinking, because if the Cops could think, they'd figure out that it's the B.A.R. Attorneys who need to be arrested, especially the scum at the Bank/Bench. Today, the Police don't know the difference between :john-henry: doe and JOHN H. DOE. When it's explained to them, they get that stupid "deer in the headlights" look on their faces, then they swear they're hearing nonsense. "There are

NO Judicial Courts in America and have not been since 1789. “Judges” do NOT enforce Statutes and Codes. Executive Administrators enforce Statutes and Codes. *FRC v. GE,* 281 U.S. 464 *Keller v. Potomac Elec. Co*., 261 U.S. 428 1 Stat. 138-178”

“There have NOT been any “Judges” in America since 1789. There have only been Administrators. *FRC v. GE,* 281 U.S. 464 *Keller v. Potomac Elec. Co*., 261 U.S. 428 1 Stat. 138-178”

“The Supreme Court has warned, “Because of what appears to be Lawful commands [Statutory Rules, Regulations and -codes–ordinances-and Restrictions] on the surface, many citizens, because of their respect for what appears to be law, are cunningly coerced into waiving their rights, due to ignorance… [deceptive practices, constructive fraud, barratry, legal plunder, conversion, and malicious prosecution in inferior administrative State courts].” (*United States v. Minker*, 350 U.S. 179, 187, 76 S.Ct. 281, 100 L.Ed. 185 (1956);”

“The Common Law is the real law, the Supreme Law of the land. The codes, rules, regulations, policy and statutes are “not the law.” (*Self v. Rhay*, 61 Wn 2d 261), They are the law of government for internal regulation, not the law of man, in his separate but equal station and natural state, a sovereign foreign with respect to government generally.

“A concurrent or ‘joint resolution 'of legislature is not “Law,” (*Koenig v. Flynn*, 258 N.Y. 292, 179 N. E. 705, 707; *Ward v State*, 176 Okl. 368, 56 P.2d 136, 137; State ex rel. *Todd v. Yelle*, 7 Wash.2d 443, 110 P.2d 162, 165).

All codes, rules, and regulations are for government authorities only, not human/Creators in accord with God’s Laws. “All codes, rules, and regulations are unconstitutional and lacking due process of Law..”*(Rodriques v. Ray Donavan*, U.S. Department of Labor, 769 F.2d 1344, 1348 (1985)); …lacking due process of law, in that they are ‘void for ambiguity’ in their failure to specify the statutes’ applicability to ‘natural persons,’ otherwise depriving the same of fair notice, as their construction by definition of terms aptly identifies the applicability of such statutes to “artificial or fictional corporate entities or ‘persons’, creatures of statute, or those by contract employed as agents or representatives, departmental subdivisions, offices, officers, and property of the government, but not the ‘Natural Person’ or American citizen Immune from such jurisdiction of legalism.”

“A “Statute’ is not a Law,” (*Flournoy v. First Nat. Bank of Shreveport*, 197 La. 1067, 3 So.2d 244, 248),

A “Code’ or Statute’ is not a Law,” (*Flournoy v. First Nat. Bank of Shreveport*, 197 La. 1067, 3 So.2d 244, 248),”

“A “Code’ is not a Law,” (In Re *Self v Rhay* Wn 2d 261), in point of fact in Law).”

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Take back your STRAWMAN

1. DBA is used to register "STRAWMAN" with county
2. Minnesota rule 220 "certificate of title" (age of majority status change)
3. Rule 17 of the rule of procedure (read)
4. Private: Surname Public: First Name (i.e. doe:john-henry)
5. Domestic Trust is not recommended
6. NY GBS Law 130 Fictitious Name #6 #9
7. Civil death lost rights through fictitious name "STRAWMAN"
8. 26 USC 7701 for definitions on foreign trust
9. Foreign; Private Domestic; Public; Foreigners don't pay tax
10. Register myself under true name (surname, given) for "court" court cannot "speak" "man" name being foreign is outside of US Corporation.
11. SS4 Form (W8-Ben Purposes Only)
12. 18 USC 914 when saying " STRAWMAN" as creditor this law is broken.
13. Bank is an intermediary (UCC)
14. "Lawful" (California Constitution 1849) "Legal" (28 USC 3002 (15)(A)); Lawful; Private; Surname Legal; Public; FirstName
15. Study Article 9 of UCC to secure what's owed to me in "the name."
16. UCC 9-312, UCC 9-311(a) use a UCC-1 that will be a NON-UCC for real public record.
17. Minnesota rule Rule 220 says "Certificate of Live Birth" is a "Certificate of Title" for " STRAWMAN"; when claimed at County as DBA perfects claim on ALL CAPS NAME and this takes priority over all lien creditors. Any intermediary (bank, carlot, utility...etc) uses private side (man) to fund public side (person) when register Certificate of Live Birth (COLB). UCC 9-313; Certificate of Live Birth (COLB) is the certificated security. Once you authenticate "a copy" of COLB then this is the one that the affidavit is placed on. NOTE: county is acting stupid so authenticate it up first then authenticate notary on affidavit stating ownership this perfects the security instrument (the NAME)
18. Bank must register the (car, home) loan on UCC-1 in order to have a proper lien and then transfer (assign) it to a UCC-3 but they never do this. Use UCC-11 to call them out on it. Do it for STRAWMAN and for real name when you get certified certificate from Secretary of State then send to credit bureau to dispute "lien" if no debt is registered then they must discharge debt if using this for the mortgage it may be harder because I must come in my pro per name in a dejure (federal) court case and invoke the California constitution 1849 as "law" and no money is used to start case in order to keep "private" status (no man can be denied his day in court - Cal constitution 1849)
19. Authentication comes from the constitution also (Georgia's constitution) use constitutions before 1933
20. Notary is the judge on the private side, supreme court is the judge on public side the commissioned notary (Secretary of State) has judicial powers based on Article 6 Judiciary Sec. 1 Paragraph 1 of Georgia Constitution 1877. When using "regular notary" this is a deputy notary deputized from the clerk of the court which get power from Secretary of State. A real notary has to be voted in by the people which is the Secretary of State of the dejure (private side) constitution the only "real" notary.
21. Using regular notary is defacto corporation, using authentication all the way up to Secretary of State is dejure.

22. Maxim of law: "anything that can be proven must be proven" must get a good standing notary to authenticate birth certificate up to Secretary of State of your state then Secretary of State US. Use affidavit on birth certificate saying that the notary is in good standing and have them authenticate that. Authentication (non-hague - man) is private side, appostille (Hague - Corp.) is public.
23. NOTE: When county clerk refuses; Get name of employee and use claim form to enforce their compliance of service to do their job.
24. NOTE: Take county fee schedule to show them in their face and get their name to file a claim against them when they refuse.
25. We need to get perfected security interest in "item (asset)."
26. Use SS-5 to correct status from us citizen to national, leave ethnicity blank and use other for national status. When done correctly the SS card will state national which is a foreigner.
27. Legal definition: minimum contact public charge necessaries social contract W8-BEN. NOTE: The W-8BEN is one of the most commonly used. It certifies foreign status, regarding tax withholding on income. Tax-free income, as specified by this form, includes interest, dividends, rents, royalties and annuities. The form allows foreigners to claim tax treaty benefits.
28. In court you say "my name is surname, given name the registered owner of ALL CAPS NAME. "who are you allowed to bring this meeting up?"
29. When arrested the cop makes a incident report that is sent to the real public record which is the Secretary of State and this unrebutted affidavit stands true.
30. Original long form certificate of birth is the certificate of title to the COLB (dead one)
31. Keep all receipts for expenses all year then use foreign trust does OID for refund.

Declaration of my Christian Nationality

I a man/woman as defined in Genesis 1:26 formerly known as STRAWMAN name; am to be known as my Christian National Spiritual Name of surname, given name in all my private matters.

Authorized Representative ___________________________

print 8 x 14 legal size paper get notarized
authenticate notary by county

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GET 98 EIN register with DBA

Foreign Persons Applying for a U.S. Business EIN
If you have no SSN, no ITIN and your business is located (or going to be located) in the U.S., you can still apply for a business EIN. However, the process is more complicated because you are not allowed to apply for the EIN online. To get your business EIN as a foreign person, you need to fill out IRS Form SS-4, Application for Employer Identification Number (EIN).

There are a few options for how to file the EIN application form as a foreign person. First, you cannot file this form online (unless you have an ITIN as discussed above). This means you'll

need to choose whether you want to file the SS-4 form by phone, fax, or mail. According to the IRS Form SS-4 instructions, you have to choose only one application method, and you cannot file the form by multiple methods. Since each method is slightly different, you have to decide whether to apply by phone, fax or mail based on what will work for your situation.

Phone: Only international EIN applicants can receive a business EIN by phone. According to the IRS instructions for form SS-4: "If you have NO legal residence, principal place of business, or principal office or agency in the U.S. or U.S. possessions, you may call 267-941-1099 (not a toll-free number), 6:00 a.m. to 11:00 p.m. (Eastern time), Monday through Friday, to obtain an EIN."
Fax: There is a special fax number to use if you want to apply for your business EIN by fax. Send the relevant IRS form to this fax number: (859) 669-5987. Note: If you apply by fax, you will generally receive your business EIN within four business days.
Mail: If you prefer to file the IRS Form SS-4 by mail, use this address for international applicants (who do not have any legal residence, principal office or principal agency in any state or international U.S. territory):

Internal Revenue Service
Attn: EIN International Operation
Cincinnati, OH 45999
Note: If you apply by mail, it might take several weeks for your business EIN to arrive.

Third Party Designee
Working with the IRS can be complicated, especially if you are based outside the U.S. This is why the IRS lets you have the option to work with a Third Party Designee on your behalf. If you want a Third Party Designee (like an attorney) to be allowed to talk to the IRS on your behalf, you can designate this on the IRS SS-4 form. Your Third Party Designee will be allowed to receive your new business EIN on your behalf, which can be helpful in working through the IRS application process to avoid any errors or delays.

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8832 entity selection form late classification
IRS is treasury (accounting)

AFFIDAVIT OF OWNERSHIP

State of _____)
) ss.
County of _____)

RE: BIRTH CERTIFICATE No. _____

I, the undersigned, of lawful age and being first duly sworn on oath, depose and state that I am familiar with the facts recited, and the party named in said naturalization certificate is the same party as one of the owners named in said certificate of title.

I, _____, (heretofore and hereinafter-"Claimant") having attained the age of majority and reason under divine law competent first-hand witness to the truth and facts recited below, hereby makes a claim against the corpus, all property whether real or personal, tangible or intangible, all deposit accounts blocked by reason of presumption of death of Claimant, cash, credit lines, Credit default swap, all federal funds, collateralized debt obligation, options, derivates, and futures received by the said court in the said county, state and federal for the administration of the named estate, and all estates in agency, including but not limited to STRAWMAN NAME(s) or by whatsoever name the said estate shall be called or charged. I hereby declare under penalty of perjury that the above information is complete, correct, and true to the best of my knowledge. By: john: henry-doe, Claimant

Authorized Representative

Signed and sworn to before me this day of , 20 .

Notary Public My Commission Expires

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Private Side Solutions
Birth Certificate, Bonds

September 15, 2017

AFFIDAVIT OF OWNERSHIP FOR JOHN DOE

STATE OF TEXAS DEPARTMENT OF STATE HEALTH SERVICES VITAL STATISTICS UNIT

BIRTH CERTIFICATE NUMBER 142-70-123456

Affiant, who goes by the appellation John Doe, a living, breathing, flesh-and-blood man, made in the Creator's image, with indefeasible title to my property and lawful owner of the landed Estate known as JOHN DOE, and it's real property and it's real property and interest, under the seal, "John Doe", or it's derivation, am recorded as the grantee on the document of title for the Estate described as follows:

Birth Certificate# 142-70-123456 Texas Department of Health in the Bureau of Vital Statistics
Place of Birth: Dallas, Texas- Republic of Texas
Attendant: 351/1 Dr. Santi
Attendants Address: St. Paul Hospital, Dallas
Grantor(s): John Doe Jr.., Jane Doe

Grantee(s): John Doe
Recorded Date: June 10, 1968

One, John Doe, does solemnly swear, under penalty of perjury, declare, and depose: that Affiant is competent to state the matters set forth herein; that Affiant has personal knowledge and belief of the facts stated herein; and all the facts stated herein are true, correct, complete, and certain.

This declaration of facts is based on Affiant's own firsthand knowledge and belief; mark Affiant's word;

1. One, John Doe is familiar with the facts recited in the Certification of Vital Record and that the party named in the aforesaid certificate is the property of the Affiant who is the owner named in said certificate of title.

One, John Doe, declares and affirms that by my freewill act and deed Affiant, John Doe, executes this acknowledgement of my acceptance of the Birth Certificate#142-70-123456 and lawful ownership of the property under the terms of the deed. Affiant asks that the record on file in the Office of Secretary of State for the United States of America and the State of Texas be updated to show my acceptance of the said certificate of origin, as lawfully seized owner of the document.

2. One, John Doe, declares and affirms that all of Affiant's other real property and interest issued in the name of the Certification of Vital Record Birth Certificate# 142-70-123456 is to be immediately returned to the Estate.

3. One, John Doe("Principal"), a living Christian man in rerum natura, declares and affirms that he accepts for value the attached bond, Certificate of Live Birth No. 142-70-123456 and all endorsements front and back in accord with Public Law found at Chapter 48, 48 Stat. 112, Public Policy found at House Joint Resolution 192 of June 5, 1933, and the Uniform Commercial Code, the Principal being the sole authorized acceptor of the said bond, contributor of value thereto, and contributing beneficiary thereof.

4. One, John Doe, accepts the oaths of all public officers and binds them to it, as well as bestows Affiant's sovereign immunity on them while administering my lawful orders. This public record under the seal of a competent court is guaranteed full faith and credit per Article 4, Section 1 of your Constitution. Any officer of the public who does not immediately carry out these lawful orders acknowledges warring with the Constitution, and committing treason. So let it be written, so let it be done.

Any man, as well as any woman, who intends rebutting this Affidavit of John Doe shall do so in the manner of this Affidavit, by signing any such Affidavit using Christian name/baptismal name/name given at birth, given in upper- and lower-case format, not set in all-capital letters, being a fully liable, living, breathing man/woman, responsible/liable for everything that such man/woman says and does.

Affiant, John Doe, a living, breathing, flesh-and-blood man, does swear and affirm on Affiant's own unlimited commercial liability, that Affiant has scribed and read the foregoing facts contained in this Affidavit, and that, in accordance with the best of Affiant's firsthand knowledge and conviction, such are true, correct, complete, and not misleading, the truth, the whole truth, and nothing but the truth.

This Affidavit is dated: the _____ day of the Eighth Month in the Year of Our Lord Two Thousand Fifteenth.

Further Affiant Sayeth not.

Done under my hand and seal of my freewill act and deed, nunc pro tunc, this _____ day of _____, 2015.
By:_____
John Doe

Witness _____
Witness _____
Witness _____

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JURAT

State of California)
)
County of Orange)

The person listed above did personally appear before me and acknowledged the contents thereof, and executed the same as his freewill act and deed.
Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.
_____ (Seal)
Notary Public
My Commission Expires: _____
Affiant 1AFFIDAVIT OF OWNERSHIP FOR BIRTH CERTIFICATE 1Estate 1

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Facts You May Not Know

1. The UNITED STATES OF AMERICA was incorporated in London in 1783. The United States of America is a territory of Great Britain. The Colonists did not win the Revolutionary War. The British troops did not leave until
1796.

Republican v. Sweers, 1 Dallas 43;Treaty of Commerce, 8 Stat. 116; The Society for Propagating the Gospel & c. v. New Haven, 8 Wheat 464, Treaty of Paris (Peace), 8 Stat. 80, IRS Publication 6209, Articles of Association, October 20, 1774.

2. King George III of England financed both sides of the Revolutionary War.

Treaty of Versailles. July 15, 1782; Treaty of Paris (Peace), 8 Stat. 80.

3. The IRS is not a U.S. Government agency. It is a Debt Collection Agency of the International Monetary Fund (IMF).

Diversified Metal Products v. IRS, et. al., CV-93-405E EJE,U.S.D.C.D.I., Public Law 94-564, Senate Report 94-1148 pg.5967, Bankruptcy Reorganization Plan No. 26, Public Law 102-391.

4. The IMF is an agency of the United Nations (UN). Black's Law, 6th Ed. pg. 816.

5. The U.S. has not had a Treasury since 1921. -41 Stat. Ch. 214 pg. 654.

6. New York City is defined in the Code of Federal Regulations (CFR) as the United Nations.

Rudolph Giuliani stated on C-Span that "New York City is the capitol of the World" and he is correct. 20 CFR Ch. 111, subpart B 422.103(b)(2).

7. No judicial courts, nor judges, have existed in America since 1789. Executive Administrators, not Judges, enforce Statutes and Codes.

FRC v. GE, 281 US 464, Keller v. PE, 261 US 428, 1 Stat. 138-178. See also the 11th Amendment. This was the abolishment of all inferior courts to hear cases of law or equity (this means that all courts below the "one supreme courts", not the U.S. Supreme Court.

8. You cannot use the U.S. Constitution to defend yourself because you are not a party to it. (use instead the Bill of Rights). *Padelford Fay & Co. v. The Mayor and Alderman of the City of Savannah,* 14 Georgia 438, 520.

9. You own no property. Slaves cannot own property. Read the Deed to the property that you think you own. You are listed as a Tenant.-Senate Document 43, 73rd Congress, 1st. Session.

10. We are slaves and own nothing, not even who we think are our children.

Tillman v. Roberts, 108 So. 62; *Van Koten v. Koten,* 154 N.E. 146; Senate Document 43 and 73rd Congress 1st, Session' *Wynehamrner v. People,* 13 N.R. REP 378,481.

11. Great Britain is owned by the Vatican. -Treaty of Verona, 1213.

12. The Pope can abolish any law in the United States. - Elements of Ecclesiastical Law, Vol. 1, 53-54.

13. We are Human Capital.-See Executive Order 13037.

14. We are enemies of the State.

Trading with the Enemy Act of 1917 and 1933, October 6, 1917, under the Adr, Section 2, subdivision (c) Ch. 106 - Enemy defined "other than citizens of the United States..." March 9, 1933, Ch 106, Section 5, subdivision (b) of the Act of Oct. 6, 1917 (40 Stat. L. 411) amended as follows: "...any person within the United States." See H.R. 1491 Public law No. 1.

15. Your name when spelled in ALL CAPITAL LETTERS is a corporation: A Cestui Que Vie Trust. - Cannon Law.

15a. Punctuate your name (i.e. jones: john-henry) because it makes you a fact, not an adjective pronoun FICTION
sign all documents and letters

Authorized Representative jones: john-henry

16. "The People" do not include you and me since our names are all Capital Letter fictional legal names.-*Barron v. Mayor of City council of Baltimore*, 32 U.S. 243.

17. A 1040 Form is for tribute paid to Great Britain (and the Vatican). - see: IRS Publication 6209 IMF decoding manual.

18. Everything in the "United States" is for sale: roads, bridges, schools, hospitals, water plants, prisons, airports, etc. (Who bought Klamath Lake in California?) -See Executive Order 12803.

19. It is not the duty of the police to protect you. Their job is to protect the Corporation and arrest Code breakers. See: *Sapp. v. Tallahassee*, 348 S0.2d 363; *Reiff v. City of Philadelphia*, 477 F. Supp. 1262; *Lynch v. N.C. Dept. of Justice*, 376 S.E.2d 247.

20. The FCC, CIA, FBI, NASA and all the other alphabet gangs were never a part of the United States Government, even though the "U.S. Government" held shares of stock in the various agencies. See: *U.S. v. Strang*, 254 U.S. 491; *Lewis v. U.S.*, 6880 F.2d 1239.

Corruption in the Courts

THE SOVEREIGN CITIZEN by: Judge Dale, retired

Our federal government has instructed our federal, state and local police agencies that everyone who purports to be a SOVEREIGN should be TREATED as a TERRORIST! They have also

brainwashed the American public into believing that being a SOVEREIGN is anti-American and unpatriotic! Perhaps this is: “The POT calling the KETTLE black?”

WHAT IS SOVEREIGNTY? It is the inherent right and prerogative of a civilized people to rule itself, and to dictate all of the forms and conditions of the institutions it sets up to carry out this rule. Ironically, the U.S. SUPREME COURT agrees with those people who claim to be SOVEREIGN citizens of the American Republic!

Bond vs. UNITED STATES, 529 US 334 – 2000, The Supreme Court held that the American People are in fact Sovereign and not the States or the Government. The court went on to define that local, state and federal law enforcement officers were committing unlawful actions against the Sovereign People by the enforcement of the laws and are personally liable for their actions. *Bond v. United States*, 529 US 334 – 2000 – Supreme Court – Cited by 761 litigants in other cases. *Bond v. US*, 131 S. Ct. 2355 – 2011 – Supreme Court – Cited by 306 “ “ *Bond v. US*, 1 F. 3d 631 – 1993 – Court of Appeals, 7th – Cited by 66 “ “

What are the implications of this 2000, U. S. Supreme Court ruling?

1] The delegates to the first Federal Convention prohibited the use of corporations by all governments representing the American Republic. Therefore, all of these corporate governments and their corporate laws are a usurpation of the organic Constitution of the United States of America. All State Governments are now sub- corporations of the Federal Government, making all Courts and all law enforcement personnel, corporate federal agencies or employees. [See: James Madison Journal of the Federal Convention, Vol. 2, P. 722] and [Pull up your State Code on your PC and search the Code for the words “District of Columbia” and “Federal Government.” You will receive about 1000 references linking your state to the federal government.]

2] The state and federal government is a corporation and therefore the Congress, State Legislatures, City Councils, Municipalities and all State and Federal Courts are corporate entities posing as Constitutional branches of government.

3] Corporations are privately owned businesses, meaning that the Corporate United States belongs to one or more private individuals, which is always governed by a Board of Directors. The Corporate United States is privately owned by a group of European Royal and Elite individuals tied to the Federal Reserve System and the letters of incorporation are recorded in the Vatican. The President of the United States is actually the CEO of the United States and the Congress and all others are corporate employees. Everything they do is in the interest of the corporate owners! I can’t access those documents because of National Security.

4] In order to promulgate and enforce Criminal Laws to govern the SOVEREIGN public, government must be SOVEREIGN too, which is an accepted RULE of LAW derived from the, Ancient Law of Kings. Corporations are not and can never be SOVEREIGN. They are not real, they are a FICTION and only exist on paper.

5] Therefore, all laws created by these government corporations are private corporate regulations called public law, statutes, codes and ordinances to conceal their true nature. Do the Judge and your lawyer know about this? You bet they do!
6] Since these government bodies are not SOVEREIGN, they cannot promulgate or enforce CRIMINAL LAWS; they can only create and enforce CIVIL LAWS, which are duty bound to comply with the LAW of CONTRACTS. The Law of Contracts requires signed written agreements and complete transparency! Did you ever agree to be arrested and tried under any of their corporate statutes? For that matter, did you ever agree to contract with them by agreeing to be sued for violating their corporate regulations?

[Citations and Complaints are contracts but they lack transparency because you were never told what might happen to you if you agree to contract, and that you had a right to refuse the accommodation!]

7] Do any of Americas Courts have Jurisdiction over a SOVEREIGN? Yes … but only by your consent to be judged by the Court. Can they compel [Summon or Subpoena] you to appear or participate in their process? No … they can't compel you and Yes … they can ask but you can reject the accommodation in writing and nothing can be done about it because you have refused to give the court jurisdiction over you!

Write (in red ink) the following across every page of the summons and you have refused to give the court jurisdiction over you! Warning: use at your own risk.

[refused for cause without dishonor UCC 2-201(2)
First-Middle: Last
nunc pro tunc DD/MM/YY]

8] Enforcement of these corporate statutes by local, state and federal law enforcement officers are unlawful actions being committed against the SOVEREIGN public and these officers can be held personally liable for their actions. [*Bond v. U.S.*, 529 US 334-2000]

9] There being no Constitutional Criminal Laws or Transparency in the American Justice System, everyone arrested, convicted and sentenced to prison under these CIVIL LAWS are in prison by CONSENT and therein, all American Jails are actually DEBTORS PRISONS!

10] Most of the County and State Prisons and all of the Federal Prisons are privately owned corporate businesses for profit, which kick back to the sentencing Judges. The Bureau of Prisons Privatization Management Branch provides general oversight, for these institutions. So if you are convicted in these Courts, you can expect to serve some jail time! Now you know why America has such high prison populations!

11] Can the State Government and Courts take Custody of your children? Only with your consent, otherwise their agents and officers can be held personally liable for their actions! Orphans are a different matter and can become wards of the Court until emancipated.

Corporate governments are a usurpation of the organic American Constitution and this corporatist onslaught in America has since its creation, been an ANTI- SOVEREIGN and TERRORIST REGIME and are in fact the real TERRORIST and TRAITORS to the American Republic.

Blessings, Judge Dale, retired

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How to Respond to Contempt of Court, Judicial Attack

We cringe for people going into court, dealing with the "sons of vipers, offspring of serpents" in these outlaw courts today. So many people write to us and call us, as they are being rendered in the money machine every day, liquidated to the Funding Streams for the elite.

If you know the right words, they back down right now - they may still have you arrested, but you have said the right words on the record to discredit him in his contemptuous acts against you, and you will use this record in any appeal or future hearings as you go. The main thing is you DISCREDIT HIM and IMPEACH HIM IN HIS OWN COURTROOM if you say the right things.

This can be used in any court in any setting, at any level, all the same basic process. I think in any country, with slight variations. Sui Juris process is simple and common law, as "any reasonable people would understand" and bridges all forms of courts or dealing with public authorities.

One of the main TOOLS they use to arrest you in a courtroom is "CONTEMPT OF COURT". Contempt is an instant six months in jail or a year sentence; potentially that is what you face. They use this for any or no reason, mainly for intimidation, and this is where they will (have already) use a stun belt or gun on a defendant who "irritates" the court asking for our rights.

When they do this to you, and it happens so fast it makes your head spin, if you have this written down, and can keep your wits about you enough to remember to say it, (you should practice it! It is THAT important!) Here is what you say:

"Is that civil contempt or criminal contempt judge?"

(You wait for a response on the record - do not talk until he answers and if they pause this LONG pause is on the record that he cannot answer you - the silence of a witness answering a question is an admission of truth in a court record and the longer the pause the better. All you want on the record is to make them COMMIT and then you go on, and now you have them caught in the permanent record) VOID WHERE PROHIBITED BY LAW 2 / 3

If he says "CRIMINAL CONTEMPT" - you say,

"Who makes the claim, what is the crime and who is the injured party?"

and wait again as long as it takes for him to say something.

If he says "CIVIL CONTEMPT" - you say,

"Where is the contract between me and you? I don't agree to the terms of the contract, judge."

NOW you have him acting CRIMINALLY OUTSIDE OF ANY LAWFUL JURISDICTION AND OUT OF IMMUNITY in his own courtroom on the record and here's why. In civil court, EVERYTHING is a CONTRACT and nothing can be done that is not a form of a contract. And ONLY HUMANS CAN LAWFULY CONTRACT. Every citation, money exchange, order, anything at all is an exchange - a contract - between two humans. The constitution is a contract with the Children of a Creator with Inherent Rights and the Constitutionally Sovereign People in the state, bonded by the JUDICIAL OATH - their contract.

Anyway, when you say to him

"I don't agree to the terms of the contract."

he KNOWS he does not have a contract with you and if you have committed no crime he has no authority to arrest you or even be conducting the hearing - he is OUT of his lawful jurisdiction and OUT of his IMMUNITY.

Now, if he says "CRIMINAL CONTEMPT", like one judge did to me, Judge Robert Walberg, with no lawful oath by the way, he made a FOOL of himself! He said "IF YOU ASK THAT AGAIN I AM HOLDING YOU IN CONTEMPT OF COURT" I said "IS THAT CRIMINAL OR CIVIL CONTEMPT WALBERG?" and he raged and said "CRIMINAL".

I said "WHAT CRIME HAVE I COMMITTED AND WHO MAKES THE CLAIM? WHO IS THE INJURED PARTY?' He went nuts and started yelling "THE STATE OF OREGON", "THE JUDICIAL SYSTEM", "THE COURT"..... I said "YOU KNOW THAT ONLY A HUMAN CAN MAKE A CLAIM AND THERE IS NO CRIME AND NO INJURED PARTY - YOU KNOW THAT THE STATE OF OREGON CANNOT MAKE A CLAIM" he backed down and sat there red faced (he had already arrested me about three times for speaking before this contempt attempt) and it shut him down.

This was on the third day of the battle in his courtroom/sham jury trial last January - so after this confrontation backed him down he sat WAY BACK in his chair for three hours and let me make the record, while the jury waited in the back. MAKING THE RECORD WAS MY ONLY GOAL ANYWAY TO UPDATE THE RECORD IN OUR CASE. Unfortunately for us, the juries do not understand anything at all, and these confrontations scare them, so all the knowledge of court process and higher law goes right over their heads and they do EXACTLY what the judge LETS them do by the way he manipulates the instructions. This judge held his finger to his upper lip and looked like a cadaver for three hours, listening to the record of the crimes of our evidence against the state and his own treason as I outlined what has happened.

That is how you make the Record. You have to use another trick called "OFFER OF PROOF". When they fight you and attack you, and rage, and say you can't say anything in front of the jury, and the DA interrupt literally EVERY sentence to stop you from speaking for days (I have gone through this!)... You tell the judge

"I am going to make an offer of proof for my appeal."

He sometimes will go in the back room altogether and leave the record on, or he will sit way back and listen while you make the record of your facts without the jury present. Another trick process word is "offer into evidence" they will let you go around for days and be denied because you don't say it that way..... They are insane, but if you do use their words they know that they have to acknowledge that this is their process and they use it so you have to be able to use it too.

Another important phrase to use is, RUSH TO JUDGEMENT. After going around with them to a certain point and being blocked at all points, you say "are you trying to rush me to judgement?" WOW - it works - boy they sit back so fast and shut up you would not believe - you would think they were shot - supposedly four times in a hearing saying that gets a reversal, but with us they don't give us anything, so I am not sure. But it is an important TOOL, you say this and it means they are preventing you from putting on your evidence as a lawful court and judicial due process requires, and for you to say this as they are doing it is like shooting them in their chair.

I hope people will write these things down in front of them when they are terrified in court - everyone is terrified in the court, even the attorneys, especially when you are bringing truth of this magnitude in there - we say where the truth meets the lie there is fallout - like a neutron bomb, you definitely stir up the hornets nest when you speak the truth in their courtrooms.

The rest of the Process for the People to Access the Courts is in the book we wrote. We learned these tools more recently and they are an "addition" to the information in the Sui Juris Book. This is what REALLY happens when you are in there, not what we think will happen or hope will happen. And learning these tools, you are prepared to meet this present evil face to face.

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The Fallacy of Loan Modifications

The fallacy of loan modifications help move people toward foreclosure by the belief that the system is designed to help them. I will start this by stating that I am actually an optimist. Although, it is getting more and more difficult to find that place in today's world of finance and political and corporate malfeasance. The arrogance and greed of Wall Street and Washington and the frustration and confusion of the citizens is the game. The mob mentality and the manipulation of fear is the fuel… This is the largest corporate/governmental land grab in history. As the government owns Freddie and Fannie, due to the failed bailouts, (these institutions back 90% of American home loans) and the other banks are making record profits after they received their bailouts, yet are foreclosing en mass and not lending, this tells the story. Quite simple really. When the people begin to believe the level of corruption, from BOTH parties, and the fraud and

corruption on Wall Street, and ACT against it things will change. And it can change overnight. France is a good current example. This will go down in history, that is if the future history books are NOT written in TX, as the largest governmental and corporate land grab in history. The people that deny that this is taking place are not living in the real world. The people that refuse to think the world is this way are not living in the real world. You MUST wake up in order to take back what Wall Street, The FED, and Washington has taken from you! This is a NON PARTISAN situation… Most people are asleep, and in denial of the true actions taking place. People are walking away from homes before playing their last hand, because they don't understand the game, their options, their state's foreclosure laws, the banks legal options, or even the fact that they have the opportunity to challenge the bank. People are nervous about their credit more than they are their home. The world of credit scores as it existed is over and new lines and rules MUST be redrawn. All a FICO score is is a calculated measure of risk tolerance that banks use. Fair Issac, the FICO people, and the 3 credit score firms are also deep into their own fraudulent situations. The whole system is in free fall. The mass media is trying to pacify the people with falsehoods, mis and dis information so the entire system doesn't simply collapse. Yet the people and "their own little" system of paying bills and having food on the table has collapsed. Understand that your government, a bank or any corporation is NOT ON YOUR SIDE. They can write off losses, or get bailed out. They care NOTHING about the loan holder, or card holder… If you have stopped paying your mortgage, don't start again until the bank gives you a new mortgage in line with the current values and percentages.

They will send a letter of foreclosure to you, they will threaten you. Possession in 9/10ths of the law. Each state has different Foreclosure policies, timelines, and practices. Learn them!! When the bank forecloses, they must go to court. You should also go to court. There will be a moment when you can ask the court that the bank produce the ORIGINAL loan document to the property in question that has YOUR INK! Due to the fraud, corruption, and criminal activity on Wall Street and the packaging and repackaging of loans that took place, and is still taking place, over 80% of the time the bank is UNABLE to produce the appropriate documents. It is their obligation to supply that document as without it they are in NO position to sue for the right to foreclose. Then follow this with a lawsuit against the bank for harassment, intent to commit fraud, coercion, and along the way we can think of many others…repackage that into massive class action lawsuits…you know… All of their threatening phone calls, threatening letters of intent is designed to get the homeowner to collapse under that pressure BEFORE it reaches the courtroom. Foreclosure court is currently at the advantage of the homeowner, and not the bank. Why else would the banks and those firms involve forge signatures. Because they don't have original documents, because they know that they cannot win in court if the people begin to challenge. Now, put that en mass!! That is where the power lies!! They must forge because they cannot come up with the appropriate documents. The paperwork is lost in the shuffle of the Wall Street fraud and corruption of packaging and repackaging loans to resell on the open market. There are even options that traders can buy for options on loans. To trade on loan packages and the real estate market. People spend money to agents that say to them that they will help them with their failed mortgage. This is the one of the biggest frauds being perpetuated today. They tell the homeowner that they will help them with the mortgage company to refinance their loan into a modification. Then they take their money and walk away, knowing the people don't have

the money to sue and come after them for fraud. If the bank cannot help you, that agent cannot help you. And the banks are NOT helping people. Simple. Do not use these con artists. It is more cost effective for the banks to play the …"oops, we pushed a wrong button" game, or "we didn't get that paperwork" response. They do this to drag out the process. To wear down the people to a point that people give up or feel that they will lose in the long run, so cut the loss now and move on. People are in a state of confusion with their loss of money, jobs, pride, family turmoil to understand that the banks care NOTHING about helping people. It is the banks position to help their stock holder, thus the Wall Street suit can get the bonus… It is so simple, but most people don't want to believe that this is how the world is. IT IS… This is the world we live in. Believe it. The beautiful, wonderful world we live in also has very dark and shitty corners. Understanding this will HELP you live in it. Hiding and not wanting to feel that this is the case will NOT help you. That is his world and the world of the elite on top that create war for profit, buy the judges, lobbyists and congresspersons in order create rules and regulations that help them win in situations like we are in. This will end when people step up and challenge the banks, en mass.

Page 3 of 4

How about this – Everyone simply stop paying all of their mortgages, and credit card debt. Let the banks try to come at every single person in the country begging. The money savings to the people will be put back into the economy in much more productive means than simply paying corporate debt. This corporate debt will be washed away anyway, through the corporate laws allowing them to buy down and write off their debt. The stockholders will take a hit, so sell before begin this process… But what about FICO score. FICO scores are already dead in the water. The credit system that was designed is over. FICO means nothing when the banks are not lending. They are finding it easier and more cost effective for the banking institution to foreclose. Consider this: Does the government REALLY want to clean up this mess or can they find ways to meander through it until the world "gets back to normal" all the while making massive profits along the way… Okay, let me put it to you this way, and you take it for what it is…In July 2008, Indy Mac failed and was seized by the FDIC. The assets of Indy Mac bank were sold to One West Bank in March 2009. One West Bank was created and is owned by Goldman Sachs VP Stephen Munchen and Billionaires George Soros and John Paulson. All of the residential 1st mortgages were purchased at 70% of the par value of the loan, and all HELOC's were purchased at 58% of the par value of the loan. Then, the deal these men made with our tax dollars via the congress and senate who agreed to the deal, was that the FDIC would cover 80%-95% of the losses due to any short sales or foreclosures. Now, these men bought the loans at 70% of the value and are guaranteed to 95% of their money back. But, here is another part of their deal. The losses that are guaranteed are to be calculated on the original loan balance. This leaves a spread of profit on the table of a minimum of 20%…GUARANTEED. They CANNOT lose. Your tax dollars are securing their profit margin. So let me spell it out a bit more clearly…(This is a (real) Real Estate Transaction) The foreclosed homeowner had a loan balance of $485,000. One West Bank paid @ 70% 334,600 for this loan. Now, this homeowner is offered a short sale from the bank or in the marketplace of $241,000. Now, the ORIGINAL loan amount is what the FDIC agreed to back the percentage loss to One West Bank (or should I say Goldman Sachs and friends). So the difference in the adjusted loss is $244,200. So, the FDIC writes a check to One West for 80% of the loss to the tune of $195,360. So, now you would add the

$195,360 from the government, to the profit of the short sale of $241,000 to reach a total of $436,360. But wait, One West only paid $334,600 for the loan. You see, all the bank had to do was sell it for WHATEVER they wanted to…the bank CANNOT lose money on this deal…So, Goldman Sachs, I mean, it's subsidiary One West Bank, just profited on the sale $101,760.Thanks to YOUR tax dollars and the arrangement with the FDIC, the Goldman Sachs, I mean, it's subsidiary, One West Bank will be doing this every day, hundreds or even thousands of times for a few years to come…GUARANTEED!

So, if you are still asking yourself "why is it so hard to get a loan modification?" the answer might be simply that there is TOO much money to be made with write offs, short sales, and foreclosures than on loan modifications… You see, One West Bank actually profited from the sale to the tune of $101,760 even though it was sold for a lesser amount than what they bought it for …DO YOU SEE, YET? DO YOU GET IT? And, by the way, the FDIC recently announced that it needs to start borrowing money from the Treasury. Now, the Treasury is the place where all of the Goldman Sachs people come from. You know, Hank Paulson, Meg Whitman, and so many others… The Treasury is the government, who Constitutionally, has the right to print their own money, but cancelled this right in 1913 made a deal with the PRIVATE group of white, rich, elite men from Germany, Austria, Switzerland to create the PRIVATE bank called THE FEDERAL RESERVE. or known more commonly as, The Fed. Note, I said PRIVATE BANK called The FED…

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Doug Boggs is an experienced real estate investor, developer, builder, activist, and a *nationally certified Bloomberg Forensic Loan Auditor*. In 2011, Doug, while acting as his own attorney, sued Wells Fargo Bank for fraud in a four year long battle in CA state court, Appellate, State Supreme, and Federal court. Mr. Boggs is *not* an attorney and is *unable* to provide any specific legal advice. This blog is not engaged in providing any legal, financial, or other professional services. Any information contained in his newsletter is not intended to constitute legal advice. Subscribers or readers of this blog, or associated newsletters should not act upon this information without seeking professional legal counsel. Transmission of the information contained in this blog is not intended to create, and receipt does not constitute, any business relationship between the sender and receiver. Share this:

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Common Violations in Loan Modifications

Mortgage servicers handle loan modification applications from homeowners. Unfortunately, servicers sometimes make serious errors when processing modification requests. This can cause a number of problems for a homeowner, like missing out on getting the loan modified or even a wrongful foreclosure.

Related Products

Read on to learn about the most common servicer violations when it comes to loan modifications and find out what to do if any of these things has happened to you.

Common Violations in Loan Modifications
Below are some common problems that servicers perpetrate in the loan modification process. (Learn about how mortgage servicing works.) https://www.nolo.com/legal-encyclopedia/how-mortgage-servicing-works.html

Failing to Process the Application in a Timely Manner
Many homeowners have experienced lengthy delays when waiting for the servicer to make a decision on whether or not to grant a loan modification. In some cases, the servicer doesn't tell the homeowners that they are missing documents necessary for the loan modification decision. In others, the servicer simply doesn't get around to reviewing the request in a timely manner. Federal mortgage servicing laws, effective January 10, 2014, aim to reduce these delays. Under these laws, when a servicer receives a loan modification application from a homeowner 45 days or more before a foreclosure sale, it must:

- review the application
- determine if the application is complete or incomplete, and
- notify the borrower within five days stating that the application is complete or incomplete. (If incomplete, the servicer must describe the information needed to complete the application.)

If the servicer receives a complete application more than 37 days before a foreclosure sale, it must review the application and determine if the borrower qualifies for a loan modification within 30 days. However, the servicer generally doesn't have to review multiple applications. But if you bring the loan current after submitting an application, you may submit another. (Learn more about federal laws that protect homeowners who're facing a foreclosure.) https://www.nolo.com/legal-encyclopedia/new-federal-rules-protecting-homeowners-with-mortgages.html

Telling Homeowners They Have To Be In Default
During the foreclosure crisis, it was commonplace for servicers to tell homeowners that they couldn't get a modification unless they were late in payments. Sometimes—but not very often—servicers still make this statement. But this is almost always incorrect. For most modification programs, you may be either behind in payments or simply in danger of falling behind (called being in danger of "imminent default") on your mortgage payments.

Requiring a Homeowner to Resubmit Information
In some cases, servicers ask homeowners to submit and then resubmit information when applying for a loan modification. This is especially true in the case of income verification documents—like pay stubs and bank statements—which can quickly become outdated in the eyes of the servicer.

In addition, servicers might also sometimes ask borrowers to resubmit documentation when the paperwork gets lost. If this happens to you, you should resubmit any duplicate information that the servicer requests, but be sure to keep a record of when you sent it, who you sent it to, and send it by some method that you can track.

Using Incorrect Income Information In Processing the NPV (Net Present Value) or Making Another Calculation Error

Sometimes, a servicer makes an error in a calculation when evaluating a borrower for a loan modification, which leads to an improper denial.

NPV calculations. When a servicer evaluates a borrower for a loan modification, it looks at financial information about the borrower, the loan, and the property (such as the borrower's income, the unpaid principal balance on the loan, the property's fair market value, etc.). It then sometimes makes a comparison between:

- the estimated cash flow the investor will receive if the loan is modified, and
- the investor's cash flow if the loan is foreclosed.

If the investor would be better off if the servicer forecloses on the loan, rather than modifies the loan (this is called NPV—or net present value—negative), then the servicer doesn't have to modify the loan. Sometimes servicers make a mistake when calculating the NPV.

Under federal law, if a trial or permanent loan modification is denied because of a NPV calculation, the servicer must include the inputs used in the net present value calculation in the denial notice.

Other calculations. Other kinds of miscalculations can lead to a modification error. For example, in 2018, Wells Fargo admitted that due to a computer glitch, it failed to give modifications to almost 900 mortgage-loan borrowers—even though they qualified for relief. The bank eventually carried out foreclosures on around 500 of those homeowners.

Failing to Convert a Trial Modification into a Permanent Modification

Many loan modifications start with a three-month trial period plan. So long as you make three on-time payments during this period, the modification is supposed to become permanent—assuming you still meet the eligibility criteria.

When a servicer promises to modify an eligible loan, homeowners who live up to their end of the bargain expect the servicer to keep that promise. But sometimes homeowners who have successfully made their trial payments are unable to get the servicer to make the modification permanent.

Servicing Transfers in the Middle of a Modification

Servicing transfers are common in the mortgage industry. In some cases, the new servicer fails to review an already submitted loss mitigation application (that is, an application for a loan modification or other foreclosure avoidance option) or fails to honor the modification agreement with the previous servicer.

Under federal law, if a complete loss mitigation application is pending at the time of the transfer, but has not been evaluated, the new servicer has to review the application within 30 days of the transfer date.

Also, a servicing transfer shouldn't affect a borrower's ability to accept or reject a loss mitigation option offered by the prior servicer. If a new servicer comes into the picture and the time frame for accepting or rejecting a loss mitigation option offered by the old servicer has not expired as of the transfer date, the new servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period.

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Stopa: Servicer Cannot be Plaintiff in Foreclosure
Posted on February 17, 2012 by Neil Garfield

Editor's Comment: Stopa is right on here. If the servicer is allowed to foreclose, and the auction is conducted, the property sold, what happens to the rest of the obligation that the servicer was not entitled to receive? How do the real creditors collect? How much can the Servicer submit as a credit bid? Why can the servicer submit anything as a credit bid on a transaction in which the servicer was not a party?

If the servicer claims they were a party by virtue of the securitization documents, then they are admitting that the loan origination documents were defective or at least are not the complete evidence of the terms of the loan and the identity of the lender. If they admit that, then their sole claim to agency for a principal is based upon a PSA that requires the manager or trustee of the pool to reject a non-performing loan submitted to the pool after the 90 day cutoff.

If the loan never made it into the pool and it is now obvious that most did not, then the claim of servicing rights arising from the pool documentation don't apply giving the servicer no rights at all.

Plaintiff as Servicer? I Think Not.

by Mark Stopa
http://www.stayinmyhome.com/blog/2012/02/plaintiff-as-servicer-i-think-not/

I observed a foreclosure trial today, and one aspect of it in particular really bothered me. The plaintiff prosecuting the case was not the owner of the Note, but merely the servicer. Many judges and, of course, plaintiffs' attorneys, seem to think this is fine, arguing the servicer can

foreclose because it's the "holder" of the Note, even though, by its own admission, it's not the owner.

In other words, the plaintiff/servicer concedes it does not "own" the Note, i.e. it's not the plaintiff's Note, but because it has the Note in its possession, and the Note is indorsed in blank, it can foreclose.

I've thought about this argument a lot, read a lot of case law, and see some fatal problems. Frankly, I'm frustrated these problems are largely being ignored and hope that everyone starts arguing and adjudicating this issue appropriately.

First off, taking the plaintiff's argument to its logical extreme, anyone can steal a Note with a blank indorsement – literally, be a thief – but because he possesses the Note, and the Note is indorsed in blank, he could foreclose simply because he's the holder. That sounds insane, but once you accept the argument that the plaintiff need only be the "holder," and that ownership is irrelevant, that's what you're allowing – a thief can foreclose. Anyone can foreclose. Come to court with a Note with a blank indorsement, and how you obtained that Note is irrelevant – you can foreclose.

Respectfully, that's just not the law.

It can't be the law.

There's no way the law can allow or would allow a thief to foreclose.

Undoubtedly, this is why IOWA Rule 1.944 requires the plaintiff be the "owner and holder."

I can hear the plaintiffs' attorneys now. "But many Florida cases say being a holder is sufficient; they don't have an ownership requirement." To a limited extent, I suppose that is true, but read those cases. For example, Riggs v. Aurora Loan Services, 36 So. 3d 942 (Fla. 4th DCA 2010), talks at length about whether the plaintiff was the holder, and plaintiffs' lawyers love to cite Riggs for the proposition that being the "holder" is all that matters.

However, the issue of ownership wasn't a question in Riggs – in that case, the plaintiff showed it was the "owner and holder." Respectfully, it is totally misguided to take a case where ownership was not in question and use that case for the proposition that ownership is immaterial. It may have been immaterial in that case because ownership wasn't disputed, but that certainly doesn't mean ownership is immaterial in all cases.

Consider, again, my thief example. Once you accept that a thief cannot foreclose, you necessarily accept that the plaintiff who forecloses must own the Note.

Again, I can hear the plaintiffs' lawyers. "But a servicer can foreclose because the servicer is the holder and has a servicing agreement with the owner, so it's foreclosing with the consent of the owner of the Note." This was the argument being espoused at the trial I observed today – **the servicer doesn't own the Note, but is foreclosing with the consent of the owner.**

This argument may sound unique or complicated, but it's one the Florida courts have adjudicated for many years in a number of contexts – that of principal and agent. Here, the plaintiff is saying that it, the servicer, is acting as the agent of the owner, the principal, by prosecuting the foreclosure case.

This is the dynamic we see in thousands of foreclosure cases – the servicer alleges it can prosecute the case for the owner under a theory of agency.

In my view, this begs the question of when can an agent bind the principal? Let's say that again:

Under what circumstances can an agent bind a principal?

There are zero Florida cases that discuss this concept in the context of foreclosure cases, so let's look to case law in other contexts.

In Fla. *State Oriental Med. Ass'n v. Slepin*, the First District ruled an attorney was not entitled to collect attorneys' fees incurred representing a corporation because the attorney (the alleged agent) did not have the authority to act on behalf of the corporation (the alleged principal). 971 So. 2d 141 (Fla. 1st DCA 2007). The attorney said he was acting on the corporation's behalf, and he purported to act on its behalf, but the First District ruled he wasn't, in fact, an agent and didn't have the authority to bind the corporation. In so ruling, the court explained:

> A finding of actual authority would require evidence that a principal acknowledged an agent's power, that the agent accepted the responsibility of representing the principal, and that the principal retained control over the agent's actions.

Similarly, the Florida Supreme Court has explained:

> Essential to the existence of an actual agency relationship is (1) acknowledgment by the principal that the agent will act for him, (2) the agent's acceptance of the undertaking, and (3) control by the principal over the actions of the agent.

Villazon v. Prudential Health Care Plan, 843 So. 2d 842 (Fla. 2003).

Let's read those requirements closely, and break them down, one by one.

1. The principal acknowledged the agent's power.
2. The agent accepted the responsibility of representing the principal.
3. The principal retained control over the agent's actions.

In the trial I observed today, the plaintiff/servicer admitted it did not even know who the owner of the Note was. Think about that for a minute. The servicer was supposed to be acting on behalf of the owner, with the owner's consent, but it didn't even know who the owner was. On these facts, how on earth could the servicer possibly prove the owner/principal "acknowledged the

agent's power"? Clearly, it couldn't, and it didn't. The servicer couldn't even identify the owner, much less prove the owner authorized the servicer's actions.

This argument is so simple it's ridiculous.
"I have authority to foreclose."
"Who gave you authority?"
"I don't know, but I have authority."
I can just see my kids making this argument to me and my wife.
"I have permission to stay up until 10:00. That's my new bedtime."
"Who gave you that permission?"
"I don't know, but it's allowed."
These arguments don't even begin to make sense, but that's what the servicer was arguing today.
"I don't know who gave me authority, but I have authority."

As I see it, to prove the requisite authority, the servicer must either

(a) introduce a servicing agreement into evidence; or

(b) provide testimony from the owner as to the servicer's authority.

Without one of those two things, I just don't see how the servicer can possibly show the owner of the note authorized the servicer to foreclose.

Do you disagree?

You tell me … **without a servicing agreement or testimony from the owner as to the servicer's authority, how can the servicer prove the owner "acknowledged the servicer's power"?** Once you conclude there is no such answer, then you necessarily agree that a servicer cannot foreclose without such proof.

Similarly, in the trial I observed, the plaintiff/servicer failed to show the owner of the Note "retained control over the agent's actions." After all, how could the servicer possibly show the owner of the Note "retained control over the servicer's actions" when the servicer couldn't even identify the owner?
Clearly, the servicer was acting as its own boss here, answering to nobody.

I realize that some of the arguments being espoused by servicers in foreclosure cases seem unique, and there appears to be an absence of case law setting forth these issues. However, once you realize a servicer purports to act on behalf of the owner, and is hence just another fancy word for an agent, it should become clear that basic principles of law regarding agents and principals must apply, as quoted above. This requires proof in foreclosure cases that, many times, is simply not forthcoming.

Mark Stopa Esq.

http://www.stayinmyhome.com

40 Responses

Robert 'Tuna' Townsend, on August 31, 2014 at 7:11 pm said:

UCC-3-203 is clear enough: only a holder in due course can foreclose. and the holder in due course can only acquire all right/title/interest from the original lender/beneficiary, showing special endorsements (named endorsee) and the corresponding written agreement (usually the assignment of mortgage/deed of trust) according to the Statute of Frauds – transfer of real property.

The reality is this: no securitized mortgage (whether you can track it into a trust or not) has a 'party entitled to enforce' ("Pete"). These loans were void ab initio. Note and mortgage split at closing and Note further split- note intangible (payment stream) directed to the trust 'investors' and the tangible note digitized and destroyed.

A multi-trillion dollar Ponzi that has collapsed the central banks of the world.
Only one solution: Jubilee.

Patrick, on November 5, 2012 at 10:45 pm said:
Plaintiff fails to attach any documentation, such as plaintiff's servicing contract, authorizing it to foreclose on the Note/Mortgage clearly in the name of another. See *Elston/Leetsdale LLC vs CW Capital Management LLC* (FLA 4th DCA 2012).
Allowing an alleged note holder to commence a foreclosure action relying on UCC 673 Florida Statute without alleging present note ownership as some commentators favor is equivalent to allowing a party to foreclose without alleging lien rights still exist. Foreclosure is an in rem action to enforce the lien instrument, not an in personum action to enforce a note for money damages, and lien rights only exist as long as the note's stored value presently resides on somebody's general ledger.

Complaints which fail to presently "allege ownership" of the Mortgage Notes in question fail to state a cause of action on the security instrument and should be dismissed. *Smith v. Kleiser*, supra; see also *Morales v. A1Iright Miami, Inc*., 755 So. 2d 198 (3d D.C.A.Fla. 2000); *Dollar Systems v. Detta* 688 So. 2d 470 (3d D.C.A. Fla. 1977).

Plaintiff is not the "holder" of the promissory note at issue in this case. Florida Statutes §671.201(21) defines "Holder" as

> "The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession."

While Plaintiff might eventually prove to be the bearer of the instrument, Plaintiff, also presently alleging it's the mortgage servicer of the subject note and mortgage, would not have the right to seek to make collection or obtain payment of a claim under the subject note on behalf of themselves pursuant to 24 C.F.R. $3500.2(b) (defining the act of "servicing" under the Real Estate Settlement Procedures Act as "receiving any scheduled periodic payments from a

borrower pursuant to the terms of any mortgage loan…and making the payments to the owner of the loan or other third parties… pursuant to the terms of the mortgage servicing loan documents or servicing contract.") (emphasis mine)

The instrument before this Court is not payable to the person in possession because a series of further transactions must have to occur for plaintiff to allege it's the current mortgage servicer of the note and mortgage. Thus the Plaintiff fails the second prong of the definition. See Troupe V. Redner, 652 So.2d 394 (Fla.App. 2 Dist. 1995) and Booker V. Sarasota, Inc., 707 So.2d 886 (Fla.App. 1 Dist. 1998) Title rights include (1) the power to demand payment; and, (2) the right to be paid consideration for the loan whereby, plaintiff, as an alleged mortgage servicer, is not the holder of title nor a person entitled to unilaterally enforce the subject instrument because it would only be authorized to demand payment from the borrower under a separate servicing agreement apart from the subject note; a contract which plaintiff doesn't even bother to attach to its complaint (emphasis added).
Like

1. 

Joni Brit, on February 27, 2012 at 1:40 am said:
When does the agent bind the principle? And can a thief foreclose? if you can answer that and find a way to add some punitive damages thrown in for good measure, you've solved this whole mortgage crisis, and I think you know that.
We're rooting for ya!!!!

citizen kane, on February 26, 2012 at 10:45 am said:
It actually simplifies the whole process, if we allow the Servicer of a Loan that was never securitized to foreclose on that mortgage, we are recognizing that an agreement was made between the Servicer and Investor, eg Wells Fargo and Deutsche Bank, before any refinance occurred, to allow a mortgage purchased in secret, never registered. to be service without a valid mortgage assignment, and contrary to all S.E.C. regulations as well as the PSA agreement of the Trust. By giving validity to Servicer to foreclose, we give validity to this most illegal and immensely profitable relationship between investor and servicer. Therefore once Servicer, eg Wells Fargo, sues to foreclose, The State as was well as Defendant's attorney can sue the Investor, eg deutsche bank, for every time the derivitive, eg., 106×03 Deutsche Bank pmsr Wells Fargo cts ACE 2005 HE-5, has been securitized in a Trust, up until the billion dollar REMICS they are still securitized in today, plus punitive damages.

Kathy Charlotte, on February 20, 2012 at 2:17 pm said:
Awesome Nancy! Thank You! You have your "Drum Roll" They are turning on each other ….
Get the Popcorn Ready!

Trespass Unwanted, on February 18, 2012 at 2:02 pm said:
@Chris,
That's crazy! I don't think anyone can self appoint themselves as Trustee. I think someone either creating the trust, or the beneficiary of the trust can set up the appointment. Trust law is complex for sure, but I think they file a lot of papers to create an illusion of right when if you know how a Trust is created and administered, you'd find out they 'can't do that!'.

A breach of trust happened long before this property stealing began. Someone, somewhere setup a trust and then created all these Trustee relationships we know nothing about. We end up 'representing' the beneficiary' but we don't have the benefits of a beneficiary and we should be the beneficiary by birth right. I was reading the other day someone called a 'breach of trust' with the Trustees and demanded the rents from the use of their estate while they were 'presumed dead' from the way this system has benefitted some and oppressed others.
If this is true, it may take a while to get the leech off the system. I mean sucking the life out of the host is what leeches do. You can't say, 'Leech, it's time for you to get off, oh and by the way there is no other host for you to suck the life out of so you gonna die.' The leech is not going to want to hear that…it may do a number of things to the host before it lets go…that's for sure. Well leech, this host plans to survive and you are no longer welcome to take, take, take, and not give back, so you have to go. We want you gone. Please leave peacefully, as while you were leeching off of us we were peaceful.
@Nancy Drewe,
Wow, that's some piece of work you posted. I got half way through and lost my focus, so I'm going to make sure I see what you are telling us in the post. Thanks for the details.
Trespass Unwanted, Corporeal, Life, Sovereign by Divine Right, A Free and Independent State, a Free People, In Jure Proprio
Like

Enraged, on February 18, 2012 at 1:34 pm said:
@Chris,
I understand your strategy. Keep yourself covered regardless. Those guys can be really, really vicious and have no soul.
Question… You may want to look it up.
Apparently, you're dealing with a lowlife crook. I would suspect that you are not the only one to have, if that guy handles foreclosures. Have you considered checking all the cases in your state in which he was representing the plaintiff servicer, looking up the kinds of result he has obtained, zeroing on defense attorney(s) who beat him at his own game and contacting him/them to see whether it would be possible to start a class action/petition with the bar against that A.H.?
Just a thought but, at this juncture, I'm afraid that's all I have to offer.
The reason I am asking is that, more and more, attorneys are going after other attorneys… I like that. I like that very much. And it always carries more weight when attorneys go after their own…
Like

2. 

chris, on February 18, 2012 at 1:15 pm said:
@ Enraged
You are correct, but I don't want to stir the pot, just yet. If I leave him in play I can use the information and documents against him, at least that's my plan. If I stir the pot now, I may run the risk of getting the "illegal" things he did, in the name of the servicer and he, the Plaintiff/Attorney/rustee, cleaned up. He's dug a whole…he needs to hold onto the shovel, he's going to need it, so he doesn't suffocate in the whole.
Complaints will be made, with documentation, all in time. I have found in this process, one needs to pay attention, verify, document and wait! Strategy and timing is just as important as the case. Thoughts?

Like

Jeff, on February 18, 2012 at 1:15 pm said:
I would like to bounce this approach off anyone who cares to answer it. Rip it apart, add to it, polish it up, explore if this approach, from a tactical point of view, holds any merit for the defendant., or am I trying to reinvent the wheel?
Assuming that discovery has already taken place in a CONTESTED foreclosure case, a Plaintiff ultimately files a motion for summary judgment,
Once the defendant receives notice that the plaintiff has filed their summary motion, the defendant likewise files a summary judgment of their own.
By filing their motion, they (plaintiff) are saying in effect to the judge, that no more issues of material fact exist, therefore, the judge should rule in their favor.
At the hearing for summary judgment, the judge hears both motions at the same time. Civil Procedure dictates that the plaintiff speaks first.
They state their reasons why the judge should rule in their favor and finish by saying there are no more issues of material fact your honor.
Before the judge rules on plaintiff's motion, defendants object and say there are several issues of material fact still remaining your honor, the defendant's then present strong evidence or a convincing argument challenging the plaintiff's motion. (Rule has it that the judge MUST rule in favor of the defendant if there is the slightest possibility that genuine issues of material fact exist.)
Before ruling, the judge now hears the defendant's motion for Summary Judgment.
The defendants simply say to the judge, your honor, counsel for the plaintiff just stated that there are no more issues of material fact remaining in their motion. Therefore your honor, THE PLAINTIFF HAS BY THEIR OWN ADMISSION, NO ISSUES OF MATERIAL FACT SUFFICIENT ENOUGH TO CHALLENGE THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.
If I am correct, this tactic has effectively used the plaintiffs own admissions against them and used them to support the defendant's own motion for summary judgmemt.
Like

3. 

Nancy Drewe, on February 18, 2012 at 1:09 pm said:
Active trust
a trust where the trustee is held accountabile for additional responsiblities. In respect to control or management of trust, colelction of rent, profkits, and sale proceeds, administration of trust property, and passive trust, trustee performs no active duties. So how scary is the following? A trust is a relationship where the trustor 'you are the homeowner trustor in all real estate deals with trustee'. The trustee holds title, you homeowner/trustor vested to agent another person, the trustee, the right to hold title to a proeprty and assets for beneficary. Are you impaired? Or are you uninformed? What determines concealment ? Where there is an organized group nationwide of agents, dealers, distributors, brokers who take possession of property for unknown third parties through deceptive acts, and congess provided civil remedy for such concealment. St. Germains – in the event the real lender becomes aware that the 'real borrower' transferred ownership the real lender may ignore or accelerate the title. A restriction to you homeowner/trustor is the real borrower withheld any right to negotiate, and witheld right to sell

loan to thrid party.
The real lender may callthe full blance due upon sale or transfer of ownership of the property.

The “due on sale” (aka “acceleration clause”) is a provision in a mortgage document that gives the lender the right to demand payment of the remaining balance of the loan when the property is sold.
It is a contractual right, not a law. This means that if title to the property is transferred, the bank may (or may not), at its option, decide to “call the loan due.”
Actually its the ‘due on sale clause’ banks inserted during the 1970’s that caused the savings & loan collapse. For the fist time in our history the Us Treasury unable to meet obligation of creditors allowed private trust funds, such as ‘variable investors trust funds’
Private exchanges of default real estate assets during trustee sales.
United States Supreme Court case, Fidelity Federal Savings and Loan Association v. de la Cuesta, 102 S.Ct. 3014, (1982), thereafter, Congress passed the “Garn-St. Germain Federal Depositary Institutions Act” (12 U.S.C. 1701-j) which codified the enforceability of the “due on sale” clause, despite state statute or case law to the contrary. Civil Remedry.
Borrower transfer of Title to third party consumer-homeowner/trustor and grantor – fact is Congress assured that there is no “due on sale” jail, no consumer regulation of the Secondary Market related to predatory lending in all purchase money loans meaning real borrower holds obligation as investor and agreed to sale of mortgage servicing collection rights. There is no one who will help any consumer harmed in secondary market!
The Agents know that transferring title to a property secured by a “due on sale” mortgage is not illegal. To be “illegal,” you must be in violation of a criminal law, code, or statute. There is no federal or state law which makes it a crime to violate a “due on sale” clause.
The Mortgage Broker/Banker allows the sale to third party as long as the sale ‘mortgage’ recorded in land records. If the lender discovers the transfer, it may at its option, call the loan due and payable. If it cannot be paid, the lender has the option of commencing foreclosure proceedings
Are you willing to take a property subject to a mortgage containing a “due on sale” clause ? That is exactly what we all did!
The Federal Home Loan Bank Board, which was disbanded in 1989 and replaced by the Office of Thrift Supervision, takes the absurd position that the Act only applies to owner-occupied homes. [See 12 C.F.R. 591.]
However, the clear language of Garn Act specifically states that it applies to residential one-to-four family homes. There is no mention that it must be “owner-occupied.”
Concealment challenge … would or would not — be in direct conflict with the Congressional statute therefore would probably be struck down in court as being “ultra vires.”
A land trust is a form of a revocable, living trust which is exempted under the Garn Act. A land trust, like a living trust, is create by two legal documents:
1.A trust agreement between the creator (called “grantor” in legal terms) of the trust and the trustee that defines the trust arrangement
2.A deed from the creator of the trust to the trustee
The trustee holds title for the benefit of the grantor. (In this case, the grantor is also the “beneficiary.”) If you place title to your property into a land trust, you have not violated the “due on sale” (so long as there is no change in occupancy).

Let’s say that you come across a seller who is willing to give you title to his property. The only “glitch” is that the loan is not assumable because the mortgage has a “due on sale” clause. Here’s the process for getting around it:
REAL ESTATE MORTGAGE INVESTMENT CONDUIT “REMIC”
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‘Seller’ signs trust agreement with you as trustee of trust and seller ‘trustee’ named as beneficiary of the trust (individual variable rider/note) sale of note to remic c/o aurora loan services, inc. Conduit for indenture trustee, and owner trustee related to investors variable trust fund (ubs warburg, … credit suisse…), for example. Seller sells ‘trnasfe’r title to trustee (no violation of ‘due on sales clause’.
Seller signed trust agreement with you as beneficiary and seller transfers title to trustee, and seller quiently assigns ‘sellers’ interest’ under trust to you the investor, mortgage broker/banker, similiar to transfer of stock in a corporation, and this assignment is not recorded in any public land record, you the seller ‘move out’ and the investor moves in, as beneficiary of the trust, and your trustee makes payments ot the lender, us we are the homeowner/trustor. We are the ‘trustee’ who begins making payments to the lender.
Seller’s interest under trust does trigger due on sale but who is going to tell the lender?
The lender will discover the sale in one of three ways:
1. Change of name on deed. Whose gonna tell in the office of the clerk? They just record what the beneficary of the trust sends them to record! Office of the clerk nationwide merchantile – don’t ask and don’t tell just record records.
Where is the notice of what a county clerk recorder does as mandated by the state treasury? Should there be legislation for all state county clerks to record their obligation to the treasury at least?
Will the lender notice that the name on the check is not the real borrower? Not likely since the servicer is the beneficiary now under agreement forwards monies due for ‘portfolio of mortgage loans’ to the lender.
Will the lender notice the change of hazard beneficiary? Not when the beneficiary is the insurance company’s affiliate!
If you notify your insurance carrier of a change in insurance beneficiary, the lender, is also a named beneficary? No the ‘servicer’ is the named beneficiary!
The ‘seller’ perceived to have implemented an estate planning device (individual variable rider/note policy) for lender who is an insurance beneficiary, and the servicers are the beneficiaries of the proceeds of sale from the remic the ‘hedge’ for the secondary market risk and lender’s acceleration of title related to due on sale clause.

Land trust new beneficiary is assigned, the lender will not be notified, since the insurance beneficiary has not changed. Strategy similar to transferring title directly from seller to buyer (called taking a deed ‘subject to”). Lender has contracted with ‘servicing company’
California Association of Realtors contain provisions contemplating a “subject to” transfer. [See, e.g., form LRO-14, Residential Lease with Purchase Option.]
The Official Utah Division of Real Estate forms also contain provisions for transfers in the face of a “due on sale” provision. [See Seller Financing Addendum to REPC.]
Form 3248, the “official” real estate contract used by New York Attorneys (jointly prepared by the New York State Bar Association and the New York State Land Title Association), contains a specific paragraph contemplating the buyer taking “subject to” an existing mortgage.
The state bars have no problem with lawyers helping clients conceal a transfer either. In Matter of Sabato, 560 N.E.2d 62 (Ind. 1990), the court found no ethical problem with an attorney helping a client circumvent a “due on sale” provision using a land trust as described above.
Which leads us in this discussion to sheriff sale or trustee sale in which acceleration of title c/o servicer beneficiary takes place.
Origination or default consumers peril at own risk!
Warning label to be affixed to all real estate transactions with servicer ‘agent’ for trustee – the consumer in ‘fiduciary risk’
for the sales escrow insurance agent nationwide are actually concealing they are selling at retail Individual Variable Riders/Notes) attached to deals for unknown third parties. The SERVICER agents, dealers, brokers, distributors do not act in best interest of consumer rather are trained and certified to act in best interests of TRUSTEE.
Warning: NATIONWIDE ‘STOREFRONTS’ ARE FULL OF SALES PEOPLE WHO ACT AS sales force for Trustee. Real Estate Brokers partner with Sales Agents who get deals approved by TRUSTEES. The Real Estate Broker’s Sales Agent may act independently and is not performing in best interests of both beneficiaries’ best interest – and i do mean you! Consumer – you deal on the telephone with a sales representative, agent, who deals with the real estate lawyer in the state the property located,
and both close in secret deals for trustee, who takes beneficial ownership and conceals from consumer ‘purchaser of property’ all entitlements, encumbrances, liens, restrictions of existing ‘grantors/grantees’ who are attached to property for life of loan. You consumer as a co-beneficiary having done business with an agent who is rewarded for sale of individual variable riders/notes, and makes deal with trustee who accepts as collateral a ‘mortgage’ recorded in public domain as placeholder of lien in which the ‘servicer’ is the actual owner of the ‘obligation’ of the ‘collection rights’ in whicy you consumer, you promised to pay cash advances for the individual variable annunity! And the monthly benefits are held in trust? Are held where? Ask yourself and do the following. Go out and look at property with a real estate agent, and look at real estate owned properties and properties in foreclosure. Decide if the sale agent and real estate agent have your best interests when they get rewarded for the deal in which you are sold propertyowned by a third party who is not recorded in the public land records. Agent acts on ttheir own self-interests to create loans for trustee to get rewards – consideration for transactions. These sales agents, are perceived to be treated like any insurance agent, who receives monthly stipends for active contracts.
How can a trustee’s sales agent sell nationwide ‘insurance/loan structrctured products’ and not be licensed, certified, to sell ? They have you sign a blank mortgage broker contract!

Best interests who conceals benefits due homeowner/trustor. risking that the trustee is not achieving the best value for the beneficiary.
Example: Fund Manager (agent) making more trades than necessary for a client's portfolio is a source of fiduciary risk, fund manager slowly eroding client's gains by incurring higher transaction costs than needed.
'SETTLEMENT AGENT' Servicer handles 'settlement of trade' in which actual securities and money are exchanged. Settlement will occur several days after the original transaction. Settlement Agents are responsible for settling the accounts of traders and making the process more efficient. The duites of a Settlement Agent can extend to examining land titles to accuracy, pro-rating property fees for current year of the transactions and interacting with local and state agencies to notify them about the transfer of ownership. Since the funding of escrow related to 'Structured Products' in sale of encumbrances, liens, entitlements, restrictions attached to property, the sale conducted in the state the property located by specially certified and trained real estate lawyers who are under contract with Qualified Intermediaries who take possession of real estate property first closing in secret several days prior to consumer signing promissory note, and during default, and during Sheriff Sale repeat the process. e.g. TRUSTEE SALE in judicial states, deed issued and recorded in public domain.
The deed executed
by sheriff, authority through court of equity, and signature of judge, who is a real estate lawyer. Has to be in order to conduct sale back to trustee.
CONVEYANCER, also known as Settlement Agent, Closing Agent
The Judge signs the Sheriff Deed and MUST BE A REAL ESTATE LAWYER, one certified to conduct the sale of a structured product, who clears title and sells back to beneficiary trustee servicer anybank na 'REMIC' who purchases for $100 does business with the substitute trustee the successor beneficiary
who will settleup with the trustee owner c/o servicer who is third party lender in secondary market.
Why is no one looking back from point of sheriff sale?
The judge issues additional orders which are not sent to 'defendant' who homeowner/trustor but are sent to 'defenant' servicer the obligor and party responsible to pay the individual variable rider/note during period of default and is the beneficiary of the title individual variable rider/note -benefits hidden from the 'homeowner/trustor'!
The beneficial owners 'servicer anybank na' remic set up credit enhancement for 'trustee owners' in which the value of the assets are protected at the full appraised value and retain power to hold real estate owned property for 'dealers'.
Settlement agent
JUDGE, Court of Equity, completing transaction between a Buyer and a Seller, through the transfer of Securities to the buyer and the transfer of cash or other compensation to the Seller. Real Estate professional for buyer conveying selling interest from buyer to seller ensuring orderly transfer of legal title from seller to buyer through the closing process.
"HERE COMES THE JUDGE" NO LONGER FUNNY … Sorry Flip Wilson… for the Judge does not copy on orders the Defendant the orders to issues proceeds of sale 'cash settlement' nor order ending period of settlement.
ORDER TO DISTRIBUTE PROCEEDS OF SALE (CASH SETTLEMENT OF FUTURES CONTRACT 'REMIC' HEDGE BENEFICIAL INTERESTS OF 'TRUSTEE')

CASH SETTLEMENTS
PART OF THE UNBUNDLED ‘PACKAGED SECURITIES’
‘PROCESS’ WHEREBY ‘SETTLEMENT DATE’ AND ‘SETTLEMENT PERIOD’
Foreclosure, a process that allows a lender to recover the amount owed on a defaulted loan by selling or taking ownership of the propertY c/o SALE BY STATE COURT OF EQUITY, AND SIGNATURE OF REAL ESTATE LAWYER WHO DEEDS, ‘CLEARS TITLE’ RECORDING ENCUMBRANCES, ENTITLEMENTS, LIENS, RESTRICTIONS TO ‘SUCCESSOR BENEFICIARY’ ALSO KNOWN AS THE SUBSTITUTE TRUSTEE.
SHERIFF WARRANTY DEED CLEARS WAY FOR SETTLEMENT OF CASH OVER EXTENDED PERIOD AS AGREEDED TO BY THE SUCCESSORY BENEFICIARY AND BENEFICIARY TRUSTEE SERVICER ‘REMIC’.
STARTING WITH MISREPRESENATIONS AND WARRANTIES OF ‘SHERIFF SALE’ OF ‘TRUSTEE SALE’
THE OFFERING OF ‘COLLATERAL’ ATTACHED TO PROPERTY PLACED FOR SALE TRACKED INSIDE SERVICERS PRIVATE EXCHANGES….FOR EXTENDED PERIOD OF TIME
THE ‘PUBLIC NOTICES’ ARE IN ADDITION, CAPTURED INSIDE THE RECONSTITUTIONAL POOLING AND SERVICING AGREEMENT OF A DEFAULT, AND ARE IN ADDITIONAL TO AGREEMENTS IN CONTRACTS AND PRIVATE EXCHANGES.
TRUSTEE’S SALE, THE PROPETY IS NOT SOLD DURING THE PUBLIC AUCTION AT RETAIL, INSTEAD, THE
BENEFICIARY TRUSTEE SERVICER ANYBANK NA ‘REMIC’ SUCCESSOR BENEFICIARY AND ‘TRUSTEE’ SETTLEMENT PERIOD ASSIGNED.
THE ‘LENDER’ SECONDARY MARKET WILL BECOME OWNER
WHO IS VESTED WITH BENEFICIAL INTERESTS IN TITLE INCLUDING ENTITLEMENTS OF TITLE, ENCUMBRANCES, LIENS, RESTRICTIONS, FORWARD SOLD TO SUCCESSOR BENEFICIARY
E.G. DIRECTORS MORTGAGE ASSET CONDUIT DBA ‘WELLS FARGO BANK NA’ DBA PREMIER ASSET SERVICES CO-JOINED WITH LENDERS PROCESSING SERVICES ASSET MANAGERS, AND SERVICER OF MORTGAGE LOAN
ATTEMPT TO SELL PROPERTY ON ITS OWN THROUGH ‘REAL ESTATE BROKER’ AND ASSISTANCE OF REAL ESTATE OWNER ASSET MANAGER, AND PROPERTIES ARE REFERRED TO AS BANK OWNED, AND THE ‘LENDER’ MAY REMOVE SOME OF THE LIENS AND OTHER EXPENSES IN ATTEMPT TO MAKE RESALE OF PROPERTY TO PRIVATE INVESTORS IN FIRST LIEN MARKET MORE ATTRACTIVE.
FOLLOWING THE SHERIFF SALE, THE PUBLIC DEED RECORDED ALLOWS THE TRUSTEE TO TAKE OWNERSHIP AND CHANGES STATUS TO NON-OWNER OCCUPIED AND TREATS PROPERTY AS INVESTMENT PROPERTY – EVEN IF COURT CASE IN APPEAL.
A CHEAPER ROUTE FOR WELLS FARGO BANK NA ‘LENDER’ AND ITS ‘ASSET MANAGERS’ AND ITS BENEFICIARY TRUSTEE IS TO AGAIN DECEIVE CONSUMER AND SELL BACK REAL ESTATE OWNED PROPERTY WHICH IS A SALE FOR DEED WITH HARD MONEY LENDER, AND THE PROCEEDS OF SALE, AND POWER OF SALE, LEAVE TITLE TO PROPERTY CLOUDED, AND SECRETLY THE COURT ALLOWS SALE TO UNKNOWN THIRD PARTY WHO WILL IN THE FUTURE ATTACH

BALOON LOAN AFFIXED TO ‘HUD1’ !!!! HOW IS THIS POSSIBLE BUT WITHOUT ‘SHERIFF SALE’ AND JUDGE LOOKING THE OTHER WAY!
BESPOKE PROCESS
SHERIFF SALE – NOTICE TO CONSUMER
BENEFICIARY TRUSTEE SERVICER ANYBANK NA REMIC NEW OWNER RECORDING IN PUBLIC RECORDS UPDATED DEED.
ALL THAT HAPPENED IS STATE COURT OF EQUTY ‘CLEARED TITLE’ FOR TRUSTEE TO TAKE BACK PROPERTY.
THE DEED WILL NOT LIST IN ‘PUBLIC’ DOMAIN PRIVATE ‘RECORD OF DEFECTS’ WHICH INCLUDE ENTITLEMENTS, AND ENCUMBRANCES, LIENS, RESTRICTIONS OF PRIVATE EXCHANGES WHICH ARE WET-INK OBLIGATIONS, LOANS AND SETTLEMENTS OF CASH, WHICH ARE ATTACHED TO THE PROPERTY.
THE JUDGE AND/OR ASSOCIATE JUDGE ACTING AS ‘TRUSTEE FOR STATE’ AND AS ‘REAL ESTATE LAWYER’ UNDER POWERS OF SALE
BENEFICIARIES
TRUSTEES
STATE SELLS PROPERTY TO NEW ‘SUCCESSOR BENEFICIARY’ AND ORDERS ‘CASH SETTLEMENT’
“same-day settlement” C/O SERVICERS ANYBANK NA ‘REMIC’
‘Compliance’ the fund sets the share price
Closed End
IPO-Yes; Exchange-traded Yes; SEC Regulated YES; Price Setter Market; Redeemable “NO”; Investment Advisor: Yes
Compare to UIT IPO – Yes; SEC Regulated YES; Price Setter Market; Redeemable: “YES”; Investment Advisor “NO”
Compare to HEDGE, IPO Yes or No; Exchange Traded “NO”, SEC Regulated “NO’ Price Setter ‘NAV’; Redeemable YES; Investment Advisor “NO”
Compare to OPEN END (MUTUAL), IPO NO, Exchange Traded No, SEC Regulated YES; Price Setter NAV; Redeemable YES, Investment Advisor “NO”
NAV – NET ASSET VALUE
REMIC FOR EXAMPLE
you just established a balanced fund and today you issue your first shares to the public. You have published a prospectus stating that you are starting with $100,000,000 in cash. Your starting NAV is easy enough to determine: $100,000,000.
But tomorrow it will be harder to compute because of two complications:
First, you will have invested your cash in stocks, bonds and money-market instruments, and you will have to deal with their changes in market price as well as accrual of interest and dividends.
Second, you will have issued shares, let’s say 1,000,000 of them – and the important number is not NAV itself, but NAV per share, or NAVPS
CASH SETTLEMENT:
A settlement method used in certain future and option contracts whereby, upon expiry or exercise, the seller of the financial instrument does not deliver the actual but transfers the associated cash position.
For sellers not wishing to take actual possession of the underlying cash commodity, cash settlement is a more convenient method of transacting futures and options contracts.

For example, the purchaser of a futures ‘obligation’ cash settled, rather than being required to take ownership of physical commodity.
Purchaser pays the difference between the current value price of commodity and the futures price.
A settlement term in a contract that stipulates that the underlying asset of the contract will not be delivered on the delivery date – rather, the net cash value of the position will be transferred to the applicable party instead.
Futures Contracts, Cash Delivery’ during which the trade details are entered into the books and records of the trading parties – typically occurs at a later time.
Cash delivery is exceptional, because all of this happens in the same day settlement. Example: REMIC Closing Date books the current settlement value of future trade
Rather than deliver underlying commodity (bearer papers) or asset to contract holder, much easier to simply transact net cash value of futures positions instead, allowing INVESTORS to hedge against price changes in underlying asset without having to worry about taking physical delivery. The Settlement Price calculated daily in private index exchanges as well as value of shares of public exchanges such as REMIC’s.
Cash Settlements
Seller of the financial instruments does not deliver the actual commodity but transfers the associated cash position.
AN EXCHANGE – ‘APPROVED DELIVERY FACILITY’
May be Private or Public
FINRA and TRACE 2003 forward continued to allow ‘non-disclosure’ of Private Trades
APPROVED DELIVERY FACILITY GENERALLY ‘BANKS’
MERCHANT BANKS ‘SETTLEUP’ C/O SERVICERS ANYBANK NA.
investment companies are considered the instrument of choice for the least sophisticated, and therefore most vulnerable, investors. Investment company distributions must comply with far more oversight than those of any other form of security.
DERIVATIES
“BESPOKE CDO’S”
COLLATERALIZED DEBT OBLIGATIONS
AND BESPOKE CDOS NO SECONDARY MARKET
The buyer of a credit swap receives credit protection,
whereas the seller of the swap guarantees the credit worthiness of the product.
By doing this, the risk of default is transferred from the holder of the fixed income security to the seller of the swap.
For example, the buyer of a credit swap will be entitled to the par value of the bond by the seller of the swap, should the bond default in its coupon payments
e.g. CREDIT SWAPS A swap designed to transfer the credit exposure of fixed income products between parties;
A substitute for a swap arrangement that is terminated before it matures. A swap may be ended early if there is a termination event or a default. If a swap is terminated early, both parties will cease to make the agreed-upon payments and the counterparty who caused the early termination may be required to pay damages to the other counterparty.
A replacement swap is likely to have different terms, or interest rates, than the original swap since market conditions usually will have changed. As such, the damages (called “termination

payments") will factor in the difference in interest rates between the original swap and the replacement swap.
Possible termination events include legal or regulatory changes that prevent one or both parties from fulfilling the contract terms ("illegality"), the placement of a withholding tax on the transaction ("tax event" or "tax event upon merger"), or a reduction in one counterparty's creditworthiness ("credit event").
Failure to pay or a declaration of bankruptcy by either party are examples of default events.
To give a real-life example, when Lehman Brothers declared bankruptcy in 2008, entities that were involved in swaps with Lehman had to seek replacement swaps
REVERSE SWAP
An exchange of cash flow streams that undoes the effects of an existing swap.
Reverse swaps are used, instead of simply canceling the original swap, because they allow investors to avoid negative tax or accounting implications.
Reverse swaps also allow investors to mitigate the original risk that they are exposed to upon entering a swap, or to cancel a position if they feel that market conditions will change in such a way as to give the original swap a negative value.
swaps are private transactions that are traded over the counter, and as such are subject to credit risk.
These contracts exchange assets, liabilities, currencies, securities, equity participations and commodities.
They are generally used for risk management by institutions, and are less common among individual investors.
Packaged securities is the collective term for investment companies, variable annuities and REITS, each of which will be defined and discussed in turn. These, combined with the array of retirement and estate planning accounts recognized by the Internal Revenue Service, comprise the major vehicles available to investors.
Because the general public tends to not to be as Wall Street-savvy as many experienced analysts who tend to trade exotic instruments, the federal government takes great pains to regulate these popular funds so that unscrupulous traders and advisors do not take advantage of the general public.
Real Estate Investment Trusts (REITS): these are trusts that hold real estate and must satisfy certain criteria. The REIT must have at least 75% of its assets invested in real estate, cash,government bonds, other REITS or mortgages. It must pay out at least 90% of its annual taxable income, exclusive of capital gains, as dividends to shareholders, must have at least 100 shareholders with concentration of less than 50% of the outstanding shares with five or fewer shareholders and at least 75% of the REIT's gross income must derive from rents, gains from the sale of real property or mortgage interest. Finally, REITS are generally liquid and trade on exchanges, though some are not.
Direct Participation Programs (DPPs): these programs allow for the investor to participate directly in the flow-through of tax advantages. Examples are real estate, oil and gas, and cattle programs. Many of these programs are organized as limited partnerships, with the general partner bearing unlimited liability and the limited partners being liable only to the extent of their partnership investment. Some are organized as limited liability corporations (LLC) with similar flow-through benefits. Some large limited partnerships that trade publicly on exchanges are referred to Master Limited Partnerships (MLP).
Investment Companies: Where assets are pooled and managed professionally.

Open End Companies (Mutual Funds): shares are purchased directly from the fund either by the investor him- or herself or with the assistance of a representative. When the client sells the shares, they are redeemed through the company. These companies sell shares on a continuous basis, rather than a fixed number of shares. Therefore, a prospectus is always issued to the purchaser. For reasons of strategy, the fund's trustees may decide to close a fund if it is getting too large and presenting the portfolio manager or management team with difficulty in putting new money to work. Mutual funds invest in fixed income, equity, real estate and cash, as well as combinations of the foregoing, in pursuit of a particular strategy or objective. Funds can pursue a particular investment style, such as small cap core or large cap value. Some funds are characterized as stock picker or 'go anywhere' funds that seek opportunities across a broad spectrum of investment types.
Closed-End Companies (closed-end funds): a type of investment company that issues a fixed number of shares at an initial public offering and trades in the secondary market like a stock. The fund may trade at a premium or discount to its net asset value (fund assets minus liabilities). These funds do not continuously sell new shares. As a result, the prospectus is only delivered to investors at the fund's initial public offering (IPO). Like their open-ended brethren, closed-end funds invest in various asset classes in pursuit of a particular objective.
Exchange-Traded Funds (ETFs): operate much like a closed-end fund, but are typically passive, in that the strategies track various indices of specific market and may be purchased on margin and sold short. Their structure effectively minimizes arbitrage opportunities, which means that the premium and discounts to the fund's net asset value are considerably less. Though most are passive, some funds use derivatives to pursue excess return (alpha), rather than the market return only (beta). Arbitrage opportunities are reduced as they create and redeem shares with the expedient of an authorized participant (AP), a large institutional investor (hedge fund, market maker or broker/dealer).
i. The AP puts together a securities portfolio matching that of the ETF.
ii. The AP delivers the securities or creation basket to the ETF and receives a creation unit or large batch of ETF shares based upon its net asset value.
iii. The AP breaks down the basket into smaller shares, selling them to the public or retaining them.
iv. Redemption of shares reverses the aforementioned process.
Unit Investment Trusts (UIT): these have characteristics of both open-end and closed-end companies. The UIT makes an initial offer of a fixed number of shares which, in turn, are used to purchase a portfolio of securities that are not managed, but, rather, held to maturity. The UIT may redeem shares and terminates at some future date. A trustee oversees the portfolio and how it is to be sold. There is no investment management company. There is a secondary market for UITs
Hedge Funds: these are privately organized investment vehicles (often designed as limited partnerships) that manage publicly and privately held securities and, depending upon the strategy, derivatives. The hedge fund may invest long and short and utilize leverage. Though the regulatory trend has been toward greater disclosure, it is less than that required for more garden variety types of investments, as these funds are offered to accredited investors who must satisfy income and net worth requirements (minimum net worth exceeding $1,000,000 or income in each of the previous two years of $200,000 for an individual or $300,000 for a married couple) and the expectation that earnings will equal or exceed these amounts in the year of investment.
•Market Directional – This type of strategy takes positions in securities based upon a belief as to

the direction of their price.
•Equity Long/Short: this type of fund both buys securities and sells them short (e.g. borrows money, sells them in the expectation that they decline in price and repurchases them at the lower price). The objective is to capture potential upside in the long position and downside in the short one. One position may offset the other, minimizing losses or preserving some gains.
•Equity Market Timing: this strategy attempts to time the purchase of securities
•Short Selling
•Corporate Restructuring – These funds utilize strategies that attempt to be on the right side of trades that involve securities of companies, in events such as mergers acquisitions and bankruptcy.
•Distressed Securities: funds purchase severely undervalued securities in the expectation that a re-organization will benefit their value.
•Merger Arbitrage: when two companies combine, often the shares of the acquired company experience an increase in value, with the expectation that the acquiring company would achieve better results. By contrast, the acquiring company may assume a significant debt burden to acquire the company, which would negatively impact its share price.
•Event Driven: these funds take advantage of any number of situations involving corporate restructuring, including spin-offs, with a view to selecting the security expected to benefit from the restructuring.
•Convergence Trading
•Fixed Income Arbitrage
•Convertible Bond Arbitrage
•Statistical Arbitrage
•Relative Value Arbitrage
•Opportunistic – These funds, by design, look to take advantage to earn alpha (the excess return over what the market yields) or beta from whatever opportunities present themselves.
•Global Macro: one of the better know and more highly publicized strategies, global macro funds invest in equities, fixed income and currencies across the globe, looking to take advantage of favorable conditions in different markets.
•Fund of Funds (FOF): this is a fund that contains several hedge funds with varying strategies. The FOF utilizes tactical asset allocation among the funds to select the ones whose strategies are apt to outperform and exit those expected to deliver a mediocre performance.
Private Equity: refers to securities that are privately purchased and not publicly traded. The four common strategies subsumed under this rubric are the financing of start-up companies known as venture capital, public companies repurchasing all of their stock to become private with the assistance of leverage known as leveraged buy outs (LBOs), a mix of private debt and equity financing known as mezzanine financing (a type of bond with an equity sweetener such as a warrant), and investment in troubled private companies known as distressed debt investing.
Principal Protected Securities (PPS): a structured product, PPS offer returns from a basket of equities and have a fixed term of five to seven years, after which they return principal and gains. In this sense, they resemble a bond. The PPS caps returns in exchange for protection of principal. The caps vary by PPS and employ options, stock futures and zero-coupon bonds that mature simultaneously with the PPS to secure return of principal.
Structured Products: given their complexity, it is not surprising that scholars and practitioners may offer differing definitions of what constitutes a structured project. In general, they are designed to utilize techniques to create a bespoke process to meet funding, liquidity, risk transfer

or other needs of the asset's owner, when an off-the-rack product cannot. Such transactions typically involve some combination of interest rate and credit derivatives in a separate entity that a financial institution uses to satisfy tax, accounting or risk transfer objectives. A wide ranging treatment of these instruments is beyond the scope of the Series 7 exam. What follows is a list of some of the more common structured products.

•Interest rate derivatives: options, caps, floors, swaps, futures and forwards.
•Credit derivatives: credit default swaps, asset swaps, total return swaps.
•Securitization: collateralized debt obligations (cash flow and synthetic),
•Credit-linked notes and structured notes.
•Project financing

According to a 1940 Act of Congress, an investment company is an issuer primarily engaged in investing in securities, then issuing certificates in shares of the portfolio of securities it has acquired. The investment company invests the money it receives from investors on a collective basis, and each investor shares in the profits and losses in proportion to his or her interest in the investment company as a whole. The performance of the investment company will be based on, but not identical to, the performance of the assets it owns.

There are three types of investment companies:

Closed-end funds

Open-end funds, more commonly known as mutual funds

Unit investment trusts (UITs)

Closed-end funds

These funds generally do not continuously offer their shares for sale. Rather, they sell a fixed number of shares in an initial public offering, after which the shares typically trade on the NYSE or Nasdaq.

•The price of closed-end fund shares that later trade on a secondary market is determined by the market and may be greater or less than the shares' net asset value (an important term that will be defined soon).
•Generally, closed-end fund shares are not redeemable: in other words, a closed-end fund is not required to buy back its shares from investors upon request.
•Some closed-end funds, commonly referred to as interval funds, offer to repurchase their shares at specified intervals.
•The investment portfolios of closed-end funds usually are managed by separate firms, known as investment advisors, that are registered with the SEC.
•Closed-end funds are permitted to invest in a greater amount of illiquid securities – ones that cannot be sold within seven days – than mutual funds.
•Because of this feature, funds that seek to invest in markets where the securities tend to be more illiquid are typically organized as closed-end funds.

Open-end Funds (Mutual Funds)

A company that pools money from many investors and purchases stocks, bonds, short-term money market instruments and other securities.

•Investors buy mutual fund shares from the fund itself or through its broker, but cannot buy the shares from other investors on an exchange.
•The price investors pay for mutual fund shares is the fund's per share net asset value (NAV) plus any shareholder fees the fund imposes at purchase, such as sales loads.

•Mutual fund shares are redeemable, meaning mutual fund investors can sell their shares back to the fund or to its broker at their approximate NAV, minus any fees the fund imposes at that time, such as deferred sales loads or redemption fees.
•Generally, mutual funds sell their shares on a continuous basis, although some funds will stop selling when they become too large.
The investment portfolios of mutual funds, like those of closed-end funds, typically are managed by investment advisors registered with the SEC.
Unit investment trust companies are a hybrid of open- and closed-end funds. Like mutual funds, UITs typically issue redeemable securities. However, like closed-end funds, UITs typically make a one-time public offering of a fixed number of shares which are known as units
Many UIT sponsors maintain a secondary market that allows owners of UIT units to sell them back to the sponsors and other investors to buy UIT units from the sponsors.
A UIT will have a date when the UIT will terminate and dissolve; this date is established when the UIT is created.
However, there is no set lifespan that applies to all UITs, and some may take more than 50 years to terminate.
In the case of a UIT investing in bonds, for example, the termination date may be determined by the maturity date of the bond investments.
When a UIT terminates, any remaining investment portfolio securities are sold and the proceeds are paid to the investors.
A UIT does not actively trade its investment portfolio: rather, it buys a relatively fixed portfolio of securities and holds them with little or no change for the life of the UIT.
Because the investment portfolio of a UIT generally is fixed, investors know what they are investing in for the duration of their investment.
Investors will find the portfolio securities held by the UIT listed in the UIT's prospectus.
A UIT does not have a board of directors, corporate officers or an investment advisor to provide advice during the life of the trust.
Exchange-Traded Funds (ETFs)
ETFs are investment companies that can be legally classified as either open-end companies or UITs.
•ETFs differ from traditional open-end companies and UITs because, by SEC orders, shares issued by ETFs trade on a secondary market and are only redeemable in very large blocks (for example, blocks of 50,000 shares).
•ETFs are not considered to be, nor are they permitted to call themselves, mutual funds.
The following articles contain useful information about ETFs, from the different varieties to choose from, to their benefits and how they are created:
•Introduction to Exchange-Traded Funds
•Advantages of Exchange Traded Funds
•An Inside Look At ETF Construction
Exclusions
Some types of companies that might initially appear to be investment companies may actually be excluded under federal law.
Private investment funds, sometimes called hedge funds, have no more than 100 investors or their investors all have a substantial amount of other investment assets. These funds are not considered investment companies, even though they issue securities and are primarily engaged in the business of investing in securities.

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Like

4. 

Enraged, on February 18, 2012 at 12:16 pm said:
@Chris,
I think those guys need to be simply disbarred!!!!!
Like

5. 

chris, on February 18, 2012 at 10:38 am said:
@ Trespass Unwanted
I have a servicer, Plaintiff, who is trying to foreclose, with their attorney, who assigned himself, Trustee and transferred the rights to proceeds of the note to himself "as a party in interest", into his own company,while the party enabling the possible sale works for the servicer and the attorney and the notary works for the attorney and with a Federal Case in process, went to the District Court to get an order from a judge to foreclose. Nice behavior…I think these guys need to get some remedial classes in the law.
Like

6. 

Trespass Unwanted, on February 18, 2012 at 10:24 am said:
funny.
The servicer is the named mortgagee (beneficiary) on my Deed of Trust from a refinance over 7 years ago.It just so happened the servicer (beneficiary) went away and another servicer (not named, not a beneficiary, not assigned to the trust) wanted to take it's place. Without an assignment to a new beneficiary, the prior beneficiary abandoned the trust. The property within the trust was not assigned to another beneficiary.
The Trustee was continuing to administer a voidable trust as there was no beneficiary. Without a beneficiary no one could administrate the trust for anyone's benefit, it needed to be dissolved and the property conveyed back to the Grantor.
The Trustee was there for the benefit of the beneficiary who basically didn't want the asset and the Trustee can't just assume the role of beneficiary because you can't be trustee and beneficiary of the same trust.
The beneficiary was not around to appoint another trustee, and this trustee could not appoint himself the beneficiary nor appoint another trustee.
It would be interesting if the Trustee sought out the new servicer to figure out a way to pass the assets of the trust forward rather than giving the assets back to the Grantor of the Trust who was called the Borrower but was also the one who Granted the property into the trust in the first place.
A new servicer without assignment assigned a substitute trustee, (something they can't do because they didn't have the right…you can't convey a right you don't have), and the mess got messier.
So I can see where the author is coming from, but it brings into question, when I refinanced, how did the servicer get between me and the original lender. I got my original loan papers back showing the loan obligation was paid in full, but the refinance was with the servicer who also eventually folded, dissolved, or went away by some means.

Trespass Unwanted, Corporeal, Life, Sovereign by Divine Right, A Free and Independent State, a Free People, In Jure Proprio
Like

7. **chris**, on February 18, 2012 at 8:14 am said:
Yes….it is cool. MERS shut Ocwen out in 2008 (I think) for non-payment of hundreds of thousands of dollars in owed fees, Ocwen filed suit! Ha, Ha, Ha…bitches (no offense anyone)! Right now, I have 2 Federal Suits pending, 1 at Ocwen and the other @ New Century…I am gathering information to file a claim on the title insurance…what my hope is, they deny the claim (sounds stupid, I know) stating why and do an investigation yielding any and all results of title matters, that I can acquire, as part of my discovery, which is very difficult to get from the parties. I'll try another approach. Everything has some value. Then, I am thinking about filing a suit against, the errors and omissions insurer from the Ocwen attorney (haven't figured out how yet and if it is doable), for forgery, fraud,etc…trying to get my ducks in a row, all the eggs in 1 basket, is a limited outcome.
Like

8. **Ian**, on February 18, 2012 at 7:58 am said:
chris- you must be referring to Scott Anderson. Nye Lavalle identified 42 variations of Anderson's signature, there is a link over at 4closurefraud, I think. Also, in MERS v. OCWEN, it was stated in the complaint that Scott Anderson was the ONLY person at OCWEN authorized to initiate foreclosures. The mers v ocwen suit was about ocwen owing mers about $700k for processing fees or whatever, and ocwen retorting that the fees were due to unauthorized persons signing things- how about that?!
Like

9. **chris**, on February 18, 2012 at 7:45 am said:
@ Sal
Not directed at you, but MERS is not, I repeat not, the party who assigned my note. IN my possession I have forgeries, by a man claiming to work at or have an interest in New Century, VP of MERS, VP of Loans Department @ Ocwen, US Bank, and Chase all around the same time frame. Federal Judge Shack, NY went after him and demanded his W-2's or 1099's, which were never produced.
I am so damned angry at the lies, still being promoted. The AG's have given the banks a free pass, get-out-of jail free card. I thought the taxpayer's paid the AG to represent them, not a private corporation? Am I wrong here?
Like

10. **Ian**, on February 18, 2012 at 6:38 am said:
Hey NancyDrewe- these posts could be dynamite if I could figure out what a Service Mark was.
Like

11. **Nancy Drewe**, on February 18, 2012 at 2:17 am said:

They are not trying to hide the fraud anymore? See service mark of ‘Bank of America’
MORTGAGE TO LEASE
Word Mark MORTGAGE TO LEASE
Goods and Services IC 036. US 100 101 102. G & S:
Financial services, namely,
loss mitigation services for under- or
non-performing mortgage loans
Serial Number 85541223
Filing Date February 13, 2012
Owner (APPLICANT)
Bank of America Corporation
CORPORATION DELAWARE
100 North Tryon Street
Charlotte NORTH CAROLINA 28255
Attorney of Record Randel S. Springer
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE
Like

12. 

Patrick, on February 18, 2012 at 1:18 am said:

In order to have a colorable claim, the mortgage servicer plaintiff must be entitled via separate agreement with its principal to enforce the debt owner’s property rights and interests provided to the debt owner by the note and lien instrument. A mortgage servicer may have possession of the genuine note, but it is never an owner of the property rights and interests the note is supposed to evidence and represent. The note was stripped and denuded of those property rights and interests when they were irrevocably assigned to a pool in order to capitalize a securities offering.
Revised UCC Article 9 contains a series of provisions that broadly expand the property rights and interests that may be assigned, regardless of anti-assignment language in contracts or other state statutes. These rules are not limited merely to restrictions prohibiting an assignment. They also override restrictions that permit assignment only with the consent of a third-party obligor or with restrictions that simply declare that assignment will constitute a default. The party that takes the right to collect via a distinct assignment of the lender’s inherent collection right in lieu of a negotiation and conveyance of the whole and inseparable loan contract is not a successor to the lender under the terms of the mortgage instrument. Likewise, the party that takes the lender’s inherent right to payment via a distinct assignment of the lender’s beneficial interests in lieu of a negotiation and transfer of the whole and inseparable loan contract is not a successor to the lender under the terms of the mortgage instrument. Both parties are considered partial assignees provided for in UCC article 3-203(a). A partial assignee is never a mortgagee and this is the real reason why MERS was created. MERS acts as a lien holder strawman, or bailee, whereas otherwise the lien would be vanquished due to these distinct property assignments. MERS allows the lien to survive these intangible property assignments and it placated the ratings agencies whereby they granted AAA status to the MBS offerings.
The servicing agreement is never attached as an exhibit to the complaint because if it ever saw the light day, it would reveal that the defendant’s payments were being remitted by the servicer for the benefit of a party lacking contract privity with the defendant and that the contract holder

is not an aggreived party nor did it suffer default. Neither the servicer or its principal have contract privity with the defendant. The contract holder has executed UCC article 9 assignments of its property rights and interests for the benefit of strangers to the loan contract whereby the note it possesses is a carcass or relic of the property rights and interests it used to evidence. Proof of this is contained within the notice of servicing transfer whereby it should state that the "right to collect" has been sold, assigned or transferred. The "right to collect" is a property right of the lender provided by debt ownership, it doesn't just appear out of thin air. That property right is required to be reported as a distinct loan asset on the mortgage servicers balance sheet. Ask yourself how the servicer can report the "right to collect" as a distinct loan asset and also claim to report the note as a distinct loan asset.

Blank endorsements act as a smoke screen for these distinct article 9 assignments and any endorsement exhibited on the note in favor of a mortgage servicer is bogus because all the property rights and interests of the debt owner were not transferred with the conveyance of a whole and inseparable loan contract. The "right to collect" was stripped and assigned to the servicer separate and independant from the loan contract. Section 20 of the lien instrument provides that these property rights and interests can be assigned independent and separate from each other. Section 13 grants the lien binds and benefits the lender's successors and assigns (except under the circumstances provided for in section 20). Taken together, the mortgage instrument grants the lien only transfers with a conveyence of the real property and not an assignment of the lender's intangible property rights and interests. Under Florida law, contracts are construed in accordance with their plain language, as bargained for by the parties. see Auto-Owners Ins. Co. v. Anderson, 756 So. 2d 29, 34 (Fla. 2000).

The foreclosure complaint filed by the mortgage servicer plaintiff is an in rem action in equity to enforce a mortgage instrument not an in personam action at law for enforcement of a note for money damages see, Sun Trust Mortgage v Fullerton FLWSUPP,1612, (6th Circuit Court, Pinellas County, Oct 2009). Be advised only the mortgagee or anyone authorized in writing by the mortgagee may accelerate the debt and file a lawsuit to foreclose on the mortgage because of the Florida Statute of Frauds Title XLI.

The servicer doesn't qualify as an entity entitled to enforce the note and mortgage because it doesn't have contract privity with the defendant. An entity lacking contract privity with the defendant is not the mortgagee nor can it grant or convey a higher status to another than what it possesses. A simple pre foreclosure QWR asking for the name of loan investor will reveal the servicer's principal but not substantiate the principal is the note owner and holder. Thereby, a written agreement with a substantiated note owning principal granting the servicer administrative authority to enforce the lien instrument must be attached to the complaint. FL R Civ P 1.130(a) provides in pertinent part "All bonds, notes, bills of exchange, contracts accounts or documents upon which action must be brought or defense made, a copy thereof or a copy of the portions thereof material to the pleadings must be incorporated in or attached as an exhibit to the complaint."

#1 The defendant is predjudiced in its ability to raise certain defenses without attachment of the written servicing agreement as an exhibit to the complaint.

#2 When provisions contained within exhibits are inconsistent with the plaintiff's allegations of material fact as to whom the real party at interest is, such allegations cancel each other out. Fladell v Palm Beach County Canvassing Board 772 So 2d 1240 (FL 2000), Greenwald v Triple D Properties, Inc. 424 So 2d 185, 187 (FL 4th DCA 1983)

#3 In Florida, prosecution of a foreclosure action is by the owner and holder of the note see Your Construction Center Inc. v Gross 316 So 2d 596 (FL 4th DCA 1975) Florida is a fact pleading State and plaintiff's failure to plead and show competent evidence it or its principal is both owner and holder of the note renders the complaint fatally defective on its face.
Like

13. 
Sal, on February 17, 2012 at 9:04 pm said:
The confidential report to Fannie May regarding the accusations made by Nye Lavelle was leaked on the internet a few days ago. It is an eye opener. The link to the whole document is below and I quoted the section regarding the Servicer's standing to foreclose below.

CONFIDENTIAL – ATTORNEY-CLIENT PRIVILEGE
REPORT TO FANNIE MAE
REGARDING
SHAREHOLDER COMPLAINTS
BY MR. NYE LAVALLE
OCJ CASE NO. 5595
BAKER & HOSTETLER LLP
May 19, 2006
E. Servicers Standing to Foreclose
While MERS took the brunt of the public criticism for false affidavits, servicers' counsel were the ones representing MERS and filing the false statements. There is no reason to believe they are acting any differently when representing servicers directly.66 The legal issue of whether servicers have standing to bring foreclosures also is unresolved, although there are more precedents supporting servicer standing.
Fannie Ma e ' s position is that servicers have a beneficial interest in the mortgages they service, the servicing rights.67 When borrowers remit their fees to servicers each month, the servicers forward most of the payment to Fannie Mae, the owner or trustee of the notes, but they also receive a portion of the payments as their servicing fee. Fannie Ma e ' s position is that ownership of servicing rights is a sufficient interest to give servicers standing to bring foreclosure actions.68
At least one court has found specifically that a mortgage servicer has standing to foreclose. Fairbanks Capital Corp. v. Nagel, 289 A.2d 99 (N.Y. App. Div. 2001) (servicer had standing to sue based on the trustee's delegation of authority over the mortgage). Bankruptcy court precedents also support the servicer. (In re Raymond C. Q.K. T.N W Tainan, 48 B.R. 250 Bankr. E.D. Pa. 1985) (servicer in its capacity as representative for collection purposes of Fannie Mae was a real party in interest); Greer v. O'Dell, 305 F.3d 1297 (l1th Cir. 2002) (credit card servicer was a real party in interest).
Mr. Lavalle, nonetheless, suggests that foreclosures could still be unwound because an indispensable party, the owner of the promissory note, was not a party to the action.
Three cases from lower courts do not resolve the issue, and therefore the accuracy of pleadings is particularly important to avoid misleading borrowers and the courts. Fannie Mae is entitled to take the legal position that MERS or servicers have standing to sue, provided the pleadings clearly set forth the facts.
Like

14. 

Enraged, on February 17, 2012 at 6:32 pm said:

@Scot,

My point all along!!!!!!!!!!!

If bank A, who "owned" a $200,000 note, is ready and willing to transfer/assign it to bank B for a measly $10, the only possible conclusion is that, at some point in time before that, bank A got the remaining $199,990 from somewhere/someone else. Otherwise, how did bank A decide on a $10 transfer value? Based on what? Where is the accounting? Did bank A eeny-meeny-miny-moe, rock-paper-scissor?

Now, if bank A decided on the $10 BEFORE having received anything more on that $200,000, bank A is obviously run by absolute morons who have no business whatesoever being in the banking industry. Further, bank A employs accountants who have no business whatsoever being in the accounting business. In short, bank A has absolutely no qualifications to operate anything other than one of Gingruch's kiddie janitorial seedy operations (and even then, I'm not so sure…)

The fact that no one, and I mean absolutely no one, wants to hear that most elementary question, let alone attempt to answer it, is simply revolting and insulting to any quarter-brain out there. If there is one question to pound on over and over and over, it is eaxctly that one: what was the consideration?

Plaintiff: I own the note

Def.: You do? How did you acquire it?

Pl.: It was assigned to me via transfer.

Def.: By and/or from whom?

Pl.: From ABC trustee (or CDF servicer, or whatever)

Def.: In exchange for what?

Pl.: What do mean?

Def.: What did ABC trustee (or CDF servicer, whatever applies) get in exchange for "transferring" to you a $200,000 note?

Pl.: I don't understand what you are looking for.

Def.: What consideration did you give or pay ABC for a note valued, in your opinion, at $200,000? Would any business transfer to you something valued at $200,000 for nothing? Are you saying that you never paid anything to get the transfer/ownership of something allegedly valued at $200,000? Are you saying that ABC simply took something it owned, valued at $200,000, and simply GAVE IT TO YOU FOR FREE? That you never paid one cent for it? That it was a GIFT to you?

(Defendant, winking at jury: "Is it any surprised then that bank A had to be bailed out to the tune of of 87 billions?"

Def,: This is a very valuable gift if you paid nothing for it. Don;'t you have a legal obligation to report it to the IRS? Was it reported to the IRS?

Etc., Etc.

Like

15. 

Scot, on February 17, 2012 at 4:55 pm said:

tnharry, you are correct, the UCC allows the transfer of notes endorsed in blank but transfer and redeeming are 2 completely different animals. Also if you are going to claim legal standing to

file a foreclosure complaint in court you must also prove damage. Meaning you would also have to provide hard proof as to what you paid for the note / mortgage. I see a lot of mortgage assignment where the compensation is $10.00 plus a valuable consideration or just valuable consideration. This is not good enough. In court one does not assume one must prove beyond a shadow of doubt with cold hard facts. You must show and prove what you paid for the note / mortgage. What was the valuable consideration. If you only paid $10.00 you cannot claim in a court of law you damages were $200,000.00. Your actual damages are only $10.00. If one wished to retain status of holder in due course one must pay due compensation.
This goes for the whole chain of title. If the originating lender bank A assign the note or mortgage to bank B for the valuable consideration of $10.00 bank B does not obtain the status of holder in due course and bank B could than assign the note / mortgage to bank C for full value of $200,000.00 but the status of holder in due course is not transferred to bank C. If bank C were to file a foreclosure complaint against the homeowner and the homeowner through discovery proved the chain of title was broken bank C would not have a claim against the homeowner but against bank B for not transferring the note / mortgage in good faith. The status of holder in due course stopped with bank A.
The problem with the alleged securitization process is that the alleged lender on the note and mortgage never funded the recorded alleged loan. (Request a copy of the certified check or wire confirmation that actually funded you loan and this will provide the evidence as to who funded your loan. Your real lender. This is could hard facts. You have to ask the courts to make the banks provide their could hard evidence not assumptions. What did the bank pay for the note / mortgage. The whole chain of title must provide a copy of the check both front and back showing what they paid for the note /mortgage.
Like

16. 
usedkarguy, on February 17, 2012 at 2:26 pm said:
Thanks, Matt. Very poignant.
Like

17. 
chris, on February 17, 2012 at 1:56 pm said:
…in blank…anyone can sign it! And what about the assignments and transfers, sales, etc…you can make copies and sell these notes a thousand times, without anyone catching it.
Where does this shit all end?
Like

18. 
chris, on February 17, 2012 at 1:46 pm said:
@ Ian
I'm back at contract law; offer, acceptance and consideration?
I signed papers (offer), I received NO signature of formal acceptance from anyone. Now the consideration was funds transferred to me for the seller, however the caveat here is "who did I get the consideration from"? Was it the broker of the loan? The originator? The person who transferred the funds? The lender (unknown)? The servicer?
We play the shell game…and for me, we/I have not met the elements of a contract. Who do I have a contract with? That is who I owe!

Just my $.02
Like

19. 
Ian, on February 17, 2012 at 1:28 pm said:
tnharry- the UCC allows blank endorsement. But only if “instrument is dated”. Sorry, but don’t know what UCC number this is under. And that is endorsement in blank of a……negotiable instrument? I’m a bit weak on this, can you quote relevant portions thereof?
Like

20. 
carie, on February 17, 2012 at 1:17 pm said:
from Mr.Stopa:
“…I realize that some of the arguments being espoused by servicers in foreclosure cases seem unique, and there appears to be an absence of case law setting forth these issues.”
Yup…all part of their “master plan”…no case law means they win…
Like

21. 
tnharry, on February 17, 2012 at 1:16 pm said:
@Scot – that’s simply not true. The UCC provides for and explicitly allows blank endorsement. Your solution may provide some degree of clarity, but isn’t a requirement under the law.
Like

22. 
Scot, on February 17, 2012 at 12:19 pm said:
I cannot get it any more simpler than my scenario. You have to teach the courts on small step at a time.
Like

23. 
Enraged, on February 17, 2012 at 11:53 am said:
@Scott,
Duh! Goint to the bank with a check made out to John but not endorsed by him and presenting an “allonge” signed by Jack will never, ever allow Scott to get a penny. Likewise for the mortgage note. There is something inherently wrong with “allonges”. I have yet to see one note having been endorsed by so many entities that there was no room left any longer and an “allonge” was rendered necessary.
We need to go back to the most simple explanation to reach judges.
Like

24. 
Enraged, on February 17, 2012 at 11:46 am said:
@Java,
You bet! But, as any real war, it must be openly declared and it must be sanctioned by Congress. So far, i don’t see Congress having the least interest in taking a stand.
Too busy wasting our time and money reopening closed cases such as contraception… Insanity turned into an art form.

Like

25. **Jim**, on February 17, 2012 at 11:24 am said:
In non judicial they foreclose quickly with a lost note affidavit. Who cares about something that doesn't exist
Like

26. **Jim**, on February 17, 2012 at 11:21 am said:
Stopa needs to acknowledge that some jurisdictions allow a thief to foreclose. See eg Horvath in Virginia that holds just that
Like

27. **Scot**, on February 17, 2012 at 11:19 am said:
i have been saying this all along. If a party only need to in possession of a copy of the note and mortgage or assignment to foreclose than why can't everyone just go to the register of deeds and start printing off notes and mortgages / assignments have the register of deeds certify the the documents as true and correct copies. This way you are not technically lying when you tell the courts that you are the holder of the note and mortgage because certified copies are by statute the same as the originals.
I don't care if the note is endorsed in Blank. Pay to the order of _____. Pay to the order of WHO? Is the question that should be raised. IF YOU WANT TO ENFORCE THE NOTE YOU MUST ENDORSE THE NOTE !!! They Plaintiff must at the very least fill in the blank with their signature. Until the Plaintiff endorses the note the party that actually endorsed the note can lay claim to the note.
It is not different than if you receive a personal check or a pay roll check. If you want to enforce the check / redeem for cash you must first endorse the check with your signature. If you wish to assign your right to redeem / cash the check to a third party you must first endorse the check with your signature and before the third party can redeem / cash the check they must first endorse the check with their signature. This way if something is wrong with the check or any of the parties that endorsed the check claims foul play the parties and or authorities are able to track the history of the check. Or with a note check the chain of title of the note to verify status of holder in due course not just status of holder.
IF YOU WANT TO ENFORCE THE NOTE YOU MUST ENDORSE THE NOTE!!!
Like

28. **Javagold**, on February 17, 2012 at 11:14 am said:
a catch22 of fraud no matter which way they turn that only trampling over the law will allow them to get away with……ITS WAR
Like

29. **chas404**, on February 17, 2012 at 11:13 am said:
If servicer is authorized agent then please provide proof. If you look to the right on this blog the ARK supreme court MERS ruling talks alot about agency and principal.

Agent can only act with instructions from the principal.
I think this is key and Mr. Stopa seems to be making it into a simple and clear argument.
I would add that these judges seem to fret over whether the homeowner attempted to mitigate losses or applied for HAMP etc.
I think it would be good for the lawyers to hammer away on the servicer per this agency authorization problem and add that the homeowner could NEVER negotiate avoiding foreclosure with a servicer who was never legally authorized to do so.
I think this issue goes to the original mortgage contract which has NOTICE provisions for the 'lender'. The lender/originator NEVER responds to the NOTICE provisions per the contract. I sent the lender a certified letter and it came back address no good.
I never sent a letter to MERS because MERS never owns anything, etc.
That leaves the homeowner negotiating with a servicer who is not authorized to negotiate and won't reveal the trust/true creditor.
I wonder if the lender is in breach of contract under the NOTICE provision per the mortgage contract. The lender does not owe the borrower forebearance/modification etc per the contract but they owe the borrower a valid point of contact.
You could now argue with the OCC consent orders, HAMP, and TARP etc they now owe atleast potential review for forebearance etc.
I would love to be able to show that the servicer was never authorized to collect payments all along.

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Texas Two Step: "Successors and Assigns"
Posted on January 4, 2019 by Neil Garfield

Homeowners are losing to legal presumptions arising from apparently facially valid documents. Thus defensive strategies, tactics and narratives should include a robust attack on the facial validity of the instruments relied upon by parties seeking foreclosure. In most cases the grounds for such an attack are present — but only upon careful reading and review of the instrument.

Looking a the "return to" instruction can often give a clue as to what is going on. If the "Lender" is asserted as "Broker One" or "American Broker's Conduit" or some other sham conduit, the fact that no payments were ever made to BOL or ABC combined with the instruction to return the document to some other entity would be corroboration of a defense narrative that the debt was never owned or controlled by the name used to designate the "lender."

The ubiquitous use of the phrase "successors or assigns" can also be used as part of the defense narrative.

Was there a succession?

Was there a previous assignment?

If not directly referenced on the document then the assumption must be that "successors and assigns" is mere surplusage. That means that only the name used to designate the "lender." And if that "lender" is dead then MERS has no party principal for whom it can act as nominee.

Assignments and indorsements from such an entity are not valid. Without assertions of the face of the document, it is improper and illegal to assume that MERS is acting on behalf of someone or some party that was the owner of the debt — especially when that party has never been specifically identified.

Take a look at the following analysis I recently performed for a client:

1. DOT names MERS as Beneficiary. "MERS holds only legal title…" for "lender"
2. Assignment of Deed-of trust has MERS executing as nominee for Broker One Lending (BOL) LLC its successors or assigns located at PO Box 2026 in Flint Michigan, which is an address associated with MERS and MERSCORP.

3.

    1. The hidden factor here is that when you read the wording carefully you can see that it is unknown if (a) the person signing worked for MERS (I can tell you with certainty they did not) (b) BOL existed at the time of the assignment and (c) whether the assignment was executed on behalf of a successor or assign which on its face could indicate that the claimant successor was JP Morgan Chase.
    2. There is no basis of any agency relationship as nominee or otherwise between MERS and JP Morgan Chase as to this alleged loan.
    3. The agency relationship existed only between MERS and BOL. If there was a successor or other assign it is not revealed which makes the assignment subject to parole evidence, and hence cannot be claimed to be facially valid.
    4. If not facially valid no legal presumptions as to the existence or content of the assignment can be drawn.
    5. JPM cannot assign to itself — if they claim to be the successor or assign and thus claim the agency (nominee) relationship with MERS, and to have some agent of JPM execute the assignment on behalf of JPM as successor or assign of BOL then they are assigning from JPM to JPM.
    6. The reference to "and assigns" indicates at least the possibility of a previous assignment that is unrecorded. Hence this assignment would not be considered facially valid and is presumptively in conflict with itself, to wit: if the DOT was previously assigned then it could not be again assigned to a different party. If the DOT was previously assigned to JPM there is no reference to such a transaction.
    7. BOL had ceased to exist when the assignment was executed, hence the agency relationship was automatically terminated by law when BOL ceased to exist.
    8. Since no purchase transaction is referenced the cessation of business by BOL either terminated MERS status as nominee or continued such status to the trustee as defined by statute of the estate of BOL.
    9. Samuel B Muller executes as "assistant Secretary" – a designation reserved for robosigned and forged documentation over the past 20 years. We can state with virtual certainty that he was not an employee or agent of MERS until he gained access to the MERS IT platform and designated himself as assistant secretary. We

scan state with certainty that his knowledge of any data relating to the subject debt, note or mortgage was nonexistent and that therefore the document should be considered unauthorized or, as it is now known, "robosigned."

10. In all likelihood JPM never entered into any transaction in which it purchased for value the subject debt, note and mortgage. Based upon our proprietary information and related admissions by representatives and counsel for JPM it was neither the owner of the debt nor the beneficiary as defined by applicable statutes at the time of the foreclosure proceedings and sale. Any action undertaken at the direction of JPM including substitution of trustee or notices are not notices on behalf of any party answering to the definition of a beneficiary of the DOT.
11. Based upon our prior encounters with JPM it has intervened and/or interposed itself as servicer for the subject debt, note and DOT and further claims to own the subject d debt, note and mortgage despite no foundation for such claim. Its claim to having the rights of a servicer are not defined, referenced nor founded upon any facts in reality.
12. As such there could have been default in payment to JPM or BOL because BOL had never been receiver of payments and JPM was never entitled to receive them as creditor. If it claims to be the agent for the owner of the debt, note or DOT no such assertion or reference is contained in any document utilized in the alleged foreclosure proceedings and sale of the subject property.
13. The amounts stated as due therefore cannot be taken as a representation of what is on the books of the party who owns the debt, note and DOT (as beneficiary).
14. Claims for Quiet Title, Interest, and Judicial foreclosure are not only without foundation — they are contrary to the facts and events that took place in the real world marketplace.
15. An interesting observation is that in the HELOC loan JPM Chase is asserted as "lender," This could be the time that JPM interposed or intervened in the original loan.

4. Indorsement of the note from BOL to Flagstar Bank within days of the alleged loan closing is a strong presumptive indicator that BOL, as its name implies, was only acting as a Broker who did not in actuality have any rights to access the funds being loaned. Hence the BOL could not have owned the debt even at the time of the closing.
5.
    1. An indorsement from a party who does not own the debt nor have any rights to enforce the debt is (a) meaningless and void as it cannot create rights that were not present at the time of the claimed "transfer" and (b) such endorsement could obviously not be used as proof (facially valid or otherwise) of ownership of the debt or rights to control enforcement. Therefore under Article 9 of the UCC, no foreclosure is applicable in the absence of clear and convincing proof that the debt was owned by party on whose behalf the foreclosure was initiated and pursued.
6. The 2015 TILA Rescission notice is somewhat vague in its interpretation of law but effective as a notice of rescission. There is considerable conflict in the courts. But the Supreme Court by unanimous decision in *Jesinoski v Countrywide* made it clear that 15 USC §1635 is a procedural statute, not one that gives rise to a specific claim. When the notice is sent and delivered it is effective as terminating the loan contract, and under Reg Z rendering void the note and mortgage or deed of trust — by operation of law.

7.

1. While numerous defensive arguments could theoretically be raised to vacate the TILA rescission the fact that it occurred is indisputable according to both the statute and the US Supreme Court.
2. And while such defensive arguments could be brought as claims to support vacating the notice of rescission, this is restricted to the following:
3.
    1. A party with standing without reference to the note and mortgage that are now void
    2. Filing within 20 days of the date that the notice was effective
    3. Defensive references to a three year limitation, or other restrictive facts in sending the notice of rescission are attempts to raise the claim that the rescission should be vacated without filing a pleading on behalf of a party with standing who does not rely on the void note and void mortgage (DOT) as the basis for asserting standing. In essence such arguments are references to claims that could have been brought by the creditor but never were.

4 Responses

ANON, on January 7, 2019 at 2:15 pm said:
Everyone should have a successor LENDER. Trusts, Trustees, servicers, and investors, are NOT lenders.
The problem is that all the financial crisis loans were made by non-banks with undisclosed warehouse lenders — who only funded cash out.
The refinance of the prior loan was simply recycled.
I have said many times to check the prior loan to last so-called “refinance” in question. Now, I am saying — go back even further. Go back all the way to the purchase of the house — and before for prior owner. GO ALL THE WAY BACK. Sixty year title search and examine it carefully. Buyer beware. .

Roger Rinaldi, on January 6, 2019 at 12:33 am said:
Mail drop for a bunch of dead banking entities and all those other successors in interest, assigns, etc.
https://cssinsuranceservices.com/mortgagee-addresses/

Javagold, on January 4, 2019 at 12:59 pm said:
1. Are assignments needed between BOA NA and BAC Home Loans switcheroo shell games?
2. How is possible to have a July statement with a $2000 monthly payment from servicer A. And then when they switch to servicer B , the July statement now says $1500 was due in July ????

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Loan Modification Scams are Illegal- unless you're a Major Bank of course.
Posted on April 5, 2016 by Neil Garfield
By William Hudson

The websites of the Office of the Comptroller, FDIC, Department of Justice, Attorney General and FBI provide numerous resources and services for consumers to report loan modification scams. The information on these websites state that it is unlawful to promise a loan modification and illegal to require payment in advance of a modification being accepted. Homeowners who feel they have been victimized by a loan modification scam are encouraged to report the perpetrators. However the complaint form is geared towards reporting small time scammers and there is no form to report the major banks that are the biggest perpetrators of modification scams in the country. The FDIC lists loan modification scams they have successfully prosecuted- but predictably not one big bank has been prosecuted.

Last week five California men pled guilty to a loan modification scam that fleeced more than 400 troubled homeowners that were seeking the assistance of the Home Affordable Modification Program. According to the Special Inspector General the men targeted, "struggling homeowners and made a series of misrepresentations to get them fork over thousands of dollars in exchange for supposed home loan modification assistance." Excuse me but how is this any different than what the big banks have been doing with their HAMP modification scam?

When will the headlines read, "Last week, fifty executives from Bank of America, CitiMortgage and Wells Fargo pled guilty to a loan modification scam that fleeced more than 5 million troubled homeowners that were seeking the assistance of the Home Affordable Modification Program"? When one of the big servicers (Wells Fargo, CitiMortgage, Chase) agrees to modify a homeowner's loan and then revokes the agreement after accepting months of payments from a homeowner (knowing they had no intention of modify the loan)- why are they not held to the same standard as the scam artists?
A double-standard exists for the "Too Big to Jail" crowd. The complaint forms online are engineered for complaints against small modification operations instead of allowing homeowners to use the same complaint form to report big banks that deceive, renege and commit fraud on unsuspecting borrowers. Why are the big banks allowed to pretend they intend to modify a loan when they don't? How can it be legal to accept payments and then apply the payments without the homeowner's approval to late fees or a suspense account (instead of to principal or interest)? Even more unlawful is the fact that servicers claim they have the right to modify loans when they don't, and then string borrowers along while playing a game of cat and mouse with the documents- knowing all along the mouse doesn't have a chance in hell of receiving a loan modification. In many cases, the fees paid to servicers are HIGHER if they are servicing a loan that is in default. This situation creates a conflict of interest, since a servicer will profit by dragging out a default situation through modification to increase the fees that they earn.

As usual, Government and law enforcement choose to focus on the small players and not the large banks that are the true culprits of this scam. Instead of attacking the low man on the totem

pole, why not go after the big guns who are perpetuating massive fraud on the American public by using modification as a payment claw-back tool and a way to create a faster and larger default? HAMP provides false hope and exploits the homeowner who is already vulnerable and suffering from life events that have resulted in financial duress.

The low-level predators in this particular scam included Roscoe Ortega Umali and his co-conspirators who convinced their victims to send "reinstatement fees" and "trial mortgage payments" to participate in HAMP, a Treasury Department program. The scammers pocketed $3.8 million from October 2012 to September 2014. The big banks follow the exact same business-crime model and have convinced millions of homeowners to do the same thing the scammers advocated with essentially the same poor rates of modification- while pocketing untold millions from unsuspecting homeowners who didn't receive a modification. Why should the law make distinctions between two groups who are effectively involved in the same scam just because one is a bank? This double-standard is reflected in the fact that if you forge documents to steal a house you commit a felony and spend 7 years at Club Fed, while when a bank forges a mortgage note it is considered a "bad business practice".

"Umali and his cohorts made false claims of operating a non-profit company, brazenly used the U.S. Treasury seal on fabricated documents, and invented fictitious HAMP benefits," according to Christy Goldsmith Romero, Special Inspector General for the Troubled Asset Relief Program. She announced the guilty pleas on Wednesday. Okay Ms. Romero, would you like to explain why TARP has focused on the low hanging fruit while banks who have been rescued by the American taxpayer are doing the same on a much larger scale? Why is it okay for the big banks to do essentially do the same thing as the "scammers" with no oversight or punishment?

The scammers contacted homeowners through nationwide mass mailings much like the big banks do. It is not unusual for a distressed homeowner to receive multiple offers to modify their mortgage from the servicer of their loan. The scammers did "nothing to help modify any mortgages," according to the IG. "Instead, they used the victims' payments for their own personal benefit and to further the fraud scheme." This is exactly what the big banks have done but they have harmed way more than 400 homeowners- in fact TARP has helped less than 30% of all homeowners who have applied for loan modifications. Like the scammers in this story, the big banks use the victims' trial modification payments for their own personal benefit and to further the fraud scheme. However, while the scammers ran a micro-HAMP fraud program, the big banks operate a macro-HAMP fraud program- and the Special Inspector General looks the other way.

The big banks have engaged in a scheme where they accept borrower's trial payments under HAMP to obtain a loan modification when the homeowner would have been better off using those funds to retain an attorney or renting a moving truck. It is in the banks' best interest to offer a trial modification they know will not be approved in order to obtain payments from the homeowner while also increasing the amount the servicer will receive when the home is foreclosed on.

The five defendants were indicted last October and they will be sentenced this summer. Each faces a maximum penalty of 20 years in prison. Meanwhile the bankers who offer HAMP

modifications with no intention of offering a permanent loan modification provide false hope, take payments under false circumstances, and force homeowners further into arrears.
There is evidence that the big banks are also using other types of assistance programs to foreclose. CitiMortgage is known to offer a "traditional" or " in-house" modification called a repayment plan. The homeowner will make three payments as required according to the repayment agreement as CitiMortgage concurrently makes arrangement to foreclosure (dual-tracking). Despite concrete evidence that the homeowner has a contract with the bank in which all elements of a contract are fulfilled (acceptance, consideration, a meeting of the minds, etc.)- CitiMortgage will then revoke the modification without reason and provide no way to appeal. Later on CitiMortgage will claim that the modification was a HAMP modification and blame the denial on the investor (Fannie or Freddie)- when they received no such denial from the investor. The big banks are much more creative and destructive than the scam artists are- and are doing so in direct conflict with the American taxpayer who bailed them out for their fraud scheme. HAMP has been a diabolical disaster from day one and so has the oversight for this program that was never intended to provide wide-scale relief.

HAMP has accomplished former Federal Reserve Chairman Timothy Geitner's goals of 'greasing the runways' for the banks to foreclose in a methodical manner. HAMP is not an opportunity for homeowners to modify their loan insomuch as it is a program for banks' to extort payments, prey on the fragile hopes of homeowners in distress, while increasing servicer profits when the home is foreclosed. The scammers lacked the corporate persona, the political connections and government and taxpayer backing, but when you look at their business model- they are surprising alike.
http://www.housingwire.com/articles/36650-five-californians-plead-guilty-to-mortgage-modification-scam

Like

1. 

elexquisitor, on April 6, 2016 at 3:13 pm said:
California has over $300M from the national settlement 4 years ago. Gov. 'Moonbeam' Brown allocated that to pay down state housing bonds, and got taken to court. Then Kamala Harris(D) from San Franwacko was elected the state attorney general. Court found Brown out of bounds (and bonds) and forced him to reverse the transaction. No charges filed (surprise!) by Harris against Gov. Brown(CA – D). That's $300,000,000 of attorney fees unavailable to the couple in the story. Harris is up for election to replace Sen. Diane Feinstein (CA – D), who is married to the banker Richard Blum, who has his hands in the High Speed Train to Nowhere as well as dealing with real estate for the Fed Post Office.
Any reason the workforce of California shouldn't expect to die on their feet working as indentured servants to the banks? Any reason a story like this shouldn't be front page news? You can't fix stupid, especially when it applies to over 50% of the population who keep re-electing their overseers.
Like

2. 

crittermom, on April 6, 2016 at 2:48 pm said:

To trespass unwanted:
I disagree with you when you say folks are only reporting against the “low-hanging” fruit. I complained to the OCC, HUD, the Consumer Protection Section of my Atty General’s Ofc, my State Rep, & anyone else I could that I (foolishly) thought would have an interest in the illegalities going on.
One even wrote back saying, “Thank you for informing us.”
When I wrote them again the reply was to hire a lawyer!
The response from EACH was, “Sorry. You may want to hire a lawyer.”
My Ag’s ofc had proof in their hands, yet still did nothing other than to advise me to hire a lawyer.
If I could have afforded one after losing my business, I would have been able to make my pymts & avoided foreclosure!
As stated in this article, even the complaint forms are geared away from reporting the big banks.
Like

3. 

crittermom, on April 6, 2016 at 2:37 pm said:
Excellent article.
I have to believe the reason the big banks don’t get prosecuted like the “low-hanging fruit” (such as in this article), is that big revolving door at the very top levels. (Remember Eric Holder & Jamie Dimon’s one-on-one meeting behind closed doors resulting in a settlement so low that Jamie received an $18.5 million bonus for it from Chase?)
I’m truly sick of hearing that the “recession” is over as well as the housing crisis. Banks are STILL foreclosing, but it doesn’t even make the news these days. That’s “old news”, now, it seems.
I’m surprised that no one has made mention of those killed in Park County, CO (my former county, before Chase stole my home there) during an eviction last month.
But like I said. I guess that’s old news now.
The Sheriff’s Deputy was the first killed in the line of duty in that large county.
The homeowner was also killed, but not before shooting three deputies. One died, another was seriously injured but survived, while the third suffered minor injuries.
Most blame the homeowner who was foreclosed upon & I in no way agree with his taking a life in defense of his home he’d fought in the courts for (to no avail).
I believe, however, some of the blood should be on the hands of the banksters. Were it not for their illegal ways it never would’ve happened. That homeowner had found the end of his rope & had lost all hope.
While I don’t condone his actions, I can say I know exactly how he felt.
The Sheriff’s Deputies were standing outside my door 4 years ago. My life has been a nightmare ever since, as I was left with nothing–at age 64.
Like

4. 

Elaine Williams, on April 6, 2016 at 12:28 pm said:
@anonymous – don’t hold your breath. BONY didn’t have standing and their foreclosure mill took my house and property with fabricated documents.
Like

5. 

Elaine Williams, on April 6, 2016 at 12:26 pm said:
Countrywide and it's servicer HomEQ did the exact same thing to us – why aren't any of them in jail or being prosecuted? Oh that's right – Angelo Mozillo got a slap on the hand and then sold the servicing rights to Bank of American and BONY. HomEQ 'approved' us for a loan mod, took close to $10,000 of our money and didn't apply it anywhere that a forensic auditor could find and then promptly closed up shop. My mortgage wound up with BONY and in the hands of the foreclosure mill of Shapiro & Burson (now Brown – Burson got canned). They showed up to court in Baltimore County on three different occasions with two completely different sets of forged and fabricated documents. My attorney (who argued this fact) told me later that he'd have his license handed to him for such brazen fraud on the courts. Baltimore County didn't seem to have a problem with the fabrications and backdating, etc.
It took them five years and all of my resources but they finally handed my waterfront property and house to a greedy asshole of a guy who wanted it so badly he waited the five years while I fought. I ran out of money and nearly ruined my 30+ year marriage. Thank you Shapiro & Brown from my daughter who will not be getting a wedding reception. We drained our 401k defending that property I am sad to say.
Like

6. 

anonymous, on April 6, 2016 at 5:57 am said:
My wife formally complained to the FBI that neither BONY nor the SLS has a standing to be our mortgagee as the assignment was fraudulent. No reply yet !
Like

7. 

neidermeyer, on April 5, 2016 at 10:41 pm said:
@ gordon forbes ,
Do you have any new news on OCWEN? or is this the SEC investigation into farming out debt collection http://finance.yahoo.com/news/sec-look-mortgage-servicers-bad-152003225.html
Like

8. 

Trespass Unwanted, on April 5, 2016 at 9:30 pm said:
My opinion is these agencies go after the people they have complaints on, and the people aren't complaining on the big banks.
The people can blame no one else. If the complaint does not exist, those agencies are not going to go looking for problems because they will be accused of acting outside of their delegate authority.
They are missing the witness, and arm chair witnesses are not the same as witnesses who actually post 'what happened'.
Trespass Unwanted, Creator, Corporeal, Life, Free, People, Independent, State, In Jure Proprio, Jure Divino
Like

9. 

E. ToLLe, on April 5, 2016 at 8:23 pm said:

☐ FYI, on the Panama Papers:https://www.yahoo.com/news/photos/protestors-outraged-over-panama-papers-findings-1459801452-slideshow/ Hope there is a lot more fallout from this.
Like

☐ 

1031frscom, on April 5, 2016 at 4:45 pm said:
I have been through all this going on 53 months now of fighting nasty old Bank of America. FNMA, CFPB, all Colorado agencies- including the GOV. Office, Fraud office, and really sad but the USAG ALL turn a deaf ear and many won't even respond:(
I might have finally stumbled across one Senator here in Colorado (Sen. Corey Gardner) who might actually be able to help me on one loan anyway, as his office contacted FNMA and immediately got a reply and grant of a trial period at a low rate for 3 months- the BIG JOKE is B of A with the crooked Janeway lawfirm has postponed the sale twice since the original date of March 2, 2016 and now have it set for May 11, 2016 per the Montrose County Recorded, Janeway got fined $1 million dollars for their overcharges and deceptive practices regarding foreclosures here in Colorado in late 2014 and they are still going strong. I think they and other lawfirms are bankrolled by the big lenders by continuing to agree to file false and inaccurate foreclosure documents.
I don't think we can get anywhere without having some major support by reputable and honest lawfirms (if there are any ha ha) pulling together in a huge nationwide class action suit and hopefully the same for lawmakers and Congress people who will put up a fight for all us property owners. Rule 120 in Colorado needs to be repealed immediately so borrowers have standing to fight for their rights. Just my humble opine. Semper Fi
Like

☐ 

E. ToLLe, on April 5, 2016 at 3:56 pm said:
Louise, the UK's Cameron is not looking to good in the Panama deal.
But I have little doubt that short of some step-downs and reshufflings, the stance will be that there's nothing wrong with stashing a billion or so tax-free here and there. The little people shouldn't concern themselves over such matters.
Imagine the leader of a nation bilking his own country….unbelievable – lack of scruples. They are all sociopaths. And they're ripping off their own citizens.
It reminds what's been said many times about Bill Clinton, that he'll shake hands with you while pissing on your leg.
Like

☐ 

gordon forbes, on April 5, 2016 at 3:05 pm said:
OCWEN is doing this too, even as they are indicted
Sent from my iPhone
>
Like

☐ 

lms53, on April 5, 2016 at 2:39 pm said:

Amen Neil, Jp Morgan Chase. Has their own version called “champ”. They reneged twice on me. With first the Hamp and then the Champ and have driven me into the hole. There was a federal class action in Boston where the plaintiffs accused chase of breach and it was settled for money and the attorneys for plaintiffs have collected and moved on and being a part of the class action we were promised new loan mods and certain fees would be wiped out and what did me the homeowner get, absolutely nothing.
Like

Sheri, on April 5, 2016 at 2:23 pm said:
That is well written. What are the Panama papers?
Like

Sheri, on April 5, 2016 at 2:19 pm said:
Well weitten
Like

louise, on April 5, 2016 at 2:17 pm said:
The double standard for banks and servicers but not for thee still lives on, and it has been eight years. The release of the “Panama Papers” is very telling in that no bank or wealthy entity/person from the UK, France, New York, USA, etc. was targeted/released. Where are the remaining papers with the remaining incriminations?