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The Non-Lawyer's Guide to Foreclosure Fraud: 2011

A Complimentary Publication

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Summary

This ebook is a complimentary publication provided by our law firm as a public service to Floridians and others across the country seeking to understand what has happened over the past few years as so many have lost their hold on the American Dream of owning their own home. This ebook is a compilation of a series of posts first appearing in our blog AboutFloridaLaw.com explaining the hows and whys of ForeclosureGate and the Florida Home Loan Fraud crisis. We hope that this proves helpful to you and we welcome your comments, insights, and questions at info@hallandalelaw.com.

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1. How It All Began, Remembering Traditional Mortgage Practices and that First Smell of More Profit

Long before Foreclosure Gate, when the economy was running smoothly and banks were not operating outside the box, a potential home buyer would go to the bank and ask for a home loan. His credit would be checked, his income verified, and if set standards were met, then the loan would be approved – if the property passed the bank's test, too.

A title company or [Title Insurance Attorney](#) would investigate the real property to insure that there was clear title to pass (that the seller had legal title to sell in the transaction). Then, a title insurance policy would be issued to protect against title losses.

An appraiser would check the property to insure that it was indeed of sufficient value to cover the amount of the note: the bank would need to know that the home was valuable enough to cover the loan amount in case the borrower did not pay as agreed.

If things went well, and both the borrower and the property got passing grades with the bank, there would be a “closing” where the buyer would sign lots of paperwork, including a note and a mortgage. The note was the promise to pay the money back. The mortgage was the okay that the bank could take the house to cover the loan if the borrower failed to pay the money back.

The bank would secure these documents in a bank vault. Documentation would be filed in the real property records to confirm the purchase of the real property.

Then, things began to change. Things stopped being so traditional.

The mortgage industry got bigger and more ways to make money began to be offered to banks. For example, banks started to secure the home loan notes in “mortgage-backed securities.” Mortgage-backed securities (MBS) are a collection of notes, a pool, secured by mortgages. These pools of notes backed by mortgages could involve lots and lots of money. Billions of dollars are involved in most mortgage-backed securities, if you totaled up the notes in the pool.

Seeing these pools as something that could be securitized and sold, the mortgage industry did just that: the collections were sold to investors. They were called Residential Mortgage-Backed Securities (“RMBS”). The investors bought them through trusts, just like people buy other investment vehicles. The loans were sold to trusts and who then issued RMBS to the investors. The loans are then serviced by the Trusts in accordance with the loan documents and the Pooling and Servicing Agreement (PSA). The PSA governs, for example, the allocation and distribution of loan proceeds and losses to the investors.

Did the home owner who was paying his mortgage payment every month know all this was going on? No. Perhaps he received a notice that his note would be serviced by another bank or lender or “mortgage servicer” and he would be instructed to make his monthly payment out to another name. The owner of the home was not told about the RMBS, the trust or the Pooling and Servicing Contracts.

Banks didn't see it as any of the home owner's business: they considered the mortgage-backed loans their assets – their property to do with as they wished.

And they wished to make more money. Which was the end of the traditional home mortgage scenario and the beginning of Foreclosure Gate.

2. Things Get Lost: Lenders Lose Key Documents in Gleeeful Days of Making More and More Money

Now that banks had discovered that they could not only make money on the interest paid from home loans, but also from selling RMBS trusts (Residential Mortgage-Backed Securities trusts) to investors, things got exciting. For the lenders, at least. Lots and lots and lots of mortgages were bundled and the RMBS market skyrocketed.

The lenders were enthusiastically bundling home mortgages into these trusts and then selling them as fast as deals could be made. Of course, all this was just paper: official documentation, but still paper. Bundling mortgages into trusts meant not only keeping track of notes and mortgages but also creating and keeping track of trust documentation as well.

The RMBS Trusts Needed Lots of Additional Legal Documentation: More and More Paper

Now, it wasn't just a matter of the lender holding a mortgage and note in the bank vault. Now, there was RMBS Trust paperwork making its way, hand over hand, from the bank to the securities company to the

trustee of the particular trust. This new money-making scheme meant there was a lot more paper involved: important paper involving not only the land documents, but contract documents and trust instruments. An amazing amount of paperwork would be created for each sale.

And, just as the old adage warns that too many cooks spoil the broth, bad things started to happen.

In hindsight, it is easy to see that all this important paperwork that tied the real estate to the promise to pay to the trust was not properly protected or respected. Stuff got misplaced. Things were lost.

Important documentation that had legal importance was disappearing: things that state and federal law have deemed of legal consequence.

Notes, mortgages, assignments, trust documentation: these documents in their original form with the parties' signatures on them are recognized under state and federal law as being necessary to prove a claim or to establish an interest in land. These documents were the kind that ordinary people would safeguard in safety deposit boxes or fireproof safes. In all the flurry of activity involved in making money, no one was taking proper care of these legally-binding documents.

Of particular importance here: the documents that involved assignments of the home mortgages.

In order to accomplish bundling their mortgages for sale, the lenders had to transfer their ownership in each mortgage and note to the buyer of the bundle. For every home loan that Bank A entered into with a borrower, there had to be a formal document (the Assignment) signed by Bank A that transferred Bank A's interest in the mortgage note to Bank B, the buyer.

The Assignment was the legal document that legally established Bank B stepping into the shoes of Bank A. This is a very important document under state and federal law. It replaces Bank B as the lender who

gets the monthly payment on the mortgage note from the home owner, and it allows Bank B to sue to foreclose on the home if the borrower stops making payments.

Why? Bank B — because of the legally binding Assignment — now wears the hat of Owner of the Note and Mortgage. Bank A is out of the picture, having taken its money and run. Bank A, which made the deal with the home buyer (as discussed in part 1) after investigating the home buyer's creditworthiness and making sure that the property had sufficient value as well as clear title, is no longer legally involved with its customer, the home buyer.

One of the problems that created the national Foreclosure Fraud crisis is that important paperwork has been lost, and perhaps one of the most important documents that has been mislaid in many instances is the Assignment.

When borrowers could not pay their home mortgage payments, Bank B was often in trouble. Bank B had to have a proper Assignment in order to institute a foreclosure action under state law in Florida and elsewhere, because state law mandates that only the Owner of the Note and Mortgage can sue to foreclose on the home owner.

So, lost paperwork created a huge, national crisis. Banks couldn't gather together all the legal documentation they needed to properly foreclose under Florida law (as well as that of other states).

However, this wasn't the worst of it. Losing things, even important things, is making a mistake. A big mistake, but not an intentional wrong. Problem is, the lenders didn't stop there. Today, there is overwhelming evidence of intentional bad acts by some of the country's most revered lenders.

3. Enter the Robo-Signers

Problems with the Assignment of Mortgage, the legal document that transferred ownership of the mortgage under Florida law from Bank A to Bank B, are a large part of the mortgage fraud crisis that Florida and the rest of the country are dealing with today. To illustrate: when Bank A sold the home loan it made with the home buyer to Bank B, usually as part of a group of mortgages pooled together in a Trust, the Assignment was a critical item needed to complete that transaction. The Assignment of Mortgage, which was required to be recorded in the public records of the county in which the property was located (which rarely happened), gave Bank B legal ownership of the mortgage/home loan.

When the homeowner stopped making the mortgage payment, Bank B, through its loan servicer, would exercise its rights under the loan documents. Bank B's legal recourse? To foreclose on the mortgage and obtain legal ownership of the collateral, the home, and at the same time, sue the home buyer for breaching the contract (the note). Unfortunately, short cuts were taken by the banks, the loan servicers and their attorneys, creating problems for Bank B.

Bank B's problem: There was no Assignment of Mortgage. Or, the Assignment was flawed or unlawfully created.

According to Florida law (as well as the real estate laws of all other states), without a proper Assignment Bank B is not permitted to pursue a foreclosure action to cover Bank B's loss after the homeowner stopped making their mortgage payments. Bank A made the deal with the home owner, but Bank A sold the mortgage. It doesn't matter to them if the homeowner pays the mortgage; Bank A is no longer involved in the transaction. That places Bank B in a tough spot; legally they don't have the authority to foreclose on the collateral because they can't prove they properly own the mortgage.

So, what did Banks do? They created Assignments out of thin air.

Enter Robo-signing.

If the Banks (or the servicers) had valid Assignments and they could be located, there would be one less reason why we are facing a national housing crisis. Unfortunately, it wasn't just one or two home owners who couldn't afford to pay their mortgage payments – it was a lot of people and the volume of paperwork needed to properly foreclose was enormous. Banks were finding themselves with a big, big problem: locating paperwork to properly foreclose was difficult at best, and in many instances the paperwork was either lost or it simply didn't exist.

Banks were faced with defaulted mortgages in unprecedented numbers. Foreclosures had to be processed, and there were a lot of them. So much so, that law firms (for example, the Law Offices of David J. Stern) dedicated all of their time and resources instituting foreclosure actions throughout Florida. To add to the mess, banks (and Fannie Mae and Freddie Mac, etc.) wanted the foreclosures done quickly.

Assignments in large numbers needed to be found or produced each week. The banks had a huge problem, and they thought they had a great solution. If they couldn't locate the paperwork, they would just create the documents.

So, in order to produce a large number of Assignments in a short period of time, lenders did a bizarre thing. They appointed people to create and sign assignments on their behalf, in much the same way that an individual appoints someone else to act on their behalf when they vacation out of the country.

The banks (or the servicers) used Powers of Attorney to grant authority to create and execute Assignments of Mortgage which transferred legal ownership of the mortgages from Bank A to Bank B.

It probably seemed like an efficient way to deal with all of the lost or misplaced paperwork at the time, particularly when there was the time pressure to foreclose, but this was actually a very, very bad idea.

The individuals who were given the authority to act on behalf of the banks were supposed to stand in the banks' shoes – act on their behalf. They were required to know what they were signing. They were given the task of properly preparing and executing the Assignments and to make sure the information was correct.

They didn't. They would sit at tables and sign and sign and sign without bothering to read the stuff. Like robots. (This is how they got the nickname “robo-signers.”)

Who were these people? Didn't they know better? Maybe these people questioned things, but they were usually low level employees at the banks or the banks' law firms who were just doing what they were told to do. In many instances, people were signing the Assignments who didn't actually have the authority to do so or they signed the document using the name of someone who did. It was a mess.

Many of the known robo-signers included paralegals, legal secretaries, bank employees, and even newly hired loan processing employees who knew nothing about mortgage transactions.

How was this a bad thing? No one stopped and asked if it was permissible to create these documents. No one was checking to make sure the information in the paperwork was correct, which all too often it wasn't. Now that law suits have been filed and Congressional investigations have taken place, we now know that these robo-signed documents included (1) fake witnesses; (2) fake dates of signing; and (3) fake signatures, among other things.

Phony documents? That's right. There are no excuses for that behavior!

4. Examples of the Bad Acts Including the Story of the Now Infamous Linda Green

As the number of homeowners defaulting on their mortgages continued to rise, a parallel increase in chaos was happening on the part of the lenders and those working with them. As previously discussed, major errors were happening: documents were being lost; work was not being completed; and in an amazing number of situations, phony paperwork was being created.

In the aftermath, as Congressional committees began taking testimony and collecting documents, all sorts of bad acts were revealed. One name that has gained national recognition in this growing scandal: Florida's "Linda Green."

What was important about Linda Green's signature?

The name of "Linda Green" is handwritten as a signature on literally thousands of different mortgage assignments that have been reviewed by the Florida Attorney General's Office. Thousands- think about that: thousands of documents.

Earlier, the importance of those mortgage assignments was discussed. Without a valid assignment of the mortgage from Bank A to Bank B, the buyer of the mortgage and note (Bank B) should not be able to legally foreclose on the home after the home buyer stops paying on the mortgage he signed with his bank (Bank A).

Assignments are extremely important pieces of paperwork for banks wanting to foreclose. It is not surprising that so many files contained invalid or no assignments at all. It was shocking to discover the people who signed off on those assignments; where they really officers or agents of the various lenders.

Investigations discovered that “Linda Green” was shown as an officer for lots of different lenders. Linda Green was named as an officer for all sorts of banks as well as mortgage companies. It has been reported that “Linda Green” was shown on various documents as being a vice president at over fourteen (14) different companies, including some big names like Citi Residential Lending and Wells Fargo.

Who was the real Linda Green?

In April 2011, the CBS-TV show *60 Minutes* aired its own investigation (watch the video online at <http://www.cbsnews.com/video/watch/?id=7361572n>) where the real Linda Green was tracked down to her home in Georgia. According to Ms. Green, while she worked for Lender Processing Services (LPS), it was decided she would be deemed a “vice president” for various banks (the 60 Minutes report tallies her name being used by 20 different financial institutions) because it was a short name and easy to spell. (Note: [Lender Processing Services was sued in August 2011 by American Home Mortgage for improprieties in its paperwork processing services. AHM seeks an unspecified amount of damages, but it is alleged to be harmed by millions of dollars by LPS's actions.](#))

Examples of the Fake “Linda Green” Signatures that the Florida AG Found

Sometimes, Ms. Green signed her name to documents. Other times, her signature was signed by others – which is pretty obvious when you compare some of the paperwork (remember, this is official legal paperwork to support mortgage ownership and/or a promissory note to pay a significant amount of money).

Here, are just a few examples of “Linda Green” signatures [discovered by the Florida AG’s Office](#):



5. More and more Zany Acts revealed as Investigations begin into Foreclosure Fraud

The widespread use of the name “Linda Green” in various Foreclosure Fraud documents was not the only name that was misused; other names that popped up with different job titles in all sorts of different handwriting included [Scott Anderson](#), [Tywana Thomas](#), and [Jessica Ohde](#). However, fake names were far from the only hijinks that were occurring.

In hindsight, it is shocking to think that the mortgage servicing companies and lender law firms that are responsible for so much of this stuff actually thought this would pass muster over time – that this would never get found out. Why? The workers were so obvious about their bad acts.

Some examples:

- There were lots of documents certified as okay by notary publics that had blank signature lines – the notary was okaying non-existent signatures.
- There were notary stamps that were fakes, giving phony names or false expiration dates.
- All sorts of people shared notary stamps; they were passed around like staplers.
- The formality of a notary public ceremonially witnessing signatures was tossed out the window; people would set at tables and sign stacks of paper without anyone watching them.
- Grantees were actually named “Bogus” – that’s right. The Florida AG discovered grantees named “Bogus Assignee for Intervening Assignments” in many documents.
- Assignment effective dates were listed as “9/9/9999” (approximately 7988 years from now) in some documents. That’s a long time away, isn’t it?

Furthermore, there were numerous examples of longstanding real estate laws being ignored by those who knew better. It’s as if these traditional practices didn’t even exist. For instance:

- Notices of Lis Pendens (clouding title in the real estate records) were filed without anyone having the legal right to do so (“standing”).
- Stamped signatures were placed on documents that were filed as “originals” in the public record.
- Affidavits were filed of record with wrong information, and then other affidavits would be filed on top of them, with different numbers or amounts. This was particularly egregious when the affidavits were being used in files where the bank foreclosed on property with mortgages that had already been paid in full.
- All sorts of documents were filed in the name of companies that no longer existed under the law; they had gone under, or had been bought out, or otherwise were no longer in business. Big example: paperwork filed under the name of Lehman Brothers.

Then, things went really wrong. Documents filed in active court cases were faked. Filings presented to judges were false and contained bad information. Illegal activities (that did not comport with notary public laws among other things) were being presented to Florida judges, and judges across the country, by lawyers who presented them as being proper.

- Motions for summary judgment had fake notaries or bad affidavits.
- Assignments that were phony were presented to the court as valid in foreclosure actions.
- Foreclosure actions were filed and judgments were obtained by attorneys using false papers.

All this abuse of the system did not get discovered all at once. State attorney general offices began receiving complaints from home owners, and state investigations began. Congressional representatives starting hearing complaints from citizens about bad things happening across the country in foreclosure proceedings.

Soon, the Florida Attorney General was investigating things and so were Congressional committees. The cat was out of the bag. Private lawsuits started being filed, which is where we are today. I keep asking myself; when will it end?

Conclusion

This complimentary publication takes a series of posts explaining the hows and whys of Foreclosure Gate and the Florida Home Loan Fraud crisis that originally appeared on our law firm blog [About Florida Law](#) and places them into a single downloadable document as a public service to those who are interested and confused about what we now know to be widespread mortgage fraud in our state and

across the country. For more information about foreclosure fraud or its derivative issues such as deficiency judgments and appraisal fraud, or if you have questions or comments about this work, please feel free to visit our blog [About Florida Law](#) and comment or contact us by phone at (954) 458-8655 or by email at info@hallandalelaw.com.

About the Author



Larry Tolchinsky is a graduate of the University of Florida with a B.S. in Economics. Larry achieved his Juris Doctorate from St. Thomas University, where he was a member of Phi Delta Phi, an international legal fraternity. Larry is a long standing member of the Florida Bar Real Property Probate and Trust Law Section.

Since 1994, Larry has achieved a level of success in his law practice and trust in the community as a Broward county probate, real estate and business law attorney. He has been a featured local lawyer for several nationally recognized financial institutions including, SmithBarney, Bank of America (f/k/a Barnett Bank) and John Hancock. Larry has also represented most of the nation's largest real estate lending companies, including Bank of America, CitiBank, ChaseManhattan Mortgage Company, SunTrust and Wells Fargo Home Mortgage.

Larry Tolchinsky is married to a college professor, has two children, and is actively involved in local youth sports programs as a head coach for baseball, basketball and flag football.

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