

Recently Discovered Flaw in Recording System Clouds Titles on Previously Foreclosed Properties

The modern system of mortgage refinancing and assignments created during the housing boom has left behind a wave of title defects on properties that have ever had a foreclosure in their history, due to a loophole in the property records recording system. This has been detected on a number of properties currently in foreclosure, and found to have been uncorrected on properties previously foreclosed.

([PRWEB](#)) February 10, 2010 -- A previously undetected title flaw has been discovered on many previously foreclosed properties. As the number of real estate foreclosures skyrockets, the odds are higher that a home you live in today, or at some point in the future may have had a foreclosure in its history. Even if the foreclosure has long since passed, a loophole in the way mortgages are recorded can create a serious title defect for future owners. Title analysis performed this month by [AFX Title](#) has detected this error to be common in random samples of properties it reviewed. "This could affect the property ownership of millions of homes nationwide" said David Pelligrinelli, of AFX Title. "The mortgage recording method which created this title flaw did not exist until recently. As title abstractors are just seeing this problem emerge now but a wave of title claims is coming over the next year or so."

The problem is created through a break in the chain of mortgage ownership. Until the 1980's, most mortgages were loans between the homeowner and a bank, who lent the money directly. More recently, the mortgage financing system transformed into an international system of securitization, with mortgage lenders packaging their loans into securities, bought and sold by investors like stocks. These transactions even split individual mortgages into sections, where each loan could have parts owned by different investment banks.

The transfer of ownership in these mortgage backed securities (MBS) was done with contracts on the balance sheets of Wall Street investment banks, such as Morgan Stanley and Goldman Sachs. The company who originally appeared to make the loan was normally a retail lending company such as Countrywide or Lending Tree, who typically acted as a sales company, and sometimes remained contracted to service the loan. In the event that the loan goes into foreclosure at a later date, the then-current owner of the loan files the foreclosure and sells the property to a new owner, often at auction. The land records would show a deed of transfer from the investment bank to the new owner. This creates a break in the chain of ownership of the mortgage rights. In many cases, the transfer of ownership of the mortgage loan has gone from the original lender, through several owners, and then to the foreclosing bank, none of which is recorded on the property title history.

Technically, the foreclosing bank has no recorded title rights to foreclose in the first place. Owners of the loan normally do not publicly record each of the transfers out of expediency, and cost. Filing a document of transfer (called an assignment) in the land records incurs a substantial fee paid to the county clerk.

Some delinquent homeowners have used this error to delay the foreclosure, forcing lenders to “produce the note.” In these cases, the bank has to go through the process of getting assignments to the foreclosing bank after the fact. However, the title repair process is not required however in the majority of cases when the homeowner does not contest the foreclosure.

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This leaves the break in chain of title dormant in the property records, vulnerable to be contested in the future. A few largely overlooked cases have already been decided by courts on this issue. In Lowell MA, a judge invalidated the foreclosure of homes based on missing and out-of-order assignments (US Bank v Ibanez).

Unraveling the chain of title and clarifying ownership of loans will create challenges for the courts and legislative bodies in all states. In the meantime, homeowners and buyers should be aware of how this could affect their property title. There are reports that some title insurers are indicating that they will not insure for this title defect.

As a national provider of property title searches, AFX Title is seeing an increasing number of files where the chain of title has obvious gaps in the recorded mortgage assignments. According to Pelligrinelli, the issue is serious. “When running searches for clients, we are noticing that a significant number of previously foreclosed properties have unconnected chain of assignments in the mortgage history. This could represent a title defect which could technically affect ownership rights for future owner.”

Pelligrinelli adds that some lenders and government institutions are rushing to repair the titles on lender-owned properties as they discover them in their portfolio. This does not help individual owners who own properties previously foreclosed.

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Contact Information

David Pelligrinelli

AFX Title

<http://www.afxc.com>

706-867-6794

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