

## FEDERAL AND STATE COMPLIANCE AUDITORS

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### Why Robo-Signatures Are Illegal in California and Other Non-Judicial Foreclosure States

Everyone in America has heard of Robosigners by now. But somehow, in a majority of states (the 27 non judicial foreclosure states), qualms exist about whether this practice is "okay" simply because the matter does not go to court. The clear answer, despite what the banks have said, is no --- absolutely not.

Because the topic has not gotten the treatment it deserves, I will gladly do the job. The following are by no means a complete list, but are the most clear LEGAL reasons (setting aside pure moral questions and the U.S. Constitution) that the Robo-Signer Controversy will entitle hundreds of thousands of homeowners wrongfully foreclosed and evicted to sue in non judicial foreclosure states. Briefly, Robo Signers are illegal in California because fraud cannot be the basis of clear title, trustee's deeds following Robo Signed sales are void as a matter of law, notarization is a recording requirement for many of the documents, which we also know was often botched, and most importantly because robo signed falsifications ARE meant for use in court, including unlawful detainers and bankruptcy matters.

#### 1. Clear Title May Not Derive From A Fraud (including a bona fide purchaser for value).

In the case of a fraudulent transaction California law is settled. The Court in Trout v. Trout, (1934), 220 Cal. 652 at 656 made as much plain:

"Numerous authorities have established the rule that an instrument wholly void, such as an undelivered deed, a forged instrument, or a deed in blank, cannot be made the foundation of a good title, even under the equitable doctrine of bona fide purchase. Consequently, the fact that defendant Archer acted in good faith in dealing with persons who apparently held legal title, is not in itself sufficient basis for relief." (Emphasis added, internal citations omitted).

This sentiment was clearly echoed in 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc. (2001) 85 Cal.App.4th 1279 at 1286 where the Court stated:

"It is the general rule that courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties." (Emphasis added).

Hence, if forged Robo Signed signatures are used to obtain the foreclosure, it CERTAINLY makes a difference in California and other non-judicial foreclosure states.

#### 2. Any apparent sale based on Robosigned documents is void - without any legal effect - like Monopoly Money.

In [Bank of America](#)

**v. LaJolla Group II, the California Court of Appeals held that if a trustee is not contractually empowered under the Deed of Trust to hold a sale, it is totally void. Voidness, as opposed to voidability, means that it is without legal effect to begin with. Title does not transfer. No right to evict arises. The [property](#)**

**is not sold.**

In turn, California Civil Code 2934a requires that the beneficiary execute and notarize and record a substitution for a valid substitution of trustee to take effect. Thus, if the Assignment of Deed of Trust is robo-signed, the sale is void. If the substitution of trustee is robo-signed, the sale is void. If the [Notice of Default](#)

**is Robo-Signed, the sale is void.**

3. These documents are not recordable without good notarization.

In California, the reason these documents are notarized in the first place is because otherwise they will not be accepted by the County recorder. Moreover, a notary who helps commit [real estate](#)

**fraud is liable for \$25,000 per offense.**

Once the document is recorded, however, it is entitled to a "presumption of validity", which is what spurred the falsification trend in the first place. Civil Code section 2924. Therefore, the notarization of a false signature not only constitutes fraud, but is every bit intended as part of a larger conspiracy to commit fraud on the court.

4. The documents are intended for court eviction proceedings.

A necessary purpose for these documents, AFTER the non judicial foreclosure, is the eviction of the rightful owners afterward. Even in California, eviction is a judicial process, albeit summary and often sloppily conducted by judges who don't really believe they can say no to the pirates taking your house. However, as demonstrated below, once these documents make it into court, the bank officers and lawyers become guilty of FELONIES:

California Penal Code section 118 provides (a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury. This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

Penal Code section 132 provides: Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony.

The Doctrine of Unclean Hands provides: plaintiff's misconduct in the matter before the court makes his hands "unclean" and he may not hold with them the pristine remedy of injunctive relief. *California Satellite Sys. v Nichols* (1985) 170 CA3d 56, 216 CR 180. California's unclean hands rule requires that the Plaintiff not cheat, and behave fairly. The plaintiff must come into court with clean hands, and keep them clean, or he or she will be denied relief, regardless of the merits of the claim. *Kendall-Jackson Winery Ltd. v Superior Court* (1999) 76 CA4th 970, 978, 90 CR2d 743. Whether the doctrine applies is a question of fact. *CrossTalk Prods., Inc. v Jacobson* (1998) 65 CA4th 631, 639, 76 CR2d 615.

5. Robo Signed Documents Are Intended for Use in California Bankruptcy Court Matters. One majorly overlooked facet of California is our extremely active bankruptcy court proceedings, where, just as in judicial foreclosure states, the banks must prove "standing" to proceed with a foreclosure. If they are not signed by persons with the requisite knowledge, affidavits submitted in bankruptcy court proceedings such as objections to a plan and Relief from Stays are perjured. The documents in support are often falsified evidence. Conclusion

Verified eviction complaints, perjured motions for summary judgment, and all other eviction paperwork after robo signed non judicial foreclosures in California and other states are illegal and void. The paperwork itself is void. The sale is void. But the only way to clean up the hundreds of thousands of effected titles is through litigation, because even now the banks will simply not do the right thing. And that's why robo signers count in non-judicial foreclosure states. Victims of robo signers in California may seek declaratory relief, damages under the Rosenthal Act; an injunction and attorneys fees for Unfair Business practices, as well as claims for slander of title; abuse of process, civil theft, and conversion.

## About the Author

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