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WHEN IS FORECLOSURE THEFT? WHEN THE MORTGAGE IS RECORDED AT MERS

Author: [L. Randall Wray \(/blog/author/lrway/\)](/blog/author/lrway/) · March 1st, 2012 · [Comments \(0\)](#)

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As I've said many times, whenever you criticize the banks you get pushback from their employees and lawyers handling their home thefts (whoops I meant "foreclosures"). About ten days ago I posted a brief update on the state of play, and received the usual comments. (Here: <http://www.economonitor.com/lrway/2012/02/22/yes-virginia-foreclosure-is-theft/#idc-container> (<http://www.economonitor.com/lrway/2012/02/22/yes-virginia-foreclosure-is-theft/#idc-container>))

Indeed, they went beyond "usual" as one bank lawyer tried to defend home theft as a "victimless crime": "As a lawyer who did foreclosure work for many years for both borrowers and lenders, I assure you that robo-signing is a victimless technicality. In only a handful of exceptions is there a wrongful foreclosure in which the outcome would have changed had the technicality been corrected. I am astonished to see foreclosure characterized as "theft" on an otherwise reputable site."

Well, I guess it is nice that the lawyer thinks this site is "otherwise reputable". But, in fact, robo-signing is a go-to-jail crime. And illegally taking a home is certainly not victimless. Let us count the victims:

*The homeowner. Often the banks seize the wrong properties—because MERS (more below) recorded the wrong address. Often they steal homes that never had a mortgage. Or they lose the payments the homeowner tried to make, then claim default, then steal the home. Or they advise the homeowner to stop making payments in order to qualify for a "loan mod" (better terms on a new mortgage, often under one of the government programs)—then steal the home. But banks and their lawyers consider these "victimless crimes".

*The neighborhood. All homeowners in the area suffer lost property values and higher crime rates. Local government lose revenues, so cut services. Workers are forced to turn down better job offers because they cannot afford to move—stuck with underwater mortgages and homes they cannot sell. Banksters see "no harm, no foul".

*The national economy. Ten million jobs lost. Over ten trillion dollars of lost wealth. We know the banksters' view of this: new opportunities for the top 1%! (As I've argued—back in 2005!—it is all part of Bush's "ownership society" agenda: pump up home prices and when the bubble bursts, all property will get concentrated into the hands of the wealthiest, the true owners of our society.)

*The justice system. Looking the other way when lawyers and their banks openly lie to judges, falsify documents, and engage in property theft turns our justice system into just another branch of the kleptocracy that Wall Street is creating—what Wall Street calls the "new plutocracy"—government of, by, and for the top tenth of one percent.

*Property rights. Over the past half a millennium western property law was developed precisely to prevent some feudal lord or modern bankster from showing up and claiming title in order to steal property. This is why in the US every property sale had to be recorded—in pen and ink—at the county recorder's office. The mortgage note and deed had to be retained by the creditor and presented to foreclose on a delinquent homeowner. It had to match the county records of ownership. That has now been destroyed in the US. Anyone with a good enough lawyer and a compliant judge can now claim your property. Who suffers? Everyone. Except the top 1% that can afford to buy lawyers and judges.

A lawyer wrote to me in response to this bankster lawyer's comment to me:

Must have been a Lender/Servicer/Plaintiff attorney! "Victimless???" Let me tell you this short war story:

During an argument (small chamber hearing — wish it had been in a large courtroom with others present), the Judge asked both the Plaintiff Attorney and me (as defense attorney) if we paid our mortgages? Both of us answered, "Yes."

The Judge then offered, of course, that he, too, paid his mortgage and then added: "So, you see we all must pay our mortgages."

This was my response to the Judge: "Yes, Your Honor, I am able to pay my mortgage because I am paid by the homeowners to defend their cases. The Plaintiff-Bank attorney is able to pay his mortgage because the banks pay him to prosecute their cases. And you, Your Honor, are able to pay your mortgage because you are paid by the taxpayers to adjudicate these cases."

Essentially, all of us are 'standing on the backs' of the homeowners who (through no fault of their own) are out of jobs or underpaid, and who are 'underwater with barely a straw to breath through' — all as a direct result of this economic recession — An economic recession which was, quite literally, caused by THIS Plaintiff and others like it in the financial industry.

In fact, Your Honor, you, as a public servant, have already witnessed cuts in the court clerk's office and other judicial resources. Even you, yourself, may have concerns of reduced income or 'cutting-down of the courts' as a result of this economic recession ."

The Judge reacted by visibly pulling back in his winged, cushioned chair, and with eyes-wide-open and responded: "My God, we're here arguing 'a car accident' and you're arguing 'A MURDER!' "

Without, blinking an eye, I leaned forward and responded, " 'Exactly,' Your Honor, this Plaintiff and others like it have, indeed, MURDERED our national economy, our state economies, as well as small businesses, communities, and our families (which include the elderly and children).

Yes, Your Honor, I am arguing a MURDER." The Point (as to "Victimless"): There are so many VICTIMS that it is impossible to take a "body count!" PLUS, our Due Process Rights, Official Land Recording System, Judicial System (as a whole), and CENTURIES of property law have all been, at the least, CRITICALLY INJURED (if not worse).

When is a foreclosure a theft? When the mortgage was recorded at MERS. MERS has no standing to foreclose. The typical mortgage was bought and sold about ten times before it finally got securitized. And those sales and purchases were not recorded at the county recorder's office. Several important court cases have ruled that servicers using MERS have no standing to foreclose because the chain of title was thereby broken. That is about two-thirds of all mortgages made since the megabanks created the MERS monster. Now, those who go up against banks trying to foreclose using the "MERS destroyed the chain of title" defense do not always win. Judges are having a hard time getting their minds around the fact that banks have destroyed property law in the US. Or, they make a calculation that recognizing this fact will throw the whole real estate sector into disarray, hence overlook the home thefts as the lesser of evils.

I am going to do a more detailed update on the more recent rulings. Meanwhile here is a link to a good site with a lot of information: <http://msfraud.org/LAW/Lounge/Lounge.html> It is instructive just to read down the list of the variety of frauds the banks are using to illegally take homes, things like:

- o Falsely claiming to be the owner/holder of the mortgage;
- o Falsely claiming standing by use of names such as Trustee, Assignee, Nominee, Beneficiary, etc.;
- o Fraudulently invoking the jurisdiction of the court; o Preying on the ignorance of the court and homeowner;
- o Falsely claiming Pooling & Servicing Agreements, industry standards, rules, guidelines or other industry-authored writings supersede the law;
- o Failing to follow PSA guidelines;
- o Robo-Signing legal documents without the legal authority to do so.
- o Entering on-time payments as late, to exact illegal and unauthorized fees;
- o Manipulating account records;
- o Backdating legal documents;
- o Filing forged documents in courts and public records;

- o Charging force-placed insurance when the homeowner already has full coverage;
- o Falsely reporting a default to the credit bureaus when it is the pretender lender who is manufacturing the default;
- o Paying property taxes late, then charging the late penalties to the borrower;
- o Paying taxes and insurance on the wrong property;
- o Refusing payments to guarantee default;
- o Adding thousands of dollars in unearned legal fees to create a default;
- o Ignoring customer complaints and “qualified written requests”;
- o Arrogantly violating numerous laws and regulations;
- o Coercing the homeowner into signing a forbearance agreement to strip away their legal rights;
- o Falsifying records and documents;
- o Committing fraud upon the courts by stating they are the Holder and Owner of the Note – when in fact – they do not own or hold the “original” Note;
- o Intentionally causing delays to run up your legal expenses;
- o Creating fictitious documents (Lost Note Affidavits, Power of Attorney, etc.);
- o Triggering the terms of the null and void Deed of Trust/Mortgage
- o Apply to the trust for reimbursement after deducting the fees from the borrowers p&i payments, (Known as double-dipping)
- o Rounding up ARM rates when on a downward trend; o Not adhering to the terms of the loan documents;
- o Creating additional false deficiencies through a variety of questionable practices;
- o Adding misc. fees to purposely create a deficiency with the borrower’s next payment;
- o Not applying payments to principal and interest;
- o Committing perjury through misrepresentations;
- o Withholding or redacting discovery evidence;
- o Tampering with court transcripts and removing evidence from the record;

- o Conjuring up events that never happened while refusing to provide documentation to support their fallacies;
- o Refusing to cooperate with attempts to refinance and stop the illegal foreclosure;
- o Using abuse of litigation, appeals and malicious prosecution to litigate forever;
- o Payoffs to the consumer's attorney, law enforcement officials, judges, court personnel and government officials;
- o Threats & intimidation; o Electronic surveillance;
- o Wire Fraud / Mail Fraud;
- o Conspiracy;
- o Fraud in the inducement;
- o Unjust Enrichment;
- o Embezzlement;
- o Racketeering – RICO;
- o Extortion;
- o Abuse of Process;
- o Violation of ethics;
- o Grand Theft;
- o Extortion;
- o Tax Fraud (REMIC);
- o Public Corruption;
- o Notary Fraud;
- o Evidence Tampering;
- o Theft of Government Services;
- o Perjury;
- o Felonious Influence of Public Officials;

- o Money Laundering;

- o Insurance Fraud;

- o Securities Fraud;

- o Constitutional and Civil Right violations.

Ah, yes, the banks are truly innovative. Keep this in mind the next time some bank lawyer tries to convince you that all this is “victimless crime”. Now many will say: “but the homeowner was delinquent, so the home theft by the banksters was justified!” Why was the homeowner delinquent? Because the banksters have tacked on fees, lost payments, doctored documents and so on. Nay, they need only be delinquent BECAUSE the bank that wants their home says they are!

And for those willing to wade through a ruling, there was an excellent recent decision in El Paso, Texas in the 171st district court. It found MERS to be “grossly negligent”, that it had “fraudulently misrepresented” standing as beneficial owner of notes and mortgages, that it had failed to properly record the property, and that it had engaged in a “conspiracy”. There have been several such cases that rule against the legal basis of MERS’s business model—which then invalidates the whole “theory” that electronic recording can replace pen and ink recording in the county recorder’s office. And that, dear Virginia, means there is no legal basis for foreclosure of property registered at MERS and all such foreclosures are property theft.

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