INTRODUCTION

If you want to trace the genesis of the mortgage meltdown then I suggest that you purchase a copy of my original workbook that was published before the crash. It accurately predicted the crash, the reasons, and the strategies that were employed by the banks, as well as predicting those strategies that would assist people who wanted to challenge what we eventually named the "Pretender Lender." This is the first revision of the Attorney's Workbook first published in 2008, when foreclosure, mortgage, priority, securitization claims were in their infancy. Since then, hundreds of decisions have been rendered, new statutes have been passed, and revelations (many accurately predicted and written in the 2008 workbook) have passed into mainstream media.

Regulatory agencies have awakened to the problem only to fail the people by limpid enforcement of required restitution. Reputable reports from San Francisco and several recording offices of several states report that the foreclosures show evidence that the party who bid on the property was a complete stranger and that they had no right to submit a "credit bid". So the question must be asked, why are we even discussing the resolution to an obvious problem? The answer unfortunately is political.

We are at one of many crossroads our nation has endured wherein the question must be answered, "Are we a Nation of Laws" or a nation of men where power gets increasingly limited to the biggest bully on the block?

The purpose of this Workbook is to provide a treatise treatment and a practice manual on the subject of residential and commercial mortgages in which there is the possibility of a securitization claim being asserted with respect to past, present or future transactions.

There are many things we now know that we could only surmise at the time of the first workbook. We accurately spotted robosigning before it was called that, notary fraud before it caused numerous notaries to receive license discipline, and most of all, the money trail which we emphatically stated and still maintain was simply a transaction between the investors and the borrowers, with all other parties being conduits or intermediaries with no right, title or ownership of the obligation. We suggested that the note and mortgage might be fatally flawed, but we now have far more evidence of that because we know that the real lender was not only not named in the closing papers with the borrower, it was actively concealed.

At the time we published the last workbook, I had suggested that the terms of repayment, as stated to the creditor, were different than the terms of repayment as stated to the borrower, and that there seemed to be no documentation of the actual money trail. It was odd, I said, that when one asked for documentation from the "bank" or servicer, the information was produced only when the case got escalated into a court battle. "Show me the note", highlighted the absence of actual possession of the original note. Porter's Survey showed that in 40% of the cases where was actual evidence the original note had been intentionally destroyed. It became apparent that there was no document trail on the actual exchange of money between the single transaction between the investors and the borrowers. There were two document trails, neither of which contained the signature or agreement of the borrower or the investor.

Passing into our 6th year of analysis of this subject it is apparent that "securitization" as it was actually practiced produced questions and concerns about more than 20 million transactions. The shear volume, which some have estimated at over 80 million transactions, including refinancing and financing of new purchases has been daunting and is clearly not for the feint of heart.

The enormity of the problem has reduced regulators to mere mouthpieces for the banks who caused the problem and whose claims of "losses" produced "bailouts" in the hundreds of billions of dollars from the U.S. Treasury and in the trillions from the Federal Reserve window. Tweaking the laws through the Dodd Frank Act, and the changing of reserve requirements under the Basil Accords has done little to allay the worldwide suspicion of central bankers that Wall Street (in a generic rather than geographic sense) is running the U.S. government under the threat of "Too Big to Fail" (TBTF).

The perception running through most government agencies and judicial forums, is currently governed by the fear that overturning 5 million foreclosures and perhaps millions of other "secured loan" transactions would produce chaos in the marketplace. Thus removing any vestige of hope that confidence could be restored in the financial systems here and across the globe.

This fear is manifest in the attitude of most judges. In thousands of cases judges are being presented with evidence of forgery, fabrication and dubious authority to execute documents, signed by persons who in deposition admit to being clerical help of the entity for whom they signed documents or in many cases the signatory admits to never having been employed by the entity on whose behalf they signed. They are also presented with law that shows that notaries have routinely violated their own rules, never met the persons signing the documents, loaned out their stamp and even allowed the use of their stamp and forged signature in California to "attest" to the authority of the signatory.

Besides the fear of causing a meltdown of the entire financial system and societal framework, judges are looking for simple answers to simple questions, not the complexity that was created by Wall Street. In plain language, the attorney or pro se litigant who fails to deny the existence of the loan being used against them, who admits non-payment, and who admits to the authenticity of the mortgage or deed of trust, provides a perfect opportunity for a fearful Judge to reject the arguments of the homeowner borrower and accept the arguments of the banks and servicers.

Attorneys and pro se litigants often are ignorant or have forgotten that judges are on the bench only to, "call balls and strikes" (at least until a trial occurs). When one side is an apparent financial institution proffering evidence that has not been offered to the court but which is not met with objection by the opposing side, most judges would argue that they are without discretion to rule in favor of the homeowner borrower even if they believe that there is something wrong with the loan or the foreclosure. They will argue that it is not their job to give legal advice or to represent one side or the other.

What we know is that at present most cases end in foreclosure, auction sales and new owners on the title record. We also know by extension that IF there is a fatal defect in the title record leading up to the foreclosure, the sale is not final and if the "credit bid" was submitted by a non-creditor, the trustee or clerk performing the auction had no right to issue a deed to a new owner because a sale never took place.

If the banks are to be believed, then hundreds of years of common law and statutory law needs to be bent or broken if such fatal defects exist in the title chain. If the homeowner borrowers are to believed, then trillions of dollars of transactions were either undocumented or so poorly documented as to prevent the application of collateral to the repayment of a loan. This could and probably does mean that more than 5 million foreclosures are susceptible to being overturned, with evictions vacated and possession and title restored to the homeowner --- without the encumbrance of a mortgage or deed of trust. The now unsecured obligation could still exist, but that would require proof of the money trail, which it appears the banks and servicers have avoided like the plague.

We also know that out of hundreds of thousands of cases in which the matter was brought into the courts, there does not appear to have been a single trial in the sense that an adversary hearing actually occurred and the parties were required to sustain their burden of proof by offering evidence to the court that was accepted and marked as evidence into the record. No such proceeding seems to have ever occurred in more than 5 years of tracking. Trial dates have been set by one side or the other or both removed it from the trial calendar with the entry of a default or the notice of a confidential settlement.

So that there is no doubt about the bias of the author, allow me to explain my position regarding these phenomena. In my opinion, most of the loans have no basis for reaching the conclusion that they ever were or even could have been perfected as liens. I further posit that most of the "sales" were sham sales in which property was deeded to a third party without a sale ever having taken place; this is because the auctioneer who issued the deed upon foreclosure did so without even having received any money for the auction sale and instead accepted a "credit bid" from a complete stranger to the transaction --- i.e., from a party who never loaned the homeowner any money, who never paid for the purchase of any loan from the borrower and who was not acting in any representative capacity at the time of the auction.

And this brings me to the last point of this introduction, which is that the only thing most judges are interested in is where did the money go, who paid, who received and whether it was paid, and if in part, to what extent. Most judges seem to feel that "technical" violations included in the chain of assignments, allonges, endorsements or even the mortgage or deed of trust don't matter. They want to know one thing, and that will govern how they see the case forever: did the homeowner take a loan and did they make their payments as scheduled? If the homeowner answers affirmatively that the loan was accepted and acknowledges that payments stopped as of a certain or contested date, the judge will presume the existence of a valid obligation that the borrower is attempting to wiggle out of using exotic theories and technical objections.

Thus it may be fairly said that this treatise and practice manual is devoted to the question of whether a homeowner can object to and deny the loan, the payment schedule, the existence of a default, and the standing of the party as a creditor. While this book is directed at the legal issues, it is, by prudence and caution, that I would suggest that the actual answer might come from an experienced accountant rather than any lawyer or even a securitization "expert" who lacks credentials in auditing and accounting.

There is one point that needs to be repeated until it is finally accepted as true. Securitization has been portrayed by Wall Street and the media and even in government reports and policies as having occurred in a chronological order. But that mostly never occurred and leads to entirely different economic, accounting and legal results from the way it was done.

THE ACADEMIC SECURITIZATION MODEL AS MYTH: As most people understand it the narrative being repeated endlessly is, the borrower applies for a loan, the loan is reviewed in some form of due diligence, and the loan is underwritten by the company whose name appears on the loan documents. On its balance sheet the lender or lending institution shows an asset called "Loan Receivable" and a liability called "Reserve for Defaults". Some time after the closing with the borrower the management of the bank decides in the academic business model to sell some loan assets to either a single buyer or into the secondary market. The loan is usually "packaged" to be sold into the secondary market where it is bundled with other loans to produce loan pools that are purchased with investor money. The loan is then off the books of the originator in the following manner: it stops being a loan receivable asset and the reserve for default is removed from the liability side of the balance sheet. The income statement is also effected by this transaction. The originator will show income from points and other charges as well as costs related to the closing of the loan transaction with the borrower.

The closing with the borrower results in few, if any errors, and few if any, violations of the Federal Truth in Lending Laws, and not much for the borrower to use as defense if the loan payments are not made timely especially if the assignment of the loan is made appropriately to the borrower as is now required under the Dodd Frank Act.

In the mythological securitized transaction the deal is complete with the payment by the investment pool (REMIC) to the original lender, an assignment is executed and all this happens within 90 days (required under the Internal Revenue Code) from the time that the REMIC was organized. The REMIC is a conduit in the academic model which merely passes on the money from investors to fund the loans and passes on the money paid by borrowers to the lender investors.

While there are some obvious potential problems with this model, the mortgage meltdown, the financial catastrophe, the recession and world wide turmoil in the financial markets could easily have been avoided. The reason is that regardless of the errors being made in the documentation and the assumptions being made about the application of rules, regulations and laws, there would have been only one creditor and one borrower and the facts would have supported the existence of collateral (the residence or building) and the ability to foreclose.

It would have been better if the lender was identified as the investment pool and the terms of repayment were disclosed to both the investor lender and the borrower at the same time, but using equitable powers of the court and the obvious intent of the parties an agreement and lien could probably be fashioned out of this exotic market. Thus while there are problems with those who might have used the academic model (a small percentage of the total mortgage market) the principal problem is that the Academic Model was never used --- not even by those who thought they were using it. In fact, the use of the term "securitization" is too loosely applied to the actual transactions where money was exchanged, and the result is that the debt and the collateral are compromised or defective beyond repair and the only claim that anyone has at this point is a claim for restitution, unjust enrichment and perhaps some exotic theory for equitable lien or constructive trust.

That this results in a "free house" for the homeowners is not caused by the homeowners since they had nothing to do with the structure of the lending, the way the money was handled, or the behavior of any of the parties in the supposed "securitization chain." At least nearly all homeowners had some money they put into the home, whether it was through refinancing or otherwise. One must remember that in approximately 50% of all loan transactions, there was refinancing, and in many of those cases, the homes were either owned outright without any encumbrance or had substantial equity even at current prices.

In any event, the "free house" concept has no discernible support for those who have done the foreclosing, auction sales and resales of homes in which the foreclosing party was not the lender, not the buyer of the debt, obligation, note or mortgage. Out of more than 5 million foreclosures, the "free house" has essentially gone to the intermediaries and conduits with little or nothing delivered to the investor lenders.

While investor lenders have much in common with borrowers on the surface, they nevertheless eschew each other. The investors are mostly pension funds and other managed funds in which the relationship between the manager of the fund and the underwriter of the bogus mortgage bonds that were issued is tangled at best. The lawsuits are coming from mostly the truly independently managed funds who purchased the bonds, relying on the representations of the investment bank, and the bond rating given essentially to mortgages that were grouped together.

There are two interesting points that should be highlighted here. One is that the majority of independently managed pension funds and similar qualified "investors" did not purchase the mortgages bonds because they identified them as sham transactions. The second point is that out of hundreds of thousands of cases in which the homeowners have gone to court and escalated the battle to discovery and pretrial levels, NONE of them have gone to trial.

THE TRADITIONAL HOME MORTGAGE LOAN

Try as they might, there is no justification for the changes that were made in the recording and execution of documents for sale or financing of real property. The academic model described below, if corrected to provide full disclosure, would have been sufficient to add real securitization. It is against the backdrop of the traditional financing, laws, rules and regulations that this book measures the validity, legality, ethics, criminal and administrative liability of what was done by all lenders except those few who stuck with traditional lending practices--lending practices that have been accepted industry-wide for decades for underwriting the risk of granting a loan to anyone, with or without collateral.

THE ACADEMIC "SECURITIZATION" MODEL WITH ERRORS

Several "lenders" initially tried to do it the academic way but quickly found the problems that I alluded to before. It was here that the fabrication, forgery and misuse of notary stamps began, and here that the tape reports and spreadsheets given in lieu of closing documentation resulted in the first fraud. While I discuss these loans in some detail in this workbook treatise and practice manual, my concentration is on those models where the parties clearly never intended to do anything except deceive and defraud as many people and entities as possible.

THE MYTHOLOGICAL "SECURITIZATION" MODEL

This is the model that predominates the American landscape in as many as 80 million lending transactions dealing with home loans and several hundred other loans of all types (auto, student, credit card, consumer etc.)

As I will show in this book, there is no discernible evidence to suggest that there were any transactions in which money exchanged hands except the one where investors put funds in escrow for the pool and the one where the funds were used, only in part, to fund mortgage loans. The documentation for these actual monetary transactions is completely absent as between the investor and the borrower. Neither the investor lender nor the homeowner borrower knew what had been promised in either of their transactions or even that the other existed.

In fact, for more than 3 years, when entities far down the food chain brought foreclosures in their own name it was emphatically denied that securitization existed or that the loan had ever been assigned or sold into the secondary market. That denial is interesting because in fact, they were right, even though they meant to deceive the courts. The problem was that although they were completely correct in asserting that no securitization occurred, that left the would-be forecloser with no status of creditor or of secured party that they could prove if the court allowed discovery.

It was mainly in this sector of loans that the investment banks simply relabeled the investor money as their own, and reported it as trading profits. It was here that while ostensibly acting as agents for the investors they misused their powers to create towers of tranches that the investment banks could blow up at their own discretion, triggering payment to the investment bank for the loss not only of the defaulted mortgaged loans, of which there were actually few at the time of the crash, but as payment for the whole tower.

Instead of repaying the investor lenders through the REMIC investor pool the banks kept the money and through accounting tricks claimed that the loss that they had themselves announced was both real and that such losses were losses of the bank. Hence the TARP money and trillions of dollars of transactions at the window of the Federal Reserve went to benefit of the banks instead of the investors who were left high and dry. In many cases the pensioners who are expecting payments down the road, are going to get notices of reduction of benefits resulting from these losses --- including those managed directly or indirectly by the investment banks that collectively issued and underwrote the sale of mortgage bonds with no mortgages.

With that as an introduction, we will now commence analyzing the paths of deceit utilized in what has been falsely identified and labeled as securitized loans. Those who seek to know "which trust is my loan in" are in for a shock (there probably are no loans in any of the investment pools). However, there are strategies discussed here that will accommodate the belief of the trial judge that the loans should be considered as having been properly transferred to the investment pools. As a trial lawyer myself, I have frequently found that by taking the opposition at their word, making them define it, and engraving their proffers and evidence in stone, can then be used as the headstone of their case.

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