

THE INVESTIGATIVE PROCESS

Adam Levitin, one of the first people to tell investors how the foreclosure crisis may just point to much larger problems introduced by securitization, has this to say about what we need to do to get out of this mess.

I was glad to hear Ben Bernanke announce this morning that federal regulators would be looking into the faulty foreclosure process. But how is this inspection going to work? **The only way to actually answer whether we have a systemic faulty foreclosure problem is to have legally trained personnel examine a healthy sample of actual loan files on both the servicer and trustee level.** Is that what the federal bank regulators are going to do? Do they even have the personnel? I don't think bank examiners have the training to know what sort of legal documentation and procedures are required to properly consummate a foreclosure; it's just not part of what they do. And are they going to look at the actual loan files or just talk to the servicers and get reassurances?

The credibility of the federal response rests on the investigative process; unless there are sufficiently trained personnel looking at the actual files, we won't know the real scope of the problem, and any clean bill of health will be a white wash. [my emphasis]

This gets at something I've been trying to get to in my continued rants about warranting titles. The legally trained people who would normally review titles on this kind of individualized basis are title insurer employees (I grant that they probably don't have

experience in tracking the trustee data, though my suspicion is that the easily identified problems, like robo-signed documents, would be a good initial trigger point for further investigation into the securitization of the loan).

By having the banks warrant these loans, it makes it far less likely that the title insurers will do that kind of review (and remember, Fidelity National by itself looks at almost 40% of the titles that pass hands).

Now maybe there is someone besides the title company prepared to do this work, but I'm not hearing anyone besides Levitin talk about who that might be.