

# **LIVEBLOG: SENATE BANKING COMMITTEE ON FORECLOSURE FRAUD**

See Part One of this liveblog [here](#).

Shelby was actually pretty good, but then Johanns and Bennett went to some length to try to pretend the banksters weren't doing what they were doing.

Johnson: Does the law need to be change?

Levitin: It's not the law, it's compliance w/the law. What was governing securitization was private contractual law. Servicers allowed to contract around UCC in Pooling and Servicing Agreements. Generally requirements set forth in PSAs not followed. A good reason for PSAs to be written the way they are: bankruptcy remote. If you don't have that chain of endorsements, it's going to be very difficult to prove you've got the chain of transfers in BK remoteness.

Levitin: This is a problem with following the law.

Johnson: What were barriers to recognizing doc problems that exist.

IA AG Tom Miller: People coming forward in foreclosure issues.

Johnson: What are the conflicts of interest?

BOA Desoer: "We do not take seconds into consideration" when modifying a first. 2nd Lien not an obstacle, does not get taken into consideration.

Chase Lowman: Second liens do not get in way of modifying first.

Tester: [referring to cases he's followed in MT] It's not a pretty picture. [Describes constituent told by BoA not to make any

payments] Can you tell me how servicer can ever tell homeowner not to pay a mortgage.

BoA Desoer: That is not what we should be telling homeowners.

Tester: Would you attribute this to employee that screwed up.

BoA Desoer: We will reinforce that aspect of communication to our teammates.

Tester: How can someone receive notice he's in foreclosure before foreclosure process restarted?

BoA Desoer: [Dodges] The sale will not take place, but that customer will continue to get notices.

Tester: These particular hearings not particularly enjoyable for me. Not an isolated incident. MT is not a state where people come to Senator willy nilly. I don't know how many people didn't come to me and they just wound up on the street. It's clear servicers have been a little bit glib, particularly about risks to their own balance sheets. Quite frankly, there ain't gonna be more bailouts.

IA AG Miller: We want to work with the banks and the Feds.

Tester: Go to what Levitin said about Countrywide. This can be taken care of by the servicers. Their heads need to roll.

Merkley: GSEs say if foreclosure has begun before mod, servicer continue foreclosure during Mod. Is continued pestering on foreclosure during mod due to parallel processing.

Chase: Foreclosure sale won't take effect.

Merkley: You don't take the final step. [Now repeats a story on similar story of parallel processing] Can't we just change this policy and suspend proceedings while mod going on?

Chase: New process prescribed by HAMP would necessitate that we enter into Mod process and

engage prior to commencement of foreclosure.

Now Chase dude trying to blame it all on only relying on evidence taken over the phone.

Chase: Now we collect docs before we enter into trial period.

Merkley: Would it be possible to suspend foreclosure during mod?

BoA: We're proposing, but can only do on our own loans.

Merkley: MERS. Case in OR where MERS cannot foreclose where they have no damage. We're talking about rights of homeowner, but also confusion that can send shockwaves through system of home finance. Can any of you comment about what to do to honor homeowner rights and shock waves.

MERS: MERS makes all of that more clear. Find out who servicer and note-holder. Never available prior to MERS.

Merkley: Person who reps MERS at proceeding is normally person you designate as certifying officer. How many?

MERS: It's not temporary, it's limited. Limited to 7 specific. 20,000 of those nationwide.

Bennet: It is so depressing how little we've moved in last 3 years. On HAMP, I wrote to Admin suggesting that servicers who were part of HAMP ought to not be able to pursue foreclosures. My understanding Admin put forward policy to that effect. Status? Are you in position to not pursue foreclosures?

BoA: Not in position to say we're not going to follow foreclosure process in parallel. We will not proceed w/foreclosure sale. Eliminating parallel process has not yet taken place.

Bennet: Gating?

BoA: Investor requirements.

NCLC Thompson: For HAMP, does halt foreclosure

process, but only for loans that are not yet in foreclosure. It does not relate back to cover loans already in foreclosure process.

Bennet: 22 months of town hall meetings people bringing their documents. Servicers telling them what they're doing is okay. I can't understand misalignment of interest. I don't believe it's possible to prop up value of all these houses. Clearly in interest to prop up the value of those homes. For investors in their interest to have homeowner to keep paying.

Levitin: 2 problems. Mortgage servicers. Simply put, foreclosure is either less costly or more profitable than mod.

Bennet: Not for investors.

Levitin: Servicers do not match investors. Loans on bank books. Strong disincentive to recognize losses quickly. 40% not securitized. We don't know how many mortgages there are in US. Somewhere between 50-60 million. If loan defaults, bank can stretch out time. If bank writes down now, it's taking immediate loss. Almost all 2nd liens on banks books. Held by 4 largest banks. BoA, Chase, Citi, Wells. Roughly equal to mkt cap of those four banks. If they started writing off these liens, they'd be insolvent.

IA AG Miller: You've made my speech [to Levitin] better than I did. Culture to get over, that servicers traditionally their job was to turn over \$\$ to investors. Now being asked to do something totally different. To underwrite loans. Our belief, State AGs, like yours, a lot more mods should be made. Working w/servicers what solution should be.

Dodd: Yes or no, do you disagree w/what Bennet said.

BoA: Largest consumer bank, aligned w/consumers being healthy and economy recovering.

Chase: Yes.

Thompson: If I may, we spent a lot of time

talking about why servicers aren't modifying.  
[lays out report] Three key changes: Ending 2-track system, requiring mod before foreclosure, requiring that mod being offered if would provide net benefit to investor, BEFORE FEES ADDED ON. 2) complicated rules imposed by PSAs. Reduce repayment of servicer expense when mod. When foreclosure, servicers get paid off the top. 3) Reduce default fees.

Akaka: It's not the law, it's not being complied to. Many problems have been addressed here. Recs?

Thompson: Key recs in testimony. Much better compliance if you fund quality mediation programs and legal services. If you can get servicers into program to focus on that particular loan. Those need to be funded. Dodd Frank authorized 35 million for legal services, that money has not been appropriated. All robo-signing found by legal services.

Miller: I'd underscore funding issue. Legal services terribly underfunded. In terms of substantive leg, it might depend on how we come out w/our investigation, if we can't solve, you might think about regulation on fees.

Dodd: How long AG investigation?

Miller: Months, rather than year or longer. Depends on negotiations. If we expand scope, expands time. Maybe something on fees allowed. Forced insurance, huge abuse. Same thing w/dual track. If you all could solve the 2nd lien problem.

Levitin: Support everything Thompson and Miller. Alternative that would go farther. Taking servicers out of loan mod altogether. We're trying to get them enter business line they're not used to doing. Having federally administered loan mod program. Would not necessarily have to be through BK courts, though it could.

Reed: You anticipated my question. How do we deal w/millions of indiv cases? SDNY BK judges are already doing this.

Levitin: You need to make sure quiet title in US. Ultimately, real problem is that there are losses. We have to figure out how to allocate them. Right now losses put on MBS holders and average homeowners. Losses have to go somewhere. Banks, homeowners, govt, investors. Not govt, had that already in 2008.

Dodd; very perceptive.

Levitin: It might get me tenure. No one wants to see losses on homeowners, but that's where it's falling. So investors or banks. Investors didn't originate problems. In many cases, investors saying "we thought we were buying better paper." We need to allocate the losses. We can avoid that for a time. As long as we don't address loss allocation, making a choice, stick losses on homeowners and investors, and that's not where they should be.

Reed: What if it gets worse. Problem for all institutions. We have to start moving towards a solution, things are getting worse in my mind. Will your recs touch upon discussions about BK-like approach? Talk about some type of distrib?

Miller: Could be recs, core would be agreement w/banks that are servicers. Trying to change paradigm w/them staying in place. They're not going to agree to kinds of fundamental change that you've talked about. So it functions way Bennet said it should function. Some provisions, requirements they'd have to live up to. There'd have to be some way it'd be enforced. We struggle w/dysfunction of system. It's a system that was designed to collect \$\$\$. Talking to investors, talking to consumer groups. Do the best we can and let the chips fall. We need agreement from the banks.

Reed: Appreciate what you're doing. MOonths from now, recs, which might take further. Do we have that time. Not just homeowners, but the economy. If economy gets worse for reasons unrelated, bottom keeps slipping down down down down.

Miller: We feel that pressure, btw.

Reed: [To BoA and Chase] Implicit, could be significant losses. Are efforts being made to minimize losses, or to effectively deal w/mods. And I suspect constant tension.

BoA: Not conflict in our company. Nothing more important than doing this right. We have moved as many resources, into servicing space. We have made progress.

Chase: We have sustained billions of losses in this crisis, as a bank. Best outcome is to keep person in home and keep paying. Don't have anything to gain to have someone go into foreclosure. Interests aligned, doing everything we can.

Reed: Require industry standard full attempt to mod prior to foreclosure being enacted, might require renegotiating contracts w/trust. Would you consider?

Chase: As we've described in HAMP program requirement today. Have to offer a mod.

Thompson: In our view HAMP, what Loman said, over time, we'll see a mod being offered. Over time, means 10s and 100s and perhaps millions until you get to point before mod offered before foreclosure. Over time, millions of dollars of fees piled on.

Levitin: Requirement only applies to HAMP eligible, only 1/6. We have a problem of HAMP too narrow a focus.

Dodd: Importance to anticipate systemic risk. This seems to be like classic example. We are in crisis w/this. Not yet one that is systemic like 08. Idea is to head off systemic process. Any conversation w/Treasury?

Chase; Haven't had contact w/council. Repeated w/AAS Michael Barr.

Dodd: Urge Sec Treas to convene that council to start talking about this.

Dodd: [To BoA and Chase] Suggestions Thompson made, Elimination of 2 track system. End of two

track system. Second, proposes failure to offer mod, where mod net present positive, be allowed to use as defense against foreclosure. Principle reduction should be mandatory under HAMP.

Chase: WRT two track system. As I mentioned, HAMP already requires.

Dodd: Would you be willing to accept?

Chase: We have now, a process, where every defaulted borrowed. We start mod much sooner than when borrower referred to foreclosure.

Dodd: So you reject that. How about #2. If mod better return for investors, using as defense.

Chase: Net present value models, in cases where it is in interest of investor to mod, we offer mod.

Dodd: Using a model is one thing.

Chase: If we should mod, it should be modified.

Chase: Principle reduction. Participating in HAMP. Most important, affordable payments. Reducing interest rate. Duty to investors to minimize losses. Need to insure that collateral values are there.

Dodd: Why wouldn't it make more sense.

BoA: Very interested in discussing changes w/existing pipeline. We do have proprietary program on principle reduction. For hardest hit states w/govt funding.

Merkley: Clarify a couple points. Sought to create safe harbor for servicers from investors so follow HAMP. Not subject to suits. Did it not provide enough protection?

BoA: Dual track, where BoA is investor, ability to do something about that. But for rest, it would take their approval.

Chase: I'm not certain we have the right safe harbor. But I'll follow up.

BoA: We have inconsistencies. There are customer issues. I do not deny that. For a homeowner who



has an ability to pay, that's what we're committed to make happen.

Merkley: Not contesting her assessment, but reputation of banks weighs that out.

Levitin: Many servicers in different sit than BoA. Plenty servicers who service under completely different name. Consumer unlikely to make any connection.

Merkley: Financial incentives not offset by reputation.

Chase: As servicer, calculation used to determine whether to foreclose or renumerate doesn't take into factor servicing \$\$ . Incented to modify.

Merkley: Systemic risk that comes from legal issues being raised.

Dodd: Subject matter of next hearing. Say this respectfully of others. 30% in judicial states. Of that 30%, 60% in FL.

BoA: In BoA's portfolio.

Dodd: 70% in non-judicial states. Burden on homeowner. Burden shifts. Judicial burden more on servicing side. Anything to draw from states, that 70% in non-judicial, why we're seeing so many more foreclosures in non-judicial states.

BoA: Economic factors, unemployment, housing price declines. I don't think FL is related to judicial or non-judicial state.

Dodd: Does framework have any impact on outcome.

Thompson: CA and NV nonjudicial. Some studies show judicial delays time to foreclosure, and increases slightly mod.

Dodd: Foreclosed homes bought, bought w/cash.

BoA: 30% of all purchases are purchased w/cash.

Dodd: That number, bought w/cash, these are not owner-occupied.

BoA: Vast majority investors rather than primary

homeowners?

Dodd: Neighborhoods?

BoA: Could mean shift to rental, but primary indication is that there are investors w/cash who think price of property is right to earn return as rental. As we acquire real estate after foreclosure. Sell relatively quickly.

Dodd; Is correlation between having less owner-occupied and value of other properties.