

MA COURT: BANKS MUST OWN A HOUSE TO FORECLOSE ON IT

A radical thought, I know.

But still only definitively true in
Massachusetts.

At issue is a Massachusetts case, *U.S. Bank v. Ibanez*, which challenged a foreclosure because of processes banks have widely used in securitizing a bunch of loans into something they can sell investors chumps. Here's how Bloomberg described the case earlier this week:

Massachusetts's highest court is poised to rule on whether foreclosures in the state should be undone because securitization-industry practices violate real-estate law governing how mortgages may be transferred.

The fight between homeowners and banks before the Supreme Judicial Court in Boston turns on whether a mortgage can be transferred without naming the recipient, a common securitization practice. Also at issue is whether the right to a mortgage follows the promissory note it secures when the note is sold, as the industry argues...

"This is the first time the securitization paradigm is squarely before a high court," said Marie McDonnell, a mortgage-fraud analyst in Orleans, Massachusetts, who wrote a friend-of-the-court brief in favor of borrowers. The state court, under its practices, is likely to rule by next month...

If loans weren't transferred properly, the banks that sponsored such trusts may have to repurchase them, Adam J.

Levitin, an associate professor at Georgetown University Law Center in Washington, said in prepared testimony in the U.S. House of Representatives in November.

If the problem is widespread enough, it may cost the banks trillions of dollars and make them insolvent, Levitin said.

The court just ruled against the bank.

This is just one state, just one ruling, but it may well mean the efforts to help banks avoid accountability for their shitpile mess will fail.

Update: Here's dday on this.

The point here is that the mortgage assignment and the securitization process was improper. US Bank and Wells Fargo did not have possession of the mortgage note, and thus did not have the standing to foreclose. In addition, they put the endorsement in blank, without naming the entity to which they were assigning the mortgage. This violated Massachusetts law, according to the original judge in the case, and now the MA Supreme Court agreed. And as we know, this is more the norm than otherwise. But this is one of the first major cases, decided by a state Supreme Court, that affirms that a lack of securitization standards means that the bank who thinks they have the power to foreclose on a delinquent borrower actually does not.

If this ruling gets applied far and wide, you're basically going to have a situation where most securitized mortgages in the country cannot be foreclosed upon. It depends on state law and the associated rulings, but you can see the Ibanez case being used as precedent.