

PRESS RELEASE

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NEW PHASE IN FIGHTING FORECLOSURES COULD FAVOR BORROWERS

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For at risk mortgage borrowers, who despair about losing their homes to foreclosure, there is new hope. "Until a few months ago, the courts gave a presumption of propriety to the most powerful cartel in our country, the banks," said senior attorney Gordon Dickson founder of Prosper Law.

"Recent court decisions have started to subtly shift the balance," he said. The tide changed January 7th with the unanimous decision of the Massachusetts Supreme Court in the case of US Bank National Association v. Ibanez. The court held that the foreclosure sale of the property where Antonio Ibanez lived was invalid, because the bank was not the holder of the mortgage at the time it initiated foreclosure proceedings.

There was no doubt that Ibanez defaulted on his \$103,500 home loan. At issue was not the default, but who was owed the loan. Banks used to hold their own mortgage notes, but no more.

"In the past, mortgage holders would be listed on the records at the county courthouse," Dickson said. "Anybody could look it up. It's a practice in common law that extended back before the founding of this country."

In the last decade banks began combining home loans into a pool. Then, if the individual loans are under a certain dollar amount, they are backed by the government sponsored entities, Fannie Mae or Freddie Mac. In recent years large private lenders like Countywide Financial or Wells Fargo, pooled mortgages too, slicing them up and selling them as securities which were sold to multiple investors.

Instead of recording transfers of ownership, many lenders relied on MERS, the Mortgage Electronic Registration System, as a way to expedite mortgage security transactions. On many mortgages it was listed as the beneficiary of the note instead of the real lenders, so that the promissory note could be freely sold and resold. "This process has stolen millions in fees from county recorders," Dickson said.

With home values increasing by 20-30% each year until the crash of 2008, there was a hungry demand for mortgage backed securities. Lenders relaxed lending criteria, allowing stated income loans, interest only, or adjustable rate mortgages where the interest would soon overwhelm the borrower. In sub prime mortgages, for those with less than stellar credit, many borrowers had no idea what they were getting into.

"The worst were the negative amortization loans," Dickson said. "Because even if you faithfully paid the minimum every month, you fell further and further behind on your equity."
"I had one client in his late seventies, diagnosed with a compulsive disorder, who was given nine of them. They were just pushed through using the same application each time. He got caught up in the real estate speculation. He's now under water on all his properties"

The Congressional Financial Crisis Inquiry Commission concluded that there were “systemic breaches in accountability and ethics at all levels.” Bankers didn’t care, as long as they were making money.

According to CoreLogic, 23% of all mortgage borrowers, 11 million home owners, now owe more than their houses are worth. “It’s the worst in California, Florida and Nevada,” said Dickson. In fact 65% of all homeowners in Nevada are underwater.

In a California bankruptcy court May 2010, *In re Walker*, The court found that that MERS had no authority to act as a mortgage lender and initiate a foreclosure because it was only “nominee” acting on behalf of the true owners. If this precedent is applied nationwide, registering through MERS would have broken the chain of title on tens of millions of mortgages.

“In a recent New Jersey case, an executive of Countrywide admitted that in her ten years with company, it had never followed proper registration procedure,” Dickson said.

Courts and state legislatures are now starting to insist on proper ownership documentation. “With some mortgage holders, documents were handled by robo-signers, executing up to 900 sworn affidavits a day without conducting the review they are swearing to.”

At lot of money is at stake. “Now that lenders realize that they are vulnerable here, some are trying to cover their tracks by backdating and falsifying documents,” Dickson said.

Dickson founded Prosper Law at the depths of the foreclosure crisis. “We are one of the few law firms in the state where our focus is fighting for the homeowner,” he said. “Most of our clients want to stay in their homes, but some simply want to get out of a bad loan.”

Dickson is not one to shy from a challenge. Growing up in Utah, he frequently returns to his home state to tackle its most demanding ski runs. After graduating from Georgetown Law School 18 years ago, Dickson has had a diverse legal career that went from practicing international law to running a film studio.

His work matters to him. “I had one borrower who had reached a forbearance agreement with Wells Fargo. Unknown to her the bank had transferred the mortgage to a third party. When my client sent the payment to Wells Fargo the bank didn’t know what to do with it. She approached the new lender only to be rejected there and was soon facing a sale date. We fought and won the case forcing the seller to transfer back the note.”

Challenging chain of title and the authority of the note holder to foreclose, is a powerful weapon for somebody as well versed in real estate law as Dickson. He is now is wielding it for dozens of clients.

Dickson’s success is in contrast to that of HAMP, the government’s Home Affordable Mortgage Program. “There the lenders reduce the interest a bit for some time and that’s it. 60 percent of the borrowers can’t maintain their agreements.”

“Our aim is not to have the mortgage wiped clean,” he said. “But the new court rulings give us the leverage to ask the lenders to write down principal for our clients, wiping out their negative equity, so they’re no longer upside down. We can now give our clients a fresh start,” said Dickson.

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