The Housing Crisis and Mortgage Assignment Rights: Are the Government-Sponsored Enterprises Liable?

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Current U.S. Mortgage Structure

- After completing the loan process, most mortgages are packaged together and sold to secondary market investors. Private-label investors include hedge funds, investment banks, and institutional investors. Agency Investors include the Government Sponsored Enterprises (GSEs), primarily consisting of Fannie Mae and Freddie Mac. If the loan has been sold in the secondary market, the bank is no longer the owner of the note and mortgage. However, the bank’s rights under the mortgage are not automatically assigned to the investors. This is when an assignment of mortgage is necessary. An assignment of mortgage is a document that indicates that a mortgage has been transferred from the original borrower or lender to a third party.

The Assignment Issue

- When foreclosure proceedings are filed with the state in court due to a homeowner’s inability to continue payment, the mortgage owner must have evidence of a recorded mortgage assignment. A mortgage assignment grants the assignee legal authority to bring foreclosure proceedings.

- By law, a mortgage note must be reassigned each time the note changes ownership. A series of recent court cases exposed that several mortgage lenders, servicers, purchasers, and investors mishandled mortgage assignments, including through the mass production of false and forged mortgage assignments, affidavits, and other legal documents related to mortgage foreclosure. Such practices also included notary fraud and false signatures obtained by so-called robo-signers.

- The mishandling of mortgage assignments resulted in foreclosures on homeowners by entities that did not have the legal authority to do so.

Summary of Lawsuits

- **Homeowner Lawsuits**
  - Some states ruled against homeowners, determining that homeowners should have raised the issues in initial proceedings
  - Other states ruled in favor of homeowners
  
- **$25 Billion Settlement**
  - Settlement among five largest servicers: Bank of America, JPMorgan Chase, Wells Fargo, Citigroup, and Ally Financial
  - Only $1.5 billion of the settlement is allocated to compensate foreclosed borrowers for misassignment (750,000 households will be compensated $2,000 each)
  - Servicers will not be held liable for $394 million in penalties they would have paid for misassignment
  - Remaining funds allocated to mortgage modification and other programs

Current Rulings By State

- **COLOR KEY**
  - For Consumers
  - Against Consumers
  - Unknown

Policy Question

- To what extent might Government Sponsored Enterprises be held liable for mortgage misassignment?

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<td>Evidence exposes questionable foreclosure practices</td>
<td>Report by The Congressional Oversight Panel warns flawed foreclosure documents cost banks billions of dollars</td>
<td>Courts in several states invalidate mortgages and block banks from foreclosing on homes</td>
<td>Homeowners across the U.S. begin filing class action lawsuits against major banks, accusing banks of illegally foreclosing with faulty documents</td>
<td>Federal government orders 16 of the nation’s largest mortgage lenders and servicers to reimburse homeowners for improper foreclosures</td>
<td>County officials in several states report receiving thousands of mortgage documents with questionable signatures since fall 2010</td>
<td>Counties across the U.S. discover that illegal or questionable mortgage paperwork taints tens of thousands of property deeds dating back to 1998</td>
<td>Massachusetts sues five major banks over deceptive foreclosure practices</td>
<td>The five largest mortgage servicers agree to reduce mortgages for nearly 1 million homeowners as part of a proposed settlement with states</td>
<td>-S$25 billion settlement deal requiring payments and other compensation from the nation’s five largest mortgage servicers</td>
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