

## AN OUTLINE OF OUR JUNE 26, 2016 SIXTH YEAR ANNIVERSARY SHOW

On June 14, 2010 I first went on the air with Honolulu's veteran talk show host Rick Hamada on KHVH-AM in Honolulu for a half hour weekly radio show discussing foreclosures.

At that time, the general public and homeowners in particular knew little about the mysteries of foreclosure litigation, securitized trusts, robo-signers, and judicial officiating, mainly because it was all taking place in relatively isolated and scattered courtrooms.

Eventually with the invaluable assistance of former Hawaii Governor John Waihee, also an attorney, I started my own one-hour talk show on KHVH-AM, The Foreclosure Hour, and John and I have spent almost every Sunday since then investigating virtually every incredibly horrifying and abusive aspect of American foreclosures.

Again, our goal has been to use the medium of radio to educate the general public and homeowners in particular about what has been largely hidden from public view and thoroughly misunderstood even by those foreclosed on, and also including unfortunately by many if not most judges, lawyers, and legislators alike.

John and I have been surprisingly pleased by all of the emails and voice mail messages that we receive weekly, regrettably more than we possibly have the time to feasibly respond to.

And recognizing that our listenership has greatly increased locally and nationally and even internationally since we first went on the air, John and I thought we would try to summarize virtually everything that we have learned and presented on past shows about the American foreclosure system.

Summarized below is what we have learned during and since the six years that we have been on the air on KHVH-AM, identifying briefly at least 50 all-encompassing ways in which the American foreclosure system has been rigged against homeowner borrowers.

This list will also eventually serve as an index to our past radio shows and perhaps can be annotated with applicable case law on our website.

This is believed to be the first time an effort has been made to list all of the major overwhelming pervasive ways that the American legal system has been abusing homeowner/borrowers.

For that reason we expanded our Sunday's Sixth Anniversary Show to two hours.

Our working hypothesis is that once all of these abuses, mostly unique to the foreclosure system, are understood and "we see the forest for the trees,"

**American homeowners will finally be able to better understand the breadth of the injustices waged against us and to finally do something about it with or without the assistance of our courts.**

**For what is needed is not merely individual court victories however welcome against this inconsistent, contradictory, and corrupt system, but a systemic change, and at the end of the broadcast we suggest what that systemic change is and can be.**

**Below in outline form are the 50 summary topics briefly highlighted on our Sixth Year Anniversary Show -- seeing the forest for the trees. You need to listen to the full two hours to fully understand these 50 ways in which the system is rigged against homeowner/borrowers.**

**1. Judicial "free house" prejudices against borrowers VERSUS judicial inconsistent awarding of "free houses" to foreclosing mortgagees and loan servicers in foreclosure cases.**

**2. Borrowers paying mortgage insurance premiums VERSUS foreclosing mortgagees inconsistently collecting the insurance reimbursements and running off with double and even triple recoveries in foreclosure cases.**

**3. Hundreds of billions of federal and state regulatory sanctions assessed against and paid by banks and loan servicers VERSUS inconsistently relative pennies distributed to borrowers foreclosed upon in foreclosure cases.**

**4. Federal mandated loan documentation as a contract of adhesion VERSUS federal Truth in Lending laws inconsistently mandating accurate loan disclosures.**

**5. Law degrees and Bar admissions VERSUS inconsistent professional incompetence regarding foreclosure defense.**

**6. Judicial confirmation of auction sales based on credit bidding in foreclosure auctions VERSUS inconsistent deterrence of competitive bidding which therefore depresses the amount of the successful bid.**

**7. State control of recording offices guaranteed by the Tenth Amendment to the United States Constitution VERSUS inconsistent back door federalization of mortgage registration in the United States.**

**8. Federal judicial ethical standards prohibiting a presiding judge's ownership of even one share of stock in a bank in foreclosure litigation in order to avoid the appearance of impartiality VERSUS contrary State judicial ethical standards prohibiting stock ownership in a bank by a presiding judge in foreclosure litigation only if considered de minimis.**

**9. Government access to justice programs VERSUS inconsistently the prohibitive cost of access to justice in foreclosure cases.**

**10. The due process requirement of judicial impartiality in court proceedings VERSUS inconsistently the self-serving, self-recusal procedures in foreclosure litigation.**

**11. Consumer protections on the books protecting borrowers VERSUS how those consumer protections are inconsistently applied in foreclosure cases concerning contract and constitutional rights, including the right to trial by jury.**

**12. Regulatory federal and state laws protecting borrowers by regulating banking VERSUS inconsistently the complete lack of enforcement of those laws within the shadow banking securitized mortgage market.**

**13. The provision of federal and locally funded legal aid programs for those financially disadvantaged VERSUS inconsistently the complete lack of effective assistance for those financially disadvantaged in foreclosure litigation.**

**14. Federal "state action" jurisdictional restrictions VERSUS the inconsistent reality of extensive federal control over the entire foreclosure process, including the documents used, nonjudicial proceedings, the underwriting guidelines, and the fees and costs chargeable by so-called local foreclosure mills.**

**15. The politically correct justification for the remedy of foreclosure as supposedly necessary to preserve the housing market and housing values VERSUS the inconsistent reality of the recent destruction of the housing market and housing equity due to foreclosures.**

**16. The traditional rules of evidence controlling admissibility and trustworthiness in court proceedings VERSUS the inconsistent admission of hearsay uniquely allowed by foreclosing mortgagees in foreclosure cases to satisfy their burden of proof, particularly by so-called Declarations of Indebtedness signed by persons having no such personal knowledge or understand of prior servicers' business procedures.**

**17. Foreclosures treated by courts as solely an economic contractual problem VERSUS foreclosures inconsistently being also equally a social and a political problem for the entire community, resulting in divorce, suicide, breakup of the family, substance abuse, unruly children, and homelessness.**

**18. Traditional mortgages being governed by contract law VERSUS nontraditional securitized trust mortgages in reality being inconsistently securities with borrower/homeowners involuntary and unknowingly issuers and so-called lenders being inconsistently commissioned securities dealers, requiring the application of securities laws and not real property/negotiable instrument laws.**

19. The monetary regulatory sanctions and fines levied upon banks now in the hundreds of billions of dollars since 2008 are indirectly paid by Bank shareholders VERSUS those sanctions in reality are inconsistently indirectly repaid by United States taxpayers through the banks' virtually unlimited interest-free draws at the Treasury window.

20. Deficiency judgments in foreclosure cases against borrowers have usually been supposedly based upon the right to fully recover what was loaned VERSUS in reality deficiency judgments in foreclosure cases have often represented unjust enrichment for foreclosing mortgagees realizing much more money than what they loaned including double and even triple recoveries by flipping the properties, often immediately, or through government (particularly FDIC) crony capitalism insider subsidies.

21. Professional licensing of lenders, insurance companies, loan servicers, and mortgage brokers is said to protect borrowers VERSUS the inconsistent reality that self-dealing by them continues to predominate in the foreclosure industry, yet there has not been a single criminal prosecution of a major bank executive even started since the mortgage meltdown of 2008.

22. Bills of Rights for homeowner/borrowers have been enacted by many States VERSUS inconsistently a lack of such enforcement predominates due to inadequate funding and personnel.

23. Class actions and whistleblower actions to discipline lenders and loan servicers by compensating borrowers for foreclosure abuses have been filed and occasionally successful VERSUS inconsistently in foreclosure cases the results have been large rewards for class and whistleblower counsel with pennies for the victimized borrowers.

24. The federal government has sponsored loan modification programs to assist homeowner/borrowers VERSUS in reality loan modification processes have been largely unsupervised, subjecting homeowner/borrowers to what has been called "loan modification hell," a thoroughly dishonest and fraudulent, emotionally over-stressing process, with few loan modifications granted on terms permanently of any real assistance and then only to a relatively few homeowner/borrowers.

25. Loan servicers have admitted using robo-signers to create false documents in foreclosure cases and submitting them into evidence in court with false representations designed to and successfully defrauding courts and borrowers by using those fraudulent documents to foreclose and evict VERSUS our courts inconsistently still continuing to themselves robo/rubber-stamp the false admissibility of those documents as evidence in foreclosure cases.

**26. The American judiciary understandably adheres to the doctrine of stare decisis which requires that courts follow precedent and only overrule prior judicial decisions when absolutely necessary so as to preserve reliance on past judicial decisions VERSUS what might in the foreclosure field be called "stare stupidious" instead, inconsistently irrationally adhering to case precedent that was designed for enforcing traditional mortgages and not securitized trust mortgages, handed down at a time when such nontraditional mortgages were widely misunderstood, which prior decisions are today known to have no intelligent application in deciding foreclosure disputes and which have become instruments for fostering fraud.**

**27. Statute of limitations generally begin to run in mortgage/deed of trust contract situations when formally accelerated by written notice including by notice of a nonjudicial foreclosure or by the filing of a foreclosure lawsuit VERSUS inconsistent recent attempts by foreclosing mortgagees to argue to courts that they have the power to decelerate an acceleration in foreclosure cases by written notice to the borrower, thereby restarting the statute of limitations all over again.**

**28. The UCC requires that an allonge to a negotiable instrument such as a promissory note be affixed to the note VERSUS the contrary practice in court of foreclosing mortgagees submitting allonges on a separate sheet detached from the note, which are accepted into evidence inconsistently routinely by most courts in foreclosure cases.**

**29. Most courts continue to require monetary tender as a precondition to borrower relief, such as for securing a temporary restraining order preventing a nonjudicial foreclosure or for securing a stay pending appeal or for being allowed to go to trial to secure a TILA rescission VERSUS to the contrary the reality that no such security should be needed in such situations especially where ownership of the mortgage loan is in dispute, and that even if so the real property itself is partial or full substitute security.**

**30. One of the fundamental pillars of Anglo-Saxon Jurisprudence is the adversary system based on the premise that the truth is best determined in court if equally equipped and intelligent advocates argue their adverse positions before a disinterested neutral judiciary VERSUS the contrary reality that in foreclosure cases there has been an imbalance of advocacy and an imbalance of funding having the reverse effect than that intended by the adversary system in foreclosure cases.**

**31. Promissory notes secured by mortgages/deeds of trust on real property are traditionally considered to be negotiable instruments freely transferred like monetary currencies VERSUS to the contrary conditional payment instruments voiding negotiability.**

**32. Promissory notes secured by mortgages/deeds of trust on real property are often claimed to be UCC endorsed as bearer notes and possession said to be transferred to a holder VERSUS such promissory note endorsements being inconsistently rubber-stamped or inkjet applied and/or undated and/or unaccompanied by powers of attorney authorizing stamping and/or by signatures of individuals no longer employed by the endorsing company by the time the promissory note was created and/or affixed on a separate sheet of paper even though there is room at the bottom of the promissory note for endorsements.**

**33. Judicial independence is said to be one of the pillars of American democracy VERSUS inconsistently the undemocratic nature of judicial unaccountability especially prevalent in foreclosure litigation.**

**34. The judicial rejection of the borrowers' early show-me-the-note foreclosure defense and the inconsistent judicial acceptance of the foreclosing mortgagees' recent here-is-the-note foreclosure offense VERSUS the contrary reality that with respect to securitized mortgages/deeds of trust the note follows the mortgage due to investor equitable rights controlling the notes.**

**35. MERS in the stated capacity as nominee for lenders and their assignees is written into over 60 million mortgages in the United States VERSUS to the contrary there being no such capacity in the American laws of agency.**

**36. MERS in the stated capacity as nominee for lenders and their assignees is written into over 60 million mortgages in the United States VERSUS the failure inconsistently to identify which MERS is the nominee in foreclosure cases since there have been four separate MERS entities: MERS 1 (Merscorp Holdings, Inc., a Delaware corporation, which owns and runs the MERS electronic database), MERS 2 (Mortgage Electronic Registration System, Inc. formed in 1997 by MERS 1), MERS 3 (formed in 1998 as a Delaware corporation by MERS 2 as "NEW MERS, Inc." lasting six months before changing its name to MERSCORP), and MERS 4 (a Delaware corporation created in 1999 by MERS 1 and also called Mortgage Electronic Registration Systems, Inc., the significance of which MERS is identified as the nominee in a specific mortgage being whether MERS' 1998 corporate resolution authorizing signing officers applies.**

**37. Loan Modification procedures established by federal law are controlled by federal regulations and administered by private loan servicers based on borrower qualifying formulae VERSUS the inconsistent existence of conflicts of interest among loan servicers approving loan modifications and contrary restrictions embedded in securitized trust Pooling and Servicing Agreements.**

**38. Courts have been awarding major damages against banks in favor of and protecting investors in securitized trusts based on securities law violations of lending guidelines VERSUS the opposite treatment given homeowner/borrowers in foreclosure cases.**

39. Courts have been awarding relief to lenders through retroactive application of judicial interpretations in foreclosure cases VERSUS inconsistently awarding relief to homeowner/borrowers through prospective application only of judicial interpretations, for example when comparing the United States Supreme Court TILA opinions in Beach in 1998 and Jesinoski in 2015.

40. State legislatures and courts have been requiring foreclosure attorneys to file sworn statements in foreclosure cases subject to disciplinary sanctions that they have personally researched and found the foreclosure paperwork they file in court to be valid in response to national robo-signing crisis revelations VERSUS foreclosure attorneys inconsistently merely parroting the hearsay declarations of loan servicer representatives in their so-called attorney affirmations blindly accepted by courts even though contrary to the rules of evidence.

41. Court appointed sale commissioners and power of sale appointed sale trustees are considered neutral auctioneers VERSUS to the contrary they are in effect appointed or controlled often by foreclosing mortgagees providing the illusion of neutrality only.

42. State and federal laws require that litigation be brought in the name of a legal real party in interest having capacity to sue which in foreclosure cases means that a purported foreclosing mortgagee with legal capacity must own the loan when filing a foreclosure lawsuit VERSUS the inconsistent misuse of that requirement by courts to allow substitution of the real owner of the loan during the foreclosure lawsuit or to ratify the original filing during the foreclosure lawsuit, and to enforce a mortgage loan furthermore even if the stated original lender is a fictitious dba having no legal capacity to contract or to sue, not registered as such in the State or County in which the court is located.

43. Rocket dockets have been created by courts to quickly process foreclosure cases to eliminate crowded foreclosure case backlogs often denying borrowers a fair hearing VERSUS inconsistently the slow snails' pace at which foreclosure appeals to the prejudice of borrowers foreclosed on are considered and disposed of.

44. Courts allow loan servicers to contract for force-placed insurance when borrowers reportedly fail to maintain adequate insurance VERSUS loan servicers as well as lenders often found to be self-dealing, owning an interest in force-placed insurance entities or receiving kickbacks from such entities, resulting in above-market charges in foreclosure cases or even contrived insurance deficiencies charged to borrowers who have current insurance actually in place.

**45. The great majority of mortgage loan monthly payments are tied in amount to various changing interest rates subject to changing published indexes supposedly outside the control of lenders VERSUS evidence that at least one such index, the London Libor Rate, has to the contrary been found by regulators to have been continually manipulated by major banks, the courts inconsistently granting relief in the form of damages to investors, but not to borrowers.**

**46. Discovery is essential to borrowers for winning foreclosure cases VERSUS many courts have to the contrary restricted such discovery, concluding that it would be too burdensome to foreclosing mortgagees or inconsistently irrelevant based on outdated foreclosure case precedents.**

**47. Courts including the weak opinion of the California Supreme Court in Yvanova have created a distinction between void and voidable note and mortgage assignments stemming from securitized trust transfers VERSUS when in reality to the contrary the issue being not whether a mortgage assignment violated the securitized trust Pooling and Servicing Agreement and thus enforceable or not, and not even whether REMIC tax laws were violated, but whether the foreclosing mortgagee can prove it owns the mortgage loan or not based on the validity of the assignment pursuant to the rules of evidence verifying standing.**

**48. Foreclosing mortgagees whether in foreclosure or ejectment proceedings as plaintiffs have the burden of proof VERSUS courts to the contrary frequently shifting that burden unfairly to borrowers which is often impossible for borrowers to satisfy either financially or time-wise.**

**49. Foreclosing securitized trust mortgagees as defendants routinely remove borrower state court lawsuits to federal district courts based on diversity of citizenship or there being a federal question involved in the case VERSUS federal district courts to the disadvantage of homeowner/borrowers apply different pleading and jurisdictional requirements that favor foreclosing mortgagees that can result in dismissals with prejudice against borrowers inconsistent with what the result would have been in state courts.**

**50. Borrowers who receive adverse foreclosure, confirmation, eviction and/or denials of temporary restraining orders against nonjudicial auction decisions have the right to appeal and for a stay of enforcement pending appeal by posting adequate security VERSUS the practice of courts inconsistently to ignore the value of the real property itself in whole or in part as substitute security.**

**No one needs to tell our listeners how bad the foreclosure system is, but John and I believe that no one has been aware of the full extent of the amorphous galaxy of abuses inherent in the American foreclosure system and what if anything can be done about it.**

John and I literally stumbled onto the solution during our live radio broadcasts, and on next Sunday's radio show John and I will share our unique findings with everyone.



Gary Victor Dubin