

## THE IMPORTANCE OF SECURITIES FRAUD AS A FORECLOSURE DEFENSE

Homeownership in the United States has fallen to 62.9%, the lowest rate since such statistics were kept beginning in 1965.

And that rate is expected to fall below 50% in the coming decades -- and the statistics are even far worse for America's minorities.

Homeowners' rights have meanwhile been virtually ignored by the American political and legal systems, as evident by little discussion by either national political candidates today.

And yet a flood of even more irrational judicial decisions has been seen this year, which we discuss on this Sunday's radio show, by federal and big-state courts protecting pretender lenders, with virtually no real relief for defrauded homeowners yet in sight who are left to beg for loan modifications, another largely dishonest and emotionally humiliating process.

And meanwhile, securities fraud class actions have multiplied and many are still ongoing, resulting already in judgments of hundreds of millions of dollars being won by securitized trust investors.

These victories by securitized trust investors have been based on having been sold interests in defective mortgage backed securities containing pools of individual homeowner loans through misrepresentations of every kind, egregious violations of regulatory underwriting guidelines, and outright fraud.

America's pension plans in particular have been decimated by past purchases of misrepresented mortgage backed securities in various derivative forms.

And such adjudicated securities violations have resulted in more than 200 billion dollars in additional regulatory fines against the sponsors of mortgage backed securities and their loan servicers.

But what about homeowners who were similarly defrauded by the same abusive predatory lending practices?

What about homeowners who were induced into taking out loans they could not pay back, based for instance on fraudulent appraisals, induced fraudulent loan applications, fraudulent promises of easy refinancing, fraudulent loan terms, bait and switch practices, index rigging, kickbacks, and related fraudulent promises?

**How about homeowners who were denied being able to rely upon traditional lender-borrower collection and workout relationships or historic housing market stability otherwise crippled by pretender lender abuses deflating the value of their properties?**

**If investors were defrauded and federal regulations violated and underwriting guidelines falsified, why can't homeowners recover damages for securities fraud for what was done to them by the same securities fraud?**

**The primary reason for such an anomaly or more accurately the pretense being used by our legal system to protect pretender lenders is that the rights of homeowners having mortgage loans in default are seen as governed not by federal and state securities laws with powerful remedies, but by the UCC and contract law -- and even then rarely are the protections of the UCC and contract law equally applied to protect homeowners.**

**In large part, this inconsistency between the treatment in court of the legal rights of securitized trust investors and those of homeowners despite both being involved in virtually the same securities transactions is because mortgage loans that are securitized are treated from the perspective of property owners as containing traditional mortgages when as securitized they morph into traded securities.**

**The only real difference is in the nomenclature, while borrowers unknowingly are really the issuers of securities, their mortgages are really securities, securitized trusts and their collaborators are really securities dealers, and of course the investors are their investors.**

**The difference between the traditional mortgage and the nontraditional mortgage (security) evaporates when one considers the following hypothetical.**

**What if an owner of real property contacted a securities dealer and wanted to sell shares in his property or several homeowners did, pooling their properties jointly, borrowing money from solicited general public investors who were allowed to trade such shares on a trading platform?**

**Can there be any question in that context that the mortgage loan was indeed a traded security subject to federal and state securities laws?**

**What difference therefore does it make that in the non-traditional mortgage context the only distinction is that the homeowner is kept in the dark and unknowingly becomes an issuer of stock? Is that not just another fraud?**

**Unfortunately, it now is clear that until and unless the homeowner is viewed by courts as an integral part of a securities transaction subject to federal and state securities laws, homeowners will continue to be remediless, continuing to become an endangered species, with devastating effects upon American Democracy, the middle class, our political system, and national social and economic stability.**

**But how to convince American courts that homeowners can sue for securities fraud based on the same claims that securitized investors have been winning damages on?**

**How to convince American courts that homeowners can recover for such things as unjust enrichment while being credited for insurance payments that partially or completely cancel their mortgage balances, rather than awarding the principals of loan servicers and their securitized trusts with "free houses"?**

**On this Sunday's radio show I am going to suggest how this can be done and why it must be done, and why that effort is now absolutely critical, an inevitable battle to come in the litigation trenches.**

**Continuing to battle trying to use traditional UCC and contract law principles, a much too slow a process assisting too few homeowners and helping only those who can afford the insane costs of litigation today able to find competent foreclosure defense lawyers also an endangered species, for the vast majority of mortgage borrowers in the United States there will otherwise be and is no help in sight.**

**Gary Dubin**