

Identification of the 21 Major “Standing” Issues in Foreclosure Litigation Today

The most important issues in state and federal court foreclosure litigation today nationwide concern “standing” — whether a plaintiff has the right to foreclose and whether the court has the power to even hear a foreclosure case.

The resolution of standing issues can often mean whether a homeowner keeps his or her home or is evicted, yet there has been little if any identification and analysis anywhere of the full spectrum of such standing issues in foreclosure litigation.

On this Sunday’s show, John and I will identify and briefly highlight all such 21 major standing issues, as time permits, with special guest, Douglas Matton, who specializes in foreclosure defense in Chicago, Illinois, currently arguing standing issues in court.

We could spend an entire show analyzing each of these issues historically and their impact on foreclosure defense.

Listeners need to determine which if any of these issues, identified and presented step by step in question form below, may impact each of them, which when properly understood can prevent the foreclosure of their home:

- 1. When is standing considered jurisdictionally important in foreclosure proceedings?**
- 2. What is the difference between personal jurisdiction and subject matter jurisdiction in foreclosure proceedings?**
- 3. When do standing issues have to be raised in foreclosure proceedings?**
- 4. Who has the burden of proving standing in foreclosure proceedings?**
- 5. How is standing proven in foreclosure proceedings?**
- 6. How is standing disproven in foreclosure proceedings?**
- 7. What are the differences regarding standing in foreclosure proceedings in federal versus state courts?**
- 8. When is standing in prior foreclosure proceedings jurisdictional for purposes of appeal and when is it not?**

9. When is standing in prior foreclosure proceedings jurisdictional for purposes of collateral litigation?

10. Can a lack of standing in foreclosure proceedings be waived or forfeited?

11. Is a violation of 12 Code of Federal Regulations 1024.39 jurisdictional?

12. Does the real party in interest doctrine impact standing in foreclosure proceedings?

13. How does the difference between principal and agent relate to standing in foreclosure proceedings?

14. How does the separation between the promissory note and the mortgage relate to standing in foreclosure proceedings?

15. How does the Uniform Commercial Code relate to standing in foreclosure proceedings?

16. How does the distinction between prudential standing and constitutional standing relate to jurisdiction in foreclosure proceedings?

17. How does the existence of a REMIC securitized trust as plaintiff relate to standing in foreclosure proceedings?

18. How does robo-signing relate to standing in foreclosure proceedings?

19. How does the distinction between standing as part of a claim for relief and as an affirmative defense relate to standing in foreclosure proceedings?

20. How does the conduct of discovery relate to standing in foreclosure proceedings?

21. What affect do third-party buyers have upon standing in post-foreclosure proceedings?

Absent an understanding of the answers to each of the above 21 questions puts homeowners at a significant disadvantage in foreclosure litigation.

These issues are especially important when attempting to get homes back that have been foreclosed on and homeowners have been evicted.