

The Proposed Mortgage Integrity Act (MIA): Some Common Sense Urgently Needed Practical Institutional Reforms For A Foreclosure System Completely Out Of Service

I am entering my tenth year as a radio commentator specializing in developments in the foreclosure field following the Mortgage Crisis of 2008.

Despite isolated legislative and judicial attempts at reform during the last ten years discussed on The Foreclosure Hour, for the vast majority of American homeowners facing foreclosure little unfortunately has really changed.

False documentation and myopic judicial oversight still predominate in foreclosure courts, while hundreds of millions of dollars in hard earned equity is literally stolen in the loan securitization process in one of the largest fraudulent transfers of wealth to a few inside traders in United States history.

Backlogged courts applying mostly outdated traditional mortgage concepts remain ill-equipped to protect American homeowners from mortgage abuse.

Waging a foreclosure defense is still beyond the financial means of most homeowners, and those that can find the money to hire an attorney, find that few if any attorneys are trained in foreclosure defense and those that are, are usually less than adequately competent.

New and reform minded decisions by State Supreme Courts are nevertheless rarely adhered to by many of their state trial courts.

Hundreds of billions of dollars in sanctions levied by state and federal governments against lenders and loan servicers detailing mortgagee abuses have nevertheless failed to stop such identical abuses, and sanction money earmarked to assist borrowers has been largely diverted to other State uses.

Meanwhile, there is literally a war against foreclosure defense attorneys still taking place in our courts and among attorney regulators who think homeowners in foreclosure are just deadbeats and attorneys representing them are just preying on vulnerable defendants.

The present mortgage and trust deed foreclosure systems in the States simply do not work except for lenders and pretender lenders, whereas the federal banking system, specifically the Government Sponsored Enterprises Fannie Mae and Freddie Mac as well as MERS, are the real cause of and not the cure for most of the present serious problems in the foreclosure field.

Nevertheless, the reforms that are needed are not expensive nor complex, just a matter of simple common sense adjustments to a foreclosure system that is centuries old and no longer compatible with the needs of a democratic society under siege by greedy and unscrupulous quick-buck securitization thieves.

On today's show John and I unveil our view of the general outlines of a proposed overhaul of the foreclosure system in the States, what we call legislation wise "The Mortgage Integrity Act" (MIA for short).

We intend to present this proposal later this year in the format of model legislation for adoption by State Legislatures.

Meanwhile, we hope to get our listeners' comments and suggestions before drafting the actual Legislation in the form of a Model Act to be sent to the judiciary committees of every State Legislature.

The Model Act will have three main parts. Part One will address the nature of the emergency, Part Two will address the enacted institutional reforms, and Part Three will address transitional issues.

Part One, to be drafted in whereas clauses, will state the following:

1. Keeping record track of and protecting interests in land within each State has historically been an exclusive State function in the United States presumably protected by the Tenth Amendment to the United States Constitution;
2. Such protection has also been a strong State public policy, affecting the economic as well as the social and political well being and health of citizens in each State since respective statehood.
3. That exclusively State function has been recently undermined by the federal government in numerous ways and is responsible for the present mortgage crisis.
4. The result has been the fostering of corruption at virtually all levels of state foreclosure systems.
5. As a result, the State Legislature hereby declares a State Emergency, requiring a restructuring of the State foreclosure system through immediate institutional reforms as well as transitional measures to safeguard the wealth and well being of our citizens from increasing confiscatory forfeitures.
6. Ironically a foreclosure system said to have its goal to stabilize real estate markets in the United States has to the contrary destabilized real estate markets in this State, driving down the value of properties and dislocating tens of thousands of homeowners annually.

Part Two, to be drafted in enactment clauses, will state the following:

1. The existing foreclosure related statutes in this jurisdiction [setting forth the affected statutes by name and number] are hereby amended, abolished and/or replaced, as follows;
2. The exercise of personal jurisdiction by State Courts shall henceforth require service of all complaints by personal service, the proof of which shall henceforth require contemporaneous photographs of those being served. Substitute service is abolished.
3. Service by publication in lieu of personal service shall require attempts to serve defendants first by certified mail, return receipt requested, and next by certification first that an independent investigative agency licensed by the State has made a diligent effort to locate the defendant and within a reasonable time no shorter than two months has failed to do so, using nationwide tracking services.
4. There shall be only one form of combined promissory note and mortgage (or deed of trust) enforced in this jurisdiction, an inseparable 'Mortgage Note", which shall only be valid and enforceable if and when duly recorded at a County or Statewide recording office, and which shall not be classified as a negotiable instrument, which may only be transferred by an assignment similarly required to be recorded to be valid and enforceable.
5. Recording offices shall be staffed by attorneys who shall be responsible for researching and approving the standing of all claimed holders of recordable Mortgage Notes prior to their recordation, their compensation to be adequately funded through increases in recording fees taxed upon recorders of securitized trust instruments.
6. Enforcement of Mortgage Notes shall require proof of notices of default consisting of return receipt requests together with personal knowledge affidavits attesting to preparation and mailing by the preparers and mailers.
7. Enforcement of Mortgage Notes shall also require verification of the entire loan general ledger by an independent CPA with no institutional connections, direct or indirect, to the foreclosing plaintiff or its representatives or affiliates.
8. The State Insurance Commissioner is directed to investigate providing mortgage default insurance for the benefit of homeowners.
9. There shall be a specialized foreclosure court in every County in the State, whose Judges shall be prohibited from directly or indirectly having any ownership interest in or any other connection with any financial institution.

10. Mortgage defaults shall by law be considered confidential and not disclosed to anyone other than the affected borrowers, accommodating mortgagors, and guarantors under penalty of fines and imprisonment, to avoid foreclosure blight lowering the market value of affected properties.

11. Foreclosure complaints shall similarly be considered confidential and filed under seal, to avoid foreclosure blight lowering the market value of affected properties.

12. Foreclosure auctions are hereby abolished. Properties subject to foreclosure shall be sold in the ordinary market place by licensed real estate brokers and listed in the Multiple Listing Service as directed by the Foreclosure Court.

13. Deficiency judgments are hereby abolished.

14. In cases in which the Foreclosure Court finds that there is little or no equity remaining after payments required to be made to a foreclosing plaintiff, a foreclosure defendant must vacate the premises within a reasonable time no less than 90 days or must elect to forfeit ownership in exchange for an immediate lease agreement preserving possession for a stated period of time including indefinitely as determined by the Foreclosure Court provided a monthly market leasehold rental payment is agreed to and timely paid.

15. In cases where the Foreclosure Court finds that there is substantial equity remaining after payments required to be made to a foreclosing plaintiff, a foreclosure defendant may elect to retain possession as a tenant as aforesaid and shall have the right to recover title including therefore his equity in the property within a time period of at least one year to be determined by the Foreclosure Court provided at the time of the exercise of that right the foreclosure defendant reimburses the foreclosing plaintiff for whatever amounts may then be due on the mortgage note.

Part Three, covering transitional matters, as follows:

1. The dates of effectiveness of the various enactments will have to be tailored to existing conditions and between new and existing secured loans.

2. The respective powers between the States and the federal government in various respects above will likely require negotiation and litigation. Fortunately, the United States Supreme Court has recently shown deference to the States in related issues involving financial regulation.

Join John and me today and email us your comments and suggestions. Is there any other way you can think of to change a system so badly out of service?

Gary