

I have been informed in a “forensic audit” of the chain of title of my mortgage, or another source, that the terms of a Pooling and Servicing Agreement (PSA) has been violated related to the assignment of my mortgage. Can I challenge a pending foreclosure on this basis?

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Answer: No, with the caveat that each case has unique facts that deserve independent evaluation. This argument raises questions of standing and whether an assignment is void vs. voidable. The overwhelming consensus from courts is that a mortgagor does not have standing to raise a violation of the PSA as grounds to invalidate an assignment, etc. Butler v. Deutsche Bank, 2012 WL 3518560 \*9 (D. Mass., Aug. 14, 2012); Juarez v. U.S. Bank Nat. Ass’n, Civil Action No. 11-10318-DJC, 2011 WL 5330465, at \*4 (D. Mass. Nov. 4, 2011); In re Correia, 452 B.R. 319, 324 (1st Cir. BAP 2011) (per curiam); In re Almeida, 417 B.R. 140, 149 (Bankr. D. Mass. 2009); In re Samuels, 415 B.R. 8, 22 (Bankr. D. Mass. 2009); Cf. In re Lacey, Bankr. No. 10-19903-JNF, 2012 WL 2872050, at \*17 (Bankr. D. Mass. July 12, 2012); In re Bailey, 468 B.R. 464, 473-76 (Bankr. D. Mass. 2012). If an assignment complies with the applicable state laws, it is valid as to the mortgagor and any other third party.

As indicated above, this argument, along with many other arguments raised by people trying to defend against a foreclosure, like the “known robo-signer” argument this author has commented on before, has a very poor track record with the courts. This fact is typically not advertised by the various sources found on the Internet promoting these types of arguments.

There can be meritorious arguments to defend against a foreclosure, but a violation of the PSA is not typically one of them. Be wary of those that seem be overconfident that one of these arguments seen on the Internet so often will be grounds for you to avoid foreclosure. They may simply be telling you what you want to hear.

In the event that you are looking to defend against a foreclosure, please be mindful that it is a serious legal undertaking. Do not be taken advantage of those touting a buzzword argument you find on the Internet. The best course of action is to obtain a legal opinion/assessment of whether you have grounds to defend against a foreclosure from an attorney that you believe genuinely has your best interests at heart. Feel free to give us a call.

Contact: George E. Bourguignon, Jr., Esq.

Phone: (508) 769-1359 or (413) 746-8008

Website: <http://www.bourguignonlaw.com>

Email: [gbourguignon@bourguignonlaw.com](mailto:gbourguignon@bourguignonlaw.com)

MERS/foreclosure/PSA/quiet title action/robo-signing