

One or more of the assignments in the chain of title for my mortgage was signed by a “known robo-signer.” Can I challenge a pending foreclosure on this basis?

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Answer: Although each case has unique facts that deserve independent evaluation, probably not. Although there has been much robo-signing in various contexts that has come to light in recent years, this does not necessarily translate into a winning argument to invalidate an assignment and a successful foreclosure defense. The robo-signing argument is typically a loser. The most recent example/case known to this author is *Butler v. Deutsche Bank*. 2012 WL 3518560 at *9 (D. Mass., Aug. 14, 2012).

You also have to ask yourself: what facts do you actually know about the signing of the assignment that you can in good faith allege in a court case? (Keep in mind that allegations raised in a court proceeding must be made in good faith.) Also, who are those that “know” the person is a robo-signer?

Despite a consensus from courts, this argument and a strain of similar buzz-word type arguments appear to have been raised frequently in recent time and they continue not to be successful. Based on the tone of recent decisions issued by judges that seem to be recognizing a pattern, it may get to the point that these types of arguments could be regarded as frivolous and sanctions against those that raise them may be issued.

Frankly, if you are thinking of raising any type of “robo-signer” argument, the banks and their attorneys will likely regard it as a sign that you are unfamiliar with the actual results of raising these types of arguments.

It is understood that you may see confident statements splashed all over the Internet concerning various arguments to avoid foreclosure. And yes, there have been some watershed decisions that have caused drastic changes to the foreclosure process and in the law in this emerging “field” of foreclosure defense law in the past four years. However, this does not mean everyone can claim a robo-signer was involved in the transfer of their mortgage and then avoid foreclosure. All one needs to do is read Massachusetts Lawyers Weekly regularly to see how many of these popular, buzz-word type arguments actually play out in the courts.

Understand that the author handles foreclosure defense as part of an active legal practice and advocates zealously for his clients. And there are, at times, arguably often, meritorious arguments based on good law to defense against a foreclosure. However, it is professionally unethical (and personally and emotionally unhealthy) to write and speak too optimistically about arguments that are typically not promising, or borderline frivolous. Please do not fall victim to these statements. Rather, the best course of action is to obtain a legal opinion from an attorney that you believe genuinely has your best interests at heart.

In the event that you are looking to defend against a foreclosure, please be mindful that it is a serious legal undertaking. In the large majority of cases it will entail the engaging of competent legal counsel and the pursuit of meritorious claims based on facts believed in good faith in order to be successful. The author suggests a thorough

consultation with a competent attorney that will provide a realistic assessment of your legal situation before embarking on foreclosure defense litigation in Massachusetts.

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