

Massachusetts Foreclosing Lenders Must Possess Valid Assignments of Mortgages

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[Click here for a copy of U.S. Bank Nat'l Assoc. v. Ibanez case](#)

On October 14, 2009, Judge Keith C. Long of the Massachusetts Land Court held that foreclosing lenders in Massachusetts must possess valid assignments of mortgages in recordable form prior to publishing or mailing notices of foreclosure sale. Judge Long's decision in *U.S. Bank Nat'l Assoc. v. Ibanez* ("Ibanez") carries the possibility of voiding hundreds, if not thousands of foreclosure sales throughout the Commonwealth due to the fact that various foreclosure law firms routinely used assignments executed after the notice of sale, and oftentimes after the sale itself.

Partridge Snow & Hahn LLP has always required valid assignments to be recorded prior to noticing a Massachusetts foreclosure sale. Accordingly, none of the foreclosures performed by this firm on our clients' behalves should be affected by the Land Court's decision in the *Ibanez* case. If you have any foreclosures performed by another foreclosure firm that you feel may be invalidated under Judge Long's opinion, please contact us to discuss.

Two foreclosing entities, each purporting to be the trustee of a securitized trust, filed Land Court complaints seeking declaratory judgments validating two foreclosure sales. Judge Long noticed that the relevant recorded assignments into the foreclosing trusts were executed after the foreclosure sale but contained "effective dates" prior to the date of the notice of sale. The Court, *sua sponte*, informally joined the two Land Court actions and dismissed the complaints holding that the back-dated assignments were not valid and as such, the foreclosing trusts were not the holders of the mortgages at the time of notice of sale as required by Massachusetts statute. The foreclosing trusts filed Motions to Vacate the orders of dismissal.

The foreclosing trusts argued that the agreements transferring ownership of the mortgage loans to the trusts were sufficient to confer upon the trusts the status of holder of the mortgage. In rejecting the trusts' arguments, Judge Long relied on the fact that the agreements themselves required valid assignments in recordable form. The trusts' failure

to possess assignments in recordable form which were executed prior to the notice of sale was fatal to their claim that they were the holders of the mortgage when they noticed the sale.

The Land Court was also not persuaded that the fact the trusts were the holders of the related promissory notes meant the trusts were also the holders of the mortgages. Citing Massachusetts case law going back to 1889, Judge Long noted that Massachusetts has failed to adopt the majority position that the mortgage “follows the note.” Instead, a transferee of a note in Massachusetts is granted nothing more than an equitable right to obtain an assignment of the corresponding mortgage. Having failed to timely obtain an assignment, the trusts could not be considered mortgage holders.

[Click here to read previous Take Note e-Alert "Recent Massachusetts Land Court Cases Delay Foreclosures"](#).

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