Error claims cast doubt on Bank of America foreclosures in Bay Area

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Topic(s):
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Joji Thomas was desperate to save his home. The San Francisco mechanical engineer sold his car, tapped into his wife's savings and begged friends for money. In July, to stave off foreclosure, he bought a $27,777.85 cashier's check and mailed it to Bank of America.

A bank representative acknowledged receiving the check two days later, Thomas said. But the payment went missing later that week and was not applied to his mortgage. Bank of America foreclosed on his home and sold it at auction. He moved out April 13.

Joji Thomas (right) directs movers as he packs up his home in San Ramon. Bank of America foreclosed on the house after the bank lost a $27,777.85 cashier's check Thomas had sent in an effort to save the home.
Credit: Matt Drange/Center for Investigative Reporting

"I was forced into this," he said as he cleared the furniture from his home. "I had no other choice."

Thomas is one of thousands of Bay Area homeowners fighting in court to save their homes from a foreclosure system rife with mistakes, mismanagement and even fraud, a joint investigation by the Center for Investigative Reporting and NBC Bay Area has found.

Despite recent settlements with state and federal regulators and a new California law that tightens rules for the mortgage industry, banks and their subsidiaries continue to file invalid documents and foreclose on properties to which they appear to have no legal right, an analysis of thousands of pages of property records and wrongful foreclosure lawsuits shows.

At the center of much of this is Bank of America, which plays the largest role of any bank in Bay Area foreclosures. From July 2008 through October, Bank of America's foreclosure trustee, ReconTrust, handled 1 in 5 defaulted properties in the Bay Area, roughly 70 percent more than the next biggest trustee, according to RealtyTrac Inc., a real estate information company. During the past five years, 184,000 Bay Area properties went into default; last year, the value of these loans exceeded $11.6 billion.

Jay Patterson, a forensic accountant and certified fraud examiner in Arkansas; Ben Weber, who formerly worked for the city of San Francisco analyzing property records; and Marie McDonnell, a private auditor in Massachusetts, reviewed hundreds of loan documents and property records for this story at the request of CIR and NBC Bay Area. All three agreed there is evidence that Bank of America and its subsidiaries skirted proper procedures in foreclosure filings. These practices included lying on fraudulent loan transfers and altering dates on property records, which allowed Bank of America to initiate foreclosure and collect payments and fees for home loans it did not own.

Patterson said an average homeowner looking through property records cannot tell if they are fraudulent; a public document that appears to transfer ownership of a mortgage can be fabricated. Patterson traced the true chain of ownership for mortgages on behalf of CIR and found that in many cases, banks were filing false documents.

"Banks didn't have them and were making them up to foreclose," said Patterson, who serves as an expert witness for plaintiffs' attorneys in wrongful foreclosure lawsuits.

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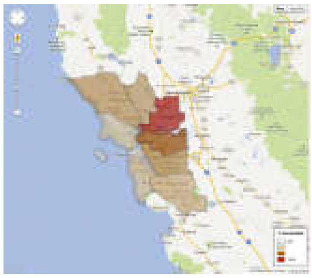

Map: Bay Area foreclosures, county by county

"Land records are supposed to be the true representation of who owns the land," he said. "But what you've seen in the last 10 years is the bastardization of these records, and it might take another 100 years to straighten them out."

Bank of America spokeswoman Jumana Bauwens said the bank and its subsidiaries provide homeowners who ask with written proof that the bank has the right to foreclose. She also said its subsidiary ReconTrust does not falsify documents. She declined to answer questions about what appear to be improper foreclosures on home loans the bank did not own.

"ReconTrust has procedures in place and controls to ensure documents are executed and notarized in compliance with applicable laws and regulations," Bauwens said.

Bank of America issued a statement today saying that it had made significant improvements to its foreclosure process since 2010 and had helped nearly 300,000 of its California customers avoid foreclosure. In its latest annual financial statement, Bank of America wrote off more than $3.2 billion in home loans.

"We have and will continue to invest significantly in assisting our customers who have been impacted by the economic downturn," Bauwens said.

Dustin Hobbs, spokesman for the California Mortgage Bankers Association, a trade group that represents mortgage lenders and servicers, acknowledged errors on the part of California banks but said allegations of filing of false property records – including instances of robosigning, in which bank employees misrepresent themselves – have been exaggerated.

"The question of who owns the loan or not, I think that's been blown out of proportion," Hobbs said. "There have been mistakes, but industry has made tangible, significant improvements over the last three or four years."

In an audit last year, then-San Francisco Assessor-Recorder Phil Ting found apparent legal violations in 84 percent of foreclosures in the city between 2009 and 2011. These ranged from procedural defects, such as not alerting homeowners that they were in default, to significant breaches of the law, including transferring loans in which banks appeared to have no legal ownership right.

Diane Thompson, a mortgage lawyer with the National Consumer Law Center who has written extensively on foreclosure abuse, said banks profit by cutting corners on documents.

"Banks have tremendous monetary incentive not to comply with standard legal procedures," Thompson said. "They have been doing it sloppily and illegally for a long time, and they have a sense of entitlement."

California's Homeowner Bill of Rights, which took effect in January, prohibits banks from foreclosing on properties while loan modifications are pending and requires that banks assign a single point of contact for each borrower. But the law does not address one issue that is key to homeownership: ensuring that banks file legitimate property records.

Bank of America, along with the nation's four other largest mortgage servicers – JPMorgan Chase & Co., Wells Fargo & Co., Citigroup Inc. and Ally Financial Inc. (formerly GMAC) – agreed last year to a $25 billion settlement with the federal government and 49 states' attorneys general to resolve claims that the banks falsified mortgage documents and misled homeowners; the banks admitted no wrongdoing. As part of the settlement, Bank of America agreed to help eligible homeowners get loan modifications and not falsify documents.

To execute a foreclosure, Bank of America relies on ReconTrust. Some states have taken legal action against the Simi Valley company, which Bank of America acquired in 2008 when it absorbed the lending giant Countrywide.

In 2011, Nevada targeted Bank of America's business model with a law prohibiting any company from serving as lender, trustee and servicer for a loan. The law also makes it a felony for a bank to make false representations about the ownership of a property.

The same year, Washington Attorney General Rob McKenna sued ReconTrust for filing false documents in thousands of foreclosure cases. The company agreed to pay $1.1 million and not file fraudulent documents.

ReconTrust declined to answer questions about its business activity and referred all foreclosure questions to Bank of America. Bauwens, the Bank of America spokeswoman, said ReconTrust is subject to the same quality controls as all the bank's subsidiaries.

Troubles with mortgage database

The filing of false property documents was exacerbated after 1997 when the banking industry created Mortgage Electronic Registration Systems Inc., or MERS, a private database that maintains information on roughly 26 million active mortgages nationwide. The registry has made it possible for banks and their subsidiaries to log mortgage transfers – and record property ownership – with little oversight.

Last year, New York Attorney General Eric Schneiderman sued the company that runs the registry and three banks – Bank of America, Wells Fargo and JPMorgan Chase – for deceiving homeowners by recording false documents in foreclosure proceedings. The suit alleges that MERS has designated thousands of "certifying officers" at ReconTrust and other companies with the authority to transfer loan ownership.

In addition to giving banks the opportunity to carry out wrongful foreclosures, false reporting of loan ownership in the industry database provides inaccurate information to investors. Adam Levitin, a law professor at Georgetown University and Harvard Law School who testified about improper foreclosures before Congress, said the filing of invalid property records threatens to derail the American economy.

"Banks feel that they have the right to foreclose and the paperwork is superfluous," said Levitin, who also has been hired by attorneys as an expert witness on mortgage securities. "If you actually probe this, it's a complete mess. No one really knows who owns what."

Therese Masson of Oakland has yet to establish who owns her loan.

Ten years ago, Masson started a business to flip homes for profit. But when the housing market crashed in 2008, she used her expertise in contract law to counsel homeowners who were in jeopardy of losing homes. Even so, she got caught up in a foreclosure crisis of her own.

Masson bought her home in 2004 for $603,200 and took out a second mortgage to remodel. Her home is now a towering 3,000-square-foot structure worth more than $1 million.

But after Masson's income declined in 2008, she couldn't make her $4,281 monthly payment on her adjustable rate mortgage. Two years later, she owed Bank of America $136,841 in late payments and fees. Bank of America assigned ReconTrust to manage her property records.

Bank of America said it could not comment on Masson's case because she did not sign a waiver allowing bank officials to discuss her financial affairs. Although Masson shared her private loan documents with CIR and NBC Bay Area, she said she did not give permission to the bank because she feared retribution.

On Nov. 2, 2010, Masson received a default notice signed by Jonathan Jackson, a ReconTrust employee. But Bank of America did not hold the title to the note on her property at the time the notice was filed, said Patterson, the forensic accountant who examined the records. That should have rendered the notice invalid, he said.

The following week, ReconTrust filed a document with the Alameda County Clerk-Recorder's Office substituting Bank of America for Masson's original lender, Indiana-based First Franklin Financial. However, First Franklin was no longer in business at the time.

The document was signed by Tina Marie Sevillano as an assistant secretary for First Franklin on Nov. 1, 2010. Three days earlier, on Oct. 29, 2010, she signed an affidavit as an assistant secretary to MERS, the electronic registry. She transferred Masson's loan to a trust – a pool of mortgages that Wall Street investors purchase as securities--that had stopped accepting loans five years earlier.

But Sevillano wasn't an employee of either company. She worked for ReconTrust, court records show. At least a half-dozen wrongful foreclosure lawsuits allege that Sevillano is a "robosigner," someone who fraudulently approves mortgage documents without verifying the information in the presence of a notary public, as required by law.

Reached by phone, Sevillano said she didn't remember all the entities for which she had signed. She declined to answer specific questions about Masson's case or the thousands of legal affidavits filed with her signature. She did not deny working as a robosigner.

"I'm pretty popular from what I understand," she said.

To postpone the foreclosure Sevillano's signature set in motion, Masson filed for bankruptcy last year and is seeking a loan modification. In its latest letter to Masson, ReconTrust gave her a sale date of May 2.

"There is no transparency," Masson said. "And that is deliberate."

Masson isn't the only Bay Area homeowner seeking the truth.

Ricardo Rodriguez lives in the Mission District of San Francisco in a modest two-story home he purchased from his parents more than 20 years ago. Today, half-filled cardboard boxes are scattered around his living room.

"We haven't bothered to clean it up," Rodriguez said. "We never know when we might have to leave."

Ricardo Rodriguez (holding bullhorn) participates in a protest against Bank of America in early March, recounting his story of fighting foreclosure on the steps of a branch in the San Francisco's Mission District.
Credit: Amy Julia Harris/Center for Investigative Reporting

In 2006, Rodriguez refinanced and borrowed $643,500 from MortgageIT Inc. Bank of America later took over the adjustable-rate loan, which had a starting interest rate of 1.25 percent.

Rodriguez said his mortgage broker assured him he would be rolled into a fixed-rate loan before the payments increased. But in 2008, his interest rate spiked. He went from paying $1,704 a month to more than $6,000 before getting a loan modification in 2009 that brought his payments back down, he said.

Bank of America said it had reduced the Rodriguez family's loan to a 2 percent fixed rate, but they were unable to pay the lower amount. "If even the lowest possible payment is not affordable for a borrower, homeownership may not be the best or most responsible option for them," the bank said in its statement.

Rodriguez still was struggling when he lost his job delivering newspapers in 2011 and fell further behind. He is now 34 months late and owes the bank more than $92,000 in back payments and fees, loan documents show.

Since 2009, Rodriguez has applied for at least 10 loan modifications without success.

Rodriguez said Bank of America lost his paperwork and repeatedly shuffled him between account managers. Meanwhile, ReconTrust sent him hundreds of letters – as many as five in a single day, he said – threatening foreclosure.

"I wake up every night thinking I'm going to get up in the morning with no house," he said.

In November, Rodriguez joined the Alliance of Californians for Community Empowerment, an advocacy group that helps foreclosure victims, among others. Volunteers there helped him apply for loan modifications and pointed out the fees he was being charged.

In February alone, Bank of America charged Rodriguez $2,030.85 on top of his principal: $1,323.35 in foreclosure expenses, $422.50 in attorney and trustee fees, $150 in miscellaneous and recording fees, and $135 in property inspection fees. Rodriguez said he never saw a property inspector.

Despite the new state law requiring Bank of America to provide Rodriguez with a single contact to answer questions about his loan, the documents show he has been assigned seven different contacts since January. Bauwens, the bank spokeswoman, said Rodriguez has been assigned multiple contacts because he continues to ask for help.

Murky paper trails

The prospect of losing his home has turned Rodriguez into a community activist. In March, he helped organize 40 homeowners to protest against foreclosure. Standing on the front steps of Bank of America's Mission District branch, Rodriguez took a bullhorn and recounted his struggles of applying for loan modifications.

"Short sales don't satisfy; Bank of America, modify," his supporters chanted.

Rodriguez hopes that taking a stand will help other people in his position save their homes. For now, he just wants answers.

"We're still getting the runaround from Bank of America," he said. "They only help who they want to help."

Michael Yesk, a Pleasant Hill attorney who specializes in wrongful foreclosure, said that in California, the Homeowner Bill of Rights has not stopped the filing of questionable property records. In nearly all of the 150 lawsuits he has filed, banks did not have legal authority to foreclose, he said.

"There are still homeowners being foreclosed on without a clear paper trail," Yesk said.

Joji Thomas, the mechanical engineer, still can't piece together the paper trail of his missing check.

He took out a $411,200 loan in 2009 to buy his San Ramon house. He was making regular monthly payments of $1,796.40 a month. But in January 2012, Thomas realized the payment on his fixed-rate mortgage had jumped to $3,197.70. The bank gave him no explanation.

He defaulted on his loan, and the bank threatened to sell his home, filing a notice of default in March.

Thomas said a Bank of America representative told him that there were errors in its mortgage database and that he should keep paying the higher amount until the problem was fixed. But when Bank of America neglected to fix the problem, Thomas hired an attorney.

After sending his check for $27,777.85, Thomas said he spoke with a Bank of America customer relations manager in New York. She told him his payment had arrived but had been forwarded to the wrong department; she assured him the matter would be resolved. There is no indication the check was cashed; Thomas did not receive a refund.

Bauwens did not respond to questions about Thomas' missing check, citing his pending lawsuit.

Thomas kept meticulous records and compiled binders full of loan documents, which he shared with CIR and NBC Bay Area. He made more than 100 phone calls to the bank between July and November, wrote to lawmakers pleading his case and filed complaints with state and federal agencies.

On Dec. 17, Oakland-based real estate company RWW Properties LLC bought his home at auction on the steps of the Contra Costa County courthouse in Martinez.

"Somebody, somewhere knows what happened," said Tom Purtell, Thomas' attorney. "We're just trying to figure out who."

Thomas sued Bank of America in January; the court gave Bank of America until Monday to explain what happened to his check.

In the meantime, Thomas filed for bankruptcy in March to postpone being evicted. But after a judge ruled that RWW Properties had a legal right to the home, Thomas and his family packed their belongings into a U-Haul and moved down the street.

Thomas and his wife, Bindu, chose a house in the same neighborhood so their three children – ages 14, 11 and 9 – could attend the same schools. They now pay $4,000 a month in rent, roughly twice the original mortgage on their old house.

Thomas is still trying to get Bank of America to refund his missing $27,777.85 cashier's check. But even if Bank of America returns the money, Thomas said it won't be enough.

"The $27,000," he said, "is nothing compared to what I lost here."

Correction: *An earlier version of this story misstated the value of Joji Thomas' house in San Ramon. He took out a $411,200 loan in 2009 in order to purchase the home.*

Agustin Armendariz of CIR and Stephen Stock of NBC Bay Area contributed to this story. This story was edited by Richard C. Paddock and copy edited by Christine Lee and Nikki Frick.

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