

# 2013

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## **[SECURITIZATION AUDIT – A WASTE OF FORECLOSURE VICTIM MONEY]**

Bob Hurt explains securitization, securitization audits, and how they waste foreclosure victims' money by never producing a worthy result in foreclosure defense. The article exhorts readers to get their mortgages examined for causes of action to justify suing the lender.

# SECURITIZATION AUDIT – A WASTE OF FORECLOSURE VICTIM MONEY

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By [Bob Hurt](#), 15 February 2012. Revised 11 June 2013

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For Immediate Release

A truly crazy craze has hit the foreclosure defense communities of America. It goes by the name of “*securitization audit*” or some variation thereof. The nature of the securitization audit service is such that only the crazy will foolishly waste money on it.

Okay, so we cannot fairly call ignorant foreclosure victims “crazy.” Why? Because they cannot easily know that a securitization audit is just another scam intended to bilk them out of yet more money they cannot afford for a service they cannot use... except perhaps to replace the old Sears Catalog in their outhouse.

So, let’s just say most foreclosure victims are uninformed about the uselessness of securitization audits. Obviously. Otherwise they wouldn’t keep wasting money on them.

So, we have undertaken this “press release” to inform the uninformed so they will not waste their hard-earned money on useless Securitization Audits.

Let us start by explaining the nature and alleged purpose of the securitization audit. Then we shall analyze its achievement of the purpose.

**What is Securitization?** Securitization is the financial practice of pooling various types of contractual debt such as residential mortgages, commercial mortgages, auto loans or credit card debt obligations and selling earnings from that consolidated debt as bonds, pass-through securities, or Collateralized mortgage obligation, to various investors. The principal and interest on the debt, underlying the security, is paid back to the various investors regularly. Securities backed by mortgage receivables are called mortgage-backed securities, while those backed by other types of receivables are asset-backed securities.

**What is a Securitization Audit?** The securitization audit consists of the activity of compiling a report of the rules and agreements regarding securitization, and the trail and timing of assignments of beneficial interest in the note and mortgage from the loan originator to the party foreclosing the loan for non-payment.

**What is the Purpose of a Securitization Audit?** The audit service provider alleges that

foreclosure victims can use the audit to stop the foreclosure or cloud the title by proving that the foreclosing party does not have the right to foreclose.

**Does the Securitization Audit Fulfill this Purpose?** NO, it does not, Statistically, NEVER.

**Why Doesn't the Securitization Audit "work"?** The Securitization Audit does not work because it does not change the essential facts of the case:

1. The borrower signed a note and mortgage giving the lender the right to sell the loan and the owner of the loan to foreclose the loan for non-payment and force a foreclosure sale of the mortgaged realty
2. The lender lent the funds to the borrower
3. The borrower used the funds to buy residential realty
4. The borrower took possession of the residential realty and occupied it.
5. The borrower started paying payments according to the note's requirements
6. The borrower stopped making timely payments
7. The loan servicer called the note due and payable, giving notice to the borrower
8. The note assignee or mortgagee have the right to foreclose according to the terms of the note and mortgage.

**What Vital Thing Doesn't the Securitization Audit Do?** The Securitization Audit does not question whether or to what extent the following "Deal-Killer" flaws underlie the Note and Mortgage:

Tortious conduct of the lender or agents in making the loan. Examples:

1. Loan application tampering by the mortgage broker;
2. Over-valuation of the realty by the appraiser.
3. Breaches of the note or mortgage contract by the lender or lender's agents.
4. Violation of any a variety of laws/regulations that justify fine or rescission of the loan.

You see, the Securitization Audit service provider claims that the foreclosure victim can use the audit to stop the foreclosure dead in its tracks. Some providers imply the foreclosure victim can get the house free and clear.

**Why Does the Securitization "Miss the Boat" for Foreclosure Victims?** The Securitization Audit ignores the factors that could constitute a cause of action against (reason to sue) the lender. Such a cause of action, equivalent to predatory lending, could make the lender squeal for a settlement to avoid a nasty, noisy lawsuit. The lender knows

that a public lawsuit would tarnish the lender's reputation and make other victims clamor for suit or settlement awards.

**What is the Core Problem of the Securitization Audit Strategy?** The securitization Audit service provider tries to focus the foreclosure victim's attention on the problems with the foreclosure of the loan rather than the problems with the loan itself. It presumes the loan has validity, a terrible strategic and tactical blunder. Personal injury attorneys can much more easily prevail against a predatory lender who cheated the borrower when making the loan, than can foreclosure defense attorneys prevail against the lender for some foreclosure flaw.

**Why Can't a Foreclosure Defense Attorney Use the Securitization Audit?** The foreclosure defender has no use for the securitization audit for several reasons.

1. The judge focuses on the INJURY TO THE PLAINTIFF in a foreclosure lawsuit, or to the Defendant in a quiet title lawsuit in non-judicial foreclosure (deed of trust) states. The judge will cause the court to redress the injury.
2. The typical Securitization Auditor cannot function in court as an expert witness, for want of qualification. So the audit's information will not get entered into evidence because no expert can testify to it.
3. The judge can plainly see any information about securitization which the SEC or lenders and others in the securitization process have posted on the world wide web for the whole world to see with a web browser. Such "self-authenticating" evidence tells the story of who assigned the note to whom
4. Whoever shows up with the note can foreclose it, so the Securitization Audit has no effect on that.
5. Even if the judge dismisses a case for robo-signing, wrong plaintiff, etc, the bank ALWAYS corrects the documents and either re-files or appeals the case, and, statistically, the bank always wins the foreclosure regardless of what the foreclosure defense attorney does.
6. The mortgage, which the borrower signed, plainly gives the lender or nominee (mortgagee) the legal right to force a foreclosure sale for no-payment of the note.
7. In Deed of Trust states, the trustee will foreclose

**Does the Use of a Securitization Audit Delay Foreclosure?** In a non-judicial foreclosure (deed of trust) state, the audit data will not stop or delay the foreclosure. In judicial foreclosure states, the audit data might contain information about robo-signing or improper assignment. In that case, the judge might dismiss the case. But this only delays, and does not stop, the foreclosure. Eventually, the foreclosure plaintiff will re-file the case after correcting the documents, and the court will grant the foreclosure.

**Do Foreclosure Defenders Successfully Argue Against Split of Note from**

**Mortgage?** Some Foreclosure defense attorneys will argue that the securitization splits the note from the mortgage, and that gives neither the owner of beneficial interest in the note nor the mortgagee the standing to force a foreclosure sale. They argue that the mortgagee did not get injured by non-payment, and the note interest owner's name doesn't appear on the mortgage, and therefore the court can order foreclosure, but not sale of the mortgaged realty.

**Why Doesn't The Court Buy that Argument?** Trial and appeals courts rule against this argument consistently. You can see why in this excerpt from the US Supreme Court in [Carpenter v. Longan](#), 83 U.S. 16 Wall. 271 (1872):

*"The mortgaged premises are pledged as security for the debt. In proportion as a remedy is denied the contract is violated, and the rights of the assignee are set at naught. In other words, the mortgage ceases to be security for a part or the whole of the debt, its express provisions to the contrary notwithstanding.*

*"The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity"*

**Why Do Foreclosure Courts Nearly Always Grant the Foreclosure?** The Court MUST give relief and remedy to the injured party, the lender or assignee. Period. The borrower breached the note contract. The breach injured the lender. The mortgage requires that the borrower must pay off the note or forfeit the realty. The Court will order the use of the proceeds of the foreclosure sale to pay off the note. The Court will give the borrower the balance after payoff of liens, or it will award a deficiency judgment to the lender.

The Court MUST do this.

The Securitization Audit, even in the hands of a highly skilled attorney, cannot avoid this hard-core reality of contract law. Look at just a few court rulings that prove this point:

- "[S]ince the securitization merely creates a separate contract, distinct from plaintiffs' debt obligations under the Note and does not change the relationship of the parties in any way, **plaintiffs' claims arising out of securitization fail.**" *Lamb v. MERS, Inc.*, 2011 WL 5827813, \*6 (W.D. Wash. 2011) (citing cases); *Bhatti*, 2011 WL 6300229, \*5 (citing cases);
- *In re Veal*, 450 B.R. at 912 ("**[Plaintiffs] should not care who actually owns the Note-and it is thus irrelevant whether the Note has been fractionalized or securitized-so long as they do know who they should pay.**");
- *Horvath v. Bank of NY, N.A.*, 641 F.3d 617, 626 n.4 (4th Cir. 2011) (**securitization irrelevant to debt**);

- Commonwealth Prop. Advocates, LLC v. MERS, 263 P.3d 397, 401-02 (Utah Ct. App. 2011) (securitization has no effect on debt);
- Henkels v. J.P. Morgan Chase, 2011 WL 2357874, at \*7 (D.Ariz. June 14, 2011) (denying the plaintiff's claim for unauthorized securitization of his loan because he "cited no authority for the assertion that securitization has had any impact on [his] obligations under the loan, and district courts in Arizona have rejected similar arguments");
- Johnson v. Homecomings Financial, 2011 WL 4373975, at \*7 (S.D.Cal. Sep.20, 2011) (refusing to recognize the "discredited theory" that a deed of trust " 'split' from the note through securitization, render[s] the note unenforceable");
- Frame v. Cal-W. Reconveyance Corp., 2011 WL 3876012, \*10 (D. Ariz. 2011) (granting motion to dismiss: "Plaintiff's allegations of promissory note destruction and securitization are speculative and unsupported. Plaintiff has cited no authority for his assertions that securitization has any impact on his obligations under the loan")

Do you see? Securitization has no relevance to whether the borrower owes and must pay the debt or the mortgagee may force a foreclosure sale.

**What If I Want to Buy a Securitization Audit Anyway?** Securitization issues have such an esoteric and arcane nature that NO FORECLOSURE VICTIM SHOULD EVER PURCHASE a securitization audit. Only the foreclosure defense attorney should obtain a review and analysis of securitization issues, IF and ONLY IF the attorney considers it necessary to advance the client's cause.

### **What Do Foreclosure Defense Attorneys and others Say?**

- **Matt Weidner, Matthew Weidner Law Firm, St. Petersburg, Florida**

We all need a real discussion here about whether loan audits have any value at all. Let me be clear, 100% clear again....

IF A LOAN AUDITOR OR REVIEWER CANNOT BE QUALIFIED AS AN "EXPERT" BY A JUDGE AN AUDIT HAS ZERO VALUE

Too many clients have blow thousands of dollars on something that is totally worthless...if the person who prepared the report cannot be qualified as an expert over the strenuous objection of counsel, it just does not get in. And getting an "expert" qualified is next to impossible in this area.

<http://mattweidnerlaw.com/blog/2012/01/loan-and-securitization-audits-are-a-waste-of-money-if-they-cannot-be-admitted/>

We're all like scientists cracking a very complex code. Now, too many people get involved with loan audits or securitization reviews THAT HAVE ZERO VALUE. ZERO VALUE. ZERO VALUE.

One thing everyone must keep in mind is that if whomever does an “audit” (whatever the heck that means) cannot be qualified as an expert in a court of law, THE AUDIT HAS ZERO VALUE. The court will not consider one single word on the page. So for everyone out there selling audits and for everyone out there thinking about using any of this garbage, you must ask whether the report can be qualified as an expert.

<http://mattweidnerlaw.com/blog/2012/01/lynn-syzmoniaks-fraud-digest-dissecting-ahmsi/>

- **Mark Stopa, Stopa Law Firm, Tampa Florida**

I asked for a copy of the audit, and, weeks later, I received literally dozens of pages of incomprehensible gobbley-gook. It wasn't even written in English – it was random numbers thrown together in a completely nonsensical way. There's no way any judge could read those documents and see that the Note/Mortgage had been 85% paid. Heck, I couldn't read those documents and conclude as much, and neither could my client.

My point, simply, is that before any homeowners rush out to pay for an audit, they should be aware of what's required for that audit to do them any good in their court case.

<http://www.stayinmyhome.com/blog/2012/01/a-foreclosure-audit/>

- **Brian Caputo, Canupp Law**

In the last 6 weeks I have met with three families that had paid up to \$2,100.00 for an audit. All three of these “audits” were three ring binders filled with documents from the Securities and Exchange Commission Home page and articles from the newspaper detailing successful mortgage defense decisions. These products are problematic for a number of reasons:

1. The documents from the SEC are free and available to the public.
2. The newspaper stories, while informative, cannot be used as precedent to a judge.
3. The analysis does nothing to breakdown what has happened with your payments after they were received by the Mortgage Company.
4. The “expert” who is rendering the opinion would never be accepted by a court to testify in an expert capacity.
5. The analytical process supporting the audit conclusion is flawed and that leads to an impossible opinion.
6. None of the analysis brought to me by clients have included a review of the money paid by the homeowner.

As of today most judges in state courts and bankruptcy courts have not had a chance to fully grasp the ongoing fraud regarding the securitization process and the documents necessary to foreclose upon a home. Arguments made on “note ownership” alone often prove to be unsuccessful in court. However, when you appear before the judge and you are able to support securitization or note ownership arguments, with evidence that also supports shenanigans with the loan payments– your legal hurdles will be much easier to cross. As a rule, judges and juries do not have to be taught about why the misapplication of money is illegal!

<http://canupplaw.com/2011/05/homeowners-now-being-cheated-by-mortgage-auditors/>

### **Scambusters**

Fraudsters are using a documents-checking process known as a mortgage securitization audit as a means of scamming foreclosure-threatened homeowners... Even when the process is legitimately carried out, the Federal Trade Commission suggests it's worthless.

<http://www.scambusters.org/mortgage securitization.html>

**How Do I Choose between Securitization Audit and Mortgage Fraud Examination?** Imagine yourself as a foreclosure victim, or a homeowner with an “under-water” mortgage, one where you owe the mortgage company more than the value of the house. You have \$2500. You want to spend it wisely to fight the foreclosure. Where to you spend it? Do you spend it on a mortgage fraud examination service, or on a securitization audit?

As the foregoing expose' has revealed, only a fool would spend it on the audit because the audit will not stop the foreclosure and will not get you the house free and clear or a cash settlement. And, the typical foreclosure defender does not have the skill to select a good service provider, determine the merit of the audit, or use the audit effectively if at all in a foreclosure defense.

**Do Foreclosure Defense Attorneys Commit Malpractice?** Some professionals in the mortgage-related industries believe attorneys defending a contract breach complaint commit malpractice IF they don't aggressively examine the mortgage-related documents for evidence of fraud, tortious conduct, contract breaches, and other violations. It takes a lot of work and skill to do that, skill most lawyers don't have. So, most foreclosure defense attorneys only want to drag out or delay the foreclosure, a violation of the rules regulating the bar and simple business ethics. Typically such “pretender defenders” charge \$1500 to \$2500 “retainer” (gift) to get started, plus \$500 to \$1000 a month for as long as they keep the foreclosure victim in the house. They typically know the victim will eventually lose the house within 6 to 24 months. The victim could have saved that money and took a keys-for-cash deal from the lender without paying a lawyer, and had enough money altogether to buy a house free and clear at a foreclosure auction. Foreclosure victims don't need a lawyer to do that.

**Why Should I Buy a Mortgage Fraud Examination?** You ought to spend the money on a mortgage fraud analysis because with the evidence in the corresponding report, the court might rule that the lender or lender's agent defrauded you or breached the contract. If so, the Court might order the lender to pay you treble damages. Why? Because the Court must redress YOUR injury. The damages award might provide you with enough money to justify a rescission order by the court. If it does, you might get your house free and clear to



settle the damage claim, or a hefty cash award to reduce your loan balance. And the jury might award you punitive damages sufficient to let you retire at a young age.

For proof, see the [West Virginia Quicken Loans case](#) where the court ordered the foreclosure victim punitive damages of \$2.1 million, plus the house free and clear, and all attorney fees paid.

**How Do I Find a Competent Mortgage Fraud Examiner?** You find a competent mortgage fraud examiner by calling me, Bob Hurt at 727 669 5511, or just [Email Me](#). The Chief Examiner, a personal friend of mine, has 35 years' experience examining and analyzing legal documents in order to find fraud, tortious conduct, breaches, and other violations and flaws. Nobody on the planet does a better job of examining the mortgage and foreclosure related documents and preparing a report that any competent attorney can use to demand a settlement from or sue the lender.

**Can I Use the Mortgage Fraud Examination Report Even if My House is in Foreclosure?** Yes, you can. In fact, it makes a lot of sense to do so if you have purchased or refinanced your home within the past 10 or 12 years. People who can make a mortgage payment can also usually feel less financial pressure, so they can typically find a way to pay an attorney for a couple of hours of work to negotiate a settlement with the lender.

**What Kind of Attorney Should I Use To Settle or Sue?** If the examination report reveals a cause of action sufficient justify suing, you should seek out a competent personal injury attorney to negotiate settlement with or to sue the lender. It makes more sense to negotiate the settlement, and then to sue only as a last resort.

**How Do I Order my Mortgage Examination and Report?** To order your examination and report CALL this number NOW:



**727 669 5511**

For more information, contact Bob Hurt. Phone 727 669 5511 or [Email Me](#)