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US Banks Fake Documents to Rush Foreclosures

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Global Research, October 09, 2010
World Socialist Web Site 7 October 2010
Region: USA
Theme: Global Economy, Law and Justice

Major US banks systematically faked documents in order to speed up foreclosures for hundreds of thousands of homeowners, a mounting body of evidence shows. It appears likely that federal and state laws were broken in the process.

The scandal speaks both to the dimensions of the social crisis and the criminality of the big banks. The immediate cause of the mortgage lenders' rampant cheating on foreclosure paperwork is the tidal wave of families ruined by the economic crisis—a crisis itself set into motion by the banks' predatory lending practices. The goal was to get people out of their homes as efficiently and ruthlessly as possible, skating over legal requirements relating to documentation.

Politicians have responded with calls for investigations and temporary suspensions of foreclosures. Speaker of the House Nancy Pelosi and 30 other California representatives this week demanded a federal investigation into the mortgage lending industry in a letter sent to the Justice Department. Democratic Senators Al Franken of Minnesota and Robert Menendez of New Jersey on Tuesday requested an investigation from the Government Accountability Office into the role of government regulatory agencies in allowing the abuses to take place. Attorneys general in a number of states have launched investigations, and foreclosures have been temporarily stopped in a few.

This pre-election concern for embattled homeowners is dishonest to the core. In fact, the entire process of dispossessing Americans from their homes has been facilitated by politicians of both parties, and in particular President Obama, whose bogus "housing rescue" of 2009 did nothing to address the root cause of the disaster: the fact that mortgages are vastly overvalued and not at all symmetrical to the incomes of US workers. This has left millions of homeowners "underwater"—owing more to banks on their homes than the market value.

At the same time, the Wall Street bailout and Obama's repeated promises that he "would do whatever it takes" to cover the banks' bad debts has ensured that lenders have no incentive to reduce drastically overvalued principal on bad loans. As a result, foreclosures have accelerated in 2009 and 2010.

The scandal emerged last month after evidence of fraud forced Ally Financial (formerly GMAC Mortgage), the fourth largest US mortgage lender, to stop foreclosures in the 23 states where a court order is needed to take over a property. This was followed last week by similar moves from financial giants JPMorgan Chase and Bank of America. Also implicated is Wells Fargo, and it is generally accepted that all the major banks were using similar methods to speed the dispossession of homeowners.

In the 27 states that do not require judicial review, lenders continue to prosecute foreclosures even though they employed the same dubious, and likely illegal, practices. Among states that do not require judicial review is California, the nation's most populous state and leader in the total number of mortgage foreclosures.

Notarized documents are required to transfer a property from one institution to another. But typically banks do not produce paperwork proving they have "standing" or the legal right to foreclose. Instead they supply affidavits that have been signed by a legal services firm hired by the bank or loan servicer. These signatures are, in theory, to be administered by a neutral, third party notary public, who is legally required to read and review the documents.

What has emerged, however, is that the notarization system was pervasively abused by major financial institutions. Among other practices, it has been revealed that notarizations took place at an impossible rate of thousands per month per reviewer, that they occurred even before the attested documents were actually prepared, that signatures ostensibly representing the same individual bank employee were clearly produced by more than one person, and that notarizations took place in offices far away from where documents were signed.

Additionally, courts are finding it difficult to determine what banks actually own mortgages. This uncertainty is owed to the securitization of mortgage debt, which is routinely bundled, sold, divided, and then rebundled and resold again. The result is often that multiple banks make claims on the same properties.

As a result of the scandal, foreclosures have been temporarily halted in several states. Lawyers representing homeowners are now much more likely to pursue legal redress. And judges may well reopen cases of previously foreclosed homes.

Texas Attorney General Greg Abbott said many of the documentation abuses could mean that "foreclosure sale[s] would have been invalid." Ohio and Iowa could levy fines of $25,000 and $40,000, respectively, for "every instance of an affidavit that was filed improperly or every time facts were attested to that weren't true," as Ohio's attorney general put it. Connecticut Attorney General Richard Blumenthal called the mortgage documents "a possible fraud on the court."

A class action lawsuit is already under way on behalf of Kentucky homeowners against abusive mortgage practices, and many more are likely to follow. Home title insurers, responsible for any unclear ownership situations, will also likely launch lawsuits against the banks to recoup losses.

The net effect of these actions will likely be to delay the hundreds of thousands of foreclosures expected to make their way to the market, steering buyers away from foreclosed homes already on the market and thus further driving down home values. It can be safely predicted that the Obama administration and both major parties will take as their primary duty the protection of the banks, as has been their overriding concern since the eruption of the financial crisis two years ago.

Meanwhile, the housing crisis continues to deepen. In August, lenders set a record by repossessing over 95,000 US homes, and issued foreclosure paperwork to 338,836 households, according to RealtyTrac.

According to data from the Mortgage Bankers Association, the percentage of loans delinquent by at least 90 days rose to 9.5 percent of all US households in the first quarter of 2010, up from 4 percent a year earlier. Over 5 million homes are now in the process of foreclosure.

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