

Banks: Foreclosure ruling flawed

Want decision overturned in mortgage cases

By Jerry Kronenberg | Tuesday, August 17, 2010 | <http://www.bostonherald.com> | Business & Markets

Mortgage giants Wells Fargo and U.S. Bank say a 2009 ruling that potentially voids thousands of Massachusetts foreclosures is “a plain error” that the state’s top court should reverse.

“The (lower) court’s rulings cannot stand as a matter of law or policy,” bank attorneys wrote in a brief asking the Supreme Judicial Court to overturn what’s known as the Ibanez decision.

The lenders want the SJC to reject a 2009 ruling in which Land Court Justice Keith Long invalidated two Bay State foreclosures due to paperwork flaws.

Long ruled that in separate instances, each bank foreclosed on a Bay State home without paperwork proving that they really controlled the borrower’s mortgage.

The banks filed the missing paperwork later, but the judge said that wasn’t good enough.

He argued that paperwork flaws can scare bidders away from foreclosure auctions, potentially reducing how much people facing the loss of their homes get for their places.

Experts say Long’s ruling calls into question the validity of thousands of foreclosures dating back as far as 20 years.

The Ibanez case centers on how lenders often sell mortgages over and over again these days.

A bank that gives you a mortgage will typically sell the loan to Wall Street, which packages it with hundreds of others to create a mortgage-backed bond. This bond then trades over and over again like shares of stock.

However, Long ruled that state laws dating back decades still require firms to file paperwork every time a mortgage changes hands.

Wells Fargo and U.S. Bank scoffed at that idea in their SJC brief.

“(The judge) erroneously rejected decades-long industry practice of recording (mortgage-transfer documents only) after a foreclosure sale,” the banks’ lawyers wrote. “This industry practice (has) been in place for at least the past 20 years in Massachusetts.”

But a lawyer for one of the homeowners involved in the case said industry customs don’t determine what’s legal.

The attorney, who spoke on condition on anonymity, said banks that foreclose without proper paperwork “are trying to take something they don’t legally own.”

Article URL: <http://www.bostonherald.com/business/general/view.bg?articleid=1275169>

[Contact us](#) | [Print advertising](#) | [Online advertising](#) | [Herald history](#) | [News tips](#) | [Electronic edition](#) | [Browser upgrade](#) | [Home delivery](#) | [Herald wireless](#)

[Save on Boston Herald Home Delivery](#)

[Jobs with Herald Media](#)

For back copy information and more information on other collectible copies please call 617-426-3000 617-426-3000 Ext. 7714. [Click here for Celtics, Patriots and Red Sox back copies](#)



© Copyright by the Boston Herald and Herald Media.

No portion of BostonHerald.com or its content may be reproduced without the owner's written permission. [Privacy Commitment](#)

0.017807 : cached : owl.heraldinteractive.com