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San Antonio Express-News

Sunday, September 18, 2011 | mySA.com

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SUNDAY FOCUS

A fight where free house is the prize

Missing links in the chain of ownership lead to some foreclosure postings being challenged.

BY JENNIFER HILLER AND PATRICK DANNER
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Ezequiel Martinez, a San Antonio real estate investor who helps homeowners avoid foreclosure, recently found himself in the same predicament as his clients.

Rather than simply fight to stop the foreclosure on his Live

Oak investment home, Martinez filed suit against his lender, saying the mortgage should be voided because of phony loan documents and because he doesn't think the bank can prove it owns the mortgage note.

If Martinez wins the case, he just might be done making mortgage payments on the house at 7502 Forest Fern.

See HOMES/10A



DARREN ABATE/SPECIAL TO THE EXPRESS-NEWS

Real estate investor Ezequiel Martinez at the Live Oak property that's under dispute.

TOUGH BUDGET TIMES

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BY PEGGY FKAC
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When death comes from above



HOMES

CONTINUED FROM 1A

"We're not trying to get a free house," he explained. "We're trying to save the house from foreclosure fraud."

Finding that Martinez "will probably prevail" at trial, state District Judge Karen Pozza on Aug. 26 prohibited the foreclosure until the case either is settled or goes to trial in March.

Martinez's case is one of thousands across the country where homeowners are challenging the validity of foreclosure postings.

The robo-signing scandal erupted last fall with allegations that lenders had employees process foreclosure documents without required review and notarization, including signing thousands of documents a month.

Since then, the foreclosure problem has grown to include issues of not properly assigning mortgage notes — tracing the line of ownership as the note is packaged and resold through the secondary market — and the allegedly phony documents created to reconstruct the line of ownership where it's broken.

Rick Sharga, senior vice president with RealtyTrac, a national foreclosure website, said lenders likely can simply restart the foreclosure process if they need to correct faulty paperwork. But he said the prove-your-own-the-mortgage-note issue could become serious.

"I don't know that it's a trivial question," Sharga said. "If you can't prove that I owe you money, that's a problem. It could throw the whole mortgage industry into chaos."

A break in title

The lawsuits represent a tug of war that pits homeowners who fell behind on mortgages against lenders and servicers who insist any mistakes in documentation are mere technicalities.

John Fleming, general

counsel for the Texas Mortgage Bankers Association, said that in almost all cases, he expects lenders or servicers will be able to cure any gap in mortgage assignments.

"At the end of the day, if a homeowner or investor has not complied with the terms of the mortgage, they will face foreclosure," Fleming said. "In some cases, they may be successful in delaying it, but there are many mechanisms and ways to fill in the missing gaps" in the records.

That could include finding someone who has proper authority to sign a corrected assignment.

In Martinez's case, he hoped to negotiate a loan modification with the lender after buying the Live Oak house.

Like millions of others, his mortgage was bundled into Wall Street securitization trusts and sold from investor to investor. But Martinez said there's no proof the mortgage ever was legally assigned to the current holder — a trust with the clunky name Soundview Home Loans Trust 2006-OPT5.

The records show that to "close" the chain of title, assignments were manufactured "out of thin air," Martinez said.

Linda Zimmerman, a forensic researcher hired by Martinez to review the recorded assignments, called them a "shoddy attempt" at creating assignments and a fraud on the court. One of the assignments contains a name that routinely surfaces: Tywana Thomas, assistant vice president of American Home Mortgage Servicing Inc.

Thomas' name appears on a number of mortgage assignments on other houses where she holds the exact same title but with different companies, including Mortgage Electronic Registration Services Inc. (MERS), Option One Mortgage Corp., Argent Mortgage Co. and Deutsche Bank National Trust Co. Zimmerman's research found.

Actually, Thomas

worked for a Georgia company called DocX LLC that prepared mortgage assignments, described in a "60 Minutes" report as a "sweatshop for forged mortgage documents."

The assignment on Martinez's mortgage was "signed with the appropriate legal authority authorized by the corporate resolution with the servicer," Michelle Kersch, a spokeswoman for Lender Processing Services Inc. (LPS), DocX's owner, said



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RICK SHARGA

of foreclosure website RealtyTrac

in an e-mail. LPS closed DocX last year.

American Home Mortgage Servicing, the servicer of the mortgage on Martinez's Live Oak home, on Aug. 23 sued DocX and Lender Processing Services in Dallas County over the practice of "surrogate signing."

American Home Mortgage Servicing claims in the suit the surrogate signings affected more than 30,000 residential mortgages, and it states it has spent millions in legal costs to correct assignments and amend foreclosure proceedings.

But Kenneth Grubbs, Martinez's lawyer and Zimmerman said the "Correction of Assignment" filed on Martinez's mortgage June 20 is problematic because the person who signed really worked for the servicers, not the original mortgagee or successor.

"They are trying to correct fraud by committing more fraud," Grubbs said. American Home Mortgage Servicing didn't respond to a request for comment.

A free house?

Banks and mortgage servicers defend them-

selves by claiming that homeowners such as Martinez are trying to snag a house for free, Grubbs said.

"Yeah, people owe the money but that doesn't mean that the bank gets to cheat," Grubbs said.

The risk for Martinez in continuing to make payments is he could learn once the mortgage is paid off that he has been paying the wrong lender and now owes money to a different com-

pany, Grubbs said.

Martinez's case isn't the only one where a local judge has issued a temporary injunction to stop a foreclosure due to similar complaints.

Homeowner Michael Deosade is suing his mortgage servicer, the bank that's trustee for the pool of mortgages that holds his note and MERS, a private company that tracks loan ownership and servicing.

His lawsuit essentially alleges there's no proof that a New York trust has possession of the note for the home on San Antonio's Northwest Side.

"The banks make representations to the courts that they assigned the mortgage to this or that trust and are foreclosing on behalf of the trust. We started to question those assignments," said Oscar Cantu, Deosade's attorney.

A state district judge issued a temporary injunction in May to stop the foreclosure on Deosade's home until the case can go to mediation or trial.

"Before you can collect you have to prove you have standing to collect," Cantu said.

Although the cases

have yet to go to court, the idea of a free-and-clear house for someone who missed mortgage payments can raise the hackles of those who pay their bills every month.

Thomas Thomson, professor of finance and real estate at the University of Texas at San Antonio, said lawsuits about mortgage assignments also raise issues about the ability of banks to sell mortgage loans downstream.

"It comes to a larger philosophical question of: Are secondary mortgage markets good or not? Is it good that banks hold mortgages or sell them to Wall Street?" Thomson asked.

Countries that don't have secondary markets for mortgages don't have the kind of long-term, fixed-rate mortgages common in the U.S., he said. Something like MERS is needed to move mortgage notes through a secondary market, Thomson said.

Foreclosure slowdown

Sharga said foreclosures have slowed across the country due to lawsuits, mediations and the additional caution by lenders to make sure paperwork is filed properly. Some markets are so saturated with foreclosures that lenders have no reason to flood the market further and are delaying until the backlog clears.

In Bexar County, the number of foreclosure postings has dropped 31 percent for October since October 2010.

In Florida, it's taking 700 days to foreclose. That time period has reached 900 days in New York and New Jersey. In Texas, the process can take as little as two months, but in practice takes several months longer.

Thomson said that if it becomes too difficult for lenders to foreclose, interest rates will rise for all.

"If you make it really hard to foreclose, everybody loses a little so the deadbeat gains a lot," he said. "It's not like there's

a giant pool of money that business has. Lending works off of a spread."

Foreclosures dipped precipitously nationally in the wake of robo-signing allegations last fall. It took until May for the Bexar County foreclosure postings to show a hiccup. Since then, they have stayed down by a few hundred postings per month.

Gregg Stanley of San Antonio-based foreclosure tracking firm RedReport.com said that absent an improving economy reason for the slowdown, it appears lenders simply are taking more care.

"They are dotting I's and crossing T's," Stanley said. "It's a serious issue to keep track of the mortgage trail."

James Gaines, research economist at the Real Estate Center at Texas A&M University, said that with millions of loans in the state and no way of tracking all of the lawsuits, it's difficult to tell if problems are widespread.

"All the big lenders and servicers are getting caught with such a huge volume of problems, they literally can't keep track of it," Gaines said. "They become so bureaucratic that the left hand doesn't know what the right hand is doing."

Still, Gaines thinks Texas' nonjudicial system means few homeowners, knowing they have missed payments, really will challenge a foreclosure in court.

"There's no judge to talk to, so you have to hire an attorney," Gaines said. "That takes money and the legal process is confusing."

And with a healthier economy and lower foreclosure rate than many states, Texas likely will avoid widespread foreclosure litigation.

"Texas got left in the dust," Sharga said, "which in this case is a good thing."

News Researcher Julie Doemel contributed to this report.