Games That Bankers Play

Dennis Naughton
Naughton Law Firm, Marion, Iowa, USA

1 Introduction – Middle Class Crash

One does not have to be an expert to identify the causes of the financial decline and recession, which began in 2008 and continues five years later in communities everywhere. Most experts would point to subprime mortgages as the cause, at least in the United States. Others would blame it on greed. Those of us who assist middle class families with their legal affairs have seen friends and family members lose jobs and, in many cases, their homes.

The causes of foreclosures have been attributed to an inability of homeowners to meet the payment obligations on their mortgage loans. The loss of a job or a decline in business for a self employed person were causes of mortgage defaults. But, experience tells us that the real causes relate back to the 1990's, the boom years when houses in the U.S. were being built larger along with the prices for those homes. During the 1990's, loans were made, brokered and sold like candy bars. For a time, it seemed one could obtain a loan to buy a house on a street corner. Mortgage firms sprouted in communities like fruit stands.

Along with the growth in loan availability came a decline in the experience, education and training of the people making those loans. Yet, despite the inexperience of the staff making loans, there were very few safeguards in place to guide them. Not only did the government fail to regulate the new types of lending practices, but the banks and finance firms who were underwriting the bad loans failed to provide the slightest scintilla of supervision of the uneducated loan brokers and the naïve, willing new customers sucked into the abyss. Loans were easy for homeowners to find, and they were easy for bankers to sell. The financial industry appeared for a while to become as innovative as the technology developments we all experienced.

The system, or the lack thereof, was fundamentally untested and seemed to be growing so fast that nobody felt a need to do so. When the growth ran out of steam, it was the unsophisticated buyers and borrowers who felt it the most. For the banks, the financial losses were staggering, but the banks had friends in Timothy Geithner, U.S. Secretary of the Treasury, and his buddies in the Federal Reserve, who organized a bail-out for the banks.

Due the events following 2008, the U.S. president and the Congress adopted several programs aimed at helping people refinance their loans and save their homes. However, the amounts of money dedicated to such programs was paultry compared to the amounts invested in saving the banks who were so intent on turning over the loan packages for quick returns that they neglected to maintain anything resembling diligent standards of care.

When loan payments got behind and the banks started foreclosing, banks to some extent were forced to adopt policies and procedures that conformed to the homeowner protection laws and programs implemented by the federal and state governments. But, the homeowners and their legal representatives found that despite the appearance of compliance, banks were really just pretending to help homeowners. The large banks and loan administration firms adopted form letters and assigned people to the process. In some cases, banks, acting in good faith, became afraid to grant concessions or refinancing arrangements.

The response of federal and state governments in the United States was to offer new programs to both protect consumers and make housing loans more accessible and encourage banks make loans to homeowners and small businesses.

Although the U.S. Congress and state legislatures implemented new rules and laws to regulate lenders and their agents, lenders were slow to re-enter the market. Meanwhile, large numbers of families lost their homes. In places like Florida, where foreclosures and repossessions were highest, whole neighborhoods became ghost towns. So, even though you might be able to buy a house cheap in some places, the large number of vacant homes around you might resemble a ghetto. According to experts, the numbers might finally be subsiding. The chart below from Statisticbrain.com published as of October last year, shows some of the numbers.

Year	Foreclosures	Foreclosure Filings	Home Repossessions
2012 Year Projection	2,300,000	2,100,000	700,000
2011	3,920,418	3,580,000	1,147,000
2010	3,843,548	3,500,000	1,125,000
2009	3,457,643	2,920,000	945,000
2008	3,019,482	2,350,000	679,000
5 year totals	16,541,091	14,450,000	4,596,000

Because of newly required reserve requirements, many banks had insufficient reserves or other resources to make many loans. But in other cases, the lenders simply elected to refrain from lending to troubled homeowners. When homeowners found their loan under water and were unable for whatever reason to keep up with the payments, their requests for assistance from their banks became nightmares. Lenders would first respond with forms to fill out and requests for documents, supposedly to help ascertain what, if any, programs the borrow might qualify for. The cases below are included as examples of what homeowners encountered.

2 Actual Cases from Iowa Courts

2.1 Midland Funding vs. Sullivan

Mrs. Sullivan had credit card account with Citibank. One day in 2008, she was notified that Midland Funding LLC had sued her claiming the account was in default, that she was behind on the payments and that Midland Funding owned the account and had the right to collect on it.

Mrs. Sullivan, the defendant, responded that she neither has nor ever had any relationship, contractual or otherwise, with the Plaintiff, Midland Funding. Mrs. Sullivan argued that she did apply for and receive from Citibank a credit card in approximately 1982 and did get behind in her payments to Citibank back in 2006 when she was hospitalized. Defendant, Mrs. Sullivan, denied owing Midland Funding LLC anything. Defendant denied that plaintiff had any rights against her as Midland stated in its petition or that she owed Midland anything or that she was in any way in default to Midland.

She received one letter from Midland Funding stating they bought her account from Citibank, but never received a confirmation from Citibank and has never seen a copy of any assignment or any contract between them. She has no reason, other than the word of plaintiff that it holds any rights against or in relation to her.

Nothing filed by the plaintiff in the above case even states what account Midland Funding wants to collect. Without an account number or any kind of identification or reference information, it's impossible for me to determine which of my several credit cards in my name this lawsuit refers to. They simply refer in vague terms to an account with Citibank. Since I have had several bank accounts and credit cards over the years, I can respond to them intelligently.

When Midland filed a motion for a summary judgment, it claimed as a fact that it owned the account and had the right to sue Mrs. Sullivan. She responded that had never received any communication, written or otherwise, from Citibank that they sold, transferred or assigned her account to Midland. It was her position that, absent proof of ownership, sale, transfer or assignment, she had no reason, other than the word of Midland, that it held any rights against or in relation to her. The court agreed. Midland did not pursue it. They had been caught in a classic robo-signing adventure. It was common in the early days of the foreclosure crisis for companies to sue on an account without any documents to prove the chain of ownership and without having a person with actual knowledge of the transaction signing the foreclosure papers.

2.2 Household Finance Industrial Loan Company of Iowa vs. Drees

Most people have heard in recent months about the role of HSBC, the banking giant that reached a settlement with the U.S. Justice Department over HSBC admissions that it laundered billions of dollars for Columbian and Mexican drug cartels and others. The justice department decided HSBC was too big to prosecute and, instead, agreed to accept a fine of $1.9 billion USD. The U.S. prosecutors stated that if they prosecuted HSBC too many executives in a major bank would lose their jobs.

In 1998, Household Industrial Loan Corporation, a subsidiary of HSBC made a loan to Doug Drees and his wife in exchange for a mortgage on the Drees home. Mr. & Mrs. Drees made monthly payments of $699 on the loan, which had a beginning balance of $74,000. Their payments were irregular because of health and financial challenges, but by the time HFC filed its suit seeking a judgment for more than $84,000 adnto foreclose the mortgage in September, 2006, the Drees had paid a total of $63,364.89 in payments, of which HFC had credited no amount toward payment on the principle amount of the debt. Because the Drees got behind occasionally on their loan payments, they tried frequently to work with HFC to get their payments up to date. Often, they made payments for two or three months at a time.

On one occasion, Mr. Drees telephoned HFC to determine how much they would need to pay to bring their loan current. He was told a payment of $10,660.05 was needed, which he sent by cashier's check to HFC. During the course of the lawsuit, the customer asked Household Finance (HFC) to explain whether it applied that large payment to the loan. It became clear that the lender could not account for that payment and several others. As to the large payment, HFC replied that the money was use to pay its attorney for preparation of a notice to the borrowers to cure the default of the customer and to take steps on several occasions to commence foreclosure proceedings. The invoices and time records of HFC's attorneys, which we already had, showed no such payments.

That, plus numerous other lies and misstatements, along with threats and actions which violated Iowa law concerning debt collections, led to a settlement agreement signed in May, 2009, wherein the loan was modified to a balance of $60,000, for which no interest would be charged, and which was payable in monthly payments of $1,000 over a period of five years. In addition, HFC paid Drees $5,000 as reimbursement for their expenses, and also agreed:

> "Household agrees to begin reporting the loan evidenced by the Note out of default and to delete negative credit reporting concerning this loan by Household and to mark as paid any previous notes (excluding the Note) between Household and Drees which have been yet to be marked paid and which have been in fact paid in full."

The customers immediately began making the payments of $1,000 per month by bank transfer. Because of their previous treatment at the hands of HFC, Mr. Drees did not want to take a change that the loan payments would not be properly credited. By reason of that concern and because HFC had by then closed its office in his city leaving no place to deliver the payment personally.

Everything seemed to be going fine, except for one small detail. The 2009 settlement agreement also required Drees to obtain insurance coverage on the home and its contents. When they applied for insurance coverage with their insurance agent, they learned that due to their credit rating, the insurance company with whom they had done business before would require advance payment before committing to insure their house. Nevertheless, they secured insurance coverage by August 10, 2009, naming HFC as an insured, and their company gave notice to HFC.

In March, 2010, ten months after the $1,000 monthly loan payments commenced, HFC sent a notice to Drees that they had no insurance coverage on the home, and, therefore, HFC was buying an insurance policy covering theft, fire and casualty damage to the home. Two and one-half weeks later, HFC sent a policy to the customer and demanded payments each month of $1,027 instead of $1,000. The customer responded by sending another payment by wire transfer, which HFC refused to accept.

Mr. Drees inquired why the policy was scheduled to expire April 10, 2010, two weeks after the customer received it. HFC failed to respond and never explained it. Nor did HFC explain why it believed the duty to provide insurance began April 10th, 2009, before the parties had even agreed on a settlement agreement.

The numerous letters from were inconsistent and confusing, indicating either a failure by various departments of the lender to agree on the approach or an intentional tactic of flooding the borrower with a variety of demands in hopes of wearing them down. The Drees received ten letters from HFC between June of 2009 and August of 2010. While they all asserted Drees owed HFC for insurance, the amount claimed differed with each correspondence. For example, just in 2010, letters kept arriving from HFC over several months:

- On March 9, 2010 announcing an increase in the loan payment to $1,027.67 per month and stating the cost of insurance to be $248, payable over 12 months;
- On March 21, 2010, a notice of cancellation of the insurance policy September 2009;
- On March 21, 2010 a second letter demanded $48.00 per month for insurance;
- On August 9, 2010 demanding $6,103.35, for delinquent payments and including a copy of the policy of insurance, which had already expired;
- On November 11, 2010 a notice of cancellation of the policy as of **August 9, 2009;**
- On November 11, 2010 a notice of cancellation of the policy as of **August 10, 2009**;

From these events a dispute was launched. HFC demanded the customer to pay for the insurance it claimed to have purchased, while the customer simply refused. Drees tried to reach HFC by telephone, but HFC refused to budge in their position. Negotiations between Drees and attorneys representing HFC throughout 2010 failed to result in compromise.

While the attorneys discussed the case, HFC sent numerous letters to the Drees demanding reimbursement for the policy it claimed to have purchased on the borrowers' home. Multiple departments of HFC in different parts of the United States were communicating with the customer. Depending on what part of the United States would send the correspondence HFC at first demanded $576 for the policy it claimed to have purchased. In other letters, it demanded from the Drees $200. At other times it stated the amount owed to be $199.

In September of 2010, HFC again sued the Drees in court for foreclosure claiming Drees owed $52,000 on the loan and $248 for the insurance policy. In defense, the Drees claimed HFC had refused payments after March, 2009 and that HFC had breached the agreement in failing to removed the negative credit reports from the public records of the three credit reporting companies. HFC said it had tried by sending one request during the summer of 2009 to correct the credit reports, but had no control over the credit reporting agencies. The Drees argued that when the 2009 settlement was signed they relied on HFC's promise that it would correct the records, not just try to do so.

After several months of legal proceedings, on August 9, 2012, the local district court granted a summary judgment for the amount balance, $50,000, plus interest, plus $199 for the insurance, finding the Drees stopped paying in March 2010 and the amount was simply owed. Regarding the failure to correct the Drees credit reports, the court held it was adequate that HFC tried to do so and accepted the HFC assertion that it had no control over the reports. It should be noted that after Drees complained about the failure to correct the credit reports, HFC did, in the summer of 2010 succeed in correcting the records. By then, the Drees claimed their credit was already damaged, preventing them from getting loans, refinancing of other debt, insurance and, causing their insurance and bank charges to be higher because of their poor credit reports.

The HFC case is being appealed to the Iowa Supreme Court. In the lower court, Household Finance employed three law firms, two from Iowa and one from Indiana. One flew his own plane and another flew commercial to a one hour court hearing. Their fees to collect $50,000? $43,000 so far, not counting the appeal.

2.2 Wells Fargo v. Athy

In 2002, Mr. & Mrs. Athy borrowed $173,670 from Wells Fargo Bank. Both the husband and wife lost their jobs and their payments on the loan became delinquent. Both were later able to find other jobs, but the income from their new jobs was substantially less than their earnings at the time the loan was obtained.

The loan was sold in 2009 to Bank of America National Association. In November, 2012, Wells Fargo served a notice to cure default. As soon as they receive that notice, the borrowers requested help from the Iowa Mediation, a service operated by the Iowa Attorney General's office. Iowa Mediation recommended the borrowers apply for refinancing through a United States government sponsored HAMP program, which meant HOME AFFORDABLE MODIFICATION PROGRM. HEMP was one of the Obama Administration's strategy to help homeowners avoid foreclosure and stabilize the American housing market.

The borrowers provided the information and filled in all the forms requesting information for the lender to consider in connection with the refinancing request. Like other borrowers attempting to negotiate with big banks in far away places, the Athys were in constant correspondence with Wells Fargo and more often than not had difficulty making any progress by telephone with changing employees at Wells Fargo. It became their practice to send all materials to Wells Fargo through the mediation service.

On January 4, 2012, Wells Fargo sent two letters to the borrowers confirming their application for HAMP refinancing. One letter contained a five page list of documents the borrower should submit along with completed forms. The second letter on that date described how the HAMP process worked and assured the borrowers that as long as the HAMP process was under way, their home would not be referred to foreclosure. From that time a battle of documents ensued. With the help of the Iowa Mediation Service, the borrowers applied for refinancing to Wells Fargo, who continued to administer the loan for Bank of America. Wells Fargo's refinancing office provided a list of documents the borrower was required to produce including their current financial statements, tax returns and proof of employment, along with completed forms about the home and their family and job histories, totaling nearly 100 pages of material.

Thereafter, through most of 2012, the following chain of correspondence took place.

- January 7, 2912 – Wells Fargo sent a letter assigning a home preservation specialist named Kimberly.

- January 19, 2012 – Athys filed a formal application for HAMP refinancing assistance.
- January 20, 2012 – Wells Fargo sent a letter identical to the Jan. 4th letter.
- January 26, 2012 – Wells Fargo filed a suit for foreclosure and served notice of it on the Athys.
- January 27, 2012 – By telephone, the refinancing specialist advised the Athys not to worry about the foreclosure while their application for HAMP assistance was pending.
- February 10, 2012 - Wells Fargo sent a letter requesting a two-page list of documents.
- March 19, 2012 - Wells Fargo sent the same letter requesting a two-page list of documents, but with a later deadline.
- March 30, 2012 - Wells Fargo sent a letter acknowledging receipt of the first documents and requesting additional documents, which were identical to the documents already submitted, and also requiring them to authorize the Internal Revenue Service to provide a transcript of their tax return.
- May 7, 2012 - Wells Fargo sent a letter requesting a two-page list of documents identical to the letters sent January 4th, February 10th and March 19th.
- June 4, 2012 - Wells Fargo sent a letter requesting the same supplemental additional documents that were requested March 30, 2012 and which had been provided twice before.
- July 5, 2012 - Wells Fargo, a different staff person named Johnny, sent a letter requesting the same additional documents that were requested July 4, 2012.
- July 10, 2012 – Documents scanned and sent to Wells Fargo.
- July 23, 2012 – Wells Fargo (also signed by Johnny) sent a letter stating the Athys did not meet the requirements for HAMP refinancing because they did not provide the information needed by the required time frame.
- July 24, 2012 - Wells Fargo (Johnny) sent a letter stating the Athys did not meet the requirements for HAMP refinancing but stating no reason except that Wells Fargo had not been able to reach them.
- July 27, 2012 - Wells Fargo (Johnny) sent a letter stating he was the new Home Preservation Specialist and that the borrowers had not provided enough information.
- August 2, 2012 – Athys telephoned Wells Fargo, spoke to Tonya and then Kathryn, who advised them their application was still active.
- August 2, 2012 – Wells Fargo (signed by Johnny) sent a letter acknowledging receipt of the documents the Athys sent to Wells Fargo and saying, "Call us immediately so we may respond to your request for mortgage payment assistance."
- August 6, 2012 - Wells Fargo sent a letter (signed by Johnny) requesting a two-page list of documents identical to the letters sent January 4th, February 10th, March 19th, and May 7th.
- August 6, 2012 - Wells Fargo sent a letter (signed by Johnny) similar to the letters sent January 4 and January 20th, but instead suggesting the borrowers consider a short sale – which would allow them to sell their home for an amount less than they owed.
- August 6, 2012 – Athys telephoned Wells Fargo – no answer.
- August 6, 2012 - Athys telephoned Wells Fargo. Unable to reach Johnny. Spoke to Jeff. He said he would encourage Johnny to telephone them.
- August 7, 2012 – Spoke to Patrick at Wells Fargo. Finally connected with Johnny. He said Shannon was their contact.
- August 18, 2012 – Wells Fargo sent a letter (signed by Johnny) explaining the HAMP program that was identical to the letters sent January 4 and January 20.
- August 22, 2012 - Wells Fargo sent a letter (signed by Adam) stating the customers should contact him and that he was their executive mortgage specialist to help them and would be their single point of contact.
- August 23, 2012 – Athys received letter and telephoned Wells Fargo. Unable to reach Johnny.
- August 23, 2012 - Wells Fargo sent a letter (signed by Johnny) stating "I'd like to take this opportunity to introduce myself…going forward, I will be your new Wells Fargo home preservation specialist."
- August 25, 2012 – Athys received August 23rd letter and telephoned Wells Fargo and requested Adam. Not available.
- August 25, 2012 – Athys telephoned and asked for Jerry. He called back.

- September 7, 2012 - June 4, 2012 - Wells Fargo sent a letter requesting the same supplemental additional documents requested January 4, March 30th, June 4, and July 5.
- September 12, 2012 - Wells Fargo sent a letter signed by Adam, stating their application for mortgage refinancing is being reviewed.
- September 13, 2012 – Wells Fargo filed a Motion for Summary Judgment to foreclose the mortgage and have a judgment against the home.
- The person they spoke to said not to worry and that a response to their application for financing would be forthcoming soon.
- September 22, 2012 – Wells Fargo sent a letter stating the Athys don't meet the requirements of the HAMP program because Wells Fargo determined they "do not have a long term financial hardship."
- September 25, 2012 - Wells Fargo sent a letter (signed by Adam) stating their income was too much to qualify for HAMP refinancing and the file was being closed, but it did acknowledge receipt of financial information from Athys on the following dates:

January 19,2012	April 13,2012	May 24,2012
January 25,2012	April 17,2012	June 7,2012
February 7,2012	April 26,2012	June 13,2012
February 21,2012	April 30,2012	June 29,2012
March 28,2012	May 16,2012	July 19,2012.
April 3,2012	May 17,2012	

- October 8, 2012 - Wells Fargo sent a letter (signed by Johnny) that was identical to the August 23, 2012 letter and stating "I'd like to take this opportunity to introduce myself…going forward, I will be your new Wells Fargo home preservation specialist."
- October 19, 2012 – Receiving the bank's motion for summary judgment, Athys called Claudette at Wells Fargo who said not to worry, that no foreclosure would happen and that a response to their application for financing would be forthcoming soon.
- October 29, 2012 – A judge filed a judgment of foreclosure.
- November 2, 2012 – I was hired by the Athys and obtained an order setting aside the foreclosure judgment.

When the bank first gave notice of default to the Athys in November, 2011, they owed three payments of approximately $3,400. When Athys applied for refinancing, the amount then owed was small enough that they could have obtained the money by selling something, saving up their paychecks or borrowing from a family member to catch up the loan and bring it current. When they learned that the bank was going forward with foreclosure, they inquired how much it would take to bring their loan current. The bank's lawyer sent a letter that a payment for more than $27,000 would be required.

I resisted the bank's motion arguing that Wells Fargo violated the Truth in Lending Act, Homeownership and Equity Protection Act (HOEPA), Regulation Z, the Real Estate Settlement Procedures Act (RESPA) regarding disclosures required in variable rate transactions and Good Faith and Fair Dealing. In addition, I claimed Wells Fargo and its successor owner of the mortgage had conspired to drag out the refinancing process long enough so that the average person would be unable raise sufficient cash to pay off the loan or bring the payments current. We also requested permission from the court to file an answer and affirmative defenses and to sue Bank of America and Wells Fargo so that we could undertake discovery.

Hearing was held on our motions and the case is still pending.

2.3 Us Bank, Na As Trustee For Chevy Chase Funding, LLC Mortgaged Backed Certificate 2006-2 vs. Cervantes

Mr. & Mrs. Cervantes obtained a loan from Chevy Chase Bank of Maryland through a realtor, who also served as a loan broker. They subsequently moved from the home but tried to rent it out. When the tenant did not pay the rent and they experienced health problems, they got behind on the loan payments.

The note on their loan was unusual in that the interest rate was tied to the LIBOR index with the possibility of changing monthly. The note was dated April 21, 2006. First payment was due June 1, 2006. The note provided:

> "Until the first day of the calendar month that immediately precedes the first payment due date set forth in Section 3 of this Note, I will pay interest at a yearly rate of 8.125%. Thereafter, until the first Interest Change Date (as defined in Section 2 (B) below), I will pay interest at the yearly rate of 1.500%. The interest rate I will pay may change ….
>
> The Interest Rate I will pay may change further on the first day of June, 2006 and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date."

The note also provided that the note holder would compute the interest rate before the end of each month previous to the one the payment was due and mail a notice of change to the borrower. That gave the borrower a mere four or five days notice of how much their interest rate would be, but no notice of how much of a payment would be required to accomplish a normal amortization of the loan so that it could be paid off in 20 or 30 years.

Chevy Chase Bank sold the loan to Capital One, who sold it to a real estate trust administered by U.S. Bank, N.A. On numerous occasions these borrowers would telephone the bank or an administrator to whom U.S. Bank assigned responsibility to determine where they stood on their loan. None of the banks involved provided the borrowers with any kind of amortization schedule. Because the note was subject to change each payment period the borrower was unable to determine what effect each payment would have on the loan balance from month to month. Whenever the borrower would attempt to telephone the bank, which was almost monthly, the phone would go unanswered. When they did reach someone at the loan administrator's office, they could not get anyone to tell them what amount was needed to bring the loan current or how it was calculated.

The loan contemplated that monthly payments might cause a reverse amortization to occur. In other words, the promissory note, on its face, provided that a payment may not be enough to pay all of the interest due that month.

In defending the foreclosure action filed U.S. Bank, the borrowers argued that the note on its face violated the Truth and Lending Act and was designed to prevent the homeowner from knowing whether the payments being made would be sufficient to pay the interest and some principle toward the ultimate pay off of the loan each month. Affirmative defenses were also asserted that the bank its agents engaged in an array of misrepresentations, misappropriations, misapplications of payments and mathematical slight-of-hand intended to confuse and mislead Defendants and engaged in predatory lending practices. The borrowers filed a counterclaim against U.S. Bank in the foreclosure action and a fraud action against Chevy Chase Bank and Capital One for their role in taking advantage of the unwitting borrowers.

The case was ultimately settled by agreement.

2.4 Admiral Investments v. Beckfield

Mr. Beckfield came to me when he had but a few days to respond to a summary judgment motion. Admiral Investments, apparently a collection firm from out of state, sued him on a note. The plaintiff claimed that: a) Defendant was extended credit, though plaintiff does not say by whom; b) Defendant purchased goods using the credit account; c) Defendant failed to timely pay the account; d) There is no dispute as to the account; e) That defendant has not disputed the account; f) The balance owed to plaintiff is $14,400.68; and g) Prior to filing its suit, plaintiff served on defendant a notice to cure and notice pursuant to the federal debt collection practices act.

In defense, I responded that each statement was false and specifically that no notice to cure the default, if any, had been served by plaintiff, Admiral Investments. My client even disputed that there was such an account. My defense also claimed that by not contacting the defendant for three and one-half years, the creditor had abandoned the account. The court ruled that Admiral had failed to prove that it was the rightful party to sue on the account, that it had failed to provide a copy of the contract or other document on which the account was based and that it had failed to itemized how it calculated the balance due on the account as required by Iowa law. Essentially, the court held that unless the plaintiff could prove it was anything but a robo-signer, the court was not inclined to ever grant a judgment in its favor.

3.3 Conclusion

Among the practices implemented were new refinancing requirements and programs, requiring banks to maintain higher reserve accounts, required mediation, new disclosure requirements and the availability of new alternatives to foreclosure, including short sales and deeds in lieu of foreclosure. Yet, despite efforts to strengthen lending laws, experiences in actual foreclosure situations indicate that banks have found ways to bypass new restrictions and have continued business as usual. Some bad lender habits, such as robo-signing have been curtailed somewhat.

The question that perhaps only the banks can answer is whether the practices of the banks in connection with refinancing programs was due to 1) extreme caution by lenders, or 2) incompetence on the part of lenders or 3) intentional avoidance of the process and the people who needed help. In our experience, we have seen people at all income levels, involving homes in all price ranges run up against the same stone walls and bureaucratic fumbling regardless of the lender or the homeowner involved.

In our region, the Midwestern U.S., small independent banks still make most of the small business and housing loans. But the system and margins on bank income encourage them to sell them to one of the big financial firms. It is the big firms who consolidate large numbers of loans and package them for resale to other banks and to investors. The administration of most loans is done by banks that the U.S. government has described as too big to fail. Companies like Wells Fargo, Chase and Capital One are among the most common firms at the administration and the ultimate repossession and foreclosure stages of the process.

It is pretty clear that the large banks managing the refinancing applications have staffs of low paid personnel with little or no authority to make decisions on the applications made to them. The banks have The upper management of the big banks have established computer generated form letters, which bombard the consumer with conflicting correspondence, clearly designed to wear them down. Some people, many in fact, give up and walk away from their homes.

Meanwhile, the banks can say that they have tried to work with those people who didn't qualify or didn't send in all the information or documents required. So what is the solution?

It doesn't appear to be the government. People who are not close to the government in the U.S. remain mystified. None of the people who abused the marketplace to cause economies to crash have gone to jail;, at least not in the United States. And the regulatory schemes that have been implemented haven't worked. The regulators have proven to be just as incompetent as the mid to non-management employees of the banks whose signatures have appeared on untold numbers of letters to unwitting homeowners.

As reported in the April 4, 2013 Wall Street Journal, a Government Accountability Office Report found that a study by the Office of the Comptroller of the Currency and Federal Reserve was flawed because of inconsistent methods were used by the consulting firms the government hired. In addition to using different sample sizes, the consultants said some files contained more than 2,000 pages.[1] The federal government has settled more than 4 million claims, and state attorneys general have recently settled a lawsuit they filed. But most homeowners have simply lost.

Contact:
Dennis Naughton, Attorney
Naughton Law Firm
1175 8th Avenue
Marion, Iowa
U.S.A. 52302
djnaughton@gmail.com

[1] ZIBEL, ALAN AND FITZPATRICK, DAN, 2013-04-04, Flaws Cited in Foreclosure Review, in *Wall Street Journal,* C1.