

US: Oregon foreclosure filings skyrocket

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A three-month trend of falling foreclosure rates in Oregon came to an abrupt halt in April with reports showing that new bank filings had skyrocketed by an astounding 236.2 percent over the prior month. This was in contrast to the national trend, which showed new foreclosure action dropping 14 percent for the month.

As reported by ForeclosureRadar, 3,719 new default notices were filed in April, compared to 1,105 for March. Filings were 74 percent higher than in April one year ago, when 2,134 notices were filed.

The preponderance of this increase is due to the actions of ReconTrust, a subsidiary of Bank of America Corp. (BOA). The mortgage servicer was responsible for 2,840 of the 3,700 filings posted in April, as opposed to 131 total for the previous three months. ReconTrust appears to be attempting to regain ground lost due to the moratorium enacted late last year as widespread flawed mortgage ownership recordings emerged in court actions by individuals facing repossession.

Oregon law requires that the ownership history for each mortgage be filed in the county recorders' office where the property is located. Failure to maintain the recording of all successive assignments has led since last October to six separate federal court judgments halting repossessions.

One lawsuit, *McCoy v. BNC Mortgage Inc., MERS, U.S. Bank, Finance America LLC, et al*, traces the sale of the loan to at least five different companies. The mechanism used by these different entities to record each sale is what came into conflict with Oregon law. The above-mentioned MERS (Mortgage Electronic Registration Systems, Inc.) was created in 1993 to provide rapid electronic processing and tracking of mortgage ownership and transfers.

The additional element in this mix is that Oregon is one of 29 states that allow "foreclosure by sale" or

"non-judicial foreclosure." Because this process takes place outside the courts, the law obliges rigorous notice requirements, called "foreclosure by advertisement." In addition to filing with the county and notifying the homeowner, a notice must be published in that county's newspaper for four weeks.

At the height of the housing boom, huge numbers of loans were being sold and re-sold, as well as bundled into collateralized debt obligations. MERS was touted as a cheap and effective way to substitute electronic recording for county recording of assignments.

As noted on the Q-Law Blog, "There was no public accountability—just a members-only 'registry,' where, *in theory*, participants would 'electronically register' the transfer of their mortgages and trust deeds. In this way, Big Banks could securitize their loans faster, rather than complying with those time consuming and pesky state recording laws. But wait! There's more! As an added bonus, lenders would save millions of dollars in recording fees!"

While the different lenders named MERS the "lender's nominee or mortgagee of record," the courts found that in Oregon this did not provide MERS with legal standing to take foreclosure action.

In the *McCoy* decision, Chief Bankruptcy Judge Frank R. Alley III ruled: "Oregon law permits foreclosure without the benefit of judicial proceeding only when the interest of the beneficiary (lender) is clearly documented in a public record. When the public record is lacking, the foreclosing beneficiary must prove its interest in a judicial proceeding."

Hundreds of foreclosures were halted or cancelled by ReconTrust and other banks and mortgage holders in the wake of the court decisions. The possibility of hundreds if not thousands of foreclosures taking place without the required legal documentation threatened a monumental debacle for the lenders, with the possibility of the courts determining that these

foreclosures were illegal and therefore invalid.

The response of the lending industry was typically cynical and underhanded. Seeking legislative forgiveness, it sought to surreptitiously insert an amendment into an affordable housing bill, Senate Bill 519, which would have retroactively eliminated the recording requirement that has hobbled the MERS foreclosures. Fearing the uproar such an action would provoke, the House Judiciary Committee decided to send the bill to a floor vote at the end of May without the amendment. According to the *Oregonian*, “Afterward, co-chair Jeff Barker cited a public outcry over the amendment as reason for its failure....”

Despite the moratorium by the banks, however, critics say that the new foreclosures are no different from their previous filings. Quoted in the *Oregonian*, real estate attorney Phil Querin said, “They’re doing the same thing they were before. They’ve not recorded successive assignments.”

Meanwhile, the biggest driver of foreclosures, unemployment, remains close to the double-digit level. Oregon’s seasonally adjusted jobless rate stood at 9.6 percent in April, down from the revised March rate of 9.9 percent.

Seven out of the 10 states with the highest foreclosure rates in the nation are concentrated in the western US. Nevada leads the country, with 1 out of every 97 homes facing foreclosure, followed by Arizona, California, Utah and Idaho. Oregon is in tenth place, with 1 out of every 497 households receiving default notices. Portland home prices have dropped 7.6 percent in the last year.



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