

State court ruling shakes up real estate market

By Alex Bloom abloom@eagletribune.com

Jan 8, 2011

NORTH ANDOVER — The state's highest court sent ripples through the real estate industry yesterday ruling that banks and lenders must have proper documentation before foreclosing on a home.

The Supreme Judicial Court affirmed a 2009 Land Court decision requiring banks to have proper documentation before moving forward on foreclosures. The decision affects thousands of homes that have been foreclosed upon in Massachusetts.

In a decision written by Justice Ralph Gants, the court ruled that U.S. Bancorp and Wells Fargo & Co. did not prove that they held the titles on two Springfield homes, ruling the foreclosures invalid. Banks and lenders, Gants wrote, must prove they own mortgages at the time of foreclosure to proceed in seizing a home.

"We agree with the (Land Court) that the plaintiffs, who were not the original mortgagees, failed to make the required showing that they were the holders of the mortgages at the time of foreclosure," Gants wrote.

Stock prices for Wells Fargo & Co. and U.S. Bancorp were down yesterday, with U.S. Bancorp down 30 cents per share at \$25.99 and Wells Fargo down \$1.05 per share at \$31.09. Bank of America and JP Morgan Chase also showed declines.

Massachusetts Attorney General Marsha Coakley issued a statement in support of the ruling.

"There are thousands of people in our state who have lost their homes and many more still in danger of losing them," Coakley said. "This decision affirms our belief that the onus should be on the banks and other holders of notes to follow proper procedures before initiating foreclosure on any Massachusetts homeowner."

Tim Warren, CEO of The Warren Group, reported that in the first 11 months of 2010 there were 11,750 home foreclosures in Massachusetts. In contrast, he said, there were 37,718 single-family homes sold in Massachusetts in 2010.

Real estate experts debated the potential effects of the ruling. Tim Warren, CEO of The Warren Group, said the decision could loom large.

"Certainly there are going to be people questioning whether the foreclosure they're involved in now or the foreclosure that took the home from them months or years ago — whether that was legitimately done," Warren said.

Edward Bloom, president of the Real Estate Bar Association for Massachusetts, supports the ruling because it adds some discipline to the foreclosure process, as some banks would purchase a mortgage and sell it quickly.

"You have seven people in the chain of the mortgage," Bloom said. "Most borrowers, most homeowners don't even know who the hell holds their mortgages."

But Bloom had hoped that the SJC would apply the ruling prospectively, meaning it would only affect mortgages in the future. The SJC chose to apply the ruling to past mortgages as well.

The ruling, Bloom said, will therefore have the largest effect on homeowners that purchased an already foreclosed home at auction. Banks selling foreclosed homes at auction might not have had the right to sell the homes that have already been purchased, and many homeowners of foreclosed homes may opt to sue the banks that resold the foreclosed homes.

Lisa Vinikoor, director of the Merrimack Valley Project, which helps fight foreclosures and evictions of families in the region, called the ruling a "huge victory" for residents facing foreclosure.

"We are pleased to see this important step towards justice for the thousands of hardworking families being foreclosed on in the Merrimack Valley," Vinikoor said.

She said many families have been unjustly foreclosed on because they are willing to negotiate and pay fair mortgages instead of going into foreclosure, but the banks instead opt to put the home up for auction.

The ruling will hold lenders more accountable and encourage them to negotiate more fair and sustainable mortgages with families, she said. Vinikoor said she hopes many foreclosures will be rescinded locally because of the ruling.

Warren disagreed, stating that people who missed payments on their mortgages deserved to face foreclosure.

"Nobody is really disputing whether the people deserve to be foreclosed," Warren said. "When they took out the mortgage, they agreed that if they didn't pay the mortgage, the bank could take back the house."

He compared the court ruling to a person committing a crime but not going to jail because of police not following proper procedures like reading Miranda rights.

"If you don't follow the procedures you end up putting the whole thing in jeopardy," Warren said.

Vinikoor said she doesn't know what the ruling will mean for families who have already moved off their properties.

David Turcotte, a co-editor of the Merrimack Valley Housing Report and a research professor of economics at UMass Lowell, questioned whether the decision will have an effect on a large scale. Foreclosure victims, he pointed out, will have to get legal representation and search through housing documentation to build a case.

"Someone has to challenge it, someone has to do the research to see if there are any issues with the paperwork along the way," Turcotte said. "If you were foreclosed on two years ago, are you going to hire an attorney, are you going to do all this work?"

Turcotte did predict that the foreclosure process in Massachusetts, which averages about 11 months, will slow down so that lenders can be certain that foreclosure can withstand a legal challenge.

"If (lenders) haven't already become really cautious and diligent then they are certainly going to become more cautious and diligent going forward and that's certainly going to slow down the process of foreclosure," Turcotte said.

Reporter Jonathan Phelps contributed to this story.

Massachusetts Foreclosures, 2007-2010

The Merrimack Valley Housing Report tracks residential and housing trends and statistics. David Turcotte, a co-editor of the report and a research professor of economics at UMass Lowell, provided

numbers on foreclosures in the Merrimack Valley. The Warren Group collects and publishes real estate news and data, and provided statewide numbers from 2007 through the first 11 months of 2010.

	2007	2008	2009	2010	Total
--	------	------	------	------	-------

Haverhill	149	201	148	181	679
-----------	-----	-----	-----	-----	-----

Lawrence	262	457	227	242	1,188
----------	-----	-----	-----	-----	-------

Methuen	52	97	75	102	326
---------	----	----	----	-----	-----

Statewide	7,653	12,430	9,269	11,750	41,102
-----------	-------	--------	-------	--------	--------