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**Slideshow: Where is a default in a securitization?**

Symphony Music

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Where is a default in a securitization?

This is the Origination Process

A. Homeowner and “bank” originate.
B. Bank “sells” to SPV in exchange for cash.
   • Bank is no longer involved as owner (but it is paid a “servicing fee” to receive cash and pay cash to SPV)
C. SPV - a trust - owns the Promissory Note.
   • (...but it is not a bank, or an insurance operation. It is either a “shill”/”front,” or a non-entity/”pass-thru”…)
D. Trust receives deposits from Tranche Investors in exchange for the rights to a priority in the received cashflow collected by the SPV.
E. Trust purchases a credit default insurance from the cashflow it receives, when available...

* SPV = “special purpose vehicle,” a “trust.”
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This is the Default Process

A. Homeowner doesn’t pay!
B. Bank declares a “default.

However,

- No one is “in default” to bank as bank doesn’t own Promissory Note.
- (bank doesn’t even officially know the name of the defaulting party)

BUT…

- Trustee tells bank to call the loan “in default” but it does not identify itself to the homeowner.

- Trustee has no monetary debt obligation to anyone and the homeowner default causes it no financial harm.

- Tranche investor is short of funds but he never gains knowledge of who is in default to him; tranche investor is only the beneficiary of a cash flow stream.

- THERE IS NO DEFAULT from the homeowner to the bank!
Furthermore, to validly declare a default of non-payment against a homeowner and to foreclose, doesn’t the owner of the debt instrument have to be suffering from a “monetary default”? 
The trustee is not permitted to officially disclose the name of homeowner to its servicing agent, or to anyone. The trustee therefore never notifies the bank that it is not in receipt of money from any homeowner’s promissory note.

However, the trustee asks the bank to enforce “collections” but the bank servicing agent only surmises that a default is ongoing, or has happened. The servicing agent largely relies on statements made to it by the homeowner. The servicing agent does not have access to the Promissory Note or, if it does, two frauds would have taken place because having access means:

a. The note was substituted with other collateral

b. That other collateral had to be for a principal amount greater than the original principal of the homeowner’s note (in a falling interest rate environment)

Therefore,

a. The servicing agent would have had to have notified the SPV that a Promissory Note was in default and the trustee would have to disclose that it owned the note to exchange it for another.

b. If the bank paid for a defaulted loan it must have been because it retained an “ownership obligation” in the note which means it reported its off-balance incorrectly to its auditors and to the SEC (FASB 140).
But,

➢ The trustee is not permitted to disclose names and addresses of the assets it owns

➢ The process of default and foreclosure, by its actions, must do at some point in time.

Therefore, either

• The originating bank retained information

• The originating bank continued to maintain control in the loan

While,

The SPV calls on its CDS* when it doesn’t collect all cash from servicing agent and it receives cash from counter party of CDS to pay Tranche investor

* CDS = “credit default swap” = a contract of insurance
But Tranche investor is still directing SPV to foreclose although it has already been made whole by the receipt of the CDS insurance payout. The Tranche investor’s interest, which is only in the receipt of a cashflow stream, is transferred to the CDS payor which reaches back to the promissory note but, most likely, no longer to the mortgage lien (A CDS counterparty is only in the “credit” business and not in the ownership of real estate business– i.e. the CDS counterparty receives its rights via subrogation of only the promissory note but it does not follow that the mortgage lien rights always follow the note!).

In pursuing foreclosure, SPV– who is not in default to anyone for any money – is trying to enrich someone who may have no claim!

There is no obligation of the SPV to pay foreclosure proceeds to CDS counterparty as that collection is not associated with a Note.
Documentation Challenge

- When a loan is originated, the original documents are physically moved to the possession of the SPV. Only the SPV has access.
- When the ownership of the pool of promissory notes is changed from one party to another, for example from WaMu to Chase, or Webster to Wells Fargo, no one gets access to the physical promissory note because they are owned by the SPV.
- For access to have existed legally, it would require the SPV to have invited the bank to access its safe and to allow an officer of the bank to stamp and sign all the affected promissory notes with the SPV’s permission and a record of the point in time when access was given.
  - It would otherwise be too easy to fraudulently change information on such critical documents that substantiate the existence of a debt.
- Every Promissory Note must therefore have an easily verifiable and traceable history of its physical location from origination to presentation in court during foreclosure.
Other Realities

- It is not possible for all mortgages originated by banks not to have all been securitized because for this not to have happened would inflate the reported size of bank balance sheets beyond their existing size.
- All default notifications to credit bureaus by banks are false ab initio (The banks do not own the note to call them into default).
- It is not possible for banks “to own” and “not own” promissory notes at the same moment in time.
  - Representation to auditors, SEC, and homeowner is false.
- If the bank’s foreclosure lawyer’s representations are true, in the American economic system, a securitized loan weaves thru to create the only unregulated/ unsupervised interaction between consumers and accredited/ sophisticated investors.
  - It is not supervised by a bank regulator, the SEC, or an Insurance Department.
- HUD disclosure statements have major errors ab initio.
- Rates charged became predatory once cost-of-funds rate structure changed and no new loans were made available.

Theft.
The 40+ year traditional profit margin for this business.

Area under curve represents new extra cash collected by banks for themselves and investors following central bank involvement.

- The higher margin changed bank behavior.
- Banks took money from consumers.
- Banks stopped lending at ‘residential/small business’ level within each State.
- Consumers stopped having access to alternatives because five banks controlled the total availability of product to the market.
Observations

- Half truths to consumers can’t be allowed to work.
- Banks only talk using the full weight of their overbearing market influence to control the loan market for which no alternative competitive options exist.
- Obfuscation: Bank represents itself as "a bank," "a lender," "a servicing agent," "an investor," and most recently, as a "mortgage creditor." Never as “a principal.”
- It is an easily quantifiable harm caused by damage to consumers.

Average truck driver’s loan excess interest payment is $25,000+…
X 1,000,000 customers = $25,000,000,000.
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Conclusion

• Every originator and SPV should be able to produce a date-stamped log of the physical whereabouts of Promissory Notes from inception to foreclosure.

• A securitized loan never involves a monetary default to anyone who owns that Promissory Note and statements to the contrary are false.

• Statements about promissory note ownership made to courts by bank lawyers are false.

• Only disclosure of actual Pooling & Servicing, Tranche Investment, and separately purchased CDS agreements can identify owner of Promissory Note and whether a defaulted note claim can be made.