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## The Curtis Law Firm, PC Newsletter — Lender Alert

### ***Importance of Detail in the Foreclosure Process: Why Lenders Should Pay Attention***

There has been an increase in litigation in the last few years surrounding the tools used by lenders to make the foreclosure process more efficient (i.e. MERS, robo-signing...etc.). One such tool that came under attack in Massachusetts was the creative use of assignments. On January 7, 2011 the Supreme Court of Massachusetts handed down a decision that has the attention of the foreclosure industry around the country.

The mortgages in ***U.S. Bank National Association v. Ibanez***, 458 Mass. 637 (2011), were bundled and sold to Wall Street investors. As is typically the case, the ownership of the mortgages transferred numerous times. However, the evidence of ownership actually on file at the Registry of Deeds lagged behind (i.e., with the state).

In the ***Ibanez*** case, the mortgage assignments at issue had not been recorded in the local jurisdiction, nor had the mortgage assignment named a specific assignee. In other words, the assignment was “in blank”. The banks argued that the governing agreement and/or the pooling and servicing agreement effectuated the transfer and thus conveyed the power to foreclose. However, the Court unanimously held that (a) U.S. Bank and Wells Fargo failed to prove that they owned the mortgages when they foreclosed on the homes of Antonio Ibanez and Mark and Tammy LaRace and (b) the post-foreclosure recording of the assignment of mortgage did not validate the foreclosure sales.

**In light of this case, you (or your attorney) should always determine whether or not the lien you wish to foreclose has been properly transferred before you commence the foreclosure process. Assignments “in blank” and unrecorded assignments (even if back-dated) can be ineffective to transfer ownership of a lien.**

It is important to note that the ***Ibanez*** case is not a Texas case. However, the Supreme Court of Massachusetts is one of the most well respected state supreme courts in the country. The ruling could easily be followed in states such as Texas that operate under a non-judicial foreclosure system that is similar to Massachusetts. One thing is clear in today’s environment – Courts are paying closer attention to the foreclosure process. It would be wise for you to review the foreclosure process at your lending institution to make sure you are following the law in light of this recent decision.

If you have any questions, please call our office at **(214) 752-2222** or email **Jason Katz** at [jkatz@curitslaw.net](mailto:jkatz@curitslaw.net) or **Zac Copp** at [zcopp@curitslaw.net](mailto:zcopp@curitslaw.net).