

Dealing With The Mess *U.S. Bank v. Ibanez* Left Behind: Massachusetts High Court To Consider Buyer's Rights After Invalid Foreclosure

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[The Massachusetts Supreme Judicial Court](#) has taken up an appeal about whether a home buyer can rightfully own a property if the bank that sold it to him did not have the right to foreclose on the original owner, after the Court's [U.S. Bank v. Ibanez](#) landmark ruling a few weeks ago. This case may determine the rights of potentially thousands of innocent purchasers who bought property at foreclosure sales that have been rendered invalid after the *Ibanez* ruling.

The case is *Bevilacqua v. Rodriguez*, and [can be read here](#). In *Bevilacqua*, Massachusetts Land Court Judge Keith Long (ironically the same judge who originally decided the *Ibanez* case) ruled that the buyer of property out of an invalid foreclosure has no right to bring a "quiet title" action to establish his ownership rights because he never had good title in the first place. "I have great sympathy for Mr. Bevilacqua's situation — he was not the one who conducted the invalid foreclosure, and presumably purchased from the foreclosing entity in reliance on receiving good title — but if that was the case his proper grievance and proper remedy is against that wrongfully foreclosing entity on which he relied," Long wrote. The net effect of the ruling is that the innocent buyer's only remedy is to sue the foreclosing lender for damages—not a great option—or force the lender to fix the deficiencies with the original foreclosure—if that's possible at all.

Estimating how many purchasers have been affected by *Ibanez* defects is difficult. There have been over 40,000 foreclosures in Massachusetts in the last 5 years, and over 12,000 last year alone, up 32% from the year before. A Boston Globe columnist recently [performed a rudimentary analysis](#) of foreclosed properties in Chelsea, and found that about 33% may have been afflicted with *Ibanez*-type deficiencies.

Many people in Massachusetts who purchased homes at foreclosure sales may not even know their titles are problematic—until they try to refinance or sell. So this problem will likely take years to ultimately resolve, unless the legislature comes up with some type of solution. And these problems may go back a very long way—5 or even 10 years in the past.

Bloomberg News has a great write up about the case [here](#).

The *U.S. Bank v. Ibanez* case has generated widespread media attention. While the case has not spread outside Massachusetts, many commentators warn that it may, which would result in some destabilization of the foreclosure and securitization markets.