

Your mortgage note is often passed around like an endorsed check. Welcome to the wild and wonderful world of "endorsements in blank." On March 22, 2013, the Maryland Court of Appeals made it just a bit easier for mortgage lenders to foreclose in the case called (take a deep breath ) *Deutsche Bank National Trust Company as Trustee for the Certificate Holders of ISAC 2006-5 MTG Pass-Through Certificates and Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, LP v. Angela Brock, No. 55, September Term 2012.*



This case allowed the appellate court to settle a common dispute involving a lender or loan servicing company's right to enforce a note, or to foreclose the deed of trust securing that note. Mrs. Brock argued that the foreclosing loan servicer lacked authority to take her home because the mortgage note was endorsed "in blank," and did not specifically name the loan servicer. And if you are not in the law biz, you may just be mumbling "what's 'in blank' mean?" Glad you asked. Pour yourself some strong coffee and read on.

An endorsement is the act of signing over a negotiable instrument (imagine the check from your own checking account). You might write a check to your friend, "Jane." Well, Jane usually will sign the back of the check and deposit that check in her account. She has "endorsed" the check. And the bank normally will require that she sign the check before it is accepted for negotiation.

But Jane can also choose to pass your check to someone else. Imagine that she owes the exact same amount of money to her friend "Dick." She would sign her name to the back and add "pay to the order of Dick." She'd hand him the check and Dick can now drop the check into his own bank account.

But Jane can also endorse your check "in blank." That is, to anyone who possesses the check. She would simply sign her name, or she might add "pay to bearer." This converts our check to something that can be passed around from Jane to Dick, and from Dick to any number of others. And each person in that chain of possession may deposit the check to their account. It doesn't matter that their individual names do not appear on the back of your check because it has been endorsed "in blank."

So, back to our case.

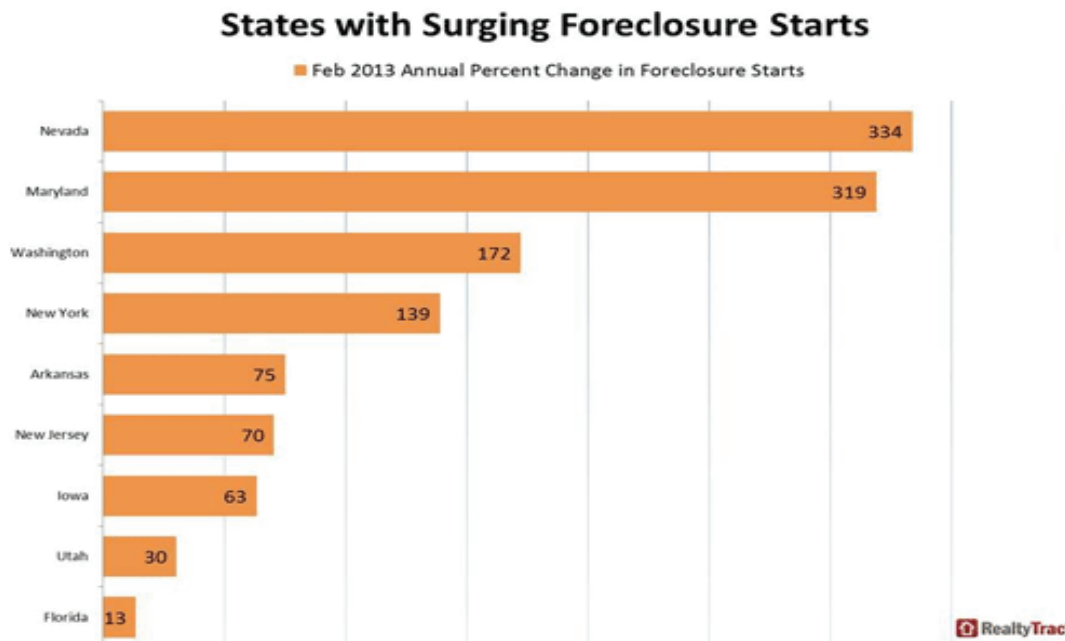
Mrs. Buck argued that the loan servicing company should be required to prove that it had received her mortgage note from the last entity identified in the chain of endorsements. This is the standard of proof when a loan servicer has possession of a

note that is missing endorsements. And it would have made foreclosure of Mrs. Buck's home more difficult. Her note was endorsed "in blank," and had been physically delivered to the foreclosing lender without any additional endorsement stamps. Remember your check that was passed from Jane, and then to Dick and his friends? Well, the Court of Appeals made the same analysis. It held that the servicing company does not have to make additional proof as long as it is in physical possession of the original note, where that note is endorsed "in blank."

What's this mean for you, as a Maryland homeowner? Very simply, another avenue of attack on mortgage lenders and mortgage servicers has been closed to the homeowner. The court recognized the long standing practice of negotiating notes endorsed "in blank" as legitimate, and not falling into the category of cases where a note is missing endorsements, or a servicer has lost the original.

In a March 14, 2013 posting, the website Mortgage News Daily reported over 158,000 new foreclosure actions were docketed across the Country in February. This is reported to be a slight increase from the prior month. ([http://www.mortgagenewsdaily.com/03142013\\_realty\\_trac\\_foreclosures.asp](http://www.mortgagenewsdaily.com/03142013_realty_trac_foreclosures.asp), last checked 4/13/2013).

In the following chart, Maryland is reportedly experiencing a 319% increase in new foreclosure activity.



As a practical matter, there are hundreds of cases clogging Maryland's courts where homeowners have sought to forestall foreclosure by arguing the lack of standing by a lender or servicer. These fights take years to resolve (Mrs. Buck's foreclosure started in 2009, four years before this final decision), and thousands of dollars in legal fees, and the delinquent homeowner often remains in the house without paying a dime in mortgage payments.

Is that a good thing? For Mrs. Buck, perhaps, but what about you and others who struggle to make your monthly payments? But that's a different discussion, for another day.

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