

FORECLOSURE - MUST HEAR TALKSHOE

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Dec 9, 2010 Jean Keating on Angela Stark

Tax law, commercial law, accounting and trust law, adverse claims and void judgments

Why you are not winning in court.

Well, I've been teaching for 50 years and doing research for 50 years. I have a degree in commercial banking law and commercial law and I understand the Uniform Commercial Code and trust law which all 4 are related.

You have to understand tax law, trust law, commercial law and accounting if you don't you won't understand anything or what the court is operating under.

Well, if you go in court, these courts have 2 jurisdictions - a public side operates in commercial and a private side that operates under Common Law and their Courts of contract. If you contract with them they have Jurisdiction. To not contract, make a Special Appearance. Make a Letter Rogatory and every time I have done one I have been successful, you have to read UCC 3-501 and 3-502 it tells you how to do a conditional acceptance upon proof of claim. You have to challenge their right, most of these people are making presentments on behalf of someone else, they don't ever tell you their authority to do that is. When they do these loans that's what they're doing on a mortgage loan they are making a presentment on behalf of someone else. You can kill all these mortgage on the administrative level; they should never get to court.

What about a non-judicial state? They never go to court anyway!

A judicial, they file a complaint against you.

Non-Judicial they can't do that, they can not do a non-judicial because it's a confessed judgment.

The Deed of Trust contains a confessed judgment that is where they get the power of sale. Read the power of sale clause in the Deed of Trust.

When a loan goes into default they enter the right under the power of sale, that's a confessed judgment. In CA in 1131 to 1134 of the CA civil code you cannot do a confessed judgment on a mortgage loan unless the borrower has consented to it. That means he has to file an Oath and Order with the court and it has to be certified by an Attorney. All these Deeds Of Trust contain a confessed judgment. That is number 1!

Number 2 is you're not dealing in a mortgage loan, you are dealing in an investment contract and they are holding you liable on a contract that you are not a party that is the Pooling and Servicing Agreement.

Under the Statute of Frauds which is Sec 1624 of the CA civil code and its in the UCC at 2-201 Sec 2-201 and the Statute of Frauds was designed to prevent the very thing they are doing. The Statute of Frauds is evidentiary and if you don't raise it, you waive it. I don't know of one person that has ever raised the Statute of Fraud as a defense. The land mark decision is the Seacrest Case because when you go to closing they are doing a loan modification. Because they made you a party to a contract to which you are not a party to. You are a 3rd party Contractee to the Pooling and Servicing Agreement and the proof of that is that is where your mortgage payments are going. The Payments are going to the investors as a cash flow claim. There not going to the servicing company, they are merely passing the payments on to the investors. Why are they giving them to the investor?

Another thing to study is; that you are dealing in securities not negotiable instruments. What you call a promissory note is a security because it has a maturity of more than 9 months. All these mortgages have 30 and 20 year maturities. Read Title 15>28>78 (c) 10; any note that has a maturity of 9 months or less is excluded from the definition of a security. Because it's not a security it's a note. Where have you ever seen one promissory note that has had a maturity of 9 months or less? You haven't!

And there is also suppose to be a Disclaimer that is suppose to be in the credit application under Title 16 16 cfr 433.2. Which says that the buyer/seller take it subject to all the defenses and claims that the buyer could assert against any transferee or any buyer who buys it. Or anybody who sells it, but they take it out of these loan applications. None of the applications have that disclaimer in it. That means there is no holder in due course. Because if you read UCC 3-302 of the UCC a holder in due course takes it free of all claims and defenses that the payor could assert against any payee or assignee or transferee. They don't take it free of that they take it subject to your claims and defenses.

What are your claims and defenses?

Under UCC 3-305 you have a claim in recoupment. Which is a counter-claim and that's the same language in Rule 13 of FRCVP

Rule 13 says there are 2 types of counter-claims, there is a mandatory and permissive counter claim.

Mandatory arises from the same transaction and occurrence as the plaintiffs claim.

No one is filing a counter-claim that is why they are running over you!

You can't be a creditor unless you file a counter-claim! UCC 3-305

2nd Claim is UCC 3-306; you have a proprietary and possessory and property interest in the note and its proceeds. You have the right to rescind negotiation of the transaction. Negotiation means the endorsement on the note. They always endorse these notes "pay to the order of", you have a right to rescind that negotiation. No one ever does it because they don't read the UCC.

When you are dealing in securities it is governed by Article 8 not Article 3 of the UCC, what you call a note is a security and it is a non-negotiable instrument. If you read the Adjustable; sub-prime mortgages have an adjustable rate rider that goes with the note. The rider modifies the conditions of payment and supplements and governs the promissory note. UCC 3-106(d) it can't be a negotiable instrument if it is subject or governed by extraneous documents outside of the promissory note. And they make it subject to the adjustable rate rider and the deed of trust. There are a dozen cases that say all mortgage notes are non negotiable instruments. If they are non-negotiable they are not governed by Article 3, there governed by general contract law, specifically Restatement of Law Second series under contract Section 164 which has to do with mis-representation which means its subject to rescission. If you read 226.23 of TILA or Reg Z : 12 cfr in the Appendix there is a Form H-8 and H-9 it is in the Appendix.

The lender has to give you the Form to rescind, that's all in 226.23. It says that it doesn't apply to residential mortgage loans but go down to in Section H it says at foreclosure you have the right to rescind the loan transaction if 2 things occur: 1.) there was no mortgage brokerage fee charged and 2.) you were not given notice of the right to rescind 3.) or your were not given the appropriate Form. The form in Appendix H-8 Form and H-9. So you could rescind the transaction when it goes to foreclosure. They will tell you only have 72 hours, if they did not give you notice the statute of limitations does not toll until they tell you, you have a right to rescind. You can do it at foreclosure. Another thing you are not in a loan transaction, your in an investment contract UCC 4-102 under Applicability says if an item is includable in Article 3 its governed by Article 8. Article 8 governs Article 3 because you are dealing in securities.

All these notes are securities, not notes or negotiable instruments. Article 8 governs 3 and 4. What you have to do is you have a claim in recoupment or a claim under 3-306 to the proceeds and a right to rescind the negotiation. And you have a possessory and property right in the proceeds of the investment contract.

File the claim! If you read 8-505 to 8-508 it tells you how to file a claim! The claim is called an Adverse Claim, it's defined in 8-102 and 8-105 of Article 8.

All these mortgage transactions are governed by Article 8 or Article 2 and you have never filed a counter claim. That is why they File a 1099 – A because they say you abandoned your claim or recoupment which is a counter claim and your possessory right to the proceeds from the sale of the security under the investment contract to which you are undisclosed 3rd party in the contract under the statute of Frauds. If they are going to hold you liable under a contract which you are an undisclosed 3rd party and it has not been subscribed to by you and you have not memorialized it then you have a right to the proceeds. Go after the proceeds. It tells you how to do that, no body is doing that!

Another reason your loosing in court is because none of these courts have subject matter jurisdiction over land. Only a land court and in Florida are the county courts and it says that in the constitution. If you go into the judiciary of the Florida Title 5 Sec20 it tells you what courts have jurisdiction. County courts have jurisdiction over land, so what you are doing are contracting with those that don't have

jurisdiction. These attorneys don't have jurisdiction to represent anyone! Read the dead man statutes which were codified under Probate law, Rule 601 under Federal Rules of Evidence, it goes to competency to testify, they are incompetent to testify for a dead person. Who is a dead person, the corporations, they are dead because they are not real. What an attorney does is they testify on behalf of all these banks and if you don't raise the objection, you loose the right!

That is the first thing to do. "I am before this court by special appearance without waiving any rights remedies or defenses, statutory or procedural". I put that admonition at the top of my pleadings, that way you don't waive jurisdiction, otherwise you are going in on contract with these people. You contract then when they rule against you even though they didn't have subject matter jurisdiction you gave them that, you gave them jurisdiction but not subject matter, but you have to raise it. Also in personam, in order for the court to have jurisdiction the plaintiff has to be there and the defendant, both party's, real party's in interest that have standing under Article III Section 2, standing is a threshold issue and the court is suppose to address that sua sponte and they are not doing it! Some do some don't! So you have the responsibility to bring it up, standing is a threshold issue. None of these servicing company's that are foreclosing on all these loans have standing to come to court to foreclose on your loan. Because they don't own the loans, who owns the security, the borrower does. That's why this CountryWide and the Kemp case, this women an employee from CountryWide testified that none of the notes are transferred. That means all of these Real Estate Investment Trusts don't have the note. April Charney in her admonition says they never transfer the notes nor do the sell them they keep them. The reason they keep them is because they don't own them. They can't transfer them and if they did transfer them, they have to do that to get the exemption otherwise they have to pay taxes. If they don't pay out 90% of their taxable income in interest and dividends to the investors then they have a tax liability. They do not qualify under Section 862 and 852 of Title 26 as a Real Estate Investment Trust so there in possession of contraband. So what they are doing is billing you for the tax that they owe. No one raises this issue because they do not understand it. That is why every mortgage is a tax issue. There are 2 issues: an investment contract and a tax. The reason a tax comes into play is because they never transferred the security, they kept the security. So that means all the investors that bought cash flow claims under the Pooling and Servicing agreement have got worthless paper. That means there is a cloud on every title and none of these notes were ever securitized. That means every B-5 Prospectus, S-3 Registration Statement, 8-K Current Report are all invalid. That are filed with the SEC because the notes; the security were never transferred at closing. The investors put up all this capital and in the law review by David Levithin (SP?) that goes into the ramifications. The banks that allegedly financed all these loans are going to have to give all the money back to the investors as cash flow claims because they never transferred; they bought something that they never got. They paid for all these notes, or securities and they were never transferred to them, they don't own them. The banks are going to have to give it back: there is not enough money in all the banks to pay these investors back. So what does that mean, you are going to have a put-back.

This professor that went up to testify before congress on the sub-finance committee under community housing, he testified before congress as to what is going to happen if congress does not do something. What are they going to do? It remains to be seen. I am telling you what the ramifications are, China will

probably buy up all these loans or they will bail out everybody, or confiscate all your money in the banks. One of those is going to happen, just watch.

In response to the lady that asked about the 1099 OID all these people that are filing 1099 OID's and 1096 and 1040, 1040-V they are not filing Form 8281. An 8281 identifies who as the issuer of the OID is under Title 15 Sec 78 c (a)(8) – go read it! It identifies you as the issuer, because you did not identify yourself as the issuer, you don't have a claim. IRS Publication 1212 page 2 that you must file an 8281 when you file the OID. You must read the publications! That is what you need to file as the issuer.

Also if you read your deed of trust, this is in every deed of trust under payments, which in most all of them is number 3 and if you go read it, this is what I mean no one reads anything, don't complain about lack of disclosure but they never read the deed of trust it tells you what they are doing. It tells you that if there is any money owed at maturity you can pay it at maturity. So how can the note be in default, if you have a right by contract, the DOT is a contract, and you signed it, how can they foreclose when you can make any payment at maturity on the note under the DOT. How can the mortgage be in default or foreclosure? Have you ever heard that? Read every word, every sentence, and every phrase. It is an unconscionable contract with clogging provisions. Clogging provisions extinguish your equity of redemption. If they sell your security how are you going to redeem it if they sell it to someone else and give you the note back, don't you always have the right to redeem a loan. That is more proof it is not a loan, it is an investment contract. Does anyone have any questions?

There is an IRS form 8281, read instructions for 8282 and 8283 read all 3.

In 1951 they passed a law under Title 26, Section 2038 and 2514, it is called the Power of Appointment Act of 1951. The donor has total power, every one of these mortgage loan transactions is a donor : donee relationship. Which means it is a Class 5 Gift and Estate Tax under 60 02090 Decoding Manual, IRS Processing Manual of 2010. If you go in there that all 1096's 1098, 1040, 1099 all W-2, W-4's are Class 5 Gift and Estate Taxes they have nothing to do with an income Tax. 1040 forms you don't report gift and estate taxes on a 1040, that's for income. All Class 5 Gift and Estate Taxes are on a 706 or 709.

There are two types of taxes: Form 706 is the generation skipping tax and Form 709 is a gift tax form. There are 2 types of taxes, generation skipping transfer tax (706) and a gift tax (709). If you go read Publication 950 you have a \$3.5 mil Unified Tax Credit that means if you know about accounting. Corporations use that \$3.5 mil credit they use it as money. Corporations use tax credit as money. They give tax credits to banks and banks will loan money on tax credits We have a \$3.5 mil Unified Tax Credit under Publication 950 on all estate taxes and \$1 Mil UTC or exclusion on the gift side. They bill if you read the 709 for them bill; the exclusion, you have 348,000 built into the form, it is in the form. I know that none of you wage earners make more than \$348,000.00. What is wrong with this picture!

With a 1099 A you have to send a Form 56! 8281 identifies you as the issuer of the OID. They are penalizing the OIDs because there is no 8281 filed.

Every one of us has the power individually to take back what we know as the kingdom of God.

We have special drawing rights on the IMF. Did you know that?

All these corporations are debtors in possession under chapter 11.

All these corporations are debtors to the corporation.

We all have our remedy.

1099 A, B C you can run your bank

Under Title 31 USC we are private bankers

I did a 1099 OID for 2006, 07 and 08 – how do I fill out the forms for a checking and savings account, for my money of equity. Read 1271 to 1288 of Title 26 Everything is an OID, because it is a public debt instrument. When you write a check it is a public debt instrument. You have issued it as an OID or withdrawal. But on the 8281 you have to have a CUSIP number. That is why it is done wrong! Everybody that is doing redemption is doing it wrong. When they send you a bill, the bill represents that they accessed your credit for that much. OK, you have to file a tax return and assess the tax. That is why they never redeem the debt because you never assessed it, because it is a tax. You are the only one that can assess it because its your credit they are using. If you don't report it as income to the IRS how are they going to give you a refund?

You do a pay order on the bill "Pay to the Department of Treasury, Charge the sum said to the person that sent you the bill, the utility company: credit it to your account with your SS# there!

Not an A4V it's a money order! Your paying the tax to the IRS and the IRS can bill the account of the person that sent you the bill. Your not doing that so they are billing you for it. They go into your account and get the money then send you a coupon or bill, they are double dipping. They keep the coupon and that is a check plus the check you sent to them. They got paid twice! If you think is not what is going on you are in for a rude awakening! The court assessed me \$80,000.00 fine and I did a "pay to the order of "and assessed the tax to them. I never heard from them again! They have to pay the tax on the bill on \$80,000.00. Every bill is a tax bill!

So take each bill and do "Pay to the order of the IRS (original to IRS) and send a copy to the person that sent you the bill along with a 1040 V, 1040 and 1096 and an 1099 OID. Put it in as income! You are reporting it to the IRS as income. How many 1040's can you file in a year? It depends on how many transactions you have. Put all transactions on one form if you want to wait until the end of the year.

They are using your money and not reporting it. Who keeps track when you write a check? Do you do that? OK, how are you going to balance your checking account? Who does that? The IRS can't balance your account, credit account unless you file a return. Reporting the income, you have to do it because its your income. Right!

Do a pay to the order on the IRS bill itself, the IRS has a DUNS number. They are a corporation! They are doing business. What they are doing is they are trying to find out if you know what you are doing! They are testing you to see if you know what you are doing. They are telling you they are double dipping.

So still send in the 8281 with the 1099 OID. Your not an issuer unless you file an 8281, Publication 1212 says you must file an 8281. It is mandatory!

These courts, none have jurisdiction to do anything. They are not courts they are privately owned trading company's. I make a contract on the private side with a conditional acceptance! I stopped a \$60,000.00 car loan by writing a letter to the judge. He took the case off the calendar and dismissed the motion for default judgment and dismissed the writ of possession. You go in on the public side with courts that have no jurisdiction, you are contracting with them and you give them jurisdiction by contract. They can contract with you, I don't contract with them. Where is your authority? I'll accept that on proof of claim. What is your authority form making a presentment on behalf of someone else.

Do they ever on the foreclosure do they ever send you the note? Do you know they have to present the instrument also, they have to tell you their authority for making the presenting, but they have give you the instrument. They have to exhibit the instrument. Have you ever made them exhibit the instrument? Did you know if you get an abstract of title, from the title company that it will show the loan was paid full at closing.

There called Titled papers! The Title company has the abstract of Title which is the record of the deeds and notes, where they have been, who is using them. The Title company has all of this! Ask the Title company for the abstract of title. Who holds the Errors and Omissions? Make a claim on the errors and omissions on the loans. Did you know that under RESPA they cannot receive any kick back on a mortgage loan which is a federally funded loan. They call them mortgage loans, but they are really investment contracts. They violate RESPA and that is an E&O claim and you can collect on the E&O.

RE the CUSIP number on the 8281, how do I fill this out?

This is how you identify who the issuer is. You are not doing that!

Information Return for Publicly Offered Original Issue Discount Instruments

UCC 4-4.5-104 – defines the originator, originator of the first funds transfer. When you read UCC 4-3-105 of the UCC it tells you who the issuer is and the issue. Under Subsection (a) it defines what the issue is, and (c) defines what issuer is. The issuer is the drawer and the maker! If you sign the mortgage notes you are the issuer by legal definition. Does that tell you anything! What did you sign you endorsed the security. Well, don't you have a proprietary interesting the proceeds from the sale of the security. They made you a party to the investment contract. Well, so why aren't you claiming it? This is why people are not winning in court. This is a UCC Article 8-102 (a)(1) "Adverse Claim" "A claim that a claimant has a property interest in the financial asset and that it is a violation of the rights of the claimant for another person hold, transfer or deal with the financial asset." UCC 8-102 (9) "A financial asset is a security." You got a property interest in a financial assets, isn't that what UCC 3-306 says...property interest.

And when you go to UCC 8-105 a person has Notice of an adverse claim if the person knows of the adverse claim. They know you have an adverse claim, they had notice of it at closing. Aren't they aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoid the information that would establish evidence of the adverse claim. Don't they have a duty imposed by statute or regulation to investigate whether an adverse claim exists. Don't they have knowledge that a financial asset or interest therein has been transferred? All this 8-105, then 8-505 tells you how to file the claim. You funded the whole thing!

Read on the internet the Affidavit by Neil Garfield he explains it. He says the money came from the investors, on a pay forward. But that is wrong! Before they ever had a borrower in place they had the capital so the investors put up the capital for these REMICs before they had the mortgage loan in place. They did it under the condition that you put up the security. Doesn't that make you the creditor? The capital that the investor put up was predicated on your putting up the security to the servicing company. Aren't you, didn't you give them the capital for the investors money. Wasn't the pay forward done by the investors, before there ever was ever a loan in place?

Caller: The investors money did not go to my security it went to my security it went to the bankers and lenders to buy the insurance policy's credit default swaps and fund their pool of money so they could pay back the investors.

But they put up that capital based on your security, that you issued, that gives you a proprietary interest in it. If you withdrew all the securities from the Pooling and Servicing Agreement and from the trust fund what would they have, nothing!

Caller: so if they didn't have the right to the investor's money if they didn't have my security.

That's right!

They would have not put up the money up in the first place unless they were guaranteed capital from the borrower. So the borrower has a proprietary interest in the proceeds from the security. But you are not making the claim! That is why they put the Disclaimer in 16 CFR 433.2; they take it subject to all the defenses and claims that can assert against the seller. Well they can't be a holder, a holder takes it free of all defenses and claims. So they are not holders in due course. What does UCC 3-305 say? Defenses and claims in recoupment that means counter claims, go look it up!

UCC 3-305(c): "it says the obligor is not obliged to pay the instrument if the person seeking to enforce the instrument does not have the rights of a holder in due course." What does that tell you?

If there taking it subject to your claims and defenses then are they a holder in due course? No! Doesn't that say you don't have to pay it? So why are they foreclosing on your property when they are not a holder in due course, because you are not raising the defense. You are not in a land court; you're in a privately owned trading company.

In California do you know where the county courts are? Read the constitution! I haven't looked it up but do they have county courts in California? They do! Ok, where are they located? Well, I assume it's like where you fight tickets and things like that? Those are the only courts that have jurisdiction over land, none of these courts have jurisdiction over land and no one is bringing this up. They go in and these courts are running over them.

Lots of questions:

So, I guess to recap just the 8281 I am still not sure how to fill it out. I will figure it out.

Just put in who the issuer is? Let me go over it quick. Let me pull it up, hang on!

This applies to everyone not just you!

IRS Form 8281:

It has a CUSIP number because it is a security.

No Notes have a CUSIP numbers, only securities have CUSIP numbers.

You can give the DTC your SS number or a Broker Dealer that you want to know what your CUSIP number is, he can tell you in 30 minutes. He will tell you what your CUSIP number is.

ISSUER NAME: YOU

TAX ID: SS#

ADDRESS:

NAME REPRESENTATIVE: SEE INSTRUCTIONS/READ THEM

ADDRESS OF REPRESENTATIVE/BROKER

PART II

CUSIP NUMBER:

TYPE OF INSTRUMENT FIXED OR VARIABLE RATE

ISSUE PRICE: AMOUNT OF MORTGAGE

INTEREST PAYMENT DATES:

AMOUNT OF OID FOR ENTIRE ISSUE

YTM: DATE VALUED AT MATURITY 360 x PAYMENT

DESCRIPTION OF DEBT INSTRUMENTS: FINANCIAL ASSETS UCC 8-102 (9)

You can report your withdrawals as debt instruments, as an OID.

Call any broker and ask for your CUSIP number!

Tell them you want to track a bond and you don't have the CUSIP and give them your SS#. I have already done this!

Question: Last week of redemption period, what do to?

What mortgage? Has he done a Unlawful Detainer? What state, judicial or non judicial? They do a UD to get you out of there. Unlawful Detainer to get you out. Based on a landlord tenant agreement, where is the agreement? How did the trustee get, you have not laid claim, you don't have a claim going. That is why they are throwing you out of the house.

How does he do that?

Go read UCC 8-505 and UCC 8-508 in the UCC. You have to find out who the broker or clearing corporation is and you gotta send a written communication, this might be a good time to go into that.

I'm going into the UCC. Hang on! UCC 8-505 says the duty of securities intermediary with respect to payments and distribution. The securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset.

You know what I would do.... I would find out who the Title company insurance company is, find out who the Errors and Omissions carrier is and tell them you want to file a claim. Tell them you want a release of lien and re-conveyance on the property. Because of the E&O claim. If they don't give you the release and re-conveyance the Title company has that right in California under 29.41.7.

If you can't locate the beneficiary of record or the lender which you can't because of the securitization then you can ask and in 30 days they have to give you a release of lien or re-conveyance. The Trustee does and you can of to the Title company and you want a release and re-conveyance because of the E&O claim you have, you want a form for it. Look under 2607 (a) of Title 12. That's what I would do if I were you. They will call the Title company they said the property was free and clear with no encumbrances. They are liable if there is any cloud on title.

Go to www.myprivateaudio.com to sign up for the classes with Jean. That is Angela..

Posted by John MacHaffie at 8:46 AM

Labels: Foreclosures

2 comments:

Anonymous said...

Thanks so much John for posting this , its the best christmas gift you could give me. I make 2 house payments a month when my husbands unemployment is gone I won't be able to keep it up. Jean is great, but he talks too fast and I can't keep up with him. This is the first time i've seen his stuff in print. I may have to do this someday, THANKS AGAIN and Merry Christmas too.

December 25, 2010 9:29 AM

Anonymous said...

To whomever actually wrote this article (Dec 9, 2010 Jean Keating on Angela Stark):

While the information is intriguing, the English grammar and usage of the presentation are so embarrassingly inaccurate, that it is not difficult to imagine what the grammar and usage are, as now used by the students who have been influenced by this “teacher of 50 years”. In fact, the purpose of this particular communication is as vague as legal jargon itself. The ruthless evil that rules the world creates its own language for the intentional obfuscation of facts in order to deceive and manipulate. There is no wonder political and corporate criminals succeed on so many levels—the majority of the world’s population communicates at the level of an elementary school child. Clear, accurate use of the written word, very likely reflects the use of sound reasoning in the prerequisite thought processes, whereas sloppy, careless expressions leave abundant room for misinterpretation. It can be seen that sloppiness, and ostentatious and obfuscatory intent, have the same result.