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the lender's interest. The trustee then notifies the debtor, in accordance with the relevant state law, that foreclosure is pending. On the date of foreclosure, the trustee offers the property to the highest bidder and has the authority to deliver title to the property in a nonjudicial action. In those states that allow it, this procedure is much faster and of lower cost than a judicial procedure, which requires court action to convey title in a foreclosure action.

Open-End Mortgage

An **open-end mortgage** sets a limit on the amount that may be borrowed and allows incremental advances up to that amount secured by the same mortgage. It reduces closing costs and appraisal costs. Nevertheless, new money advanced under an open-end mortgage may be at a different, current rate of interest. This type of mortgage is often used in farm loans to meet seasonal needs, much like a line of credit. Maintaining some balance due on the mortgage obligation can retain the priority of the mortgage lien. Even so, it is a good idea for the lender to require a title search when an incremental advance is made as certain claims, such as property taxes, can create a higher priority claim than the mortgage.

Construction Loan

A **construction loan** is a short-term loan used to cover the costs of building. It is sometimes called an "interim" loan, although that term also

describes a broader range of loans. A construction loan differs from other mortgage loans in that it is funded through periodic advances as construction progresses. The loan may be funded by either of two different methods: (1) after certain stages of construction are completed, or (2) after certain time periods (such as each month) for work completed up to that point. It takes a construction-wise loan officer to ensure that funds are released as building progresses. Following this procedure of loan inspection and advances, the value of the building used as collateral increases at approximately the same rate as the amount of the loan. Nevertheless, the risk of a construction loan lies in the ability of the borrower/builder to complete the project within the budget, or the total amount of money available. Failure to complete the building precludes release of the permanent loan, the amount of which is normally used to pay off the construction loan. (For additional information on this issue, see Chapter 11.) There are two types of construction loans: one-time closings and two closings. One-time closings are offered by many lenders that offer construction loans. These loans are also called "construction-to-permanent loans" because what occurs is a simple "rollover" from a construction loan to a standard mortgage once the building is completed. Taking one loan means one application and only one set of closing fees. Two-closing construction loans involve the simple construction loans discussed next (interim loans), where borrowers pay only the interest accrued on the cost of the build. Upon completion of construction, the borrower, if the same as the end-use homeowner, must re-qualify and pay the closing costs associated with taking a mortgage on the cost of the build.

Interim Loan

The term *interim* is often used synonymously with the term *construction loan*. While the jargon varies somewhat, an interim loan has a broader meaning. It is any loan that is expected to be repaid from the proceeds of another loan. A home loan is expected to be repaid from the borrower's personal income; an income property loan is expected to be repaid from income derived from the property itself; and an interim loan is expected to be repaid from other borrowed money. An interim loan is sometimes used for short-term financing until regular financing has been completed. When used for this purpose, the financing is also called a *gap loan* or a

bridge loan. Since most construction loans are made with the expectation of repayment from a permanent loan when the building is completed, they easily qualify as an interim type of financing.

Mortgage with Release Clauses

When money is borrowed for the purpose of land development, specific release procedures are necessary to enable the developer to sell lots, or portions of the land, and deliver good titles to those portions. This is the purpose of a release clause. Conditions are structured so that a developer can repay a portion of the loan and obtain a release of a portion of the collateral from the original mortgage. In a subdivision of building lots, loan repayment would be based on a percentage of the sales price of the lot or a minimum dollar amount for each lot released. The lender normally calculates partial payoffs so that the loan would be fully repaid when around 60% to 80% of the lots are sold.

With regular mortgages, partial sale of the collateral is normally not an option. So a development loan requires considerable negotiation to work out all the details necessary for success. The lender will want some control over the direction of development; that is, lots must be completed and sold in an orderly manner that will not undermine the value of any remaining land. A time pattern must be negotiated to allow realistic limits on how fast lots must be sold. The clause that permits release of a portion of the mortgaged land is also called a *partial release clause*, since the remainder of the land continues to be held as security for the remaining balance on the loan.

Junior Mortgage

The term **junior mortgage** applies to those mortgages that carry a lower priority than the prime or first mortgage. These can be second, third, or even fourth mortgages. The lower priority carries higher risk and requires corresponding higher interest rates. No mortgage instrument carries a designation in its title or text describing its lien position. The order of lien priority, which determines the exact order of claims against a piece of property, is established by the time of its recording. This order becomes of extreme importance in a foreclosure proceeding.

Example

Assume a property valued at $200,000 carries a first mortgage of $130,000 and a second mortgage of $40,000. If this property is forced into a foreclosure sale that results in a recovery of $135,000 in cash after payment of court costs and legal fees, how should the money be distributed? Assuming that no other liens, taxes, or other claims have shown priority, the first mortgage holder is in a position to recover the full $130,000 from the $135,000 in proceeds. The remaining $5,000 is awarded to the second mortgage holder, leaving that payment $35,000 short of recovering the $40,000 loan. Due to the promissory note, the second mortgage holder may have the right to seek a deficiency judgment against the borrower to recover that $35,000. However, the land serving as collateral has been wiped out by the foreclosure.

Later in this chapter, we will discuss in more detail the subject of recording as it relates to the question of establishing priority of mortgage liens.

Purchase Money Mortgage

A **purchase money mortgage** is one taken by the seller of property as all or part of the consideration. Such a mortgage carries certain priorities over other claims because the delivery of a deed occurs simultaneously with the taking back of the purchase money mortgage, allowing no time for any other lien to intervene. A purchase money mortgage of this kind carries the special status of a vendor's lien. A *vendor's lien* may be defined as an equitable lien of the grantor upon the land conveyed. It is an implied right held by a seller until all purchase money due the seller is repaid. Also, depending on state law, a defaulting buyer may or may not be subject to a deficiency judgment upon default of a purchase money mortgage. During the recent financial crisis, many lenders have offered delinquent borrowers the opportunity to simply deed the property back to the lender in a procedure referred to as a *deed in lieu of foreclosure* transaction. A deed in lieu of foreclosure is more desirable than a straight foreclosure for the borrower, as it will not have as negative an effect on a borrower's

credit as a foreclosure. In addition, a deed in lieu of foreclosure is less expensive and far quicker for a lender in obtaining title to a distressed property than a foreclosure procedure.

A second definition of a *purchase money mortgage* is a mortgage in which the loan proceeds are used exclusively to buy the property secured by that mortgage.

Chattel Mortgage

Chattel is tangible personal property and it can be mortgaged to secure a debt; this is called a *chattel mortgage*. The procedure is more likely to be used when additional security is needed for a loan. It could also be used as part of a loan on real property when it is important to identify certain personal property assets. In the acquisition of personal property, chattel mortgages have been replaced by the *bill of sale* as a security agreement that is regulated by the Uniform Commercial Code.

Package Mortgage

A **package mortgage** pledges both real and personal property to secure a loan. It is often found in the acquisition of a new house. The buyer/borrower includes in the collateral package a number of essential furnishings and appliances needed for the house, and is thus able to pay for them over an extended period of time. Most package mortgages also require the borrower to sign and file a financing statement in accordance with the provisions of the Uniform Commercial Code. A package mortgage normally calls for simple interest rather than the add-on interest found in many installment-type loans.

Blanket Mortgage

A mortgage is not limited to pledging a single parcel of land as collateral. Sometimes the security pledged for a loan may include several tracts of land. When more than one tract is pledged, the security instrument is called a **blanket mortgage**.

"Subject To" Mortgage

In the conveyance of property, it is possible for title to be delivered *subject to* an existing mortgage. The phrase has a legal intent and means

that the buyer is not accepting personal liability to the lender for payment of that mortgage note. It in no way changes the claim of a lender holding the mortgage. Rather, it means that the new buyer does not accept the liability. It also means that the new buyer's rights to the property could be wiped out if the grantor of the property fails to make mortgage payments. In the event of a default, the lender holds whatever rights were granted by the mortgage but has no additional right to pursue the new buyer for any deficiency. Such liability remains with the original debtor.

The "subject to" procedure may be used for a number of different transactions, such as when property is acquired for the purpose of rehabilitation and resale. Such a transaction does not create a contingent liability and would not be shown on a financial statement. However, "subject to" clauses are most commonly found when a wraparound mortgage is used.

Transferring property with a "subject to" procedure is definitely a transfer of interest, and could trigger a due-on-sale clause even though the loan itself is not assumed. A *wraparound mortgage* is a new mortgage that encompasses, or "wraps around," one or more existing mortgages and is subordinate to them. The purpose is to acquire additional funding from a loan while retaining the priority of lien of existing mortgages. In periods of escalating interest rates, this design has the additional benefit of retaining an older, lower-interest-rate loan that could benefit both buyer and seller. Lenders and most states' attorneys general have held that if mortgagees enter into wraparound mortgages without notification to the existing lender on the property of the transfer of title, even if it is only placed in escrow, they have committed fraud.

The wrap procedure can be used when an owner borrows additional money with the wrap as a junior mortgage, or it can be used in financing the sale of property. While declining interest rates limit usage of this procedure, it carries some attraction for seller-financed transactions. Since seller financing entails a transfer of interest, the existing mortgage must be assumable in order to consummate a wrap procedure even though the property is transferred "subject to" an existing mortgage. Following is a hypothetical example of how a wrap might fit into a seller-financed transaction that is advantageous to both parties.

Example

A property worth $350,000 has a mortgage with a $240,000 balance at 4% interest. In some future period, the market rate of interest on a 30-year, fixed-rate mortgage new financing costs might be 7%.

To acquire the property, the buyer is willing to pay $60,000 down and is seeking $290,000 in financing. The buyer has three options.

1. Accept all new financing of a $290,000 first-mortgage loan at an interest rate of 7%.
2. Assume the existing loan of $240,000, and from a regular lender borrow the additional $50,000 (the difference between $240,000 and $290,000) needed on a second-mortgage loan. This second loan would carry a higher interest rate of, say, 9%.
3. Arrange a wraparound loan with the seller for $290,000 at, say, 6%—a loan that would include the existing $240,000 loan. Net new cash is $50,000.

Further examination of the wrap procedure illustrated in the preceding example shows that it could be advantageous to both buyer and seller. The advantage to the buyer, obviously, is lower-cost (6%) financing than otherwise would be possible. For the seller accepting a wraparound mortgage, the advantage is 6% on the new funding of $50,000 plus 2% additional earned interest on the existing $240,000 loan that requires no new cash. The net yield to the seller would thus be greater than 6%. In effect, the buyer makes payments to the seller on a $290,000 loan at 6% interest, while the seller passes on payments to the existing mortgage holder on the $240,000 at 4% interest.

Contract for Deed

A **contract for deed** is a sale and financing agreement that allows the purchase price of property to be paid in installments. It is not a mortgage, although it is often misunderstood as one. Under a contract for deed, the buyer receives only the rights of possession and enjoyment, much the same as in a lease with option to buy. However, it is distinguished from a lease by the fact that a contract for deed grants the buyer an **equitable title** to the property during the payment period. This means that after a part,

or all, of the payments have been made as agreed, the seller is obligated to deliver legal title to the property. State law varies as to how it treats the buyer/borrower under a contract for deed. Some states grant the buyer certain rights to the property as payments are made. Others recognize only the ownership rights retained by the seller to the extent that such contracts may not even be recordable.

The following are the risks that most concern a buyer in a contract for deed transaction:

1. The greatest risk for the buyer involves the fact that title is not delivered until after payment has been made. During the payment period, it is possible that the seller will become unable to perform. While legal title remains in the seller's name, it is subject to any adverse claim that may accrue against the seller. The seller may suffer a legal disability, file bankruptcy, or die. Or the seller may be a corporation with only limited liability for the directors and shareholders. Holding an executed deed in escrow pending final payment does not remove this risk because the deed would not be recorded.
2. If there is an underlying mortgage on the property, a payment escrow account should be used to assure the buyer that payments are properly made to the mortgage holder.

The following are the risks that most concern a seller in a contract for deed transaction:

1. If a buyer defaults or becomes bankrupt, there could be a problem of clearing title, which might be costly.
2. A contract for deed is subject to contract law, which offers differing interpretations.
3. If the seller has an existing lien on the property that is not going to be paid off by the transaction, he or she will mostly be in default under the due-on-sale clause provisions in most mortgage and deed of trust documents used over the past 30 years.

Although there are special problems with a contract for deed transaction, the procedure serves some valid purposes. One would be to allow someone who has difficulty qualifying for a mortgage loan to possess a home. A problem might arise if a person is laid off, then finds a new job but is unable to meet a lender's length of time on the job requirement. If the time requirement is met and a proper mortgage loan can be obtained,

the buyer has possession of the home. Another possibility is that a property may have a known title defect that is curable, but the cure will take time. The present condition of the title disqualifies the property as collateral. A contract for deed could convey possession, however, while allowing time for the title to be cleared. Once good title is achieved, a mortgage loan could then be obtained to pay off the seller.

Contracts for deed are often used in the sale of lots in resort areas, or when the purpose is to achieve a fast sale under high-pressure tactics. With legal title to the property held by the seller, there is less need to fully qualify a buyer. It is easier to push for a quick closing. And because title is not conveyed at closing, there appears to be less need to assure good title with a search of the abstract, or to require title insurance. An unwary buyer may be in danger in this situation, as title defects can just as easily interfere with a later delivery of title as with an immediate delivery.

Contracts for deed can be found under an assortment of names, causing some confusion for buyers. They may be called land contracts, installment contracts, agreements of sale, conditional sales contracts, or even just real estate contracts. Properly handled and in the right circumstances, a contract for deed (an example of which appears in the Appendix) is a practical procedure for transferring property, but legal counsel is advisable before entering into such an agreement, regardless of its name.

Property Insurance

If a building is included in the mortgage pledge rather than only raw land, the mortgage will require property insurance coverage for both the lender's and the borrower's protection. This is also termed **hazard insurance**. Principally, it includes fire and extended coverage and is required by the lender in an amount at least equal to that of the loan (even though the loan amount usually includes the value of the land). To make certain that collateral property is insured, the lender generally requires a full year's paid-up insurance policy before releasing loan proceeds. To assure future payment of premiums, the lender requires two months of the annual premium to be paid into an escrow account as a cushion at closing. (The Real Estate Settlement Procedures Act, RESPA, limits this escrow cushion to not more than two months' premiums.) Then, added to each monthly payment, one-twelfth of the annual premium must be paid. The original policy is held by the lender, and it is part of the lender's servicing

responsibility to maintain the coverage with timely payments from the borrower's escrow account.

Minimum Requirement for Hazard Insurance

Insurance companies in most states must comply with another requirement controlling the minimum amount of coverage that can be carried to establish full repayment in case of a partial loss. Since most fire losses are partial in extent, it is not unusual for a property owner to want to carry only partial coverage, hoping that any fire would be brought under control before the damage exceeds the amount of insurance coverage. To distribute the cost of insurance more equitably over all policyholders, insurance company regulators set some minimum standards for coverage. Therefore, insurance companies generally include a required minimum coverage if the policyholder expects full recovery for a partial loss stemming from a claim on a home.

Such a clause will require an amount of insurance coverage not less than a given percentage of the actual cash value of the building at the time of loss. These clauses are known variously as *coinsurance clauses*, *average clauses*, and *reduced rate contribution clauses*. A common minimum amount of insurance to assure full payment of partial losses is 80% of the actual cash value of the building at the time of loss. By carrying less than the minimum percentage of insurance, the property owner cannot collect in full for a loss but will have to bear a part of the loss personally.

If coverage is below the required minimum, the insurance company's liability is limited to the same percentage of the loss that the amount of insurance carried bears to 80% of the property's actual cash value.

In areas of the country where property values tend to undergo substantial increases, any failure to maintain proper insurance coverage can expose the lender, as well as the property owner, to uninsured losses.

Disbursement of Hazard Insurance Proceeds

Another insurance problem to be considered with mortgaged property involves determining just how the proceeds should be paid in case of an actual loss. Earlier mortgages required payment of the insurance money to the lender, who in turn decided how to apply the funds, determining whether to permit the funds to be used for restoration of the property (the usual procedure for smaller losses), or instead to apply the proceeds to pay off the loan. Today, most residential mortgage instruments give the

borrower a stronger position in the distribution of insurance proceeds, as is apparent in the Fannie Mae/Freddie Mac-conforming mortgage covenants. This instrument, in Covenant 5, states, "Any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened."

Flood Insurance

Property located in a flood-prone area serving as collateral for a loan handled by a federally related institution or agency must carry flood insurance. This requirement stems from the 1994 National Flood Insurance Reform Act, which became effective as of September 23, 1995, creating our current National Flood Insurance Program (NFIP). The NFIP places responsibility on the *lender* to force-place the necessary insurance if it is required and the borrower fails to buy the coverage. The borrower is allowed 45 days to purchase the required insurance when notified by the lender. The lender may rely on information provided by the Director of the Federal Emergency Management Agency (FEMA) stating whether or not the building is in a special flood hazard area.

While National Flood Insurance has been in existence since 1968, the 1994 act made nonpayment more difficult, requiring lenders and servicers to escrow flood insurance premiums for covered loans along with taxes and other insurance premiums. This placed both a responsibility and a liability on lenders to make sure loan collateral in flood-prone areas was insured for at least the loan amount.

The Disaster Mitigation Act of 2000 was passed to better coordinate state and local disaster alleviation efforts by requiring states and local government to have plans in place in order to continue to be allowed to participate in the federal flood insurance program. Lenders should know the basics of their state's plans to be able to coordinate claims should a disaster occur.

In 2004, the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act was passed to reduce losses to properties for which repetitive flood insurance claim payments have been made. This development is important to real estate professionals because this restriction on future coverage runs with the property. It has generally been interpreted as meaning that after two claims have been paid on a subject property, it is no longer eligible for the program.

On July 16, 2010, the House of Representatives approved a flood insurance reform bill designed to extend the NFIP through September 30, 2015. The Flood Insurance Reform Priorities Act would have ensured that current policyholders would retain their coverage and that new policies could be written. However, it could not pass muster in the Senate due to lingering concerns over the program's losses from Hurricanes Katrina, Rita, and Wilma. These disasters caused almost $23 billion in NFIP losses—almost double the cumulative losses experienced by the program in its entire history prior to 2005. A real possibility exists that NFIP, even with the provision of the 2004 act restricting future benefits, may eventually be a casualty of attempts to reduce the federal deficit. This was feared to occur after the term of its extension under the National Flood Insurance Program Act of 2010 expired, which was to occur on December 16, 2011. However, the Biggert-Waters Flood Insurance Reform Act of 2012, (FIRA of 2012) was passed, reauthorizing and reforming the National Flood Insurance Program (NFIP) for five years through September 30, 2017. The main impact on the real estate buyer community will be that premium rate structure reforms will phase out subsidies for second homes, business properties, severe repetitive loss properties, or substantially improved/damaged properties. Rates for these properties will increase by 25% per year until premiums meet the full actuarial cost. Real estate professionals must be aware that the FIRA of 2012 will require that any premiums for new flood insurance on property not currently covered must be based on actuarial rates. There are several other important provisions that can be found at the link to Floodsmart.gov provided at the end of this chapter.

Property Taxes

Property tax, also known as **ad valorem tax** ("according to value" tax), becomes a specific lien on real property on the date the tax is assessed by an authorized taxing authority. Release of lien is automatic upon payment of the tax. Tax records are normally filed in each county as a separate section of information. Property subject to tax (some land is exempt) must stand good for its payment. If the tax is not paid, the property is subject to foreclosure by the state. In some states, an assessment by a properly authorized neighborhood maintenance or home owners association carries the same status as a property tax. A tax assessment is a high-priority claim in a foreclosure action, preceded only by the administrative costs

of the sale. Thus, property taxes hold a higher priority than other secured claimants; regardless of the date their claims are recorded.

Property taxes take precedence over a first mortgage lien even though the mortgage may be filed of record earlier. Therefore, lenders normally require the protection of handling tax payments as a part of escrow requirements. A cushion of one-sixth of the annual tax is usually deposited with the lender at loan closing. In addition, the tax escrow at closing includes the amount of taxes that have accrued to that date (payable by the buyer or seller as may be owed by each). Then, one month's worth (one-twelfth of the annual amount due) of taxes is added to each monthly payment of the mortgage loan. Once the money is in escrow, the lender is responsible for making tax payments directly to the tax authority as part of its loan servicing function.

One of the most common errors on estimating closing costs for a residential mortgage loan is the amount that should be paid to begin the tax escrow account. Many misguided loan officers and real estate professional, trying to "help" borrowers close more quickly, understate this amount, which lowers the amounts due at closing. Some go even further, offering an 80% LTV loan with a simultaneous closing of a second loan for 10% to 20%. These simultaneous loans avoid the requirement of a tax escrow account altogether. In states with higher real estate taxes, like California, New York, and Texas, borrowers who cannot come up with the money to pay their taxes on subprime mortgages caused servicers to advance funds and add this to the borrowers' payments. Subsequently, many of these borrowers had trouble making regular payments without consideration for paying these taxes, advanced by the servicer, back.

Federal Tax Claims

A tax claim by the federal government is considered a general lien,[1] but only when it is filed of record. While a taxpayer may be delinquent in payment of taxes, such debt is not a lien until a claim is recorded. Such a lien may be assessed against any taxpayer's property, real or personal, and under the federal claim of supremacy, it would carry a higher priority than other liens or a mortgage lien in a foreclosure proceeding. If there is still equity in the property, the Internal Revenue Service has 120 days to redeem the property. If there is a great deal of equity in the property, the

[1] A *general lien* is a claim against all assets of the target of the lien; a *specific lien* is a claim against one specific asset, such as a tract of land.

IRS can use that money to satisfy any tax liens. This is a rare but possible occurrence. However, the property tax would not necessarily be satisfied in such a foreclosure action; it simply rides with the land as a continuing claim unless title actually passes to the federal government, in which case the property tax must be satisfied. State property taxes have priority over all other claims regardless of when they were recorded.

Another problem has surfaced regarding federal tax liens. If a buyer has a federal lien against him or her, it would become a prior claim on any property acquired. As a result, title companies are now checking tax records for federal liens on buyers and sellers.

During the financial crisis that began in 2008, lenders started accepting settlements of troubled mortgages using a loss mitigation technique called a short sale. A short sale occurs when a borrower in or near default, with the mortgagor's permission, sells property for less than the mortgage loan balance. The lender agrees to this process because the property has declined in value below the mortgage balance, and the lender prefers to get most of the value of the property rather than getting none.

The amount of debt not recovered, if no deficiency judgment is obtained, has historically been viewed by the federal government as debt forgiveness and, as such, is considered a taxable event to the borrower. However, to help facilitate a recovery of the residential real estate market and to provide some relief to already distressed borrowers, Congress passed the Mortgage Forgiveness Debt Relief Act of 2007, which removed taxation of forgiven debt to borrowers who received debt forgiveness on home sales for discharges of indebtedness on or after January 1, 2007, and before January 1, 2010.

Congress then passed Federal Bailout Legislation H.R. 1424 on October 3, 2008, extending this relief through December 31, 2012. This new law excludes qualified principal residence indebtedness forgiven by lenders from taxable income. The reduction in taxable income is limited to $2,000,000 for the exclusion ($1,000,000 for the mortgage interest deduction) and $1,000,000 for married persons filing a separate return for the mortgage interest deduction.

Congress habitually waits until the eleventh hour to make decisions. On December 15, 2014, the legislature finally extended mortgage debt forgiveness for sales through the end of 2014. Real estate professionals or lenders may be asked whether a contemplated short sale, loan modification, or foreclosure is covered by the extension for 2014 or any future time period. These clients should contact a tax professional familiar with

the law for advice. The limits on taxable income and interest owed, as mentioned above, still apply. However, it seems that if a portion of the mortgage debt forgiven was used for purposes other than improving or construction of the mortgaged home, then that portion may not qualify for the exclusions. For example, it is unlikely that cash used to refinance or buy a car would qualify for the exclusion.

Where Are We Now?

What You Should Know about Rampant Foreclosures

Following is an excerpt from a 2011 *New York Times* article on foreclosure:

Revelations that mortgage servicers failed to accurately document the seizure and sale of tens of thousands of homes caused a public uproar and prompted lenders like Bank of America, JPMorgan Chase, and GMAC Mortgage to temporarily halt foreclosures in many states. In October 2010, all 50 states' attorneys general announced that they would investigate foreclosure practices. The nation's largest electronic mortgage tracking system, MERS, has been criticized for losing documents and other sloppy practices, and JPMorgan Chase has announced that it no longer used the service.

Mortgage documents of all sorts were treated in an almost lackadaisical way during the dizzying mortgage lending spree from 2005 through 2007, according to court documents, analysts, and interviews. Now those missing and possibly fraudulent documents are at the center of a potentially seismic legal clash that pits big lenders against homeowners and their advocates who are concerned that the lenders' rush to foreclose flouts private property rights.

In early 2011, the attorneys general and the newly created Consumer Financial Protection Bureau began pressing for a settlement that would involve banks paying penalties of up to $20 billion, and for steps to drastically alter the foreclosure process and give the government sweeping authority over how mortgage servicers deal with millions of Americans in danger of losing their homes.[2]

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[2]Hopeful Signs in Settlement Talks. By: AGUILAR, ORSON, THRASH, TUNUA, American Banker, 00027561, 4/6/2011, Vol. 176, Issue 53