



*Truth*

Nothing has  
changed.

Uniform Commercial Code

Securitization **Law**

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*Truth*

Nothing has  
changed.

*Truth*

Nothing about  
this is okay.



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# *Stevenson v. BOA*

February 8, 2008

Loan

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August 2009

BAC acquires rights

---

November 6, 2009

BAC files suit

---

November 10, 2009

Assignment of  
Mortgage (cites date of  
transfer as November  
5, 2009)

---

November 12, 2009

Recorded

# *Stevenson v. BOA*

Contrary to Stevenson's contention, the assignment of mortgage was not the document which transferred enforcement rights on the note to BAC, and the date of its execution is immaterial to the case at bar.

Pursuant to KRS 355.3-201(2), "negotiation" means "a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.... If an instrument is payable by bearer, it may be negotiated by transfer of possession alone."

# *Stevenson v. BOA*

Stevenson fails to comprehend that when the note was endorsed in blank it became a bearer instrument and no assignment was necessarily required to transfer the right to collect and enforce the note. Mere possession of the original note was sufficient. Because BAC was lawfully in possession of the original note, clearly it was entitled to enforce the obligations secured thereby and was the real party in interest in the litigation below.

# *Stevenson v. BOA*

359 S.W.3d 466 (Ky.App. 2011)  
Published February 3, 2012

# *Berghaus v. US Bank*

360 S.W.3d 779 (Ky.App. 2011)  
Published February 10, 2012



# *Berghaus v. US Bank*

Miller indicated that her responsibilities include the management of accounts and that she has access to records containing relevant data for every loan serviced. She provided a summary of information with respect to Berghaus's loan, including: principal balance, accrued interest, late charges, escrow advances, and "Selected Fees & Expenses." She indicated that Berghaus's payoff balance as of April 5, 2010, was \$90,511.55.

# *Berghaus v. US Bank*

CR 56.03 provides that affidavits may be used to determine if summary judgment is proper. However, CR 56.05 provides that sworn or certified copies of **all papers or parts thereof** referred to in an affidavit “**shall** be attached thereto or served therewith.” (Emphasis added.) While it can be inferred from the averments included in Miller’s affidavit that she had undertaken a review of Berghaus’s account, the fact remains that copies of the records to which she referred in the affidavit were neither attached to nor served with the affidavit—rendering the affidavit deficient.

# *Berghaus v. US Bank*

The bank's deficient affidavit, coupled with the trial court's denial of an opportunity for full and complete discovery in this case, persuades us that summary judgment with respect to Berghaus's breach and the order of sale were prematurely entered.



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*Equity*

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of LOUISVILLE

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LAW

& EQUITY



Lawyers

Lawyers

*Equityers*



*Equity*



*Equity* is the full story.



Equity requires a court to “balance hardships that the parties, other affected persons, and the public would face under various possible outcomes.”  
*Handbook of Modern Equity*, de Funiak, William Q., 42–46 (2d ed. 1956)

*Equity*

The Kentucky Constitution “imbues the circuit courts with the general power to determine all matters of controversy arising under common law or equity.” *Hisle v. Lexington-Fayette Urban County Government*, 258 S.W.3d 422, 432 (Ky. App. 2008).

*Equity*

“Foreclosure is peculiarly an equitable action, and the court may entertain such questions as are necessary to be determined in order that *complete justice may be done.*” *Morgera v. Chiappardi*, 813 A.2d 89, 98 (Conn. App. 2003).

*Equity*

*Equity* is the full story.

equitable standing

equitable waste

deficiency judgments

*Equity*

equitable standing

*What has the lender  
done to avoid  
foreclosure?*

Does the lender **deserve** the  
right to foreclose on this  
particular homeowner?

*Equity*

Should the Court allow  
the lender to **inflict** a  
foreclosure on the  
community?

*Equity*



equitable waste

“...wanton and unconscientious abuse of his rights, ruinous to the interests of other parties.”

*Landers v. Landers*, 151 S.W. 386, 391  
(Ky.App. 1912).

equitable waste  
loan modification  
refinance  
forbearance plan  
reverse mortgage  
deed-in-lieu  
short sale



**FALL**



“What about the message they will send to their family and their kids and their friends?”

–John Courson, chief executive of the Mortgage Bankers Association

equitable waste  
loan modification

deficiency judgments

*Equity*

“In an action to enforce a mortgage or lien, judgment may be rendered for the sale of the property and for the recovery of the debt against the defendant personally.”

deficiency judgments

*Equity*



“In an action to enforce a mortgage or lien, judgment may be rendered for the sale of the property ~~and for the recovery of the debt against the defendant personally.~~”

deficiency judgments

*Equity*

equitable standing

equitable waste

deficiency judgments

*Equity*

“Where the Plaintiff’s conduct is inequitable, a court may withhold foreclosure on equitable considerations and principles.”

*Morgera v. Chiappardi*, 813 A.2d 89, 91  
(Conn. App. 2003).

*Equity*

“The Plaintiff chose to play with fire in the risk-filled world of housing finance and now expects the Court to stand aside and watch as our neighborhoods burn.”

*Equity*

*Equity* is the full story.

“Open Letter to Kentucky Judges  
Regarding the Ongoing  
Foreclosure Crisis”

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