



**Michael  
LAIRD**

Gavel & GAVEL

## What's wrong with this picture?

A lot has been written lately about the slow-motion train wreck otherwise known as the residential mortgage foreclosure crisis, so I won't blame any of you who choose to chastise me for piling on. As seems to happen with almost any high-profile controversy affecting the economy in this supercharged political environment, camps set up almost overnight for aggrieved borrowers (good guys), predatory lenders (bad guys), lax regulators (lethargic guys), unscrupulous lawyers (really bad guys), and mortgage-backed securities hawkers (really rich bad guys). But one thing that has struck me more than anything else about all the commentary: the conspicuous lack of much pragmatic discussion of some of the basic facts that led us to where we are now.

Let's start at square one.

Somebody, without a gun to his or her head, borrowed money and mortgaged house and home to secure its repayment. Granted, some lenders might have been loopy to think that a given borrower could ever hope to pay the loan back, but to some degree that's beside the point. Same "no gun to the head" comment. True, there is a very valid question as to whether somebody (e.g. the government) should have stepped in and called a timeout – if not an outright foul – in the middle of all the lending excesses of a few years ago. But that didn't

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happen.

Now I am sympathetic to the argument raised by consumer advocates that wildly over-aggressive mortgage originators were booking home loans with people they knew would never be able to keep their loans current, particularly after the low-interest-only payments converted to higher rate, amortizing ones. This point of view may be unsettling to those who champion personal responsibility for one's actions, but it is not nearly as cavalier as the "you should have known better than to loan me that money" argument folks over 50 will remember as the Penn Square Bank defense of some commercial borrowers back in the early 1980s.

OK, so the loan is in default, the borrower has no chance of repaying and the lender wants to foreclose on the house to recover at least some of the debt.

Square two – the paperwork details. Some of these residential loans have been recycled so many times in the netherworld of mortgage-backed securities that the pertinent documentation for them is literally impossible to locate. Should this mean that the foreclosing lender is denied any recovery? Back to square one – somebody loaned the money and somebody borrowed it. So then we have "roboaffidavits" signed by lender personnel to fix the problem. Sorry, there's just no way to make that look good, regardless what your position on all this is.

What's the answer? Is stronger government oversight the way to go, or do we look to the theoretically wiser private sector to create new and more balanced lending parameters? I think I'll leave that to others to decide. It's above my paygrade, anyway.

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