



Commonwealth of Massachusetts

SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
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A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

August 30, 2011

Mr. Edward M. Bloom
President
The Real Estate Bar Association
50 Congress Street, Suite 600
Boston, MA 02109-4075

Dear Mr. Bloom:

I am in receipt of your letter of August 8, 2011, as President of the Real Estate Bar Association of Massachusetts ("REBA") laying out your concerns about the "integrity" of the real estate records in the Southern Essex County Registry of Deeds. I thank you for your concern. You also represent that your comprehensive response was on behalf of REBA and allege that it is on behalf of its 2500 members. Contrary to that statement I have received emails and telephone calls from a number of REBA Members, attorneys who agree with me and still believe in the rule of law and peoples property rights. That being said I do not feel that your response has the full support of your membership. As you know, I have the privilege and honor of having been elected for numerous terms by the constituents of Essex County as the Register of this Registry. I have held this position since 1977.

The responsibility for maintaining the accuracy, integrity, reliability, consistency and indeed, the creditability, of the public land records recorded in my district is a great one. I take this responsibility very seriously. It is with more than a little disappointment that I reviewed your letter, which reads more like an admonishing lecture to an underling. It was accompanied with a veiled warning of some sort of further legal action and the blatant suggestion that I should ignore the massive fraud that has been perpetrated on the public land records (nationwide by the way) and simply act as a rubber-stamp for documents which have been fraudulently or improperly executed and recorded in my registry and countless others.

You may recall that my involvement in the foreclosure crisis began with my questioning the ability of Mortgage Electronic Registration Systems, Inc. ("MERS") to assign mortgages, or act as a "nominee" for those assigning mortgages and/or interests in mortgages, without paying statutory recording fees. This seemed an obvious problem to me where, particularly with respect to registered land in Massachusetts, all assignments of mortgages are required to be recorded. See G.L. c. 185, s. 67. I referred this matter to

the Attorney General's office as I do all matters which I find need legal attention. She is currently investigating these issues and has assured me that MERS, an entity which REBA has vigorously defended for some reason, will get her due attention.

Based on my simple concern that all recording fees be lawfully paid, a large number of ancillary and disturbing issues began to present themselves. These had largely to do with the execution and recording in my registry of documents by persons who either have admitted themselves in sworn depositions, or been otherwise exposed as being closely associated with entities involved in the so-called "robo-signing" crisis.

Luckily, was able to obtain the *pro bono* services of several professionals, including but not limited to, Marie McDonnell of McDonnell Property Analytics, an experienced forensic mortgage analyst as well as Jamie Ranney, an excellent attorney from Nantucket who has been working on foreclosure cases for several years. Your denigrating and disrespectful comments about them notwithstanding, these individuals have provided significant time, for free and helped to educate me about how far and wide-ranging the problems are and to provide me with case law and other resources substantiating my concerns about the issues that are now being raised and which I am seeking, in some small way to rectify. As you know, these issues go far beyond MERS.

For some reason however, instead of supporting my efforts to root out fraudulent documents or documents that have illegally avoided paying recording fees, REBA has instead asked me for all intents and purposes to "back off".

REBA's mission statement states:

"For over 150 years, the REBA mission has been to *advance the practice of real estate law by creating and sponsoring professional standards*, actively participating in the legislative process, creating educational programs and materials, and demonstrating and promoting fair dealing and good fellowship among members of the real estate bar."

In your nine (9) page missive, it is apparent to me that you have strayed far from your core values and beliefs. I don't need nine (9) pages to explain why REBA members appear to have lost their way.

It is not lost on me, or others, that it was no less than the Supreme Judicial Court of Massachusetts in the *Ibanez* case in January of this year that made short work of REBA's Title Standard 58 which laid out an unlawful standard for the transfer of title to a foreclosed property. This REBA-promulgated regulation had been relied on by countless banks and real estate conveyancers in conveying foreclosed properties who have now been shown to have unquestionably participated in conducting certainly hundreds, if not thousands of tainted closings in the Commonwealth and in further clouding the titles to those properties.

In REBA's amicus brief in *Ibanez*, REBA itself raised the issue of "tainted" assignments. Now however, REBA wants me to ignore such "tainted" assignments. REBA, in a vain effort to offset the damage caused, at least in part by reliance on REBA's rules, argued

for the SJC to make its *Ibanez* ruling prospective rather than retrospective. In doing so, REBA *rejected their own title standard* and *agreed* that the questioned foreclosures were unlawful. Instead of defending their own standard, REBA argued instead that, quite literally, the sky would fall if the SJC were to uphold the lower court's decision to invalidate all past foreclosure sales based on REBA's defective advice. REBA, playing on the same fear-mongering rhetoric evident in your August 8, 2011 correspondence, wrote to the SJC: "REBA wonders if there are sufficient resources in the court system to handle the number of actions that will certainly result from a non-prospective application of the rulings in the subject cases." Luckily for the people of the Commonwealth, whom I represent, the SJC does not respond such hyperbole, but rather applies the law and fully and in a sentence or two rejected REBA's position. And despite REBA's gloomy predictions, the sky, as you know, has not fallen.

Given the foregoing, you will forgive me if I do not consider REBA's positions on all matters involving real estate conveyancing, including those addressed in your letter, to be binding or even authoritative. To hear you tell it, everyone ought to simply put their heads in the sand and simply ignore the foreclosure and robo-signing crisis until it all blows over, while continuing to blindly accept and record documents known to be questionable or outright fraudulent. I reject this position absolutely and would not be doing what I was elected to do if I accepted such a position.

Ironically you characterize *my* actions, in seeking to vigorously defend the integrity of the public land records, as "damaging the confidence" of the "public and the bar" in the real estate records in the Southern Essex District. Contrary to your position however, it is, in many cases, members of REBA, purportedly acting as agents, representatives, officers or purported employees of various banks and their loan servicers that have caused immeasurable and as yet unknown damage to the public land records with sloppy record keeping, negligently and defectively executed documents and a failure to properly provide appropriate documents establishing lawful chains of title. Please know that the very same lenders along with MERS that you defend are asking for broad legal immunity from loan origination, securitization and servicing practices, robo - signing and predatory lending and their use of the MERS and you question why I am doing what I am doing? As noted in The Washington Post's article on August 24, 2011 entitled "'MERS Morass' Is Hanging up Negotiations on Foreclosure Settlement".

REBA cannot be so obtuse as to flatly ignore everything that is happening in the courts and which is obvious not only to the general public but to the very banks, servicers and their related entities that you as President of REBA appear to be carrying water for.

Just the most recent example is a case captioned *American Home Mortgage Servicing, Inc., v. Lender Processing Services, Inc.*, (Cause No. 11-10440; 8th Jud. Dist. Dallas County, TX; filed August 11, 2011) wherein a well-known loan servicer, AHMSI has sued an entity to whom they themselves outsourced document preparation services such as assignments of mortgage. The "Preliminary Statement" in this case states:

“AHMSI brings this action seeking redress for the millions of dollars in losses it has suffered, and continues to suffer, as a result of Defendants’ (LPS) unauthorized execution and notarization of assignments affecting more than 30,000 residential mortgages in Texas and throughout the United States. *Defendants do not dispute that, without AHMSI’s knowledge or consent, they improperly executed, notarized, and recorded thousands of assignments upon which AHMSI relied in the course of pursuing foreclosure proceedings on behalf of the securitization trusts that owned the loans. . .*”

AHMSI goes on to allege:

“Without AHMSI’s knowledge or approval, and in violation of their contract with AHMSI, Defendants engaged in a practice they have described as “surrogate signing” in which persons *not* authorized by AHMSI’s board executed assignments of mortgage by signing the names of the Special Officers who were explicitly authorized.” Defendants then caused these unauthorized signatures to be witnessed and notarized, thereafter recording the assignments in the local real property records in connection with the related foreclosure proceedings.” (emphasis in the original)

Sadly, you would have me and the Attorney General, the Secretary of State, the Chief Justice of the Land Court and the President of the Massachusetts Registers and Assistant Registers of Deeds Association believe that “robo-signed” documents were “more than likely signed with the authority of the named signatory”. Your position, completely unsupported by any facts or law is absolutely contradicted by the allegations in only *one* case. There will be many others, I have no doubt.

Do you know how many AHMSI assignments have been recorded in the Southern Essex Registry that were prepared by LPS? THOUSANDS.

LPS has produced, executed and recorded MILLIONS of assignments for *other* servicers this country. Do you think that it was *only* the AHSMI assignments that were invalidly created and executed?

There is far more support out there for my holding parties recording such documents to a rigorous standards than there is for REBA’s absurd position that such documents were “likely signed with the authority of the named signatory”. It is far more likely, based on what is now being alleged by servicers against their own subcontractors, that Attorney Ranney’s suggestion that MA criminal forgery and uttering statutes may be implicated is exactly correct. It would seem to me that restoring public confidence in the recording system should commence with the criminal investigations of the robo-signing which as I

hope you are aware, is *not* a victimless crime. Unless of course REBA thinks that unlawful foreclosures based on such fraudulent and defective documents is not something that society should be concerned with.

The “confusion and hesitancy” REBA suggests that my actions are causing the public in attempting to provide some indicia of reliability in the documents being recorded in my registry is not being caused by me. The “confusion and hesitancy” to which you refer has been caused by the negligent, fraudulent and sloppy actions of the banks and their loan servicers. I found the concurring opinion in the *Ibanez* case interesting when Justice Cordy stated “I concur fully in the opinion of the court, and write separately only to underscore that what is surprising about these cases is not the statement of principles articulated by the court regarding title law and the law of foreclosure in Massachusetts, *but rather the utter carelessness with which the plaintiff banks documented the titles to their assets.*” (Emphasis supplied) I seek only to reassure and reinforce the public’s confidence in the public land recording system. It is baffling to me why REBA would want to continue to undermine my efforts rather than do everything they could to support them.

As was the case in *Ibanez*, I am quite confident that history will show that REBA is flatly on the wrong side of this matter. I only hope that for the sake of your worthy organization that you and the REBA members that you purport to represent, come to their senses and start supporting efforts to clean-up this mess. Instead of being part of the problem, I hope that REBA starts becoming part of the solution and to the extent that you have objections to the means by which I am attempting to restore confidence and integrity to the land records, I hope that instead of simply maligning myself and those who have worked in good faith to try to help with the problem, you instead offer some reasonable solutions.

In addition, I find your August 4th letter to Attorney General Martha Coakley, that I might add you did not copy me on, truly irresponsible. Hopefully more judges will follow the example of Federal Judge John McConnell in Rhode Island and halt foreclosures until the court can sort through the chaos created by MERS. Defending MERS is like defending the plague. MERS has caused damage to hundreds of thousand of homeowner’s chains of title, used fraudulent documents to take peoples homes and have fleeced the taxpayers out of billions of dollars in lost recording revenue of title.

As the elected Register of Deeds, I am the keeper of the records and do not intend to knowingly be a participant in any scheme that maybe in violation of the mortgage fraud statute or impugn the integrity of the land recordation system in Essex County. I intend to continue my policy of forwarding copies of documents that I believe may violate the crime against property statue to the Massachusetts Attorney General. In addition, any known robo-signers who we have variations of there signatures recorded here at my Registry will be returned with a copy of my affidavit. I will continue to be vigilant about my duties and will continue to work with the Massachusetts’s Attorney General and other regulatory agencies as they investigate mortgage fraud. I take my oath very seriously and

you as an officer of the court should do the same and join me in encouraging registers across the country to follow my lead and say no to fraud.

I would greatly appreciate if you would post my response to your members on your website as I understand you have posted both your letter to me and the one you sent to the Attorney General on the REBA website, that way your membership will get both sides of the story.



Sincerely,

John O'Brien
Register of Deeds
Southern Essex District

Cc: Hon. Karyn Faith Scheier
Chief Justice
Land Court Department of the Trial Court of Massachusetts

Attorney General Martha Coakley

William Francis Galvin
Secretary of the Commonwealth

Barry J. Amaral
President
Massachusetts Registers and Assistant Registers of Deeds Association