

Massachusetts Alliance Against Predatory Lending

maaplinfo@yahoo.com

www.MAAPL.info

Comments of Grace C Ross of the Mass Alliance Against Predatory Lending to Registry of Deeds Modernization and Efficiency Commission

August 28, 2013

Members of the Commission,

I want to thank you very much today for taking my testimony. I'm honored to be here in front of you and I very much respect the work of the Registers of Deeds. I'm honored to call some of you my friends as well.

I know that the Commission has defined its mission primarily around updating the computer systems and the interface with customers.

I am the Coordinator of the Mass Alliance Against Predatory Lending. We are a 70 plus group coalition working in the state to reverse the foreclosure crisis and the impacts of the foreclosure crisis. We have member groups from grassroots organizations to lawyers and civil rights organizations folks who work on policy advocacy work, etcetera.

Your work I consider a sacred charge as elected representatives of the people of Massachusetts and I wanted to state something briefly about history here which is that I hadn't known, but it doesn't surprise me, that the Register of Deeds became an elected position shortly before the American Revolution.

What is not well known by people is that the American Revolution came out of another time period of foreclosures. Folks were having their family farms foreclosed upon. The small business owners who had a residency above their small cobbler shop or bakery were losing their homes and their livelihoods. We think of the famous words from the Constitution about life, liberty, and property, but what you may not know is the first time that those words appear, they appear as part of the revolt in the Massachusetts colony (as we know, at that time the Massachusetts colony also included all of Maine, so it's a huge territory).

People were protesting, among other things, these foreclosures; the protests moved from community to community and different statements were made. The last community to have an uprising against the powers that be was Worcester, my hometown.

In Worcester, the words that were the precursor to the American Constitution first appear and they appeared as "...life, liberty, and the means of sustenance..." So property came out of the meaning of a "means for sustenance". That was not about 'property' in the sense of some big mansion on the hill, it was people saying: "we need the property that allows us to work and survive". That means the farm that you farm or the building that you live in and is also your place of work.

So this sacred duty, your sacred duty as registers, is specifically around protecting the same kind of folks who now are losing their homes; homes which are also part of their means for sustenance. That is the property folks were fighting to have protected.

The same is true today, and the recording of documents *is* related to this. This is clearly critically important.

Last time I spoke at the last Commission meeting I raised concerns about the accuracy of the documents in the Registries of Deeds. We believe that there are numerous documents that are questionable. I know I had raised the question of MERS, but that was just one example.

A number of you share these concerns because you have, in fact, initiated your own lawsuit around the failure to record assignments of mortgages. As an example we have someone now who's in court trying to protect their home; there are literally at least two sets of assignments that were not recorded their case. What we're going to do about that I'm not sure.

In listening at the last commission hearing, folks went on about the concern about the order in which documents related to title are filed; the critical nature of what order you get your filings in. That's one of the critical roles of a Registry of Deeds, but here we have assignments that were purposefully not recorded. We have no way of knowing their legitimacy. For all we know (there's no way of knowing this would be true, but there's also no way of knowing that this wouldn't be true) that they were filled out and notarized recently. We have no way of knowing what order they were really prepared in; it's not clear what the homeowner is going to be able to do in this case. Those are unrecorded assignments unrelated to the whole MERS transferring assignments inside of MERS question.

Similarly, we know about the securitized trusts that supposedly hold people's mortgages (potentially one quarter of the mortgages now in Massachusetts). Those trusts require a transfer of the mortgage through several hands before they get into the trust itself. These represent a whole additional set of assignments that in general were not recorded; we have no evidence of what happened with them. I'm just mentioning these because the last time we talked about MERS and folks were sort of tired of hearing about MERS which is fine, but they're just one of many examples. Now, we have people in trouble trying to figure out the very fundamental question of who has their mortgage, who is it that they need to talk to, who is it that's in control?

Those assignments are not of record. I raise that only because you're in the middle of figuring out how to improve the efficiency of the registry; the whole purpose of the registry is for people to be able to figure out who has title to their property and this is *the* problem these days. It seemed to me there were some specific actions to consider in your deliberations which would make a big difference.

Registry Options

There are three things that seem to me could be part of the efficiency process that would make a big difference for transparency for those who are not used to using the system.

Last meeting, folks were talking a lot about practitioners and the access of practitioners. We want to make sure that the increase in the ease of access particularly for practitioners does not mean there is less oversight by the Registry of Deeds. Already we're in terrible trouble with lack of enforcement of the

laws around property; we would not want efficiencies to become an excuse for a lack of oversight about compliance with recording requirements. On the other side, we need all processes to be made simpler and clearer for homeowners who are desperately trying to save that “means of sustenance”, that largest investment that they will probably ever make in their life. They are trying desperately to understand now what’s happening. When they come to the Registry of Deeds, the first thing they’re going to find out when they look up their property is that the bank they’ve been dealing with now that the banks have separated off the servicing (the bank that they’ve been getting bills from and they’ve been talking to about a loan modification) is not even the bank that owns their mortgage. They do not even know that as a starting point.

I appreciate that the Registry needs to be careful not to give legal advice; however the registry should be a place where homeowners can really be assisted in this crisis and be a source for basic information that they can’t access regularly anywhere.

It seems like the registry can provide basic statutory information that people could then go look up if they so desire. I believe the Registry can provide some of this background information that’s very confusing to people.

My image is of pop up windows with information. These would be windows people who already know this information can close. Perhaps a system could be created for practitioners to be able to turn off popup windows completely for practitioners. It would be helpful to start from a place of assuming that people need the information and then allow folks who don’t need it to turn it off. Perhaps, depending on how the new system gets set up, a practitioner could identify, have an ID or something to save them from having to turn off the windows each time they log on for.

It would be appropriate for the Registries to have a poster at their entrance saying “if you are a homeowner trying to understand your mortgage and property documents...” and then list things that could be helpful to them. Even an initial brochure or flyer for how you get around the database could be displayed. It could include an opening paragraph saying that:

“...your mortgage will identify the original lender and mortgagee lender being the entity that has your note to the mortgagee being to the entity that has your mortgage. That if your mortgage was sold you should be able to find the chain of assignments from the original mortgagee to the new mortgagee. That it’s possible that you won’t recognize any of these names because your mortgage may be being serviced by what’s referred to as a servicing bank or servicer. Therefore, if the names you find of the financial institutions related to your mortgage are different from the names of the financial institutions that have been billing you, don’t panic, the servicing bank often has rights to send you bills and negotiate loan modifications....” You could even reference the part of the Division of Banks regulations that relate to servicing banks so people could look that up if they wanted further information. Perhaps, the brochure could open with “...Are you a homeowner or a property owner and this is your first time visiting the registry...” and that could even be a flash screen on the online database as well.

Continuing down this path, I think there could be a sort of a lexicon of information that folks could search. If they see a word like “assignment” or “mortgagee” that they don’t know, there could be a definition. They could also then be sent to the relevant recording statute for assignments, mortgages, deeds. Without being exhaustive, it could include just the words they’re most likely to see, such as

“order of notice,” which they won’t know what that is.

I don’t know how much detail to go into but for instance if someone is looking at their record and there’s a note affidavit it might be great to have a window popup saying “...this came into effect August 3, 2012 and here’s the statute that requires it...”. People could then read the statute and see what’s supposed to be happening. Certainly each of the documents could be referenced that way and give people basic statutory information. That would be incredibly helpful.

I’d actually be happy to work with folks to identify what some of these are, but I know you also do focus groups; perhaps this would be an area to explore with a focus group. One caveat: your focus group, of course, is already likely to be higher educated consumers than some folks who are looking at their record right now with great confusion.

I think also some of you said that your registry already does trainings for the public. Unfortunately, having been in a few registries and certainly having been on most of the registries online, I’ve never seen a notice for those trainings. That may be me being unobservant, but if I’m unobservant I assume others are as well. I think those trainings would be invaluable. It might well make sense for those trainings to be advertised more broadly like at the local legal services, listing them in municipal calendars of events for the municipalities that your registry covers, maybe even getting the AG to put the information out to the HomeCorps lawyers would be very helpful.

Again, I thank you for your time and attention. I would be happy to meet with any of you if I can be of help with any of these ideas.