

Securitisation Removes All the Originating Banks Rights

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The securitisation of home loans and mortgages by lenders, originators and banks has a serious impact on the rights attached to the original housing loan documents.

Simply stated, **securitisation completely removes any and all rights of the originator/original lender to claim interest payments or return of principal or the right to exercise its power of sale under the terms of the residential mortgage – to foreclose on the home in case of default.** The lender transfers its rights under the relevant loan agreements to a special-purpose vehicle (SPV) trust entity.

The rights are thus transferred to parties that are not disclosed to the borrower. Moreover, the original lender changes roles during the life of a home loan and yet typically never discloses those changes to the borrower.

The SPV then on-sells derivatives of the loan and mortgage to investors. Only that SPV (or, if it on-sells its mortgagee rights, any buyer of those rights) has the authority to make a claim against the borrower or the mortgaged property.

Further to this, **the SPV relies on full mortgage insurance of the loan and mortgage as its security, not the mortgage instrument itself.**

If a borrower falls into default the SPV will generally therefore call upon the mortgage insurance, rather than foreclose on the home owner. However, it is possible in Australia's financial climate that a mortgaged home whose debt has been securitised will be foreclosed upon, albeit in the unlikely event that the SPV's insurance cover is less than the amount of the debt owed on the property.

The trusts used in securitisation rely on secrecy and at times mandate that the borrower must not be informed of dealings in the loan and mortgage, as that could collapse the trust.

Consequently, some financial institutions fail to provide full disclosure to their clients and will avoid providing information to clients and courts when requested.

When a financial institution acts to foreclose, it is not doing so as the originator or original lender but in a capacity that should be clarified for the borrower.

Securitisation, then, has significantly changed the character of bank lending and should be immediately reviewed, particularly in the context of the law relied upon by financial institutions when dealing with delinquent clients.

The situation is made all the more urgent because securitisation not only applies to home loans but to personal loans, credit card facilities and many other elements of the financial industry as well.

I cannot stress highly enough the seriousness of this situation. **All responsible regulatory bodies in Australia must give careful attention to these matters in the public interest.**