

Thousands of Americans are being stalked by houses they didn't know they still owned after their lenders walked away from foreclosure

# The curse of the zombie titles

BY MICHELLE CONLIN COLUMBUS, OHIO, JANUARY 10, 2013



oseph Keller doesn't expect he'll live to see the end of 2013. He blames the house at 190 Avondale Avenue.

Five years ago, Keller, 10 months behind on his mortgage payments, received notice of a foreclosure judgment from JP Morgan Chase. In a few weeks, the bank said, his three-story house with gray vinyl siding in Columbus, Ohio, would be put up for auction at a sheriff's sale.

The 58-year-old former social worker and his wife, Jennifer, packed up their home of 13 years and moved in with their daughter. Joseph thought he would never have anything to do with the house again. And for about a year, he didn't.

Then it started to stalk him.

First, in 2010, the county sued Keller because the house, already picked clean by scavengers, was in a shambles, its hanging gutters and collapsed garage in violation of local housing code. Then the tax collector started sending Keller notices about mounting back taxes, sewer fees and bills for weed and waste removal. And last year, Chase's debt collector began pressing Keller to pay his mortgage, which had swollen, with penalties and fees, from \$62,100.27 to \$84,194.69.

The worst news came last January, when the Social Security Administration rejected Keller's application for disability benefits; the "asset" on Avondale Avenue rendered him ineligible. Keller's medical problems include advanced liver disease, hepatitis C and inactive tuberculosis. Without disability coverage, he can't get the liver transplant he needs to stay alive.

"I can't make it end," says Keller. "This house, I can't get out."

Keller continues to bear responsibility for the house because on Dec. 23, 2008 – about two months after he received Chase's notice of sale – the bank filed to dismiss the foreclosure judgment and the order of sale. Chase said it sent Keller a copy of its court filing on Dec. 9, 2008. Keller says he never received any notification. Either way, his name remained on the property title.



ON THE HOOK: Years after moving out, unsuspecting homeowners have found themselves being pursued for back taxes and housing-code violations. **REUTERS/STEVE NESIUS** 

The Kellers are caught up in a little-known horror of the U.S. housing bust: the zombie title. Six years in, thousands of homeowners are finding themselves legally liable for houses they didn't know they still owned after banks decided it wasn't worth their while to complete foreclosures on them. With impunity, banks have been walking away from foreclosures much the way some homeowners walked away from their mortgages when the housing market first crashed.

"The banks are just deciding not to foreclose, even though the homeowners never caught up with their payments," says Daren Blomquist, vice president at RealtyTrac, a real-estate information company in Irvine, California.

Since 2006, 10 million homes have fallen into foreclosure, according to RealtyTrac, a

Banks say that because they are not the legal owners of these homes, they aren't required to maintain them, pay taxes on them, or take any legal responsibility for them.

number that in earlier, more stable times would have taken nearly two decades to reach. Of those foreclosures, more than 2 million have never come out. Some may be occupied by owners who have been living gratis. Others have been caught up in what is now known as the robo-signing scandal, when banks spun out reams of fraudulent documents to foreclose quickly on as many homeowners as they could.

And then there are cases like the Kellers, in which homeowners moved out after receiving notice of a foreclosure sale, thinking they were leaving the house in bank hands. No national databases track zombie titles. But dozens of housing court judges, code enforcement officials, lawyers and other professionals involved in foreclosures across the country tell Reuters that these titles number in the many thousands, and that the problem is worsening.

"There are thousands of foreclosures in limbo, just hanging out there, just sitting, with nothing being done," says Cleveland Housing Court Judge Raymond Pianka, whose pending court cases tied to derelict properties have doubled in the past two years, to 1,000. He says the surge is due largely to homes vacated by people who fled before an imminent foreclosure sale, only to learn later that they remain legally responsible for their house.

When people move out after receiving a notice of a planned foreclosure sale and the bank then cancels, municipalities are left to deal with the mess. Some spend public funds on securing, cleaning and stabilizing houses that generate no tax revenue. Others let the houses rot. In at least three states in recent months, houses abandoned by owners and banks alike have exploded because the gas was never shut off.

#### **THREAT OF JAIL**

Unsuspecting homeowners have had their wages garnished, their credit destroyed and their tax refunds seized. They've opened their mail to find bills for back taxes, graffiti-scrubbing services, demolition crews, trash removal, gutter repair, exterior cleaning and lawn clipping. At their front doors they've encountered bailiffs brandishing summonses to appear in court.

In some cities, people with zombie titles can be sentenced to probation - with the threat of jail if they don't bring their houses into compliance.

"These people have become like indentured serfs, with all of the responsibilities for the properties but none of the rights," says retired Cleveland-Marshall College of Law Professor Kermit Lind.

Banks used to almost always follow through with foreclosures, either repossessing a house outright — known in industry parlance as REO, for real estate owned — or putting it up for auction at a sheriff's sale. The bank sent a letter notifying the homeowner of an impending foreclosure sale, the homeowner moved out, the house was sold, and the bank applied the proceeds toward the unpaid portion of the original mortgage.

That has changed since the housing crash. Financial institutions have realized that following through on sales of decaying houses in

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#### Kermit Lind

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markets swamped with foreclosures may not yield anything close to what is owed on them.

By walking away, banks can at least reap the insurance, tax and accounting benefits from documenting the loss — without having to take on any of the costs and responsibilities of ownership, according to a 2010 Federal Reserve paper. A walk-away also enables them to "sell the unpaid debt to debt collectors, sometimes noting to the court that the loan has been charged off," according to a Case Western Reserve University study released in 2011.

No regulations require that banks let homeowners know when they change their minds about a foreclosure. So they rarely do, according to housing court judges, homeowners' lawyers and academics who study foreclosure problems. "The banks do not answer inquiries, they do not answer phone calls, they do not answer letters," says Judge Patrick Carney of the Buffalo, New York, Housing Court. His zombie-title caseload has swollen in the past few years to well into the hundreds. "The whole situation is surreal," he says.

Marlon Sheafe, a 55-year-old who drove trucks for Sara Lee Corp for 25 years, was sentenced to probation in May. The citation from the Cleveland Housing Court says that if he doesn't fix the problems with the investment property he bought in 2005, the grandfather of three, who suffers from advanced cancer, will go to jail in May 2014.

Ocwen Financial Corp, the servicer of Sheafe's mortgage, foreclosed on the house in 2008, when Sheafe was hospitalized with congestive heart failure and later lost his job, forcing him into default. That was the last he heard about the house until a year and a



CROWDED DOCKET: Cleveland Housing Court Judge Raymond Pianka says the recent surge in the number of cases his court handles is due largely to zombie titles.

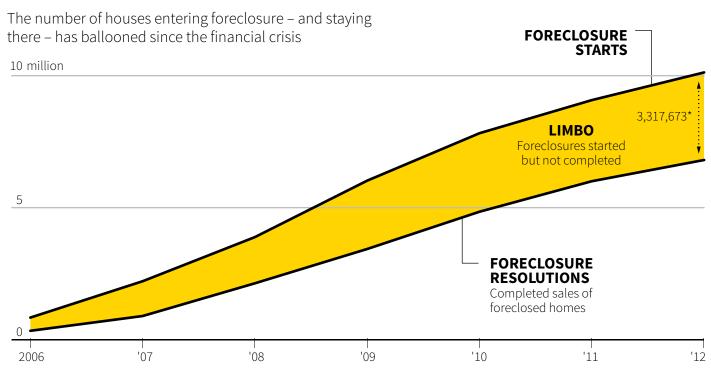
REUTERS/AARON JOSEFCZYK

half ago, when he received a summons to appear in Cleveland Housing Court for code infractions on the property: cracked steps, shredded siding, weeds as tall as the doors. There was also a \$300 lawn-mowing bill.

A few weeks later, Sheafe appeared at the drab, brown-paneled chambers of the Cleveland Housing Court, packed, as it is every Tuesday and Thursday lately, with other people in his situation. Sheafe expected his appearance that day would clear up what he thought was a big mistake. Instead he left with the order to get the house up to code.

Sheafe started visiting the tall, crooked house every week. Looters had stripped the place bare. The "dope boys" had left their sneakers on the porch and their empty cans of sausages strewn around inside. Sheafe repaired the steps and spray-painted patches of the exterior where the vinyl siding had been ripped off. He returned every week to check on the house and mow the lawn.

### Lost in the Shuffle



\*Includes roughly one million loan modifications, which have a high rate of default.

Source: RealtyTrac

While Sheafe worked on the house, Judge Pianka worked on the mortgage servicer, subpoenaing Ocwen to appear in court. In February, Ocwen released its lien on the house, which Sheafe hoped would enable him to donate it to the local land bank – one of many set up by local governments in recent years to manage abandoned properties.

But Sheafe still can't shake free of the house. The county sold his tax lien to a debt collector, which is now suing Sheafe for fore-closure. He also faces \$4,185 for code violations, \$185 for court costs and up to \$10,000 if the city is forced to tear down the house.

"There's no end to this," Sheafe says. "I can't win."

Asked to comment, Ocwen issued a statement saying: "It is Ocwen's policy not to disclose details about specific customers. In this case, Ocwen has attempted to work with the borrower over a four-year period. Ocwen offered to settle the account with the borrower but never

received a response to the offer."

Sheafe says he couldn't afford the amount Ocwen proposed in its settlement offer.

The Consumer Financial Protection Bureau, the federal agency established in the wake of the financial crisis to guard against predatory lending and other abuses, declined to comment for this article.

Joe Smith is the monitor of the National Mortgage Settlement, the agreement struck a year ago between major banks and state attorneys general to, in part, address foreclosure abuses. In a statement responding to a request for comment, he said: "To my knowledge, the servicers' behavior in the situation... is not covered by any standards in the Settlement." He added: "However, it does sound like there are problems with this type of treatment. I recommend the borrowers contact their state's attorney general and remember that the Settlement does not preclude borrowers from taking their own legal action."

Patrick Madigan, Iowa's assistant attorney general, was instrumental in crafting the National Mortgage Settlement. He said that he thought the consent decree would attempt to address the issue of foreclosure limbo, but that in the end, the language in the order was ambiguous. "It's a very difficult situation," Madigan said.

#### **NO RESPONSIBILITY**

Banks say that because they are not the legal owners of these homes, they aren't required to maintain them, pay taxes on them, or take any legal responsibility for them. Homeowners legally own their properties until the day of sale. And it's not until that day, the banks point out, that a homeowner's name vanishes from the title.

David Volker found that out the hard way. When the housing market crashed, so did Volker's contractor business, and he was unable to keep up with payments on Text continues on page 6

# The house they bought still isn't theirs

Brian and Holly Barnhart dreamed of turning an eyesore into a home for their growing family.

Their dream was destroyed by a zombie title – not theirs, but someone else's. As their experience shows, buying a foreclosure can be risky.

It all started in November 2010, when the Barnharts forked over \$153,000 in cash savings for a Spanish-revival house in Cape Coral, Florida - a Wells Fargo foreclosure that was in a sorry state. Rats poked around the patio. The water in the swimming pool was green. The yard was wild with weeds.

The couple plowed an additional \$100,000 – the balance of their savings — into a gut renovation. Here they planned to raise their two small children and the baby that was on the way.

But in January 2011, not long after unpacking their boxes, the Barnharts found out from the Lee County property appraiser that when they purchased the house, the bank didn't actually own it. So now, neither did they. The title insurance they were required to have when they closed on the house afforded no protection.

"It's an absolute and utter nightmare," says Brian Barnhart, a real estate agent. "It has pushed my wife to the breaking point."

It turned out that in 2007, Wells Fargo, which is the trustee of the previous owner's mortgage, and American Home Mortgage Servicing, which is the mortgage servicer, foreclosed on Richard Riccobono. Trustees act on behalf of the mortgage bond investors who own the loan, and foreclosure suits are usually brought in their name. Mortgage servicers actually manage the loans.

On Dec. 30, 2008, Wells Fargo took ownership of the house. The following July, it had that move set aside and transferred the title back to Riccobono.

Riccobono says that he didn't know the



DREAM DESTROYED: The fixer-upper that Brian and Holly Barnhart bought for their growing family turned out to be in the hands of a zombie-title holder. **REUTERS/STEVE NESIUS** 

house was back in his name and that he is prevented from transferring the title to the Barnharts because of various liens on the property. "It's the craziest thing I've ever seen," says Riccobono, now living in Fort Myers.

In 2011, the Barnharts sued American Home Mortgage Servicing, now called Homeward Residential, and Wells Fargo in a bid to get the banks to scrub the title. Under a settlement reached in March, the banks agreed to pay the couple's lawyer's fees and clear the title, Barnhart says.

But the title change still hasn't happened.

The former owner is prevented from releasing the title of the house to the Barnharts because of liens on the property.

Wells Fargo said that as trustee, it had nothing to do with management of the loan and referred questions to Homeward Residential.

Homeward Residential said it was still working to resolve a lien and a small claim judgment against the former owner in order to clean the title. "We continue to be in regular communication with our customer regarding this situation," it said.

Barnhart says the bank had assured him it would straighten out the mess by October. That's when the family of five moved into a new house with hopes of selling their former dream home, a place Barnhart's wife won't set foot in.

But they still can't put it on the market because, as Barnhart says, "it's still not ours." Michelle Conli his barn-like two-story house in Buffalo, New York. His mortgage servicer, HSBC, foreclosed on the home in 2009. A few months later, while he was staying with his girlfriend, he stopped by the house to find an HSBC padlock on the doorknob and bank stickers plastered across the door.

Shattered glass covered his front steps. When he crawled through a broken window, he found the place trashed – by whom, he doesn't know. Even the toilets were gone. Hearing nothing more from the bank, he figured the house was no longer his.

The place continued to decay. Gutters tore loose from the eaves. The yard turned into a dump for balding tires. Volker's neighbors started complaining to the Buffalo Housing Court, which eventually tracked down Volker at the rental where the 49-year-old was living and ordered him to appear in court. That's when Judge Carney told him that he was still the owner.

"I was stunned," Volker says. "I never for a moment thought I still owned this house."

Volker worked with a realtor to try to get HSBC to take several short-sale offers - deals under which the bank would allow Volker to sell the house for less than the amount owed on it - but he says HSBC turned them down. Since then, he's been asking the bank to agree to a deed in lieu, whereby he would give the house back to the bank. So far, he hasn't been able to make that happen. He has \$1,000 in water and trash bills and faces up to \$30,000 in demolition fees if the city decides his house is a safety hazard and must be torn down.

HSBC declined to comment on Volker's case, citing privacy concerns. In a statement, the bank said it "has a strong commitment to home preservation and regards foreclosure as a last resort, only after alternatives have been exhausted and the borrower is seriously delinquent."

Cases against zombie-title holders are rising due to everything from sewer bills to tilting chimneys, and they are clogging the courts. In Milwaukee, Wisconsin, about Once a bank walks away from a foreclosure, the real rot begins. ... In Chicago, Cleveland and Bridgeport, Connecticut, abandoned homes have exploded because of undetected gas leaks.

900 cases in the foreclosure process involve zombie titles. In South Bend, Indiana, the number is 1,275, up from 600 in 2006. In Memphis, Tennessee, cases have doubled in the past two years to 1,500.

In Cleveland, 15 percent of foreclosures between 2005 and 2009 stalled out in foreclosure limbo, more than a third of them involving homeowners who had fled foreclosure notices, according to the Case Western Reserve study.

#### **STATE ACTION**

State tax authorities are getting into the game, too. When IndyMac foreclosed on Richard Chavarry's house in Victorville, California, in 2008, he had already relocated to Los Angeles to escape the 80-mile commute to his job. The renters he had initially relied on to help him keep up payments on the Victorville house were long gone, too. But he had no idea that IndyMac canceled the sale in October 2009. "They never notified me," Chavarry said.

Nearly two years passed before Chavarry started getting citations in the mail for code violations from the city of Victorville. In February, the California Tax Board seized his \$631 tax refund to pay the city back for the costs of scrubbing graffiti, removing tumbleweeds and boarding up the windows of Chavarry's house.

In March, Chavarry filed a deed in lieu to try to get IndyMac, now owned by OneWest Bank, to take back the house.



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The bank rejected it. Chavarry still owes the county \$5,731 in back taxes and fees for housing-code violations.

IndyMac declined to comment.

Once a bank walks away from a foreclosure, the real rot begins. Living rooms turn into meth labs. Falling shingles menace passers-by. Squatters' cooking fires turn into infernos. The latest iteration of the trend: gas explosions.

Electric companies usually shut off the juice when homeowners tell the utility they are moving. But natural-gas companies usually don't. In recent months, abandoned homes have exploded in Chicago, Cleveland and Bridgeport, Connecticut. In all cases, foreclosed homeowners had moved out. With no one home to smell the gas, it went undetected - until the houses blew.

"We are seeing more and more close calls," says Mark McDonald, a former natural gas public safety worker who now runs the New England Gas Workers Association. "These houses are a formula for disaster."

Cities are struggling to find ways to cope with growing numbers of blighted properties. Miami, Detroit and Las Vegas have created registries intended to force banks to take more responsibility for vacant houses.

The Mortgage Bankers Association has opposed these measures. Placing "unreasonable" and "onerous" requests upon servicers will only hurt the already ailing mortgage-lending business, the association says on its website.

The association did not respond to repeated requests for comment.

Registry advocates say the banking industry's opposition has helped water down some of those actions, such as a recently enacted Georgia law that requires banks to register vacant properties only after a foreclosure has been completed.

A vacant-property ordinance in Los Angeles requires banks to register a house as soon as they file a default notice. Failure to do so could result in a \$1,000-a-day fee. However, "it's not being enforced," says

#### REAL ESTATE THE CURSE OF THE ZOMBIE TITLES

Los Angeles Assistant City Attorney Tina Hess. "Part of the problem in L.A. is the building and safety departments have been cut so severely they don't have the inspection staff to monitor these properties."

In Columbus, Ohio, Joseph Keller recently paid a visit to the empty house on Avondale Avenue. In the living room, the floor was littered with dirty diapers, pill bottles, condoms, sooty mattresses and soda cans. In the kitchen, squatters had hung pink curtains.

"They tore it to hell and back," Keller said, kicking at a dirty mattress. "We never would have left the home if we weren't told to get out."

The Kellers live in their daughter's dining room, where their queen-size bed leaves little room to maneuver. Joseph can't sit, stand or sleep for more than 15 minutes at a time.

He can't take pain medication because of his diseased liver. Every few months, he makes a trip to the emergency room, where doctors drain his abdomen of excess fluid.

Last May, Chase's debt collector, Professional Recovery Services, sent Keller a letter: "At this time," it said, "we are able to offer you a settlement of \$25,258.41 on this account to be paid within 15 days." He lacks that kind of money, as well as the \$11,759.08 he owes to the county in back taxes.

Professional Recovery Services declined to comment.

At a hearing in early December, a Social Security administrative judge told the Kellers that he would review their appeal of the original denial of benefits, a process that he said could take two months. Joseph Keller responded that he might not be around that long. Earlier this month, the judge sent the case back to the local office after it determined that the house was virtually worthless. Keller still has no benefits.

"He's dying," says Keller's daughter, Barbara. "He needs his name off this house."

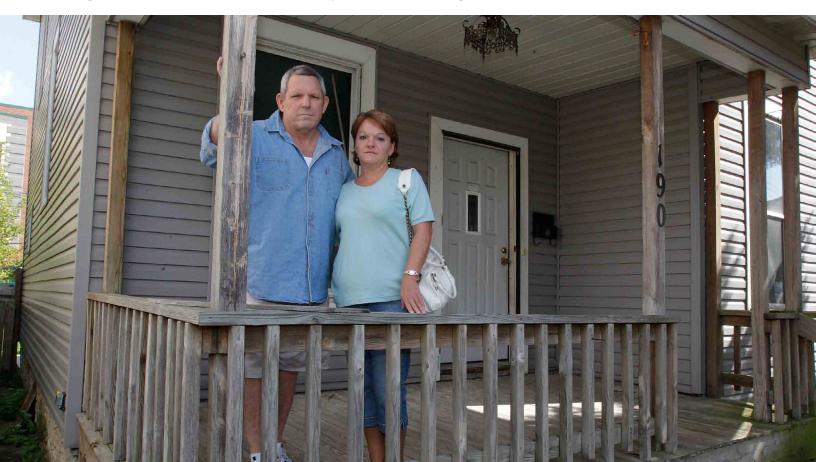
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MAKESHIFT: Joseph Keller and his wife, Jennifer, lived in the house at 190 Avondale Ave. for 13 years before a foreclosure notice prompted them to move into their daughter's dining room. **REUTERS/JAY LAPRETE** 

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