A FORECLOSURE TIMELINE

[A Fictional Case Study]

FACT SITUATION

In June, 2005, John and Mary Borrower are a married couple living in a mid-sized city in Ohio with three school-age children. One of their children is autistic a condition that manifested itself almost immediately after the child was given the standard vaccination regimen. John is an architect working for a small architectural firm and Mary has her own modest internet-related business. At the time they purchase their ten-year-old, comfortable four-bedroom home in a newly-developed neighborhood twenty miles from the downtown business district for $350,000, John and Mary have combined income of $120,000, a $150,000 401K, $30,000 in savings and a credit rating of 700.

They sold their previous home for a profit of $25,000 and withdraw $10,000 from savings so they can make a 10% ($35,000) downpayment. [Before the closing, they find they need to take out another $5,000 to cover loan costs and other fees and expenses related to the loan.] They go online to search for the best deal on financing for their home and get a series of quotes, the lowest of which is from Countrywide Mortgage, a California-based lender, for 5.5%, resulting in a mortgage payment, after mortgage insurance, of $2,686. They understand that any lender will require private mortgage insurance for any loan with

less than a 20% downpayment. Their $315,000 loan is a 3-year ARM with initial teaser rate. They understand that after 3 years, the interest rate floats on a monthly basis at a 3% spread to LIBOR. They figure that after a few years as Johns income goes up and Marys business gets off the ground, they can refinance, maybe into a flat-rate 20% downpayment loan that will eliminate their mortgage insurance payment. They do not purchase title insurance because they believe that, since the lender will be purchasing its own title insurance policy, their interests are in alignment with those of the bank and they dont need to spend the extra money.

In summary:

Home purchase price: $350,000
Downpayment: $35,000
Other costs of closing: $5,000
First mortgage: $315,000, Countrywide Mortgage
Countrywide profit on loan: $9,450
Private mortgage insurer: PMI Mortgage Insurance Company
The Borrowers monthly payment to the bank, which requires an escrow for property taxes and insurance for any loan with less than a $20% downpayment, is as follows:

Mortgage payment on Countrywide loan:		$1,789
Property tax escrow:	$625	
Mortgage insurance premium:	$142	

Property insurance escrow: $130

Total $2,686

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TIMELINE OF SUBSEQUENT EVENTS

- July, 2005 Countrywide sells the Borrowers loan to Fannie Mae, making an allonge or assignment in blank of the mortgage in a robosigning incident along with thousands of other loans. No filing is made in the county recorders office, so that anyone who searches the property records is under the impression the loan is still owned by Countrywide. Countrywide retains the servicing on the loan, so the Borrowers continue to make their payments to Countrywide.

- Soon after moving into their new home, Marys congenital blood condition worsens, making it difficult for her to continue working and costing the family $20,000 in unreimbursible medical expenses. On the heels of Marys health problems, one of the Borrowers autistic son develops complications related to his condition requiring hospitalization, for which health insurance fails to cover $30,000. Mary winds down her business (decreasing the family income by $25,000/year) to work on her health and tend to her sons needs.

- The Borrowers spend down their savings (leaving $30,000 in medical bills) and start liquidating the 401K at a 10% penalty to the IRS when they run short at the end of the month.

- In September 2007, the Borrowers get an offer in the mail for a home equity line of credit (called a HELOC) and decide that this is a way for them to help pay for tuition at a special school for children with developmental disabilities for their autistic son, medical bills not covered by health insurance and the temporary monthly shortfall due to Marys not working and the monthly payments to the hospital. Park Nationals appraiser, surprisingly, values their home at $400,000, allowing them to borrow $50,000 at 10% interest. The monthly payment on the HELOC is $438 (resulting in a new total monthly house payment of $<u>3,124</u>.

- In March 2008, due to the fact that housing starts are down, Johns architectural firm decides to lay off some of the employees and (he suspects) because Johns familys medical problems have resulted in a jump in the firms health insurance premiums, John is laid off, even though he has more seniority than some of the younger architects who were not laid off. During Johns exit interview, the HR director discloses to John that, under COBRA, his family has the right to continue their health insurance coverage under the firms current health insurance plan, but the premium he must pay is $1,800/month. John goes to the Department of Jobs and Family Services to apply for unemployment compensation. John is entitled to

receive $2,000 month in unemployment benefits but, as a condition, must look for other work. Johns family believes that he should find another architectural job, but no architecture firms are hiring and John hears from former colleagues in the same boat that the unemployment rate for architects is 40%. Johns research reveals that, best case in the short term, in his area of the country, John can find a job for $10/hour, at most. At his weekly job support group, he learns that he needs to spend at least 20 hours per week looking for permanent work in his profession, which, on average, will take him one month for each $10,000 in income i.e., a year. There are no $10/hour jobs with health benefits, he finds. So, if John works 40 hours each week at a $10/hour job, John can expect to make less than his unemployment compensation, which he will lose dollar-for-dollar if he works, and it will be difficult to look for other work at the same time. They will be in worse financial shape if John works, so he concentrates on looking for a higher-paying job while collecting the maximum unemployment. The Borrowers spend down the 401K at a rapid rate and go on food stamps (EBT) ($250/mo).

- July, 2008: The Borrowers hear on the news that their lender, Countrywide, is involved in various lending scandals and has been acquired for acquired by Bank of America. Sure enough, the get notice that they are to make future mortgage payments to BoA. Being at the three-year anniversary of their loan, they also receive notice of their new mortgage interest rate, which will now float quarterly at 3% over LIBOR: 7-1/2%. Although that doesnt sound so bad, it means that the Borrowers monthly mortgage payment, including the HEL payment, goes up to $3,537.

- In September 2008, hurricane fall-out results in damage to the Borrowers house when one of four downed trees hits their roof. Even though it is the neighbors tree, John finds out that he must make a claim on his property insurance. The Borrowers insurance rates increase 15% (to $150/mo) and Borrowers are hit with a $4,000 bill for the damage ($1,000 deductible and $3,000 to remove trees that didnt hit the house, because that is not covered under the policy.

- Spring 2009: the Borrowers decide, after much heartache, that they must consider moving out of the house, because it is just too expensive and Johns job-hunting efforts have led to nothing. They call BoA to inquire about a deed-in-lieu of foreclosure, only to find out that with a second mortgage on their home, it does not qualify for a DIL. They ask about a short sale. Since the real estate market is bad, they cannot clear anywhere near their loan balances by selling the house. They will need to get the lenders permission for a short sale if they are to avoid a deficiency judgment, because in Ohio there is no anti-deficiency statute as there is in states like California. When they talk to Bank of America about a possible short sale, BoA tells them it requires the Borrowers to list with approved real estate agent who is qualified in short sales. The real estate listing agent they hire tells them they can expect to list their house at $275,000, that houses now are taking more than six months to sell even if priced aggressively and in perfect condition (which their house is not), and that the inventory in their neighborhood leads her to believe they may have to drop the price a lot in order to sell it at all. The listing agent gives them a schedule that shows them

lowering the offering price by $10,000 every several months. They put the house on the market and hope for the best.

- October 31, 2009: Park National is closed and acquired by US Bank, which is now the Borrowers new creditor for their HELOC. In reviewing the loans on its books from Park National, US Bank finds out about Johns unemployment and raises the interest rate on the HELOC to 29.99%, increasing the HELOC payment from $438 to $2,202/month. Their total mortgage payment all-in is now <u>$5,321</u>.

- The Borrowers401K is experiencing serious losses as it is being drawn down to pay living expenses, including losses on mortgage-backed securities on homes like the Borrowers

- November 2010: John hears on the local NPR station that it is hosting a free event for unemployed workers to find out how they can get help to avoid foreclosure of their homes and decides to go. He is surprised to find 300 other people filling out financial forms at long tables people, mostly over 40 and middle-class, with stories like his. They are teachers, lawyers, city workers and many people in the construction and real estate-related business. Many had jobs in manufacturing companies that had shut down or moved jobs abroad. John learns that, because his state has a high unemployment rate, the Borrowers are entitled to get up to $15,000 from the federally-funded Hardest Hit Fund through the state housing finance authority, which can help the Borrowers make mortgage payments for approximately seven

months. However, the Borrowers bank, in giving the mortgage arrearage amount to the Hardest Hit Fund, fails to add in legal costs and other fees added to the arrearage, so John, in addition to dealing with looking for work/starting a new consulting business and caring for a sick wife and child becomes entangled in a web of bureaucracy in proving to the bank that the Borrowers loan is current. An automatic dialer at the bank starts to call the home phone every day hounding them for payment, using an outsourcing collection service located in Mexico. After 10-15 hours, John straightens everything out.

- Spring 2010 – Purchase offers for $200,000 are presented to the servicer, which says the mortgage insurer will not approve a short sale, so the sale falls through.

- The 401K is gone. The Borrowers can no longer afford health insurance and go on Medicaid. Mary spends 15 hours/week finding doctors and dentists who accept Medicaid (very few), battling with an antiquated state Medicaid system that spews out multi-page correspondence in legalese about appeal rights, fails to be updated promptly (causing wrongful denials of service) and requires a 2-hour wait on hold by telephone to speak to a case worker who can explain how to untangle all of the errors; and driving her son to distant medical clinics with long wait times. She tries to rev up her business again, but what she is able to bring in is chump change compared to the Borrowers debts.

- The Borrowers miss a mortgage payment. They get daily calls from BoA and, if they dont answer the phone, the calls come every two hours, with agents from Mexico and other far flung places wanting to take a mortgage payment over the phone, asking personal questions about whether the Borrowers can borrow money from family to make their mortgage payment, and asking whether they still live in their home and want to keep it. Over and over, the same questions, which start to put Mary on edge and in an ill humor. US Bank starts calling, too, when they miss a HELOC payment. Finally, they just stop paying their mortgages altogether. The Borrowers unplug their home phone and try to get all of their friends and church groups to switch to calling them on their cell phones.

- June 2010: The Borrowers go to their neighbors home for dinner and find out that Joe Neighbor, who owns a local Marathon gas station, garage and delicatessen is losing his business. His business had been good, even through the recession, and he had just invested money in improvements and new fixtures. It seems that Joe didnt know the loan from the local bank had a balloon provision. He has been current every month for five years since purchasing the station, having put down $250,000, consisting of almost his entire savings. The formerly local and later regional bank had called Joe out of the blue to tell him the entire balance of his loan was due immediately. He thought they were kidding. There must be some mistake he was current on his loan. He took his payments in to the local branch office every month like clockwork. It was no joke. Joe couldnt get new financing, even from his own bank, where he had good credit. So the bank is forcing him to close down. The

property is being auctioned off at public auction and he will lose his entire investment.

- Joe also tells the Borrowers that the house down the street (owned by the Smiths) that has been vacant and for sale for a year has been vandalized of its copper pipes after the banks affiliated field service team, seeing it unoccupied with a for sale sign, broke in to weatherize it in April They plastered the house with signs all over indicating to the world that the bank had taken over the property. The neighbors were enraged. The signs said, in big letters that could be read from the street:

> **ATTENTION**
> **ENTRY IS STRICTLY PROHIBITED**
> **THIS PROPERTY IS MANAGED BY BAC FIELD SERVICES CORPORATION**
> **TO REPORT PROBLEMS OR CONCERNS PLEASE CALL: (866) 515-9759**
> **BAC Field Service Corporation does not own the property and should not be contacted regarding sale or rental inquiries**

Another sign, on the door, read:

> **ATTENTION**

ENTRY BY UNAUTHORIZED PERSONS
IS STRICTLY PROHIBITED
To protect interest of the lender and in accordance with the terms of the security instrument, the property has been secured to prevent entry by unauthorized persons. In case of and emergency only, call (866) 829-2657, and have the property address below ready. BAC Field Services Corporation does not own the property and should not be contacted regarding its sale or rental.

REO

No buyers had shown interest in the property since then.

The Smiths had moved out of town three years ago and rented the property to John and Mary Renter, because they couldnt sell it and neither, alone, could afford the mortgage after their divorce. But the Renters defaulted, due to a lost job, and moved in with family. When the insurance company found out that no one was living in the house, it cancelled the Smiths homeowners insurance. Now, Bank of America has force-placed insurance from its insurance affiliate, Meritplan Insurance Company, at a cost of $7,457. The old insurance had cost $1,464. The Smiths do not qualify for any kind of mortgage help because they do not live in their house any more. In addition, because they have not lived in the house for two out of the last five years, they do not qualify for the homeowners exemption from tax on forgiveness of indebtedness (i.e., the amount the bank wrote off on the obligation). In Ohio, there

is no anti-deficiency law preventing the lender from collecting the mortgage deficiency after foreclosure. Under Ohio law, the bank has two years from the date of sheriffs sale to collect whatever is still owed, including all the inflated insurance, upkeep, legal fees, court costs, appraisals and other charges against the loan. If the bank sells its uncollected loan to a third party debt collector (usually for a few cents on the dollar), the collection agency may hound the Smiths for payment long after the two years is up, even though that is not legal.

- January, 2011: The Borrowers talk to BOA about getting a loan modification or other assistance (not knowing that BOA is required under its Participation Agreement with the federal government to offer them a HAMP (under the Home Affordable Mortgage Program) loan modification that would limit their mortgage payments to 31% of their income if they qualify or allow them to do a deed in lieu of foreclosure or short sale with no deficiency judgment + $3,000 for moving costs if they decide they cannot afford a HAMP loan). They turn in all of the paperwork, and every three months thereafter the bank says it is processing their application but needs updates of the financial information to keep the file open.

- June 2011: BOA files a foreclosure action, even though the Borrowers have long since provided a hardship letter and all financial documentation to apply for mortgage assistance BOA is so overwhelmed with mortgage defaults that it cannot process loan modification requests for months and months; the Borrowers dont know that BOA is supposed to appoint a single point of contact with the bank and refrain from

foreclosure pending a determination whether the Borrowers qualify for HAMP/HAFA (HAFA is the Home Affordable Foreclosure Alternatives program). Mary talks to the bank and is told not to worry about the foreclosure action no one will take the Borrowers home as long as their application for a loan modification is being processed. So the Borrowers ignore all of the papers coming in from the court that say they must answer the foreclosure complaint and mention a summary judgment hearing.

- July 2011: Mary confides the Borrowers situation to a friend at church whom she had heard had gone through bankruptcy and lost her home two years ago. Marys friend Sarah Scrude tells her things only got worse after the bankruptcy, even though the Scrudes debts were discharged and they were able to find an apartment to rent near the childrens school. It seems that when the bankruptcy had been complete, Sarah had called the bankruptcy department of the bank (which was located in California) to find out what to do about the house. The bank representative said mail us the keys, which she did, assuming the bank would become owner of the property. The house, however, was in a neighborhood that had gone downhill and where the houses were worth very little any more. Without telling the Scrudes, the bank had decided not to take title to the home. The home had gone up for sheriffs sale twice, but no one bought it. Sarah had gotten some notices of building code violations and forwarded them on to the bank, not thinking anything about it. A full year later, Sarah received a notice that the Scrudes had received certified mail. When she signed for it, she found out that she and her husband had been charged with a misdemeanor

building code violation as the owner of the house and was liable for payment of thousands of dollars of repairs that the city had made. Two months later, she was served with another complaint there was a lawsuit by a trespasser on the property who was injured when he fell through the floor of the porch trying to break in to steal the copper pipes. Sarah said that since the accident, the City had established a land bank where zombie properties like hers could be contributed, but it was too late for Sarah and her family. Sarah also tells Mary that her cousin in Florida reports that foreclosed homes n the cousins county that originally sold for $500,000 are now being converted to Section 8 housing by the Federal Housing Administration (HUD).

- October 2011: John has found a headhunter who has temporary (1099) work at several consulting firms that need real estate construction consulting help for several federally funded infrastructure projects. He gets no benefits, but he is able to earn about $5,000/month in gross self-employment income. There is little hope of permanent employment, however, because the companies for which he works do not want to pay the placement fees for permanently hiring the independent contractors brought to them through the search firm.

- Unpaid real estate and income taxes become additional liens on the Borrowers home. They also find out that there is another lien for $25,000 that they knew nothing about. Apparently, the husband of the family who sold them their home had taken out a business line of credit secured by the house in addition to a first lien mortgage with the same bank. When the Borrowers bought the house, the sellers bank, in

error, released only the home mortgage and not the lien for the business line of credit, which was still outstanding. Countrywides title insurer had missed it, but the Borrowers have no recourse because they didnt buy their own policy of title insurance. So much for relying on the banks title insurance to keep everyone honest. When Countrywide called the seller to ask him to release the lien, he said he could not afford to pay off the line of credit because business was bad, even though a check of his credit reveals that he owns a vacation home in another state and that he paid $1.3M for his current home (now assessed at $700,000).

- First week of February, 2012: BOA and three other major banks enter into the National Mortgage Settlement (referred to as the National Settlement) with the 49 states attorneys general, which, like the TARP participation agreement BOA has already signed, requires BOA, Wells Fargo, CitiMortgage and GMAC (now called Ally) to clean up their servicing operations and offer defaulted borrowers various relief packages (primarily HAMP and HAFA) before resorting to foreclosure.

- At about the same time, the Borrowers come home to find a notice posted on their door saying that there will be a sheriffs sale of their home. They call the bank. The bank says that the application for the HAMP loan had been denied and their application for a loan modification has been rejected. The man who had told them not to worry about any sheriffs sale no longer works for the bank. Everyone she talks to gives Mary a different reason for the denial of the loan modification application, from lack of approval by the private mortgage insurer, to lack of approval of the

investor, to insufficient income to some black box formula not working. Enraged, Mary goes up the chain of command at the bank and demands to know what the bank is going to do about its breach of its servicing obligations under their TARP participation agreement and the National Settlement. No one is helpful.

- Mary goes to legal aid, where she is told that she has no rights even though the bank is obligated to the US government to do all sorts of things to help families remain in their homes that are set out in detail on the www.makinghomeaffordable.gov website, borrowers have no right to enforce those agreements themselves. So the servicing rules touted on the makinghomeaffordable.org website are basically unenforceable except in states with liberal courts where judges hold the banks fee to the fire. But the local courts in the Borrowers county and other counties to the north are not very sympathetic to borrowers and therefore dont buy that argument.

- First semester, 2013: the Borrowers second son, even though he now qualifies for a $5,000 Pell Grant because of his familys income, now has to borrow all $15,000 of his remaining college expenses for room and board in the form of student loans, only $5,000 of which each year are subsidized. He pays his other living expenses from earnings from a part-time job for which he is paid $7.00/hour. His parents are required to take out a Parent Plus loan, even though their house is in foreclosure there is no lower income limit for a federal Parent Plus loan, which is not dischargeable in bankruptcy should the Borrowers go bankrupt.

- January 7, 2013: Fannie Mae settlement with BOA over abusive Countrywide loans sold to Fannie Mae – $11.6B for $1.4 T in loans (by original principal balance).

- January 17, 2013: The Consumer Financial Protection Bureau created under Dodd-Frank legislation issues final regulations that institutionalize many of the borrower protections and servicing standards that are currently guidelines for servicers under the Home Affordable Mortgage Program and required by contract with the federal government. They dont take effect until 2014, however.

- January __, 2013 the Ohio Bar Association reports a case out of the Ohio Second District Court of Appeals (Dayton) where the court rejected a borrowers argument that a foreclosure of the borrowers home should be overturned because the bank failed to fulfill its obligations under the Home Affordable Mortgage Program.

- Now the Borrowers home is being put in an REO bulk sale managed by a major investment banking firm. Internet advertisements of the bulk sale tell potential investors that they may be able to purchase the properties for as little as 50% of fair market value. At 50% of market value, the Borrowers house, for which they paid $350,000, would sell for about $100,000 - $125,000. Ruefully, the Borrowers realize that if they had been able to purchase their home from the federal government (i.e., Fannie Mae, which had been taken over by the US government) at that price and get a loan at current market interest rates, they could easily afford the mortgage with

Johns current much-reduced but fairly steady income and the modest additional income Mary has been able to generate from reviving her Internetbased business.

FANNIE/FREDDIE BAILOUT COSTS

FHFA revised estimate on cost of bailing out Fannie Mae and Freddie Mac through 2014 (October 28, 2011): $124B (down from previous years estimate of $154B) http://online.wsj.com/article/SB10001424052970203687504577001653467422674.htmlhttp://online.wsj.com/article/SB10001424052970203687504577001653467422674.html: price tag was $141B as of the October 28, 2011 article the figure excludes amounts borrowed to pay dividends to the government

Fannie Mae has received $104 billion from the Treasury, including $15 billion that it has borrowed to pay back the government. The company must currently pay more than $10 billion to the Treasury every year, more than it earned even during boom times. Over the next three years, the FHFA projected that Fannie would need to borrow $46 billion in order to pay dividends of $47 billion.

Freddie, which has cost taxpayers $52 billion, has returned more to the Treasury than it has taken in each of the past four quarters. The analysis found that Freddie could return $15 billion to taxpayers through 2014.

> The agency.s loss estimate of $124 billion is based on the future path of home prices and interest rates. Under a more severe economic scenario, the bailout cost could rise to $193 billion, down from last year.s estimate of $259 billion.

According to WSJ as reported on October 28, 2012 (http://www.addictinginfo.org/2012/10/28/cost-of-bailout-for-fannie-mae-freddy-mac-expected-to-majorly-drop/):

> The Federal Housing Finance Agency, the companies federal regulator, released a report on Friday that estimated they will pay between $32 billion and $78 billion to the U.S. Treasury through 2015. The baseline forecast assumes that the companies would end up costing taxpayers $76 billion by the end of 2015, down from the current tab of $142 billion.
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> The Federal Housing Finance Agency, the overseer for Fannie Mae and Freddie Mac, said that by the end of 2015 the two firms are estimated to draw between $191 and $209 billion from the U.S. Treasury Department.
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> That is much less than the FHFAs previous estimate released in October 2011 of between $220 billion and $311 billion by the end of 2014.

To date, Fannie and Freddie have drawn $187.5 billion from Treasury and paid back $46 billion in dividend payments.

June, 2011 CBO estimate was $317B, based on guarantees outstanding: http://cnsnews.com/news/article/true-cost-fannie-freddie-bailouts-317-billion-cbo-sayshttp://cnsnews.com/news/article/true-cost-fannie-freddie-bailouts-317-billion-cbo-says (CBO report is here: http://www.cbo.gov/publication/41487)

CURRENT

Freddie and Fannie account for 90% of new mortgages;

http://www.cbo.gov/publication/41487