How one woman beat the big banks: The amazing, true story about how Wall Street's mortgage fraud unraveled

Sued by a giant bank, Lisa Epstein didn't have many options. Then she found the small print that changed everything

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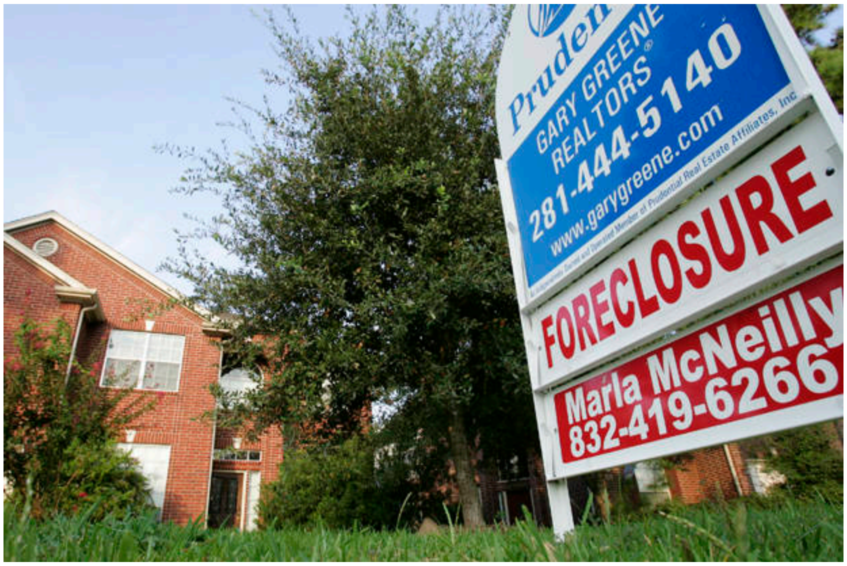

(Credit: AP/David J. Phillip)

Excerpted from "Chain of Title: How Three Ordinary Americans Uncovered Wall Street's Great Foreclosure Fraud"

None of Lisa Epstein's options for dealing with her foreclosure seemed very attractive. She could try the Home Affordable Modification Program, or HAMP, which President Obama announced from Mesa, Arizona, on February 18, 2009, the day after Lisa was served. She pulled the speech up at the White House website. The idea was that the Treasury Department would give mortgage servicers incentive payments to modify delinquent loans. In the speech, Obama kept stressing borrower responsibilities more than the responsibilities of fraudulent lenders or securitizing banks. Did he not understand how this crisis happened? Plus HAMP involved applying through Chase Home Finance, Lisa's servicer, which spent nine months losing her paperwork, ignoring her requests for help, and driving her into foreclosure by advising her to miss payments. Common sense dictated they wouldn't be much better at administering a new program, no matter how many inducements the government gave them.

Lisa could fight it out in court, but the handful of lawyers taking foreclosure cases in Palm Beach County wanted retainers of up to $5,000, and $340 an hour in consultation fees. If Lisa had that kind of money, she probably wouldn't be in foreclosure to begin with. Legal aid societies and pro bono lawyers working for free were overloaded and unavailable for someone with a decent job, like Lisa. Banks knew troubled homeowners didn't have the resources to fight foreclosures; that's why everyone told her most cases never got challenged. Besides, anytime Lisa would meet with a lawyer—and she talked to several, even drove an hour down to Broward County once—she'd explain her operatic theories about the housing crash, and the attorneys would stare at her like she sprouted horns. They all told her there wasn't much she could do if she didn't pay. But Lisa pleaded, "You don't understand. The bank suing me says they have no relationship with me. How could I just give up?"

Without hope of a last-minute intervention, and without funds for legal representation, Lisa had a third option: fight the foreclosure herself, as a pro se litigant. This sounded crazy to her. She had no legal training, picking up bits and pieces in late-night cram sessions. The saying went that anyone who represents herself as a lawyer has a fool for a client. But Lisa's motivations went far beyond whether or not she would keep that misbegotten house on Gazetta Way.

Something had gone horribly awry at the highest levels of the economy, causing the largest destruction of wealth in eighty years. Wall Street recklessness played the signature role, and Lisa wanted to challenge that in her small way. Maybe she could unearth some novel strategy, share her knowledge, and help spare other unsuspecting Americans from her pain. It would be difficult, no doubt, maybe impossible, maybe preposterous to even try. But Lisa didn't think it worth her personal comfort to stay silent. Something about the magnitude of the crisis and the constancy of voices tagging foreclosure victims like her as irresolute deadbeats made her more determined to prove everyone wrong, to keep searching until she found something she could call justice.

While running through all this, Lisa kept coming back to Count II, the "Re-establishment of Lost Note."

A mortgage has two parts. There's the promissory note, the IOU from borrower to lender, and the mortgage, which creates the lien on the home in case of default. Foreclosure laws vary from state to state and evolve with every court decision, but in the simplest terms, to be able to foreclose, a financial institution must hold the mortgage, the note, or both. This gives you standing, as it would in most judicial contexts: if you accuse someone of stealing your car, you'd need to establish that you actually owned it in the first place.

During securitization, mortgages were transferred from the originator through a series of intermediaries and then to the trustee, who administers the mortgage-backed trust. Lisa's case featured three parties in all— DHI Mortgage (originator), JPMorgan Chase (depositor), and U.S. Bank (trustee)—but sometimes these deals had as many as seven or eight transfers. The securitizations included intermediaries mostly to reassure investors that they would still get payments if the originator went out of business, which actually happened quite a bit. This desire for "bankruptcy remoteness" drove securitization transfers, and it didn't hurt that every transfer generated another fee.

At each stage there would have to be documented evidence of transfer, like links in a chain—a chain of title, which lays out the different transactions. You can't skip a link: the chain must show evidence of transfers from originator to depositor to trustee, and everyone in between, in precise order. Mortgages are assigned with a signed piece of paper affirming the transaction. Notes are endorsed the same way you would endorse the back of a check. Theoretically, the originator could endorse the note “in blank,” so that anyone in possession of the note could enforce it. But that theory ran up against the reality of the securitization agreements.

When Lisa finally found copies of the rules governing securitizations, known as the pooling and servicing agreements (PSAs), they all had roughly the same language about transfers. This comes from the prospectus of Soundview Home Loan Trust 2006-OPT2:

On the Closing Date, the Depositor will transfer to the Trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, Mortgage, assignment of mortgage in recordable form in blank or to the Trustee and other related documents received from the Originator pursuant to the Master Agreement (collectively, the “Related Documents”). . . .

The Pooling Agreement will require that, within the time period specified therein, the Depositor will deliver or cause to be delivered to the Trustee (or a custodian on behalf of the Trustee) the mortgage notes endorsed to the Trustee on behalf of the Certificate holders and the Related Documents.

The mortgage and the note had to be physically conveyed into the trust and delivered to the document custodian, with the mortgages assigned and the notes endorsed with a wet-ink signature at every step along the way, culminating in assignments and endorsements to the trustee. And this had to be done within ninety days of the transaction, with no grace period beyond that closing date. Only then would you have a “true sale” of the loans from originator to trustee.

Most trusts were created under New York State trust law, which is unbelievably clear. It stipulates that the pooling and servicing agreements are the governing documents. Any transaction that doesn’t comply with the PSA is void. Failure to convey mortgages and notes would result in noncompliance. That means the trust would be unfunded and effectively not exist. Ownership would revert back to the last verifiable owner in the chain. And under New York law, there was no mechanism to transfer mortgages and notes after the closing date.

There are tax consequences associated with this failure as well. All securitization trusts were set up as REMICs. If the trust closed without the key documents conveyed over, those assets would not qualify for the REMIC tax exemption. They could not be added later, especially in the middle of foreclosure, because REMICs cannot acquire nonperforming assets. As a result, any income derived from the assets would get taxed, under the law, at 100 percent.

Those were the rules, spelled out in governing documents agreed to by all parties. And the Living Lies chatterers were convinced that nobody in the mortgage industry bothered to follow them. If this theory was correct, it would turn mortgage-backed securities into non-mortgage-backed securities. And the trustee, in Lisa’s case U.S. Bank, would not have the right to collect on the promissory note or use the mortgage lien to foreclose on the borrower. As Neil Garfield put it, “There is an 18-

minute Nixonian gap in the record that cannot be cured." Activists took to calling it "securitization FAIL."

The prevalence of "lost" notes, including Lisa's, created more suspicion. If the notes were safely stowed away by the trustee's document custodian, losing them could never be an issue. One study hinted that the losses could be systemic. Neil Garfield originally got interested in securitization FAIL after reading a November 2007 report by law professor Katherine Porter, then of the University of Iowa. Porter examined public court records in 1,733 bankruptcy cases filed in 2006. She found near-universal disagreement between borrowers and mortgage servicers over amounts owed, with multiple instances of illegally imposed fees, including charging homeowners for ordinary office activities like delivering faxes or creating payoff statements. But one passage leaped out at Garfield: in a majority of cases, servicers lacked one or more pieces of documentation needed to establish the validity of the debt. That included the note, which was missing over 40 percent of the time.

Bankruptcy cases and foreclosure cases are different. But in two out of every five in the study, mortgage companies simply didn't comply with the rules to verify standing. The fact that, according to Porter's paper, bankruptcy courts would routinely let cases advance even without critical documents didn't bode well for those who wanted to fight the system. But thinking about all these different links in the chain and how fast financial institutions were swapping mortgages during the bubble, Lisa was convinced that the companies involved didn't comply with the law. And she couldn't stay quiet about that.

Under Florida law, plaintiffs didn't necessarily have to present the original promissory note at trial. But they did need to give an explanation and show proof of underlying ownership. This was the "Re-establishment of Lost Note" count in Lisa's complaint: U.S. Bank was announcing its intention to submit evidence that, despite losing the note, it indeed had the right to foreclose.

So on March 9, 2009, just a few weeks after being served with foreclosure papers, Lisa, acting in her own defense as a pro se litigant, filed a motion to dismiss for lack of standing. She cribbed from a couple of sample legal templates at Living Lies, arguing that U.S. Bank had no interest in her loan and therefore could not foreclose. The motion was meant to provoke a reaction, to get whatever the bank saw as their proof submitted into the court records. U.S. Bank filed a motion for extension. They weren't prepared to actually make a case.

Shortly after filing her motion, Lisa entered what she would later call her "sleepless phase": staying up until three in the morning, taking a catnap, and waking up at six. She spent every night reading and researching and learning. She analyzed lists of securitizations, read foreclosure defense strategies, and devoured every article on Living Lies. Every morning she would run to the computer to see if she missed anything. It was like going to college for an intense, self-administered degree in high finance. It lasted over three years.

This further strained her relationship with Alan, which had already taken more shots than most marriages could endure. Lisa was spending her nights outside the marriage bed, sitting in that big useless room glued to the home computer, while Alan tossed and turned. The couple barely spoke.

Lisa doesn't quite remember when she moved out of the house. One day, at a light on the outskirts of downtown West Palm Beach, instead of taking a left, she took a right, to the co-op by the Intracoastal. With so much disorder in her life, she longed for the simple pleasures of sitting on the balcony, hearing the water hit the seawall. She'd spend a day at the house and a day at the apartment, consumed by the fantasy that if she just spent more and more time at the condo, maybe Alan wouldn't notice she left. The marriage could dissolve of its own accord, without conflict or even discussion. Lisa gradually gathered her possessions, a couple of things a day, until she had everything out of the house. She didn't care if Alan stayed there, provided they still owned it. She chuckled at the irony of spending most of her waking hours trying to prevent foreclosure on a house she no longer even lived in.

At the end of April, Jenna had surgery at Miami Children's Hospital, to release the tethered spine and relieve pressure on the vertebrae. Alan came to Miami, staying in a local Ronald McDonald House. Lisa bunked in the hospital room, never leaving Jenna's side. The surgery went well, though afterward Jenna couldn't move for a couple of weeks, confined to lying still on her back. Lisa would lie beside her, breastfeeding or staring at the ceiling, which the hospital used for immobile patients as a projection screen. Lisa would point out the objects or colors that flashed against the ceiling, and Jenna loved it. Dogs and clowns and play pals would come by every day, activities known inside the hospital as "child life." Sometimes nurses would put Jenna in a wagon and ride her around the corridors.

Loaded up with drugs to relieve the pain, Jenna would also sleep for hours and hours, and Lisa could only wait out the slumber. But Children's Hospital did have an Internet connection. Lisa brought an old Acer laptop, sat by her daughter's bedside, and day and night continued her research. There were moments when Lisa was the only person awake in all of Children's Hospital, the blue light of the computer screen illuminating her face, eyes darting from article to article.

The family returned to Palm Beach for months of recovery, Lisa staying home with Jenna for a few weeks. Finally, on June 3, 2009, Florida Default Law Group (FDLG), the foreclosure mill law firm litigating on behalf of U.S. Bank, responded to the motion to dismiss. Count II, the "Re-establishment of Lost Note," had been removed. FDLG now maintained that its client found the note and the assignment of mortgage. They submitted them, along with a bundle of other affidavits and documents. Lisa finally possessed the raw materials to assess U.S. Bank's case. And she got right to it.

The newly found note was not endorsed in blank but directly endorsed from DHI Mortgage to JPMorgan Chase Bank. Kathy Harman, an assistant secretary at DHI Mortgage, signed the endorsement. In Lisa's view, U.S. Bank had to receive the endorsed note under the pooling and servicing agreement. But the chain of title stopped at Chase. The wrong entity was foreclosing. Furthermore, the mortgage assignment went directly from the assignor, "Mortgage Electronic Registration Systems, incorporated as Nominee for DHI Mortgage Company," to the assignee, U.S. Bank. Lisa made a mental note to Google “Mortgage Electronic Registration Systems” later, but she knew enough to see a fatal error. The assignment skipped a link in the chain. It should have gone from DHI Mortgage to JPMorgan Chase, with an additional assignment from JPMorgan Chase to U.S. Bank. But that was not what this assignment showed. It looked like whoever put these things together had no idea which entity belonged in which spot. One affidavit had asterisks wherever the name U.S. Bank appeared, and a handwritten footnote, “**Chase Home Finance LLC as-attorney-in-fact-for.”

U.S. Bank’s address was listed on the assignment as 3415 Vision Drive, Columbus, Ohio. Googling the address revealed it was actually the headquarters of Chase Home Finance, her mortgage servicer. How did two banks fit in the same headquarters? Then there was the date on the assignment: “Assignor has executed and delivered this Instrument on May 21, 2009.” That was three months after Lisa Epstein was served with foreclosure papers. According to this document, U.S. Bank had not yet been assigned the mortgage at the time they sued Lisa.

Here in Lisa’s hands was clear evidence of securitization FAIL, documented proof that the transactions on her mortgage were either improperly done or not done at all, with the assignment mocked up after the fact. Lisa rechecked the pooling and servicing agreement for her trust; like all of them, it stipulated that JPMorgan Chase had a ninety-day closing window back in 2007 to deposit the mortgage and note into the hands of U.S. Bank. The documents showed that U.S. Bank never got assigned the mortgage in time, meaning the securities based on her loan were invalid and unenforceable. And this poorly drafted cover-up was presented to a court, entered into the public record for everyone to see. Lisa laughed out loud for what felt like the first time in months.

Lisa also finally had actual names of people involved in these transactions. For example, there was Kathy Harman at DHI Mortgage, who endorsed her note to JPMorgan Chase. Lisa found a number for DHI Mortgage and tracked down Harman. “Hi, Kathy, my name is Lisa Epstein. I bought a mortgage from your company a couple years ago. I don’t know what’s going on here—I’m being sued by a bank. I don’t even know anything about U.S. Bank.”

“Mm-hmm.”

“I just got a copy of the note, and your name is on it. I’m just trying to get to the bottom of this—can you send me what you have in your file about me?”

Kathy Harman may have never received a call like this before. But after the initial bewilderment, she offered to fax Lisa all the information she could find on her mortgage, including screenshots from the computer system. “I hope this can help you,” Kathy said.

One screenshot showed that DHI Mortgage shipped the loan out to something called “Chase Alt-A Bulk” right after Lisa signed it (“Alt-A” is industry shorthand for a below-prime mortgage that isn’t quite a subprime loan). JPMorgan Chase “table-funded” the loan, supplying the funding up front and taking possession of the mortgage and note thereafter. Under Department of Housing and Urban

Development regulations, table funding actually had to be disclosed; Lisa never received any disclosure. More important, nothing in Kathy Harman's file included any reference to U.S. Bank, whose law firm managed to doctor up the assignment but not the promissory note, which was—by its own evidence—held by a different party.

The mortgage assignment, dated three months after the foreclosure filing, also had a bunch of names on it. Christina Trowbridge was listed as vice president and Whitney Cook as assistant secretary of the mysterious company known as Mortgage Electronic Registration Systems. The assignment included two witnesses, Zaher Gerges and Vladimir Buskarov. After their signatures came a statement from a notary public from Franklin County, Ohio, named Jennifer Jacoby, who attested that Christina Trowbridge and Whitney Cook "personally appeared" before her and "acknowledged that they executed the foregoing as its duly authorized officers." Underneath, in small type, there was this little notation: "Recording requested, prepared by and return to: Cirilo Codrington."

Of all the names on the assignment, Lisa figured she'd have the easiest time finding the real Cirilo Codrington, since that name was so unusual. Plus he wasn't just a witness; he prepared the incorrect, after-the-fact document. Maybe he could shed some light on its origins. So Lisa went to where presumably all private investigators start missing-persons searches these days: Facebook. When she typed in Cirilo Codrington, only one profile came up. The location: Panama City, Panama. Lisa sent Cirilo a friend request, not knowing whether someone in Panama would notice an unknown lady from Palm Beach, or what she would even do about it if he did. But Cirilo quickly replied with a confirmation. He then sent Lisa a private message: "Who are u?"

Before panic set in, Lisa pulled together a cover story. "Your name looks so familiar," she wrote back. "I was searching for someone else and saw your profile and something was triggered in my memory. Have you ever been to Florida or Washington D.C. area (VA and/or MD)?"

Fortunately for Lisa, she cast her net wide enough to find a connection. "Washington dc my dad used to live over there, his name is Bruce Antonio Codrington. I live in Panama and my aunts live in Landover Hills Maryland." "I used to live all over Washington D.C.!" Lisa replied. "In North Virginia and in Kensington, Maryland and Columbia, Maryand. Now I'm in Florida. Do you ever go by Cirilo besides here on Facebook?"

Lisa didn't get a response right away, so a few days later, she tried to pump more info out of her new Panamanian friend. "Hi Cirilo, by any chance did you used to work doing mortgage stuff? I'm just starting to work in the industry and I saw your name on a document and wondered if that was you! I mean, how many people have the same name as you do? Small world! How's life in Panama these days? Lisa."

Thirteen minutes later, Cirilo messaged back. "Sure I work for Firm Solutions Panama it has to do with foreclosures I am the training manager."

Maybe private detective work was Lisa's calling, not nursing. She later tried to get Cirilo interested in an interview about mortgage documents with a local paper; she would be the interviewer, of course. Cirilo replied, "I will let you know promptly," but never followed up.

But Firm Solutions Panama was enough of a lead. The company billed itself as "the premier legal and financial support services provider in Panama." They seemed to work directly with foreclosure mills, providing and processing documents. Like outsourcing in American manufacturing, law firms apparently outsourced document creation, which would go from the doc shop in Panama to wherever the documents needed to be signed. Lisa found one Facebook page where Firm Solutions and Florida Default Law Group, the firm in her case, were connected.

Why would a law firm employ an offshore document processor in Panama unless the documents had never been created initially? These were basic forms, to be completed for any mortgage transfer. It was obvious to Lisa that this was all a weak attempt to paper over inattention to proper procedure during the go-go housing bubble. Mortgage originators sold $1.9 million worth of loans every minute in the peak bubble years; they had no time or inclination for paperwork. These fabrications covered up the original sin: nobody established the chain of title properly, on perhaps millions of mortgages.

Cirilo seemed nice enough to Lisa. She figured he was just a cog in the Great Foreclosure Machine, a line worker, someone told what to do and when to do it. If it wasn't so sad it would be comical: day by day, unsuspecting Central Americans put on ties and dress slacks, went to the office, and nonchalantly manufactured the raw materials in U.S. foreclosure cases, unaware of their central role in what increasingly looked to Lisa like a criminal enterprise. How many families were thrown onto the street every day because of what someone in Panama did for a living?

Lisa had one more question. What was Mortgage Electronic Registration Systems?