

*County Land Records, Mortgage Electronic
Registration Systems and Foreclosure:
AB 1321*

**Office of Assessor-Recorder Phil Ting
Ben Weber
April 29, 2011**

Foreclosure Process in the Assessor-Recorder's Office

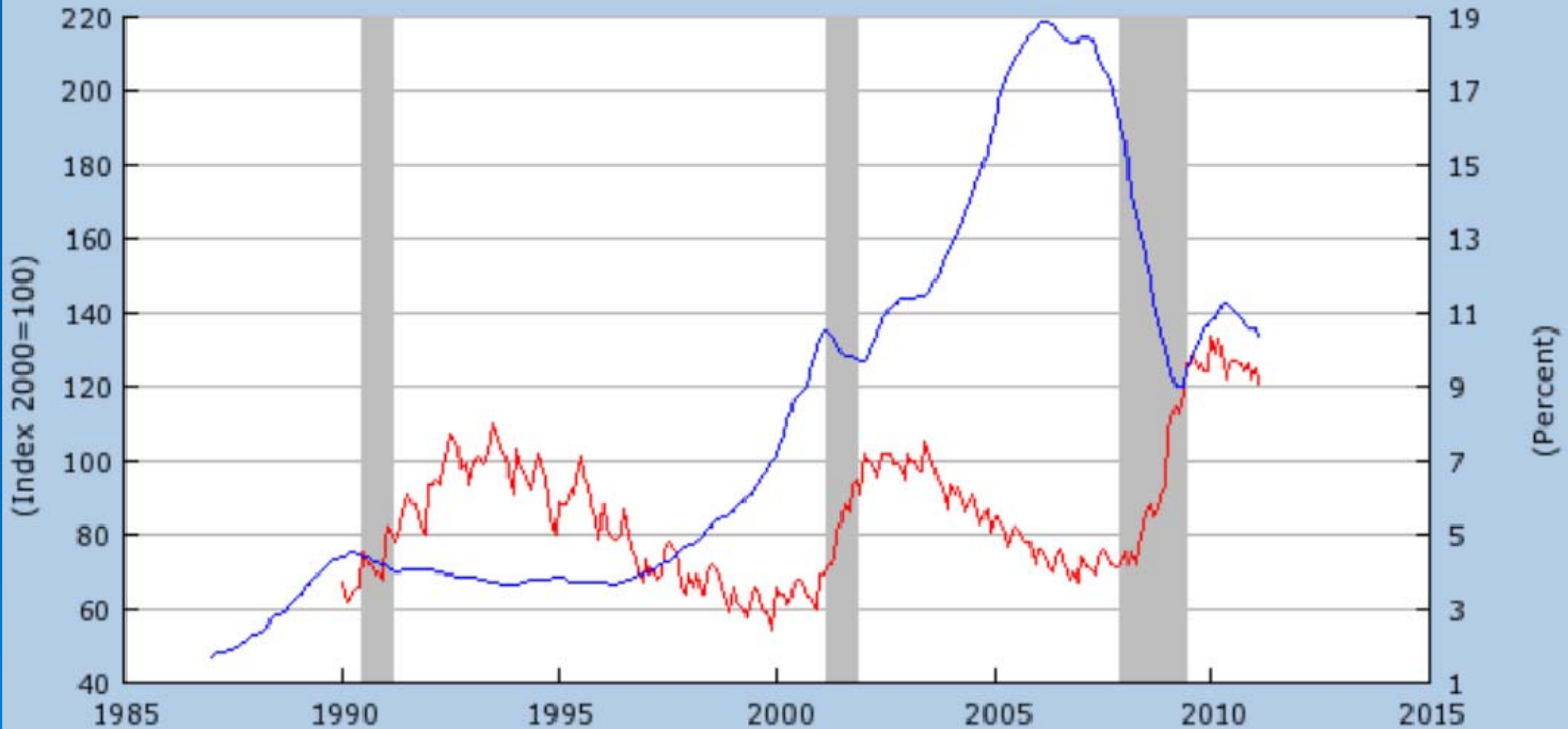
- House is sold, three party deed of trust is recorded with trustor (borrower), beneficiary (lender), trustee (party with power of sale) listed
- Transfer tax paid on sale price and property is assessed
- After default, three documents in foreclosure process are recorded: default notice, sale notice, trustee deed
 - Older base year assessed values will likely see an increase after foreclosure
 - If the property goes back to the lender, the transaction is exempt from transfer tax

California Housing Uncertainty

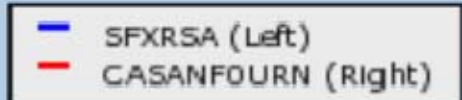
- There are approximately 277,000 homes in California going through the foreclosure process
- An estimated 1.8 million California residents are underwater on their mortgage
- California is sixth in negative equity with 35% of its borrowers underwater, behind FL, NV, and AZ with over 50%
- Negative equity is one of the best indicators of foreclosures so can we expect another 1.5 to 1.6 million in foreclosures?

San Francisco Home Price Index and Unemployment Rate

Home Price Index for San Francisco, California (SFXRSA)
Unemployment Rate in San Francisco County/city, CA (CASANFOURN)



Shaded areas indicate US recessions.
2011 research.stlouisfed.org



Foreclosure Prevention Activity in San Francisco

- Our office send letter residential properties with notices of default recorded referring borrowers to housing counseling agencies
- Don't Borrow Trouble Program
- San Francisco Fair Lending Working Group
- Mortgage Modification Consultant Regulation

	2006	2007	2008	2009	2010
DEFAULT NOTICE	817	1371	1804	2815	2337
SALE NOTICE	306	657	990	1724	2063
TRUSTEE DEEDS	81	286	667	713	877

How and why MERS was created?

- About 15 years ago the mortgage industry wanted to expedite the transfer of mortgages between entities so they could be sold and resold on Wall Street.
- To track a mortgage sold multiple times and avoid paying a recording fee for each assignment, mortgage lenders created the Mortgage Electronic Registration System or MERS.
- Recording in MERS was voluntary for each member and MERS also offered foreclosure services on behalf of its members as “nominal beneficiary”

WHEN RECORDED RETURN TO:
METROCITIES MORTGAGE, LLC
ATTN: DOCUMENT CONTROL
15301 VENTURA BLVD. SUITE D300
SHERMAN OAKS, CALIFORNIA 91403

DOC- 2007-1331173-00
Act 11-FIDELITY NATIONAL Title Company
Friday, FEB 02, 2007 08:00:00
Ttl Pd \$57.00 Nbr-0003168303
REEL J320 IMAGE 0022
0J1/JL/1-17

MERS MIN NO. 100034200067491676

Lot 4 H, Block 594 [Space Above This Line For Recording Data] LOAN NO. 21078142
Pacific Ave. **DEED OF TRUST**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **JANUARY 22, 2007**, together with all Riders to this document.

(B) "Borrower" is

[REDACTED], AN UNMARRIED WOMAN AND [REDACTED], AN UNMARRIED MAN, AS TENANTS IN COMMON

Borrower is the **trustor** under this Security Instrument.

(C) "Lender" is

METROCITIES MORTGAGE, LLC

Lender is a **LIMITED LIABILITY COMPANY**

organized and existing under the laws of **DELAWARE**

Lender's address is **15301 VENTURA BLVD. SUITE D300, SHERMAN OAKS, CA 91403**

Lender is the **beneficiary** under this Security Instrument.

(D) "Trustee" is **FIRST AMERICAN TITLE INSURANCE CO.**

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the **beneficiary** under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888)679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated **JANUARY 22, 2007**

The Note states that Borrower owes Lender

FIVE HUNDRED TWENTY THOUSAND AND 00/100

Dollars. (U.S. \$ **520,000.00**) plus interest. Borrower has promised to pay this debt in regular

Periodic Payments and to pay the debt in full no later than **FEBRUARY 1, 2037**

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, and prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

Adjustable Rate Rider

Condominium Rider

Second Home Rider

MERS and the Loss of Transparency

- Numerous court cases in New York, Massachusetts, and California have ruled against MERS and its members business practices :
 - This month the U.S. Southern District Bankruptcy Court ruled that a U.S. Bank instituted foreclosure was deficient because U.S. bank had not recorded its interest, was not the beneficiary of record and foreclosed prior to having an interest in the note.
 - Last fall a bankruptcy court ruled that MERS does not have the legal right to foreclose because MERS “has no interest in the note to transfer.”
 - These rulings and others confirm that MERS’ business practices have created a mess of real property record in counties across the country compromise title.
 - In a Feb 2011 notices to its members MERS advised: “Assignments out of MERS’ name should be recorded in the county land record, even if state law does not require such recording.”

MERS in San Francisco County

- MERS recorded an average of approximately 6,700 deeds of trust each year in San Francisco from 2007 to 2010
- MERS deeds of trust are usually transferred between two and four times
- A one page assignment currently cost \$11 to record and MERS members have avoided, conservatively \$134,000 per year in fees
- Members of the public have asked to discover who owns their mortgage and just this week our office was named in a quiet title case involving MERS.

Our Response to the Problem

- Assembly Bill 1321 (Wieckowski) sponsored by Assessor-Recorder Phil Ting addresses the problem by:
 - Requiring that all mortgage assignments are recorded within 30 days of their execution
 - Preventing a notice of default from being recorded until 45 days after any deed of trust or assignment has been recorded
 - Provide consumers with better transparency about who owns their debt.

Two Unsuccessful Bills in this California Legislative Session

- AB 935 (Blumenfield) sought to charge a foreclosure fee of \$20,000 to compensate municipalities for the total estimate costs of foreclosure
- SB 729 (Leno and Steinberg) attempted to compelled foreclosing entities to provide written notice to borrowers who did not qualify for a loan modification, limit dual tracking,

Other Issues

- Real estate recording law established at the state level
- 50 State Attorneys General negotiating with mortgage industry
- Discussion about reforming Fannie and Freddie