

Our first story on the Massachusetts ruling:

[Mass. court ruling has potential to void thousands of foreclosures - Wash Po](#)

Banks lose pivotal Massachusetts case

[Source - Bloomberg](#)

U.S. Bancorp and Wells Fargo & Co., in a ruling that drove down bank stocks, lost a foreclosure case before Massachusetts's highest court that will guide lower courts in that state and may influence others in bank disputes involving state real-estate law.

The state Supreme Judicial Court yesterday upheld a judge's decision saying two foreclosures were invalid because the banks didn't prove they owned the mortgages, which he said were transferred into two mortgage-backed trusts without the recipients' being named.

Joshua Rosner, an analyst at the New York-based research firm Graham Fisher & Co., called the decision "a landmark ruling" showing that at least in Massachusetts a mortgage "must name the assignee to be valid."

"This is likely to open the floodgates to more suits in Massachusetts and strengthens cases in other states," Rosner said.

"We agree with the judge that the plaintiffs, who were not the original mortgagees, failed to make the required showing that they were the holders of the mortgages at the time of foreclosure," Justice Ralph D. Gants wrote for a unanimous court.

Although the decision was issued by a Massachusetts state court, it will be used by homeowners in foreclosure cases in other states, said Matthew Weidner, a St. Petersburg, Florida, lawyer who represents such homeowners.

- **“This is a very detailed, very specific indictment of an entire industry’s practices and procedures, and it’s an indictment that is going to send shockwaves throughout the entire mortgage, foreclosure, real-estate servicing industry,” he said.**

“In Massachusetts, where a note has been assigned but there is no written assignment of the mortgage underlying the note, the assignment of the note does not carry with it the assignment of the mortgage,” Gants wrote.

- **The court rejected the banks’ request to apply the decision only to future foreclosures if they lost.**
- **In a concurring opinion, Justice Robert J. Cordy said he was struck by “the utter carelessness with which the plaintiff banks documented the titles to their assets.”**

“All that has changed is the plaintiffs’ apparent failure to abide by those principles and requirements” in the law “in the rush to sell mortgage-backed securities,” Gants wrote.

Banks Lose Pivotal Foreclosure Case in Massachusetts High Court

By Thom Weidlich - Jan 7, 2011 8:44 AM PT



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Noah Berger/Bloomberg

US Bancorp and Wells Fargo & Co. lost a foreclosure case in Massachusetts's highest court that will guide lower courts in that state and may influence others in the clash between bank practices and state real estate law. The

US Bancorp and Wells Fargo & Co. lost a foreclosure case in Massachusetts's highest court that will guide lower courts in that state and may influence others in the clash between bank practices and state real estate law. The Photographer: Noah Berger/Bloomberg



Jan. 10 (Bloomberg) -- Joshua Rosner, an analyst at Graham Fisher & Co., talks about the implications of a court ruling against U.S. Bancorp and Wells Fargo & Co. in a Massachusetts foreclosure case. The state Supreme Judicial Court upheld a judge's decision saying two foreclosures were invalid because the banks didn't prove they owned the mortgages, which he said were transferred into two mortgage-backed trusts without the recipients' being named. Rosner speaks with Deirdre Bolton on Bloomberg Television's "InsideTrack." (Source: Bloomberg)

[US Bancorp](#) and Wells Fargo & Co. lost a foreclosure case in [Massachusetts's](#) highest court that will guide lower courts in that state and may influence others in the clash between bank practices and state real estate law. The ruling drove down bank stocks.

The state Supreme Judicial Court today upheld a judge's decision saying two foreclosures were invalid because the banks didn't prove they owned the mortgages, which he said were improperly transferred into two mortgage-backed trusts.

“We agree with the judge that the plaintiffs, who were not the original mortgagees, failed to make the required showing that they were the holders of the mortgages at the time of foreclosure,” Justice Ralph D. Gants wrote.

Wells Fargo, the fourth-largest U.S. lender by assets, dropped \$1.10, or 3.4 percent, to \$31.05 at 11:41 a.m. in [New York](#) Stock Exchange composite trading. US Bancorp declined 28 cents, or 1.1 percent, to \$26.01.

The 24-company [KBW Bank Index](#) fell as much as 2.2 percent after the decision was handed down.

Claims of wrongdoing by banks and loan servicers triggered a 50-state investigation last year into whether hundreds of thousands of foreclosures were properly documented as the housing market collapsed. The probe came after JPMorgan Chase & Co. and Ally Financial Inc. said they would stop repossessions in 23 states where courts supervise home seizures and [Bank of America Corp.](#) froze U.S. foreclosures.

Teri Charest, a spokeswoman for Minneapolis-based US Bancorp, didn't immediately return a call for comment. [Jason Menke](#), a spokesman for San Francisco-based Wells Fargo, didn't have an immediate comment.

Foreclosures Voided

Charest previously referred questions on the case to the loan servicer for both mortgage-backed trusts, American Home Mortgage Servicing Inc. Philippa Brown, a spokeswoman for Coppel, Texas-based American Home Mortgage, didn't have an immediate comment.

In March 2009, Massachusetts Land Court Judge Keith C. Long [voided the foreclosures](#), finding that the mortgage transfers were done months after the house sales. In October of that year, Long declined the banks' request to reverse that ruling after they argued that the documents that bundled together the mortgages had transferred those instruments to them.

Today's court decision held out the possibility of securitization documents properly transferring mortgages.

Such documents, along with “a schedule of the pooled mortgage loans that clearly and specifically identifies the mortgage at issue as among those assigned, may suffice to be proof that the assignment was made by a party that itself held the mortgage,” Gants wrote. “However, there must be proof that the assignment was made by a party that itself held the mortgage.”

The case is *U.S. Bank v. Ibanez*, 10694, Supreme Judicial Court of Massachusetts (Boston). The lower-court cases are *U.S. Bank National Association v. Ibanez*, 08-Misc-384283, and *Wells Fargo Bank NA v. LaRace*, 08-Misc-386755, Commonwealth of Massachusetts, Trial Court, Land Court Department (Boston).

To contact the reporter on this story: Thom Weidlich in [Brooklyn](#), New York, federal court at tweidlich@bloomberg.net.