

## Whose House is It Anyway?

by Joseph P. McCaffery

During the past few weeks we've watched a new trend emerge. Banks are walking away from foreclosed properties, leaving neighborhoods devastated by abandoned homes and placing homeowners, who thought their property had been taken away, with financial obligations often beyond the deficiencies of their loans.

Following the release in July by Northwestern University, University of Chicago and European University economists of a new study that indicates as many as 26 percent of homeowners have "strategically" defaulted on their homes, news and talk programming, as well as print editorials, raised numerous ethics questions about the findings. Around the same time, a handful of news outlets around the country, including *The New York Times*, were reporting on the devastating results of bank walk-aways, which appear to have received far less scrutiny regarding ethics.

Our firm has successfully navigated clients with more than \$50 million in outstanding mortgage debt through the foreclosure process with no personal deficiencies. However, we recently began representing a client whose home, which once appraised at \$800,000, was foreclosed on 9 months ago but the bank did not secure the property. When our client first contacted us on referral from one of our other foreclosure clients, we found the home with unlocked doors; light fixtures, utility meters, appliances and some plumbing fixtures – even one of three toilets – removed; water damage and mold. All of this was on a nearly half-acre lot that hadn't been mowed or weeded in nearly a year.

Beyond the once-stately property being a danger and eyesore in the community, we discovered the title remained in our client's name, making him liable for any potential ordinance or code violations. Fortunately, working with a team of property managers, the home was quickly secured and restored to current market value, likely at far less cost than it would have been after another Illinois winter.

The property title is being placed in trust awaiting the bank's next steps, allowing our client to finally, truly walk away. However similar stories, with far less successful endings, are being told in [Wisconsin](#), [Ohio](#), [Michigan](#) and other states across the nation. Some municipalities are considering ordinances to force banks to take title and the responsibility that goes with it, but enforcement remains an issue.

### Frauds and Scams, or Helping Hands?

Most people are aware that the mortgage crisis has spurred a new industry for opportunistic scam artists preying on homeowners who have made the decision to walk away from homes they can no longer afford, or that don't make economic sense to maintain. Some of these organizations are facing Attorneys General suits and investigations, and class-action suits from their former clients who paid up-front fees of nearly \$1,000 for such things as a "Foreclosure Protection Kit" that includes "a personalized cease and desist letter addressed to your lender to stop harassing phone calls."

How does one separate the wheat from the chaff? One way is the fee itself. [The Illinois Mortgage Rescue Fraud Act](#) prohibits companies from requiring upfront payment from consumers for a list of services, most of which the homeowner could perform his or her self.

One property management firm we can recommend is [Wolf Consultants, Inc.](#) This company provides its services to qualified distressed homeowners at *no charge*. Its services are tied strictly to property management and maintenance, including monitoring the title and tax status of properties that have been foreclosed upon. Its newly launched Website provides a simple application for homeowners in distress, as well as a form for community members to report abandoned properties in their neighborhoods – properties that, like our client's former home, may have been abandoned by the foreclosing lender and have become a hazard in the community.

### Legal Representation

You don't need legal representation to talk with your banker, but your banker's attorney is another story. It's always risky to represent yourself in a legal action. If you are being sued by your lender, there are ways through the court system to reduce or eliminate any personal deficiency. And as the stories of bank walk-aways surface throughout the country, it's important to have [experienced legal representation](#) to protect you in both the short and long term.

### Do "Routine" Immigration Checks Cross the Line?

*Washingtonpost.com reported the Obama administration is expanding a program this summer to make the checking of immigration status a routine measure during local jail bookings. The result, it's suggested, could be a tenfold increase in illegal immigrants identified for deportation.*

*Our hands-on experience suggests that this practice has been in effect for at least some weeks prior to the administration's May 19 announcement, and that in some areas, police are questioning immigration status during minor violations, such as a traffic stop. Even passengers, not subject to arrest for the traffic violation, are being questioned and held for potential immigration violations.*

**Our recommendation: Don't answer immigration status questions without the guidance and/or presence of an attorney.**

*While the Post reports Homeland Security Secretary Janet Napolitano "has made it 'very clear' that her top priority is deporting illegal immigrants who have committed crimes," the practice we've seen also targets many who have committed no crime, and carry valid drivers' licenses issued by their state of residence. Furthermore, since the program involves matching fingerprints from all bookings in local jails with immigration databases maintained by Homeland Security, it is designed to identify what authorities call "criminal aliens." However, since it's based on arrests and not convictions, and these arrests are being made for such so-called "violations" as being a passenger during a vehicle stop, it appears to be a guise for a general round-up of anyone who speaks with a foreign accent. We think this crosses the line.*

### JPMA Welcomes...

**Rebecca Volk**, a juris doctorate candidate at Loyola University Chicago School of Law (May 2011), has joined JPMA as a law clerk. Rebecca holds an undergraduate degree in political science from Marquette University, Milwaukee. She has previous experience as a legal secretary for a Milwaukee law firm and has worked for the Milwaukee County Executive Office.

