

Servicer Authority in Foreclosure: a Weak Link Banks Hope You Miss

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In most foreclosure cases, the name on the lawsuit is not the party doing the work. It's the servicer. But do they really have the authority to foreclose? We'll explain.

The servicer sends the notices. The servicer files the affidavits. The servicer's employees testify in court. The servicer's lawyers push the case forward. Servicers like shellpoint are trying to foreclose.

And yet, one of the most important questions is rarely asked clearly:

What gives the servicer the legal authority to do any of that?

This is not a technical question. It is a foundational one.

If the servicer cannot prove authority, the entire case begins to weaken.

The Illusion of Authority

Servicers operate with an assumption built into the system:

If they show up and say they are acting for the lender, the court will accept it.

And many times, that is exactly what happens.

But that assumption is not the law.

The law requires proof.

Not labels. Not titles. Not job descriptions.

Proof.

Who Is the Servicer, Really?

A servicer is typically a company hired to manage the loan.

That may include:

- collecting payments
- maintaining records
- communicating with borrowers
- handling default and foreclosure processes

But here is the key point:

The servicer is not automatically the creditor.

And what most people don't realize is the servicer is actually keeping all the money they collect!
There is no real creditor entitled to receive these funds so they just keep them; all by design!!

And more importantly:

The servicer does not automatically have the right to enforce the debt.

That right must come from somewhere.

The Missing Link: Authority

For a servicer to act in a foreclosure case, it must have authority from the party that actually has the right to enforce the debt.

This usually means one of two things:

- the servicer is acting on behalf of the creditor
- the servicer has been granted authority through a servicing agreement or similar document

But here is where the problem starts.

In many cases, that authority is assumed—but not proven.

What the Servicer Must Prove

If the case is challenged properly, the servicer should be required to prove:

- who the actual creditor is
- that the creditor has the right to enforce the debt
- that the servicer has authority to act on behalf of that creditor
- that the authority existed at the time the foreclosure was filed

This is not optional.

These are basic elements of the claim.

Why This Matters More Than Most Defenses

Many homeowners focus on issues like payment disputes, loan modifications, or hardship.

Those may matter—but they are not usually what wins the case.

What wins cases is forcing the other side to prove what they assumed nobody would challenge.

Servicer authority is one of those issues.

The Affidavit Problem

Most foreclosure cases rely heavily on affidavits from servicer employees.

These affidavits typically claim:

- the borrower is in default
- the plaintiff has the right to enforce
- the amount due is accurate

But look closely at what is missing.

* Where is the proof of authority?

* Where is the document showing the servicer was authorized to act?

* Where is the foundation for that knowledge?

Often, it is not there.

The Business Records Shortcut

Servicers often try to rely on "business records" to support their claims.

But those records frequently include data created by prior servicers or outside entities.

That raises serious questions:

- Does the witness have personal knowledge?
- Were the records verified when transferred?
- Is the foundation sufficient for admissibility?

If the answer is unclear, the evidence is weak.

The Chain of Authority Problem

Even if a servicer claims authority, the next question is:

Where did that authority come from?

That creates a chain of authority that must be proven.

For example:

- The creditor must have the right to enforce
- The creditor must have granted authority to the servicer
- The servicer must be acting within that authority

If any link in that chain is missing, the claim weakens.

Why Courts Sometimes Miss This

Courts see thousands of foreclosure cases.

They become routine.

Servicer affidavits are accepted as standard practice.

But routine does not equal proof.

And when the issue is raised properly, courts often take a closer look.

What Homeowners Should Be Asking

If you are facing foreclosure, you should be asking:

- Who is the actual creditor?
- What proof shows that party has the right to enforce?

- What document gives the servicer authority?
- Was that authority in place when the case was filed?

These are not complicated questions.

But they are powerful ones.

How This Fits Into a Winning Strategy

Servicer authority is rarely a standalone defense.

It works best when combined with:

- lack of standing
- chain of title defects
- weak business records
- statute of limitations issues

Together, these issues force the case back to its foundation.

And that is where many foreclosure cases begin to fall apart.

The LivingLies Approach

The goal is not to argue everything.

The goal is to identify the points where the other side must prove its case—and where that proof is weakest.

Servicer authority is one of those points.

Because it sits at the intersection of:

- standing
- evidence
- credibility

And when those elements are weak, the entire case is exposed.

Conclusion

Servicers do not win foreclosure cases just by showing up.

They must prove authority.

They must show where that authority came from.

And they must support it with admissible evidence.

If they cannot do that, the case is not as strong as it appears.

Do not assume authority.

Make them prove it.

Need Help Reviewing Your Foreclosure Case?

If you are facing foreclosure, do not rely on assumptions. Get help reviewing the documents, the claimed transfers, the alleged servicer authority, and the missing money trail.

LivingLies helps homeowners and attorneys identify the gaps in the foreclosure claim and build evidence-based defenses. YOUR HOME IS YOUR CASTLE WE HELP YOU DEFEND IT

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Internal Resources

- [Lack of Standing in Foreclosure](#)
- [Servicer Dirty Tricks](#)

Frequently Asked Questions

Can a servicer foreclose without owning the loan?

Only if it can prove authority from the party entitled to enforce the debt.

What proves servicer authority?

Typically a servicing agreement or similar document showing authorization.

Are servicer affidavits enough?

Not by themselves. They must be supported by admissible evidence.