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FORECLOSED

In *Foreclosed*, Chris Odinet gives voice to the stories of homeowners who have been neglected, particularly those facing foreclosure and deep financial distress. The book reveals the powerful and often invisible mortgage servicing industry, the tremendous discretionary power it wields over the housing lives of most Americans, and the servicing problems that still persist today. In doing so, it unveils a quiet and dangerous market shift in mortgage servicing – namely, an ongoing move toward a shadow banking sector where regulation is weak – that threatens the stability of our housing finance system. Ultimately, the book demonstrates how the law does not afford homeowners the protection most think and how regulation of these mortgage middlemen remains weak. *Foreclosed* should be read by anyone concerned with the state of housing and homeownership in the United States.

Christopher K. Odinet is an associate professor of law and an affiliate associate professor in entrepreneurship at the University of Oklahoma. Professor Odinet is a national expert on real estate transactions finance law, and consumer protection.

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MORTGAGE SERVICING AND THE HIDDEN
ARCHITECTURE OF HOMEOWNERSHIP IN AMERICA

CHRISTOPHER K. ODINET

University of Oklahoma (Norman, Oklahoma)



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*To my husband Dub, without whom nothing worthwhile
was ever accomplished.
—CKO*

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Preface

I was in law school at the time of the financial crisis. Although I had little understanding of financial markets and the law that buttressed them, I knew that what was happening outside the walls of my classroom was significant. More importantly, I knew that real estate was at its center. There was something about property – about the home – that made all this happen. And perhaps it was this simplistic view that led me to be a real estate lawyer. During my time at the law firm, I learned about the complex structuring of real estate transactions – everything from structured finance and credit underwriting to foreclosure and bankruptcy. My practice, however, was mostly focused on commercial real estate transactions, and I knew that it was on the residential side that the crisis originated. So, I began to spend time learning more about how residential closings worked and how money moved around in the home loan market. I was particularly interested in people’s stories. I was fascinated (and often horrified) by the struggles of American homeowners in the aftermath of the crisis. About this time, it was hard to scroll through Facebook or turn on the television without reading headlines about people losing their homes or about whole neighborhoods turning to blight as a result of foreclosure. I often wondered: “How was this happening?” “Why isn’t someone doing something to help these people?” “Are they to blame or is there more to it?”

It wasn’t until my first year on the faculty in the fall of 2013 that I zeroed in on the subject of this book. I was teaching a seminar on housing and community development at the Southern University Law Center (SULC) as a first-year assistant professor. We focused a great deal on the 2008 crisis and its aftermath because these topics were still so timely. Every week, I would have students bring news stories to share with the class. Midway through the semester, one student shared a story published in the *New York Times* that chronicled the use of bank contractors in kicking homeowners out of their homes prior to foreclosure. Many of the tales were deeply disturbing, including individuals having their doors broken down and their children’s belongings thrown out on the street. Another student shared the tale of a distressed, elderly couple seeking a loan modification from their bank so they

could stay in their home, only to be given the endless runaround and ultimately forced to start again at square one. As the class collectively dug deeper into these stories, we became interested in the all-important industry that occupies the space between homeowners and the ultimate owners of their home loan. These are the mortgage servicers – the middlemen. My fascination with mortgage servicers began a multiyear project of coming to more deeply understand these firms and the key position they occupy in American housing finance. And, through a series of events, my captivation with these hidden players led me to write this book.

As this is the first book I've ever written, I quickly learned that the process would be more difficult than I had originally thought. Needless to say, in any such monumental endeavor one acquires many debts – and acquire them I most certainly did. I acknowledge them completely and am confident that I could never accurately name and duly thank the many individuals who have played such an enormous part in this effort. I have been blessed with many wonderful friends and mentors in the legal academy who have provided extensive comments and critiques, either in conversation or in writing, to various chapters of this project. These include Wilson Freyeremuth, Adam Levitin, Kathleen Engel, Tanya Marsh, Timothy Mulvaney, Pamela Foohey, Kellen Zale, Gregory Stein, Andrea Boyack, Sean Sullivan, Andy Grewal, Anya Prince, Ann Lipton, Gregory Shill, David Fagundes, Tara Twomey, Peter Carrozzo, Christopher Bradley, Stephen McJohn, Kate Sablosky Elengold, Judith Fox, Matthew Lambert, and Jeff Sovern.

Several other people, however, merit particular acknowledgment. First, I give special thanks to my mentor and friend Joseph William Singer of the Harvard Law School, who gave me the confidence and support early on when the idea for this book was just a draft law review article. I join the many property law professors in the United States and abroad who found their voice in the legal academy under his guiding hand. In figuring out how to write a legal academic book, I also thank Ronald Krotoszynski of the University of Alabama School of Law for his sage advice, candor, and good counsel. I give thanks to Thomas Cox, a skillful banking attorney turned consumer rights lawyer who single-handedly discovered the robo-signing foreclosure scandal in 2010 and who so graciously gave me expert comments on numerous chapters of this book. The superb staff of the National Consumer Law Center, with whom I have had the pleasure of working with over these past few years, are also due acknowledgment – particularly Tara Twomey and Lauren Saunders.

I am especially indebted to SULC and Chancellors John K. Pierre and Freddie Pitcher Jr., both of whom provided me with generous research support and funding throughout the process. I give similar thanks to the University of Iowa College of Law and Dean Gail Agrawal who provided me with research support during my time as a visiting faculty member in the fall of 2017. And of course, I thank Joseph Harroz, the dean here at the University of Oklahoma College of Law (OU), for his support of my project. Relatedly, so much of the heavy lifting related to this endeavor is due to the hard work, patience, and talents of Michael Waters, editorial advisor for the OU

law journals, Elaine Bradshaw, assistant director at the OU Law Library, and Leslee Roybal, OU faculty support legal assistant. I also thank my wonderful current and former colleagues at SULC, Iowa, and OU for helping me sharpen my arguments and better define the project's goals.

I presented portions of this book and had the benefit of helpful feedback at the University of Cambridge; Texas A&M University School of Law; the Harvard University Law School; the University of Montana School of Law; the Washburn University School of Law; the Southeastern Association of Law Schools Conference; the American Association of Law Schools Annual Meeting; the American Bar Association's Real Property, Trust, and Estate Law Spring Symposium; and the Association of Law, Property, and Society Conference, among other gatherings. I received exceptional suggestions and comments at these various venues from Lisa T. Alexander, Thomas W. Mitchell, Christopher Serkin, Bethany Berger, Nestor Davidson, Sarah Schindler, David Dana, Patricia McCoy, Rashmi Dyal-Chand, Nadav Shoked, Audrey McFarlane, Marc Roark, Jim Kelly, Tim Iglesias, John Lovett, Erin Ryan, Julie Patterson Forrester, Kristen Barnes, Steve Clowney, Asmara Tekle, Sally Richardson, Jamila Jefferson-Jones, Julie Hill, Matthew Bruckner, Melissa Lonegrass, Blake Hudson, Donald Kochan, Drew Dawson, Kara Bruce, Shelby Green, Monika Ehrman, Katheleen Guzman, Melissa Mortazavi, Rebekah Taylor, Donald Bogan, Jonathan Forman, Karen Lynch-Shally, Peter Byrne, Juanita Roche, and Gregory Alexander.

As with all projects, not everyone who is thanked in these pages agreed with my ideas or views. I endeavored to seek the advice of individuals with varying ideologies and points of views, all of which helped enrich the project and forced me to rethink some of my own beliefs about the financial crisis and mortgage regulation generally. To that point, all views and errors in this book belong to me alone.

I also thank my bright and hardworking research assistants, Robert Davidson (Iowa Class of 2018), Glenn Kats (Iowa Class of 2019), and Zachary Harrison (SULC Class of 2019). They provided invaluable assistance and attention to detail at every step of the way. At Cambridge University Press, I am thankful to Matt Galloway, who championed this project and helped shepherd the work (and me) through the publication process. I further had the benefit of comments from several anonymous peer reviewers in the fields of property, commercial and consumer transactions, and law and finance. Kathleen Engel and Patricia McCoy's tremendous work on the subprime mortgage crisis, Tara Twomey and Adam Levitin's research on the economics of mortgage servicing, and Matthew Desmond's illuminating book on poverty and the American landlord-tenant system all served as inspiration for this project, although I could never hope to match the significance of their contributions.

And last but not least, I thank my husband, McHenry "Dub" Lee. This book is for you. Thank you for always being there for me. And for cooking me dinner every night.

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