Debtors' Rights in the Age of Mass Securitization

By

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This dissertation is dedicated to the memory of Thomas Zahorik, whose brilliance continues to light my path.

Abstract

Applying mixed methods analysis to a case study of mortgage foreclosure in Cook County, Illinois between 1992 and 2006, I examine how lawyers, judges, and market actors reshaped mortgage foreclosure to increase housing precarity for borrowers at risk of foreclosure. Past research on mortgage foreclosure has focused on foreclosure as an outcome, a risk factor, or a characteristic of place and often draws a straight line from lending decisions or missed payments to residential displacement. This research examines foreclosure as a socially emergent and highly variable process, and argues that these variations affect residential precarity, credit market structure, court systems organization, and borrowers' substantive legal rights and material wellbeing.

Chapter 1 theorizes mortgage foreclosure as a nexus connecting macro-level financialization to the precarity experienced by struggling homeowners. The financialization of the American economy has had important implications for household well-being, but the mechanisms connecting financialization and precarity have not been fully identified. This chapter asks (1) how mortgage securitization, a key technology of financialization, enabled new practices in the collection of residential mortgage debt; and (2) how these new practices impact housing precarity among homeowners at risk of foreclosure. To answer these questions, this chapter traces the evolution of mortgage foreclosure in Cook County, Illinois, using statistical analysis of court records and process tracing interviews with key participants. I find that as mortgage securitization attenuated social relationships between lenders and borrowers, foreclosure became more common and loan administrators and their attorneys worked to reduce costly borrower protections, directly increasing both the likelihood and speed of displacement for homeowners at risk of foreclosure.

Chapter 2 identifies county judges as housing market intermediaries that shape subprime lending markets through their management of foreclosure litigation. While studies have examined how states' lawmaking and enforcement apparatuses shape housing markets, local court systems and civil judges remain underexamined despite their critical role in enforcing mortgage contracts through foreclosure. However, the subprime mortgage boom of the 1990s and 2000s increased market actors' demands for courts' foreclosure litigation services even while court systems experienced chronic budget austerity. This chapter examines how resource-constrained judges developed the capacities for mass foreclosure required by the subprime mortgage industry, and how these capacities were shaped by courts' dependence on foreclosure litigation fee revenue. It asks (1) how local courts structure high-risk mortgage markets, and (2) how courts' fee dependency affects mortgage markets and housing precarity. Examining foreclosure in Cook County, Illinois between 1993 and 2005, I find that judges changed court processes and adjudication strategies to retain foreclosure fee revenue. These changes fast-tracked mortgage foreclosure, which accelerated residential displacement, increased subprime lending activity, and intensified housing precarity in Cook County.

Chapter 3 examines the strategies that high-volume law firms used to speed up foreclosure litigation in Cook County, and the critical role foreclosure speed played in securing future business for these law firms. If financialization has led the corporate sector to prioritize profit through financial channels rather than the trade of goods and services, how has this shift affected foreclosure litigation strategies and the function of the real estate market? This research breaks new ground by testing anecdotal accounts that high-volume foreclosure firms prioritize foreclosure speed over other litigation goals. I find that firms completing foreclosures more quickly subsequently received more foreclosure litigation business. Further, I examine two

strategies disproportionately used by high-volume foreclosure firms: filing foreclosures in federal court and using the Mortgage Electronic Registration System as a generic plaintiff. My analysis demonstrates that these strategies created uncertain legal outcomes that threaten both the stability of real estate transactions of foreclosed property and the function of the real estate market itself.

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Introduction

This work theorizes mortgage foreclosure as a socially emergent process connecting macro-level market structures to an array of downstream consequences for homeowners. Foreclosure transfers risk from industry actors onto households through forced residential displacement, making it a critical link between markets and housing precarity. In this research, the risk shift between mortgage industry actors and households is primarily conceptualized and measured as the speed of residential displacement or the duration of the foreclosure litigation processes. In the United States, residential homeowners generally have the right to possess and occupy their homes during the entirety of the foreclosure process without making further mortgage or rent payments. The longer the foreclosure process lasts, the more "free housing" the defaulted mortgage borrower receives. For homeowners, this safety net is a right secured by their legal and social status, independently of their economic position. However, the social safety net provided by the foreclosure process also creates significant costs for mortgage industry participants. Mortgage servicers, who administer loan payments, are required to make up borrowers' deficiencies to investors and tax authorities from the time of the initial delinquency until the end of the foreclosure process (Levitin and Twomey 2011). Further, longer foreclosure durations tend to impose greater final costs on investors because the resale value of homes that serve as collateral tends to become more depressed the longer the foreclosure drags on (Pennington-Cross 2004). For attorneys who specialize in bringing foreclosure suits against borrowers, faster foreclosure means more future business and higher profit margins. Judges overseeing foreclosure litigation, however, must balance the borrowers' legal rights, their own interest in working through crowded dockets, and intense pressure from powerful foreclosure attorneys to move litigation quickly.

This research analyzes how foreclosure processes and outcomes emerge from social actions and institutional structures by applying mixed methods to a case study of foreclosure litigation in Cook County, IL from 1992 to 2006. It traces how mechanisms of mass foreclosure evolved together with neoliberal budget austerity and the financialization of mortgage markets. As mortgage securitization changed social and economic relations between borrowers and loan administrators, foreclosure ceased to be a money-losing last resort and instead became a financial option that could profitably be bought, sold, and exercised—making foreclosure more common. The speed of foreclosure became a key industry metric, and the legal rights and processes that created protections for homeowners became managed as costs—reducing the amount of time that borrowers at risk of foreclosure could remain in their homes and speeding up the processes of residential displacement. For foreclosure attorneys, foreclosure speed became a key performance metric that was valued even over stable legal outcomes and the ability to resell foreclosed property. As foreclosure became more common, the associated litigation fees became a key source of funding for the local county courts—but also a source of leverage attorneys used to demand that judges change foreclosure litigation procedures to process cases more quickly.

The findings presented here demonstrate that the mechanisms and actors that work to speed up foreclosure (and magnify underlying risk transfers) are socially embedded. The organization of social relationships—between lenders and borrowers, mortgage servicers and homeowners, judges and foreclosure attorneys—structures if transfers occur and how quickly they are executed. The extent to which mortgage industry actors can speed up foreclosure is regulated not only by the laws on the books, but by procedural decisions made by local judges. Judges' decisions reflect not only their legal interpretations and policy preferences, but also the court's dependency on foreclosure litigation revenue and their relationships with lawyers from

large foreclosure firms. A critical finding presented here is that such procedural decisions can greatly impact outcomes even when the law on the books remains static.

Like other mechanisms driving housing precarity, the foreclosure process is understudied (Desmond 2012). While the literature on housing intermediaries examines how actors like mortgage lenders and real estate agents structure and stratify housing markets (Korver-Glenn, Bartram, and Besbris 2023), mortgage servicers, foreclosure attorneys, and judges managing foreclosure litigation—the actors managing and executing foreclosure—remain unexamined. This research shows how these actors have intervened in foreclosure litigation to reshape both borrowers' rights and mortgage markets. Where foreclosure is the subject of sociological research, outputs like aggregate foreclosure volume or foreclosure rates tend to be foregrounded while the social processes generating those outputs remain opaque (e.g., Dwyer and Phillips Lassus 2015; Immergluck and Smith 2005). A large subset of the sociological literature treats foreclosure as an independent variable and component of place, measuring how foreclosure rates within a community affect outcomes like neighborhood reputation, collective action, racial segregation, crime, community health, or demographic composition (Downing 2016; Hall, Crowder, and Spring 2015; Kirk and Hyra 2012; Pais, Batson, and Monnat 2014). Other research has examined the impact of foreclosure at the household level by examining its relationship to things like political activity, future homeownership, and perceptions of status and stigma (McCormack 2014; Shah and Wichowsky 2019; Sharp and Hall 2014). Where foreclosure is examined as a dependent variable, it's often treated as an outcome of "risk contexts" like predatory lending, economic inequality, labor market risk, residential segregations, and structural racism, rather than a dynamic social process in its own right (e.g., (Dwyer and Phillips Lassus

2015; Immergluck 2009; Ross and Squires 2011; Rugh, Albright, and Massey 2015; Rugh and Massey 2010).

The effects of forced residential displacement on families and individuals are well established: it is associated with increased rates of violence by adolescents (Sharkey and Sampson 2010), worsened academic performance (Pribesh and Downey 1999), poorer health outcomes (Dong et al. 2005), declines in mental health (Oishi 2010), and the destruction of social ties (Sampson, Morenoff, and Earls 1999). Desmond has emphasized the critical role of forced residential mobility in reproducing inequality, arguing that the impact of eviction on African American women is comparable to the impact of mass incarceration on African American men: both are "typical but severely consequential occurrences contributing to the reproduction of urban poverty" (2012:120).

Foreclosure, like eviction, is a process of forced displacement from home and shelter. Unlike eviction, foreclosure is accompanied by the loss of the largest financial asset most individuals will ever have, and the state-sponsored ejectment from the benefits and protections associated with the social status of "homeowner." If eviction is a critical process in the reproduction of urban poverty, foreclosure has become a major process in downward mobility and social dislocation for people who once considered themselves to be middle class. This work details how mortgage securitization changed social and economic relations between borrowers and the parties that managed their loans, enabling new debt collection practices that made housing more precarious, mortgage markets higher risk, and legal rights more contingent.

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Chapter 1. Financialization, Foreclosure, and Precarious Homeownership in the United States

Introduction

The 2007 foreclosure crisis triggered mass residential housing displacement, with 13 million homes entering foreclosure by 2012 (Fligstein and Rucks-Ahidiana 2016) and approximately one in every twenty American adults losing a home due to missed mortgage payments (Martin and Niedt 2015). Elevated foreclosure rates among non-subprime borrowers seem to be a durable feature of the post-2007 American housing market (Dharmasankar and Mazumder 2016; Emmons 2016)**.** The COVID-19 pandemic touched off a new wave of mass foreclosure: more than two million homeowners may lose their homes as foreclosure moratoriums expire around the country (Joint Center for Housing Studies of Harvard University 2021).

The foreclosure process, like other mechanisms of housing precarity, is understudied (Desmond 2012). The endurance of high-volume foreclosure, the growing body of research highlighting the effects of residential displacement (e.g. Sullivan 2017), and the role of the legal system in adjudicating both property rights and shelter indicate the importance of foreclosure as a sociological phenomenon. However, to the extent that sociology has addressed mortgage foreclosure, it has been treated as a corollary to mortgage lending rather than as a socially emergent and highly variable process (e.g., Dwyer and Phillips Lassus 2015, Immergluck 2009, Rugh and Massey 2010).

This project examines how the financialization of the residential mortgage market enabled new debt collection practices that increased housing precarity for homeowners at risk of foreclosure in Cook County, Illinois, from 1992 to 2006. Although the narrative of a "foreclosure crisis" only became widely used in 2007, foreclosure rates had increased steadily in the previous

25 years, both nationally and in Illinois. In the late 1990s, women and minority homeowners (who were disproportionately exposed to "cutting edge" mortgage technologies like subprime loans) saw foreclosure rates as high or higher than those experienced by white male-headed households in the 2007 crisis (Strolovitch 2021).

While scholars agree on financialization's role as a cause and context of the 2007 foreclosure crisis (e.g., Lounsbury and Hirsch 2011) the larger set of processes to which the term applies is contested, and its relationship to debt collection mechanisms like foreclosure is largely untheorized. Debt collection is not only a necessary corollary of credit extension; it is a sociologically significant mechanism connecting macro-level market processes to an array of downstream consequences for borrowers. Foreclosure, as a specialized mechanism of collecting housing debt, transfers risk onto homeowners in the form of forced residential displacement, making it a critical link between financialization and housing precarity. However, no sociological research exists tracing the evolution of foreclosure practices and their impact on borrower's housing precarity. The existing economics literature on the relationship between mortgage securitization (the packaging of many individual mortgages into financial commodities) and foreclosure and the data sets these scholars have used to inform this analysis do not track foreclosure activity prior to 2005, leaving the genesis of the 2007 foreclosure crisis largely unstudied (Emmons 2016).

This chapter examines how the mechanisms of mass foreclosure that enabled the nationally recognized crisis developed together with the financialization of the residential mortgage market between 1992 and 2006. As the technology of mortgage securitization intensified the financialization of mortgage markets, foreclosure ceased to be a money-losing last resort with consequences for lenders and borrowers alike and instead became a financial option

that could literally be bought and sold independently of the underlying mortgage. At the same time, the speed with which foreclosure could be accomplished became a key industry performance metric, and the legal rights and processes that created substantive protections for at-risk homeowners became managed as key drivers of costs. As securitization changed social and economic relations between borrowers and the parties that managed their loans, it enabled new debt collection practices that made housing more precarious.

Precarity and Foreclosure

Sociologists have become increasingly concerned with the distribution of risk and precarity in the context of employment, housing, and inequality (e.g., Davis 2009, Hacker 2006, Jung 2015, Kalleberg 2011). Processes of economic restructuring, deregulation, and financialization of the U.S. economy have been tied not only to increased inequality, but to a "Great Risk Shift" wherein the rights, protections, and guarantees that were once fulfilled by the state or employers have been pushed onto individuals and markets (Aalbers 2008; Dwyer and Phillips Lassus 2015; Hacker 2006).

Precarious housing is both a cause and consequence of rising inequality and increased risk. Residential mobility is driven in part by stagnant incomes, rising rents, and government disinvestment in housing (Sullivan 2017). While the deleterious effects of residential mobility have long been established (including increased rates of adolescent violence, reduced academic performance, and physical and mental health risks), recent literature has been focused on rental housing instability and eviction as causal mechanisms in the reproduction of poverty (Desmond 2012, Pattillo 2013). Eviction creates records that damage access to public housing, private rentals, and mortgage markets, jeopardizing future access to housing (Desmond and Kimbro 2015; Greiner, Pattanayak, and Hennessy 2012). Forced residential displacement places time constraints on the search for new housing, and people who move involuntarily are more likely to

move into poorer, more dangerous neighborhoods, and to accept substandard housing compared to people who move voluntarily (Desmond, Gershenson, and Kiviat 2015). Forcibly displaced renters also have higher rates of future unforced residential mobility as they relocate first into lower-quality housing before moving again into better accommodations (2015). Unstable housing and the criminal justice system act together to cycle people between incarceration and housing precarity (Pattillo et al. 2022).

Although current housing precarity research has largely focused on residential mobility among low-income renters, increased housing precarity is also evident among middle-class homeowners (Dwyer and Phillips Lassus 2015). The extent to which the outcomes of foreclosure mirror those of eviction are unclear, but there are similarities: families in foreclosure also face involuntary, time-delimited search for new housing while being economically constrained and burdened by stigmatizing records of forced displacement that limit access to credit and housing. Foreclosure adds to these burdens the loss of the largest financial asset most families will ever possess—residential real estate.

While the mortgage markets that supported the American post-war boom created relatively safe mechanisms of wealth accumulation, the mortgage markets created by deregulation and financialization in the 1980s, 1990s, and 2000s have made housing and housing wealth insecure (Immergluck 2009, Pattillo 2013). Historically, the United States government has used credit as a substitute for a fully-developed welfare state (Fourcade and Healy 2013; Prasad 2012). Mortgage credit has been a critical component of full inclusion in US society, and is used to manage access to public goods such as schools and social services (Prasad 2012; Quinn 2019; Robinson 2020). The provisioning of goods and inclusion through “credit state” mechanisms like mortgage lending has appealed to American policymakers because they are

fiscally and ideologically "light"—credit guarantees require little upfront spending, and conform to free-market, non-interventionist governing ideologies (Quinn 2019).

The deregulation of the mortgage market made homeownership riskier and foreclosure more common (Heisler and Hoffman 1987; Immergluck 2009) In the 1980s, bank deregulation created a national mortgage market, and face-to-face lending was replaced by bureaucracies and automation, creating new hurdles for precarious borrowers to navigate (Heisler and Hoffman 1987). In the 1990s and 2000s, subprime lending, reduced underwriting standards, and mortgage securitization introduced perverse incentives that drove home prices beyond what borrowers could safely afford, and marginalized communities especially became targets of predatory lending practices that destabilized homeownership (Fligstein 2021; Immergluck 2009; Taylor 2019). Increased labor market precarity also contributed to housing precarity, as dimensions of precarity in American society intersect (Dwyer and Phillips Lassus 2015).

While increased housing precarity among homeowners is an active area of sociological research, the actual processes of mortgage foreclosure and the business of managing loan delinquency are largely overlooked. Despite more than 25 percent of Americans being pursued by debt collectors between 2004 and 20018 (Furey and Kelly 2019), sociological literature on credit and precarity has—with some exceptions—neglected debt collection processes. Two recent review articles have emphasized debt collections' critical role in consumer lending, and its role as a tool lenders use to mediate risk, but actual processes have remained unexamined (Rona-Tas and Guseva 2018; Wherry and Chakrabarti 2022). A relatively new literature examines the collection of Legal Financial Obligations (LFOs)—the fines and fees that judges impose against defendants that are enforced by the court system (Harris 2016; Pattillo and Kirk 2021). While LFOs impact credit scores and access to housing, they are unlike consumer debts in that they are

assessed and enforced as punishment, undermining status and stability (Friedman and Pattillo 2019).

Compared to individuals burdened by LFOs, and virtually every other type of debtor, homeowners with mortgage debt have historically been treated as a protected class. American foreclosure laws feature unique protections that reflect the importance of homeownership in American society, and provide homeowners with both a significant window of time to redeem their property and the right to freely possess and occupy their home during the entire foreclosure process (Dana 2011). In Illinois, tenants may lose their lease and be evicted five days after a missed rent payment, while homeowners have a minimum of seven months to catch up on their delinquency, and continue to own and occupy their home for the same period without making further payments. For homeowners, this "implied housing subsidy" is a safety net secured by their social status rather than their economic position: a renter behind on rent is in the same economic position as a homeowner with no equity late on their mortgage, but the law treats these parties very differently.

Foreclosure's implied housing subsidy creates significant costs for the mortgage industry and significant benefits for borrowers, many of which are directly related to the duration of the foreclosure process. Third-party mortgage loan administrators (called *mortgage servicers*) of non-government-insured mortgages contractually guarantee borrowers' payments to mortgage investors, and make up delinquencies until the property is sold in a foreclosure auction (Kruger 2018; Levitin and Twomey 2011). Longer foreclosure processes force servicers to make more payments, and increase property management costs borne by mortgage investors (Pennington-Cross 2004). At the same time, the implied housing subsidy has significant benefits for borrower well-being that increase with the duration of the foreclosure process. The average unemployed

mortgage borrower only has liquid assets equivalent to only 2.5 weeks of their former wages, making homeowners' protections in foreclosure an important lifeline (Herkenhoff and Ohanian 2019). Longer foreclosures (and, thereby, greater implied housing subsidies) are associated with greater reductions in foreclosed homeowners' outstanding credit card debt (Calem, Jagtiani, and Lang 2017). Foreclosure delays function similarly to unemployment benefits, in that both "allow unemployed mortgagors to smooth consumption while searching for a good [employment] match" (Herkenhoff and Ohanian 2019:63- 64).

The foreclosure laws that protect homeowners are the product of a "never-ending struggle between debtor and borrower"(Friedman 2019:228). Studying the recent evolution of mortgage foreclosure and its associated protections allows me to identify mechanisms driving precarity among a group long considered the core of the middle class. I argue below that financialization created new opportunities for the mortgage industry to avoid homeowners' foreclosure protections and shift risk onto more privileged individuals and families.

Despite the protections afforded American homeowners, foreclosure has a devastating effect on communities, families, and individuals. Foreclosure drives down the value of nearby real estate (Schuetz, Been, and Ellen 2008), and is associated with increased hospital and emergency room visits at the zip-code level (Currie and Tekin 2015). Foreclosure costs families an average of $10,300 in moving costs, legal fees, and administrative charges (U.S. Department of Housing and Urban Development 2010). Foreclosure creates significant social costs: homeownership is related to self-identity in a way that other assets and economic activities are not, and contributes to a stable sense of self (Tsai 2015). The importance of mortgage foreclosure to identity and sense of self may contribute to the relationship between foreclosure and suicide:

increased foreclosures are correlated with increased suicide at both the state level and the individual level (Fowler et al. 2015; Houle and Light 2014).

Financialization, Securitization, and Foreclosure

Financialization, or "the increasing dominance of financial actors, markets, practices, measurements, and narratives" and the resulting "transformation of economies, firms…states, and households" has increased the importance of financial assets and the power of their holders' claims(Aalbers 2017; Carruthers 2015). Financial assets themselves are a "form of authority…by which the claims of wealth holders are asserted against the rest of society" (Jayadev, Mason, and Schröder 2018: 354); over the last several decades, financialization has made the holders of financial assets "more powerful in their claims on the income of the non-financial sector" (Tomaskovic-Devey, Lin, and Meyers 2015: 16). Most of the financialization literature that addresses precarity has focused on the financialization of the corporate sector, and its effect workers' earnings and job stability (Alvarez 2015; Jung 2015; Kaldor 2022; Lin and Tomaskovic-Devey 2013)

Mortgage securitization is a "critical yet underappreciated" mechanism facilitating financialization and shifting risk in American society (Davis and Kim 2015; Dymski 2018). By packaging many idiosyncratic and illiquid mortgages into standardized financial commodities, securitization allows lenders to externalize risk by selling loans in secondary markets rather than holding them as investments (Davis 2009). This risk shift allowed high-risk lending to flourish, and investor demand for subprime loans led to groups of people historically denied mortgage credit (such as women and people of color) being pushed into high-risk loans more likely to end in foreclosure (Baumer et al. 2017; Mian and Sufi 2009; Nadauld and Sherlund 2013). In this

context, families and individuals have been forced to evaluate housing not only as a home but as potentially risky investments (Aalbers 2008; Fligstein and Goldstein 2015).

After World War II, mortgage lending was dominated by *portfolio lenders* that made mortgages with the intention of holding them as long-term investments, overseeing loans directly, and managing defaults in-house. Most of these lenders were savings and loan institutions that specialized in mortgage lending, and were restricted to lending within 100 miles or less of their place of business until 1983 (Laughlin 1991). These geographical restrictions were to ensure that lenders had "local expertise" in the community, as "mortgage underwriting was based at least in part on relationships" (Green and Wachter 2010:432). Historically, portfolio lenders were sensitive to their local reputation and strongly tied to local housing markets.

Mortgage securitization was pioneered in 1968 by the Federal National Mortgage Association (known as Fannie Mae). Government Sponsored Entities (GSEs) like Fannie Mae and the Federal Home Mortgage Corporation (Freddie Mac) historically commanded a smaller share of the mortgage market than portfolio lenders. Mortgage securitization was developed at Fannie Mae in the late 1960s in response to political struggles around the federal budget, rather than demands from the financial sector (Quinn 2019). The GSEs are primarily middlemen, buying loans from loan originators (who make loans with the intention of reselling them) or loan wholesalers (intermediaries who provide credit to originators or mortgage brokers in exchange for completed mortgage loans) and partnering with investment banks to package them into Mortgage Backed Securities (MBS), which attract investors in part because they are guaranteed by the GSE and implicitly backed by the federal government (Fligstein 2021). GSEs set standards for loan underwriting, and take on much of the risk that would otherwise be borne by MBS investors and the servicers of their loans: as long as relevant underwriting standards are

met, GSEs have historically repurchased defaulted loans and born the credit risk directly, even if servicers have modified or renegotiated loan terms to help struggling borrowers (Capone 1996). GSE mortgage securitization dominated the mortgage market after the Savings and Loan Crisis of the late 1980s, but their business model faced resistance until the early 1990s, when "banks of all kinds began to realize that the new model for mortgages had replaced the savings and loan model [and] pivoted to find a role in the new securitization structure" (Fligstein 2021:16).

As securitization replaced portfolio lending as the dominant mortgage market business model in the 1990s, the rise of the Private Label Security (PLS) market intensified the financialization of the mortgage market. PLS securities are MBS created by investment banks, finance companies, and Real Estate Investment Trusts. Initially, these products were designed to compete with GSE securities, with financial engineering taking the place of the government guarantee. Until the early 1990s, the PLS market acted largely as a free-rider on the infrastructure established by the GSEs, adopting their metrics and standards to create products that could compete with GSE mortgage-backed securities.

While portfolio lending and GSE securitization were federal projects supporting middle-class homeownership, the PLS infrastructure developed in an era of deregulation and free market supremacy to suit the needs of MBS producers and investors, "completely private [and] unregulated" (Levitin and Wachter 2013). In the early 1990s, the PLS industry began to offer "alternative" mortgage products like subprime mortgage securities featuring higher returns and higher risks: these became the fastest-growing segment of the MBS industry by the mid-1990s (Lembke and DiMartino 1994). These new PLS securities packaged mortgages deemed too risky by the GSEs, and as their market expanded, subprime and non-prime lending grew too: from the mid-1990s to 2006 non-prime mortgages "grew from virtually zero to nearly 50 percent" of

newly originated mortgages (Levitin, Pavlov, and Wachter 2009:4). These innovations were extremely profitable for market players, but I show that they increased housing precarity for mortgage borrowers.

Since the foreclosure crisis, a body of real estate economics literature has found that PLS securitization increases rates of foreclosure and decreases rates of mortgage renegotiation (or *modification*). Research examining mortgage foreclosures finds that PLS securitization is associated with higher rates of foreclosure and lower rates of modification: foreclosure rates for non-securitized loans were between 13 percent and 32 percent less than for PLS securitized loans (Piskorski, Seru, and Vig 2010); modification rates for non-securitized loans were between 26 percent and 36 percent higher than for loans in PLS securitizations (Agarwal et al. 2011); and PLS securitization increased the probability of foreclosure within 12 months of first serious mortgage delinquency by 19 percent and reduced the likelihood of mortgage modification by 33–78 percent (Kruger 2018). However, all of this literature studies foreclosures occurring in 2005 or later, leaving the causal forces driving the 2007 foreclosure crisis and its foreclosure practices unexamined.

The story of the 2007 foreclosure crisis is often written as a two-part narrative: "easy" access to credit propelled the pre-crisis housing boom, while the foreclosure was driven by the "reversal in house price growth when credit dried up" (Adelino, Schoar, and Severino 2012: 2, Favilukis, Ludvigson, and Van Nieuwerburgh 2017). However, the idea that the wave of foreclosures was *subsequent* to the boom in housing prices deserves scrutiny: while U.S. housing prices peaked in 2006, home ownership peaked in 2004 (Calem, Nakamura, and Wachter 2011). As noted above, for women and minority homeowners, foreclosure reached crisis levels during the late 1990s (Strolovitch 2021). However, industry analysts see rising home prices as reducing

foreclosure by increasing homeowners' equity, allowing them to avoid default by refinancing or selling their homes (Lambert 2021). Economic theory holds negative home equity as "a necessary condition" of foreclosure for the same reason (Foote et al. 2008; Foote and Willen 2017:1).

This research asks if increased housing precarity developed contemporaneously with the PLS securitization boom as an integral component of mortgage market financialization. If a commercial society dependent on the extension of credit demands the forcible collection of unpaid debt (Kagan 1984), then increased lending implies expanded debt collection. Extending the theorization of financialization to include the collection of residential mortgage debt through foreclosure leads to the following:

Hypothesis 1

> *The financialization of the mortgage market, proxied by the value of outstanding mortgages serviced as part of PLS mortgage securities, will be positively associated with the number of foreclosures filed.*

Mortgage Servicing and Foreclosure Legal Services

Mortgage securitization necessitates that mortgage servicing, the day-to-day work of loan administration, be separated from mortgage ownership. Mortgages that are securitized always have a third-party servicer (Eggert 2007; Levitin and Twomey 2011). MBS derive their value from the streams of borrowers' payments and the value of the real estate pledged as collateral: for MBS to be traded liquidly, these sources of value must be continually monitored and managed by a party other than the investor. Mortgage servicing is a specialized line of business combining two distinct functions: (1) processing and distributing loan payments; and (2) managing loan delinquency (Thompson 2011). Payment processing is readily automated, and

enables great economies of scale. Most servicers make the bulk of their income through the "servicing fee" of between 0.25 percent and 0.5 percent of outstanding principal. For a single mortgage of $200,000, the servicing fee would be between $500 and $1000 annually. This fee structure makes large-scale servicing an attractive business, and the mortgage servicing industry has undergone a series of consolidations: between 1996 and 2007, the five largest mortgage servicing firms increased their share of the servicing market from 19 percent to 46 percent (Levitin and Twomey 2011:25). While most sociological research on mortgage finance focuses on making or trading mortgage loans (Fligstein 2021; Pattillo 2013), servicers' control over payment accounting, fees, penalties, modification, and foreclosure means that they often have a greater impact on borrower outcomes than the initial lender (Eggert 2004).

The literature on mortgage securitization and foreclosure doesn't examine their coevolution. The economic and legal literature on foreclosure that developed after the crisis focuses largely on contracting issues that create barriers to renegotiation and incentives to foreclose, rather than the actual process of collecting mortgage debt (Adelino, Gerardi, and Willen 2013; Kruger 2018; Levitin and Twomey 2011; Piskorski et al. 2010; Thompson 2011). Even after the foreclosure crisis, it is common in both economics and industry research to consider loans that are ninety or more days delinquent as having entered foreclosure (e.g., Adelino, Gerardi, and Willen 2013).

Mortgage servicers prioritize fast and cheap foreclosure litigation, and the high-volume foreclosure law firms that compete for their business are unlike the firms that are usually the subject of academic research (Zacks 2012). The attorneys pursuing foreclosures in court are "little more than debt collectors, far down on the profession's prestige ladder" (Levitin and Wachter 2013:703). Foreclosure firms take cases under flat-fee agreements rather than the

traditional billable-hours model. The flat-fee model means that the less time spent on any individual case, the more profitable it is. Foreclosure firms are "factory-like" and rely on non-attorney staff to produce legal filings that in traditional firms would be the product of licensed attorneys (Zacks 2012:869). Further, foreclosure firms operate knowing that the opposing party is likely to either be absent from court or not have legal representation, reducing the chance that their filings will be contested.

Despite the protections afforded to US homeowners, the "overwhelming majority" of borrowers who enter the formal foreclosure process will eventually lose their homes (Cowan 2016:2). Between 2005 and 2009, the percentage of borrowers who became current and stayed current on their mortgage after entering foreclosure approached zero (Goodman 2010). Many borrowers exit the foreclosure process by negotiating the sale of the home or surrendering the real estate. These negotiations take place within "the shadow of the law": the rules and expenses of foreclosure litigation structure parties' bargaining positions (Mnookin and Kornhauser 1978:950). These negotiated outcomes do not appear in the record as foreclosures, but still drive forced residential displacement.

The low probability that borrowers keep their homes after entering foreclosure means that for servicers, the primary issue to be managed in foreclosure is not the outcome of the case, but the speed with which that outcome is reached. To the extent that financialization impacts the legal processes that regulate mortgage foreclosure and/or the parties that influence the foreclosure process, we would expect formal and informal protections for homeowners to be deprioritized relative to the interests of financial asset holders and their representatives. This leads to my second hypothesis:

Hypothesis 2

> *The financialization in the mortgage market, proxied by the value of outstanding mortgages serviced as part of PLS mortgage securities, will be negatively associated with the duration of foreclosure.*

Research Design

This research employs mixed methods within a case study of mortgage foreclosure in Cook County, Illinois, between 1992 and 2006. The mixed methods inform each other: the quantitative analysis identifies empirical relationships, while the qualitative analysis identifies causal mechanisms and linkages. Cook County is an "extreme case" where protections for borrowers are high, and the judiciary has acted to create new protections. Illinois has some of the most borrower-friendly laws in the United States, and is one of 22 states where lenders *must* file a lawsuit to foreclose. While foreclosure law varies by state, foreclosure processes vary at the county level. Within Illinois, Cook County is a leader in consumer protection during foreclosure. Extreme case design allows me to study foreclosure in a context where protections for borrowers have been high, and suggests that the effects of the financialization found here may be even more impactful in states and counties with less robust protections.

Quantitative Data

I collected metadata records of every foreclosure in Cook County Chancery Court between 1992 and 2006. Every foreclosure case generates a unique public record maintained by the clerk of court, allowing me to measure the following dependent variables:

- *Annual Residential Foreclosures*. Residential foreclosures (n=179,736) are foreclosures where the owner of the housing unit is also the occupant. These are a subset of total foreclosures processed by the Chancery (n=184594) and are

distinguished from commercial foreclosures (n=4858). To categorize foreclosures, I use methods developed by Mathew Desmond's Eviction Lab: if the defendant is named as a private individual (i.e., Robert James), the case is coded as a residential foreclosure. If the defendant is named in such a way that indicates they are not private individuals (i.e., Robert James, Incorporated) the foreclosure is coded as a commercial foreclosure.

- *Residential Foreclosure Duration*. The duration of each completed residential foreclosure (n=179,731) is calculated as the count of days between the filing date and the date the case is disposed of, plus one so that foreclosures filed and dismissed on the same day will last a single day. Five residential foreclosures were still active when the court data was collected: these foreclosures are not included in calculations of foreclosure duration.

Independent variables were collected from court records and from other sources.

Independent variables include:

- *PLS Servicing Outstanding*. Reported annually by Inside Mortgage Finance, this variable represents the total dollar value of unpaid principal for all US mortgages serviced as part of PLS MBS. This variable serves as a proxy for the financialization of the mortgage market as a whole: it represents the segment of the mortgage market least mediated by government regulations or social embeddedness, the most responsive to the demands of private market actors, and the fastest-growing during the period of study. This variable has been adjusted for inflation to 2000 dollars. For analysis, I use a natural log transformation because it exhibits a strong right skew and increases by orders of magnitude, but untransformed data in millions of dollars is also included in summary statistics.

- *Cook County Housing Price Index*. This index is compiled by the U.S. Federal Housing Finance Agency and tracks the annual value of single-family home transactions scaled against the year 2000.
- *Cook County Annual Unemployment Rate.* Annual averages of county-level unemployment rates, calculated from monthly U.S. Bureau of Economic Analysis data.
- *Mortgages Delinquent 90+ Days*. Reported quarterly by the Mortgage Bankers Association, this is the number of mortgages 90 or more days delinquent (the industry standard for considering a loan liquidated and initiating foreclosure) in Illinois. This variable approximates mortgage delinquency in Cook County, especially because the county makes up nearly half of the state's housing units.
- *Defendant's Representation*. Court records code defendants as having legal representation, representing themselves *pro se*, or as absent from court proceedings.
- *Court Reorganization*. On October 1, 2002, the Chancery Court created a new internal division to manage foreclosure cases, staffed with additional judges. The creation of this division and its effect on the foreclosure process is the subject of ongoing research. This dummy variable is equal to zero before the court reorganization, and equal to one after the court reorganization.

Summary statistics of these variables are presented in Tables 1, 2, 3, and 4.

[Table 1 about here]

[Table 2 about here}

[Table 3 about here}

{Table 4 about here}

Qualitative Data

The qualitative portion of this research uses process-tracing analysis of 20 interviews with judges and attorneys involved in mortgage foreclosure. I asked participants open-ended questions about their careers and their perceptions of the evolution of the foreclosure process, inviting them to share what they felt was most important.

Conducting interviews with actors with long professional histories across the foreclosure litigation process me to employ within-case process tracing. Within-case process tracing entails analyzing multiple features of an individual case to identify causal mechanisms and sequences that link variables over time (Lange 2012; Robinson 2020). By integrating interview data with trade publications, newspaper articles, and judicial reports, I can trace "what follows what" and generate a causal narrative of the entire process (George and Bennett 2005:207). My process-tracing analysis is explicitly grounded in theories of financialization and precarity, and can be examined against my quantitative analysis as a check for validity.

Process-tracing analysis helps me map the mortgage value chain, trace its evolution, and account for the positionality of my interviewees. This evolving value chain was never totalized by a single actor: the coherence of the narrative presented here is generated by the correspondence between interviewees' emplotments, the quantitative analysis, and primary and secondary literature (Steinmetz 1992). Different actors have different positions in and different relationships to the mortgage value chain. Judges, for example, often failed to distinguish between different kinds of foreclosure plaintiffs (even those with different incentives and strategies in foreclosure) and frequently used terms like "bank" or "lender" to refer to plaintiffs that were anything but. Attorneys who represented plaintiffs, on the other hand, clearly identified different types of clients with different goals in foreclosure litigation. At the same time, many of the plaintiff's attorneys downplayed certain litigation tactics as technicalities, while judges and

defense attorneys viewed the same litigation strategies as problematic. Almost all of my interviewees had worked at only one location along the chain: only one lawyer had experience both as defendant's counsel and as plaintiff's counsel.

Quantitative Analysis

I first present a quantitative analysis of the two hypotheses generated by the literature. After establishing the statistical significance of the theorized relationships, I apply process tracing analysis to qualitative interview data and primary literature to explain the causal mechanisms driving those relationships and tracing their historical evolution in Cook County.

Limitations

The quantitative data examined in this chapter have strengths and weaknesses that impact my analysis. The primary strength is the population-level data from the Cook County Chancery Court, which has jurisdiction over the foreclosure process. While court records have been found to be more accurate than survey methods for analysis of residential housing displacement, they are not without limitations (Desmond 2012). As discussed above, court records do not capture private settlements, leading reported outcomes to vastly overestimate the number of borrowers who keep their homes.

The methodology used for coding residential foreclosures is not foolproof, and defendants owning commercial property in their own name (rather than through a business or corporate entity) will be misclassified. While the proportion of rental housing properties owned by unincorporated individuals has fallen since the early 1990s (from over 90 percent nationally in 1991 to 75 percent in 2015), it remains a common form of ownership that cannot separate from owner-occupied foreclosures (Travis 2019). This issue is exacerbated by occupancy fraud,

the most common form of mortgage fraud, where borrowers claim in mortgage paperwork that they will occupy the home rather than rent it out (Elul, Payne, and Tilson 2019). Mortgage industry actors do not seem to differentiate between these groups in their own foreclosure practices—and due diligence can hardly be considered an industry priority during the period of study, as they were frequently committing similar types of fraud (Elul et al. 2019; Piskorski, Seru, and Witkin 2015). Residential foreclosures compromise the majority of the data, and including commercial foreclosures does not meaningfully change the results of the analysis.

The PLS Servicing Outstanding variable is only available nationally. Despite this mismatch between the independent and dependent variables, Cook County is highly integrated into national mortgage markets. Illinois ranks among the five largest mortgage markets in the U.S. in every year of the study according to Inside Mortgage Finance's mortgage activity data. Cook County contains approximately 45 percent of all Illinois housing units, and 1.5 percent of all U.S. housing units (U.S. Census Bureau 2020). Market pricing and activity in the Cook County market reflects national trends, indicating that the local housing market is highly integrated into the national mortgage market and exposed to its transformation. Figure 1 plots the US Housing Price Index against the Cook County Housing Price Index for the period of the study: the trends are strikingly similar.

[Figure 1 about here]

Lastly, the Cook County Chancery Court shares jurisdiction over some foreclosures with the United States District Court for the Northern District of Illinois. Only out-of-state plaintiffs with claims larger than $75,000 can file foreclosure in federal courts, and federal judges do not encourage this practice. Between 1992 and 2006, only 13,554 foreclosures were filed in the

Northern District of Illinois. However, not all of these cases were from Cook County—the federal court has jurisdiction over six counties in northern Illinois. As there is no means of determining the location of mortgaged property from federal court metadata, these cases are excluded from the study.

Despite these limitations, the data used in this study provides a population-level dataset for foreclosures processed by the Cook County Chancery Court, and covers at least 93 percent of foreclosures filed against owners of property in the county.

Quantitative Analysis of Hypothesis 1

Analysis of Hypothesis 1 is complicated by the small number of observations available for variables collected on an annual basis (n=15). PLS Servicing Outstanding—the critical independent variable in this analysis—is only available annually between 1992 and 2006. While 15 observations are generally considered too few for regression analysis, population-level data obviates the issues associated with small-n regression, such as overfitting, type I (false positive), and type II (false negative) errors. When using population data, these issues are not applicable, and coefficients associated with independent variables are meaningful regardless of p-value because they describe actual relationships observed in the population rather than hypothesized relationships observed in a sample (Austin and Steyerberg 2015; Green 1991). However, the line of best fit presented in Figure 3 and in the associated equation below takes the form of a linear population regression equation, and the positive coefficient for the relationship between Annual Residential Foreclosures and logged PLS Servicing Outstanding supports the relationship predicted made in Hypothesis 1 that increased financialization would be associated with increased foreclosure.

There are non-regression methods of analysis for Hypothesis 1 that similarly benefit from population-level data. Pearson's correlation analysis (presented in Table 5) shows that the log of PLS Servicing Outstanding and Annual Residential Foreclosure have a strong, positive linear relationship that is significant at the 99 percent confidence level. This finding supports Hypothesis 1 and is consistent with the relationship between PLS securitization and foreclosure found by Agarwal et al. 2011, Kruger 2018, and Piskorski et al. 2010, and suggests that PLS mortgage servicing increased foreclosures even before the housing crisis.

It is notable that residential foreclosure is highly positively correlated with the Cook County Housing Price Index. This finding supports the theory presented in this chapter that mortgage industry practices developed in the run-up to the financial crisis made housing more precarious for homeowners and indicates that housing precarity increased among homeowners even as the value of their property increased: in Cook County, the rising tide did not lift all boats.

[Table 5 about here]

This correlation analysis is supported by visual representations of the population-level relationship between the Annual Residential Foreclosures and the natural log of PLS Servicing Outstanding. Figure 2 presents a scatter plot of these variables over time, and Figure 3 presents Annual Residential Foreclosures plotted line against the natural log PLS Outstanding with a line of best fit a visual representation of the relationship between the variables. The line of best fit is shown in the following linear population regression equation:

$$Annual\ Residential\ Foreclosure = -71775.55 + (\ 6475.42 * ln\ PLS\ Servicing\ Outstanding)$$

These findings support the relationship between financialization and foreclosure proposed in Hypothesis 1.

[Figure 2 about here]

[Figure 3 about here]

Quantitative Analysis of Hypothesis 2

Using a series of nested negative binomial regression with robust standard errors, I find support for Hypothesis 2, which predicts that Residential Foreclosure Duration would decline as PLS Servicing Outstanding increased. Negative binomial regression is appropriate when an outcome variable is overdispersed and measured as a count, as Residential Foreclosure Duration is in this analysis (Long 1997). The full model with fixed effects for Court Reorganization is shown in the following equation:

$$log\mu_i(Residential\ Foreclosure\ Duration) = \beta_0 + \beta_{(ln\ PLS\ Servicing\ Outstanding)} + +\beta_{(Representation:\ Absent)} + \beta_{(Representation:\ Self-Representing)} + \beta_{(\ Representation:\ Legal\ Representation)} + \beta_{(Court\ Reorganization)} + \varepsilon_i$$

The bivariate regression yields a negative coefficient significant at the 99 percent confidence level. Because the independent variable PLS Servicing Outstanding is a natural log-transformed, the relationship between foreclosure duration and PLS Servicing Outstanding may be interpreted as a log-log regression. For the bivariate regression, for every one percent increase in PLS Servicing Outstanding, we would expect Residential Foreclosure Duration to decrease by 0.1 percent. For the multivariate model, for every one percent increase in PLS Servicing Outstanding, we would expect Residential Foreclosure Duration to decrease by 0.02 percent. Table 6 presents the results of both bivariate and multivariate regression analysis, while Figure 4 and Figure 5 provide a visual interpretation of the relationship between Residential Foreclosure

Duration and PLS Securitization Outstanding in the bivariate analysis and multivariate analysis, respectively.

[Table 6 about here]

[Figure 4 about here]

[Figure 5 about here]

This analysis supports the hypothesis that as mortgage markets became more financialized, the duration of foreclosure—and the housing subsidy provided to vulnerable homeowners—was reduced in Cook County. However, it cannot tell us how and why financialization both increased mortgage foreclosures and decreased the amount of time it took foreclosures to be processed.

The categorical variables associated with internal court process—Court Reorganization and Representation—have significant impacts on Residential Foreclosure Duration. Compared to a defendant absent from court, self-representation is predicted to increase the duration of foreclosure by 29 percent, while legal representation is predicted to increase the duration of foreclosure by 27 percent. Court Reorganization, which occurred on October 1, 2002, is predicted to decrease the duration of foreclosure by 12 percent, all else being equal. These results suggest that factors endogenous to the legal process significantly impact borrowers' outcomes in foreclosure.

Qualitative Analysis

The quantitative analysis presented above establishes the basic empirical relationships I hypothesized: the financialization of the mortgage industry is positively associated with a greater number of residential foreclosures accomplished more quickly. However, it cannot tell us how and why these phenomena took place.

I now turn to process tracing to examine how the financialization of the mortgage industry changed debt collection and foreclosure practices. Using interviews with judges and lawyers who worked in foreclosure and/or the mortgage industry, contextualized by the business press, court reports, and archival records, I identify mechanisms that (1) increased the frequency of foreclosure and (2) reduced the duration of foreclosure.

Foreclosure by Locally Embedded Actors

Before PLS securitization, financial institutions that made mortgage loans would typically service loans and manage foreclosure, even for loans sold to GSEs for securitization (Levitin and Twomey 2011). Delinquent mortgages would usually be managed by the originating loan officer: separate divisions for managing delinquent loans didn't exist until 1974 (Capone 1996). Guidelines issued by the Federal Housing Authority (which regulated the GSEs) and private mortgage insurers were regarded as suggestions: lenders instead used loan modifications, forbearances, and foreclosure to manage delinquencies on a case-by-case basis, and "through experience…came to a fairly common set of operating rules even though they often had no written policy manuals" (1996:20).

Historically, lenders' management of delinquent loans was informed by reputational concerns and ongoing relationships in local communities. In the 1940s, life insurance companies (then a significant source of mortgage funding) avoided foreclosure to "retain the goodwill" of their real estate-owning customer base and continue to find a market for their products (Mehr 1944:1). Local lenders have been susceptible to local pressure: a case study of foreclosures in a de-industrializing Ohio county from 1979 and 1983 found that judges and sheriffs could and did effectively pressure local lenders to forebear on foreclosure, but non-local lenders were "immune from community pressure" (Heisler and Hoffman 1987:237–39). While lenders making decisions

about foreclosure based on relationships and reputation may seem old-fashioned, the trade magazine *Mortgage Banking* in 1987 warned against institutions maintaining "good old boy" policies "where a lender holds off on taking actions to cure the default because of its close ties to the community or because of the borrower's relationship with the association" (Butler 1987: 63).

For portfolio lenders invested in and dependent on local real estate markets, working with struggling borrowers was part of the business. Real Estate Lawyer 1, who practiced in a small town outside Cook County, described how foreclosure worked at portfolio lenders during the 1970s and 1980s:

> *Mel at the bank would call me up and say, "The Smiths are way behind. They're not going to be able to catch up. We need to start a foreclosure action." ... There were always contacts, and I always knew why the people were behind: they were moving away and they couldn't sell the house, or they had medical issues, or the breadwinner died…. We didn't see the file unless those contacts had been unsuccessful…We always wanted to work things out. I mean, we didn't want to foreclose on people's homes… If a client came in to see me and said, "I can't afford these [payments] right now, can we renegotiate?" I would've called up Mel and said, "The Smiths are in my office. Can they for the next six months pay half? And then when their tax refund comes in, can they get caught up?" We would work it out because it was just the bank's business.*

Banks worked with delinquent borrowers in part because they were socially embedded in the local community, but also because it made economic sense: mortgage owners lose approximately 25 percent of their investment in foreclosure, so strategies that avoid foreclosure often increase their total net present value (Capone and Metz 2003).

In Cook County, this collaborative approach to mortgage delinquencies was exemplified by Talman Federal Savings and Loan Association. Founded in 1922, Talman had been built on close ties to Chicago's Eastern European immigrant communities. Talman advertised itself as "looking beyond the houses we lend on, into the lives and circumstances of the people that live in the houses" and as a partner to the borrower: "[w]hen Talman makes a loan to you on your home, you and Talman become partners, for the primary reason of clearing your home from debt

as soon as possible" (in Ehrenhalt 1995:106–7). Talman was known for its close relationships with borrowers and its "willingness to forbear" on delinquencies and eventually became the largest savings and loan in Illinois (Ryan 1991). Real Estate Lawyer 2, a prominent Chicago practitioner, reflected on the relationship-based lending model that was dominant at the beginning of his career and how it affected foreclosure:

> *I started out in mortgage foreclosure. Your local bank issued the loan. You went in, they talked to you. People would go, they'd get their cup of coffee and their cookie. They would talk about [the delinquency]. Back then lenders lent on the person…Talman lent on the people, hardworking people. They started out in the Polish communities and…they knew that guy was going to get a third job to pay their mortgage… When things happened, they'd come in, they'd work it out.*

Prior to PLS securitization, portfolio lenders and other mortgage lenders usually serviced their own loans (even if they were sold to GSEs and securitized), were socially and economically tied to local communities, and saw borrowers as customers whose business they wanted to retain. These lenders profited from activities across the mortgage value chain and did not necessarily seek to maximize servicing income, especially if doing so would damage their local reputation, the local real estate market they depended on, or—particularly for portfolio lenders—the net present value of their in the delinquent loan. Instead, they worked to generate revenue across the value chain and secure future business in the same community.

Securitization, Third-Party Servicing, and New Incentives in Foreclosure

The value chain that developed with PLS securitization is characterized by the rise of specialty non-bank, servicing-only firms, and the transformation of mortgage servicing rights (MSRs) into liquid financial assets. As PLS securitization became an increasingly important source of housing credit in the early 1990s, the structure of the mortgage industry changed so

that borrowers-servicer relationships were less socially and economically intertwined (Davis and Kim 2015; Dymski 2018; Gotham 2006).

A national market for mortgage MSRs came into existence between 1989 and 1992 (Levitin and Twomey 2011). This market was an unintended consequence of the government's response to the Savings and Loan Crisis. In 1989, the federal government established the Resolution Trust Corporation (RTC) to manage the assets of failed portfolio lenders, which auctioned off the right to service mortgages and earn associated fees. By 1992, the RTC had sold $155 billion in MSRs (National Mortgage News 1992). A private MSR market flourished after these initial government offerings: by 1994, many former portfolio lenders had entered the servicing business and had an aggregate serviced-for-others portfolio of $295 billion (Blalock 1995; Jacobides 2005). Servicers also began to securitize and sell the payment streams generated by MSRs as financial commodities, independent of any loan servicing activity, as mortgage securitization led to MSR securitization (Gardner 2005; Platt and Van Gorp 2017).

The commodification of MSRs was aided by new accounting rules issued in 1995 by the Federal Accounting Standards Bureau (Blalock 1995; Utermohlen 1995). Financial Accounting Statement 122 (FAS 122) was heavily lobbied for by the Mortgage Bankers Association and was the first update in MSR accounting since 1982. Previous to FAS 122, lenders could not treat MSRs generated by *their own* lending as assets for accounting purposes, while MSRs *purchased* from other lenders were treated as assets. After FAS 122, *all* MSRs were assets on the balance sheet. This shift forced institutions to reconsider how they ran mortgage servicing operations: prior to FAS 122, the servicing departments at many lenders were not significant profit centers, and often simply broke even (Blalock 1995). The new accounting rules forced these lenders "to

look at unit costs and servicing profits in a manner…similar to the rest of the mortgage banking industry" (1995: 38).

The growing market in MSRs created new strategies for managing delinquent loans. Now, mortgage servicers could choose to sell MSRs associated with defaulted mortgages to "special servicing" companies that specialize in profiting from delinquency and foreclosure (Thompson 2009). Although contracts governing securitized mortgages require servicers to maximize investors' net present value in their management of delinquent loans, net present value depends on assumptions of loss severity, re-default rates, and self-cure rates that are left to the servicer's discretion (Levitin and Twomey 2011). Servicers purchasing MSRs received not only the right to collect revenue streams but also the right to manage foreclosure according to their own profit and loss calculation. Historically, defaults and foreclosures have been costly for the mortgage industry, but may be profitable to servicers that (1) foreclose quickly and (2) levy "junk" fees for things like phone calls and faxes (2011: 50-51). While servicing of loans securitized by GSEs is subject to oversight, PLS servicing was unregulated until the launch of the Consumer Financial Protection Bureau in 2011.

The MSR market allows financial institutions with reputational concerns to wash their hands of problem mortgages by selling them to a special servicer rather than foreclosing themselves. Real Estate Lawyer 3, who had a long career representing foreclosure plaintiffs before he changed his practice to foreclosure defense in the 2000s, accused lenders of selling the servicing rights of struggling mortgages to reduce the number of foreclosures attached to them in court records:

> *The statistics aren't reliable, and they've been made to be unreliable. Many lenders will make a portfolio of… loans heading to foreclosure, and they'll sell the servicing…They don't want you to be able to see that [they] filed an extraordinary number of foreclosures…I'm sure they'd say, 'We have all kinds of legitimate business purposes for*

> *doing that'...But the secondary mortgage market is a perverse place. It's like going to New Orleans on a Friday night: nobody is what they seem to be.*

"Legitimate business purposes" for selling MSRs associated with delinquent loans include the purchaser's willingness to pay a premium to be recouped by foreclosing more cheaply and more quickly—and hence more profitably—than the MSR seller. Servicers capable of generating greater profits in foreclosure are further able to gain market share by outbidding competitors for MSRs.

Third-party PLS mortgage servicers' maximization of servicing revenue coupled with their lack of interest in individual loan outcomes creates incentives to foreclose rapidly on delinquent borrowers (Eggert 2004; Levitin and Twomey 2011; Odinet 2019; Thompson 2009). While portfolio lenders can increase the total net present value of their investment by finding an alternative to foreclosure (Capone and Metz 2003), servicers have little to no equity in the underlying loans and are contractually obligated to make payments borrowers miss until foreclosure is complete, creating a significant incentive to foreclose aggressively (2011). Further, renegotiation costs are not usually reimbursed to servicers by MBS investors, while the reimbursement of foreclosure costs is industry standard (Kruger 2018). Fees assessed against delinquent borrowers compromise a significant revenue stream for mortgage servicers: in 2006, the largest American mortgage servicer made 10 percent of servicing revenue from late fees alone (Levitin and Twomey 2011). This fee income is not shared with MBS investors, who have few contractual rights to monitor or regulate fees (Eggert 2004; Kruger 2018).

Mortgage securitization and the MSR market increased foreclosure by cutting the social and economic ties between mortgage owners and borrowers that supported forbearance and negotiations. The Talman business model ended with securitization, according to Real Estate Lawyer 2: "You don't have that anymore…You're going to go to a broker, and the broker is going

to do your loan and then he's done with you because that loan is sold." Real Estate Lawyer 1 agreed:

> *The banks, suddenly they're conduits, they make the loan and then they pass it through and sell it…you no longer had a local bank to work with. Once we lost that local contact, I would call up Mel at the bank and say, the Smiths are in my office, can we work something out for their payments for the next few months? He would say, you'll have to call New York, Chicago, you know, some nameless person. Of course, you can't get through to those people, so there was no negotiation process.*

PLS securitization and active MSR markets fragmented the mortgage value chain, creating specialists that primarily profited from mortgage servicing and were not financially or reputationally invested in the outcomes of individual loans—rather, they were incentivized to foreclose as quickly as possible. These servicers saw their reputations reflected in rating agency evaluations and identified their customers as the financial institutions that securitized loans and invested in MBS, rather than individual borrowers in local communities.

The rise of servicing as a critical profit center together with the severing of ongoing relationships between servicers and borrowers are causal mechanisms identified by this research explaining the relationship between financialization and increased foreclosure, and supporting the quantitative analysis presented above confirming Hypotheses 1& 2. These mechanisms enabled servicers to profit from loan delinquencies and foreclosures and help explain how foreclosure increased even amid economic growth and rising housing prices.

Pressure to Foreclose

While foreclosure litigation attorneys for Fannie Mae and other GSEs were historically selected by local congresspeople as part of the GSEs' broader political patronage efforts, (Hagerty 2012, Real Estate Attorney 3), legal services for PLS mortgages were outside of this patronage system, and law firms competed fiercely on price and speed. Servicers' active

management of foreclosure speed was reportedly pioneered between 1980 and 1983 by Patricia Stodola, head of servicing at Percy Wilson Mortgage and Finance. Stodola's Critical Date System "broke down the foreclosure process…into a step by step procedure, and assigned an optimal timeframe for each of those steps… if a case was referred to an attorney on January 1st, the Critical Date System said that…the [foreclosure] complaint should be filed by January 30th. If it wasn't, a bell went off and lights flashed" (Real Estate Lawyer 3). This new system would eventually become an industry standard, shifting the relationship between mortgage servicers and foreclosure attorneys from "attorney-client counseling…to a system driven by critical dates" (Real Estate Lawyer 3).

Rating agencies increased the pressure to foreclose quickly when they supplemented their MBS ratings with ratings of mortgage servicers. Standard & Poor's released the first mortgage servicer ratings in 1989, and other agencies quickly followed (Thompson 2009). Servicer ratings evaluate servicer performance from the perspective of the investor, not the homeowner (Bone 2008) and the speed with which servicers moved loans through foreclosure became a key metric in servicer ratings (Thompson 2009).

The advent of subprime mortgage securitization in the early 1990s increased the emphasis on foreclosure speed. Rating agencies evaluating subprime securitizations preferred "aggressive servicing" including "the prompt initiation of foreclosure" to protect investors from heightened risk (Lembke and DiMartino 1994:7). PLS securitization created opportunities for lenders experienced in aggressive debt collection practices to enter the lucrative world of securitization servicing (Lembke and DiMartino 1994; United Companies Financial Corp 1994).

Mortgage servicers pressured their attorneys to foreclose as quickly as possible. "The volume firms get a lot of their work from servicers, and there are certain timeframes that have to

be met. They take these cases knowing what the timeframes are, and they have to push it through or there will be penalties" (Real Estate Lawyer 2). Real Estate Lawyer 4, a prominent Chicago practitioner, noted that for high-volume foreclosure attorneys, "every day that file is in your office, you're losing money."

The Critical Date System evolved as the pressure to speed up foreclosure increased. Whatever flexibility the system had initially granted foreclosure attorneys was lost.

> *In the hands of people like Patricia Stodola, a report could be made that said 'We haven't filed [within] 30 days, but the following developments clearly indicate this loan can be reinstated…so we're looking for an extension of that critical date.' That was very common…Today mortgage banking people and supervising attorneys…don't understand and they don't give extensions. That mentality is what drives the loss mitigation system these days [away] from loan modification. The people…determining whether to proceed with foreclosure [have] clipboards, not brain cells or discretion. The whole mortgage servicing industry has morphed into a clipboard, rather than getting counsel from your lawyer. On the other side of the coin…the foreclosure business has become so high volume that whatever it takes to check the box on the clipboards is what lawyers will do" (Real Estate Lawyer 3).*

Over time, increased foreclosure volumes (driven in part by subprime mortgage lending) created significant financial rewards for law firms that were able to meet the demands placed on them by servicers (Real Estate Lawyer 3), and firms invested in highly specialized document management technology to maximize their performance and gain market share (Real Estate Lawyer 2).

By 2001, the Critical Date System substantially limited attorneys' discretion in foreclosure cases, even to make decisions that were in the best interest of mortgage investors and borrowers. Real Estate Lawyer 3, who had previously worked as a plaintiffs' lawyer in high-volume foreclosure described why he switched to foreclosure defense:

> *[Banks] used to send me a report every month… say[ing] "You met our critical date for filing 87 percent of your cases, but the other 13 percent, you failed. As a result, this coming month we're going to send you 13 percent less cases" …I would pull out those cases and write an individual paragraph in a reply, "The Adams case was filed in 36*

> *days because we couldn't get a document from your office. The cause for the delay wasn't sourced from us, so you shouldn't hold that against me…Mr. and Mrs. Banks…reinstated their loan on the 34th day, and had we filed on the 30th day, they wouldn't be able to reinstate because they would have $900 additional in court costs…We solved the problem."…I'd produce these long, long letters, and I'd get a letter back from the vice president thanking me for my effort [and] my insight, but advising me that in this month as in the future, the critical date system would control.*

Foreclosure attorneys' ability to meet servicers' timelines was hindered by the securitization process itself. Prior to PLS securitization's restructuring of the mortgage market, foreclosure had been straightforward. Real Estate Lawyer 1 described her experience with foreclosure documentation in the 1970s and 1980s:

> *Mel would bring me the file, and [there] would be the deed, the note and the mortgage. The originals would be in the file. There would be a ledger sheet that would show…what their arrearage was...We would just attach the copy of the note and mortgage to the complaint and we would file it and.... [if] you filed all the correct documents, you got your foreclosure judgment.*

Securitization, however, complicated foreclosure. While securitization is grounded in modern securities law, mortgage law dates to the 18th century. Market actors transfer mortgage *securities* electronically, but transferring the underlying mortgages must be documented and executed on paper with handwritten signatures and notarizations (Slesinger 1992:91). For the securitization industry, transferring mortgage ownership was "paper-intensive, error-prone, and therefore costly" (Slesinger and McLaughlin 1994:808). The middlemen of the securitization process had little incentive to perfect paperwork, according to Real Estate Lawyer 5, who had one of the oldest and largest foreclosure practices in the county: "Nobody looks at [the paperwork] unless you go into default…People were buying hundreds of thousands of loans. Each one was recorded separately [and] each one needed to be assigned separately. Try to get a banker to sign 60,000 documents. You can do it, but it's pretty hard." As noted by Judge 1, who oversaw high volumes of foreclosures, each transfer along the securitization value chain

introduced possibilities for error: “literally…the documents were placed in a bundle on wooden carts, and they would be shipped to the [purchaser]. Then processors would work on these bundles and enter them into their systems, literally hundreds and hundreds of loans, just being bundled and placed onto carts.” Mortgage servicing industry actors so frequently failed to properly record or store loan documentation that an audit of the largest private mortgage document database found that as much as 88 percent of records were inaccurate or incomplete (Aequitas Compliance Solutions, Inc. 2012) and approximately 40 percent of all foreclosure plaintiffs were unable to produce original documentation in federal bankruptcy proceedings (Porter 2008).

Flawed or lost documentation called into question the plaintiff’s right to foreclose on the loan, or the dollar value of the delinquency. Errors introduced by the securitization process led to problems that foreclosure attorneys had to solve: “How are you going prove your case without your payment histories and your original documents?” (Real Estate Lawyer 2). Without these records, foreclosure cases became increasingly challenging.

Across the period of study, foreclosure attorneys began to rely heavily on *affidavits* to prove their right to foreclose as well as the value of the borrower’s delinquency. Illinois law enables foreclosure plaintiffs to replace mortgage documentation with petitions stating a description of the real estate, the transaction history that generated the plaintiff’s claim on the real estate, and the value of the plaintiff’s claim (IL Destroyed Public Records Act 1990). These petitions must be verified, usually by an *affidavit, or* a sworn statement submitted in lieu of in-person testimony. Anyone signing an affidavit is testifying under oath that they have personally done the due diligence required to ensure that the information it contains is correct (Brotine 2020) and faces penalties for false statements (IL Destroyed Public Records Act 1990). In a

mortgage foreclosure case, the presiding judge decides if the petition is legitimate (Brotine 2020). Affidavits we used even when documents had not been lost or destroyed: it was quicker and cheaper to create an affidavit than to locate and retrieve the documents, and affidavits became a primary means of producing evidence in foreclosure cases across the country (Odinet 2019).

In the early 2000s, Cook County judges began identifying issues with the accuracy and legitimacy of the affidavits submitted in foreclosure cases. When servicer employees were called into court to verify their written testimony, they frequently admitted that they'd never examined the documentation and had no knowledge of the borrower's standing (Judge 1). This was common enough that nearly every judge hearing foreclosure cases eventually instituted special rules targeting this issue (Judge 1). However, the practice endured throughout the foreclosure crisis. In 2010, the Cook County Sheriff's Department suspended evictions in foreclosure cases after finding 70 percent of affidavits reviewed showed "pattern[s] of irregularity that may rise to criminal conduct"(CBS News 2010). The problems with affidavits were caused at least in part by some law firms affixing a pre-signed signature page to an affidavit they had drafted on behalf of the plaintiff, with varying degrees of due diligence. A major foreclosure firm was censured in 2011 for "changing the original content by removing the signature page and reattaching the signature page…to the altered content…[adding] attorney's fees and costs, adding in insurance costs, inspection costs, preservation costs, and/or taxes incurred on the property" in at least 1700 foreclosures (Jacobius 2011). These additional costs would be added to homeowners' arrearages and would reduce their likelihood of becoming current on their homes. It would also increase the losses suffered by MBS investors, who receive the proceeds of the foreclosure sale less servicers' and attorneys' fees and expenses.

The practice of submitting false affidavits seems to have been considered mundane by attorneys and servicers (Title Insurance Lawyer). Servicers continued to assign cases to foreclosure firms with known histories of fraud and abuse (Zacks 2012). Judge 2 commented that foreclosure attorneys could reasonably expect that defendants would either be absent or not have a lawyer, and that judges on tight schedules would not closely examine filings. Judge 1 noted that even when judges did identify problematic affidavits, they usually only demanded that the affidavit be refiled.

The pressure servicers placed on foreclosure attorneys, and attorney's attempts to meet these pressures and gain business, encouraged practices that accelerated the foreclosure process. Some of these practices, like the mass filing of false affidavits, not only degraded the rights and protections granted to homeowners in foreclosure but threatened the function of the real estate market itself. For foreclosure attorneys, these "shortcuts" solved documentation problems within the timeframes demanded by their clients. As securitization increased and mortgage servicing became separated from real estate lending or loan ownership, the servicing industry prioritized reducing the time it took to foreclose, and previous industry goals like keeping homeowners in their homes or facilitating future real estate transactions ceased to be relevant.

The evolution of the Critical Date System to reward fast foreclosure, regardless of the quality of legal services rendered, and the practice of mass affidavit fraud some law firms used to speed up foreclosure are causal mechanisms that explain the relationship between PLS Servicing Outstanding and decreased foreclosure duration and support Hypothesis 2. As mortgage securitization fragmented the mortgage value chain, third-party mortgage servicers worked to increase profit by reducing the time it took to foreclose. The legal improprieties used to speed up the foreclosure process became possible in part because servicers could disregard individual loan

outcomes and future real estate transactions involving previously foreclosed property. For the lawyers involved in these practices, the growing demand for fast and cheap legal services allowed them to specialize in foreclosure litigation and develop strategies to meet their clients' unique needs. These strategies made mass foreclosure possible even in the context of document irregularities introduced by the securitization process, increasing housing precarity for struggling homeowners in Cook County.

Discussion & Conclusion

Summary of Argument and Findings

This multimethod analysis offers substantial evidence that between 1992 and 2006, the financialization of the mortgage market changed residential mortgage foreclosure to increase housing precarity. The quantitative analysis presented here shows that the volume of PLS Servicing Outstanding (a proxy used to measure mortgage markets financialization) has statistically significant associations with (1) increased annual foreclosures in Cook County; and (2) decreased foreclosure durations—thereby increasing housing precarity and decreasing the informal housing subsidy that protects struggling homeowners during foreclosure. This analysis supports the theorized impacts of financialization on the foreclosure process.

Qualitative process tracing analysis identifies mechanisms by which financialization increased housing precarity. As mortgage securitization fractured the industry value chain, mortgage servicing became a profit center separate from other types of mortgage market activity. This reorganized market structure reduced financial and reputational risk associated with foreclosure and created economic and reputational incentives for servicers to foreclose quickly, as the duration of foreclosure became a critical industry metric. New markets in Mortgage Servicing Rights (MSRs), and the redefinition of MSRs as accounting assets, created opportunities for servicers to specialize in and profit from mortgage delinquencies and

foreclosures. This market structure also created demand for fast and cheap foreclosure legal services, which was met by specialty mortgage foreclosure law firms working on flat-fee contracts. These law firms frequently used strategies like false affidavits to lower the price of foreclosure, increase the speed of the legal process, and overcome evidentiary problems introduced by securitization itself. Major servicers continued to employ law firms that regularly committed abuses and fraud because the fragmented market structure meant the impacts of these practices (including reputational costs and the destabilization of future homeowners' property rights) had little impact on them. These new market structures and incentives discouraged practices that had historically helped struggling homeowners avoid foreclosure, like renegotiation and forbearance, and reduced the informal housing subsidy that created cost-free housing for homeowners experiencing foreclosure.

There are limitations to the conclusions that may be drawn from this research. The generalizability of my findings is limited in that my observations and data are restricted to a single county, albeit one that is well-integrated into the national mortgage market.

However, for mortgage servicers and foreclosure attorneys, the incentive structure is clear: faster foreclosure means cheaper foreclosure, and cheaper foreclosure means that cost-benefit analysis increasingly selects foreclosure. Figure 6 provides a broad overview of causal mechanisms identified in this research, and their relationships to each other and the observed phenomena.

[Figure 6 about here]

Contributions to Financialization and Precarity Scholarship, and Implications for Further Study

This research introduces debt collection as a socially emergent mechanism that plays a significant role in financialization and precarity. I extend the literature on the relationship

between financialization and precarity beyond the context of the firm and financialization's impact on employment and wages to housing, mortgage foreclosure, and debt collection more broadly (Alvarez 2015; Jung 2015; Tomaskovic-Devey et al. 2015). Although credit markets depend on debt collection to function (Kagan 1984), the sociological literature hasn't examined how mortgage foreclosure practices arise from particular formations of social relations.

This research demonstrates that the foreclosure practices driving housing precarity are integral to the financialization of the mortgage market. Not only did the fragmentation of the mortgage value chain make foreclosure a profit center unto itself, but high-volume securitization of high-risk mortgage loans required more frequent and more cost-effective foreclosure. Without the innovation of widespread affidavit fabrication, securitization's endogenous documentation problems could have rendered mass foreclosure either prohibitively expensive or legally impossible (either of which could have caused the securitization business model to fail). This work also suggests the declining social and economic connections between entities managing loans and borrowers' communities played an important role in more aggressive foreclosure and increased precarity.

This research contributes to housing precarity literature by showing that the foreclosure practices that developed with financialization made struggling homeowners more likely to enter foreclosure, and have less time to both benefit from cost-free housing and find new housing. These findings have critical implications for scholarship on financialization and precarity: if, as Desmond (2012) argues, rental housing eviction plays a role in reproducing inequality, what is the effect of these more aggressive foreclosure practices?

Further, we might expect to see similar dynamics to those discovered here in other types of consumer lending that have become increasingly financialized. Approximately 50 percent of

Americans would either struggle or be unable to pay $400 dollar emergency expense: in this context, collection techniques like wage garnishment and bank account seizure have significant impacts on the precarity of American life even while they make debt collection—and consumer lending—more profitable (Grover 2021). Further, the impacts of financialized debt collection may be more extreme for borrowers struggling with non-mortgage debt, which do not afford the same protections as mortgage debt.

A future area of study is the role of the judiciary in enabling mass foreclosure while managing tensions between markets, formal rights, and informal protections. An unexpected finding presented in Table 5 is that the duration of foreclosure decreased as annual foreclosure increased: the more foreclosures the court needed to process, the faster it processed them. This counterintuitive efficiency suggests that the judiciary was responsive to the demands of mortgage market actors. Further, this research shows that mass foreclosure was accomplished through practices so dubious the Cook County Sheriff publicly identified them as potentially criminal. Financialization has been theorized to affect every area of society, but its impact on the judiciary is unexamined.

This research complicates our understanding of the relationship between credit, citizenship, and the state. The American credit state, especially through the tool of mortgage credit, allocates not only resources but full social inclusion and citizenship (Krippner 2017; Robinson 2020). Theories of the credit state posit it as an attractive alternative to welfare because of its ideological and budgetary "lightness" (Prasad 2012; Quinn 2019:11). However, the state's role in enforcing debt may threaten this lightness. Mass foreclosure—and the state's seeming tolerance for the white-collar crime that enabled it—were key drivers of the 2011-era Occupy protests (Gabbatt and Devereux 2011). More recently, the enforcement of student loan debt has

moved into the national political spotlight, and policy responses to the COVID-19 crisis like forgivable Paycheck Protection Program (PPP) loans and the foreclosure and eviction moratoriums mean that debt enforcement is no longer politically taken for granted. How light is credit, and how effective is credit state allocation of social, political, and economic resources, if the state's role in debt enforcement becomes contested? How does the state's enforcement—or non-enforcement—of debt serve as a mechanism for allocating resources and citizenship?

Further, these findings suggest that the impact of financialization on debt collection might directly erode citizenship. This research demonstrates the *reflexive relationship* between rights and markets: consumer credit markets are inherently intertwined with the rights of everyday people because business strategies and profits in the consumer finance sector depend on creditors' ability to seize borrowers' property and the legal procedures necessary to do so. This research shows that as mortgage securitization restructured the social and economic relationships between borrowers and the parties managing loans, servicers, and their attorneys were able to systematically undermine borrowers' formal rights and informal protections. These practices destabilized previous boundaries between citizenship and markets to make life more precarious. These findings suggest that as financialization intensifies, the rights and protections of everyday people will be reduced to increase profits in the consumer finance sector. If social rights imply "an invasion of contract by status [and] the subordination of market price to social justice," (Marshall and Bottomore 1992:38) then financialization may imply the reverse.

Tables

Table 1. Descriptive Statistics of Cook County Chancery Court Foreclosures and Associated Independent Variables, n= 179,736

Variable	Mean	Std. Dev.	Min	Max
ANNUAL RESIDENTIAL FORECLOSURES	14030.54	4669.68	5302	21970
RESIDENTIAL FORECLOSURE DURATION	339.32	340.48	0	6970
PLS SERVICING OUTSTANDING, MILLIONS OF DOLLARS	701554.3	533921.8	174490.5	1803892
NATURAL LOG PLS SERVICING OUTSTANDING	13.198	0.71	12.07	14.4
COOK COUNTY HOUSING PRICE INDEX	111.21	26.33	73.12	156.34
COOK COUNTY AVERAGE ANNUAL UNEMPLOYMENT RATE	6.45	1.25	4.9	8.6
MORTGAGES DELINQUENT 90 DAYS+	9944.63	3885.48	4137.75	17114.13

Table 2. Descriptive Statistics of Annual Averages for Cook County Chancery Court Foreclosures and Associated Independent Variables, n=15

YEAR	ANNUAL RESIDENTIAL FORECLOSURES	MEAN DURATION RESIDENTIAL FORECLOSURE (ST DEV)	PLS SERVICING OUTSTANDING, MILLIONS OF DOLLARS	NATURAL LOG PLS SERVICING OUTSTANDING	COOK COUNTY HOUSING PRICE INDEX	ILLINOIS GROSS STATE PRODUCT	ANNUAL COOK COUNTY UNEMPLOYMENT RATE	MORTGAGES DELINQUENT 90 DAYS+ (ST DEV)
1992	5986	387.18 (369.16)	174490.5	12.07	73.12	372664.1	8.8 (0.87)	5149.29 (180.35)
1993	5425	375.25 (354.56)	200374.5	12.2	75.15	379382.06	8.6 (0.74)	5163.6 (250.36)
1994	5302	352.85 (353.8)	212705.4	12.27	77.35	398547.17	6.6 (0.94)	5245.83 (114.91)
1995	5875	354.72 (339.08)	219682.1	12.4	80.27	407900.21	6 (0.45)	5597.84 (552.8)
1996	7744	346.75 (355.97)	236315.3	12.37	82.64	413045.94	6 (0.42)	5417 (350.75)
1997	10319	357.13 (377.32)	273459.4	12.52	85.29	433955.78	5.7 (0.3)	4860.83 (439.22)
1998	11616	376.24 (373.13)	341311.8	12.74	87.3	459194.95	5.3 (0.45)	5600.69 (671.68)
1999	12652	363.86 (377.97)	365162.2	12.81	91.32	483247.52	5.1 (0.45)	6639.11 (897.18)
2000	12453	363.63 (356.86)	377500	12.84	100	464257	4.9 (0.29)	7549.58 (1127.96)
2001	15938	356.17 (338.45)	456122.3	13.03	106.86	458189.17	6.2 (0.26)	10210.35 (1271.79)
2002	17197	339.83 (333.64)	523346.6	13.17	113.96	448058.18	7.7 (0.33)	13073.09 (1957.95)
2003	15562	314.2 (317.23)	626890.9	13.35	119.05	443828.4	7.4 (0.53)	13409 (455.97)
2004	15397	298.92 (313.97)	959880.2	13.77	130.35	443668.91	6.8 (0.30)	13136.45 (517.73)
2005	16300	310.45 (301.49)	1421531	14.17	145.32	488894.02	6.5 (0.67)	13001.63 (735.07)
2006	21970	306.48 (309.19)	1803892	14.41	156.34	507741.14	4.9 (0.56)	14666.9 (1772.7)

Table 3. Defendant Representation in Residential Foreclosure, 1992-2006, n= 179736

	REPRESENTATION			
	Absent	*Self-representing*	*Legal representation*	*Total*
Residential foreclosures	129732 (72.18%)	12427 (6.91%)	37577 (20.91%)	179736 (100%)

Table 4. Court Reorganization: Residential Foreclosures Before and After Oct 1, 2001, n=179736

	COURT REORGANIZATION		
	Before Oct 1 2001	*On or After Oct 1 2001*	*Total*
Residential foreclosures (Percent)	106,326 (59.16%)	73,410 (40.84%)	179736 (100%)

Table 5. Pairwise Correlations Between Annual Averages of Cook County Chancery Court Data and Associated Independent Variables, n=15

Variables	(1)	(2)	(3)	(4)	(5)	(6)	(7)
(1) *Annual Residential Foreclosures*	1.000						
(2) *Natural Log PLS Servicing Outstanding*	0.912*** (0.000)	1.000					
(3) *Residential Foreclosure Duration*	-0.693*** (0.004)	-0.855*** (0.000)	1.000				
(4) *Mortgages Delinquent 90 Days+*	0.893*** (0.000)	0.912*** (0.000)	-0.854*** (0.000)	1.000			
(5) *Cook County Housing Price Index*	0.911*** (0.000)	0.993*** (0.000)	-0.869*** (0.000)	0.939*** (0.000)	1.000		
(7) *Annual Cook County Unemployment*	-0.331 (0.228)	-0.283 (0.306)	0.135 (0.631)	-0.008 (0.978)	-0.2311 (0.407)	1.000	

**** p<0.01, ** p<0.05, * p<0.1*

Table 6. Nested Bivariate and Multivariate Negative Binomial Regression Models Predicting Duration of Residential Foreclosure, n=179731

	(1) Duration Residential Foreclosure	(2) Duration Residential Foreclosure
PLS Servicing Outstanding, Logged	-.1***	-.02***
	(.003)	(.006)
Representation: Absent		
Representation: Self-representing		.29***
		(.009)
Representation: Legal Representation		.27***
		(.006)
Court Reorganization: Before Oct 1 2001		
Court Reorganization: After Oct 1 2001		-.12***
		(.009)
_cons	7.14***	6.06***
	(.043)	(.078)
/lnalpha	-.29***	-.31***
	(.003)	(.003)
Observations	179731	179731
Pseudo R^2	.0005	.002

Robust standard errors are in parentheses
*** p<.01, ** p<.05, * p<.1

Figures

Figure 1. Cook County Housing Price Index vs. United States Housing Price Index, 1992-2006. Data Source: U.S. Federal Housing Finance Agency, All-Transactions House Price Index.

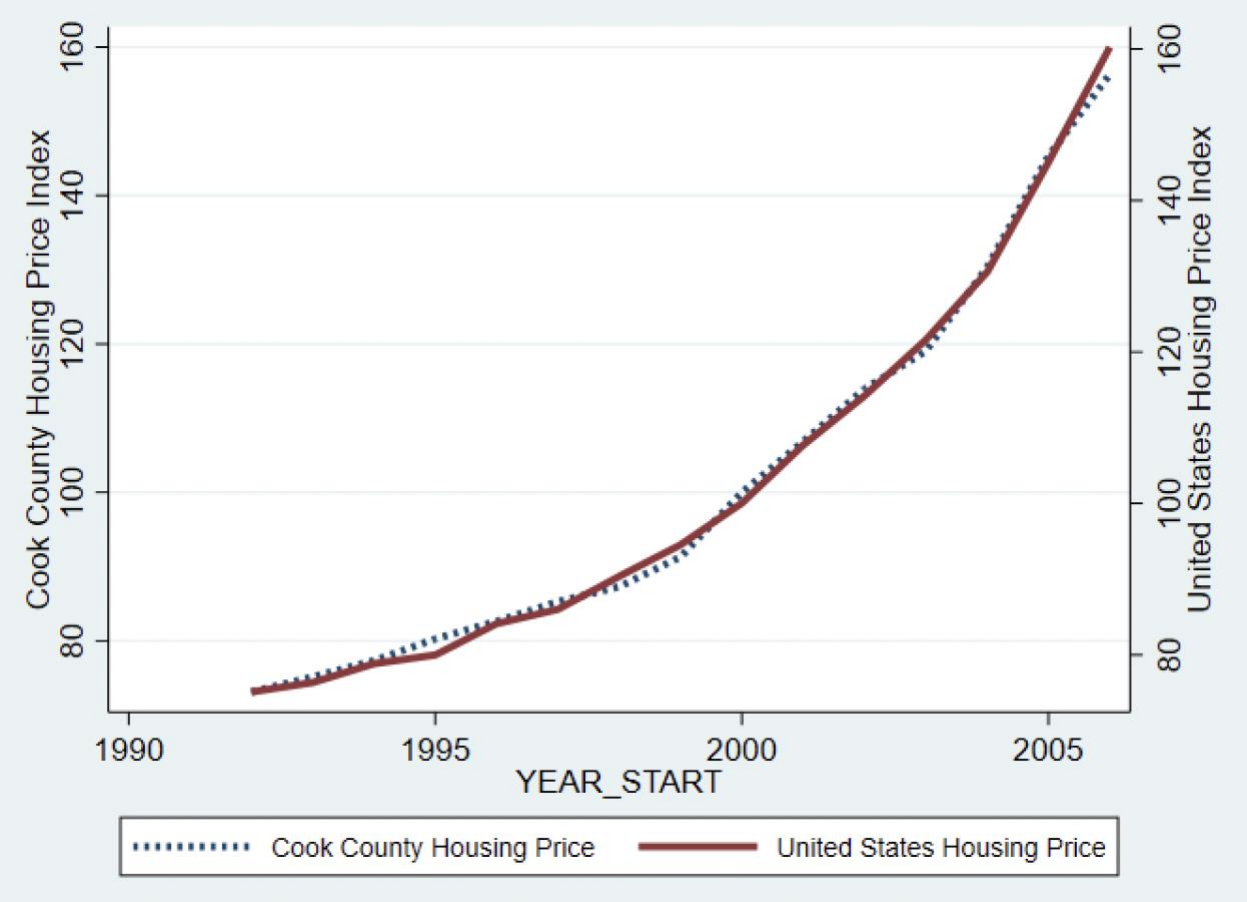


Figure 2. Scatterplot of Annual Residential Foreclosures and Log PLS Servicing Outstanding Over Year, 1992-2006

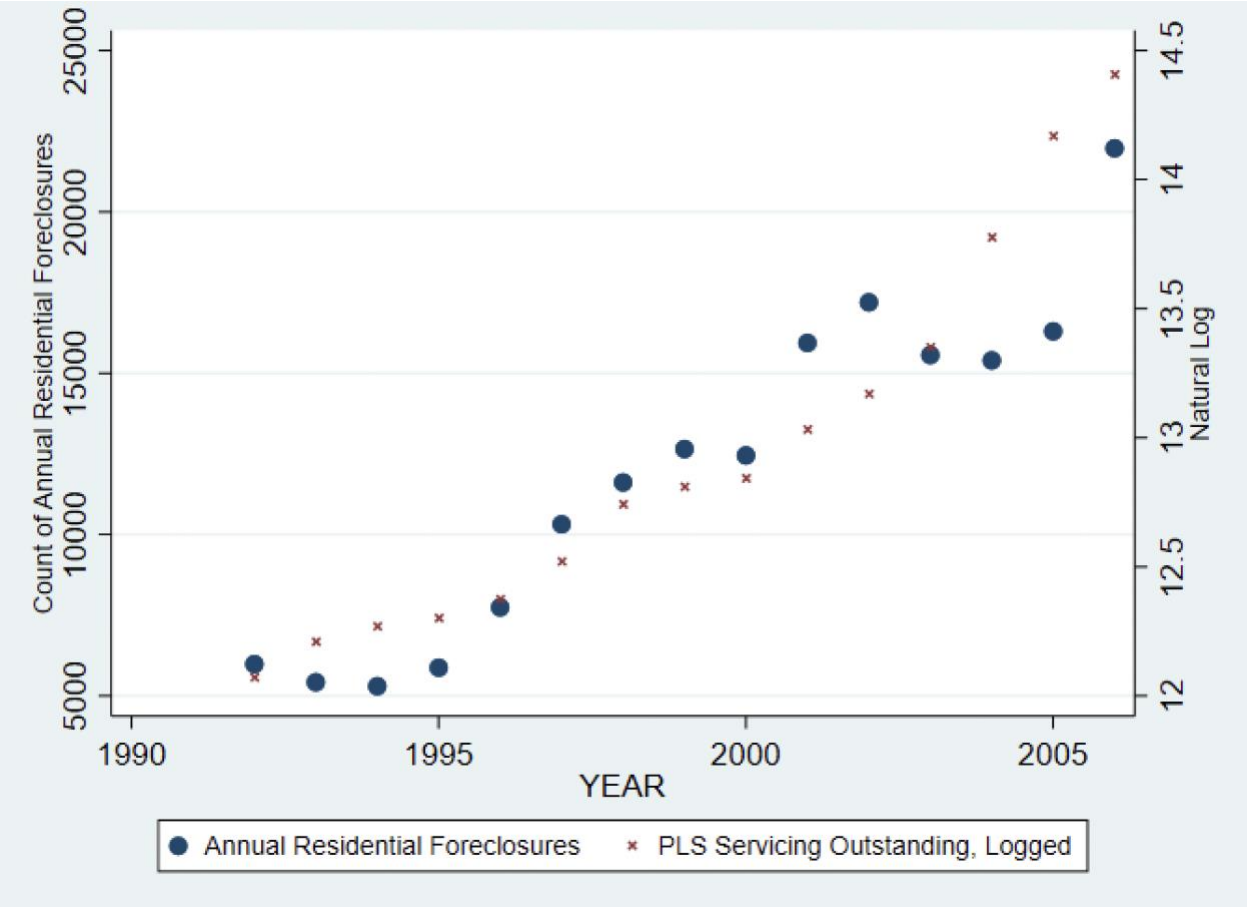


Figure 3. Scatterplot of Annual Residential Foreclosures and Log PLS Servicing Outstanding with Best Fit Prediction Line, 1992-2006

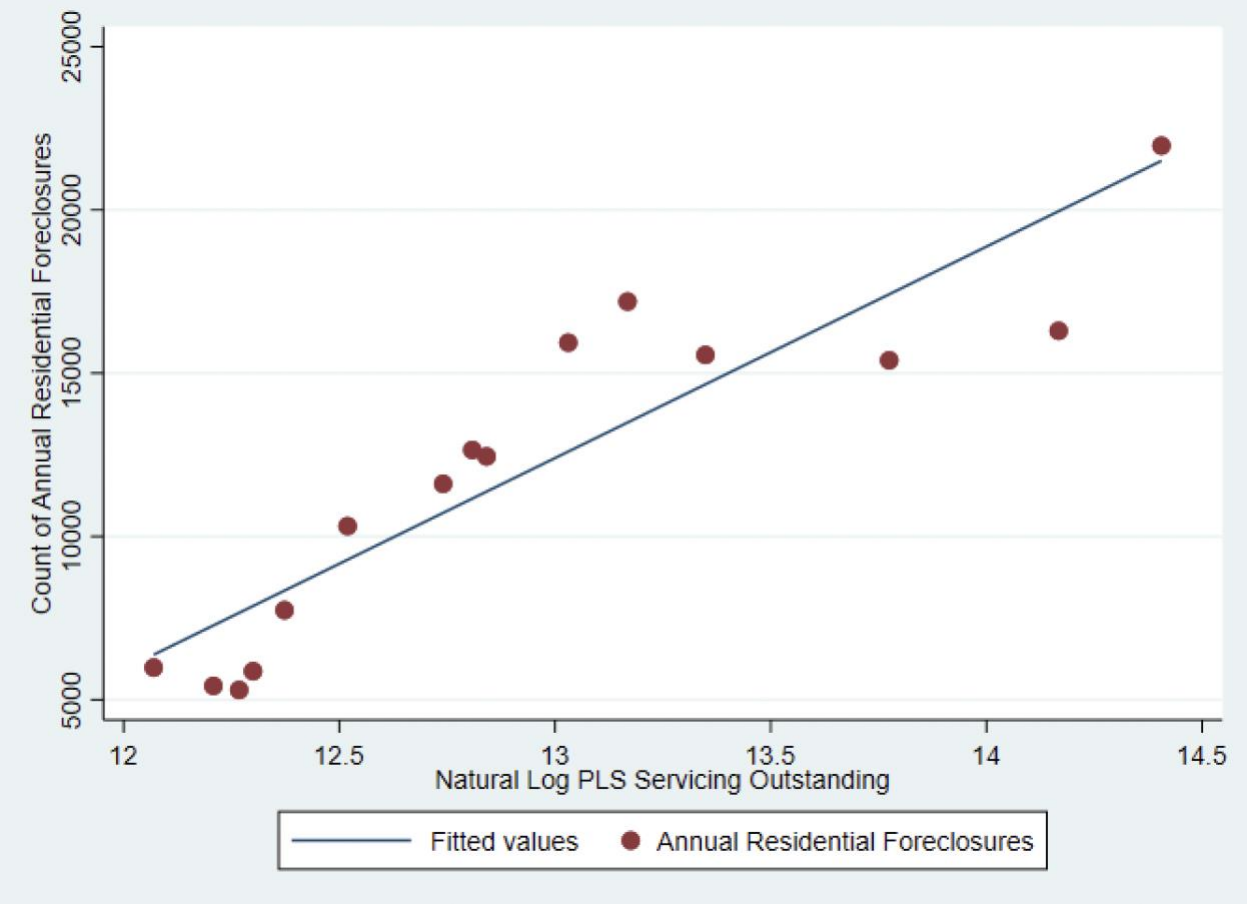


Figure 4. Adjusted Predicted Margins of Bivariate Regression Analysis: Marginal Effect of Log PLS Servicing Outstanding on Predicted Duration of Foreclosure

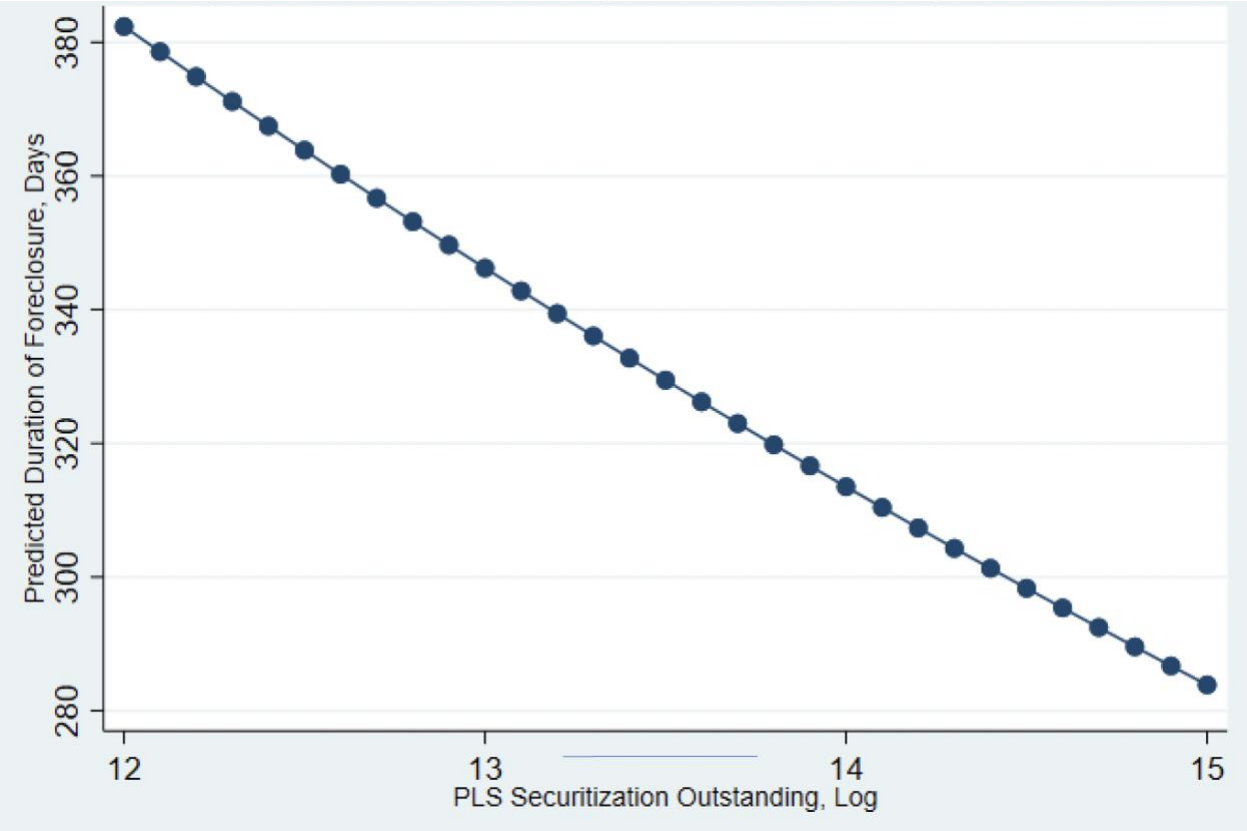


Figure 5. Predicted Margins of Multivariate Regression Analysis: Marginal Effect of Log PLS Servicing Outstanding on Predicted Duration of Foreclosure

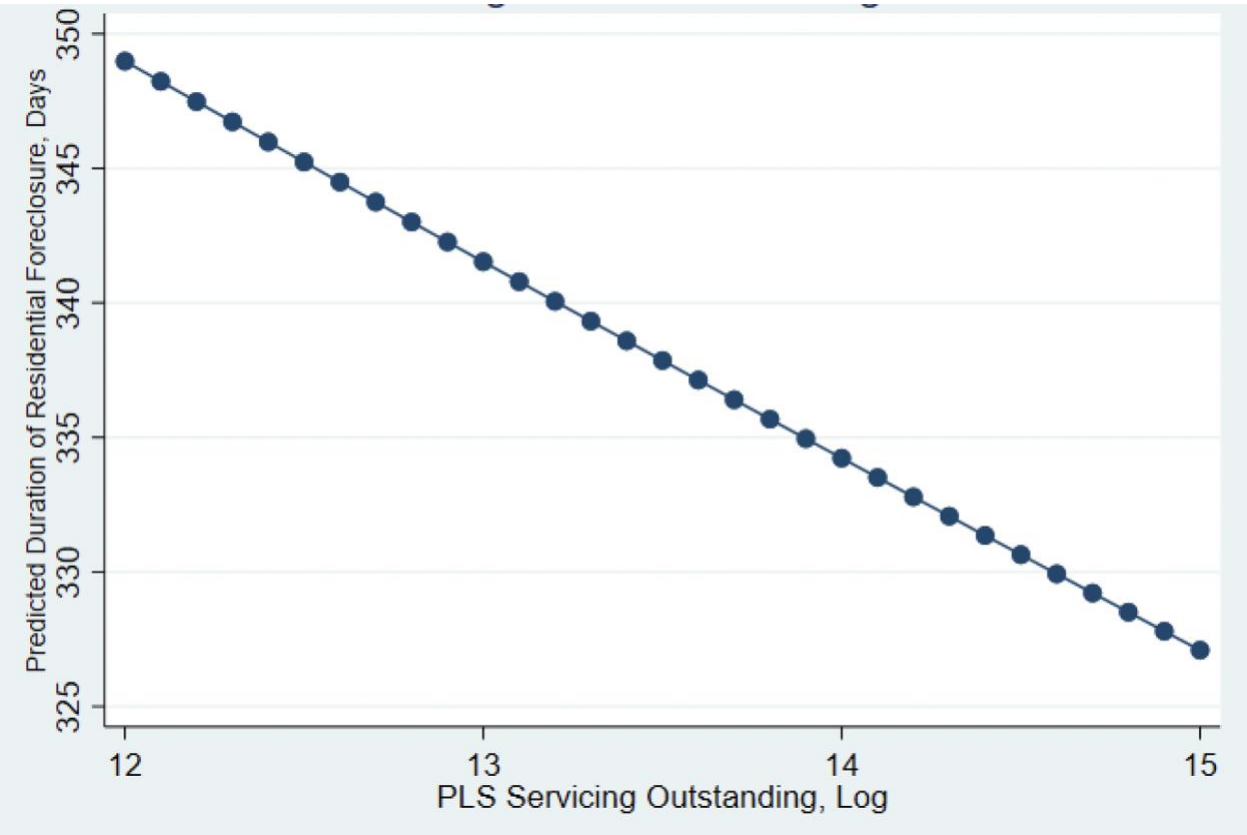
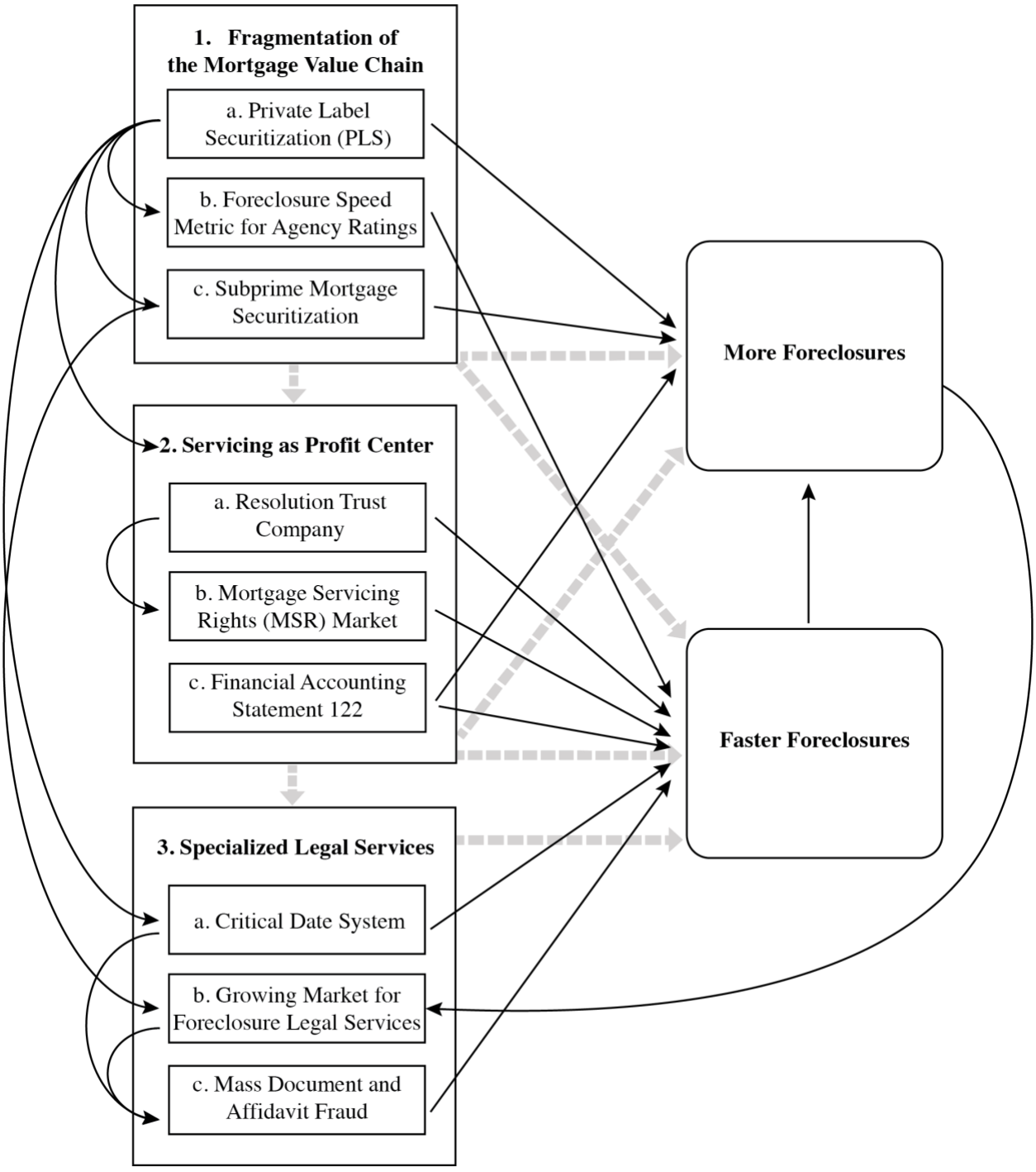


Figure 6. Process Tracing Analysis of Conditions for Increased Foreclosure Volume and Decreased Foreclosure Duration in Cook County, 1992-2006



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Chapter 2. Subprime Mortgage Markets, Municipal Court Funding, and Housing Precarity

Introduction

Foreclosure litigation is a nexus transferring risk from mortgage markets to individual homeowners. This risk transfer is continually contested, and evolves in ways that create meaningful consequences for both financial industry actors and mortgage borrowers (Kahn 2024). While market deregulation and subprime lending directly led to the 2007 foreclosure crisis, their relationship to foreclosure as a socially emergent *process* embedded in local legal institutions is understudied (Immergluck 2009; Kahn 2024). The practices that enabled mass foreclosure during the 2007 crisis developed together with deregulation and subprime lending, which had massively increased forced residential displacement over the preceding 15 years (Strolovitch 2021). However, the court systems tasked with managing foreclosure had been hamstrung by chronic austerity and struggled to manage the increase in filings (Conference of State Court Administrators 2003; Zemans 2003; Marcus 2013).

This research traces how and why resource-constrained courts developed the capacity for efficient mass foreclosure by answering two questions: (1) how do judges and local courts structure mortgage markets; and (2) how does courts' dependence on fee revenue affect mortgage market structure and housing precarity? Applying case study methods to foreclosure litigation in Cook County, Illinois, between 1993 and 2005, I trace how court-established foreclosure procedures enabled high-risk subprime lending by making foreclosure faster and cheaper. Shorter foreclosure durations reduce the costs and risks borne by owners and managers of distressed mortgage loans—costs to which the subprime lending industry is extremely sensitive because of its endemically high default rate—and increase the market share of subprime mortgage lending

specialists. However, decreasing foreclosure durations directly increases the speed of forced residential displacement and associated housing precarity. Faster foreclosure processes reduce how much time borrowers have to remain in their homes, the time they have to save their homes by finding new financing or work, and decrease their ability to reallocate money normally spent on housing to things like paying down non-mortgage debt.

The dramatic growth of the subprime mortgage industry in the years preceding the 2007 foreclosure crisis was accomplished only with significant, ongoing, government action. Researchers have identified many dimensions of the government's influence on American housing markets but overlooked the role of local court systems in structuring high-risk subprime mortgage markets. Although all credit markets depend on the coercive power of the state to enforce their claims (Carruthers 2020), the subprime mortgage market is exceptional in the frequency with which it calls upon the state to perform market action—specifically, to order foreclosure. Before the housing crisis, subprime mortgage borrowers were eight times more likely to miss mortgage payments than prime borrowers, and subprime loans were 10 times more likely to enter foreclosure (Gerardi et al. 2007; Danis and Pennington-Cross 2008). Even in the best of times, subprime mortgage lenders anticipate high default rates and aggressively manage the costs associated with foreclosure.

Neoliberal governance in the 1980s and 1990s set the stage for the subprime mortgage industry's massive growth. Ideological commitments to shrinking government and maximizing market freedoms led to the undoing of the New Deal regulatory regime and enabled the financial sector to increase volume, risk, and profits (Prasad 2006; Garland 2016). As policymakers slashed the welfare state, consumers relied on credit markets to make ends meet, and while deregulation increased the volume and variety of credit offerings, it also made those products

riskier for consumers (Prasad 2006; Crouch 2009; Wiedemann 2023). This was especially true for mortgage markets: Figure 1 shows that new foreclosures increased more than1500 percent between 1980 and 2005 (Mortgage Bankers Association National Delinquency Survey).

[Figure 1 about here]

Subprime mortgage lending contributed significantly to higher foreclosure rates (Immergluck and Smith 2004). This is accepted in the industry, which targets borrowers with damaged credit histories and high debt-to-income ratios (Sengupta and Emmons 2007). Subprime lenders charge higher fees and interest rates than prime loans: While these features are intended to compensate creditors for taking greater risk, they also increase the likelihood that already-compromised borrowers will default (Jung 1962; Page 1964; Vandell 1978; Sengupta and Emmons 2007). Figure 2 displays annual subprime mortgage foreclosures and the percent of subprime mortgages entering foreclosure in 1998 (when the Mortgage Bankers Association began tracking subprime loans separately) and the end of the study period in 2005.

[Figure 2 about here]

The local court systems responsible for overseeing these new foreclosures, however, were experiencing ongoing budget cuts and resource shortages. In the 1980s, the Reagan administration initiated an era of "permanent austerity" through a wave of cuts in grants and transfers to local governments (Pierson 2002; Marcus 2013). At the same time, traditional sources of local government revenue like property taxes were being capped or reduced (Martin et

al. 2018). Between 1980 and 1996, the share of local government funding supplied by the federal government declined by 56 percent and the share from state governments declined by 1 percent. Over the same period, the share of local funding from taxes increased by only 1.3 percent, while the share from fees and miscellaneous income increased by 20 percent (Howard 2001).

Judges and local court systems around the country struggled to cope, especially as case filings continued to grow. Tough-on-crime policies led to increased felony filings during the 1980s, but tort, contract, and real estate filings also grew (Larkin 1992). Indeed, total filings in state court systems grew by more than 40 percent between 1987 and 2005 (Langton and Cohen 2007). In 1988, the American Bar Association announced that state courts were so "starved for resources" that it threatened "the quality of justice" (Larkin 1992, p. 2). In the 1980s and 1990s, state courts dealt with temporary shutdowns, staff furloughs, decrepit facilities, and outdated technology (Silas 1992). Courts often responded by shifting resources from civil to criminal proceedings (Silas 1992; Muniz 2013). Funding would be further reduced after the 2001 recession (Martin 2020), and in 2003 the Conference of State Court Administrators reported that budget cuts were "forcing court closures, suspension of jury trials, layoffs and hiring freezes," delaying justice and imposing "untold economic and non-economic costs" on society as a whole (Conference of State Court Administrators 2003).

[Table 1 about here]

Faced with ongoing shortages, local court systems increasingly relied on fees and fines to fund their own operations (Martin 2008; Martin et al. 2018; Kirk et al. 2020). Commentators in the 1970s had dismissed the idea that courts could self-fund through fee revenue: it was

considered constitutionally questionable, and criminal defendants were thought too poor to pay while civil litigants were politically powerful enough to avoid novel court fees (Goodpaster 1970; Hazard et al. 1971). Proponents of neoliberal governance, however, saw fee-for-service models imposing market discipline on citizens' consumption of public goods (Kirk, Fernandes, and Friedman 2020). For local elected officials, legal system revenues are attractive for many reasons: they are under local control, available to communities where racialized patterns of economic development restrict alternatives, and came to be considered politically safe (Scharff 2016; Graham and Makowsky 2021; Pacewicz and Robinson III 2021). However, transforming courts into sites of revenue generation is not costless: if judges are forced to make legal and administrative decisions with an eye toward their budget, it threatens "the very soul of formal justice" (Heydebrand and Seron 1990a, p. 91, 1990b).

This research contributes to the literature on foreclosure, credit markets, courts, housing, precarity, and the 2007 housing crisis. It breaks new ground by showing that judges are powerful housing market intermediaries, and that their decisions during foreclosure litigation have unexamined power to shape local mortgage market structure and the lived precarity of homeowners. Housing precarity and mortgage foreclosure are both understudied (Desmond 2012; Kahn 2024), and the role of judges in actively structuring these processes has not been theorized. While the role of state legal institutions and laws in shaping markets is well researched (Carruthers 2020; Pistor 2020), it has been explored primarily at the national level, and hasn't been theorized in the context of consumer debt collection even though credit markets cannot function if the state doesn't enforce creditors' claims (Kagan 1984). Further, extant research shows that local, state, and federal governments intervene in housing markets to manage distributional conflicts (Gotham 2009; Krippner 2011; Quinn 2019; Robinson 2020), this

research shows that court budget conflicts drive new and different interventions into mortgage markets. A body of real estate economics literature does examine state-level foreclosure law as generating marginal costs that shape local credit markets (Clauretie and Herzog 1990; Quercia and Stegman 1992; Cao and Liu 2016), but judges' role as critical housing market intermediaries that exercise power over markets independently of statutory law or state and federal regulatory agencies hasn't been explored. Similarly, although a growing scholarship demonstrates that court fees and fines change the function of the legal system and increase defendants' precarity in criminal, traffic, and family courts (Harris et al. 2010; Pattillo and Kirk 2021), the impact of fee revenue hasn't been explored in the context of mortgage foreclosure litigation or any other type of civil debt collection, despite American's enormous indebtedness and the frequency with which these debts are collected through litigation. This is in part because social science literature has tended to treat foreclosure as a straight-line outcome from risky lending or borrower default, a rate, or a characteristic of place, rather than a socially emergent and highly variable process that greatly affects the precarity faced by everyday people (Kahn 2024). Finally, by tracing how courts experiencing chronic budget crises developed the capacity to foreclose more rapidly and at higher volumes, we gain insight into the mechanisms that led to the foreclosure of approximately ten million homeowners, and the displacement of countless more, during the national housing crisis that began in 2007 (Martin and Niedt 2015).

High-Risk Mortgage Markets and New Incentives for Faster Foreclosures

Federal policy interventions—both intentional and improvised—created the national subprime mortgage market in the 1980s and enabled its exponential growth in the 1990s and 2000s (Quinn 2019; Fligstein 2021). In the 1960s and 1970s, the progenitors of today's industry were high-interest regional lenders, peripheral to major financial markets, and heavily reliant on aggressive collections practices (Eggert 2008; Muolo and Padilla 2010). These "hard-money"

lenders didn't lend to borrowers seeking to purchase a home, but to homeowners who were unable to access other sources of credit (Mansfield 1999; Muolo and Padilla 2010). They were not subject to federal regulation, and they had a poor reputation in the larger financial industry (Muolo and Padilla 2010, p. 34). The industry relied on aggressive collection methods, and foreclosure was built into their business strategies: for example, lenders would cap loans at the amount they believed they could recover in foreclosure proceedings (Lembke and DiMartino 1994; Muolo and Padilla 2010).

Reagan-era financial deregulation transformed this small, seedy business into a national market (Gilreath 1999; Mansfield 1999; Eggert 2008). Until the 1980s, state governments retained regulatory power over mortgage lending, creating a series of fragmented local mortgage markets (Silvers and Slavkin 2009). States set maximum interest rates, and often disallowed common features of modern subprime loans like floating interest rates, balloon payments, and prepayment penalties (Engel and McCoy 2016). The first step towards a national subprime mortgage market was the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA), which prevented states from establishing mortgage interest rate caps (Mansfield 1999). In 1982, the Alternative Mortgage Transactions Parity Act (AMTPA) gave federal regulators sole authority over "alternative" mortgages and overturned state bans on adjustable-rate mortgages (Silvers and Slavkin 2009). The Tax Reform Act of 1986 (TRA) prevented consumers from writing off interest payments on all non-mortgage loans, incentivizing homeowners to finance consumption by taking out lines of credit backed by their homes (Hellwig 2009). Together, these laws created a national mortgage market and made subprime loans available in every state.

Subprime mortgage lending remained a relatively small component of the national mortgage market until the early 1990s, when mortgage securitization integrated it into international capital markets. Mortgage securitization pools idiosyncratic (and hence illiquid) individual mortgage loans into standardized mortgage backed securities (MBS) which are financial commodities legible—and attractive—to major institutional investors. Securitization was initially only possible for high-quality prime loans. In the early 1990s, investor demand and industry capacity outstripped the supply of prime mortgages, and investment bankers began securitizing subprime mortgages (Temkin et al. 2002). While less than 30 percent of subprime loans were securitized in 1995, about 55 percent were securitized in 2001 and more than 58 percent were securitized in 2003 (Chomsisengphet and Pennington-Cross 2006). Subprime lending boomed: between 1990 and 1993 annual subprime mortgage volume increased from $37 billion to $85 billion and reached $160 billion in 2001 (Inside Mortgage Finance Mortgage Originations by Product 1990-2003). Subprime and other exotic mortgage products would go from nine percent of all new loans in 2000 to forty percent in 2006 (Gotham 2009; Aalbers 2009; Office of Inspector General 2019).

Subprime mortgages remained high-risk, even if high yields and financial engineering made them appear safe to investors. Even before the 2007 housing crisis, subprime loans defaulted at six times the rate of prime loans and entered foreclosure ten times more frequently (Chomsisengphet and Pennington-Cross 2006). The Mortgage Bankers Association didn't track subprime loans separately until 1998, but that year, subprime loans made up 2.4 percent of all mortgages, but nearly 10 percent of all new foreclosures. By 2006, subprime loans made up 13.5 percent of outstanding mortgages and more than half of all new foreclosures. Between 1989 and 2007, twenty percent of homeowners who used a subprime loan to buy a home would enter

foreclosure, a rate six times higher than for homeowners who initially used traditional mortgages (Gerardi et al. 2007).

For the mortgage industry, longer foreclosure timelines increase costs and losses (Cordell et al. 2015). Owners of mortgage loans expect to lose about 25 percent of their investment during foreclosure, but this increases with the length of the foreclosure process, as expenses like opportunity costs, insurance, maintenance, property tax expenses, and property devaluation grow over time (Capone 1996; Danis and Pennington-Cross 2008; Cordell et al. 2015). Historically, these costs incentivized lenders to avoid foreclosure (Kahn 2024). Under the portfolio lending business model (which dominated mortgage lending from the New Deal until the late 1980s or early 1990s) a single entity would own and manage an individual mortgage for the entire life of the loan and would bear the cost of foreclosure (Quinn 2019; Fligstein 2021). These lenders worked with borrowers to find alternatives to foreclosure, and avoided risky lending that would increase losses (Capone 1996; Kahn 2024).

Securitization made foreclosure more common and also incentivized "efficient" or fast foreclosure (Kahn 2024). For MBS to function as liquid financial commodities, a third party must track and distribute borrowers' payments to investors, ensure property taxes are paid, manage delinquency, and protect the property during the foreclosure process (Eggert 2004; Levitin and Twomey 2011). Mortgage servicers are specialized administrators that oversee loans packaged into MBS, and every securitized mortgage is managed by a servicer (Eggert 2004, 2007). Servicers have little to no equity in the loans they manage, but contractually guarantee borrowers' payments to investors and must make any payment missed by the borrower (Eggert 2007; Levitin and Twomey 2011). If the borrower remains delinquent, servicers will recoup these payments *only* after the foreclosure is complete (Eggert 2004). Research shows that servicers of

securitized loans manage default differently than portfolio lenders, are more likely to place loans in foreclosure, and are extremely sensitive to the speed of foreclosure (Piskorski et al. 2010; Kruger 2018; Kahn 2024).

Mortgage servicers charge delinquent borrowers a host of fees, each of which makes it more difficult for the borrower to catch up (Eggert 2004). Late payments might incur a 5 percent fee, while flat fees are charged for things like property inspection and "preservation" fees ($5 to $3000 per instance), with additional fees charged for "field visits" ($60), breach letters ($35), providing loan documents ($5 or more per document), or sending a fax ($10) (Shellpoint Mortgage Servicing 2023). The fees assessed against delinquent borrowers compromise a major source of servicer revenue and are not shared with mortgage investors: late fees alone made up 10 percent of servicing revenue for America's largest mortgage servicing company in 2006 (Eggert 2004; Levitin and Twomey 2011; Thompson 2011; Kruger 2018). Once foreclosed property is sold, servicers recover all payments and outstanding fees and penalties before MBS investors receive any payment (Eggert 2007; Levitin and Twomey 2011).

After the foreclosure process is initiated, the primary concern of subprime mortgage servicers and subprime loan owners is the speed with which it is completed (Kahn 2024). Foreclosure plaintiffs almost always win their case: if the borrower can find the money owed, the case will be dismissed, but courts rarely decide against the plaintiff—even when they have been shown to mislead the court (Cymrot and Biggs 2006; Dayen 2017). Mortgage servicers' guarantee of borrowers' payments—and their ability to recoup payments and collect fee revenue when the foreclosure is finalized—incentivizes them to foreclose as quickly as possible once the borrower defaults. Indeed, foreclosure can even be profitable for servicers that manage it effectively and impose fees aggressively (Eggert 2004). For subprime MBS investors and owners

of subprime loans, faster foreclosure means smaller losses (Clauretie and Herzog 1990; Cordell and Lambie-Hanson 2016). These incentives, coupled with documentation problems inherent to the securitization problems and borrowers' inability to afford a drawn-out legal contest, led to abusive litigation practices and out-and-out fraud by foreclosure plaintiffs and their attorneys (Odinet 2019; Kahn 2024).

Struggling homeowners, however, materially benefit from longer foreclosure timelines. Borrowers retain the right to occupy their homes during foreclosure, creating a "free housing period" where they may live in their homes without making payments (Kahn 2024). For unemployed homeowners, longer foreclosure durations enable longer job searches and lead to better employment outcomes, with the free housing period acting similarly to unemployment benefits (Herkenhoff and Ohanian 2019). Struggling homeowners also use the free housing period to pay down other debts by reallocating money that would have gone to mortgage payments towards things like credit card debt (Calem et al. 2017). Further, longer durations increase the likelihood that homeowners keep their homes, either by negotiating a modification or finding the money to pay off their delinquency (Collins et al. 2011; Ding et al. 2022).

States and Housing Markets

The state's role in building and shaping markets is a central area of research in economics, sociology, and legal scholarship. Recent contributions to the states and markets literature identify budget crises and distributional conflicts as key drivers of government intervention in housing markets, as governments reshape credit markets to achieve their own policy goals. The modern mortgage market and mortgage securitization were created by the Johnson Administration to resolve conflicts over the federal deficits created by the Vietnam War (Quinn 2019). To remove housing policy expenditures from the budget, Johnson privatized the National Federal Mortgage Association (Fannie Mae) and subsidized private investment in

mortgage-backed securities (MBS) (Quinn 2019). Later, when the Savings and Loan industry failed to supply adequate mortgage credit to U.S. housing markets, the federal government deregulated interest rates to let markets do the politically divisive work of allocating credit, which inadvertently paved the way for the financialization of the U.S. economy (Krippner 2010, 2011). While local governments have fewer resources to affect financial markets, they have become increasingly dependent on real estate to drive urban growth and have embraced financial techniques like Tax Increment Financing (TIFs) to fund development (Pacewicz 2013, Weber 2010). Local governments also use mechanisms like zoning and building codes to drive real estate investment (Gotham 2006, 2009; Hirt 2015; Besbris et al. 2024). However, these literatures have not considered the role played by local courts in shaping mortgage markets or the impact of court budget conflicts on their management of foreclosure litigation, despite the role courts play in defining and enforcing the legal rights and remedies on which these markets depend.

Laws and legal institutions that enforce creditors' claims are the primary mechanisms by which states shape and construct markets to achieve policy goals (Gotham 2009; Haselmann et al. 2010; Carruthers 2020). Researchers find that nations with legal systems that more reliably enforce creditors' claims have capital markets that supply more credit at a lower cost compared to countries with less creditor-friendly legal regimes (Djankov et al. 2007; Haselmann et al. 2010). In countries with strong enforcement, businesses are more likely to borrow on capital markets compared to those in less protective legal regimes (La Porta et al. 1997; Pistor et al. 2000). Deregulation doesn't reduce creditors' dependence on the state, as they still require its authority to "privilege their private arrangements" and enforce their claims "in a predictable manner" (Carruthers 2020, p. 154). However, this literature focuses on national or cross-national

analysis of regulatory institutions, corporate actors, and institutional investors (e.g. Allen, Qian, and Qian 2005; Djankov et al. 2007; Malen, Vaaler, and Zhang 2023). Despite the oft-repeated refrain that all markets depend on the state's coercive enforcement powers, the day-to-day work of high-volume courts overseeing creditors' claims against consumers is unexamined.

Real estate economics scholarship considers the relationship between state foreclosure law and mortgage markets, and finds that subprime lending is especially sensitive to laws that increase foreclosure timelines and costs (Cao and Liu 2016). In states with Judicial foreclosure laws—including Illinois and 18 others—the foreclosure takes place through the court: creditors must file a lawsuit to foreclose, and judges have authority over the process (Feinstein 2018). In non-judicial (or *power-of-sale*) states, a creditor may foreclose simply by notifying the borrower and appointing an independent trustee to auction off the property (Cao and Liu 2016). Even excluding legal costs, judicial foreclosure is more expensive because it increases time-sensitive costs, such as opportunity costs, maintenance costs, and property devaluation (Clauretie and Herzog 1990; Harrison and Seiler 2015). Researchers find that subprime lending is more sensitive to differences in costs imposed by state foreclosure law than other types of mortgage lending because its greater default rate makes foreclosure-related risks (Curtis 2014; Cao and Liu 2016). In judicial foreclosure states, lenders make significantly fewer subprime loans (Harrison and Seiler 2015; Cao and Liu 2016). Non-judicial states have 10 percent more subprime mortgage borrowers, and subprime lenders in these states have a 5 percent larger share of the total mortgage market (Harrison and Seiler 2015; Cao and Liu 2016; Milonas 2017). Mortgage lenders incorporate time-related foreclosure transaction costs into the interest rates they charge (Harrison and Seiler 2015). Broadly, legal regimes that make it faster and cheaper for mortgage creditors to foreclose increase the supply of mortgage credit, especially in the subprime sector

(Curtis 2014; Cordell et al. 2015). However, this research overlooks courts' role as socially embedded institutions that shape legal processes independently of legislation or even formal rules. Further, the emphasis on *laws* rather than legal institutions or processes, means that the effects of ongoing resource shortages—such as chronic understaffing or dependence on foreclosure fee revenue—are unexamined.

While there is a growing literature on housing intermediaries, the role of public sector housing intermediaries in constructing, maintaining, and expanding housing markets is "understudied yet key" (Korver-Glenn et al. 2023, pp. 191, 196). Previous research on public sector housing intermediaries has found that zoning boards, housing authority inspectors, and building code inspectors shape housing markets in ways that reproduce socioeconomic and racial inequality by enforcing and promoting the values and interests of wealthy and middle-class property owners (Hirt 2015; Kurwa 2020; Bartram 2023). However, Bartram (2019) finds that housing inspectors in Chicago favor and protect low- and moderate-income property owners by "going easy" on inspections of their properties, but are more stringent with professional landlords or wealthy property owners who they feel can afford to maintain the property but fail to do so. These findings provide an important reminder to researchers that the relationship between state actors and inequality is more complex than we often imagine, and that public sector housing intermediaries may act in ways that conflict with the preferences of other housing intermediaries and market actors (Bartram 2019; Korver-Glenn et al. 2021). Judges across the United States and in Illinois specifically have enormous discretion over processes by which laws are enforced—they manage the court system, make the rules that govern legal proceedings, and establish the method and order by which claims are enforced (New 1978). Although the procedures enacted by judges affect the transaction costs, there has been no examination of how

judges intermediate local mortgage markets through the foreclosure litigation process (Macey 1994).

The structure and size of credit are shaped by states' enforcement of creditors' claims and subprime mortgage lending activity and market share are especially sensitive to foreclosure laws and foreclosure timelines. U.S. state actors intervene in housing markets to resolve budget crises. If judges' control over the foreclosure process effectively makes them housing market intermediaries that structure and shape mortgage markets, and the court systems they work in struggle with increased foreclosure caseloads while experiencing long-term, budget austerity, then my first and second hypotheses are as follows:

Hypothesis 1:

> *Judges will intervene in mortgage foreclosure procedure to address ongoing court budget crises.*

Hypothesis 2:

> *If judges make procedural changes that shorten foreclosure durations, subprime mortgage lenders will increase their share of the local mortgage market.*

Effects of Fee Revenue Generation on Courts and Defendants

Research on criminal, traffic, and family courts shows that court system dependence on fee and fine revenue significantly affects both the judiciary's adjudication and defendants' outcomes. Municipal courts' revenue generation has been found to financialize criminal courts, turning judges into debt collectors who compel defendants to pay for their freedom (Page and Soss 2017; Pattillo and Kirk 2021). A federal investigation following the 2014 police shooting of Michael Brown in Ferguson, Missouri, found that the local court "primarily used its judicial authority" to generate and collect revenue, and that the city's budget depended on legal-system revenue (U.S. Department of Justice 2015, p. 3). A study of cities in Georgia that

disproportionately relied on fine and fee revenue found that their local courts functioned as "highly efficient revenue collectors…process[ing] more cases than courts in similarly sized cities" (Carpenter et al. 2019, p. 5). Defendants who cannot pay these debts remain under court supervision, making these fees a form of "perpetual punishment" for people of limited means, extending the burdens of parole and increasing their risk of re-incarceration (Harris 2016, p. 2; Martin et al. 2018; Pattillo and Kirk 2021). This ongoing contact with the criminal legal system destabilizes employment, disallows certain occupational licensing, and increases the likelihood of driver's license suspension and re-incarceration—all of which make the debts more difficult to pay off (Harris et al. 2010; Cadigan and Kirk 2020). The debts interact with precarious housing to "churn" people between the criminal justice system, housing hardship, and homelessness (Pattillo et al. 2022). The prioritization of revenue generation challenges the ideological foundations of the legal system, as judges and court officers are transformed into debt collectors rather who literally put a price on freedom (Harris 2016; Pattillo and Kirk 2021). However, this literature hasn't examined any form of civil debt collection litigation where processes like mortgage foreclosure and wage garnishment directly drive precarity, despite this being one of the largest areas of activity for state courts across the country (Court Statistics Project 2020).

In the context of foreclosure litigation, the proceeding literature leads to my third and fourth hypotheses:

Hypothesis 3:

> *Judges will change how they adjudicate mortgage foreclosure to secure fee revenue in ways that will lead to faster and higher-volume foreclosure.*

Hypothesis 4:

> *Changes made to foreclosure processes by the judiciary to generate fee revenue will increase the precarity experienced by homeowners at risk of foreclosure.*

Methods & Data

This research applies mixed methods to a case study of mortgage foreclosure in Cook County, Illinois between 1993 and 2005. Specifically, I employ process tracing, which analyzes multiple features of a case over time to identify causal mechanisms and sequences (George and Bennett 2005; Lange 2012). I generate a causal narrative by integrating qualitative and quantitative data. Using snowball sampling, I interviewed 21 judges and attorneys involved in mortgage foreclosure (Parker et al. 2019). These actors had participated in foreclosure litigation and/or made critical decisions about the court's foreclosure procedure. This information is integrated with judicial reports and orders collected from the Cook County Circuit Court website.

Quantitative data were collected from population-level court records containing every foreclosure in Cook County Chancery Court between 1993 and 2005, covering the early days of the subprime mortgage boom to shortly before the national foreclosure crisis. Because Illinois is a judicial foreclosure state, creditors *must* file a lawsuit to foreclose. Each foreclosure suit generates a unique public record, allowing me to collect the following variables:

- *Annual residential foreclosures*. Total residential foreclosures filed in the Cook County Chancery (n= 151,778) are calculated from the unique case numbers available in court metadata.
- *Annual mean foreclosure duration*. The duration of each completed residential foreclosure is calculated as the number of days between the filing date and the date the court disposes of the case, plus one to account for foreclosures that are filed and dismissed on the same day. Annual mean foreclosure duration is then calculated as the

average foreclosure duration of all foreclosures filed in the same year. Two foreclosures missing disposed of dates in the court metadata are excluded from duration calculations.

- *Filing Fees*. Filing fees are fees by plaintiffs to start the foreclosure and are filed at the beginning of the lawsuit.
- *Appearance Fees*. Appearance fees are paid by the 25 percent of defendants who participate in court proceedings. These fees are more variegated than filing fees. In cases joined by third parties (as when secondary creditors become involved in litigation), multiple appearance fees are paid. More importantly, they are not paid at the time the lawsuit is filed, but when a defendant joins the case later date, sometimes many months later. Fee schedules can and do change in the interregnum, and it is impossible to tell from court metadata when exactly the defendant joined the suit. To account for these vagaries, I assign each case where a defendant appeared in court a single appearance fee at the lowest rate observed in that calendar year. The county's appearance fees may reduce the likelihood that debtors appear in court. However, these fees are not charged in all court systems, and the percentage of defendants that appear in court remains low for foreclosure and other types of debt collection litigation across the country: a common rule of thumb is that only 10 percent of consumer debtors show up to their court date. (Halpern 2014; Taylor Poppe 2019).

The Cook County court system has overlapping jurisdiction over some (but not all) foreclosures with the local federal court, the United States District Court for the Northern District of Illinois. Between 1993 and 2005, 13,505 foreclosures were filed in this federal court. However, the federal court has jurisdiction over a total of eighteen northern Illinois counties, and court metadata does not identify the location of the disputed property, meaning this data cannot be

used to determine which of these foreclosures occurred within Cook County. For this reason, federal foreclosures have been excluded from county-level data analysis. However, the analysis presented in this paper still uses a population-level dataset for foreclosures processed in Cook County courts and covers a minimum of 92 percent of foreclosures in the county.

Other quantitative data was collected from public and private mortgage market datasets. The Mortgage Bankers Association's *National Delinquency Survey* (2022) covers institutional lenders and servicers that comprise approximately 85 percent of the U.S. mortgage market (Mortgage Bankers Association 2024). This resource provided the following:

- Number of outstanding mortgages at the national and state level from 1980 to 2005.
- Number of outstanding subprime mortgages at both the national and state level from 1998 to 2005.
- New foreclosure starts for all national and state mortgages from 1980 to 2005.
- New foreclosure starts for subprime mortgages at both the national and state levels from 1998 to 2005.

The survey allows respondents to use their own company's definitions of foreclosure starts so not all mortgages in this category will formally enter the foreclosure process (Mortgage Bankers Association 2024).

Other quantitative variables were collected from federal databases. Home Mortgage Disclosure Act Loan Application Register data (HMDA) is loan-level data on mortgages used to buy or improve a home made by lenders that (a) made over 200 loans, and (b) exceed approximately $50 million in assets (Federal Reserve System 2006; Federal Reserve Board 2010; Wolters Kluwer Compliance Solutions 2023). The data includes every mortgage made to purchase or improve owner-occupied real estate, a lender ID number, regulatory institution ID

number, and the state and county where the loan was made (Federal Reserve Board 2010; Wolters Kluwer Compliance Solutions 2023) HMDA data covers approximately 90 percent of mortgage lending in metropolitan areas (Federal Reserve Bank of Philadelphia 2024).

I match lending HMDA lending data to the HUD Subprime and Manufactured Home Lender List using the lender name, ID number, and regulatory institution ID (U.S. Department of Housing and Urban Development 2006). This list was maintained by the Department of Housing and Urban Development (HUD) between 1993 and 2005 to identify lenders that specialized in subprime mortgage lending. HUD identified subprime lenders by examining their lending activity. HUD also confirmed this designation with lenders, and some lenders that contested their designation were kept on the list if more than 50 percent of their mortgage lending was subprime (U.S. Department of Housing and Urban Development 2006). Matching subprime mortgage specialists identified by HUD to loan-level HMDA data together allows me to track the following:

- All HMDA loans made by subprime specialists annually in Cook County between 1993 and 2005.
- All HMDA loans made by other lenders annually in Cook County between 1993 and 2005.
- Market share for subprime specialists and non-subprime specialists, calculated as percent of all new HMDA mortgage loans made between 1993 and 2005.

During the period of study, HMDA loan-level data lending activity cannot be dated more granularly than to year. If changes in Cook County foreclosure procedure happen *within* a given year, I cannot determine if loans from that year were made before or after that change. For this

reason, HMDA data collected in years where a procedural change occurred is dropped from tests measuring the impact of the procedural change.

Quantitative data is utilized for descriptive statistics, correlation analysis, Z-tests of means, and two-proportion Z-tests. Z-tests of means are used in industry analysis of HMDA data (Piven 2018) and are appropriate here because there is no probability-based sampling to account for. HMDA reporting covers 90% of the mortgage lending, but the excluded loans and/or the lenders are qualitatively different from the mainstream residential mortgage industry, and include entities like specialist lenders providing business loans to entrepreneurs secured by mortgages on residential property (Federal Reserve Board 2005). Two-tailed Z-tests of means are used to test (a) how annual mean foreclosure duration responds to changes in Cook County foreclosure procedure; and if lending activity by subprime mortgage specialists changes significantly in response to changes in (b) Cook County foreclosure procedure and (c) annual mean foreclosure duration. Z-tests of proportions are used to test the proportion of loans made by subprime specialists before and after judicial interventions in foreclosure procedure.

Analysis: The Case of Mortgage Foreclosure in Cook County, Illinois, 1993-2005

Subprime Mortgage Foreclosure and Underfunded Courts in Cook County

While federal deregulation established the national subprime mortgage market, local court systems across the country would need to maintain it by processing foreclosure quickly enough to make this high-risk lending viable. Federal regulators and private credit rating agencies have long required subprime mortgage industry participants to develop strategies to efficiently manage delinquency and foreclosure. Rating agencies see efficient foreclosure as a tool for protecting MBS investors and incorporate foreclosure speed and efficiency into ratings for both servicers and MBS: since the early days of subprime securitization, they have demanded that servicers of subprime loans initiate foreclosure “promptly” (Lembke and DiMartino 1994;

Eggert 2004; Thompson 2009). The Office of the Comptroller of the Currency (OCC), the Federal Reserve, and the Federal Deposit Insurance Corporation (FDIC) mandate that companies in the subprime business make "stronger collection efforts" than those in the conventional mortgage industry, and consider strategies for "moving quickly to foreclose or repossess collateral, and allowing few loan extensions" to be "critical" in this industry segment (Office of the Comptroller of the Currency 1999a, p. 4). In the absence of such policies, subprime mortgage lending is "a high-risk activity that is unsafe and unsound," and can lead to regulatory intervention (Office of the Comptroller of the Currency 1999b, p. 2, 1999c).

Data from Cook County and the state of Illinois shows mortgage market deregulation and subprime lending were indeed associated with dramatic increases in mortgage borrower distress. Figure 3 shows that between 1980 and 2005, new foreclosure filings in Illinois increased tenfold. Figure 4 details the foreclosures associated with subprime lending in Illinois. Comparing the data presented in Figure 3 and Figure 4 shows that subprime loans in Illinois were disproportionately likely to enter foreclosure: in 1998, they made up about 2.5 percent of all outstanding mortgage loans and about 14 percent of new liquidations in Illinois; in 2005, subprime loans made up approximately 12.5 of outstanding mortgages but represented 47.3 percent of new liquidations.

[Figure 3 about here]

[Figure 4 about here]

The Cook County housing market reflected statewide trends. Figure 5 shows the growth of annual residential foreclosure filings in Cook County during the period of study, while Table 2 shows the linear correlation between foreclosure filings and previous year lending activity by (a) subprime specialists ($r(13) = 0.82$, $p < 0.001$), (b) all lenders ($r(13) = 0.66$, $p < 0.05$), (c) and non-subprime specialists ($r(13) = 0.54$, $p < 0.10$). These correlations fit the expected

relationships between different types of lending activity and foreclosures in the following year: while all mortgage lending increases the likelihood of future foreclosures, lending by subprime specialists is more strongly correlated with following-year foreclosures than lending by non-subprime specialists, and only the relationship between subprime specialist lending activity and following-year foreclosures is significant at the 99.9 percent confidence level.

[Figure 5 about here]

[Table 2 about here]

This tidal wave of foreclosure occurred while local courts in Illinois were experiencing ongoing funding shortages and budget austerity. Responsibility for funding local courts is split between the state and the individual counties: the state funds juvenile justice, probation services and personnel, and judicial salaries, while counties fund ongoing operations and non-judicial court staff salaries (*Annual Report to the Supreme Court of Illinois* 1992). Counties primarily fund court through property taxes, but the state legislature began capping property taxes in the early 1990s, and Cook County's were capped in 1994 (Supreme Court of Illinois 1994; Anderson et al. 2008). State funding for courts is often cut in favor of other budget priorities, and fluctuates independently of the demand for court services: funding declined 22 percent between 2002 and 2013 even as costs rose and county budgets were decimated (ISBA Special Committee on Fair and Impartial Courts 2013). The state has "never" fully met its funding obligations to the court, forcing the court to find other money to keep the system running (*Annual Report to the Supreme Court of Illinois* 1992, p. 17).

Budget issues have caused conflict between the courts and both state and county governments. In 1990, the president of the Cook County Board of Commissioners refused to allocate more money to courtrooms and office space, instead demanding that judges work

"double shifts" in their extant accommodations—an order the Chief Judge resisted (Tribune 1990a, 1990b). Around the same time, the governor vetoed legally mandated cost-of-living raises for judges as part of a deficit reduction program: the Illinois Supreme Court responded by threatening to hold the state comptroller in contempt of court, and a group of judges sued the governor (Zemans 2003). The state sometimes fails to fund court system projects even after funding is approved by the legislature, leading to conflicts between counties when the court system is unable to pay the costs it was supposed to bear (*Annual Report to the Supreme Court of Illinois* 1992).

Cook County courts, like all courts in Illinois, rely on self-generated revenues (Statutory Court Fee Task Force 2016). The Cook County Clerk of the Circuit Court collects and disburses millions of dollars in fees and assessments annually. This revenue funds the court's operations and other projects, including libraries, roadside memorials, and after-school programs (Statutory Court Fee Task Force 2016). Critically, the county uses court fee revenue to offset funding that it would otherwise have to provide. If there is a shortfall in fee revenue, the county must make up the difference, or the court simply must go without (Supreme Court of Illinois 1994).

Fees related to foreclosure are an especially attractive source of funding for Illinois courts. While fee revenue generated by criminal proceedings dwarfs those generated by mortgage foreclosure, collecting from criminal defendants is quite difficult, and some court systems spend nearly as much on collections as they recoup in criminal system fee revenue (Chicago Appleseed & Chicago Council of Lawyers 2020, Harris 2016). Foreclosure litigation fees, on the other hand, are quite easy to collect: if a plaintiff doesn't pay the fees required to file a lawsuit, it won't commence. As foreclosures increased in Illinois, so did the fee revenue they generated, making it a growing source of funding across the period of study. Further, as

discussed below, individual foreclosure cases require very little time or effort from the judiciary: plaintiffs often win by default because most defendants don't show up, and foreclosure rarely involves time-consuming processes like discovery or witness testimony.

An unstoppable force meets an immovable object: foreclosure attorneys, Chancery judges, and foreclosure timelines

If mortgage industry actors, their lawyers, the larger financial industry, and federal regulators were all convinced of the importance of fast and efficient foreclosure processes, the judiciary was not. Foreclosures in Cook County are overseen by the Chancery Division, a "crown jewel" appointment where judges have jurisdiction not just over foreclosure, but over constitutional law, class actions, injunctions, declaratory judgments, and complex civil litigation (Chancery Presiding Judge Interview). Mortgage foreclosures were considered less important, and to contain "no legal issues" (Judge CHS Interview). In the early 1990s, judges started the day with a few foreclosure cases before moving to more substantive legal work: "Most of the cases are…complex civil litigation. Before those would be called, the court would hear mortgage foreclosure cases. Each day there would be a handful, two or five cases…they were handled summarily" (Judge CHS Interview).

As foreclosure filings increased, plaintiffs' attorneys and judges became frustrated with the state of foreclosure litigation. Attorneys were exasperated by the judges' unwillingness to devote more time and resources to foreclosures as volumes increased, and the lengthy foreclosure timelines that resulted (interviews with Judge SDN, Plaintiffs Attorney NBL, and Plaintiff Attorney MHN). A boutique real estate litigator with a sizable foreclosure practice said that by the late 1990s, "there was a lot of grumbling by the mortgage foreclosure bar that the foreclosure division was slow" (Plaintiffs Attorney BDL Interview). As one judge stated, "Foreclosures started multiplying and the banking industry started complaining that the chancery

judges were only hearing four or five cases a day" (Judge SDN Interview). While the statutory minimum for a residential foreclosure under Illinois law is seven months (see Kahn 2024 for more on foreclosure timelines), this timeframe was rarely achieved. According to an attorney representing foreclosure plaintiffs since the late 1960s, "theoretically you could do it in seven months. In real terms, you can't. They won't let you…The judges are pro-borrower, and they don't want to be signing all these judgments and evicting people" (Plaintiffs Attorney MHN Interview). This long-time foreclosure attorney went on to recall how some judges resisted hearing more foreclosures:

> *If you wanted to have a motion… there was a book, and you'd write it in by hand. There were no computers doing this. In the 1990s, some judges got pissed off and they cut the book in half. They'd say, I'm only hearing 10 motions a day. That's how crazy it was. Now, the Chancery judges were very powerful…They handled very different kinds of cases. But foreclosures were boring, to be honest with you"* (Plaintiffs Attorney MHN).

Many judges in the Chancery saw the growing volume of foreclosure as overwhelming the courts' resources and "not a good use of judicial time" (Judge RLT Interview, confirmed by Presiding Judge and Defense Attorney MYM). An internal report reviewing the courts' management of foreclosure claimed that in the 1990s and early 2000s, foreclosures overwhelmed the court and caused "significant backlogs":

> *Litigants in non-foreclosure cases were finding that they could not schedule their motions promptly because [calendars] were already filled with foreclosure cases. Attorneys for lenders were complaining that there were not enough spaces for their cases on the motion calls. Homeowners [were] in packed courtrooms…The atmosphere was not one conducive for a homeowner to tell his or her story and for the judge to explain…options available for refinancing and legal representation* (Kinnaird 2010: 2).

One judge recalled his experience as a litigator arguing non-foreclosure cases in Chancery:

> *I would run in on [an injunction] at 8:45 in the morning and for an hour and a half [a foreclosure attorney] had a giant file box of default foreclosures. These very experienced super-duper judges then had to go through the file box of default foreclosures while attorneys for Lloyds of London and Northwestern Medical were sitting in the audience twiddling their thumbs, waiting for their case* (Judge RLT Interview).

Other judges and attorneys attributed Chancery judges' unwillingness to allocate more time and resources to foreclosure as motivated by something like snobbery (interviews with Chancery Presiding Judge, Defense Attorney MYM, and Plaintiff Attorney MHN). One foreclosure defense attorney was more direct in pointing out foreclosure's position at the bottom of the Chancery Court's status hierarchy:

> *The general Chancery is traditionally a very high-brow area of practice where the judges really read your pleadings and really ask questions… The judges and importantly, the wealthy lawyers who appear in front of them, had to wait while 'those people' came in. You know, those stinky, not as well dressed, not as literate, not as well-spoken people. They did not like this at all* (Defense Attorney GDY Interview).

Whatever the cause of foreclosure delays, they were an important issue for the local mortgage industry, and especially for the subprime lenders. Table 3 presents correlations between the annual mean foreclosure duration and mortgage loans made in the following year by (a) subprime specialists ($r(13) = -0.90$, $p < 0.001$), (b) all lenders ($r(13) = -0.48$, $p < 0.10$), and (c) non-subprime specialists ($r(13) = -0.3$, $p > 0.10$). Table 4 presents correlations between the duration of residential foreclosure activity and market share the following year by (a) subprime lending specialists ($r(13) = 0.76$, $p < 0.001$) and (b) by non-subprime lending specialists ($r(13) = -0.76$, $p < 0.001$). Figure 6 and Figure 7 depict the relationships between residential foreclosure duration and subprime lending specialist's following-year lending activity and market share, respectively.

[Table 3 about here]

[Table 4 about here]

[Figure 6 about here]

[Figure 7 about here]

These correlations fit the theorized relationships between foreclosure duration, subprime lending activity, and non-subprime lending activity: subprime lending's endemically high rate of foreclosure makes it more sensitive to costs and risks associated with the duration of foreclosure. Shorter foreclosure durations reduce the costs of subprime lending and allow lenders to make more loans more profitably. Further, Table 4 and Figure 7 show that shorter foreclosure durations change the composition of the local mortgage market and allow subprime lenders to command a greater share of the mortgage market.

It could be argued that these correlations are spurious, that the subprime market was growing in many markets during the period of study, and that the relationship between foreclosure duration and subprime specialist market share is coincidental. Table 5 provides evidence to the contrary: it shows that subprime specialist market share is more strongly correlated with (a) previous year's foreclosure duration ($r(13) = -0.87$, $p < 0.001$) than with (b) present year foreclosure duration ($r(13) = -0.67$, $p < 0.05$) or (c) following year's foreclosure duration ($r(13) = -0.42$, $p > 0.10$), suggesting that lenders are incorporating past foreclosure durations into present lending decisions, rather than a spurious correlation between two trends that just happen to be moving together.

[Table 5 about here]

Fee Income Dependence & Achieving Faster Foreclosure

On October 1, 2002, the Chancery launched a new Pilot Project setting up a special Pilot Project to hear uncontested foreclosures and help process the accumulated case backlog (General Administrative Order No. 2002 – 02). Seven new judges were appointed (not elected, as was the case for general Chancery judges) and 16 new calendars were created for scheduling foreclosure

proceedings. One of the new judges explained that the Pilot Project was initiated because "the mortgage foreclosure cases that were coming into Chancery, there was a backlog. They weren't moving them fast enough" (Judge FRN Interview). The Pilot Project would last until February 2005, when it was formalized as a new subsection within the Chancery called the Mortgage Foreclosure/Mechanics Lien section, after which *all* foreclosures from the general Chancery shifted into the new section (Kinnaird 2010).

However, data doesn't support the contention that the court was failing to keep up with foreclosure filings—which was claimed by both judges and foreclosure attorneys. Figure 8 presents annualized population-level data on foreclosure filings and foreclosure duration. From the beginning of the study in 1993 until 2001, the average duration of foreclosure decreased even while foreclosure filings spiked. The correlation between annual foreclosures and foreclosure duration between 1993 and 2001[1] is negative ($r(13) = -0.55$, $p < 0.05$). Judges seem to have found ways to process higher volumes of foreclosure more quickly even before the launch of the Pilot Project, some of which may have been accomplished by the common practice of "just signing [foreclosure] papers…without even looking at them" during court proceedings (Chancery Presiding Judge).

The court's decision to allocate new resources to foreclosure litigation and process cases more rapidly cannot be attributed simply to judicial disinterest in a low-status area of law or to pressure from plaintiffs' attorneys and the foreclosure industry: these were necessary conditions but not sufficient conditions. As discussed above, judges' lack of interest in foreclosure was long-standing: according to the presiding judge "it never made sense that foreclosures were in

[1] 2002 is excluded from this analysis because annual foreclosure duration data for that year would include data from both before and after the launch of the Pilot Project.

Chancery" (Chancery Presiding Judge Interview). A not uncommon opinion among Chancery judges was that "if the person defaulted on their mortgage, the bank's entitled to the property" (Judge FRN Interview, confirmed by interviews with Judge CHS, Defense Attorney MYM, and Chancery Presiding Judge).

[Figure 8 about here]

Complaints about Illinois foreclosure by mortgage industry actors and their representatives are nearly as old as the state itself. When Illinois passed a law in 1841 giving borrowers a year-long period after foreclosure to live on and repurchase their land, the *New York Journal of Commerce* wrote that the law was "disgusting and knavish [and] attests to the almost hopeless depravity and corruption of the age" (Friedman 2019, pp. 229–30). An 1858 *Chicago Press and Tribune* article attributed the scarcity of mortgage credit to the state's arduous foreclosure process, which forced creditors *"*to wait a year, more or less, to enforce an execution or to get title to property sold by the law for the payment of his debts" (Stay 1858). In 1932, the Chicago Real Estate Board commissioned a group of Northwestern law professors and students to write a series of reports on Cook County foreclosure, which the *Chicago Daily Tribune* summarized with the headline "Costly Foreclosures Held Needles: Law School Report Raps Method" (Chase 1933). A law professor and Home Owners Loan Corporation attorney wrote an article in 1940 demanding that Illinois foreclosure be reformed, calling the state's "extremely costly and time-consuming" foreclosure process the nation's most expensive (Bridewell 1940, pp. 214–15). In 1956, a powerful mortgage banker told a local newspaper that mortgage credit in Illinois was tight because the state had the "worst, most absurd, and costliest" foreclosure

process in the country (Fuller 1956, p. C7). A 1975 report prepared for the federal Office of Economic Research identified Illinois' foreclosure process as "extremely complicated and lengthy," and estimated that lenders would lose about half the outstanding value of the loan during foreclosure (McElhone and Cramer 1975, p. 7). In 1981, the mortgage industry succeeded in having the state legislature reduce statutory foreclosure durations by 6 months, but complaints continued: in 1988, an Illinois law professor called for further reforms to the state's foreclosure process, writing that "in today's clogged foreclosure courts…The foreclosure docket is crowded, especially in Chicago…[judges] have little time to reflect judiciously" (Myler 1981; Freyfogle 1987, p. 935) .

What made the mortgage industry's demands for faster foreclosure successful in this instance, compared to the long history of pressure, was the courts' new dependence on foreclosure fee revenue. As foreclosure filings increased, so did revenue from foreclosure litigation fees. Table 6 details the mortgage foreclosure filing fees (required to begin a lawsuit) and appearance fees (required for defendants participating in court proceedings) during the period of study. This doesn't account for other fees paid into a series of special statewide funds such as the Court Document Storage Fund and the Court Automation Fund that defray court costs borne by counties across the state (Statutory Court Fee Task Force 2016). Table 7 shows county appropriations, total fee revenue, and foreclosure fee revenue for the period of study. Relative to county appropriations, total fee revenue fell between 1993 and 2002, while foreclosure fee revenue steadily increased.

The proximate cause of the Pilot Project was the courts' need to maintain the revenue generated by foreclosure litigation, as predicted in Hypothesis 1 above. Plaintiffs' attorneys were aware that the court depended on the fees they paid, and in 2001 they directly leveraged this

revenue. That year, a group of large foreclosure firms confronted the Chancery's newly appointed presiding judge and told her that unless foreclosures were processed more quickly, they would be taking their foreclosure cases to federal court (Chancery Presiding Judge Interview, Judge SDN Interview, Plaintiffs Attorney BDL Interview). The presiding judge interpreted this as a threat to the court's funding and to external programs funded by court fees (Chancery Presiding Judge Interview). A lawyer involved in the effort to move foreclosures to federal court agreed, saying that the Chancery's presiding judge "was definitely apprised of the fact that if it goes to federal court…it's going to have a big effect on the filing fees, [and] she'll lose a significant amount of money" (Plaintiffs Attorney BDL Interview). As one Chancery judge put it, "Any government wants to keep revenues coming in to support its operations. The threat to go to federal court meant that revenues could be taken from the [county] court" (Judge SDN Interview).

When the foreclosure attorneys threatened to take their cases to federal court, total fee revenue as a percentage of county appropriations had been declining for about a decade. Foreclosure fee revenue, however, had grown consistently in the years leading up to this confrontation: between 1993 and 2001, foreclosure filing and appearance fees more than doubled to nearly $4 million, and increased from two percent of total fee revenue to eight percent. The four law firms leading the effort were the largest in the county, and over the previous three years had filed almost 65 percent of all foreclosures and paid more than $5 million in fees. If just these four firms had taken their cases to federal court, the impact would be significant.

[Table 6 about here]

[Table 7 about here]

Foreclosure Duration and Subprime Mortgage Lending After the Pilot Project

The judges assigned first to the Pilot Project were aware that the court needed to process foreclosures more quickly. One of the new foreclosure judges described why he was assigned to the new position:

> *They needed somebody to move the cases along faster. I already had a reputation for being effective and efficient at moving high-volume courtrooms. I didn't know anything about foreclosures, I had never practiced in the real estate area, other than buying my own house. That was the extent of my experience* (Judge FRN Interview).

At least some of these new judges shared the general Chancery judges' dismissive attitude toward foreclosure. According to one leading foreclosure attorney, the new section handled cases more perfunctorily than the general Chancery:

> *When I started practicing before the general Chancery, Chancellors were smart [and] articulate. They let you make your argument [and] they listened to you, and they made a ruling. Once it went to a dedicated [foreclosure] section, it was almost like following a book, A, B, C, D, E, and judges would say "No, I'm not going to hear that argument"* (Real Estate Attorney NBL Interview).

A legal aid attorney who practiced before the new section recounted his experiences with the judges:

> *Since the section was created, there's been like maybe two or three judges who cared and were conscientious [and] at least half of them are just marking time…. There's at least one judge I've heard say things like, 'The only reason foreclosure court exists is to accommodate the foreclosure plaintiffs and attorneys and to keep things moving smoothly through foreclosure because nobody has a defense and they're entitled to the house and that's all there is to it.' I don't think most of the judges would be that crass, but there's been a couple* (Defense Attorney MYM Interview).

The Pilot Project didn't clear the foreclosure backlog, but did reduce foreclosure durations, which satisfied the foreclosure litigation industry's demands and freed the General Chancery judges of their burdensome foreclosure caseload. Table 8 presents summary statistics of mean foreclosure duration and a *Z*-test of the difference of means in foreclosure duration

before and after the Pilot Project, under H_0: $\rho = 0$, with results $z = 25.7$, SEM = 1.9, $\rho < 0.01$ (two-tailed) with a confidence interval for the number of days average foreclosure was reduced by of 99% CI (43.0, 52.6)—meaning it reduced the duration of foreclosure by roughly one and a half to two months. The information presented in Table 8, together with the quotes above from lawyers and judges working in the new Pilot Project section, offers strong support for Hypothesis 3 and Hypothesis 4: the Pilot Project was intended to placate foreclosure attorney's demands for faster foreclosure, and did significantly decrease foreclosure durations. Shorter foreclosure durations would make subprime mortgage lending more profitable and maintain the influx of court fees. This was a success for everyone except borrowers at risk of foreclosure: it would reduce the amount of time they had to remain in their homes, find new work or financing to save their homes, or simply use the money they saved on housing to pay down other debts. Borrowers would lose the same amount of time plaintiffs gained, meaning that the Pilot Project would reduce the amount of time they could stay in their homes by one and a half to two months.

[Table 8 about here]

The Pilot Project also increased subprime specialist lenders' market share in Cook County, as predicted in Hypothesis 4. Table 9 presents the Z test of the proportion of loans made by subprime specialists before and after the Pilot Project with results H_0: $\rho 1\text{-}p2 = 0$, with results $z = 150$, SEM = 0.00018, $\rho < 0.01$ (two-tailed). The market share of subprime lending specialists, measured as the proportion of all mortgages they made, increased by about 27 percent (from 0.216 to 0.274).

[Table 9 about here]

The Pilot Project seems to have satisfied the foreclosure plaintiffs and their attorneys. Table 10 shows foreclosure filings in both Cook County court and the federal district court. Federal foreclosures increased between 1993 and 2002 but dropped sharply after the Pilot Project was launched. As the judiciary processed foreclosures more quickly, the threat to the county court's revenue stream receded. Cook County, however, got its pound of flesh. Table 6 above shows that the court raised fees for mortgage foreclosure cases by $51 in December of 2002: no other filing fee increase observed in the study period was more than five dollars.

[Table 10 about here]

Conclusion and Implications for Further Study

This chapter advances research on judges and courts, mortgage markets, housing, precarity, and the relationship between states and credit markets by showing (1) that judges presiding over foreclosure litigation act as intermediaries that structure and regulate local mortgage markets, and (2) that courts' budget pressures and fee dependence affect judges' regulatory work and triggers significant interventions in mortgage markets. Tracing the evolution of foreclosure litigation in Cook County between 1993 to 2005, I examine how resource-constrained courts developed the ability to manage the sharp rise in foreclosure associated with the expansion of subprime lending, setting the stage for the tsunami of forced residential displacement that would occur during the 2007 foreclosure crisis. I find that judges in the Cook County Chancery developed the capacity for efficient mass foreclosure—processing more foreclosures more quickly—to retain the foreclosure-related fee revenue that the court became dependent on as

foreclosure filings grew. The Pilot Project was a solution that allowed the Chancery judges to offload the low-status foreclosure while satisfying the mortgage industry enough to retain the foreclosure litigation income stream—a win-win.

For subprime mortgage specialists, the Pilot Project was a solution to their existential problem of time-sensitive foreclosure costs. These lenders gave expensive mortgage loans to people who couldn't reliably repay: the loans were expected to enter foreclosure regularly. Fast and efficient foreclosure was critical not only to the profitability of individual companies, but to the credit ratings agencies that evaluated the performance of subprime mortgage backed securities, the investors that purchased those securities, and the federal agencies that regulated the industry. The market share of subprime lending specialists in Cook County grew by 27 percent after the Pilot Project reduced average foreclosure durations by 13 percent, or roughly 48 days.

For homeowners at risk of foreclosure, reducing foreclosure litigation timelines by 48 days decreased the time they had to remain in their homes without making further payments and shrank the associated safety net. This reduced associated benefits and protections, including the time they had to find new work or financing to save their home, their ability to divert housing payments to other debts, and the time they had to remain in their home for free during a period of financial stress and turmoil. For homeowners at risk of foreclosure, the Pilot Project directly increased their precarity.

This research demonstrates the significant relationship between local mortgage markets and aspects of foreclosure procedure directly under the control of municipal courts. While previous real estate economics research established that differences in state law affect time-sensitive foreclosure costs and shape state-level mortgage markets, this work shows that local

judges exercising their discretion over foreclosure procedures may dramatically affect local mortgage markets within a single jurisdiction, over time and at the case level.

By finding that judges overseeing foreclosure in municipal courts can restructure mortgage markets by exercising discretionary powers over the litigation process and procedure, this research contributes to the literatures on housing markets, credit markets, and the relationship between states and markets. Extant states and markets literature emphasizes the critical role state enforcement policies play in shaping credit markets, but this scholarship breaks new ground by showing that judicially controlled processes in consumer debt collection similarly shape financial markets and creditor behavior. By showing that judges overseeing foreclosure litigation are powerful public housing market intermediaries that shape local mortgage markets, I contribute to the growing research on housing intermediaries (Korver-Glenn et al. 2021). While sociologists have been focused on how private market intermediaries shape housing market outcomes (Besbris and Faber 2017; Besbris 2020), this work shows that the work of public sector actors and institutions can impact individual-level outcomes and broader market structure. Further, while fiscal constraints in the executive branch of federal and local governments have been found to drive housing market interventions, courts' budget conflicts haven't previously been theorized as generating such interventions (Gotham 2009; Krippner 2010, 2011; Quinn 2019). While Quinn (2019) details the federal government's work in creating the modern mortgage securitization industry, this research adds a new dynamic: local judges' control over the foreclosure litigation process continuously structures the local mortgage market, and courts' reliance on foreclosure litigation fees gives the demands made by the mortgage industry increased leverage. However, local courts and judges in many locations are elected, raising the

possibility for communities to exert democratic control over some aspects of local mortgage markets.

This research adds to the court fees and fines literature by showing that courts' dependence on fee revenue changes foreclosure proceedings, expanding on work that traces the effect of fines and fee revenue in criminal, traffic, and family courts (Harris 2016; Pattillo et al. 2022). I contribute to this literature by showing that court dependence on foreclosure litigation fees increases the precarity of defendants even when those costs are borne by plaintiffs. This research supports previous scholarship that finds the injection of financial calculous into legal system operations inherently conflicts with formal legal principles of justice (Heydebrand and Seron 1990a; Pattillo and Kirk 2021). While the financialization of the court system has been theorized as inserting a creditor/debtor relationship into criminal proceedings and turning freedom into a commodity (Pattillo and Kirk 2021), this research contemplates different mechanisms of court system financialization: here, the courts' dependence on revenue derived from a heavily financialized mortgage industry expands the industry's power and claims-making abilities (Tomaskovic-Devey et al. 2015).

While there should be no expectation that these findings hold precisely in every jurisdiction, the pressures that led to this outcome are present in many local court systems. Not every cash-strapped court system facing a rising tide of foreclosure will create a subsection akin to the Chancery's Pilot Project. However, as Real Estate Litigator NNN stated, "services all over the country" were asking their attorneys to explore filing in federal court (Plaintiffs Attorney BDL Interview), indicating that the pressures experienced in Cook County weren't unique. More work needs to be done to understand how demands for faster processing of mortgage creditors' claims played out in other jurisdictions, but this research shows that local courts and the local

mortgage industry are bound together tightly, and that mortgage market actors are aware of this dynamic and work hard to influence it. Tables 2 and 3 together with Figures 6 and 7 above show foreclosure litigation was being processed more quickly even before the Pilot Project. While Kahn (2024) examines how mortgage servicers and foreclosure attorneys worked to speed up foreclosure, the informal cooperation between judges and attorneys to accelerate foreclosure hasn't been explored sufficiently.

Critically, this work shows that mortgage foreclosure processes aren't static, even when the law on the books remains unchanged. The findings presented here depict a vicious cycle between courts and mortgage creditors: as high-risk lending drives foreclosures, courts that depend on foreclosure litigation revenue will be more susceptible to mortgage industry demands for faster, more "efficient" foreclosure—further incentivizing high-risk lending. The extent to which this dynamic is present in other forms of debt collection demands study.

Further, the extent to which these dynamics are present in other forms of debt collection demands study. Despite the highly developed literature on the state's role in creating and shaping financial markets (Carruthers 2020; Pistor 2020), the constitutive role of the judiciary in making markets by enforcing creditors' consumer debt claims is understudied. This work shows that debt enforcement processes are variable and historically constructed, and that these variations impact the well-being of everyday people. Judge's attitudes and discretion affect debt collection processes "enormously," even as these processes are being contested and remade (Dana 2011, p. 108).

This research points to the reality that neoliberal deregulation and austerity policies force municipal court systems to manage growing volumes of consumer credit defaults while receiving fewer resources from federal and state governments. While the local instantiations of these

tensions will differ, this work suggests several constants that may serve as the basis for future research: (1) the consumer credit industry will continuously make powerful and coordinated, demands for faster processing of its claims; (2) courts' decisions will be impacted by their dependence on fee revenue; and (3) solutions that satisfy courts and creditors are likely to increase both borrowers' precarity and the prevalence of high-risk products in local credit markets.

Figures

*Figure 1: Number of Mortgages Entering Foreclosure vs. Percent of Mortgages Entering Foreclosure National*ly*, quarterly 1980-2005, MBA National Delinquency Survey Data*

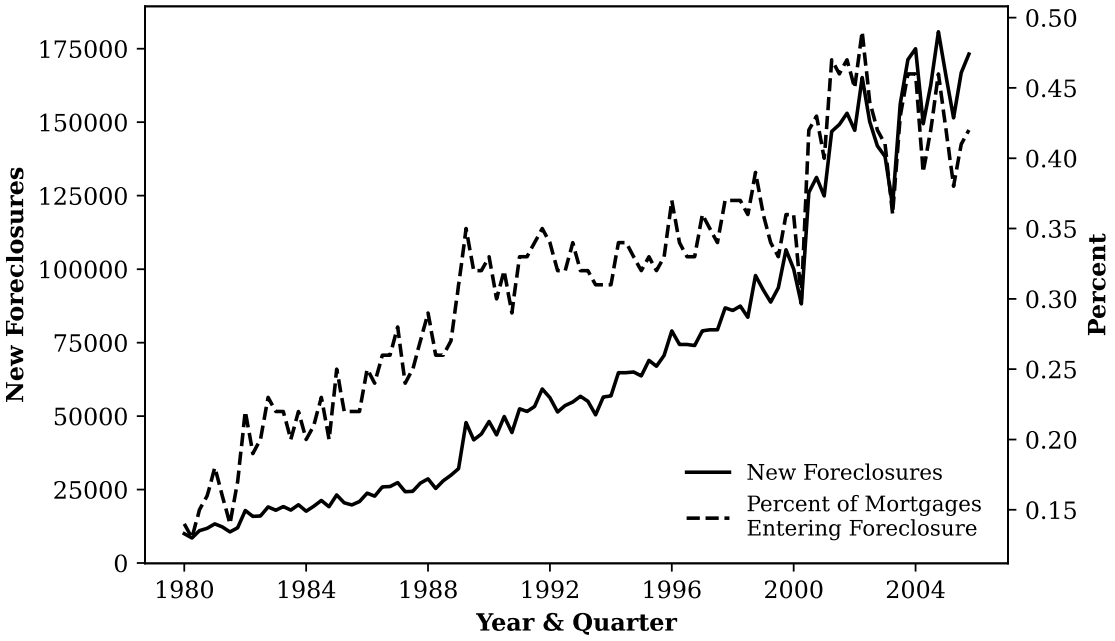


Figure 2: Number of Subprime Mortgages Entering Foreclosure vs. Percent of Subprime Mortgages Entering Foreclosure in the U.S., Quarterly 1998-2005, MBA National Delinquency Survey Data

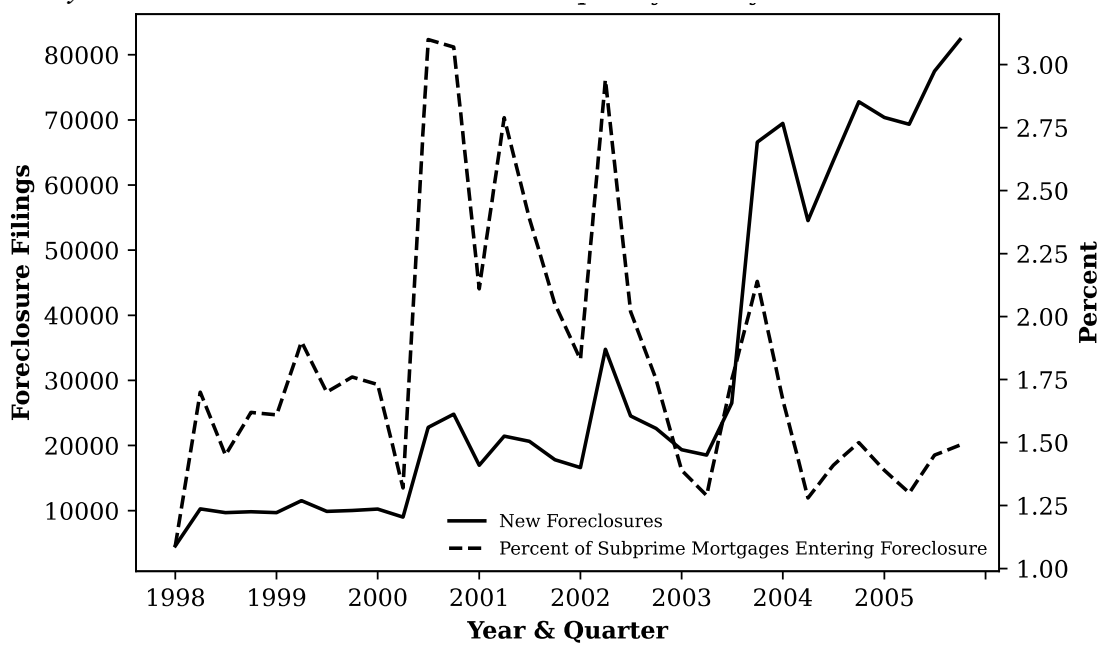


Figure 3: Number of Mortgages Entering Foreclosure vs. Percent of Mortgages Entering Foreclosure in Illinois, quarterly 1980-2005, MBA National Delinquency Survey Data

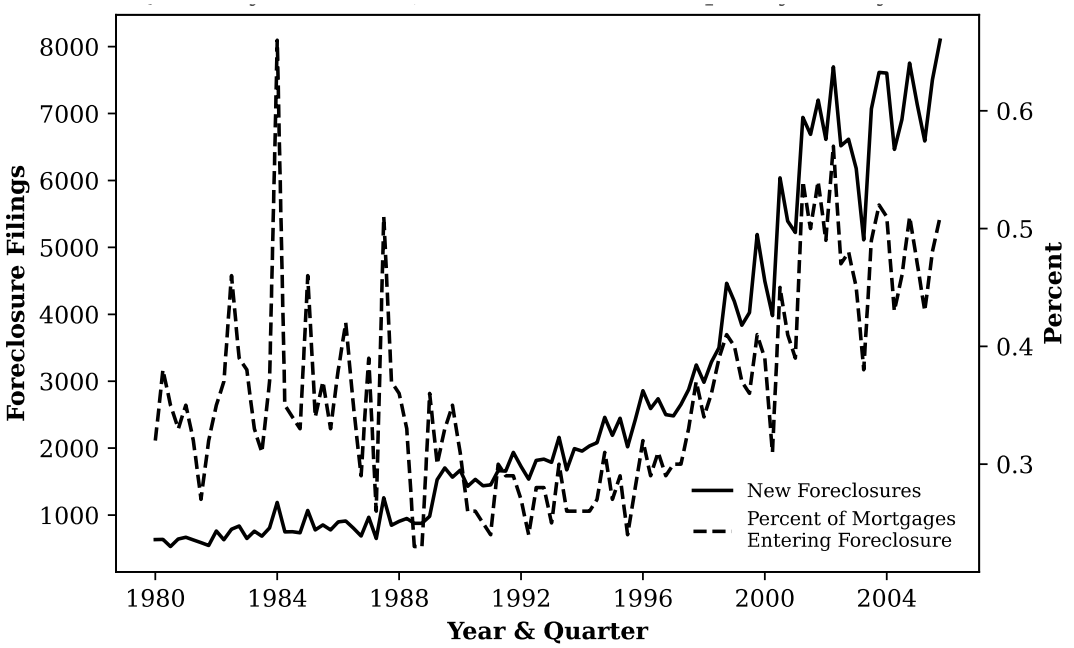


Figure 4: Number of Subprime Mortgages Entering Foreclosure vs. Percent of Subprime Mortgages Entering Foreclosure in Illinois, quarterly 1998-2005, MBA National Delinquency Survey Data

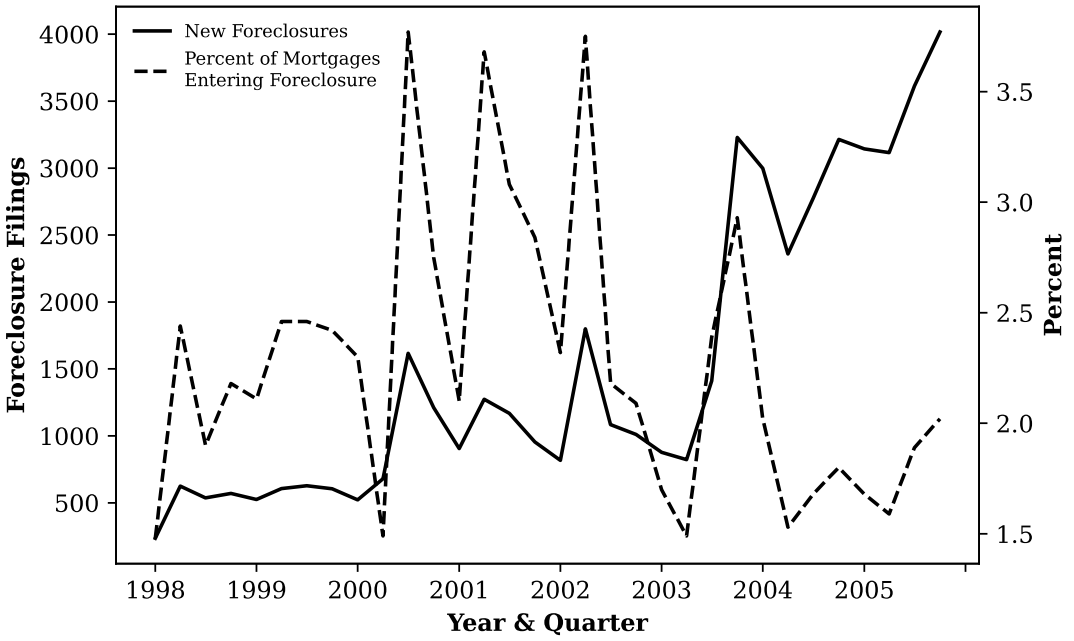


Figure 5: Annual Residential Foreclosure Filings, Cook County Chancery Court, 1993-2005

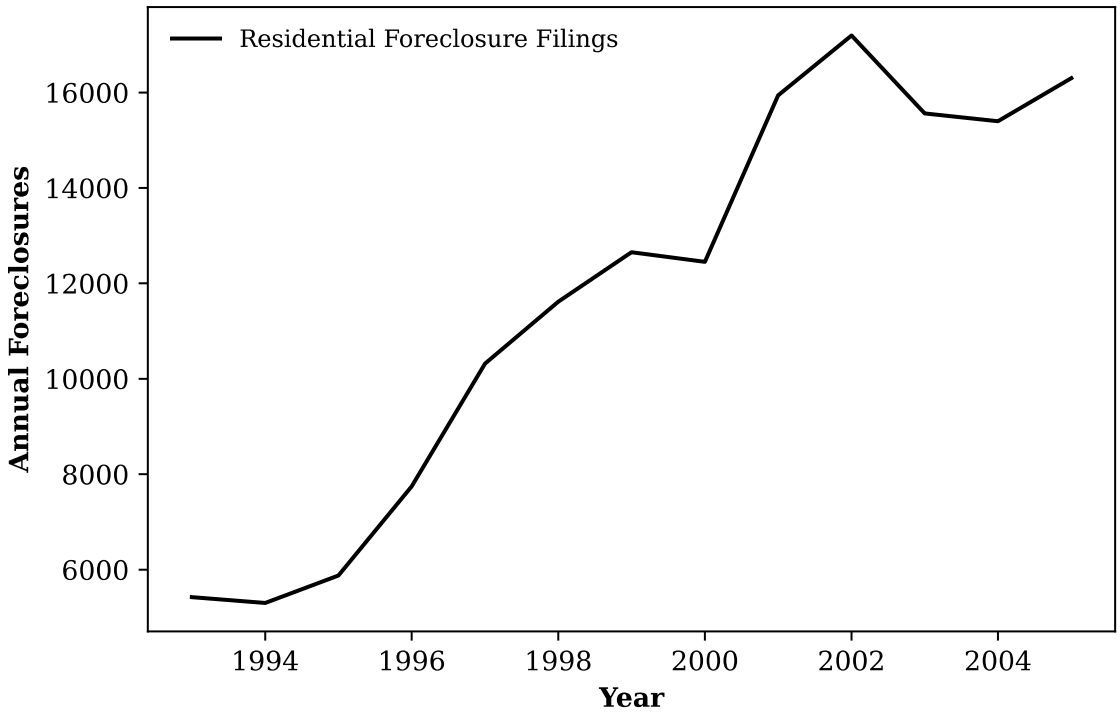


Figure 6. Lending by Subprime Specialists vs. Previous Year Mean Foreclosure Duration, 1993-2005

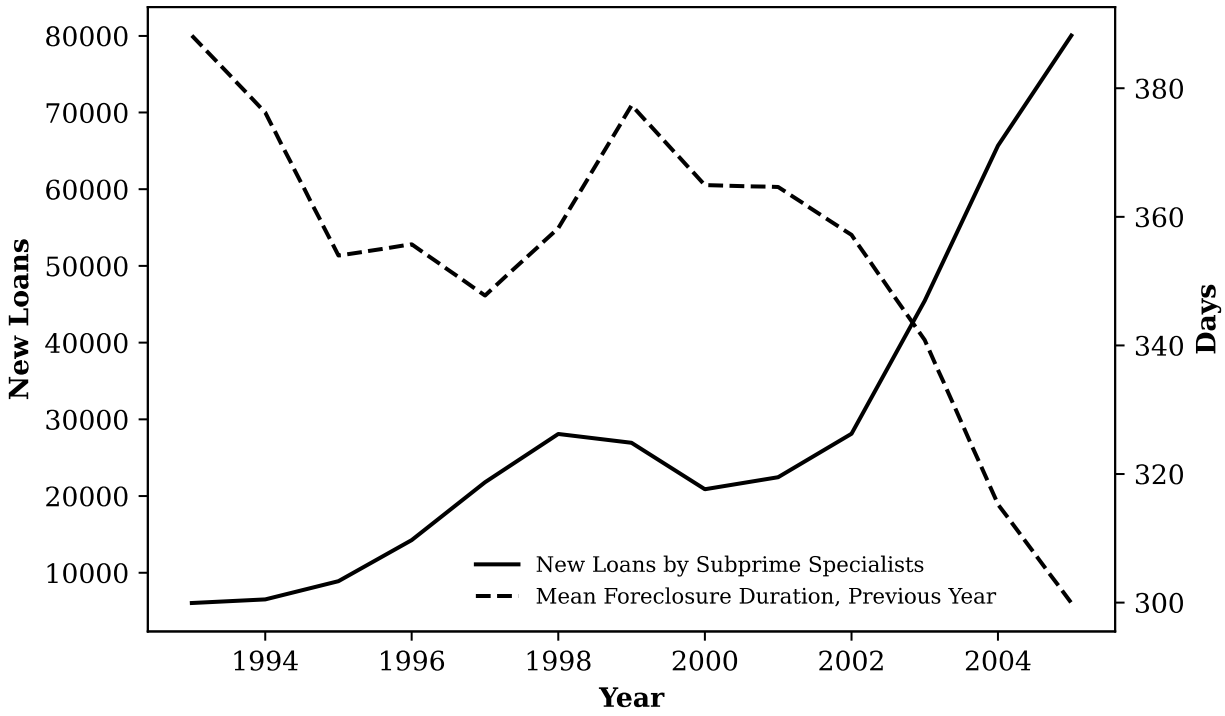


Figure 7. Subprime Specialists' Annual Market Share vs. Previous Year Mean Foreclosure Duration 1993-2005

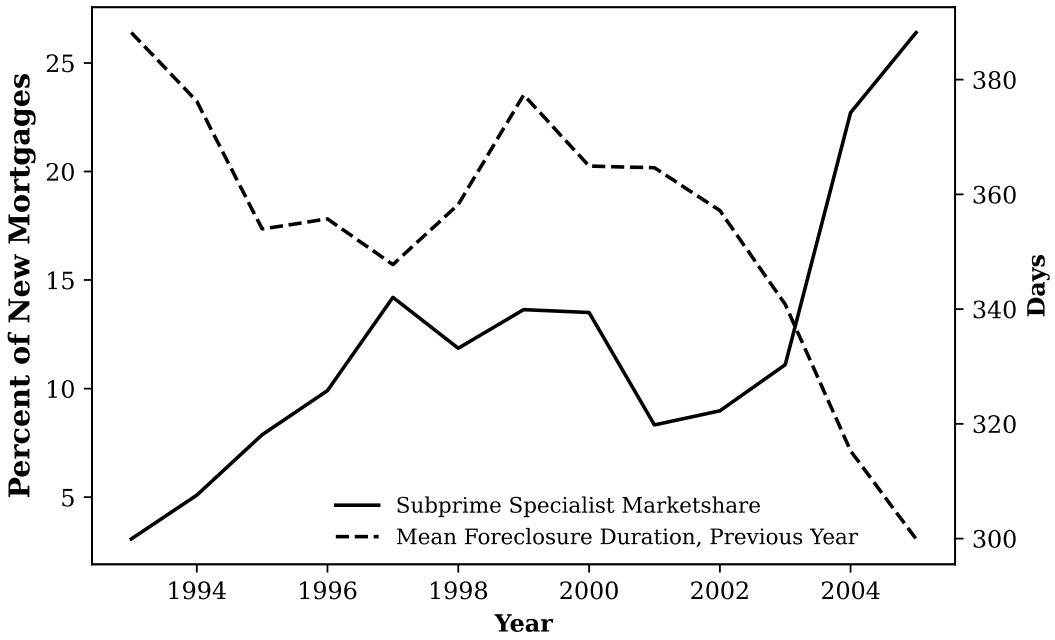
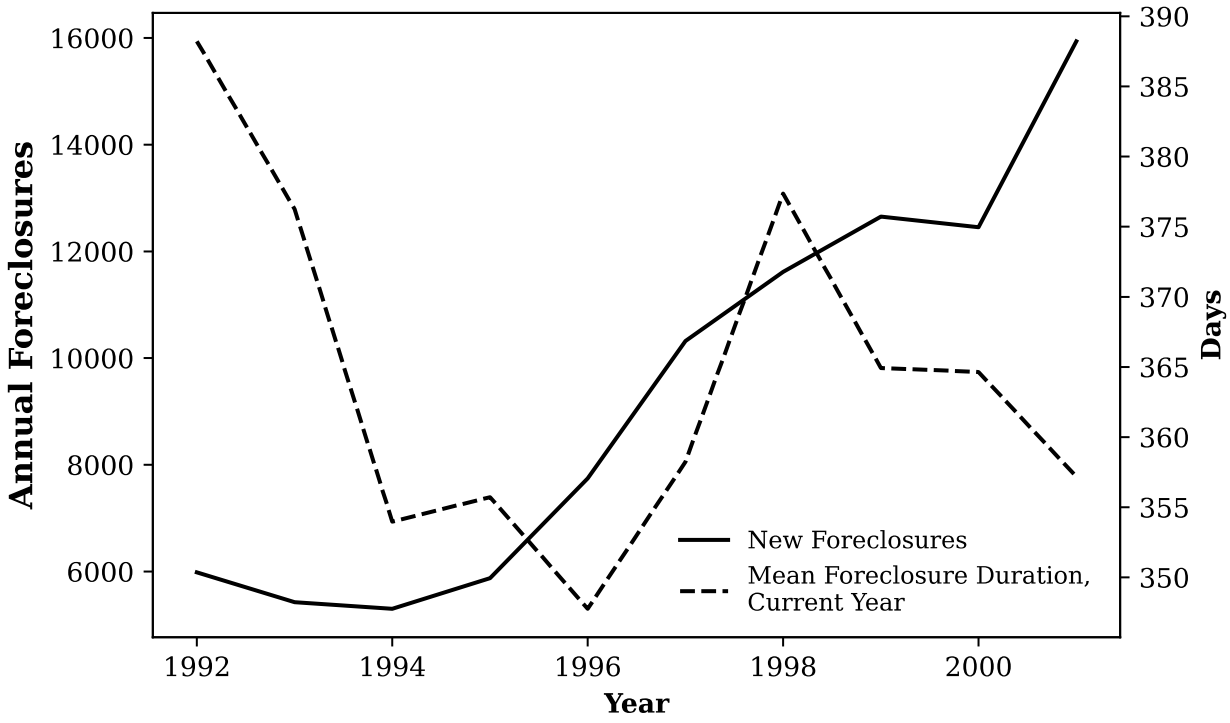


Figure 8. Annual Foreclosure Filings vs. Annual Mean Foreclosure Duration, 1993-2001



Tables

Table 1 U.S. Local Government Revenue by Source, 1981 – 1996 ($ in millions)

	Intergovernmental					Own Sources		
Year	Total Gen. Revenue	From Federal	From State	General Revenue	Total Taxes	Property Taxes	Other Taxes	Fees & Misc.
1980-1981	$257,179.1	8.7%	34.6%	56.7%	36.9%	28.0%	8.8%	19.8%
1981-1982	$279,203.3	7.5%	34.0%	58.5%	37.1%	28.2%	8.9%	21.3%
1982-1983	$298,542.2	7.0%	33.0%	60.0%	37.9%	28.8%	9.1%	22.1%
1983-1984	$323,235.6	6.5%	32.7%	60.8%	38.2%	28.6%	9.5%	22.6%
1994-1985	$354,186.4	6.1%	32.9%	61.0%	38.0%	28.2%	9.8%	23.0%
1985-1986	$380,662.6	5.4%	33.3%	61.3%	38.1%	28.2%	9.9%	23.2%
1986-1987	$410,347.3	4.8%	33.3%	61.9%	38.6%	28.4%	10.1%	23.4%
1987-1988	$433,976.6	3.7%	33.5%	62.5%	39.5%	29.3%	10.2%	23.0%
1988-1989	$468,549.0	3.8%	33.6%	62.6%	39.4%	29.3%	10.1%	23.2%
1989-1990	$512,322.2	3.6%	33.6%	62.8%	39.3%	29.2%	10.0%	23.5%
1990-1991	$541,752.5	3.5%	33.7%	62.7%	39.6%	29.9%	9.8%	23.1%
1991-1992	$573,255.3	3.5%	34.2%	62.3%	39.6%	30.0%	9.7%	22.7%
1992-1993	$601,804.5	3.5%	34.2%	62.2%	39.7%	30.0%	9.7%	22.5%
1993-1994	$639,242.5	3.8%	34.1%	62.1%	39.5%	29.5%	9.9%	22.7%
1994-1995	$676,360.8	3.9%	34.4%	61.7%	38.7%	28.7%	10.0%	23.0%
1995-1996	$709,216.4	3.8%	34.3%	61.9%	38.2%	28.1%	10.0%	23.7%

Source: Howard 2001, Illinois Economic and Fiscal Commission, Property Taxes in Illinois January 2001 Update

Table 2. Correlations between New Foreclosure Filings, and Previous Year Lending Activity by Subprime Specialists, All Lenders, and Non-Subprime Specialist Lenders*, 1993-2005*

Variable	Previous Year Lending by Subprime Specialists	Previous Year Lending by All Lenders	Previous Year Lending by Non-Subprime Specialists
Foreclosure Filings	0.82***	0.66*	0.54

Notes: *p < .05; **p < .01; ***p < .001 (two-tailed)

Table 3. Correlations between Foreclosure Duration and Following Year Lending by Subprime Specialists, All Lenders, and Non-Subprime Specialist Lenders, 1993-2005

Variable	Annual Mean Foreclosure Duration
Following Year Lending by Subprime Specialists	-0.90***
Following Year Lending by All Lenders	-0.48
Following Year Lending by Non-Subprime Specialists	-0.3

Notes: *p < .05; **p < .01; ***p < .001 (two-tailed)

Table 4. Correlations between Annual Mean Foreclosure Duration and Following Year Market Share of Subprime Specialists and Other Lenders, 1993-2005

Variable	*Previous Year Annual Mean Foreclosure Duration*
Subprime Specialist Market Share	0.76***
Other Lenders'	-0.76***

Notes: *p < .05; **p < .01; ***p < .001(two-tailed)

Table 5. Correlations between Subprime Specialist Market Share and Foreclosure Duration in the Previous Year, the Same Year, and the Following Year, 1993-2005

Variable	Subprime Specialist Market Share
Previous Year Foreclosure Duration	-0.87***
Present Year Foreclosure Duration	-0.67*
Following Year Foreclosure Duration	-0.42

Notes: *p < .05; **p < .01; ***p < .001 (two-tailed)

Table 6. Foreclosure Fees in Cook County Chancery Court, 1993-2005

Filing Fees	*Fee Schedule*
1993 through Feb 17, 1994	$215
Feb 18, 1994 through Nov 30, 2002	$220
Dec 1, 2002 through Jan 3, 2005	$271
Jan 4, 2005 through Dec 30, 2005	$274
Appearance Fees	
1993-2000	$104
2001-2002	$105
2003-2004	$140
2005	$143

Table 7: Court Fee Revenue and Mortgage Foreclosure Fee Revenue as Percentage of County Appropriations, 1993-2005

Fiscal Year	County Appropriations	All Fee Revenue	Foreclosure Fee Revenue	All Fees as % of Appropriations	Foreclosure Fees as % of Appropriations	Foreclosure Fees as % of Total Fees
1993	$71,226,280	$67,845,744	$1,522,373	95%	2%	2%
1994	$71,845,753	$68,392,509	$1,479,489	95%	2%	2%
1995	$73,430,480	$46,571,705	$1,582,368	63%	2%	3%
1996	$78,186,597	$68,120,129	$2,039,168	87%	3%	3%
1997	$82,641,125	$51,453,607	$2,643,824	62%	3%	5%
1998	$88,907,714	$49,735,705	$2,898,972	56%	3%	6%
1999	$90,957,229	$49,641,124	$3,206,696	55%	4%	6%
2000	$98,578,347	$49,835,728	$3,116,824	51%	3%	6%
2001	$102,573,164	$51,168,596	$3,881,952	50%	4%	8%
2002	$104,534,985	$51,395,055	$4,312,450	49%	4%	8%
2003	$98,020,464	$64,480,353	$4,877,827	66%	5%	8%
2004	$97,542,858	$66,254,365	$4,797,106	68%	5%	7%
2005	$96,340,092	$65,168,281	$5,043,167	68%	5%	8%

Table 8: Average Duration of Foreclosure Before and After the Pilot Project

	Number of Foreclosures	Mean Duration of Foreclosure, Days	Z[a]
Foreclosures before Pilot Project (1993 to Sept 30, 2002)	100,340	359.4 (356.5)	
Foreclosures filed after Pilot Project Default (Oct 1, 2002, to 2005)	51,438	311.6 (313.3)	25.7***
Total	151,778	343.2 (343.2)	

Notes: Numbers in parentheses are standard deviations.
Observations =15,1778
a: Z-score from two-tailed Z-test of means (H_0=0) comparing mean foreclosure duration before and after the Pilot Project with *p < .05; **p < .01; ***p < .001 (two tailed)

Table 9: Proportion of New Mortgage Loans Made by Subprime Specialists Before and After Pilot Project

Subprime Specialist Market Share	All Loans Made	Proportion of Loans by Subprime Specialists	Z[b]
Before Pilot Project, (1993 to 2001)[a]	3,039,027	0.216 (0.00024)	
After Pilot Project, (2003 to 2005)[a]	2,134,010	0.274 (0.00031)	-150***
Total	5,775,451	0.234 (0.00018)	

Notes: Numbers in parentheses are standard errors.
Observations =5,775,451
a: data from 2002 is excluded from this test because HMDA data's annual periodization makes it impossible to determine if loans from that year were made before or after the Pilot Project began on Oct 1, 2002.
b: Z-score from a two-tailed test of proportions under H_0: p1-p2=0 comparing proportions of loans made by Subprime Specialists before and after the foreclosure Pilot Project with *p < .05; **p < .01; ***p < .001 (two-tailed)

Table 10: Foreclosure Filings in Cook County and the Federal District of Northern Illinois

Year	County Filings	Federal Filings	Federal Filings as % of All Filings
1993	5,938	31	0.5%
1994	5,718	53	0.9%
1995	6,267	575	8.4%
1996	8,100	693	7.9%
1997	10,630	1,123	9.6%
1998	11,937	1,236	9.4%
1999	12,935	1,454	10.1%
2000	12,706	1,116	8.1%
2001	16,227	1,524	8.6%
2002	17,445	2,261	11.5%
2003	15,814	2,142	11.9%
2004	15,628	1,114	6.7%
2005	16,489	183	1.1%
Total	155,834	13,505	8.0%

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Chapter 3. High-Volume Foreclosure Law Firms' Strategies for Fast Foreclosure & Potential Impact on Property Title and Real Estate Market Function

Introduction

If the financialization of the American economy has led the corporate sector to prioritize profit through financial channels rather than the trade of goods and services, how has this shift affected mortgage foreclosure litigation strategies and the real estate market? High-volume foreclosure law firms entered the popular consciousness after the 2007 foreclosure crisis, but little academic research has examined these firms or their foreclosure strategies (Zacks 2012). This research examines the litigation practices of major foreclosure law firms in Cook County Illinois between 1992 and 2006 to test anecdotal and journalistic accounts that these firms prioritize foreclosure speed over other litigation goals. I find that firms completing foreclosures more quickly subsequently received more foreclosure litigation business. Further, I examine two strategies disproportionately used by high-volume foreclosure firms—filing foreclosures in federal court and using the Mortgage Electronic Registration System as a generic plaintiff—created uncertain legal outcomes that threatened the stability of real estate transactions of foreclosed property and the function of the real estate market itself.

Financialization, defined as a method of accumulation where corporate profits are generated through financial transactions rather than production and trade in goods and services, has fundamentally changed how businesses function (Dobbin 2012; Krippner 2005). Historically, financial market operations have been seen as facilitating the production and exchange of goods and services. However, as the economy has financialized, this relationship has been reversed. General Motors, for example, initially launched an auto lending subsidiary in 1919 to help it sell

more cars—the cars, not the loans were the profit center (Anderson, Muise, and Gancarz 2010; Krippner 2011). As the economy financialized, this relationship reversed, and between 1986 and 2006, 90% of General Motors's consolidated profit was generated by this same subsidiary (Anderson et al. 2010; Krippner 2011). General Motors entered the mortgage lending business in 1985, and by 2006 the company's financial subsidiaries managed $412 billion of mortgages on behalf of investors and owned outright $69 billion in mortgage loans (Anderson et al. 2010). GM was not alone: between the 1950s and the 1990s, the share of corporate profits attributed to financial assets (rather than operations revenue) increased by more than 300 percent (Krippner 2005).

Financialization has had far-reaching effects beyond the formal limits of the corporate sector, many of which have not yet been empirically examined (Aalbers 2017). This research asks if and how high-volume foreclosure law firms operating in the highly financialized mortgage securitization industry (as described in Chapter 2) prioritize the interests and profit-making in the mortgage securities industry, and how the strategies they used to achieve these goals affect real estate transactions and the function of the real estate market. I demonstrate empirically that high-volume foreclosure prioritized the speed of foreclosure, and that the strategies they used to achieve this speed introduced significant instability into the real estate market. While the claims presented here have been widely theorized, this is the first time they have been demonstrated empirically (Dayen 2017; Odinet 2019).

Mortgage Securitization, Legal Industry Specialization, and New Housing Intermediaries

While the literature on housing intermediaries examines how actors like mortgage lenders and real estate agents structure and stratify housing markets (Korver-Glenn, Bartram, and Besbris 2021), foreclosure attorneys—the actors managing and executing foreclosure—remain

unexamined. Housing intermediaries are agents that work to assemble, maintain, or develop housing markets, and their work is crucial to the production and maintenance of housing inequality (Korver-Glenn et al. 2021). Critically, housing intermediaries frequently have conflicting preferences with other intermediaries, consumers of housing, and capital providers (Besbris and Korver-Glenn 2023).

Securitization—the bundling of many individual mortgage loans into marketable financial commodities— is a key technology of financialization that dramatically changed the mortgage industry's structure, as well as the goals and strategies of entities managing the foreclosure process (Davis and Kim 2015; Kahn 2024). Traditional portfolio lenders like Savings and Loan institutions treated loans as long-term investments, and tried to maximize the return over the entire life of the loan (Jacobides 2005; Kahn 2024:202). Mortgage securitization fractured a vertically integrated industry into a series of niche markets dominated by specialists (Fligstein 2021; Jacobides 2005). Different components of the value chain became industries unto themselves, with standalone businesses operating to identify new mortgage borrowers, originate mortgage loans, fund these loans, manage extant loans, and own loans (Jacobides 2005; Thompson 2011). Critically, securitization financialized the mortgage industry, and attenuated the relationship between housing markets and mortgage markets (see Chapter 2).

Securitization meant that mortgages were no longer managed by their owners or by entities invested in local real estate markets, but by specialist third-party asset managers known as *mortgage servicers* (Eggert 2007; Levitin and Twomey 2011; Thompson 2011). Mortgage servicers have complex contractual incentives that may conflict with the interests of borrowers and investors who own loans or invest in real estate directly (Kruger 2018). Critically, mortgage servicers guarantee borrowers payments to investors, and must make up any payment that is

missed (Kruger 2018; Levitin and Twomey 2011). Servicers recoup these payments (along with fees assigned to the delinquent borrower) from the proceeds of the foreclosure sale, before any payment is made to investors (Eggert 2004; Thompson 2009). This incentive structure, together with a lack of interest in the local housing market or community, incentivizes mortgage servicers to foreclose as quickly as possible once borrowers default (Eggert 2004; Kahn 2024). While smaller, locally embedded portfolio lenders historically avoided foreclosure and may have relied on less specialized real estate law firms to handle their lower foreclosure volume, the new mortgage servicing giants demanded more specialized legal services (Kahn 2024).

High-volume foreclosure firms differ from both traditional corporate law firms and the firms that handled foreclosures for Government Sponsored Entities (GSEs) like Fannie Mae in the late 1970s. The law firms that serve large corporate clients have long been among the highest-status in the industry, and have been the focus of significant socio-legal scholarship (Galanter and Henderson 2007; Galanter and Palay 1994; Heinz et al. 2005; Heinz and Laumann 1982). Traditionally, these firms operate on a tournament structure where young lawyers compete to become partners to bill huge amounts of hours and accumulate reputational capital (Galanter and Henderson 2007; Galanter and Palay 1994).

However, the structure of the bar has changed greatly since the golden age of the 1980s (Heinz et al. 2005; Heinz and Laumann 1982). Historically stable client relationships and solid economic margins have deteriorated, internal career ladders have become uncertain, and billable hours expectations have increased (Galanter and Henderson 2007; Lerman 1998). Increased competition in large markets for legal services and clients' demand for expertise in niche practice areas have prompted law firms and lawyers to heavily specialize, further intensifying competition within these niche practice areas (Ariens 1993; Garicano and Hubbard 2009).

Billable hours agreements—which establish a rate per hour per attorney—have long been the cornerstone of firm economics, but clients have increasingly demanded alternative fee arrangements, like flat fees or contingency fees, which are seen as encouraging efficiency and aligning the interests of clients and firms (Campbell and Charlesworth 2012; Hadfield 2000). Indeed, the intense pressure attorneys face to reach ever-growing billable hours targets is seen as creating conflict with legal professional ethics (Suchman 1998).

High-volume foreclosure law firms share clients with these tournament law firms, but the goals, practices, organization, and incentives of foreclosure litigation differ greatly from traditional legal services. Foreclosure firms operate on flat-fee fee agreements—they receive a predetermined fee for each foreclosure, regardless of the time or resources they put into the case (Zacks 2012). High-volume foreclosure firms take on cases where defendants are largely absent, and those that do show up often lack legal representation (Streitfeld 2011). For attorneys, the legal work is nearly identical not only from firm to firm but even from case to case, driving down the value of reputational capital and making it easy for attorneys to move between different foreclosure firms (although moving to a different sector of the legal industry might be more difficult, as discussed below) (Zacks 2012:896–97)2012: 896-7). These firms also maintain far higher ratios of support staff to attorneys than most law firms, and low-paid staffers do much of the work that is traditionally considered to be appropriate for lawyers (Gardner 2009; Zacks 2012:898–99). These firms are not designed to yield high-quality legal results, but to process high volumes of litigation as quickly as possible (Kahn 2024). Although foreclosure can be quite remunerative, other lawyers often view these firms as "debt collectors, far down on the profession's prestige ladder" (Levitin 2013:703).

While these high-volume foreclosure firms have been found to impact housing precarity and mortgage market structure (see Chapters 2 & 3), they are largely unexamined by sociolegal scholars (Zacks 2012). Our primary sources of information come from journalists' accounts, regulatory documents, and court decisions. Some scholars examine high-volume foreclosure firms as part of their analysis of legal doctrine, but rely primarily on non-academic reporting for empirical information on foreclosure firm activities that occur outside of legal filings (Zacks 2011, 2012; Zacks and Zacks 2014).

The wave of journalism on these firms during the national foreclosure crisis, however, describes legal practices with little resemblance to traditional law firms. By the mid-2000s, high-volume foreclosure firms were structured to provide "the fastest and cheapest legal services available" and execute litigation on a "factory line"(Morgenson and Glater 2008:6–7; Zacks 2012:867). They executed thousands of legal documents per day, and attorneys at some firms were expected to file "at least" 1,000 foreclosures a month—often by signing documents they had not drafted or read (Kroll 2010; Morgenson and Glater 2008:6–7; Wachspress, Agalstein, and Mott 2015). Perhaps because of the enormous time pressures, or the scarcity of defendants capable of mounting a meaningful defense, these firms were found to routinely break the law (Cymrot and Biggs 2006; Kroll 2010; Morgenson and Glater 2008). One reporter described an "entire industry willing to cut corners, deceive judges, and even (allegedly) commit fraud" (Kroll 2010:1). In 2010, it became clear that at least some of these firms had made filing false affidavits a standard practice (Levitin and Twomey 2011). Common practices included backdating foreclosure documents so that borrowers' time-delimited rights expire earlier than they would have otherwise would have (Kroll 2010:1–2). Foreclosure attorneys in Florida came under particular scrutiny after attorneys were found to have routinely submitted fraudulent filings to

speed up foreclosure (Dayen 2017; Patterson 2010). A former paralegal from The Law Offices of David J. Stern recalled "unofficial contests" to see who could process foreclosure the fastest: "Somebody would get a 76-day foreclosure…and then someone else would say, 'Oh, I can beat that!'" (Kroll 2010:6). Stern, notably, began his career in foreclosure litigation at a Florida law firm owned by Gerald M. Shapiro (BCG Attorney Search 2024; Kroll 2010). Mr. Shapiro pioneered modern plaintiff-side foreclosure litigation by transforming it into a "commodity business" in the early 1980s at the Chicago-area firm Shapiro Kreisman & Associates (Shapiro 2000:63). Shapiro and Kreisman would go on to build a national network of high-volume foreclosure litigation firms and associated support businesses (Shapiro 1999). These firms would face repeated sanctions for cutting corners or breaking the law. In 2011, Shapiro's law firm would be censured for filing more than 2000 pieces of false evidence(Podmolik 2011). An employee from one of Mr. Shapiro's Florida foreclosure firms testified that this type of fraud had been employed in ninety-five percent of foreclosures completed by the firm since 2000 (Morgenson and Glater 2008). These types of practices have been found across the U.S. and date back as far as the late 1990s, but our understanding of them remains largely anecdotal (Associated Press 2011; Odinet 2019).

At least some major mortgage servicers knew their foreclosure attorneys routinely made false statements and submitted fraudulent documentation in court, but largely ignored these behaviors (Dayen 2017; Panchuk 2024). Companies may have overlooked these issues because they themselves were committing similar abuses (Associated Press 2013; Bennington 2010; Morgenson 2010). Others simply assumed that borrowers in foreclosure lacked the resources necessary to hold them accountable: an internal report commissioned by Fannie Mae in 2005 found that the company's foreclosure attorneys regularly filed "sham pleadings" and "false

affidavits," but concluded that meaningful consequences were unlikely because struggling borrowers lacked the resources necessary to impose liability on the company for the actions of their attorneys, and because judges generally did not give much weight to such abuses (Cymrot and Biggs 2006:5; Dayen 2017).

New Foreclosure Technology and High-Volume Foreclosure Litigation Practices

Advanced information technology has transformed many law firms, but perhaps no area of practice has been as highly automated as foreclosure litigation (Rodgers, Armour, and Sako 2023; Shapiro 1999, 2000). Mortgage servicing companies and high-volume foreclosure firms have credited their speed to significant investments in cutting-edge technology, but the extent to which these technologies simply enable fraud is an open question (Durham 2011; Kahn 2024). In the bankruptcy case *in re Taylor* 407 B.R. 618 (Bankr. E.D. Pa. 2009) Judge Weiss Sigmund detailed technology's role in the modern foreclosure litigation process: HSBC pursued foreclosure against the Taylor family, who were under the protection of a Chapter 13 bankruptcy plan, because the Taylors refused to pay for flood insurance that HSBC insisted they owed (Durham 2011; Gardner 2009). HSBC managed foreclosure through NewTrak software, which they licensed from a third party, Lender Processing Services (LPS): as part of the software license agreement, HSBC was required to foreclose through a law firm selected by LPS (Gardner 2009). HSBC employees never examined the information that this automated software system shared with these designated attorneys, which turned out to be inaccurate: the Taylor's monthly mortgage arrearages were incorrectly listed, the wrong mortgage note had been uploaded, and the real estate was undervalued by about $100,000 (Mullison 2011). This inaccurate information was assembled into litigation documents through a highly automated process executed exclusively by paralegals, who were evaluated on per-hour productivity (Gardner 2009; Mullison

2011). These documents were signed (but not verified, despite the legal requirement to do so) by attorneys and filed in court. When the Taylors presented conflicting documentation, the attorneys requested updated information from HSBC through NewTrak but did not call or contact HSBC through any other medium—in fact, they had no phone number for a contact person at the bank (Mullison 2011). Receiving no response and facing a tight litigation timeline, the attorneys moved forward with facts they knew to be untrue (Durham 2011). After a series of appeals, the Third Circuit Appellate Court found that the foreclosure attorneys had "essentially abdicated [their] professional judgment to a black box" (Ramos 2011:4). At the time of the case, LPS was America's largest mortgage default technology company, raising the possibility that the problems identified in this case affected other families (Stephens Inc. 2009).

Other mortgage technologies introduced new problems. At one point, the Mortgage Electronic Registration System's (MERS) database system managed roughly half of all American mortgages (Powell and Morgenson 2011). MERS is a private replacement for the local clerk's office: historically, ownership of mortgage loans was tracked through the local county clerk's office. Transferring rights through the clerk's office requires paper documentation and incurs filing fees between $25 and $50 per transaction (Peterson 2009). For the mortgage securitization industry, this was "paper-intensive, error-prone, and…costly" (Slesinger and McLaughlin 1994:808). MERS was established to avoid these frictions. MERS members—mortgage lenders, servicers, law firms, banks, and other industry players—pay an annual fee to access this private database (Peterson 2009). To enter a loan in the system, members first establish MERS as the owner-of-record in the local county recording office and pay a one-time fee of $3.50 per loan to MERS, after which all future transfers are made electronically by

employees of member companies (not MERS employees) within this private database: county records remain unchanged, thereby avoiding paperwork and filing fees (Oppy 2001).

MERS, from its inception, encouraged servicers and attorneys to name MERS as the plaintiff in foreclosure cases: this strategy offered advantages that included (but were not limited to) saving the time and money necessary to change county records of loan ownership, and concealing the actual party foreclosing on the home (Arnold 1997; Covington & Burling 1997; Peterson 2009). According to mortgage servicing companies, MERS made "major" improvements in foreclosure efficiency (Mullen 2000:65).

Sociolegal Dynamics of Foreclosure Courts

The literature on legal disputing shows that high-volume litigation has unique dynamics that allow some actors to pursue long-term strategies rather than individual cases (Conti 2010; Galanter 1974). Foreclosure plaintiffs and defendants generally correspond with ideal-type litigants established in this literature: foreclosure plaintiffs and the attorneys who represent them are *repeat players* anticipating future litigation, while the defendants in foreclosure (who usually either do not show up to court or do not have a lawyer) are *one-shot players* that have no experience in foreclosure litigation and do not anticipate future foreclosure litigation. Repeat players have familiarity with the court system and the legal process, giving them information that other parties lack. They also enjoy economies of scale in litigation and relatively low startup costs for any individual case. Further, repeat players have less at stake in any one case than one-shot players, and strategically pursue legal precedents that maximize their outcomes over the long term, even if it creates costs in the case (such as when a repeat player decides to settle a case to avoid establishing a new legal rule that might disadvantage them in future litigation) (Conti 2010; Galanter 1974; Hamzehzadeh 2010). While the advantages held by repeat players

are widely noted in the disputing literature, this research explores new strategies and leverages available to them.

Courts are social spaces, and formally neutral relationships between judges and lawyers often become collaborative communities or workgroups coordinated around shared instrumental goals (Blumberg 1967; Chen, Chung, and Sands 2024; Eisenstein and Jacob 1977). These courtroom workgroups emerge from the ongoing relationships of individuals who interact regularly in the courtroom setting, and typically include judges, prosecutors, defense attorneys, clerks, bailiffs, and other court personnel—but not one-shot defendants (Nardulli 1979). An oft-cited goal of courtroom workgroups is to speed up case processing, because high caseloads and drawn-out processing times are problematic for lawyers, judges, and court staff alike (Blumberg 1967; Chen et al. 2024; Eisenstein and Jacob 1977; Nardulli 1979). Courtroom workgroups establish informal practices to move cases through the system more quickly (Eisenstein and Jacob 1977, Heydebrand and Seron 1990a, 1990b, McCree 1981, Jacob 1997). High caseloads and limited resources produce conflict between the "intense pressures to process large numbers of cases…and the stringent ideological and legal requirements of 'due process of law'" (Blumberg1966: 22, Heydebrand and Seron 1990a, 1990b). This conflict is resolved, in part, by "work crimes" or "short cuts, deviations, and outright rule violations adopted as court practice in order to meet production norms" (Blumberg 1966: 22, Platt et al. 1968). These "work crimes" are institutionalized but denied as such judges and lawyers alike: "Fearfully anticipating criticism on ethical as well as legal grounds, all the significant participants in the court's social structure are bound into an organized system of complicity" (Blumberg 1966: 22).

While the importance of speed in foreclosure litigation is frequently referenced, it has never been tested empirically, and its effect on firms' future foreclosure litigation business is

unknown. This research breaks new ground by testing the effect of foreclosure litigation speed on firms' future case volumes. I then use interview data and quantitative analysis to examine two strategies used by firms to speed up foreclosure—filing in federal court and using MERS as a generic plaintiff—and analyze how these strategies introduce significant uncertainty and instability in individual case outcomes and future real estate transactions.

Methods & Data

This research uses mixed methods within a case study of mortgage foreclosure law firms in Cook County, Illinois, and the litigation strategies they used between 1992 and 2006. Illinois is one of 22 judicial foreclosure states where lenders *must* file a lawsuit to foreclose (Feinstein 2018). In-depth semi-structured interviews were conducted between 2018 and 2021 with five judges, eight plaintiff's attorneys, five defense attorneys, one title insurance attorney, and one court administrator. Table 1 summarizes the professional experience of each group circa 2006, the end of the period of study. I used snowball sampling (Parker, Scott, and Geddes 2019) to identify actors who had witnessed dynamic moments in the evolution of mortgage foreclosure. Interviews about past events introduce recall bias and forgetting, especially about details and anomalous events (Evans and Leighton 1995). Accuracy was improved by focusing interviews on routine events and practices, asking multiple questions on the same issue, and prompting subjects with specific events rather than dates (Weller 1998).

[Table 1 about here]

I collected population-level panel data of plaintiff's firm foreclosure litigation from metadata maintained by the Cook County Chancery Court between 1992 and 2006 and the

U.S. District Court for the Northern District of Illinois between 1992 and 2001. The following variables were collected from the Cook County Clerk of Court:

- *Annual Residential Foreclosures*. Residential foreclosures (n=179,736) are distinguished by their unique case identification number. To distinguish these from commercial foreclosures, I use methods developed by The Eviction Lab: if the defendant is named as a private individual, the case is coded as a residential foreclosure; if they are not private individuals the foreclosure is coded as a commercial foreclosure.

- *Residential Foreclosure Duration*. The duration of each completed residential foreclosure (n=179,731) is the days elapsed between the date the case is filed and disposed of, plus one so that foreclosures filed and dismissed the same day will last a single day. Five residential foreclosures were ongoing when this data was collected: these are not included in calculations of foreclosure duration.

- *Plaintiff.* The identity of the party bringing foreclosure litigation against the homeowner.

- *Plaintiff's Firm*. The identity of the law firm filing foreclosure on behalf of the plaintiff.

- *Firm's Average Annual Foreclosure Duration.* I calculate the average number of days it took each law firm to complete all the foreclosures it filed in a given year. This is an imperfect measure of firm performance: as established in Chapter 2, firms' foreclosure performance is evaluated by plaintiffs on a much more granular basis, with each stage of litigation evaluated

on a separate timetable. Annual foreclosure duration, however, is the best quantitative metric for measuring foreclosure performance available using court metadata.

- *Change in Firm's Filings.* For each firm in each year, I calculate the year-over-year change in foreclosure cases filed by calculating the net difference between the number of cases they filed in the present year and the previous year.

The following variables were collected from LexisNexis electronic records from the U.S. District Court for the Northern District of Illinois:

- *Annual Foreclosures*. Individual foreclosure cases (n=7857)—both commercial and residential—were collected from unique foreclosure dockets.
- *Plaintiff's Firm*. The identification of the law firm filing foreclosure on behalf of the plaintiff was collected from unique foreclosure dockets.

The federal district court has jurisdiction over Cook County and seventeen other counties in northern Illinois. Because court metadata does not identify the location of property subject to foreclosure litigation, the proportion of federal foreclosures involving Cook County real estate is unknown. Analysis of federal foreclosure is conducted separately from analysis of county foreclosures and is used to answer questions specifically about high-volume foreclosure firms' strategic use of the federal court system. County-level foreclosure analysis presented here still uses a population-level dataset for foreclosures processed in Cook County courts and covers a minimum of 92 percent of foreclosures in the county. Analysis of federal court foreclosures is limited to the years 1992-2001 because of the 2002 agreement reached between county judges

and high-volume foreclosure law firms to keep foreclosures (and associated fee revenues) in county court, as discussed in Chapter 3.

High-volume foreclosure firms are identified qualitatively and quantitatively. They are operationally defined as the firms that filed more than six percent of all county foreclosures during the period of study. Further, the firms identified quantitatively as high-volume firms were also designated as such by interviewees. These firms identified each other as having common interests and were the only foreclosure firms working together to lobby the court (Chizewer 2012). Table 2 provides summary statistics on the market share of high-volume plaintiff's firms. While two other firms achieved six percent of annual residential foreclosures a total of seven times, the high-volume regularly achieved market shares that were larger than these firms' best years. For the entire period of study (1992-2006), the four firms identified as high-volume together filed 65 percent of all foreclosures. Individually, the three largest firms regularly filed between ten and thirty percent of new foreclosures annually. The fourth firm had greater market share than all firms not designated as high-volume, but failed to keep up with its peers and would eventually merge with another high-volume firm. The 2,345 firms not designated as high-volume are categorized as lower-volume firms.

[Table 2 about here]

Quantitative data is utilized for descriptive statistics, random effects regression analysis, ANOVA testing, and Z-tests of means. Two-tailed Z-tests are used to examine if mean residential foreclosure duration is significantly different between (1) different types of mortgage plaintiffs; and (2) different types of plaintiff's firms, both under the null hypothesis that there is no difference. Z-tests are appropriate because I have access to population data and can calculate

the population standard deviation. One-way ANOVA testing is used to test the significance of variation in different types of law firms' strategic use of the federal court system. While this type of ANOVA analysis is traditionally recommended for categorical variables with six or more subjects and/or observations to address sampling error, the research presented here utilizes population data, and thus there is no sampling error for which to account. Random effects regression analysis is used to test how past foreclosure speed affects firms' future case volumes. The random effects model (REM) is here preferable to ordinary linear model (OLM) regression: I am analyzing firms' performance as panel data and an individual firm's past performance impacts their future performance, I cannot make the assumption required for OLM that data is uncorrelated. Similarly, REM is here preferable to a fixed effects model (FEM) because I cannot assume that coefficients of the same covariate will remain equal, nor can I assume that the error variances will be equal across all waves of the panel data (Bollen and Brand 2010). Not all of the firms filing foreclosure in Cook County will be high-volume firms specializing in foreclosure speed and volume: some, for example, will be more generalized real estate firms that handle foreclosure more rarely at the request of clients that usually demand other sorts of services (Kahn 2024).

Analysis

Property Title & Mortgage Foreclosure

Mortgage foreclosure litigation, like many other types of real estate litigation, has long resolved around *title*, or ownership rights. A property's title can be unclear or impaired, such as when there is a lien placed on the property, or when the ownership of property is contested. Certainty of title is critical to the function of real estate markets: an owner cannot sell something they do not possess. Foreclosure litigation exists to formally extinguish (or "foreclose") a

previous owner's rights and interests in the property, usually when a borrower has failed to make the payments required for their loan (Zacks and Zacks 2014).

Many of the generalized real estate attorneys practicing in Cook County prioritized obtaining clear of title to foreclosed property for their client, so that it could be sold free and clear of any competing ownership. According to a leading real estate litigator practicing in Cook County, "mortgage foreclosure is about…getting your client good title" (Attorney LBN). This attorney favored thoroughness and certainty, using "a belt and suspenders approach" in case "something pops up" (Attorney LBN). Another long-time real estate attorney stated that foreclosure litigation is about "the integrity of title" and "much more complicated than just having a judgment" because "if you screw up, and somebody buys that house, now [someone's] saying they don't own it" (Attorney HSLMN). An attorney for a Chicago-area title insurance company, described the problems his business faced when foreclosure failed to create a clear title: "The lender…they're going to put it on the market right away, because they want to their money. If there's something wrong with the foreclosure… wait a minute, this guy's coming back saying he's a lien holder…What are you going to do about that?" (Attorney BTRA).

These attorneys, however, observed the high-volume foreclosure firms did not prioritize creating clear title. High-volume firms competed to foreclosure as fast as possible "without regard to whether they were taking legal shortcuts" (Attorney BSHW). For these firms, "speed is [the] only criteria" (Attorney DDLY). Prioritizing speed over title changed how high-volume firms practiced: "When you're looking at just speed, did [someone] get it slightly wrong? Who cares? We're just two cogs in the wheel. What matters is that the judgment [was] entered as fast as possible" (Attorney DDLY). These firms were willing to play the odds: "We're near the home of [Judge] Posner. It's Chicago School of Law and Economics. [Some firms decide to] absorb the

cost of getting caught because cutting corners saves money on each and every case" (Attorney DDLY). For attorneys working at high-volume firms "whether or not there was a clean title didn't matter" (Attorney DDLY).

Real estate attorneys were also quick to distinguish themselves from high-volume foreclosure firms. According to Attorney LBN, "My firm lawyers…We do depositions. We do a lot of appellate work. We argue in the Illinois Supreme Court. We can and do defend class actions. We're lawyers." Attorney HSLMN reflected on his experience teaching property law at a local law school, where he had taught many of the attorneys who went on to work in both general real estate and high-volume foreclosure in Cook County: "I trained thousands of lawyers. They're not all smart. I'm not trying to be smug about it. There are not a lot of people that fully understand the legalities of real estate and title… But that's the problem: the more you know, the more trouble you have being a lawyer." A leading Chicago real estate firm, in fact, developed a specialty practice stepping in to handle litigation when high-volume firms made mistakes or bit off more than they could chew: "we got into it because [high-volume firms] didn't have the skill set to do [contested litigation]" (Attorney NNN). Attorneys only trained in high-volume foreclosure practice developed a specialized—and limited—skillset: "[High-volume foreclosure] is pretty specific…Someone working [at a high-volume firm] has a good handle on how to draft a mortgage foreclosure complaint, and what you need to do to get a judgment. [But] then for whatever reasons you want to leave the firm, it's not like you can go to an insurance defense firm" (Attorney LBN).

High-volume firms competed on speed because their clients prioritized it (as discussed in Chapter 2)—and some of their clients prioritized it even above clear property title. The widespread adoption of title insurance meant that specialized insurance companies often bore the

risk associated with post-foreclosure title disputes: according to one title insurance attorney, "Who's going to suffer the loss? The title company, because we insured somebody" (Attorney BTRA). Servicers might sometimes deprioritize title because their goal was to simply terminate the mortgage so they could stop making payments to investors (Attorney DDLY). In cases where the real estate was unlikely to sell quickly some servicers might abandon the property to avoid fees and taxes, creating so-called "zombie foreclosures":

> *there are rules about how you maintain a vacant home. As long as they didn't record the deed, they weren't subject to recording fees and taxes, or having to board it up and have a watch person…if they did follow all the rules and hypothetically had a clean title, [sometimes they] couldn't sell the properties at all or for very much. [Often] people wouldn't come to look at them until they had a whole block…those were people aggregating properties to knock down the whole block and gentrify it or put in a Chick-fil-A or Walmart or whatever nightmare they can come up with* (Attorney DDLY)

Fannie Mae and Freddie Mac were noted by one attorney as prioritizing clean title: according to Attorney HSLMN, these firms "will make a foreclosure attorney crazy if the title isn't clear. And they don't like title indemnities, there's many, many requirements that make it very difficult." These mortgage giants still employed foreclosure attorneys on flat rate contracts that incentivized speed, and prioritized speed themselves—perhaps assuming that costs associated with title liabilities, like those related to their foreclosure lawyers' fraudulent filings, would be cheap enough to ignore (Cymrot and Biggs 2006). Further, for foreclosure attorneys working on flat fee contracts, processing foreclosures quickly directly improved their profitability, both because it meant putting in less work for the same amount of money, and also because clients typically based new foreclosure assignments to law firms on the number of foreclosures that each firm had successfully processed within the allotted time in the previous month: as missing deadlines this month meant less new work next month, as discussed in Chapter 2.

Regression Analysis of Firms' Foreclosure Speed on Following Year Foreclosure Filings

If mortgage foreclosure speed is a critical performance goal of many foreclosure law firms and the mortgage servicers that hire them, I expect to see that firms that foreclose more quickly gain future business. Using a random effects model (REM) panel regression analysis, I test the null hypothesis (H_0) that firms' average annual foreclosure speed has no impact on future foreclosure litigation business against the alternative hypothesis (H_A) that past foreclosure speed impacts future business opportunities.

The regression analysis presented in Table 3 supports interviewees' accounts that foreclosure speed was a critically important metric for law firms in the foreclosure business. The REM equation $Y_{it} = \alpha + \beta ln(x_{it-1}) + Pilot + High\text{-}Volume + U_i + Z_{it}$, where:

- Y_{it} is the number of cases filed by firm *i* in year *t* minus the number of cases filed by firm *i* in year *t-1*
- α is the y-intercept
- x_{it-1} is a lagging variable representing the logged mean foreclosure duration achieved by firm *i* in the previous year, year *t-1*
- *Pilot* is a dummy variable categorizing foreclosure filings as occurring before or after the launch of the county's Pilot Project in 2002 (data from 2002 has been omitted because that was the year that the Pilot Program was launched, corrupting annualized data from that year).
- *High-Volume* is a dummy variable indicating that the firm is among the four high-volume foreclosure law firms identified in the methodology section of this study.
- U_i is the random effect for firm *i*
- Z_{it} is the residual

[Table 3 about here]

Past foreclosure duration has a statistically significant effect on year-over-year change in individual firms' foreclosure filings. For every one percent decrease in a firm's average annual foreclosure duration, we can expect a 0.002 increase in new foreclosure filings by that firm the following year foreclosures, significant at the 99.9 percent confidence level.

Having established the significance of foreclosure speed on the foreclosure litigation business, I now turn to examine strategies firms used to complete foreclosures more quickly and attract more business.

Strategies Accelerating Foreclosure and their Impact on Title: Federal Foreclosure Filings

Interview subjects identified an individual high-volume foreclosure firm that strategically filed cases in federal court to process foreclosure more. According to Attorney LBN "one firm in particular, a [high] volume firm loved going into federal court" even before the coordinated effort in 2001 to threaten to withhold foreclosure cases and associated fees, discussed at length in Chapter 3. No interviewee was willing to identify this high-volume firm by name, but foreclosure litigation metadata from the Northern District of Illinois indicates that Farrall & Farrall was the firm regularly filing foreclosures in federal court. One-way ANOVA analysis identifies Farrall & Farrall as filing a significantly higher volume of federal foreclosures than all other firms, both high-volume and lower-volume. The other high-volume firms did not rely on federal foreclosure, and although "there were always some foreclosures filed in federal court for whatever reason… the volume was microscopic" (Judge DLRT).

Table 4 presents annual and mean federal foreclosure filings by individual high-volume law firms and all lower-volume firms. Using one-way ANOVA, I test the null hypothesis (H_0)

that that mean federal foreclosure filings are equal for all law firms and the alternative hypothesis (H_A) is these means are not equal. I reject the null hypotheses because there is a statistically significant difference in means, with ($F(4, 45) = 7.83$, $p = 0.0001$). Bonferri's post-hoc analysis test conducts a series of t-tests off the difference in firms' mean federal filings under the null hypothesis that there is no difference, but with the error rate adjusted to account for Type 1 error. The results of the Bonferroni test are presented as a matrix in Table 5 with the first entry, 584.3, representing the difference between mean federal foreclosure findings between Carlson Law Offices and Farrall & Farrall. These tests identify the Farrall & Farrall law firm as filing significantly more federal foreclosure, at least at the 95 percent confidence level.

[Table 4 about here]

[Table 5 about here]

Interviewees indicated that federal court filings were advantageous because the process was more streamlined and less time intensive than county court, and enabled plaintiff's attorneys to appear in court less often. Federal law gives judges the power to take actions *in camera*, or in private, and reach decisions based on legal filings without parties being present in open court (Crowley 1995). These powers are often used by judges to protect the privacy of abuse survivors in civil or criminal cases, thereby avoiding the entry of sensitive medical records into the public record (Crowley 1995). In camera proceedings were also used, in the Northern District of Illinois, to quickly dispose of foreclosure proceedings. According to foreclosure attorneys familiar with the practice: "in the federal court you can file a foreclosure…and those federal judges don't even have people come to court. They do everything in chambers" (Attorney HSLMN). This "very simple process" meant that "you didn't have to worry about timelines"

(Attorney LBMN). Federal judges may be willing to dispense with open court proceedings because "they have bigger issues to deal with" and see foreclosure litigation "as minutia" (Attorney LBMN).

However, filing foreclosure in federal court rather than state court created risks for the title of the contested real estate and any transfers of that property going forward. Federal courts have different jurisdictional requirements than state courts, and their power to hear local foreclosure cases rests primarily on diversity jurisdiction (Brandofino and Mignardi 2022). The drafters of the U.S. Constitution, concerned that state courts would be biased against out-of-state litigants, leveled the playing field by giving federal courts the power to hear cases where all parties were domiciled in different states, as long as the financial value of the dispute was above a set amount (Bassett 2003). This means that for federal courts using diversity jurisdiction to preside over foreclosure litigation, all of the parties to the dispute must be known to ensure that none of them are domiciled in the same state.

It is not uncommon for parties to have legally valid interest or rights in a borrower's property that are not readily discoverable in the public record. These "unknown owners and non-record claimants" might include a tenant, a contractor that has worked on the property but not received payment, or any creditor with an interest in the house that has not been publicly recorded (Hammond 1992). For county courts, which have *in rem* jurisdiction or jurisdiction over the property directly, extinguishing any and all legally valid claims is a simple matter: as long as the plaintiff publishes a public notice of the foreclosure suit in a local paper, these anonymous claimants are considered to be sufficiently notified of the case, and their interests in the property will be eliminated by default if they do not participate in the legal proceedings. This practice of "publishing" against unknown owners and non-record claimants adds time and

expense to foreclosure litigation, but also creates more certainty about the ownership and yields a clear title (Attorney LBMN).

Filing for foreclosure in federal court under diversity jurisdiction requires that plaintiffs omit these John Doe defendants, and cannot eliminate their claims to the property. The Northern District of Illinois has made its position clear:

> *[Plaintiffs'] counsel appears to reflect obvious experience with state court foreclosure practice: They have added as defendants "Unknown Owners, Tenants, and Non-Record Claimants," as is customary in that practice. More than a quarter century has elapsed since this Court identified for mortgage foreclosure practitioners how fatal to federal jurisdiction that state practice was in terms of establishing the requisite diversity…And that of course remains good law today* (internal citations omitted) (Shadur 2009:1).

Attorney LBN identified the need to obtain clear title as the reason he avoided filing foreclosure in federal court:

> *I never went into federal court on my cases because [of] unknown owners and non-record claimants…I do that because I feel at the end of the day, a mortgage foreclosure is about one thing, getting your client good title. Period… So, unknown owners and non-record claimants to me, gives it gives me [protection]. In federal court, you can't do that. You'd have no diversity.*

Farrall & Farrall may have completed foreclosures more easily and quickly by filing in federal court and requesting judges to make rulings *in camera*, but this clouded title and created risk for any future property transactions. However, for Farrall & Farrall and their clients, fast foreclosure seems to have been more important than any future real estate transactions.

Strategies Accelerating Foreclosure and their Impact on Title: MERS as Generic Plaintiff

Another strategy attorneys used to streamline foreclosure litigation was naming MERS as the plaintiff, and accessing the documentation fixes this system enabled. Attorneys in Cook County began filing foreclosures naming MERS as the plaintiff in 1998. Using MERS as the plaintiff avoided challenges the plaintiff's right to foreclose: as the party listed in county property records, MERS' standing was taken for granted (Thangavelu 2002).[2]

Initially, few foreclosures were filed naming MERS as the plaintiff. This may have been because of the relatively low volume of loans in the MERS system at the time, or because there were significant legal questions about the validity of this method of foreclosure (Levitin 2010). Interviewees contended that using MERS as the plaintiff shouldn't impact foreclosure litigation (Plaintiff's Attorney NEN, Plaintiff's Attorney LMN, Defense Attorney KLD) in part because MERS functions comparably to a trust—a common real estate structure (Plaintiff's Attorney BSH).

Foreclosures naming MERS as plaintiff, however, were completed significantly faster than foreclosures naming other plaintiffs. From the first instance in 1998 to the end of the study period in 2006, MERS foreclosures took approximately 35 days less to complete than foreclosures using other plaintiffs, with the difference significant at a 99 percent confidence level. Table 6 presents summary statistics of MERS and non-MERS foreclosures, as well as the results of the Z-test of the difference of means of foreclosure duration for MERS and non-MERS foreclosures under H_0:$\rho=0$, with results $z = 12.3$, SEM = 2.9, $\rho < .01$ (two-tailed)—indicating that there is a statistically significant difference in foreclosure duration.

[Table 6 about here]

MERS foreclosures were disproportionately filed by the four highest-volume foreclosure firms in Cook County, and these firms all achieved larger reductions in foreclosure duration than lower-volume firms. These high-volume firms filed 68 percent of foreclosures during the period of study, but 83 percent of MERS foreclosures. Compared to foreclosures naming any other plaintiff, lower-volume firms naming MERS plaintiff reduced foreclosure duration by approximately 7 days, while the high-volume firms reduced foreclosure duration by more than 34 days. Z-test results of the difference in mean foreclosure duration between these two groups

under H_0:ρ=0 are z = 4.5, SEM = 7.4, $\rho < .01$ (two-tailed). Table 7 summarizes MERS foreclosures for the four high-volume firms and lower-volume firms, and presents Z-scores for the difference in mean duration of foreclosures naming MERS between these two groups, as well as for individual high-volume firms compared to lower-volume firms.

[Table 7 about here]

For individual high-volume firms, the difference in their foreclosure duration when naming MERS as plaintiff compared to lower-volume firms is not always statistically significant. However, all the high-volume firms achieved better results than lower-volume firms at the population level, and the high-volume firms that had the most success with MERS foreclosure used this strategy more frequently. The performance of high-volume firms naming MERS as plaintiff changed over time. Figure 1 presents best-fit lines of foreclosure duration for high-volume firms using MERS foreclosures (although these results are skewed by the lower frequency of MERS foreclosure early in the period, and should be interpreted with caution). Carlson Law greatly increased its efficiency over time, and became the most prolific filer of MERS foreclosures. While Farrall & Farrall saw early success with a small number of MERS foreclosures, they could not achieve this at scale and their performance declined between 1998 and 2005. Notably, Farrall & Farrall had no 2006 foreclosures because it closed and merged with another large firm in 2005 (PRWeb 2005).

[Figure 1 about here]

There are several possibilities for *how* using MERS as the plaintiff sped up foreclosure, both of which create some legal uncertainty about the validity of the foreclosure and the quality of title. According to servicers, MERS made “major” improvements in their efficiency by allowing them to purchase a large volume of servicing rights and start foreclosure without

addressing underlying paperwork (Mullen 2000:65). Filing with MERS as the sole plaintiff eliminated the time and cost necessary to transfer ownership of the mortgage in the public record (Berry 2007), a utility acknowledged by interviewees that doubted MERS' ability to accelerate foreclosure (Plaintiff's Attorney LMN, Plaintiff's Attorney NEN, Plaintiff's Attorney BSH, Defense Attorney KLD). For mortgages that had been securitized, establishing a non-MERS plaintiff would frequently require reassembling evidence of formal transactions between approximately four separate entities (Levitin 2010)—not necessarily an easy task, given the securitization industry's documentation practices discussed in Chapter 2.

Another possible efficiency created by using MERS as the foreclosure plaintiff was gaining access to documentation "fixes" that the system enabled. MERS at one point managed about half of all American mortgages, but had less than about 50 employees (Powell and Morgenson 2011). To execute the massive volume of documents and affidavits (written statements submitted instead of courtroom testimony) that plaintiffs must produce during foreclosure, it outsourced to its members' employees. *Any* employee of a MERS member firm could complete an online form to become a corporate officer, empowered to sign "any necessary documents as an officer of MERS" (MERS 2005). MERS corporate seals—rubber stamps used to signify that documents were authorized by the corporation—were sold for $25 on the same webpage (MERS 2005). During the 2000s, MERS deputized approximately 20,000 such officers (Peterson 2012). MERS' blanket grant of authority and outsized market share enabled these "corporate officers" to execute documents on behalf of defunct entities or entities to which they had no relationship, and to mass produce false documentation and affidavits (Peterson 2009, 2012). MERS did not monitor the accuracy, authenticity, or volume of foreclosure documentation produced by these officers: during a deposition, MERS CEO R.K. Arnold admitted that short of a

lawsuit, there was no oversight: “If nobody challenges [the document], then it's probably true…[Affidavits] are under oath filed with the court. I presume that those are true. And that's the [oversight] that we have” (Arnold 2009:200–201, 2009). In congressional testimony, Arnold admitted that the MERS system had been abused to accelerate foreclosure and create false documents (Arnold 2010). I am unable to discern many of the details of how the largest Cook County foreclosure law firms used MERS and its deputized corporate officer powers because none of these firms were willing to participate in the research, but cases have been identified where attorneys for major foreclosure firms use MERS in just this way (Cerne 2011).

However, MERS’ ability to act as a plaintiff in foreclosure was legally uncertain. Traditionally, foreclosure plaintiffs have had possession of the mortgage and note or a recognizable interest in the foreclosed property: MERS lacked both, and often made contradictory pleadings about its relationship to the disputed mortgage (Peterson 2009; Steven 2012). State courts have traditionally prioritized the rights of the legal owner, “and that isn’t MERS” (Powell and Morgenson 2011). MERS’ CEO claimed in Senate testimony that “a review of the use of MERS in all 50 States was done by Covington and Burling in 1996 and 1997” as part of the due diligence process (Arnold 2010:46). This review consisted of a mere nine pages in a twenty-eight-page memo, and was at best a brief analysis of foreclosure law (Covington & Burling 1997). While Covington & Burling relied heavily on analysis of the Universal Commercial Code (UCC) procedures for negotiability and transfer of security interests, Illinois law holds that the state’s foreclosure statutes provide “the exclusive procedure for foreclosure of mortgages in Illinois” (internal citations omitted) and governs the applicability of the UCC (Horan 2020:38)

The legitimacy of foreclosures naming MERS as plaintiff was contested well into the 2010s, with courts across the country coming out on both sides. In 2010, Illinois courts finally confirmed MERS' standing to act as plaintiff in foreclosure cases in *MERS, Inc. v. Barnes*, 406 Ill. App. 3d 1. Courts in states like Maine, Massachusetts, and New York rejected or severely limited MERS' ability to stand as plaintiff (Steven 2012). Facing a legal and political crisis, MERS forbade its members from naming it as plaintiff in foreclosure suits in 2011(HousingWire 2011). The strategy paid off for law firms seeking to expedite foreclosure: for a, they were able to save time and money by using MERS as a generic plaintiff, and no court retroactively invalidated foreclosures where MERS had stood as plaintiff.

The use of MERS as a generic plaintiff was a calculated risk that exposed the title of these foreclosed properties to increased risk and uncertainty, and decisions could have gone the other way. According to an anonymous mortgage banker involved in the creation of MERS, "[Covington & Burling] didn't do the deep homework… their real theory was: 'If we can get everyone on board, no judge will want to upend something that is reasonable and sensible and would screw up 70 percent of loans'" (Powell and Morgenson 2011). This bet on economic power rather than legal cognoscibility paid off, but in the aftermath of the 2007 Mortgage Crises, this was an active unknown, and some states that had initially confirmed MERS' power to foreclose changed their position as the foreclosure crisis deepened (Steven 2012). One New York judge put it succinctly, "This court does not accept the argument that because MERS may be involved with 50 percent of all residential mortgages in the country, that is reason enough…to turn a blind eye to the fact that this process does not comply with the law" (Powell and Morgenson 2011).

Foreclosure attorneys met mortgage servicers' growing demand for fast foreclosure services by using strategies like filing foreclosure in federal court or using MERS as a generic foreclosure plaintiff. Both of these strategies were used at statistically higher rates by high-volume firms. While these strategies reduced the duration of foreclosure, they also threatened to cloud the title of foreclosed property and undermine the function of the real estate market.

Conclusion & Discussion

High-volume mortgage foreclosure law firms are powerful housing intermediaries that prioritize foreclosure litigation speed and use instrumental strategies to foreclose more quickly. Firms that achieved faster foreclosure were shown to gain more future foreclosure litigation business. These firms used strategies to achieve this speed, like filing foreclosure in federal court and using MERS as a generic plaintiff at statistically higher rates than lover-volume foreclosure firms. This research contributes to scholarship on housing precarity, mortgage foreclosure, and civil litigation by statistically demonstrating the relationship between foreclosure speed and future litigation business in the mortgage foreclosure litigation industry.

Considering these findings in the context of mortgage securitization's function as a primary mechanism of financialization, discussed in Chapter 2, leads to a revealing comparison. The strategies these firms used to speed up foreclosure improved profits for firms and the servicers managing mortgage backed securities, but threatened to undermine the function of the real estate market itself by potentially destabilizing title to foreclosed real estate and undermining transactions involving these properties. If the financialization of the corporate sector led non-financial firms to generate a larger share of revenue through financial transactions than actual productive enterprise, we can say something similar happens with mortgage securitization: the real estate industry still required property transactions to occur, but the

primary focus for some of these companies (at least) became mortgage credit transactions—even at the expense of the underlying real estate market that was the necessary foundation of these mortgage transactions. Mortgage securitization and financialization separated mortgage loan management from the real estate market, and previous housing market goals like keeping homeowners in their homes (discussed in Chapter 2) or facilitating future real estate transactions ceased to be relevant.

Tables

Table 1: Average Professional Experience in 2006 by Occupation, n=20

Interview Subjects	**Obs.**	**Avg. Years Professional Experience in 2006**
Plaintiffs' Attorneys	8	25.3 (9.4)
Judges	5	12 (7)
Defense Attorneys	5	12 (10.9)
Other	2	11.5 (12)
Total	20	17.2 (11)

Notes: Numbers in parentheses are standard deviation

Table 2: Foreclosure Firms' Market Share of County Court Foreclosures, Individual High-Volume Firms, All High-Volume Firms, and All Low-Volume Firms 1992-2006, n=6

		Individual high-volume firms				*Combined firms*	
Year	*Annual Residential Foreclosures*	*Peterson & Associates LLC*	*Carlson Law Offices*	*Stevens & Killian Attorneys at Law*	*Farrall & Farrall Legal Group*	*All high-volume firms (n=4)*	*All lower-volume firms (n=2,345)*
1992	5986	11%	11%	27%	5%	54%	46%
1993	5425	11%	10%	21%	5%	47%	53%
1994	5302	16%	10%	18%	5%	48%	52%
1995	5875	16%	12%	16%	4%	48%	52%
1996	7744	23%	14%	12%	6%	55%	45%
1997	10319	24%	18%	10%	8%	60%	40%
1998	11616	23%	20%	9%	10%	62%	38%
1999	12652	22%	24%	9%	10%	65%	35%
2000	12453	23%	25%	12%	6%	67%	33%
2001	15938	24%	26%	12%	5%	68%	32%
2002	17197	23%	24%	14%	6%	67%	33%
2003	15562	24%	25%	15%	6%	69%	31%
2004	15397	24%	25%	12%	10%	70%	30%
2005	16300	23%	29%	12%	7%	72%	28%
2006	21970	27%	29%	14%	0%	69%	31%
Total	179736	23%	23%	13%	6%	65%	35%

Table 3: Effect of Past Foreclosure Duration on Future Foreclosure Filings

Independent Variable	Dependent Variable: Year over Year Change in Plaintiff Firm Foreclosure Filings Effect
Log mean duration of foreclosure, lagged	-0.212*** (0.033)
Pilot Project Dummy	-0.309*** (0.041)
High-Volume	-0.771*** (0.164)
Constant	2.135*** (0.19

Note: Standard Error in parentheses
p < .05; * p < .01; ** p < .001

Table 4: Federal Foreclosure Filings by Individual High-Volume Firms and All Lower-Volume Firms, 1992-2001

Year	*Farrall & Farrall Legal Group*	*Peterson & Associates LLC*	*Carlson Law Offices*	*Stevens & Killian Attorneys at Law*	*All lower-volume firms*
1992	6	1	0	16	9
1993	10	0	0	0	24
1994	16	0	0	0	38
1995	35	0	0	0	540
1996	185	0	0	0	511
1997	673	0	1	0	450
1998	1137	3	0	0	97
1999	1311	9	1	2	138
2000	1043	20	0	40	14
2001	1430	25	1	1	70
average	584.60	5.80	0.30	5.90	189.10

Table 5: Bonferri post-estimation test of significance of the difference between categorical means

Row mean- column mean	Carlson Law Offices	Farrall & Farrall Legal Group	All lower-volume firms	Peterson & Associates LLC
Farrall & Farrall Legal Group	584.3***			
All lower-volume firms	188.8	-395.5*		
Peterson & Associates LLC	5.5	-578.8***	-183.3	
Stevens & Killian Attorneys at Law	5.6	-578.7***	-183.2	0.1

Note: p < .05; * p < .01; ** p < .001***

Table 6. Foreclosure Duration by Plaintiff Type 1998-2006

Plaintiff	*Obs.*	*Mean Duration*	*Z*[a]
Non-MERS	124,580	337.72 (337.41)	
MERS	14,500	301.87 (301.3)	12.23***
Total	139,080	333.99 (334.01)	

Notes: Numbers in parentheses are standard deviation.
a: Z-score from two-tailed Z-test of means (H_0=0) comparing average foreclosure duration for non-MERS Plaintiffs and MERS Plaintiffs with p < .05; * p < .01; ** p < .001 ***

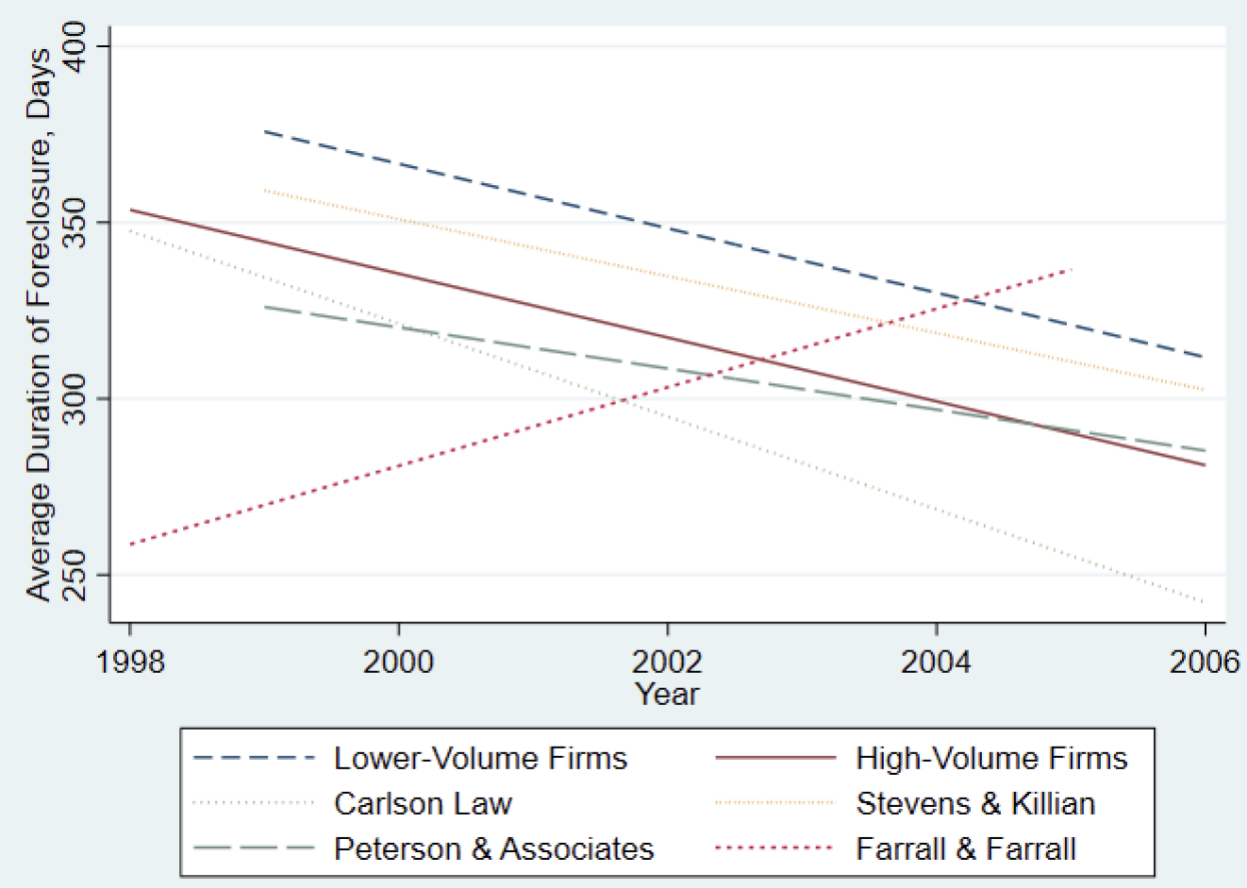
Table 7: Foreclosure Duration of MERS Foreclosures by law firm type, 1998-2006, n=6

	Foreclosures	Mean Duration in Days	Z^a
Lower-volume firms	2,428	329.92 (319.02)	
High-volume firms	12,072	296.23 (297.3)	4.54***
Individual high-volume firms:			
Carlson Law Offices	4,778	273.53 (284.73)	7.49***
Stevens & Killian Attorneys at Law	2,610	327.57 (330.71)	0.28
Peterson & Associates LLC	3,834	296.38 (275.87)	4.89***
Farrall & Farrall Legal Group	850	326.9 (337.6)	0.25

Notes: Numbers in parentheses are standard deviation.
a: Z-score from two-tailed Z-test of means (H_0=0) comparing average foreclosure duration for MERS foreclosures among high-volume firms and lower-volume firms, and individual large foreclosure firms against non-large foreclosure firms with $p < .05$; * $p < .01$; ** $p < .001$ ***

Figures

Figure 1. Best fit line of average duration of foreclosures naming MERS plaintiff, by type of plaintiff's firm 1998-2006, n=6



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Conclusion

Summary of Findings

This article breaks new ground by examining foreclosure as a social process and shows that changes in foreclosure enabled by financialization, securitization, and court budget austerity directly increased housing precarity for homeowners at risk of foreclosure, and shifted mortgage markets towards high-risk lending. By examining foreclosure's evolution between 1992 and 2006—from the beginning of the subprime explosion to the dawn of the foreclosure crisis—I trace how borrowers' rights and protections were degraded by the evolving mechanisms of mass foreclosure. By tracing the development of new foreclosure strategies and practices, I contribute to our understanding of the foreclosure crisis and show that the crisis that erupted into popular consciousness in 2007 actually began in the late 1990s.

During the 1992-2006 period, annual foreclosures in Cook County IL increased by more than 250 percent and foreclosure duration decreased by more than 20 percent. On average, these changes represent the elimination of almost three mortgage payments the servicer would otherwise have had to pay investors per foreclosure, and the loss of almost three months of free housing for each homeowner in foreclosure. Given that annual residential foreclosure increased by more than 15,000 cases during this period, the impact of these changes on both industry profits and housing precarity were substantial. Between 1993 and 2005, these changes in foreclosure duration contributed to a 27 percent increase in the market share of subprime mortgage lenders.

Securitization restructured the mortgage industry so that servicing became a profit center unto itself. In this new market structure, the entities managing delinquency and foreclosure lacked significant investment in loan outcomes, repeat customer relationships, and local real

estate markets. For servicers, securitization meant that foreclosure could be profitable if properly managed. Reducing the duration of foreclosure was key to profitability for both servicers and specialized foreclosure attorneys they employed: however, this required reducing foreclosure's associated free housing period. Securitization created markets in Mortgage Servicing Rights (MSRs) that generated new opportunities for mortgage servicers to specialize in and profit from delinquency and foreclosure. The Mortgage Electronic Registration System (MERS) created a private replacement for the public recording of mortgage ownership and servicing interests, allowing MSRs to be transferred electronically. The explosion of subprime mortgage lending increased demand for fast and cheap foreclosure legal services, which was met by specialized foreclosure law firms working on flat-fee contracts. At least some of these law firms relied on strategies like false affidavits and using MERS as a generic plaintiff to "fix" documentation problems introduced by securitization itself.

The foreclosure practices driving housing precarity were integral to the financialization of the mortgage market: they were solutions to problems created by securitization, and they became possible because securitization changed incentives and relationships within the mortgage industry. As the fragmentation of the mortgage value chain made foreclosure a profit center unto itself, high-volume, high-risk subprime mortgage securitization required more frequent and more cost-effective foreclosure. Without the innovation of widespread evidence fabrication, securitization's endogenous documentation problems may have rendered mass foreclosure either prohibitively expensive or legally impossible (either of which would have posed a significant challenge to the business model).

For mortgage servicers and foreclosure attorneys, the incentives created by the financialization of the mortgage market are clear: faster foreclosure meant cheaper foreclosure,

and cheaper foreclosure meant that the cost-benefit analysis applied to struggling borrowers increasingly selected foreclosure. Securitization discouraged practices that had historically helped struggling homeowners avoid foreclosure, like renegotiation and forbearance, and reduced the period of cost-free housing for homeowners at risk of foreclosure.

The strategies that foreclosure attorneys used to speed up foreclosure put property title at risk and threatened future real estate transactions. For foreclosure attorneys, these strategies brought them more business and increased their profitability. Further, the intense specialization of high-volume foreclosure attorneys' legal practice left them relatively unexposed to dysfunction in the housing market. For many of their clients, and perhaps for the mortgage industry as a whole, financialization and securitization meant mortgage transactions were more important than real estate transactions to their bottom line.

For judges, increasing the speed of the foreclosure processes was critical to retaining the foreclosure litigation revenue. However, it also shifted local mortgage markets towards high-risk subprime mortgage lending. In turn, this increased future foreclosure filings and added to the caseloads judges already struggled to manage. At the same time, increased subprime lending increased the court's foreclosure litigation revenue—and increased the leverage of foreclosure attorneys over the court system.

Contributions to Scholarship and Opportunities for Further Study

Other types of non-foreclosure debt collection can be theorized as social processes related to financialization and precarity, and further study is necessary to determine if the findings on foreclosure presented here apply to other types of debt collections. While all credit markets depend on debt collection to function (Kagan 1984), the social organization of debt collection is understudied. Financialization's fracturing of social relations between lenders and borrowers in non-mortgage consumer credit markets may create opportunities for loan managers and legal

service providers to specialize in distressed loan management and aggressive debt collection, increasing precarity for borrowers.

By focusing on mortgage foreclosure, I show that financialization and court budget austerity changed debt collection and increased precarity even where borrowers have above-average protections. Where protections are lower, financialization may have a greater impact on precarity. When half of all Americans would struggle to pay a $400 emergency expense, "innovative" application of techniques like wage garnishment and bank account seizure may have an outsized impact on lived precarity and the structure and profitability of consumer lending (Grover 2021). Further research is needed to determine if and how other types of debt collection evolved with the financialization to increase precarity in everyday life.

This work also identifies a *reflexive relationship* between rights and markets, and raises the possibility that financialization innately erodes borrowers' legal rights. Consumer finance markets are inherently intertwined with the rights of everyday people because business strategies and profits in this sector depend on creditors' ability to overcome borrowers' legal protections and expedite the seizure of borrowers' property. As financialization increases the power and influence of the holders of financial assets and their agents, their efforts to improve profitability by degrading borrowers' legal protections may become more successful. Austerity deprived local court systems of the resources they would need to adequately enforce those protections and aligned their interests with the finance industry actors that paid fees to consume legal services

This research contributes to our understanding and raises new questions about how states manage and enable credit markets. While the role of the state in constructing and enabling credit markets is well established (Carruthers 2020; Krippner 2011; Quinn 2019), consumer debt collection is not examined as a mechanism by which states shape markets. However, my findings

suggest that judges in foreclosure cases have at least an ex post facto role in regulating consumer credit markets: if the judiciary had aggressively intervened against "innovations" in foreclosure, the high-volume, high-risk subprime mortgage industry—recognized from its inception as requiring more frequent and more cost-effective foreclosure—may have been forced to internalize more risk, maintain stronger underwriting standards, and lend at lower volumes.

Further research is also needed to understand if and how the financialization of debt collection reinforces the American credit state's long history of racialized marginalization (Robinson 2020). Historically, the state structured mortgage markets to ensure the status and economic citizenship of white men, and used practices like redlining to exclude racial minorities (Fourcade and Healy 2013; Prasad 2012; Quinn 2019). When the federal government finally acted on minority groups' demands for credit, inclusion was often predatory and extractive (Seamster and Charron-Chénier 2017; Taylor 2019). The racialization of predatory mortgage lending—and the damage these practices have inflicted on communities of color—is well established (Immergluck 2011; Rugh, Albright, and Massey 2015; Rugh and Massey 2010). Researchers like Immergluck and Smith (2005) find that the subprime mortgage industry's targeting of minority communities led to racialized disparities in foreclosure, but no scholarship examines racial dynamics internal to the processes of loan management or foreclosure. Are abusive servicing tactics racially targeted in the same way as predatory lending? How does implicit bias affect the judges managing foreclosure litigation? While data used for this present research provide little leverage on these critical questions, it is worth remembering that foreclosure became a "crisis"—and efforts were made to curtail abusive servicing and foreclosure practices—only when white male-headed households began experiencing rates of

foreclosure similar to those that marginalized communities had experienced for 15 years (Strolovitch 2021).

This work fundamentally expands our understanding of how states and credit markets shape each other. While the role of law and regulatory agencies in shaping markets is well-researched, the role of county courts in shaping local credit markets is previously untheorized. However, this research finds that in Cook County, the local judiciary shifted the local mortgage market towards high-risk subprime lending by speeding up the foreclosure process. This shift occurred under immense pressure from foreclosure attorneys, who directly threatened to withdraw a critical revenue stream from the court. The extent to which this dynamic occurred in other jurisdictions—as indicated by attorneys interviewed for this project—demands further study. However, the power of the local judiciary to shape local mortgage markets through their control of court procedure creates new possibilities for political action to demand that judges use this power for the public good rather than corporate interests.

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