

Northern Illinois University Law Review

Volume 32 | Issue 3

Article 5

6-1-2012

Vol. 32, no. 3, Summer 2012: Table of Contents and Masthead

Northern Illinois University Law Review

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Recommended Citation

Northern Illinois University Law Review (2012) "Vol. 32, no. 3, Summer 2012: Table of Contents and Masthead," *Northern Illinois University Law Review*: Vol. 32: Iss. 3, Article 5.

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Northern Illinois University Law Review

Volume 32

Summer 2012

Number 3

ARTICLES

Avoiding a Lawyers' Race to the Foreclosure Bottom: Some Advice to Lawyers for Lenders and Borrowers on Their Roles in Foreclosure Litigation

James Geoffrey Durham..... 419

Lawyers for lenders and borrowers are joining their clients in questionable actions in foreclosure litigation as a massive number of borrower defaults have led to a flood of lawsuits. This article describes some of the practices lawyers for lenders and borrowers have undertaken in this race to the bottom likely rationalized by "the ends justify the means" and "everyone else is doing it, why can't I?" It goes on to outline the minimum standards set by the rules of legal ethics and to describe just what foreclosure lawyers should be doing. The lessons are not new, but the foreclosure crisis highlights the need to revisit them.

Collateral Matters: Housing Code Compliance in the Mortgage Crisis

Kermit J. Lind..... 445

This article begins by describing the paradigm shift in mortgage loan servicing produced over the past two decades by securitization and exotic financing products using residential property for collateral. It shows how current mortgage servicing and debt collection practices ignore mortgage collateral and renders conventional housing code compliance procedures obsolete. It then suggests that new strategic thinking is needed to redesign and retool code compliance processes. Residential neighborhoods and communities need to protect themselves against the wanton lending and servicing practices produced in the wake of the mortgage disaster. There is still immanent disaster not only from the new financial practices but also from some of the policies and programs initiated at the national level to protect big financial institutions from the consequences of their mortgage madness.

COMMENTS

Pawing Their Way to the Supreme Court: The Evidence Required to Prove a Narcotic Detection Dog's Reliability

Monica Fazekas.....473

Historically, courts have given great deference to the anatomical scent detectors from which the canine's heightened sense of smell derives. In 2005, the Supreme Court supported this position and held that a drug detection dog's sniff did not constitute a search under the Fourth Amendment. The Court partially based its reasoning on the classification of the dog sniff as sui generis. With this holding, courts began admitting evidence of a drug detection dog's alert to narcotics to constitute the requisite probable cause for an officer's search. Virtually every circuit allows a canine alert to establish such probable cause by presenting the bare minimum of evidence that demonstrates the drug dog is reliable. This evidence must merely state the canine is "trained" and "certified." Despite the overarching support federal appellate courts have for this position, state courts have begun to hold in favor of a much more assiduous method that is based on more detailed, objective evidence. These courts have held that evidence of the canine's training and certification, an explanation of that certification, recertification records, field performance records, and evidence of the handler's training are required in order to establish the canine's reliability. This Comment argues that if the drug detection dog that alerts to the scent of narcotics is unreliable, the court determining whether or not that dog constituted probable cause for the officer's search could not be aware of the dog's unreliability without the objective evidence that state courts require. As such, these courts risk an unnecessary invasion of an individual's privacy by allowing unreliable drug dogs to constitute probable cause in a search that, without the dog's alert, would otherwise be a suspicion-less, warrantless, unconsented, and otherwise unlawful Fourth Amendment search. This Comment concludes by advocating for the totality of the circumstances requirement in order to ensure the constitutionality of searches incident to a canine's alert to the scent of narcotics.

Then I Saw the Contract, Now I'm A Believer: Why "Concept Groups" are "Works for Hire" and Cannot Invoke Statutory Termination Rights After 2013

Daniel Porter..... 507

The year 2013 will mark the first opportunity for musicians to exercise the copyright assignment termination rights granted by § 203 of the Copyright Act of 1976. In theory, exercising these termination rights will allow artists to reclaim the rights to their songs and albums which they had to assign to the various record companies as a means of recording, publishing, and selling their music. Artists that invest their creativity, musical talent, and time into making a successful record deserve to ultimately reap the benefits that flow from that success. On the other hand, artists that merely record songs written by others, dress and perform the way others direct them to, and have limited musical talent to contribute to the record, in most instances, do not deserve to reap the benefits that flow from that record's success. This Comment argues that the latter category of artists, commonly referred to as "concept groups,"

should not be allowed to exercise the statutory termination rights to reclaim the rights to the songs they recorded. Through examination of the Congressional intent behind the Copyright Act of 1976, common law agency principles, federal case law, and other scholarly work from the field, this comment urges courts to prevent artists classified as “concept groups” from exercising these termination rights.

NORTHERN ILLINOIS UNIVERSITY
LAW REVIEW

Volume 32

Summer 2012

Number 3

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Cite as N. ILL. U. L. REV. (2012)
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