

ATTORNEY/ BANKER INTERVIEW ABOUT A FORECLOSURE: BANK LOAN – “THAT IS HOW IT WORKS.”

Note: the same interview can be applied to credit card and personal loans. Substitute “foreclosure loan” for “credit card loan.”

Interview with a banker about a foreclosure. The banker was placed on the witness stand and sworn in. The plaintiff's (borrower's) attorney asked the banker the routine questions concerning the banker's education and background.

The attorney asked the banker, "What is court exhibit A?"

The banker responded by saying, "This is a promissory note."

The attorney then asked, "Is there an agreement between Mr. Smith (borrower) and the defendant?"

The banker said, "Yes."

The attorney asked, "Do you believe the agreement includes a lender and a borrower?"

The banker responded by saying, "Yes, I am the lender and Mr. Smith is the borrower."

The attorney asked, "What do you believe the agreement is?"

The banker quickly responded, saying, " We have the borrower sign the note and we give the borrower a check."

The attorney asked, "Does this agreement show the words borrower, lender, loan, interest, credit, or money within the agreement?"

The banker responded by saying, "Sure it does."

The attorney asked, "According to your knowledge, who was to loan what to whom according to the written agreement?"

The banker responded by saying, "The lender loaned the borrower a \$50,000 check. The borrower got the money and the house and has not repaid the money."

The attorney noted that the banker never said that the bank received the promissory note as a loan from the borrower to the bank. He asked, "Do you believe an ordinary person can use ordinary terms and understand this written agreement?"

The banker said, "Yes."

The attorney asked, "Do you believe you or your company legally own the promissory note and have the right to enforce payment from the borrower?"

The banker said, "Absolutely we own it and legally have the right to collect the money."

The attorney asked, "Does the \$50,000 note have actual cash value of \$50,000? Actual cash value means the promissory note can be sold for \$50,000 cash in the ordinary course of business."

The banker said, "Yes."

The attorney asked, "According to your understanding of the alleged agreement, how much actual cash value must the bank loan to the borrower in order for the bank to legally fulfill the agreement and legally own the promissory note?" The banker said, "\$50,000."

The attorney asked, "According to your belief, if the borrower signs the promissory note and the bank refuses to loan the borrower \$50,000 actual cash value, would the bank or borrower own the promissory note?"

The banker said, "The borrower would own it if the bank did not loan the money. The bank gave the borrower a check and that is how the borrower financed the purchase of the house."

The attorney asked, "Do you believe that the borrower agreed to provide the bank with \$50,000 of actual cash value which was used to fund the \$50,000 bank loan check back to the same borrower, and then agreed to pay the bank back \$50,000 plus interest?"

The banker said, "No. If the borrower provided the \$50,000 to fund the check, there was no money loaned by the bank so the bank could not charge interest on money it never loaned."

The attorney asked, "If this happened, in your opinion would the bank legally own the promissory note and be able to force Mr. Smith to pay the bank interest and principal payments?"

The banker said, "I am not a lawyer so I cannot answer legal questions."

The attorney asked, "Is it bank policy that when a borrower receives a \$50,000 bank loan, the bank receives \$50,000 actual cash value from the borrower, that this gives value to a \$50,000 bank loan check, and this check is returned to the borrower as a bank loan which the borrower must repay?"

The banker said, "I do not know the bookkeeping entries."

The attorney said, "I am asking you if this is the policy."

The banker responded, "I do not recall."

The attorney again asked, "Do you believe the agreement between Mr. Smith and the bank is that Mr. Smith provides the bank with actual cash value of \$50,000 which is used to fund a \$50,000 bank loan check back to himself which he is then required to repay plus interest back to the same bank?"

The banker said, "I am not a lawyer."

The attorney said, "Did you not say earlier that an ordinary person can use ordinary terms and understand this written agreement?"

The banker said, "Yes."

The attorney handed the bank loan agreement marked "Exhibit B" to the banker. He said, "Is there anything in this agreement showing the borrower had knowledge or showing where the borrower gave the bank authorization or permission for the bank to receive \$50,000 actual cash value from him and to use this to fund the \$50,000 bank loan check which obligates him to give the bank back \$50,000 plus interest?"

The banker said, "No."

The lawyer asked, "If the borrower provided the bank with actual cash value of \$50,000 which the bank used to fund the \$50,000 check and returned the check back to the alleged borrower as a bank loan check, in your opinion, did the bank loan \$50,000 to the borrower?"

The banker said, "No."

The attorney asked, "If a bank customer provides actual cash value of \$50,000 to the bank and the bank returns \$50,000 actual cash value back to the same customer, is this a swap or exchange of \$50,000 for \$50,000."

The banker replied, "Yes."

The attorney asked, "Did the agreement call for an exchange of \$50,000 swapped for \$50,000, or did it call for a \$50,000 loan?"

The banker said, "A \$50,000 loan."

The attorney asked, "Is the bank to follow the Federal Reserve Bank policies and procedures when banks grant loans."

The banker said, "Yes."

The attorney asked, "What are the standard bank bookkeeping entries for granting loans according to the Federal Reserve Bank policies and procedures?" The attorney handed the banker FED publication Modern Money Mechanics, marked "Exhibit C".

The banker said, "The promissory note is recorded as a bank asset and a new matching deposit (liability) is created. Then we issue a check from the new deposit back to the borrower."

The attorney asked, "Is this not a swap or exchange of \$50,000 for \$50,000?"

The banker said, "This is the standard way to do it." The attorney said, "Answer the question. Is it a swap or exchange of \$50,000 actual cash value for \$50,000 actual cash value? If the note funded the check, must they not both have equal value?"

The banker then pleaded the Fifth Amendment.

The attorney asked, "If the bank's deposits (liabilities) increase, do the bank's assets increase by an asset that has actual cash value?"

The banker said, "Yes."

The attorney asked, "Is there any exception?"

The banker said, "Not that I know of."

The attorney asked, "If the bank records a new deposit and records an asset on the bank's books having actual cash value, would the actual cash value always come from a customer of the bank or an investor or a lender to the bank?"

The banker thought for a moment and said, "Yes."

The attorney asked, "Is it the bank policy to record the promissory note as a bank asset offset by a new liability?"

The banker said, "Yes."

The attorney said, "Does the promissory note have actual cash value equal to the amount of the bank loan check?"

The banker said "Yes."

The attorney asked, "Does this bookkeeping entry prove that the borrower provided actual cash value to fund the bank loan check?"

The banker said, "Yes, the bank president told us to do it this way."

The attorney asked, "How much actual cash value did the bank loan to obtain the promissory note?"

The banker said, "Nothing."

The attorney asked, "How much actual cash value did the bank receive from the borrower?"

The banker said, "\$50,000."

The attorney said, "Is it true you received \$50,000 actual cash value from the borrower, plus monthly payments and then you foreclosed and never invested one cent of legal tender or other depositors' money to obtain the promissory note in the first place? Is it true that the borrower financed the whole transaction?"

The banker said, "Yes."

The attorney asked, "Are you telling me the borrower agreed to give the bank \$50,000 actual cash value for free and that the banker returned the actual cash value back to the same person as a bank loan?"

The banker said, "I was not there when the borrower agreed to the loan."

The attorney asked, "Do the standard FED publications show the bank receives actual cash value from the borrower for free and that the bank returns it back to the borrower as a bank loan?"

The banker said, "Yes."

The attorney said, "Do you believe the bank does this without the borrower's knowledge or written permission or authorization?"

The banker said, "No."

The attorney asked, "To the best of your knowledge, is there written permission or authorization for the bank to transfer \$50,000 of actual cash value from the borrower to the bank and for the bank to keep it for free?"

The banker said, "No."

Does this allow the bank to use this \$50,000 actual cash value to fund the \$50,000 bank loan check back to the same borrower, forcing the borrower to pay the bank \$50,000 plus interest? "

The banker said, "Yes."

The attorney said, "If the bank transferred \$50,000 actual cash value from the borrower to the bank, in this part of the transaction, did the bank loan anything of value to the borrower?"

The banker said, "No." He knew that one must first deposit something having actual cash value (cash, check, or promissory note) to fund a check.

The attorney asked, "Is it the bank policy to first transfer the actual cash value from the alleged borrower to the lender for the amount of the alleged loan?"

The banker said, "Yes."

The attorney asked, "Does the bank pay IRS tax on the actual cash value transferred from the alleged borrower to the bank?"

The banker answered, "No, because the actual cash value transferred shows up like a loan from the borrower to the bank, or a deposit which is the same thing, so it is not taxable."

The attorney asked, "If a loan is forgiven, is it taxable?"

The banker agreed by saying, "Yes."

The attorney asked, "Is it the bank policy to not return the actual cash value that they received from the alleged borrower unless it is returned as a loan from the bank to the alleged borrower?"

"Yes", the banker replied.

The attorney said, "You never pay taxes on the actual cash value you receive from the alleged borrower and keep as the bank's property?"

"No. No tax is paid.", said the crying banker.

The attorney asked, "When the lender receives the actual cash value from the alleged borrower, does the bank claim that it then owns it and that it is the property of the lender, without the bank loaning or risking one cent of legal tender or other depositors' money?"

The banker said, "Yes."

The attorney asked, "Are you telling me the bank policy is that the bank owns the promissory note (actual cash value) without loaning one cent of other depositors' money or legal tender, that the alleged borrower is the one who provided the funds deposited to fund the bank loan check, and that the bank gets funds from the alleged borrower for free? Is the money then returned back to the same person as a loan which the alleged borrower repays when the bank never gave up any money to obtain the promissory note? Am I hearing this right? I give you the equivalent of \$50,000, you return the funds back to me, and I have to repay you \$50,000 plus interest? Do you think I am stupid?"

In a shaking voice the banker cried, saying, "All the banks are doing this. Congress allows this."

The attorney quickly responded, "Does Congress allow the banks to breach written agreements, use false and misleading advertising, act without written permission, authorization, and without the alleged borrower's knowledge to transfer actual cash value from the alleged borrower to the bank and then return it back as a loan?"

The banker said, "But the borrower got a check and the house."

The attorney said, "Is it true that the actual cash value that was used to fund the bank loan check came directly from the borrower and that the bank received the funds from the alleged borrower for free?"

"It is true", said the banker.

The attorney asked, "Is it the bank's policy to transfer actual cash value from the alleged borrower to the bank and then to keep the funds as the bank's property, which they loan out as bank loans?"

The banker, showing tears of regret that he had been caught, confessed, "Yes."

The attorney asked, "Was it the bank's intent to receive actual cash value from the borrower and return the value of the funds back to the borrower as a loan?"

The banker said, "Yes." He knew he had to say yes because of the bank policy.

The attorney asked, "Do you believe that it was the borrower's intent to fund his own bank loan check?"

The banker answered, "I was not there at the time and I cannot know what went through the borrower's mind."

The attorney asked, "If a lender loaned a borrower \$10,000 and the borrower refused to repay the money, do you believe the lender is damaged?"

The banker thought. If he said no, it would imply that the borrower does not have to repay. If he said yes, it would imply that the borrower is damaged for the loan to the bank of which the bank never repaid. The banker answered, "If a loan is not repaid, the lender is damaged."

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The attorney asked, "Is it the bank policy to take actual cash value from the borrower, use it to fund the bank loan check, and never return the actual cash value to the borrower?"

The banker said, "The bank returns the funds."

The attorney asked, "Was the actual cash value the bank received from the alleged borrower returned as a return of the money the bank took or was it returned as a bank loan to the borrower?"

The banker said, "As a loan."

The attorney asked, "How did the bank get the borrower's money for free?"

The banker said, "That is how it works."

. . . And that's the truth!