

## ON THE HOUSE

# Bank glitch traps Lancaster pair in web of foreclosure

Sunday, February 7, 2010 3:41 AM

BY JIM WEIKER

Someday, someone will produce a fair and balanced moral analysis of the housing collapse.

Until then, we must settle for shallow, ill-informed and facile explanations that fall into two main camps: The lenders are crooks who got what they deserved, or the homeowners are fools who had no business borrowing what they did.

On one side, sympathy is hard to summon for bankers who aren't being paid for loans that any third-grader could have foreseen as doomed.

On the other, it's a bit disingenuous for borrowers to blame banks for lending them money. That's akin to blaming the woman who agrees to go out with you for what proves to be a less-than-enjoyable date: You might question her judgment, but you're the person, after all, who made the overture.

The fact is, some homeowners borrowed far more than they should have and are now paying the price of such greed.

And then, there are others.

There are people such as Kreg and Audre Smith, a young Lancaster couple who did nothing wrong but still landed inside the horrible bureaucracy that has become a byproduct of the foreclosure mess.

Kreg and Audre, who have known each other since the seventh grade, were married in October 2006, a month after Kreg enlisted in the Navy.

In July 2008, while Kreg was stationed in Virginia, the couple bought an old home on the east side of Lancaster. They paid \$117,500 for the home, borrowing \$116,579 from Fifth Third Mortgage for the purchase.

"It was the perfect home for us -- a beautiful three-bedroom, two-story home," said Audre, who served eight years in the Army Reserve.

The Smiths aren't rich, but neither did they struggle to make the \$876 monthly payment. They arranged



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**Audre Smith in front of her Lancaster home.**

for Fifth Third to deduct the money directly from their Chase bank account.

In November 2008, Fifth Third notified them that their mortgage had been transferred to U.S. Bank.

A month later, Audre noticed that Fifth Third had deducted a payment for December. She assumed that money was passed on to U.S. Bank. The same thing happened in January, and Audre assumed the same thing.

Those assumptions, though, proved in error: On Jan. 12, 2009, U.S. Bank alerted the Smiths that they were two months behind in their payments and advised them to contact the bank's default counseling department.

That advisory pitched Audre headlong into the gears of the banking machine -- a place seemingly designed to chew up all but the most-experienced navigators.

Most calls to U.S. Bank led her to a different person. No matter how many times she repeated the problem, she heard the same answer: You're behind on payments.

She had no more success with Fifth Third, even though she said the bank has never disputed that it received the December and January payments. (She and her lawyer can offer proof of the payments.)

After Audre canceled the direct withdrawals in February, she sent U.S. Bank a check for the monthly mortgage payment. She received the check back with a note saying that the account must be paid in full, including the months that had already been withdrawn from her account.

She then stopped paying, even though she said she continued to try to negotiate with both banks.

In July came the inevitable: U.S. Bank filed a notice of foreclosure in Fairfield County. Audre sought help from the Ohio Poverty Law Center, which has since done battle with U.S. Bank in court.

Representatives from U.S. Bank and Fifth Third declined to discuss the case because it is in litigation.

Douglas Rogers, a former partner with Vorys, Sater, Seymour and Pease who now works at the law center, took the Smiths' case.

He is arguing that the banks violated the Real Estate Settlement Procedures Act, commonly known as RESPA, which prohibits a transferred loan from being treated as delinquent if the original lender doesn't pass on the payment.

Rogers wants the court to compel U.S. Bank or Fifth Third to resume the loan after bringing it up to date.

The Smiths' moral position is undermined by their insistence that the banks are now liable for the amount in arrears, now 15 months behind. Such an insistence raises questions about their ability to repay the loan, even though Audre insists they can afford it.

Their claim that they did nothing to land in this quicksand, though, seems beyond dispute; and their case deserves to be considered by those who are convinced that everyone in foreclosure belongs there.

Now, Audre waits with her two children -- Zakk, 5, and Xavier, almost 3 -- while her husband is deployed offshore.

"It's put everything on hold," she said. "We wanted to redo the boys' room, but we won't do that now."

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The Smiths' lawyer is arguing that the banks violated a law that prohibits a transferred loan from being treated as delinquent if the original lender doesn't pass on the payment.

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