

# After The Storm

## Foreclosure Fraud & Robo-Signing Continues...

*A Year Ago, A Storm of Allegations And Reports Highlighting Robo-Signing And Foreclosure Fraud Swept Across America Causing Major Banks To Halt Foreclosures Nationwide While Congressional, State, And Federal Investigations Were Launched. A Year Later, While Investigations Are Still Ongoing, Regulators Have Failed To Correct The Underlying Issues Behind Foreclosure Fraud And Robo-Signing. The Overwhelming Evidence Presented In This Paper Is That Not Only Were American Homeowners And Borrowers Defrauded In The World's Greatest Financial Scam, But American's Wealth And Security Were Placed At Risk. To Date, There Has Been Only One Criminal Conviction Of An Executive Of A Major Mortgage Company And Other Criminal Convictions Have Been Halted. Still, As Shown In This Paper, Foreclosure Fraud And Robo-Signing Continue While Some Courts Address The Issue And Others Ignore The Ramifications Of This Massive Fraud. What Is Now Known Is That These Scams Were Not Unique, But Industry-Wide. The Mortgage-Backed Securities Turned Out To Be Non-Mortgage & Note Backed Empty Trusts. To Conceal This Massive Ponzi Scheme Perpetuated Against Americans, The Nation's Mortgage Industry Continues To Manufacture, Fabricate, & Destroy Evidence, Despite The Inherent Risks And Ramifications Since Over 90% of Borrowers Don't Challenge Their Foreclosures.*

# After The Storm

## Foreclosure Fraud & Robo-Signing Continues...

Recent court decisions, news events, and regulatory actions have shed a bright spotlight on the fraudulent and abusive mortgage and foreclosure practices of banks, lenders, Wall Street firms, and the nations' GSEs such as Fannie Mae and Freddie Mac. Allegations, and now admissions of robo-signing, false affidavits, fraudulent assignments, missing promissory notes, and the multi-pledge of securities and notes are now common-day occurrences in our daily news cycles and legal briefs.

However, these acts are not news to me for I have been investigating and reporting on these facts since 1993 culminating in reports I issued in 1999/2000 detailing each of these fraudulent schemes and acts. Some call me ground zero for this mortgage fiasco, having been the first to identify the abuses of robo-signing, false affidavits,<sup>1</sup> and that the banks and lenders who claimed ownership of the loans were in fact imposters in the early nineties.<sup>2</sup> At the end of this paper, I will share with you some new proof positive of my allegations that the servicers, lenders, trustees, and their foreclosure law firms and vendors are not only fabricating evidence for use in foreclosure cases, but destroying evidence as well.

I have written this paper to brief you on the impacts of these abuses and frauds and how to protect your personal and commercial real estate interests and related finances. However, I do not want you to take my word and opinions alone. As such, I have interspersed different facts, sources, and information throughout these pages. I have simplified some points for quick review and summary as well as provided more detailed information for those of you as thorough as I am along with relevant links and footnotes.

My objective is for you to cover what is most likely, your primary asset - - your home. If you follow my course of action, you may one day be able to eliminate losses and increase profits. I'd like you to protect yourself and your property. In my space, protection comes from exacting research and investigation with a careful analysis of the information and data gathered.

The key difference I offer is the interpretation and analysis of information and data at a time where developments and legal decisions concerning this crisis grows at warped speed each day. This is no time for amateurs and newcomers to educate themselves in any quick and effective fashion. There are many Johnny-Come-Latelys who profess to be forensic mortgage auditors and experts who in reality are simply the same mortgage broker conmen that got many of you into this mess in the first place! They use "robo-audits" and the same manufactured

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<sup>1</sup>[http://www.wisbar.org/AM/Template.cfm?Section=wisconsin\\_lawyer&Template=/CM/HTMLDisplay.cfm&ContentID=101562](http://www.wisbar.org/AM/Template.cfm?Section=wisconsin_lawyer&Template=/CM/HTMLDisplay.cfm&ContentID=101562)

<sup>2</sup>[http://en.wikipedia.org/wiki/2010\\_United\\_States\\_foreclosure\\_crisis](http://en.wikipedia.org/wiki/2010_United_States_foreclosure_crisis)

process as the servicers they are supposed to attack. While you will need audits, what you really need are experts with experience and expertise to work with and guide lawyers on the complexity of the legal issues involved. You cannot and should not go it alone.

Having discovered robo-signing, foreclosure fraud, predatory servicing, and predatory securitization as well as creating the produce the note strategy in the early nineties and the strategic default option later, I have a unique position and interest in these matters. Virtually anyone who is prominent in this field and doing good or God's work, as I call it, has come through my door or my email box. As such, I work with those who are on the cutting edge of the legal decisions and investigations shaping each of your futures. We can take our nation and our homes back, but we must put political, social, racial, religious and other divisions aside. We must work with one another and fight for one another against the international banking oligarchy that wishes to control our lives, wealth, and independence.

However, I do not want you to take my word, opinion, or facts alone without fact checking. To me, an informed borrower or property owner is the best scenario for success in this war against what I term "International Financial Terrorism." I will forego the talk on conspiracy theories and the goals of a New World Order, but before you go discounting anyone's theory, remember that all scientific discoveries were once theory, before they became fact and accepted science. Take careful time to not only read this paper, but many of the footnoted articles, reports, and links to court decisions and news reports that will validate what I share with each of you on the following pages.

While over the past two decades, I have previously written many of the facts, opinions, and concerns contained in the following pages, today, they are not my own. Increasingly, with each waking moment of my life, state and federal authorities, congressional panels, regulatory agencies, and Attorney Generals are validating and corroborating my decades old warnings and writing.

No one can say anymore that I am crying wolf or I am Chicken Little screaming the sky is falling, the sky is falling for the sky has already fallen on many of us and this great nation of ours. If you don't believe me, search for any of my prior reports on the Internet and then read the Congressional Oversight Panel Report of November 16, 2010 titled "Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation." You may download this report and other relevant facts and testimony at <http://www.scribd.com/doc/43107212/Congressional-Oversight-Panel-Report-11-16-2010>. Immediately below, I highlight for you, some key findings of the panel.

"In the fall of 2010, reports began to surface alleging that companies servicing \$6.4 trillion in American mortgages may have bypassed legally required steps to foreclose on a home. Employees or contractors of Bank of America, GMAC Mortgage, and other major loan servicers testified that they signed, and in some cases backdated, thousands of documents claiming personal knowledge of facts about mortgages that they did not actually know to be true.

Allegations of ‘robo-signing’ are deeply disturbing and have given rise to ongoing federal and state investigations. At this point, the ultimate implications remain unclear. It is possible, however, that “robo-signing” may have concealed much deeper problems in the mortgage market that could potentially threaten financial stability and undermine the government’s efforts to mitigate the foreclosure crisis. Although it is not yet possible to determine whether such threats will materialize, the Panel urges Treasury and bank regulators to take immediate steps to understand and prepare for the potential risks.

*In the best-case scenario, concerns about mortgage documentation irregularities may prove overblown. In this view, which has been embraced by the financial industry, a handful of employees failed to follow procedures in signing foreclosure-related affidavits, but the facts underlying the affidavits are demonstrably accurate. Foreclosures could proceed as soon as the invalid affidavits are replaced with properly executed paperwork.*

**The worst-case scenario is considerably grimmer. In this view, which has been articulated by academics and homeowner advocates, the ‘robo-signing’ of affidavits served to cover up the fact that loan servicers cannot demonstrate the facts required to conduct a lawful foreclosure. In essence, banks may be unable to prove that they own the mortgage loans they claim to own. The risk stems from the possibility that the rapid growth of mortgage securitization outpaced the ability of the legal and financial system to track mortgage loan ownership.**

In earlier years, under the traditional mortgage model, a homeowner borrowed money from a single bank and then paid back the same bank. In the rare instances when a bank transferred its rights, the sale was recorded by hand in the borrower’s county property office. Thus, the ownership of any individual mortgage could be easily demonstrated.”

**Nowadays, a single mortgage loan may be sold dozens of times between various banks across the country. In the view of some market participants, the sheer speed of the modern mortgage market has rendered obsolete the traditional ink-and-paper recordation process, so the financial industry developed an electronic transfer process that bypasses county property offices.”**

This electronic process has faced legal challenges that could, in an extreme scenario, call into question the validity of 33 million mortgage loans. Further, the financial industry now commonly bundles the rights to thousands of individual loans into a mortgage-backed security (MBS). ***The securitization process is complicated and requires several properly executed transfers. If at any point the required legal steps are not followed to the letter, then the ownership of the mortgage loan could fall into question.*** Homeowner advocates have alleged that frequent “robo-signing” of ownership affidavits may have concealed extensive industry failures to document mortgage loan transfers properly.

**If documentation problems prove to be pervasive and, more importantly, throw into doubt the ownership of not only foreclosed properties but also pooled mortgages, the consequences could be severe. Clear and uncontested property rights are the foundation of the housing market.**

If these rights fall into question, that foundation could collapse. Borrowers may be unable to determine whether they are sending their monthly payments to the right people. Judges may block any effort to foreclose, even in cases where borrowers have failed to make regular payments. Multiple banks may attempt to foreclose upon the same property. **Borrowers who have already suffered foreclosure may seek to regain title to their homes and force any new owners to move out.** Would-be buyers and sellers could find themselves in limbo, unable to know with any certainty whether they can safely buy or sell a home. **If such problems were to arise on a large scale, the housing market could experience even greater disruptions than have already occurred, resulting in significant harm to major financial institutions. For example, if a Wall Street bank were to discover that, due to shoddily executed paperwork, it still owns millions of defaulted mortgages that it thought it sold off years ago, it could face billions of dollars in unexpected losses.**

The statements made above in the Congressional Report were supported with a bipartisan 5-0 vote of the congressional panel, a rarity in today's polarized political climate. What the panel was referring to were the liabilities created by the mortgage securitization process and the creation of a company called Mortgage Electronic Registration Systems, Inc. ("MERS")

My research over the past two decades has come to the conclusion that MERS and the securitization process were created by bankers to cook their books with off balance accounting treatments wherein the lenders attempted to book instant income and profits while in reality they were financing receivables, not selling the notes in a true sale transaction, that really wasn't such a true sale at all, as we are increasingly finding.

As my colleagues, Max Gardner, April Charney, and I have been warning for years, the originating lenders and Wall Street securitizers and their special purpose vehicles, failed to lawfully transfer the notes to the securitized trusts and insure that such trusts or anyone holding a note could be considered a "holder in due course."

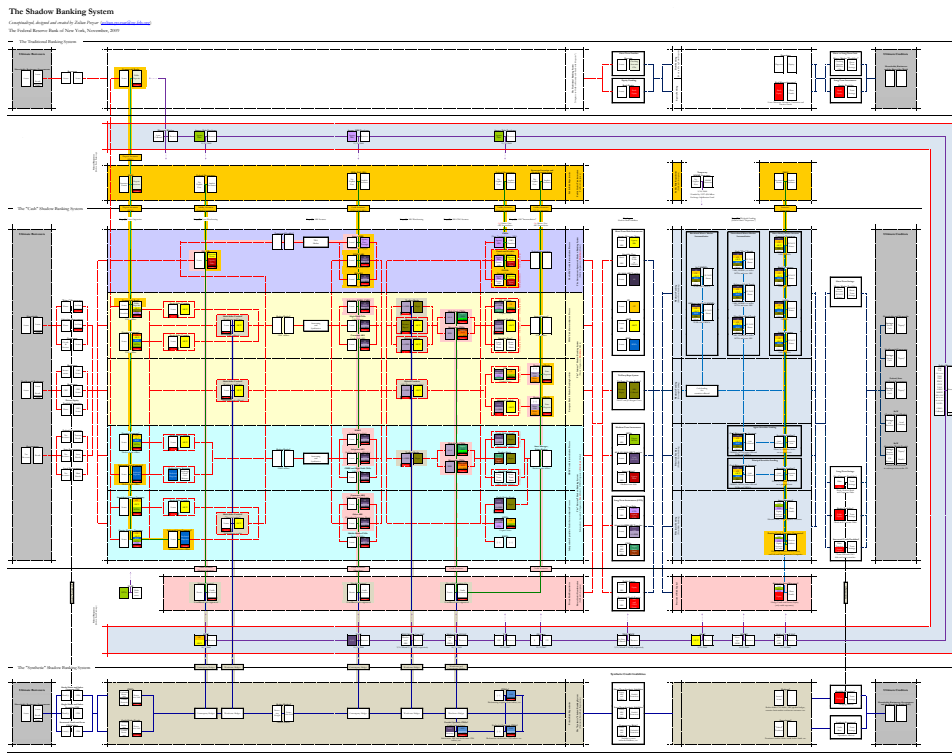
They did not execute the necessary paperwork to show who owned the actual note since they often pledged "imaged" copies of the note to the trust and held onto the original "wet ink" promissory notes for use in other sales or pledges to the Federal Home Loan Bank, Federal Reserve or other lenders as collateral for advances, financing, and loans. While many claim this was done out of laziness and cost cutting, the real motives were far more sinister.

Foreign International Bankers, in unison with some of our nation's enemies, including Muslim extremist organizations and potentially terrorist groups, were raping America's wealth,

property values, and our safety nets such as our pension funds and 401-K plans. They accomplished their objective with the creation of a “Shadow Banking System” wherein secret hedge funds, sovereign wealth funds, foreign intelligence agencies, and private billionaires flooded our mortgage and capital markets with fast and easy money without concern over the repayment of the loan, mortgage, or credit card debt since each was securitized.

This “private” Shadow Banking system was the focus of a New York Federal Reserve Bank paper that provided the following chart that illustrates who your potential “real creditor” may be; who you may be able to exert claims against due to the lack of holder in due course status; and where America’s wealth and money is actually going.

### THE SHADOW BANKING SYSTEM



In essence, they created a massive Ponzi scheme of leveraged risk wherein the money used to fund the scheme wasn't the borrower's payments, but the purchases of various mortgage-backed (really not backed by anything) securities and derivative products that I first warned was coming in 1996. However, don't believe me, examine the writing of other colleagues and experts who have followed the securitization trail. What created the collapse of our markets and the mortgage industry was not the missed payments and defaults of borrowers

on their mortgage or the subprime market, but the lack of trust and confidence by foreign and institutional investors buying the junk AAA rated bonds they previously were swindled into purchasing. This was the cash that drove the digital money machine and why our economy is in the state its in today!

The subprime collapse illustrated what was wrong with the lever machine, but it was the loss in confidence in investors buying the empty box of chocolates that Wall Street was selling that brought our markets to a crash and halted home sales. As illustrated in the comments and writing below, the fall was a collapse of a Ponzi scheme of historic proportions.

In a blog<sup>3</sup> at Mandelman Matters, written on Wednesday, May 25, 2011 Mandelman details certain facts about the Ponzi scheme and reports on a book by Nomi Prins aptly titled, *It Takes A Pillage* wherein he writes “at the end of 2007, there were roughly \$1.4 trillion in subprime mortgages in this country... and “between the Federal Reserve, the FDIC and the Treasury over \$13 trillion has been pumped into financial institutions to fix the ‘housing correction,’ which is what Hank Paulson was still calling our economic collapse as of November of 2008.

He continues, “at the end of 2008, there were \$11.9 trillion worth of mortgages in this country. So, with \$13 trillion, the government could have paid off every single one... and still had a little over a trillion dollars left over.” Let me highlight what Mandelman is getting at below for your edifice.

**WE HAVE APPROXIMATELY \$12 TRILLION IN MORTGAGE DEBT FOR PROPERTY MOST LIKELY VALUED AT ABOUT \$8 TRILLION NOW. IF THE GOVERNMENT TOOK THE \$13 TRILLION WE GAVE THEM IN TAX MONEY AND JUST GAVE IT BACK TO US, WE WOULD HAVE PAID EVERY RESIDENTIAL MORTGAGE IN AMERICA OFF AND NONE OF US WOULD HAVE ANY MORTGAGE DEBT!!**

Think about this for a moment! What greater stimulus to the economy and to jobs would there be than to free up all that money going out each month to our so-called lenders and potentially foreign terrorists and into the pockets of fellow Americans and even our local, state, and national governments for taxes to reduce our debt to the international bankers? So, why did the Federal Government choose to bail out the banks, rather than its citizens? Simply, the shareholders of America are no longer its citizens as we are made to believe, it’s the international bankers and the Shadow Banking System supported by central banks like the Federal Reserve!

Mandelman goes on to explain that there’s a lot more to the economic problem according to **Nomi Prins**,<sup>4</sup> who he considers his new favorite financial uber-genius and is the author of *“It takes a Pillage.”*<sup>5</sup> According to Prins, Wall Street banks had been playing a leverage

<sup>3</sup> <http://mandelman.ml-implode.com/2011/05/if-you-think-the-meltdown-was-the-fault-of-homeowners-think-again/>

<sup>4</sup> <http://www.nomiprins.com/biography/>

<sup>5</sup> <http://www.amazon.com/Takes-Pillage-Bailouts-Backroom-Washington/dp/0470529598>



game, somewhat like they did in the 1920s, but on mega-steroids as Mandelman describes. “Leverage means borrowing on assets, and Wall Street banks were leveraged by 30:1 and commercial banks by 10:1, not including their ‘off-the-balance-sheet’ holdings, which could make their leverage ratio significantly higher in many cases” as I warned of in what is ENRON times trillions!

In *“Pillage,”* Prins explains this Ponzi scheme in terms anyone can understand that factoring in the leverage at only 11:1, America is looking at a \$140 TRILLION economic problem! Now, you understand why I call it a Ponzi scheme. There is only approximately \$8 Trillion in actual residential real estate value backing \$140 trillion in exotic mortgage-backed (not so mortgage-back) securities and various derivatives like SWAPs, CDOs, CDO squared and my favorite, Synthetic CDOs!

Our Wall Street bankers, through the use and abuse of an unregulated and uncontrolled securitization process, manufactured bundles of electronic and digital currency that you see on your monthly “ink-on-paper statements” you receive each month from your bank, broker (the same folks who created this scheme) and pension fund. It all makes Bernie Madoff (irony here “made-off”) look like a mere pauper! They created excessive amounts of digital money leverage, leaving us with a potential tab of \$140 TRILLION for what they siphoned away from our respective trust, mutual, pension, and insurance funds.

This is one motive for the common industry-wide practice in having all original wet-ink notes promissory notes, soon after their execution, stamped with blank indorsements on an “unattached blank allonge” along with a “blank assignments, often pre-notarized to fill in the blanks to whom the future officer for the assignor and who the assignee would be. As the notes traveled from one lender to another, electronically or via shipments to warehouse lenders, the allonge with the indorsement was removed and replaced. Such removals from the file concealed the true “ownership path” or “chain of title” to the note. In addition, indorsements were rarely placed on the notes themselves, except on occasion for perhaps one or two on the face of the note.

Again, if you don’t believe me, read a Viewpoint column in the American Banker on Tuesday, October 19, 2010 by banking industry securitization guru and lawyer, Karen Gelernt a partner in the New York law firm of Cadwalader, Wickersham & Taft titled (no pun) “Title Transfer Law 101.”

In the column, Ms. Gelernt provides us with a concise explanation of how title to promissory notes are transferred and explains some of the fine points of the Uniform Commerical Code (“UCC”) that all of our fifty states have adopted for generations now. She appropriately illustrates that a promissory note is like a check under the UCC and can be transferred by specific endorsement. What she doesn’t address is what if the check has already been cashed and the endorsements cancelled and now there are attempting to pass on a worthless check or a check with no money in the bank?



Ms. Gelernt admits that allonges and assignments of mortgages and deeds were done in “blank.” What she doesn’t describe, which we know to be true and show evidence below, is that in the vast majority of times, these “blank assignments” were already pre-notarized and dated only to have the Assignee, officers, and dates of assignment added into the blanks via laser printers with exacting page makeup and Photoshop-like software programs placing the “missing and blank data” years after the actual notarized date! Thus, if properly challenged, these assignments transfer nothing since they are forgeries.

Ms. Gelernt writes “historically, when a mortgage loan was transferred it was accompanied by an assignment of mortgage, ***oftentimes in blank***. Because the secondary market was so active, **buyers of mortgage loans frequently did not record the assignments in blank and merely delivered the assignments with the related mortgage notes endorsed in blank to the subsequent buyer**. Frequently, the servicer of the mortgage loans {or MERS} remained the mortgagee of record and would receive any important notices regarding the related mortgaged properties. However, in order to facilitate easy transfers of mortgage loans, and to ease the burden of multiple recordings of assignments of mortgage in an active secondary market, MERS systems was developed. MERS is basically an agent for the mortgagee of record. So while a mortgage note may be transferred several times the mortgagee of record remains MERS and MERS tracks the intended mortgagee in its systems. **But at the end of the day, it is the owner of the mortgage note that dictates ownership of the mortgage** (a premise commonly referred to as “the mortgage follows the note”) as evidenced by Article 3 and Article 9 of the Uniform Commercial Code, in effect in all states.”

Thus, you see the need for the industry to create, fabricate, and even destroy very important real estate and UCC chain of title documents to recreate or conceal their frauds and abuses. Since notes can be pledged for other loans and advances, they are left endorsed in blank and possession becomes 100%, not 9/10<sup>th</sup> of law at that point. It’s sort of the musical chair game, when a chair disappears (such as when a company goes bankrupt or pledges the same note to multiple parties) the person sitting in the chair wins the game since he has possession of the seat for his/her backside! Cover your ASSETS, as its called.

Thus, the blank, robo-signed, unattached and ineffective allonges and assignments were fraudulently created at the get-go with the full understanding and knowledge that one day the bust would occur, but the agents and servicers holding the notes could easily transfer them out of a bankrupt estate and claim ownership via covering up the real path and chain of title and ownership via a fabricated, forged, and fraudulent transfer and endorsement documents when such entities were no longer in business or in bankruptcy.

In a report<sup>6</sup> I wrote in 2004, warning of this calamity, I stated “*they have failed to take into account the billions of dollars in missing, lost and destroyed mortgages and notes across the*

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<sup>6</sup> <http://4closurefraud.org/2010/08/10/2004-report-on-predatory-lending-amp-servicing-practices-amp-their-effect-on-corporate-compliance-conduct-ethics-amp-accounting/>

***nation and the threat is that in a case of a major collapse or bankruptcy of a Wall Street firm like Bear Stearns ala LTCM derivative crisis, systemic risk among counter parties to these transactions could make the market fall like a stack of cards. Upon such a failure, the underlying collateral that is the mortgage and/or promissory note becomes key as to that will be entitled to future payments from the borrower. The failure to properly record assignments and perfect lien positions, only to have the underlying instrument declared lost or stolen or appear with missing assignments poses a threat to virtually every pension, mutual and trust fund that invests in these high risk securities."***

In fact, one ratings analyst from Fitch informed me that the entire industry is a scam and that the true sale opinion letters being written by major law and accounting firms weren't worth the paper they were written on since everyone knew that the majority of transactions were really financing of receivables since there were many side recourse agreements that the ratings firm were aware of. An article<sup>7</sup> appearing in CFO Magazine confirms the analyst's concerns. This article is titled False Security?

In the article the journalist wrote "*corporate insolvencies are testing whether securitization is a stable structure or a flimsy facade. If a bankruptcy court, like in the LTV case, were to rule that in fact the securities or mortgages are the property of the bankruptcy estate and had not been properly isolated in trust, then the whole industry could collapse and investors taking a back seat and position to other creditors.* In fact, at the Bond Market Association's annual meeting in New York in April of 2003, the moderator of a panel on asset-backed securitization (ABS) joked that this enormously popular form of structured financing has ***proven to be bankruptcy remote — except perhaps in the event of bankruptcy.***"

"For investors and honest CFOs, that's no joke. ABS and MBS products are popular because they are supposed to transfer illiquid corporate assets (such as receivables) to a bankruptcy-remote entity [the SPV/SPE], which then allows them to be repackaged and sold as securities. Once the underlying assets are legally separated from the company's fortunes — and its creditors — those securities typically carry higher ratings than the company's own debt issues."

However, this allowed the mortgage companies and their enablers, the Wall Street banks securitizing their credit drug, not to carry these debts on their books. Like Enron before them, they stood behind these offerings with wink or nod or side agreements guaranteeing performance and the obligation. If such is the case, then there are recourse provisions and these so-called true sales are not true sales at all, but sham financing of receivables that places institutional investor money at risk.

Recent events, court rulings, and investigations by the New York Attorney General as described below, prove my decade-old contention and that of my colleagues Max and April, that

<sup>7</sup> <http://www.cfo.com/article/1,5309,9621||M|586,00.html?f=home> featured

the notes never were lawfully or equitably transferred to the securitized trusts they were intended to go and the originators, warehouse lenders, and other intermediaries held onto the original wet-ink notes, sometimes or often, as the case may be, selling the same note to multiple parties or pledging them for other loans, financings, or advances.

One only needs to analyze the Taylor Bean Whitaker (“TBW”) bankruptcy and the criminal conviction of their CEO. In a bankruptcy filing, the following was stated: “On numerous occasions, the Debtor {TBW} has informed the Court and other parties in interest that one of the biggest challenges in this case will be **sorting out the competing claims to cash and other assets** that flowed through the Debtor’s accounts prior to the bankruptcy filing. **Indeed, it appears as though many loans and other mortgage-related assets have been double and even triple-pledged to various constituencies.** According to the Debtor, the largest single source of disputed funds—more than \$548 million according to the Debtor’s Second Interim Reconciliation Report—relates to Freddie Mac. Indeed, BofA believes that there were improper diversions of Ocala loans and assets from TBW to Freddie Mac, and Ocala may have valid ownership claims with respect to a substantial portion of assets that relate to Freddie Mac.”

This is the primary motive of why all the notes, assignments, and allonges were endorsed in blank and left blank, only to be filled in and have ownership recreated. The blank endorsements, allonges, and assignments also did not state the date such documents were executed; the authority of the signatory on the endorsement, assignments, and allonge, and if an allonge, not firmly and “permanently” attached to the note so as to never allow its removal, would create ownership or make the allonge a nullity.

In addition to the allonge issues, blank and unrecorded assignments of the mortgage, deed of trust, or security deed were also fabricated without authority, after the required lawful timelines to transfer both the note and mortgage into the securitized trusts. The majority of assignments went unrecorded so there were no public records.

Thus, if the original wet ink promissory note is pledged to the Federal Reserve or a Federal Home Loan Bank for an advance or loan and it was indorsed in blank, the true owner of that note is the Federal Reserve or Home Loan Bank. However, many mortgage lenders securitized “imaged copies” of the originals and pledged or assigned their alleged ownership of the note to the securitized trusts. Now, these “empty trusts” hold empty assets. Trust laws are constrictive in that if the “original wet ink note” was not transferred by the closing and cutoff dates specified in the trust agreements, then the transfer did not take place and cannot take place at a later date in time. In addition, many of the current fabricated assignments of the original notes into a securitized trust are coming years after there was any right to a repurchase and attempt to assign a defaulted loan into the trust that is a violation of the trust agreements.

## VALIDATION & CORROBORATION OF OUR RESEARCH, FINDINGS, & OPINIONS

In the past year, our prior findings, opinions, and conclusions that the original wet-ink notes were never transferred to their intended securitized trusts was confirmed in the testimony<sup>8</sup> of a Bank of America and former Countrywide employee, Linda DeMartini in the Federal Bankruptcy Court of New Jersey in Case No. 08-18700-JHW.

Countrywide was once the nation's largest loan originators and securitizers of home loans. Yet, as highlighted below in a direct quotation of the judge in the case in his opinion, Countrywide as normal policy never transferred possession of the original wet-ink promissory notes to their intended trusts, despite representations in prospectuses and filings with the SEC.

*"She [DeMartini] testified further that it was customary for Countrywide to maintain possession of the original note and related loan documents." That assertion certainly seems to suggest that **the failure to transfer a promissory note from Countrywide Financial to the security trust in this case was not an isolated error—but a matter of policy at Countrywide Financial**"*

This again corroborates our findings that originators of mortgage loans didn't transfer the original wet-ink promissory notes to their intended securitized trusts and that questions about note ownership and the relevant authorities and right granted in the note and mortgage/deed can only be determined by a due diligence review and audit of the relevant documents we request for our inspection and analysis. If the document custodians, servicers, lenders, and trustees can't provide my due diligence team with the documents and evidence we require to inspect and analyze, then this a red flag indicia of fraud and any attempt to conceal these documents from us, our, experts and any court must be analyzed as to motive.

In analyzing the Countrywide v. Kemp case, Pulitzer award winning New York Times columnist, Gretchen Morgenson, explained in a November 20, 2010 column titled Trying to Put a Price on Bank Errors.

*"If Countrywide's practice was to hold onto the note, then investors in this pool and others may question whether the security was constructed properly and legally and may be able to require Bank of America to buy back their securities."*

Further corroborating my prior warnings, findings, and opinions that notes were not lawfully and equitably negotiated and transferred to their intended securitized trusts, I have added the allegations and facts of the Verified Pleading In Intervention that The People Of The State Of New York By Eric T. Schneiderman, Attorney General of the State of New York brought forward in a case involving one of the nation's largest trustees for securitized mortgage obligations, Bank of New York Mellon ("BNYM") in Case No. 651786/2011 before the Supreme Court Of The State Of New York, County Of New York, in the matter of The Bank Of New York

<sup>8</sup> [http://www.maxbankruptcybootcamp.com/pdfs/Countrywide\\_08\\_11%2009DiMartini.pdf](http://www.maxbankruptcybootcamp.com/pdfs/Countrywide_08_11%2009DiMartini.pdf)

Mellon (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures) as Petitioner Counter-Defendant -and- BlackRock Financial Management Inc., (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), et al.

In paragraph 2 of their pleading, the State of New York states:

*“the claims at issue arise from a massive collapse in value of the mortgage loans held by the trusts. This collapse resulted from widespread misconduct both in the origination of mortgage loans and in the creation and administration of the Trusts, all causing grave harm to borrowers, investors and to the integrity of the securities marketplace.”*

As background, on June 29, 2011, Bank of America, which bought Countrywide in early 2008, announced a settlement with BNYM, the trustee for numerous trusts created by Countrywide, including the 530 trusts covered by the Proposed Settlement. On or about the same day, BNYM commenced an Article 77 proceeding, seeking “an order, among other things, (i) approving the Proposed Settlement, and (ii) declaring that the Proposed Settlement is binding on all Trust Beneficiaries and their successors and assigns.”

In paragraph 9 of their pleading, the State of New York states in part that:

*“the cure provisions propose procedures under which BoA/Countrywide will perform, and BNYM as trustee will monitor, the reconstruction of otherwise deficient mortgage files and restore the rights to collateral underlying the trusts’ certificates.”*

In paragraphs 23 to 34 of their verified pleading as shown below, the State of New York’s Attorney General outlines a series of facts that corroborate my findings that original wet-ink promissory notes were not lawfully and equitably negotiated and transferred to their intended trusts according to New York Trust law that governs the majority of PSAs.

“Almost all of the Trusts were governed by PSAs, which define the Trustee’s duties. One of BNYM’s primary obligations as trustee under these PSAs was to ensure the proper transfer of loans from Countrywide to the Trusts. The ultimate failure of Countrywide to transfer complete mortgage loan documentation to the Trusts hampered the Trusts’ ability to foreclose on delinquent mortgages, thereby impairing the value of the notes secured by those mortgages. These circumstances apparently triggered widespread fraud, including BoA’s fabrication of missing documentation.”<sup>9</sup>

“PSAs require actual delivery to the trust of original mortgage documents and assignments of the mortgages in favor of the trust or in blank. For example, a PSA for one of the Trusts, CWALT 2006 OC-7, between BNYM as trustee, Countrywide Financial Corporation and others (hereinafter referred to as the “Trust PSA”)<sup>10</sup> provides that as

<sup>9</sup> ¶23 of Verified Pleading

<sup>10</sup> Pooling and Service Agreement dated as of August 1, 2006, Alternative Loan Trust 2006-OC-7, between CWALT, Inc., Depositor, Countrywide Home Loans, Inc., Seller, Park Granada LLC, Seller, Park Monaco Inc., Seller, Park Sienna LLC, Seller, Countrywide Home Loans Servicing LP, Master Servicer, and The Bank Of New York, Trustee (“Trust PSA”).

part of the transfer and assignment, “the Depositor has delivered or caused to be delivered to the Trustee ... for the benefit of the Certificateholders” a number of mortgage-related documents. Proper transfer of these loans was defined by the PSA as including:”

the original Mortgage Note endorsed by manual or facsimile signature in blank in the following form: ‘Pay to the order of \_\_\_\_\_ without recourse,’ with all intervening endorsements showing a complete chain of endorsement from the originator to the Person endorsing the Mortgage Note (each such endorsement being sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note).<sup>11</sup>

“To ensure that the mortgage files are intact, PSAs require the Trustee to promptly review the mortgage loan documentation delivered by Countrywide and make an initial certification as to its completeness, noting any defects. For example, the Trust PSA states that “[t]he Trustee agrees to execute and deliver on the Closing Date to the Depositor, the Master Servicer and Countrywide ... an Initial Certification ... Based on its review and examination ... the Trustee acknowledges that such documents appear regular on their face and relate to the Mortgage Loans.”<sup>12</sup>

“Moreover, the PSAs require BNYM to issue a certification of compliance, with exceptions detailing any issues it has identified during the course of its review. The exceptions can range from minor defects to problems of major significance, such as a missing promissory note or assignment. Pursuant to this provision, BNYM has generated exception reports for each mortgage pool held in each of the Trusts, usually identifying great numbers of files that are incomplete and improperly documented. Notably, the Proposed Settlement provides for a process to reconstruct or correct the extensive deficiencies noted in the exception reports.”<sup>13</sup>

“These provisions are central to any mortgage securitization, but they are now vitally important to trust investors in light of the housing market collapse. Any action to foreclose requires proof of ownership of the mortgage. This must be demonstrated by actual possession of the note and mortgage, together with proof of any chain of assignments leading to the alleged ownership. Moreover, complete mortgage files give borrowers assurance that their properties are properly foreclosed upon. The failure to properly transfer possession of complete mortgage files has hindered numerous foreclosure proceedings and resulted in fraudulent activities including, for example,

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<sup>11</sup> ¶24 of Verified Pleading

<sup>12</sup> ¶25 of Verified Pleading

<sup>13</sup> ¶26 of Verified Pleading

‘robo-signing.’ These fraudulent activities have burdened borrowers as well as the courts with flawed foreclosure proceedings.”<sup>14</sup>

“BNYM knew the scope of the loan documentation deficiencies because it issued detailed exception reports for the Trusts. These deficiencies impaired the value of the securities by compromising the collateral and imposing additional servicing costs.”<sup>15</sup>

“Once a trustee learns of an obligor’s default—here, Countrywide’s failure to deliver complete mortgage files to the Trustee—the trustee is held to a “prudent man” standard of care under New York common law and Article 4-A of the Real Property Law (the “RPL”). See *Ambac Indemnity Corp. v. Bankers Trust Co.*, 573 N.Y.S.2d 204, 207 (Sup. Ct. N.Y. Co. 1991) (discussing the obligation of “the trustee in the event of default to carry out his duties with the care and skill a prudent man would use in the conduct of his own affairs.”); N.Y. Real Prop. Law Art. 4-A § 126(1) (mandating that trust instruments concerning real estate mortgages and interests therein impose a duty on trusts, in the event of a default, “to exercise such of the rights and powers vested in the trustee by such instrument, and to use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.”).”<sup>16</sup>

“This rule required BNYM to notify investors that the loans securing their notes were impaired by Countrywide’s defaults. PSAs define “Servicer Events of Default” to include: any failure by the Master Servicer to observe or perform in any material respect any other of the covenants or agreements on the part of the Master Servicer contained in this Agreement (except with respect to a failure related to a Limited Exchange Act Reporting Obligation), which failure materially affects the rights of Certificateholders, that failure continues un-remedied for a period of 60 days after the date on which written notice of such failure shall have been given to the Master Servicer by the Trustee...

The Trustee gave such notice to Countrywide in the form of exception reports for each of the 530 Trusts.”<sup>17</sup>

“The Trustee’s knowledge of an event of default is presumed when “a Responsible Officer of the Trustee shall have received written notice thereof.” Such notice was actual and abundant, as evidenced by (1) BNYM’s own detailed exception reports, (2) widespread news coverage of foreclosure fraud, and (3) foreclosure actions brought on BNYM’s behalf. Indeed, the Attorney General’s own investigation revealed numerous foreclosure actions brought on BNYM’s behalf which were improperly brought against New York homeowners. A review of the records in the Bronx, New York and

<sup>14</sup> ¶27 of Verified Pleading

<sup>15</sup> ¶28 of Verified Pleading

<sup>16</sup> ¶29 of Verified Pleading

<sup>17</sup> ¶30 of Verified Pleading



Westchester County Clerk's offices reveals that BNYM failed to ensure that notes were transferred to some of the Trusts:

*In a number of actions the mortgage note was not assigned to the Trustee prior to the foreclosure action. For example, in Bank of New York v. Kirkland, Bank of New York, as trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006-8, conceded that the mortgage at issue was "to be assigned by an Assignment to be recorded in the Office of the Clerk of WESTCHESTER County."*

*In other cases, the note was allegedly transferred just days before the foreclosure action was brought. In Bank of New York v. Gioio, for example, Bank of New York, as trustee for the Benefit of CWABS, Inc. Asset-Backed Certificates, Series 2007-13, alleged that the mortgage was assigned two days before the action was filed.<sup>18</sup> Despite these clear indicators, BNYM did not notify any of the parties or seek to halt Countrywide's widespread fraud in improperly prosecuting foreclosure actions.<sup>19</sup>*

As I was editing this paper, Dow Jones Wire story, published in the Wall Street Journal<sup>20</sup> on August 16, 2011, reported on a lawsuit filed by the Knights of Columbus in the same matter. The lawsuit complaint corroborates our findings and that of the New York Attorney General that the promissory notes never made it to the trust.

According to the Wall Street Journal story, The Knights of Columbus hold \$17 billion in assets, including mortgage-backed securities. They claim that the Bank of New York, as trustee to many MBS, violated terms of agreements on 18 residential mortgage-backed securities issued by Bank of America Corp.'s (BAC) Countrywide unit, including maintaining files on underlying loans and ensuring master servicer Countrywide was pursuing foreclosures without undue costs to investors.

In their amended lawsuit,<sup>21</sup> filed in New York Supreme Court, The Knights of Columbus reiterate my comments and opinion that mortgage "backed" securities were backed by nothing at all when they allege they **"did not acquire residential mortgage-backed securities, but instead acquired securities backed by nothing at all."** The Journal continued by writing:

*"Wall Street banks intoxicated by volume and profits eased guidelines and waded in weaker loans that, in many instances, violated terms of the contracts shown to investors that bought related securities." "The Knights of Columbus are concerned that discovery of rushed foreclosure proceedings, known as robo-signing, have significantly delayed the*

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<sup>18</sup> ¶31 of Verified Pleading

<sup>19</sup> ¶32 of Verified Pleading

<sup>20</sup> <http://online.wsj.com/article/BT-CO-20110816-713697.html>

<sup>21</sup>

<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=tirVQewp3WtlbufDmA+yiA==&system=prod>

*process and added to costs that lower proceeds once a property is finally liquidated. They also said the trustee has breached its duties by not investigating robo-signing at Countrywide, illicit foreclosures and excessive fees. Further, Bank of New York's failure to hold loan files calls into question the ownership of properties that have been sold after foreclosure, adding to potential liability of the Knights of Columbus, the lawsuit stated."*

In their amended lawsuit,<sup>22</sup> filed in New York Supreme Court, the Knights of Columbus reiterate my comments and opinion that mortgage "backed" securities were backed by nothing at all. After spending hours going over their lawsuit and exhibits, I've decided to edit my paper to document for you how these "White Knights" have come to the rescues of each of you with their well documented and verified complaint. To do that, I have decided to use paragraphs directly from their verified complaint to not only back up my findings and opinion that these notes never got to their intended securitized trusts, but also the good-hearted motives of these good Knights.

The Knights of Columbus is the world's largest Catholic family fraternal service organization, was chartered as a fraternal benefit society by the Connecticut state legislature in 1882 to further its mission of rendering financial aid to sick, disabled, and needy members. Founded on the principles of charity, unity, patriotism, and fraternity, the Knights promote social and intellectual fellowship among its members and their families through educational, charitable, religious, social welfare, war relief, and public relief works. Membership in the Knights is open to men 18 years of age or older who are practicing Catholics and are committed to supporting the Catholic Church and making their community a better place. The Order has been called "the strong right arm of the Church" and has been praised by popes, presidents, and other world leaders for support of the Church, civic involvement, and aid to those in need. In 2008, the Holy See gave the founder of the Knights, parish priest Father Michael J. McGivney, the title "Venerable Servant of God," which marks an important step on the journey to his beatification and canonization.<sup>23</sup>

In 2009, the Knights raised and donated more than \$151 million to charitable needs and projects, and members volunteered more than 69 million hours of their time to charitable initiatives including 227,900 hours to Habitat for Humanity. In the last decade, the Knights have donated more than \$1.367 billion to charity and provided nearly 640 million service hours. The charitable work performed by the Knights is vast and varied and includes disaster relief in Japan, Haiti, and the Philippines; donations of over \$1 million to local food banks; and the distribution of new coats to children and wheelchairs to those in need. More recently the Knights have begun an extensive program in Haiti to assist children who lost limbs in the earthquake by fitting

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<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=tirVQewp3WtlbufDmA+yiA==&system=prod>

<sup>23</sup> ¶ 11 of Knight's Amended & Verified Complaint

them with prosthetics, providing rehabilitation services, and operating “The Return to Sports” program so that amputees can run and play soccer once again.<sup>24</sup>

Since its inception the Knights have sought to protect the membership through the tool of insurance. Initially, the founding parish priest, Father McGivney, instituted a not-for-profit life insurance program to provide for the **widows and orphans of deceased members**. This not-for-profit program has expanded substantially to more effectively serve the organization’s 1.8 million members worldwide and now includes annuity, disability, and long-term care products. Today, the Knights maintain an investment portfolio of \$17 billion and operate a fraternal insurance organization doing business in the 50 states of the United States, the District of Columbia, the 10 provinces of Canada, Puerto Rico, the Virgin Islands, Northern Mariana Islands, Guam, Mexico, the Philippines, and Poland. In April of 2011, life insurance in force exceeded \$80 billion. The Knights are one of only five insurers in North America to receive the highest possible rating for financial stability from both A.M. Best and Standard & Poor’s, and one of only three U.S. insurers to have both those accolades *plus* the Insurance Marketplace Standards Association certification for ethical business and marketing practices.<sup>25</sup>

As a fraternal benefit society, the Knights have no stockholders; the Knights’ “owners” are its members, and just as those members are committed to performing an impressive array of charitable, religious, and patriotic works, the Knights are committed to protecting the financial futures of the members and their families. One way the Knights do this is by paying claims and dividends to insured members. In 2009, the Knights paid well over \$431 million in death claims and other benefits, and more than \$309 million in dividends to policyholders. From 2000 to 2009, the Knights paid \$3.191 billion in dividends to insured members.<sup>26</sup>

As you can see, these are a pretty good bunch of knights and souls who are looking out for others. Unlike the evil black knights in the Shadow Banking System, these white knights have provided all of us with a treasure trove of legal arguments as well as ammunition and weapons for our war. The paragraphs listed below refer to a Trustee which is the same Bank of New York Mellon talked about above and the Master Servicer is the old Countrywide Home Loans Servicing LP that is now known as BAC Home Loans Servicing, LP a unit of Bank of America. In the amended complaint, the knights state:

Recent revelations from a variety of credible sources indicate that **the Trustee and the Master Servicer may be acting for their own benefit rather than for the benefit of investors**. Furthermore, the acts detailed below indicate that **the Trustee and the Master Servicer may be damaging the borrowers whose**

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<sup>24</sup> ¶ 12 of Knight’s Amended & Verified Complaint

<sup>25</sup> ¶ 13 of Knight’s Amended & Verified Complaint

<sup>26</sup> ¶ 14 of Knight’s Amended & Verified Complaint

**loans make up each Trust's corpus and undermining efforts to restore economic prosperity to this Country.**<sup>27</sup>

As this Court well understands, **a national financial crisis exists, which was primarily caused by irresponsible lending practices and leveraging of debt on the part of the nation's largest financial institutions.**<sup>28</sup>

As this Court also understands, *a national foreclosure crisis accompanies the financial crisis. "The Federal Reserve considers the record rate of mortgage delinquencies, foreclosures and their impacts on communities an urgent problem."* See <http://data.newyorkfed.org/creditconditionsmap/#>. *Losing a home to foreclosure can be one of the most serious, stressful, and devastating events in a person's life. **During the foreclosure process, borrowers should be treated with respect, and the foreclosure process should be performed in a manner that is honest, legal, and in compliance with due process of law.***<sup>29</sup>

Borrowers losing homes to foreclosure can fall into a number a categories, examples of which include the following borrowers who are working to save their homes from foreclosure: (1) honest borrowers experiencing difficult life events ("Good Faith Borrowers"); and **(2) victims of predatory lending activities who were misled or outright defrauded into obtaining a loan they could not afford ("Predatory Lending Victims")**. The Master Servicer should provide Good Faith Borrowers a reasonable opportunity to stay in their homes where that result exceeds the net present value of foreclosing. The entity (or its successor in interest) who sold a Trust a loan made to a Predatory Lending Victim should repurchase the loan from the Trust as it warranted it would upon sale and face the consequences of its wrongful acts against the borrower under applicable law.<sup>30</sup>

Let me summarize the highlights of what a good white knight investor in dozens of mortgage-backed securitized trusts is saying. First, they say that the trustee and servicer are acting on their own behalf and are damaging both investors and borrowers. This argument can be used to show motive for fraudulent foreclosures and robo-signing. Next, they blame the financial and mortgage crisis on the **"irresponsible lending practices and leveraging of debt on the part of the nation's largest financial institutions"** Then, the good knights, for whose benefit the servicer and trustee are foreclosing on state **"the foreclosure process should be performed in a manner that is honest, legal, and in compliance with due process of law."** WOW, holy smoke (pardon

<sup>27</sup> ¶ 23 of Knight's Amended & Verified Complaint

<sup>28</sup> ¶ 24 of Knight's Amended & Verified Complaint

<sup>29</sup> ¶ 26 of Knight's Amended & Verified Complaint

<sup>30</sup> ¶ 27 of Knight's Amended & Verified Complaint

my intentional pun), these good knights are advocating honesty, legality, AND due process, much of which has been abdicated in the foreclosure process. Last, but certainly not least, our new knight heroes state that borrowers are losing homes to foreclosure and are **“victims of predatory lending activities *who were misled or outright defrauded into obtaining a loan* they could not afford (“Predatory Lending Victims”).**

A carefully crafted lawsuit complaint or answer and affirmative defenses can show fraud and also defenses such as contributory negligence, and fraud in the factum and inducement. However, don't let me stop here with our knight colloquy. The remainder of their lawsuit complaint corroborates my analysis and opinion that the notes never made it to their designated trusts! They cite the duties of the Trustee and the Master Servicers on how to get the notes to become part of the “trust corpus.” If the notes never became part of the trust corpus and only their receivables were pledged, then they not only lose authority to foreclosure, but a question arises if anyone else has a lawful right or authority to foreclose. This question becomes more complex when bankrupt and out of business mortgage lenders are involved.

In the next section, the knights and their lawyers detail the requirements of the trust agreement in getting the notes into the trust corpus via the strict provisions of the PSA. These PSAs are trust documents that must be construed within the four corners of the agreement according to typically, New York law that governs these complex and lengthy agreements. In paragraph 29 of their complaint, the knights state:

Each PSA contained express terms for the delivery of the loans into the Trust. Specifically, each PSA contained language to the effect that the Depositor would deliver certain critical documents evidencing and supporting each loan to the Defendant Trustee:

In connection with the transfer and assignment set forth in clause (b) above, the Depositor has delivered or caused to be delivered to the Trustee (or, in the case of the Delay Delivery Mortgage Loans that are Initial Mortgage Loans, will deliver or cause to be delivered to the Trustee within thirty (30) days following the Closing Date and in the case of the Delay Delivery Mortgage Loans that are Supplemental Mortgage Loans, will deliver or cause to be delivered to the Trustee within twenty (20) days following the applicable Supplemental Transfer Date) for the benefit of the Certificateholders the following documents or instruments with respect to each Mortgage Loan so assigned:

(i) the original Mortgage Note endorsed by manual or facsimile signature in blank in the following form: “Pay to the order of \_\_\_\_\_ without recourse,” with all intervening endorsements showing a complete chain of endorsement from the originator to the Person endorsing the Mortgage Note (each such endorsement being sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note); or

[...] (iii) in the case of each Mortgage Loan that is not a MERS Mortgage Loan, a duly executed assignment of the Mortgage, (which may be included in a blanket assignment or assignments), together with, except as provided below, all interim recorded assignments of such mortgage (each such assignment, when duly and validly completed, to be in recordable form and sufficient to effect the assignment of and transfer to the assignee thereof, under the Mortgage to which the assignment relates); provided that, if the related Mortgage has not been returned from the applicable public recording office, such assignment of the Mortgage may exclude the information to be provided by the recording office; provided, further, that such assignment of Mortgage need not be delivered in the case of a Mortgage for which the related Mortgaged Property is located in the Commonwealth of Puerto Rico;

CWALT 2006-6CB PSA § 2.01(c).

The knights then go on to detail the document custody and certification procedures to be employed in relationship to a securitization. In paragraph 30 of their complaint, the knights state:

Moreover, the Trustee acknowledged the receipt of these critical documents and promised to hold them “in trust for the exclusive use and benefit of all present and future Certificateholders.” The Defendant Trustee further acknowledged that “it will maintain possession of the Mortgage Notes in the State of California”:

The Trustee acknowledges receipt of the documents identified in the Initial Certification in the form annexed hereto as Exhibit F-1 and declares that it holds and will hold such documents and the other documents delivered to it constituting the Mortgage Files, and that it holds or will hold such other assets as are included in the Trust Fund, in trust for the exclusive use and benefit of all present and future Certificateholders. The Trustee acknowledges that it will maintain possession of the Mortgage Notes in the State of California, unless otherwise permitted by the Rating Agencies.

CWALT 2006-6CB PSA § 2.02(a).

This example shows that there was a clear responsibility for the trust to have the notes in their control and custody and that the Trustee was supposed to inspect the files and certify that they had control and custody of the original wet-ink promissory notes. This is why our “produce the note” arguments are important in EVERY case. The note is evidence of a debt, and without it, there is no debt. Second, the endorsements are important for a few reasons. One, was the note lawfully and equitably negotiated, transferred, and sold and two, is there any holder in due course status bestowed upon any lender or trust. However, the most critical issues are who has standing and authority to notice, demand, collect, service, accelerate, advertise, foreclose, mediate, settle, rescind, approve assumptions and short sales and a host of other legal contingencies contained in the provisos of your note and mortgage or deed.

In paragraph 31, the knights state: *The Trustee was required to execute “the Initial Certification in the form annexed hereto as Exhibit F-1” (attached to this Complaint as “Exhibit F-1”), in which it was to state that it had both received a Note and an assignment, and that it had undertaken a “review and examination” of those documents:*

In accordance with Section 2.02 of the above-captioned Pooling and Servicing Agreement (the “Pooling and Servicing Agreement”), the undersigned, as Trustee, hereby certifies that, as to each Initial Mortgage Loan listed in the Mortgage Loan Schedule (other than any Initial Mortgage Loan paid in full or listed on the attached schedule) it has received:

(i) (a) the original Mortgage Note endorsed in the following form: “Pay to the order of \_\_\_\_\_, without recourse” or (b) with respect to any Lost Mortgage Note, a lost note affidavit from Countrywide stating that the original Mortgage Note was lost or destroyed; and

(ii) a duly executed assignment of the Mortgage (which may be included in a blanket assignment or assignments).

Based on its review and examination and only as to the foregoing documents, such documents appear regular on their face and related to such Mortgage Loan.

CWALT 2006-6CB PSA Form F-1.

In paragraph 31, the knights state: “The Trustee subsequently had to issue a Final Certification (attached to this Complaint as “Exhibit H-1”) with respect to the loans:”

Not later than 90 days after the Closing Date, the Trustee shall deliver to the Depositor, the Master Servicer and Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) a Final Certification with respect to the Initial Mortgage Loans in the form annexed hereto as Exhibit H-1, with any applicable exceptions noted thereon. If, in the course of such review, the Trustee finds any document constituting a part of a Mortgage File which does not meet the requirements of Section 2.01, the Trustee shall list such as an exception in the Final Certification [...]

CWALT 2006-6CB PSA § 2.02(a).

As illustrated in paragraph 33, it was also the Trustee’s duty to *affix certain language to each assignment of Mortgage:*

**As promptly as practicable subsequent to such transfer and assignment**, and in any event, within thirty (30) days thereafter, the Trustee shall (i) as the assignee thereof, affix the following language to each assignment of Mortgage: “CWALT Series 2006-6CB, The Bank of New York, as trustee”, (ii) **cause such assignment to be in proper form for**



**recording in the appropriate public office for real property records and** (iii) cause to be delivered for recording in the appropriate public office for real property records the assignments of the Mortgages to the Trustee, except that, with respect to any assignments of Mortgage as to which the Trustee has not received the information required to prepare such assignment in recordable form, the Trustee's obligation to do so and to deliver the same for such recording shall be as soon as practicable after receipt of such information and in any event within thirty (30) days after receipt thereof and that the Trustee need not cause to be recorded any assignment which relates to a Mortgage Loan, (a) the Mortgaged Property and Mortgage File relating to which are located in California or (b) in any other jurisdiction (including Puerto Rico) under the laws of which in the opinion of counsel the recordation of such assignment is not necessary to protect the Trustee's and the Certificateholders' interest in the related Mortgage Loan.

CWALT 2006-6CB PSA § 2.01(c).

I don't think "as promptly as practicable" mean a few or several years later as we see in virtually every foreclosure case that we review and analyze. Paragraph 34 stated: "Furthermore, numerous provisions of the PSA made clear that the Trustee was required to maintain possession of the Mortgage File, which contained among other things the Note and any assignments, and that possession of the Mortgage File by any other entity was to be a closely guarded and monitored exception rather than the rule. For example:

*"The Trustee shall retain possession and custody of each Mortgage File in accordance with and subject to the terms and conditions set forth herein. The Master Servicer shall promptly deliver to the Trustee, upon the execution or receipt thereof, the originals of such other documents or instruments constituting the Mortgage File as come into the possession of the Master Servicer from time to time."* CWALT 2006-6CB PSA § 2.02(d) (emphasis added).

*"With respect to any Substitute Mortgage Loan or Loans, sold to the Depositor by a Seller, Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) shall deliver to the Trustee for the benefit of the Certificateholders the Mortgage Note, the Mortgage, the related assignment of the Mortgage, and such other documents and agreements as are required by Section 2.01, with the Mortgage Note endorsed and the Mortgage assigned as required by Section 2.01."* CWALT 2006-6CB PSA § 2.03(c) (emphasis added).

*"Upon the payment in full of any Mortgage Loan, or the receipt by the Master Servicer of a notification that payment in full will be escrowed in a manner customary for such purposes, the Master Servicer will immediately notify the Trustee by delivering, or causing to be delivered a "Request for Release" substantially in the form of Exhibit N. Upon receipt of such request, the Trustee shall promptly release the related*

*Mortgage File to the Master Servicer, and the Trustee shall at the Master Servicer's direction execute and deliver to the Master Servicer the request for reconveyance, deed*

of reconveyance or release or satisfaction of mortgage or such instrument releasing the lien of the Mortgage in each case provided by the Master Servicer, together with the Mortgage Note with written evidence of cancellation thereon.”

CWALT 2006-6CB PSA § 3.12.

“From time to time and as shall be appropriate for the servicing or foreclosure of any Mortgage Loan, including for such purpose, collection under any policy of flood insurance, any fidelity bond or errors or omissions policy, or for the purposes of effecting a partial release of any Mortgaged Property from the lien of the Mortgage or the making of any corrections to the Mortgage Note or the Mortgage or any of the other documents included in the Mortgage File, the Trustee shall, upon delivery to the Trustee of a Request for Release in the form of Exhibit M signed by a Servicing Officer, release the Mortgage File to the Master Servicer. Subject to the further limitations set forth below, *the Master Servicer shall cause the Mortgage File or documents so released to be returned to the Trustee when the need therefor by the Master Servicer no longer exists*, unless the Mortgage Loan is liquidated and the proceeds thereof are deposited in the Certificate Account, in which case the Master Servicer shall deliver to the Trustee a Request for Release in the form of Exhibit N, signed by a Servicing Officer.” CWALT 2006-6CB PSA § 3.12 (emphasis added). Each “Request for Release” referenced above is attached to this Complaint as “Exhibit M” and “Exhibit N”. Both Exhibits M and N make clear that they are to be used for individual loans, not for the entire loan pool.

“Notwithstanding any other provisions of this Agreement, *the Master Servicer shall transmit to the Trustee as required by this Agreement all documents and instruments in respect of a Mortgage Loan coming into the possession of the Master Servicer from time to time* and shall account fully to the Trustee for any funds received by the Master Servicer or which otherwise are collected by the Master Servicer as Liquidation Proceeds, Insurance Proceeds or Subsequent Recoveries in respect of any Mortgage Loan.” CWALT 2006-6CB PSA § 3.13 (emphasis added).

Now, one of my favorite issues and what I have been writing about for over fifteen years is covered in the knight’s complaint, were any of these securitizations true sales? In paragraph 35, the knights state: Even the PSA’s “fail safe” provision (providing that if a true sale does not take place then the Trustee has a security interest in the loans) required that the Mortgage File be delivered to the Trustee:

In connection with the pledge of the fail safe security interest, “[t]he Depositor hereby represents that: [...] (v) All original executed copies of each Mortgage Note that are required to be delivered to the Trustee pursuant to Section 2.01 have been delivered to the Trustee.” CWALT 2006-6CB PSA § 10.04(b).

“The Master Servicer shall take such action as is reasonably necessary to maintain the perfection and priority of the security interest of the Trustee in the Mortgage Loans; provided, however, that *the obligation to deliver the Mortgage File to the Trustee*

pursuant to Section 2.01 shall be solely the Depositor's obligation and *the Master Servicer shall not be responsible for the safekeeping of the Mortgage Files by the Trustee.*" CWALT 2006-6CB PSA § 10.04(c) (emphasis added).

Thus far, our white knights have given us a great map to follow and fabulous ammunition to fight with, but the last portions of their complaint not only reiterates much of what's been said in this paper by me and others, but precisely details how the Countrywide notes never got to their intended destination, the trusts. This raises questions if the notes ever got to Fannie Mae, Freddie Mac, and others, as well.

Paragraph 36 is my favorite and plainly states: **"Based on the following allegations, it is apparent that the Defendant knowingly failed in its obligation to receive, process, maintain, and hold all or part of the Mortgage Files as required under the PSA. As a consequence, Plaintiff did not acquire residential mortgage-backed securities, but instead acquired securities backed by nothing at all."**

Here, an investor to MBS confesses that there were no mortgages assigned to them or promissory notes delivered. They admit they can't foreclose and illustrate why we need to see the books to determine who, if anyone, actually owns the notes that are secured by the mortgages that place liens on our properties. In paragraphs 37 to 44, the knights describe a few cases I highlight herein, but with additional emphasis, so I share them with you here.

In a case styled *Kemp v. Countrywide Home Loans, Inc.*, 440 B.R. 624 (D.N.J. Bankr. 2010), the Master Servicer, identifying itself as the servicer for Defendant, filed a secured claim in the bankruptcy of homeowner and debtor Kemp. Kemp filed an adversary complaint against the Master Servicer asserting that "the Bank of New York cannot enforce the underlying obligation." *Id.* at 626.

At trial, a supervisor and operational team leader for the Litigation Management Department for the Master Servicer testified that **"to her knowledge, the original note never left the possession of Countrywide, and that the original note appears to have been transferred to Countrywide's foreclosure unit, as evidenced by internal FedEx tracking numbers. She also confirmed that the new allonge had not been attached or otherwise affixed to the note. She testified further that it was customary for Countrywide to maintain possession of the original note and related loan documents."** *Id.* at 628. 39. Summarizing the record, the New Jersey Bankruptcy Court found that:

[W]e have established on this record that at the time of the filing of the proof of claim, the debtor's mortgage had been assigned to the Bank of New York, but that Countrywide did not transfer possession of the associated note to the Bank. **Shortly before trial in this matter, the defendant executed an allonge to transfer the note to the Bank of New York; however, the allonge was not initially affixed to the original note, and possession of the note never actually changed. The Pooling and Servicing Agreement required an indorsement and**

**transfer of the note to the Trustee, but this was not accomplished prior to the filing of the proof of claim. The defendant has now produced the original note and has apparently affixed the new allonge to it, but the original note and allonge still have not been transferred to the possession of the Bank of New York.** Countrywide, the originator of the loan, filed the proof of claim on behalf of the Bank of New York as Trustee, claiming that it was the servicer for the loan. Pursuant to the PSA, Countrywide Servicing, and not Countrywide, Inc., was the master servicer for the transferred loans. At all relevant times, the original note appears to have been either in the possession of Countrywide or Countrywide Servicing.

*Id.* at 629.

“With this factual backdrop”, the New Jersey Bankruptcy Court turned “to the issue of whether the challenge to the proof of claim filed on behalf of the Bank of New York, by its servicer Countrywide, can be sustained”, and found that:

Countrywide’s claim here must be disallowed, because it is unenforceable under New Jersey law on two grounds. First, under New Jersey’s Uniform Commercial Code (“UCC”) provisions, **the fact that the owner of the note, the Bank of New York, never had possession of the note, is fatal to its enforcement.** Second, upon the sale of the note and mortgage to the Bank of New York, **the fact that the note was not properly indorsed to the new owner also defeats the enforceability of the note.**

*Id.* at 629-630.

To test the *Kemp* testimony concerning endorsements, FORTUNE magazine “examined [104] foreclosures filed in two New York counties (Westchester and the Bronx) between 2006 and 2010”, and reported the following:

None of the 104 Countrywide loans were endorsed by Countrywide – they included only the original borrower’s signature. Two-thirds of the loans made by other banks also lacked bank endorsements. The other third were endorsed either directly on the note or on an allonge, or a rider, accompanying the note.

The lack of Countrywide endorsements, combined with the bank’s representation to the court that these documents are accurate copies of the original notes, calls into question the securitization of these loans, as well as Bank of New York’s right, as trustee, to foreclose on them. These notes ostensibly belong to over 100 different Countrywide securities and worse, they were originally made as long ago as 2002. If the lack of endorsement on these notes is typical -- and 104 out of 104 suggests it is -- the problem occurs across Countrywide securities and for loans that pre-date the peak-bubble mortgage frenzy.

The lack of Countrywide endorsements also corroborates [the Master Servicer employee who testified in *Kemp*], who said that in her 10 years at Countrywide she had never seen a note with an endorsement, and that as foreclosures had been increasingly litigated, she had been handling the original notes, not just the copies scanned into the bank's database.<sup>1</sup>

Defendant had the opportunity to demonstrate that it possesses the Mortgage Files through discovery served by Plaintiff in this action. Defendant has failed to answer Plaintiff's properly propounded and narrowly tailored discovery requests.

The Attorneys General of both New York and Delaware recently requested information from Defendant to determine whether the Trusts for which Defendant served as Trustee "were properly documented and valid". See Gretchen Morgensen, *Two States Ask if Paperwork in Mortgage Bundling Was Complete*, NEW YORK TIMES, June 12, 2011, at <http://www.nytimes.com/2011/06/13/business/13mortgage.html>.

The Attorney General of New York, moreover, has filed a proposed Verified Pleading in Intervention, dated August 4, 2011, in *In the matter of the application of The Bank of New York Mellon*, Index No. 651786/2011, which alleges that Defendant not only knew that Mortgage Files were not transferred properly (¶¶ 23-28), but also breached its duty to notify Certificateholders like the Knights of this fact (¶¶ 29-34).

The Knights conclude with many facts about false and robo-signed affidavits, assignments, endorsements, and note, some of which are discussed herein, in paragraphs X to X.

In a February 19, 2010, deposition in a Massachusetts bankruptcy case, Renee D. Hertzler, an employee of the Master Servicer, admitted under oath to signing seven to eight thousand legal documents a month outside the presence of a notary and without reviewing the documents prior to signing them. Ms. Hertzler testified "I typically don't read them because of the volume that we sign."

Ms. Hertzler further admitted to signing affidavits as the Vice President of the Defendant The Bank of New York Mellon when, in fact, she was not and never had been employed by Defendant.

Tam Doan worked on pre-sale foreclosures for the Master Servicer in Southern California. While his job required him to sign various legal documents, he primarily handled notices to delinquent borrowers that their loans were proceeding to foreclosure. His signature constituted an affirmation that the Master Servicer had reviewed the loan and it did not qualify for modification. Yet, Mr. Doan told CNN that "[w]e had no knowledge of whether the foreclosure could proceed or couldn't, but regardless, we signed the documents to get these foreclosures out of the way." In some cases he claimed that he did not even know what kind of document he was signing. "I had no idea what I was signing," said Doan. "Either you were in or you were out."

This practice of signing documents in an assembly-line manner and swearing to personal knowledge of facts that the affiant has not even reviewed has popularly become known as “robo-signing”.

The media revelations about robo-signing were a topic of discussion during a Congressional hearing<sup>3</sup> on the financial regulatory overhaul. A WASHINGTON POST article dated September 30, 2010, entitled *7 Major Lenders Ordered to Review Foreclosure Procedures* quoted John Walsh, acting director of the Office of the Comptroller of the Currency, as telling lawmakers that some lenders “clearly had deficiencies” in their foreclosure systems. Accordingly, seven banks, including the Master Servicer, were ordered to review their foreclosure processes.

In her testimony before this same Congressional panel, Federal Deposit Insurance Corp. Chairman Sheila C. Bair described the issue of document processing errors as “troubling.” She also said “it’s just a further indication of how wrong we went with the mortgage origination process and securitization process.”

The transcripts of the Senate Banking Committee Hearing on Financial Overhaul can be found at <http://1.usa.gov/9XkhWP>, while the hearing video can be viewed at <http://www.c-spanvideo.org/program/Overhaul>.

According to the Congressional Oversight Panel’s November Oversight Report, “Affidavits such as the ones involved in the foreclosure irregularities are statements made under oath and thus clearly fall within the scope of the perjury statutes.” Congressional Oversight Panel, November Oversight Report, Nov. 16, 2010, at 42.

On October 1, 2010, the Master Servicer announced that it was putting foreclosures on hold in the 23 judicial foreclosure states. According to the Master Servicer’s spokesman Dan Frahm: “To be certain affidavits have followed the correct procedures, Bank of America will delay the process in order to amend all affidavits in foreclosure cases that have not yet gone to judgment.”

In October 2010, Attorneys General in California, Florida, Connecticut, Illinois, Ohio, and Colorado called for foreclosure moratoriums, and then-New York Attorney General and now Governor Andrew Cuomo began an investigation of the issue.

On October 4, 2010, the Attorney General of Texas sent notices to the Master Servicer and 29 other mortgage companies in the state demanding that all foreclosures be halted until all “robo-signers” were identified, remedial steps taken to deal with legally insufficient documentation, and proper assurances of compliance with Texas law were given.

On October 5, 2010, Massachusetts Attorney General Martha Coakley asked the Master Servicer and other banks to suspend foreclosures and evictions in that state, and Delaware Attorney General Joseph R. Biden, III called on the Master Servicer and other banks to halt all pending foreclosures until a thorough review of their foreclosure policies and procedures was complete.<sup>7</sup> That same day North Carolina Attorney General Roy Cooper asked the Master Servicer and 13

other mortgage companies to suspend foreclosures in his state.<sup>8</sup> All told, at “least 10 states - with Iowa and Delaware being the latest - are seeking to expand a voluntary freeze on foreclosures by some of the nation’s largest mortgage lenders to include more companies and more regions.”

The Master Servicer responded on October 8, 2010, by releasing the following statement: “Bank of America has extended our review of foreclosure documents to all fifty states. We will stop foreclosure sales until our assessment has been satisfactorily completed. Our ongoing assessment shows the basis for our past foreclosure decisions is accurate. We continue to serve the interests of our customers, investors and communities. Providing solutions for distressed homeowners remains our primary focus.”

In response to the ongoing dissemination of information regarding robo-signing, in October 2010, the Attorneys General of all 50 states formed the Mortgage Foreclosure Multistate Group. In a joint statement issued October 13, 2010, the group opined that robo-signing “may constitute a deceptive act and/or an unfair practice or otherwise violate state laws.”

On October 18, 2010, the Master Servicer released a statement that “We have reviewed our process for resubmission of foreclosure affidavits in the 23 judicial states with key stakeholders, including our largest investors. Accordingly, Bank of America today began the process of preparing foreclosure affidavits for submission in 102,000 foreclosure actions in which judgment is pending. We anticipate that by Monday, Oct. 25, the first foreclosure affidavits will be resubmitted to the courts. Upon judgment, foreclosure dates will be set and Bank of America will resume foreclosure sales in such proceedings in the 23 judicial states.”

However, on October 24, 2010, THE WALL STREET JOURNAL reported that the Master Servicer admitted finding errors in ten to twenty-five out of the first several hundred foreclosure files it examined. The mistakes included lack of signatures, missing files, and inconsistent information about the property and the payment history. In addition, a Master Servicer spokesman admitted that, rather than review all of the files for accuracy, the Master Servicer only reviewed several hundred, which represents less than 1% of the foreclosure filings it intends to resubmit to the courts. The WASHINGTON POST quoted Master Servicer spokesman Dan Frahm as stating: “We never said that our review tested each of these previously filed affidavits in these 102,000 proceedings.”

The states where foreclosures were suspended are: Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont, and Wisconsin.

Thus, despite the Master Servicer’s review of its “process for resubmission of foreclosure affidavits in the 23 judicial states with key stakeholders”, the Master Servicer review appears to




be little more than a “robo-review”, which is insufficient to determine whether or not the foreclosures are fully compliant with law.

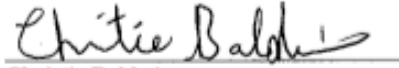
On May 4, 2011, the Register of Deeds of Guilford County, Jeff L. Thigpen, surveyed various recorded documents filed with his office. Scores of filings in the name of Bank of America, N.A. were signed by Christie Baldwin. Filings in the name of Bank of New York Trust Company, N.A. were signed by Pat Kingston, who also signed for numerous other entities, including EMC Mortgage Corp., Citi Residential Lending Inc., Mortgage Electronic Registration Systems Inc., and Wells Fargo Bank, N.A. “Pat Kingston” and “Christie Baldwin” respectively used eight and twelve different signatures in Guilford County, including the following examples:

  
Pat Kingston  
Vice Pres. Loan Documentation

  
Pat Kingston  
Vice President

Bank, N.A.  
  
Pat Kingston  
Vice Pres. Loan Documentation

  
Pat Kingston  
Vice President

  
Christie Baldwin  
Vice President

  
Christie Baldwin  
Vice President

  
Christie Baldwin  
Vice President

  
Christie Baldwin  
Vice President

  
Christie Baldwin  
Vice President

  
Christie Baldwin  
Vice President

During the fourth quarter of 2010, the Office of Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board undertook a coordinated horizontal examination of foreclosure processing at the nation's 14 largest federally regulated mortgage servicers, including the Master Servicer. As John Walsh, Acting Comptroller of the Currency, testified before the Senate Committee on Banking, Housing, and Urban Affairs on February 17, 2011:

In general, the examinations found critical deficiencies and shortcomings in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third party law firms and vendors. These deficiencies have resulted in violations of state and local foreclosure laws, regulations, or rules and have had an adverse affect on the functioning of the mortgage markets and the U.S. economy as a whole. By emphasizing timeliness and cost efficiency over quality and accuracy, examined institutions fostered an operational environment that is not consistent with conducting foreclosure processes in a safe and sound manner.

On April 13, 2011, the Office of the Comptroller of the Currency "announced formal enforcement actions against eight national bank mortgage servicers and two third- party servicer providers for unsafe and unsound practices related to residential mortgage loan servicing and foreclosure processing." The eight servicers included the Master Servicer. See <http://occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html>.

That same date, the Office of the Comptroller of the Currency signed and published a consent order styled *In the Matter of Bank of America, N.A.* (the "Consent Order"), which found that the Master Servicer "engaged in unsafe or unsound banking practices" by reason of the following conduct:

In connection with certain foreclosures of loans in its residential mortgage servicing portfolio, the Bank: (a) filed or caused to be filed in state and federal courts affidavits executed by its employees or employees of third-party service providers making various assertions, such as ownership of the mortgage note and mortgage, the amount of the principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records; (b) filed or caused to be filed in state and federal courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary; (c) litigated foreclosure proceedings and initiated non-judicial foreclosure proceedings without always ensuring that either the promissory note or the mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party at the appropriate time; (d) failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure processes; (e) failed to devote to its foreclosure processes adequate

oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training; and (f) failed to sufficiently oversee outside counsel and other third-party providers handling foreclosure-related services.

On May 20, 2011, the Connecticut Attorney General sent a letter<sup>31</sup> to the Master Servicer regarding the “numerous complaints from consumers whose loans are served by Bank of America” received by his office:

Just this week my office received a complaint from a former Navy Corpsman who described his two-year ordeal with the bank as a “nightmare.” This customer’s experience is far from unique. Indeed, our colleagues at the Connecticut Department of Banking and the Connecticut Fair Housing Center report that they continue to assist many consumers who are experiencing significant difficulties with Bank of America. Despite having had more than two years to “right-size” your staff and establish effective procedures and systems, Bank of America has so far not prevented even the most common consumer complaints regarding lost documentation, poor communication, misinformation, dual tracking, and lack of a single point of contact. Such consumer complaints are common and a clear indication that Bank of America has not devoted sufficient resources toward addressing its well-documented default servicing problems.

According to the Associated Press, the Master Servicer ***continues to engage in robo-signing despite entering into the consent order:***

Since [June 7, 2011], [John] O’Brien[, the registrar of deeds in Essex County,] has received nine documents from Bank of America purportedly signed by Linda Burton, another name on authorities’ list of known robo-signers. For years, his office has regularly received documents signed with Burton’s name but written in such vastly different handwriting that two forensic investigators say it’s highly unlikely it all came from the same person.

O’Brien returned the nine Burton documents to Bank of America in mid-June. He told the bank he would not file them unless the bank signed an affidavit certifying the signature and accepting responsibility if the title was called into question down the road. Instead, Bank of America sent new documents with new signatures and new notaries.

A Bank of America spokesman says Burton is an assistant vice president with a subsidiary, ReconTrust. That company handles mortgage paperwork processing for Bank of America. “She signed the documents on behalf of the bank,” spokesman Richard Simon says. The bank says providing the affidavit O’Brien asked for would have been costly and time-consuming. Instead, Simon says Bank of America sent a new set of documents “signed by an authorized associate who Mr. O’Brien wasn’t challenging.”

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<sup>31</sup> [http://www.ct.gov/ag/lib/ag/press\\_releases/2011/brianmoynihanboa .pdf](http://www.ct.gov/ag/lib/ag/press_releases/2011/brianmoynihanboa .pdf)

The bank didn't respond to questions about why Burton's name has been signed in different ways or why her signature appeared on documents that investigators in at least two states have deemed invalid. Several attempts by the AP to reach Burton at ReconTrust were unsuccessful.

O'Brien says the bank's actions show "consciousness of guilt." Earlier this year, he hired Marie McDonnell, a mortgage fraud investigator and forensic document analyst, to verify his suspicions about Burton's and other names on suspect paperwork.

She compared valid copies of Burton's signature with the documents O'Brien had received in 2008, 2009 and 2010 and found that Burton's name was fraudulently signed on hundreds of documents.

Most of the documents reviewed by McDonnell were mortgage discharges, which are issued when a home changes hands or is refinanced by a new lender and are supposed to confirm that the previous mortgage has been paid off. Bank of America declined comment on McDonnell's findings.

## LEGAL VALIDATION & CORROBORATION

In the last few years, and especially in recent months, there have been many legal decisions that have corroborated by decades of research, findings, and opinions. Also, many courts across America have imposed new rules to eliminate these practices.

The nation's courts have responded to the servicers' notoriously flawed paperwork by instituting new procedures in foreclosure matters in an effort to insure the integrity of the process. For example:

The New York Court of Appeals implemented a new rule on October 20, 2010, requiring that every attorney handling a foreclosure matter sign a form verifying that the documentation presented to the court is valid.

On November 8, 2010, the Cuyahoga County Court of Common Pleas (covering Ohio's largest county including the Cleveland metro area) announced a new residential mortgage foreclosure affidavit policy that will require attorneys to provide details of their communication with the representative of the party seeking foreclosure and certify that, to the best of their knowledge, the pleadings and other court filings are complete and accurate.

In Maryland, the state's highest court approved new emergency measures that provide for examiners and/or special masters to scrutinize the documentation in foreclosure matters. The new rules specifically allow the courts to pass on the cost of the examinations to the firms foreclosing on debtors.

A few legal scholars and colleagues have succinctly capsulized these legal decisions that I share with you below. My colleague and friend, Lynn E. Szymoniak, along with Ray Brown highlighted foreclosure fraud and numerous court's acceptance of foreclosure fraud in a paper titled "MORTGAGE ASSIGNMENTS, MORTGAGE SERVICERS AND SECURITIZED TRUSTS IN BANKRUPTCY CASES" found at <http://frauddigest.com/pdfs/BankruptcyDecisionsOverview.pdf>.

They wrote that "in 2010, the concept of 'foreclosure fraud' emerged in case law. Foreclosure fraud differed from mortgage fraud in that foreclosure fraud referred to fraud by mortgage companies, mortgage servicing companies, and banks serving as trustees for securitized trusts, where mortgage fraud most often referred to fraudulent acts by borrowers, and brokers." This was good to know, since I have been investigating and documenting such fraud since the early 90s.

Lynn and Ray highlighted several cases in the first week of 2011 that made it clear that fraud by mortgage servicers and securitized trusts, in particular, is now one of the most important considerations in the defense of foreclosures. The cases and summaries they highlighted are as follows:

*In re Szumowski*, Case No. 10-12431 (REL), USBC, Northern District of New York, Tracey Hope Davis, the Bankruptcy Trustee for Region 2, submitted a response to the debtor's objections to the proof of claim filed by BAC Home Loans Servicing, LP<sup>32</sup> on January 6, 2011. According to the Trustee, "The documents in the record do not demonstrate that BAC is a "creditor" of the debtor. The United States Trustee supports a finding that BAC has not established through adequate documentary proof that it has a claim against the debt arising out of the Note." The Assignment in the Szumowski case was signed by Elpiniki M. Bechakas as "Assistant Secretary and Vice President of Mortgage Electronic Registration Systems, Inc. as Nominee for Home Funding Finders, Inc. its successors and assigns."

When Bechakas signed the Assignment, she was an attorney in the law firm of Steven Baum, the law firm that represented the plaintiff in the foreclosure action. The Assignment assigned the mortgage, but not the note, to Countrywide Home Loans, Inc.<sup>33</sup> According to the Trustee, "With respect to BAC, there is no document in the record establishing that either the Note or the Mortgage were assigned to BAC." The Trustee noted that while the mortgage was assigned to Countrywide, there was nothing in the record to establish that the Note was also assigned. According to the Trustee, "If BAC is not the holder of the Note, then there is no basis for the claim."

The Trustee also stressed the role of the Baum Firm, the firm that filed the BAC proof of claim, noting: "It appears that the attorneys filing the proof of claim and objection to confirmation did not take adequate steps to verify the truth or accuracy of

<sup>32</sup> BAC Home Loans Servicing, LP was formerly known as Countrywide Home Loans Servicing, LP is a mortgage servicing company owned by Bank of America and located in Collin County, Texas.

<sup>33</sup> Countrywide Home Loans, Inc. was the Assignee on the Bechakas Assignment. BAC Home Loans Servicing, LP was the successor to a different, but related entity, the servicing company, Countrywide Home Loans Servicing, LP

their statements as required under Rule 9011.” The Trustee pointed out that the Baum Firm “recently was sanctioned \$5,000 for submitting pleadings with defects similar to the documents filed in this Court,” citing *Federal Home Loan Mtg. Corp. v. Raia*, 29 Misc.3d 1226 (A), 2010 WL 4750043, 2010 NY Slip OP. 52003 (U)(Dist. Ct. Nassau Co. Nov. 23, 2010.) The Trustee also noted that the state court judge called the Baum Firm’s actions “reprehensible.”<sup>34</sup>

*In re Bevins, Jr.*, Case No. 10-12856, USBC, Northern District of New York, Albany Division, United States Trustee Davis also filed a response to the debtor’s objections to a proof of claim filed by a mortgage servicer. In the *Bevins* case, the mortgage servicer was GMAC as servicer for Deutsche Bank Trust Company Americas as Trustee for RALI 2006QS18.

Once again, Elpiniki Bechakas signed the Assignment of Mortgage relied upon by GMAC and attached to the proof of claim. On this Assignment, Bechakas again signed as an “Assistant Secretary and Vice president of Mortgage Electronic Registration Systems, Inc.” The Trustee again asserted that Deutsche Bank had no standing because an Assignment of Mortgage does not demonstrate that there was also an assignment of the underlying note.

The Trustee also cited a recent opinion by Hon. Martin Glenn, Bankruptcy Judge, Southern District of New York, *In re Tandela Mims*, Case No. 10- 14030 (Bankr. S.D.N.Y. 2010), in which Judge Glenn surveyed New York case law and concluded that an Assignment of Mortgage, standing alone, is a nullity and cannot be the basis of a state court foreclosure action and is, therefore, insufficient to establish standing to request or obtain a relief from stay in a bankruptcy court.

According to the Trustee, because the Deutsche Bank claim failed, the claim of GMAC, as servicer, must also fail because the agent can never be granted broader authority than that of the principal. GMAC cannot do anything that its principal, Deutsche Bank, lacked authority to do. As in the *Szumowski* case, the Trustee sets forth the many state court cases challenging the practice of The Baum Firm and Elpiniki Bechakas to submit Mortgage Assignments on behalf of MERS so that The Baum Firm appears on both sides of the mortgage assignment. The Trustee states: “To the extent the Court is inclined to consider sanctions against the law firm that filed the documents, the United States Trustee supports such an outcome in order to protect the integrity of the bankruptcy system.”

*In re Brian W. Davies*, Case No. 6:10- bk-37900-TD, USBC, Central District of California, a case involving OneWest Bank as both the movant and as agent of Deutsche Bank. In a

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<sup>34</sup> New York State Court decision regarding Assignments signed by Elpiniki Bechakas from The Baum Firm was written by the Honorable Judge Arthur M. Schack, Kings County, New York: *U.S. Bank, N.A. as Trustee for SG Mortgage Securities Asset backed Certificates, Series 2006-FRE2 v. Emmanuel*, 27 Misc.3d 1220(A), 2010 WL 1856016 (N.Y.Sup.).

very simple Order, the Court ruled 1) OneWest Bank and OneWest Bank as Agent for Deutsche Bank lacked standing; and 2) that the movant's declaration lacks credibility, having signed as both an employee of the movant and as an agent for MERS.

*In Koontz v. EverHome Mortgage and Mortgage Electronic Registration Systems, Inc.*, Case No. 09-30024, Proc. No.-3005, October 20, 2010, USBC, Northern District of Indiana, (South Bend Division) EverHome Mortgage ("Everhome") and Mortgage Electronic Registration Systems, Inc. ("MERS") moved for summary judgment against Koontz, claiming that they did not file a fraudulent assignment, and that there was no dispute that Bethany Hood, who signed Koontz's Mortgage Assignment as the Vice President of MERS, was in fact an employee of MERS. U.S. Bankruptcy Judge Harry C. Dees, Jr. dismissed the defendant's motion for summary judgment.

Judge Dees asserted that MERS admitted that Hood was not an employee of MERS, thus there were genuine issues of material fact, and Koontz may be able to prove that EverHome and MERS attempted to perform a fraudulent foreclosure: "MERS, in its Answer to the plaintiff's Complaint, admit(ted) that Bethany Hood is not an employee of MERS. (cite omitted)... Indeed, MERS has completely sidestepped the fact that this Assignment was signed by someone representing herself to be a Vice President of MERS, and it has declined to explain why this false document was attached to the amended Proof of Claim... In the view of this court, the conduct of the EverHome defendants and the MERS defendant – reflecting a lack of transparency and determination not to provide information or documents until required – has burdened both the debtor and this Court."

On October 11, 2010, Locke Barkley, the Standing Chapter 13 Trustee for the Northern District of Mississippi, joined a case against Lender Processing Services on behalf of herself and all Chapter 13 Trustees in the United States. The case, Thorne v. Prommis Solutions Holding Corporation, et al., Case No. 10-01172-DWH, USBC, Northern District of Mississippi, was brought by a family who lost their home in foreclosure. The family and the Trustee alleged that fees charged by the law firm representing the mortgage company were improper, illegal, and not properly disclosed to the bankruptcy court. The couple alleged that Lender Processing Services engaged in illegal fee-splitting.

According to the complaint, Johnson & Freedman contractually agreed to split legal fees with Lender Processing in return for cases Lender Processing sent to Johnson & Freedman, a law firm frequently representing banks, mortgage companies and securitized trusts in foreclosures. According to the lawsuit, the undisclosed fee-splitting arrangements are improper because fees designated as legal fees are being shared with companies that aren't authorized to practice law. The lawsuit alleges that these fee-



splitting contracts are disguised as “administrative fees, document review ‘views,’ document download fees, document execution fees, and technology facilitation fees.”

*In re Wilson*, Case No. 0711862, USDC, Eastern District of Louisiana, the United States Trustee filed a Motion for Sanctions on May 21, 2010, against Lender Processing Services, Inc., f/k/a Fidelity National Information Services, Inc. and The Boles Law Firm. The Trustee alleged that Lender Processing Services misrepresented to the Court their knowledge of mortgage payments made by the Debtors during the course of Show-Cause proceedings initiated by the Court.

The Trustee also alleged that Fidelity misrepresented to the Court whether it communicated with Boles about un-posted payments made by the Wilsons and whether “Fidelity misrepresented that it did not function as a “go between” in this case, between Boles and Option [One], with respect to the un-posted payments.” The Court heard oral argument on the Trustee’s Motion on December 1, 2010. The parties were given until February 1, 2011 to submit admitted exhibits on disc.

*In re Taylor*, 2009 WL 1885888 (Bankr. E.D. Pa. 2009), an earlier case also involving sanctions against Lender Processing Services, Judge Diane Sigmund Weiss determined that sanctions were warranted. Judge Weiss made very specific findings regarding how the mortgage servicing and foreclosure systems operate. She described Lender Processing Services (“LPS”) as the largest out-source provider in the United States for mortgage default services. She found that the LPS systems frequently resulted in incorrect information regarding mortgages reported to litigants and judges in foreclosure actions. The LPS network of national and local law firms were required to communicate directly with LPS, and not the mortgage servicers, about any issues that arose in any given case.

Likewise, the servicers were required to execute a 51-page Default Service Agreement with LPS that delegated to LPS all functions with respect to the default servicing work. LPS used a software communication system called “NewTrak” to deliver instructions and documents to the LPS network attorneys and to deliver any information to the servicers. LPS also had access to the servicers data-base platforms. The law firms were staffed primarily by paralegals with little supervision by attorneys. See *In re Taylor*, supra, at 1885889 to 1885891.

Judge Sigmund Weiss found that the LPS system was designed to minimize human involvement. She concluded, “When an attorney appears in a matter, it is assumed he or she brings not only substantive knowledge of the law but judgment. The competition for business cannot be an impediment to the use of these capabilities. The attorney, as opposed to the processor, knows when a contest does not fit the cookie cutter forms employed by the paralegals. At that juncture, the use of technology and automated queries must yield to hand-carried justice. The client must be advised,

questioned and consulted. The thoughtless mechanical employment of computer-driven models and communications to inexpensively traverse the path to foreclosure offends the integrity of our American bankruptcy system. It is for those involved in the process to step back and assess how they can fulfill their professional obligations and responsibly reap the benefits of technology. Noting less should be tolerated.”...Ultimately, on August 18, 2010, Chief United States Bankruptcy Judge Stephen Raslavich denied the Debtors’ Motion to Penalize HSBC Mortgage Corp. for Securing a Claim by Violating the Automatic Stay Code.

*In re Nosek*, 386 B.R. 374 (Bankr. D. Mass 2008), Ameriquest Mortgage Company (“Ameriquest”) claimed that it was the holder of Nosek’s mortgage, despite the fact that Ameriquest was the loan originator, had not held the note since November 30, 1997, and ended its mortgage servicer role as of March 31, 2005. Judge Joel B. Rosenthal placed blame on Ameriquest, the mortgage servicer, and Wells Fargo, the mortgage lender, for the mishandling of the Mortgage Assignment, stating: “It is the creditor’s responsibility to keep a borrower and the Court informed as to who owns the note and mortgage and is servicing the loan, not the borrower’s or the Court’s responsibility to ferret out the truth...That Ameriquest had no role after March 2005—well before the trial in Adversary Proceeding 04-4517, was unknown to the court.” Judge Rosenthal also did not allow Ameriquest to claim that PSAs give banks the inherent power to act in their own name on filing proofs of claim: “Ameriquest also seeks to hide behind the Pooling and Servicing Agreement by arguing that the document gave Ameriquest the power to act in its own name, including for the purpose of filing proofs of claim.”

“That may be true but proofs of claim filed under a written power of attorney MUST have the power of attorney attached. Fed. R. Bank. P. 3001 and Official Form 10. No part of the agreement was attached to the proof of claim.” Judge Rosenthal also blamed Wells Fargo, the mortgage lender, for the mishandling of the Mortgage Assignment, stating “This Court will not allow Wells Fargo or any other mortgagee to shirk responsibility by pointing the finger at their servicers.” Judge Rosenthal imposed sanctions of \$250,000 on Ameriquest and Wells Fargo, as well as sanctions on the law firms.

On May 28, 2009, U.S. District Court Judge William G. Young upheld the sanctions against Ameriquest, but overturned the sanctions against Wells Fargo. Judge Young’s harshest criticisms were for the lawyers involved: “*After 43 years at the bar, the saddest thing about this case is the conduct of the lawyers — all the lawyers. A careful reading of the briefs in this case reveals only a single recognition that counsel did anything amiss in their misrepresentations to the Bankruptcy Court. There’s blame aplenty, of course, each one blaming everyone else — including the hapless bankrupt homeowner. ... How is it that our profession, the legal profession — which could have and should have strongly counseled against the self interested excesses that set up the*

*collapse — instead has eagerly aided and abetted those very excesses? How could we (all of us who profess to be lawyers) have fallen so low?"*

In a footnote regarding the arguments of Ameriquest's national law firm, Judge Young stated: ***"This argument is singularly unpersuasive. It is tantamount to saying, 'We've been making these misrepresentations for years. Until 2005, no one seemed to care.'"***

*In re Hayes*, 393 B.R. 259 (Bankr. D. Mass. 2008), Deutsche Bank, as Trustee of Argent Mortgage Securities, Inc. Asset-Backed Pass through Certificates Series 2004-W11, filed a Motion without Recourse for Relief from Stay against Hayes, claiming that it had standing to seek relief because Hayes' mortgage transferred from Argent Mortgage Securities to them. The Court used the "real party in interest" rule under Section 362 of the Bankruptcy Code to determine standing, stating that a "real party in interest" is 1) the party with the legal right to bring suit, and 2) a party who is not seeking to assert another party's rights. *Id* at 371, citing *In re Woodberry*, 383 B.R. 373 (Bankr. D.S.C. 2008).

The Court determined that Deutsche Bank was not a "real party in interest" because it never proved that Hayes assigned its mortgage to Argent Mortgage Company, LLC or Argent Securities, Inc., the trust's depositor, in the Pooling and Servicing Agreement ("PSA") of the Trust. In addition, the Court asserted that Deutsche Bank "submitted no evidence that the November 3, 2004 mortgage was included in the PSA or was subject to Section 2.09 of the PSA." Judge Joan M. Feeney ordered Deutsche Bank to show cause, as to why they should not be sanctioned under Fed.R.Bankr.P.9011 for filing without competent evidence that they had standing. The Court subsequently released the order to Show Cause because the parties reported in open court that the matter was resolved.

*In re Nuer*, Case No. 08-17106 (REG), Diane G. Adams, the United States Trustee for the Southern District of New York, in a Memorandum of Law of the United States Trustee in Support of Sanctions Against J.P.Morgan Chase Bank National Association, filed January 4, 2010, alleged that "Chase has filed documents that appear to be either patently false or misleading in connection with the Motion for Stay Relief...Chase took the position that it was acting only as the servicer of the Mortgage. Chase at the same time attached documents which supported a different position."

The Trustee reviewed the testimony of Mr. Herndon, a witness for Chase, who testified that the chain of title for the property in question passed through three entities. Previously, however, Chase had submitted contrary documents. In particular, Chase had submitted an assignment "that appeared to show that Chase assigned its right as mortgagee to Deutsche, as trustee for Long Beach Mortgage Trust 2006-2. The Assignment was signed by Scott Walter as "Attorney in Fact for Chase (the "Walter

November 1 Assignment”)... It was signed on November 1, 2008, after the Filing Date. This 2008 Assignment to a trust that closed in 2006 signed by an individual who did not in fact work for Chase has become the focus of the sanctions debate. Regarding the Walter Assignment, the Trustee states: “Here, the misconduct of Chase includes the attachment of the Walter November 1 Assignment...Chase’s own witness could not explain the Walter November 1 Assignment...” [Walter was actually an employee in the Minnesota office of Lender Processing Services.]

*In re Foreclosure Cases*, 2007 WL 3232420 (N.D. Ohio Oct. 31, 2007). On October 10, 2007, Judge Boyko issued an order to Deutsche Bank to show cause for their filed complaint, demanding that Deutsche Bank file copies of the Assignments showing that they were the holder and owner of the Notes and Mortgages, as of the date the complaint was filed, which was July 27, 2007. The Assignments would prove that Deutsche Bank had standing to file its complaints against the homeowners. For one of the cases, Deutsche Bank filed an assignment on October 10, 2007, that was dated August 13, 2007, even though the trust on the Mortgage was closed in 2006.

To the Court, this revealed that Deutsche Bank did not have the particular assignment at the date of the complaint, and created Assignments for trial. U.S. District Judge Christopher Boyko, Northern District of Ohio, Eastern Division, rendered a decision dismissing 14 of the foreclosure cases in *In re Foreclosure Cases* without prejudice, due to the filing of executed Assignments after the date of the filed complaint for 10 of the cases, and the lack of Assignments for four of the cases.

*In re Sima Schwartz*, Case No. 06-42476-JBR, Judge Rosenthal denied the Motion for Relief of Stay filed by HomeEq Servicing Corporation. Again, Assignments were at issue. According to the Court, Deutsche Bank “simply assumes that the mortgage was properly assigned to it prior to the foreclosure. Deutsche produced an Assignment, signed by Liqueanda Allotey, who was represented to be a Vice President of MERS [but who was actually an employee of Lender Processing Services]. (In footnote six, the Court described Allotey’s signature as “a very large check mark attached to a downward line.”) Deutsche also argued that there was no requirement that the Assignment be recorded prior to the foreclosure.

Judge Rosenthal stated: “While this is a correct statement of the law...it ignores that the assignment it provided to the Court was not signed until after the foreclosure sale. In denying the Motion for Relief of Stay, Judge Rosenthal stated: “While “mortgagee” has been defined to include assignees of a mortgage, in other words the current mortgagee, there is nothing to suggest that one who expects to receive the mortgage by assignment may undertake any foreclosure activity.” The court concluded that Deutsche was confused as to when it acquired the mortgage.

Judge Margaret A. Mahoney of the U.S. Bankruptcy Court Southern District of Alabama Mobile, Alabama co-authored a paper titled “The Mortgage Crisis” wherein she described the following cases of foreclosure fraud and abuses. In section J of her paper titled “Case Law,” Judge Mahoney writes:

“the mortgage crisis has caused litigation in the courts raising issues about loans and their servicers. The bankruptcy courts have had cases dealing with the standing of servicers to file motions for relief from stay, the propriety of fees charged by lenders, the failure of lenders to disclose fees added to accounts during bankruptcy cases, the failure of lenders to provide proper documentation of loan payments, and the filing of false affidavits.”

“As stated in the New York Times, December 28, 2008, ‘A Mortgage Paper Trail Often Leads to Nowhere,’ Problems often emerge because these notes—which are written promises to repay the full amount of a mortgage—weren’t recorded properly when they were bundled by Wall Street into pools or were subsequently transferred to other holders. How can a loan be modified. . . if the lender cannot prove that it actually owns the note? More and more judges are asking the same thing about lenders trying to foreclose on borrowers. . . Most loan servicers— the folks responsible for handling all the paperwork surrounding monthly mortgage payments—aren’t set up to handle all of the details involved in a modification.”

Judge Mahoney then summarizes the following cases including two of the cases preciously referenced above:

*In re Haque*, 395 B.R. 799 (Bankr. S.D. Fla. 2008). **Court sanctioned Wells Fargo Bank for filing about 45 false affidavits.** The affidavits sought payment of “penalty interest,” a charge for debtors early payoff of their mortgages. In these cases, Wells Fargo was seeking relief from the stay because the debtors were in default on their mortgages, not seeking to pay them off. Wells Fargo could not explain why the charge had been added to each statement of delinquencies. The judge assessed a sanction of \$2,114.10 per affidavit or \$95,130.45 for the violation.

*Wells Fargo Bank v. Burrier (In re Burrier)*, 2008 WL 5422646 (Bankr. D. Colo. 2008). The Court set for hearing at a later date whether to sanction Wells Fargo for its failure to provide clear, complete records of debtors= loan payment histories. The burden of proving that a stipulation was not adhered to by the debtors was on Wells Fargo and it could not so prove. The stipulation required the debtors to prove that they had made loan payments that Wells Fargo alleged had not been made. The debtors could not produce cancelled checks showing payment because, per Wells Fargo=s own procedures, it electronically debited the payments from debtors’ bank account. Such debiting does not result in a cancelled check. However, the debtors did produce bank statements showing the debits. Wells Fargo had no record of the payments.

The judge stated that the case illustrates three problems with the current loan servicing system. First, it reflects a significant and problematic imbalance between a creditor, the mortgage holder, and debtors, homeowners who are timely making their mortgage payments, and who are not knowledgeable about banking procedures and check processing. . . Second, this case illustrates a major lender mortgage company whose operations and collections practices are seemingly disconnected from its own technologies. . . Third, this dispute might portend a widespread abuse of collection practices or creditor overreaching—demanding of debtors what it, the creditor itself, is unable to provide: accurate and reliable record keeping and billing practices.

2008 WL 5422646 at \* 1.

*In re Kang Jin Hwang*, 396 B. R. 757 (Bankr. C.D. Cal. 2008). Bank could not bring motion for relief from stay when it was the holder of the note but it had assigned its rights under the note to another entity. The owner of the note must be joined as a party.

*In re Vargas*, 396 B.R. 511 (Bankr. C.D. Cal. 2008). MERS filed a motion for relief from stay as to a mortgage loan for which it was the mortgagee's agent. Its motion stated it moved for relief on its own behalf and for "its assignees and/or successors in interest." The court held that MERS could not seek relief on behalf of undisclosed parties and denied the motion.

*In re Hayes*, 393 B.R. 259 (Bankr. D. Mass 2008). The movant in a relief from stay proceeding was Deutsche Bank who filed the motion in its capacity as trustee of Argent Mortgage Securities, Inc. Previously, Argent Mortgage Company, LLC filed a proof of claim for the same debt in its capacity as loan servicer for Argent Mortgage Company LLC. At the hearing on the motion for relief from stay, Deutsche Bank did not prove that it was the real party in interest as to the loan. Courts have held that mortgage servicers are parties in interest. **However Deutsche Bank could not trace the loan from Argent Mortgage Company, LLC, to it.** Accord, *In re Jones*, 3008 WL 4539486 (Bankr. D. Mass. 2008); *In re Maisel*, 378 B.R. 19 (Bankr. D. Mass. 2007); *In re Parrish*, 326 B.R. 708 (Bankr. N. D. Ohio 2005).

*Nosek v. Ameriquest Mortgage Co. (In re Nosek)*, 386 B.R. 374 (Bankr. D. Mass. 2008). Ameriquest as holder of a mortgage filed a proof of claim in Nosek's case. It did this even though it had transferred the note prior to the representation that it was "holder" of it. The court sanctioned Ameriquest and the actual holder of the note \$250,000 for the misrepresentations.

*In re Foreclosure Cases*, 2007 WL 3232430 (N.D. Ohio 2007). The Court, prior to entering foreclosure orders, required each plaintiff-lender "to submit a copy of the Assignment of the Note and Mortgage, executed as of the date of the Foreclosure Complaint. In [these]. . . cases, none of the Assignments show the named Plaintiff to be the owner of

the rights, title and interest under the Mortgage at issue as of the date of the Foreclosure Complaint.” 2007 WL 3232430 at \*2.

As shown immediately above, courts across the nation have found abuses and frauds in the foreclosure and bankruptcy practice of servicers, foreclosure law firms, trustees, and alleged lenders.

As a result of such abuses and frauds, here in Florida and across the nation, state and federal courts have instituted and imposed new rules of civil procedure and practices to address the false and fraudulent practices of mortgage lenders, servicers, and members of the foreclosure bar as described herein.

These are the very same practices I have warned of for over a decade and have been investigating and reporting on since the early nineties. So, what can you do? Don't run and never hide!

### **FIGHT BACK - - DON'T RUN AWAY**

The primary reason these robo-signing and foreclosure frauds continue is that the banks and servicers know that more than 90% of people in foreclosure walk away and don't fight. However, armed with the knowledge in this paper and the proper resources, borrowers, both residential and commercial, can mount stringent legal battles and claims over these frauds and abuses claiming that the party foreclosing has no authority or that other indispensable parties need to be brought into the litigation. In addition, it can be argued that no one has holder in due course status so that the significant losses in property values, income, and profit can be argued as damages.

Executives, trustees, and members of a corporate board of companies involved in commercial and residential real estate development must take extra precaution. Investors or shareholders may make accusations of violation of corporate board member's fiduciary duties if there is a failure to conduct extensive due diligence in relationship to dealings with banks and their financing as well as real estate and property legal matters.

As described herein, the banks, lenders, and Wall Street firms have created a nation of dubious land title clarity; a commercial and retail real estate market of vastly declining property values; a mortgage backed securities market that is virtually worthless; and a nation, its taxpayers, investors, pension funds, and communities at the precipice of a total financial Armageddon.

**If you have a million-dollar plus loan and property and don't want to fight, e-mail me since we've developed a program to purchase properties and assume your obligation and return 20% of our recovery to you. If you had a million-dollar plus loan and property that**



**you've believe has been illegally foreclosed upon, contact me as well. I have lined up investors to deal with such situations. We are especially looking for homes and properties in Georgia or Florida that were foreclosed in the name of MERS.**

Sorry for the million limit we placed, but the financing, investors, lawyers, and partners can only deal with high value properties due to the investment returns necessary.

### **KEY FACTS LEARNED FROM MY RESEARCH & EXPERIENCE...**

My journey into this morass of greed, fraud, and financial engineering began almost two decades ago when my family simply wanted to payoff a mortgage of \$100,000 in 1992. After three years of bickering with a savings and loan called Savings of America who was intentionally force-placing insurance and misapplying our payments and churning our account for late fees, we simply said we want out and we'll pay you cash if you can provide us a payoff figure and produce the original "wet-ink" promissory note my mother and father had executed stamped cancelled and paid in full upon payoff.

The first problem came when they produced the "payoff letter." My analysis showed that they were approximately \$18,000 off on the payoff. Then, I requested servicing histories to audit the account when they produced various dot matrix printouts that were redacted with whiteout and where some beginning year balances were thousands more than the immediate prior year balance with no corresponding adjustment. When questioned, they threatened pay us or else!

This was immediately after the S&L scandal and my 20-year journey would be "ground zero" for this mortgage and financial catastrophe our nation has endured for the past four years. Being a researcher, I began a diligent investigation that has now lasted two decades. What I found should startle most Americans. Originally, I was called a "conspiracy theorist" and the first line of attack by the banks is to call whistleblowers "crazy." However, all scientific facts begin in theory. The facts of my science, as you will read and have read with your own eyes, is that my theories, forecasts, and predictions ALL came true! In 1996, I predicted the financial collapse of the American and international financial markets due to fraudulent mortgage securitization and that's for starters. However, what I learned are a few simple facts and truths every borrower, lawyer, developer, judge, and accountant should know. I share them with you now...

First - - borrowers know little, if anything, about all the documents they sign at a real estate closing including the terms and conditions of their promissory note and their mortgage or deed. Even the lawyers and banks that wrote the documents, don't know what all the fine print means. If you think I am mistaken, then look at what has happened to Mortgage Electronic Registration Systems ("MERS") in the past few years. Again, if you don't believe me, look at the recent Massachusetts Judicial Supreme Court decision in U.S. Bank vs. Ibanez.

Second - - borrowers and even many lawyers don't know that the company you send your mortgage payment to is not your lender as defined in your note and many times, doesn't even have the legal right to collect payments from you or to foreclose, if necessary. I will expand on that point later. In reality, the entity you send your payment to is a "mortgage servicer" which is just a pretty name for bill collector and payment center. Most often, they do not own and hold your note.

Third - - you don't ever pay off a mortgage, you pay off a promissory note and you satisfy a mortgage and release a lien to property. The promissory note is an IOU that can be turned into a negotiable instrument like a check, bond, or stock. The mortgage/deed has no value except to secure your property as collateral for payment.

Fourth - - when you pay off your note, you're entitled to the return of your note to you stamped "cancelled and paid in full." If you do not receive your note back cancelled, you may still be on the hook for its payment to another lender who may have purchased your note without any knowledge of your payoff. This is called the holder in due course doctrine. You may have released your mortgage, but not cancelled your note and you could be on the hook twice for double liability. It's the law of the land and many states. Just check and see how many of the notes you signed, paid off and/or refinanced were returned to you stamped "cancelled and paid in full!"

Fifth - - everyone still believes that banks do not make mistakes. This is true, they do not make mistakes... they simply financially engineer and program the profits they need through various policies and practices to cook their books. You know of some of these practices, like delaying the payment of your checks to create more float to charging and pyramiding NSF fees upon fees, but there are hundreds more.

Sixth - - no one is really regulating the banks and what they do. This includes regulators like the Federal Reserve that is not a government agency like so many think. The Fed, as it is commonly called, is a private corporation owned by the banks, many of which are foreign, not U.S. based. Just look at recent regulatory decisions and consent orders after only sampling a couple of hundred loans, out of millions.

Seventh - - less than a ½ percent of borrowers "audit" the payoff figures they are given when paying off a loan, refinancing a loan, buying a new car, house, student loan, or paying down their credit cards. The banks know this and how to steal from you. They conduct extensive human behavior research and modeling to know how long you will spend on the phone disputing a charge before the call drops or you reach another person, often times a person in India who cannot easily communicate with you. This is called the call abandonment rate.

Eighth - - loan officers and brokers often sell you loans under terms that are not best for you, but make more money for them and their banks. Often, they are incentivized to place you into the worst loan for you personally, but has the highest rate of immediate return for their bank by something called a yield spread premium that is paid on the back end.

Ninth - - loan officers and underwriters, in an effort to meet their “production quotas,” knew how to “game the system” to get you approved since the approval process was a highly automated system. From bribing and threatening property appraisers to “hit the right property value numbers” to falsifying your monthly, telling you to fudge your income, and in many instances, forging W-2’s, bank statements, and other documents, the whole origination process for many companies was a cesspool of fraud from the beginning. They even had monikers in the biz for loans calling them “liar loans” or the “fast and sleazy” program.

Tenth - - unbeknownst to virtually every borrower, their loans were part of a securitization transaction wherein many of the rights and covenants granted in the promissory notes and mortgages they executed were abdicated to thousands of pages of trust, repurchase, swap, and other derivative agreements. The securitization not only took away rights the borrower thought they had bargained for, but also created the inability for the real “lender,” as defined in the note, to be identified since so many loans and notes had not only been sliced and diced into various tranches, but multi-pledged and sold to different parties.

Eleventh - - due to the fact that many brokers and loan originators committed fraud, it is common for loans to go through a quality control (QC) or quality assurance (QA) system immediately after origination. These QC and QA systems kick out reports that identify the frauds and abuses that have occurred and then such loans are “flagged” as “scratch and dent” mortgages making them B, C, and D paper and less marketable. Many of these loans go to toxic waste “special servicers” to be liquidated due to the liability that any holder may have. You know your loan has been designated for liquidation and has major fraud issues if EMC Mortgage, Litton Loan, Ocwen, or Select Portfolio Servicing is who you are sending payments to.

Twelfth - - Many banks will tell a court that they don’t want to foreclose on a home. This is a total lie and fallacy. The servicer wants to foreclose on properties since its free money for them. When a servicer’s lawyers states that the borrowers doesn’t deserve a free home, the just must be informed that neither does the servicer. It could be your pension, trust, mutual, or insurance fund who’s owed. In addition, they are also compensated by insurance proceeds upon foreclosure and paid back interest and others fees advanced. If there is equity in a home, the servicer will be more likely to foreclose knowing that they get to retain the “net liquidation” proceeds of the sale.

Thirteenth - - Due to the creation of MERS, securitization, robo-signing and other industry practices, virtually no one has clear and unclouded title to their property. Additionally, many borrowers are still on the hook, in case of massive collapse, for promissory notes they have already paid off.

As if the above facts were not enough, I’d like everyone to take 3 major points that they must recognize and commit to memory in EVERY real estate or mortgage transaction that I detail below.

## #1 -- Banks Can't Count

Years ago when a person thought they had a problem with their bank account, there was a standard response and old adage that the consumer must be wrong because “banks don't make mistakes.” This is true! Research of mortgage banking and servicing practices clearly shows that the mortgage industry and banks don't make mistakes. They know exactly what they are doing, often time ignoring or in many instances covering-up sophisticated Enron-type accounting practices.

While mortgage accounting should be an exact science that's quite simple -- one plus one equals two and two plus two equals four -- often times it's a complex weave of deception and fraud. Sophisticated computer systems in the wrong hands can manipulate numbers, formulas, and calculations to a borrower's detriment.

But borrowers aren't the only ones affected. Such abuses affect us all. One only has to look back a little over twenty years ago and examine the Savings and Loan crisis of the late 80s and early 90s that cost U.S. taxpayers over \$150 billion. Money that could have reduced taxes for Democrats and Republicans alike or paid for needed government services, military or reduced the cost of prescription drugs for the elderly. Instead, billions of dollars went to enrich white-collar criminals in Texas, California, Arizona, and other states.

These same criminals are robbing Americans and America again as the recent financial crisis has cost this nation trillions in wealth, property values, lost income, and bailouts. However, the preferred tools of these crimes are not a gun or knife, but computers, sophisticated accounting programs, analytic models, phone wires and the mail. The name of their crime was called subprime which I aptly named sub-crime lending, years ago.

Despite advanced sophisticated computer accounting and servicing systems, the banks have admitted to mistakes. The only problem is that as a social researcher, I understand statistical probabilities and margins of error that should be a point or two or much less. However, when analyzed, and the bank's so-called “errors” inure to the benefit of the bank, 99.999% of the time, it's not a mistake, but a carefully planned financial engineering scheme.

For those of my friends of the right-wing or Republican political persuasion that don't believe me, due to their genetic temperament, a must read is a recent report<sup>35</sup> of a three-month investigation by Rupert Murdoch's conservative New York Post. Post journalist, Catherine Curan, wrote on August 13, 2011:

*“the banks still just don't get it. In a staggering 92 percent of the claims brought by creditors asserting the right to foreclose against bankrupt families in New York City and the close-in suburbs, banks and mortgage servicers couldn't prove they had the right to kick the families out on the street, a three-month probe by The Post has shown.*”

<sup>35</sup> [http://www.nypost.com/p/news/business/house\\_of\\_cards\\_hNdx5fNGt6oO1IU9mTW0HN#ixzz1V7KSkSWR](http://www.nypost.com/p/news/business/house_of_cards_hNdx5fNGt6oO1IU9mTW0HN#ixzz1V7KSkSWR)

*But that didn't stop the banks from trying. By robo-signing documents and pressing foreclosures without the proper paperwork, banks have attempted to steamroll their way over sometimes-outgunned homeowners, The Post has uncovered."*

As you see, banks and mortgage companies in reality are very "calculating." Have you ever heard the expression, he or she is very calculating? In this use, the term is not a positive one. Today, far too many bankers, CFOs, major accounting firms and Certified Cash Managers have reverted to the negative connotation of this term. They are calculating alright, but in a negative fashion. They simply calculate risk and cost vs. reward and liability, knowing that as of today, 95% of people being foreclosed upon don't show up to fight!

According to a study by MACC-TRAC, several years ago, a national firm completed an extensive audit of loans serviced by a major sub-prime lender. A total of 43,205 residential mortgage loans were thoroughly analyzed and audited for computational accuracy and quality assurance. The pool of residential loans audited consisted of 23,011 adjustable rate mortgages (ARM) and 20,194 fixed rate mortgages (FRM). The percentage of ARM loan servicing errors that created both undercharges and overcharges was 56.90%. Fixed Rate servicing discrepancies affected 49.23% of the loans. Of the discovered discrepancies, 30.14% of the total population had errors that generated borrower overcharges; 13,022 homeowners out of 43,205 had refunds due. The highest single overcharge was \$21,108.62. Yes, \$21,108.62!

What's most troubling is that the average seasoning (age) of these loans was only three years. The average original loan amount was \$78,598 with average balance at time of audit \$76,645. The frequency and magnitude of the so-called errors discovered is compelling evidence of the value and importance of critical, computational loan auditing that many mortgage servicers and Wall Street investment banks ignore.

Claimed errors in Fixed Rate product were nearly five times the auditing firm's statistical average from other engagements and almost double the firm's average for ARM products. The company who engaged the auditing firm did the right thing for its customers and its shareholders. The problem however is that many mortgage servicers and Wall Street investment banks are afraid of the liability and what they might find if an audit is conducted. They intentionally shy away from such detailed due diligence for fear that results may open them up to future lender or shareholder liability.

Original plans of this company were to continue the audit for a remaining 250,000 loans. However, the company was purchased by a major bank that elected not to pursue the audit program. If the statistics from the initial audit pool were applied to the 250,000 loans not audited, speculation would be that over 75,000 borrowers have been or continue to be overcharged by this single institution.

Unfortunately, many loan servicing enterprises simply choose to deny that they may or do have a problem. Quality control generally consists of manual review of loan documents for

one of every ten loans and few actually institute a diligent computational audit. In the mortgage servicing and mortgage backed security market, accounting is like horseshoes and hand grenades, close is OK!

This is possible because banks know that borrowers are so happy to get financing, close the deal, or get keys to new home that they never analyze OR audit the closing papers and payoff figures. Banks often misapply payments; put funds into suspense accounts; accrue late fees, inspection fees and other non-recoverable advances; and even use the wrong interest rate and amortization schedules.

To prove my point, several years ago, the GAO estimated error rates in servicing ARMs to be 25% to 35%. The Wall Street Journal in 1994 cited 68%. One auditing firm I interviewed said their experience is 30% on average with high of 90% and low of 15%. Borrowers only have a one-year statute of limitation to identify the issues. Sometimes, even BPOs and appraisals are conducted after the purchase of the property to determine the property's value and if the LTV is upside down or not.

These financial engineering schemes are not in compliance with the law and over represent the payoff figures provided. Payoffs often contain non-recoverable advances that accrue and ONLY dump at payoff, foreclosure, refinance, or bankruptcy as well as intentionally miscalculated principal balance and escrow payoffs that were intentionally and "financially engineered" to fraudulently increase profits, cash flow, revenue etc...

I have seen payoffs off by thousands and tens of thousands to over \$250,000 with the case of a major retail company we all know of. This is done due to the fact that the banks know that few, if any borrowers, audit the servicing histories prior to payoff to see if the proper applications of payments were applied in the right order as well as if the payments were properly amortized according to the note's provision.

In order to address this issue, "servicing audits" or as minimum "testing" of varying degrees should be done on every loan once a year and especially in advance of any payoff or refinancing of the property or by any affiant executing an affidavit in support of summary judgment in a foreclosure case. Simply taking principal balance, interest, principal, late fee, escrow, and advance numbers placed by other parties off a computer screen and system run by third-party vendors and placing them into a blank space of a template affidavit, as is the industry practice, does not meet the necessary evidentiary standards required to foreclose on someone's home and property in this nation.

## **#2 - - Banks Can't Account**

As shown, time-and-time again, banks and servicers can't tell you who your actual and lawful lender is. They can't account for chain of titles, payments, calculations, escrow payments,

original notes, all unrecorded assignments created; proof of payment for notes; proof of ownership, possession, and control of your note etc.

They intentionally conceal records and accountings so you can't prove their frauds. Simply put, they can't prove they have a right to foreclose, cancel your note release your mortgage and lien etc. Also, when was last time you received your note returned stamped and canceled and paid in full? If you don't receive it, under the law, even if you paid it off, you're still on the hook for payments to another party if that note was not properly returned, cancelled and paid in full. As such, a document, property record, and servicer audit should be conducted once a year as well as prior to payoff or refinancing of any loan.

### **#3 - - When Caught, Banks Lie, Cheat, Fabricate & Destroy Evidence And Provide Perjured Testimony**

As evidenced by all of the recent press and media reports, my reports, and court rulings, banks and servicers make up pleadings, assignments, affidavits, and forge docs. They can't testify to anything. You can NEVER BELIEVE ANYTHING A BANK SAYS AND PLACES ON PAPER in this business at face value. You must distrust everyone and make every one prove what they say. I created a takeoff on an old Regan motto. YOU MUST DISTRUST AND VERIFY, VALIDATE AND PROVE EVERYTHING A BANK SAYS OR PLACES ON PAPER IN RECORDS AND TESTIMONY!!!

As you will see below in only one of the thousands of cases I have analyzed, the mantra of the banking and servicing industry is to create fraud and do everything you can to cover it up and destroy your borrower at any cost in complete violation and willful blindness of the law and corporate ethics and governance policies.

### **FURTHER PROOF OF FORECLOSURE FRAUD & ROBO-SIGNING**

Throughout this paper, I have shared with you over a decade of my research, findings, analyses, and opinions that have now been corroborated and validated by various state local, appeals, and supreme courts, federal courts, regulatory agencies, congressional panels, state and federal attorney generals, fellow advocates, lawyers, investors, and the media.

Yet, despite the last year of frenzied media coverage from 60 Minutes to the front pages of virtually every newspaper in America, these abuses and frauds have not been abated, just delayed in some cases, and retooled and reengineered in others. I leave you with three (3) new highlighted cases from my recent work and a conclusion that I call "Show Me The Money Trail™" that I conclude with. Please study each case carefully and review the exhibits. They will prove my opinion to never accept anything a bank or servicer places on paper or in testimony without a thorough review and audit of all data, files, and records that are known to exist!

### **HomEq Orders Fabricated & Forged Pre-Notarized Assignments of Mortgage**



Recently, a woman in Michigan contacted me after seeing my reports on the Internet and even though she lost her home, the home her family left to her, she wanted me to analyze her case and bring the story of the fraud of Wells Fargo, HomEq Servicing, and Fidelity/LPS. Our unfriendly friends at Ocwen, recently purchased HomEq along with the very fraudulent and toxic mortgage dump, Litton Loan Servicing. I have been a shareholder at Ocwen for several years and their operation is one of the most corrupt and dishonest mortgage servicing operations I have witnessed, alongside EMC Mortgage, SPS (formerly Fairbanks Capital), and Litton Loan Servicing which Ocwen recently purchased.

These industry described “default” and “special” servicing operations are charged with the task of collecting on and foreclosing on loans and mortgages that have been reduced in value by not only non-payment defaults, but toxic waste on property, defective titles, missing mortgage documentation, and known servicing, origination, and securitization fraud. If you’d like to learn more about our unfriendly opponents at Ocwen, you must google and read the honorable Arthur Schack’s legal opinions about the company and many of its employees, including Scott Anderson, one of America’s most prolific robo-signers who I featured in a prior report in 2008. In addition, Ocwen’s General Counsel, Paul Koches, informed me and the Palm Beach Post<sup>36</sup> that other employees sign Mr. Anderson’s initials on assignments of mortgages and affidavits, with his permission, that are then notarized as being his own. They’ve also admitted this fact in Federal Court admissions in Atlanta.

In any event, the focus of report are the actions of HomEq and Wells Fargo as trustee under the Pooling and Servicing Agreement dated as of February 1, 2005 Asset Backed Pass-Through Certificate Series 2005 WHQ1. Such pooling and servicing agreement, as filed with the SEC, is found at <http://www.secinfo.com/dqTm6.zf8.d.htm>.

Page 79 of this trust agreement specifically states in **ARTICLE II CONVEYANCE OF MORTGAGE LOANS; ORIGINAL ISSUANCE OF CERTIFICATES, SECTION 2.01. Conveyance of Mortgage Loans.**

*The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee without recourse for the benefit of the Certificateholders all the **right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans** identified on the Mortgage Loan Schedule, the rights of the Depositor under the Mortgage Loan Purchase Agreement, all other assets included or to be included in REMIC I, the Interest Rate Swap Agreement certain payments made under the Swap Administration Agreement and the Swap Account. Such assignment includes all interest and principal received by or on behalf of the Depositor or the Master Servicer on or with respect to the Mortgage Loans (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee an executed copy of the Mortgage Loan Purchase*

<sup>36</sup> <http://www2.highlandstoday.com/content/2011/jan/09/foreclosure-fraud-ag-releases-critical-report/>

Agreement, and the Trustee on behalf of the Certificateholders, acknowledges receipt of the same.

In connection with such transfer and assignment, the Depositor does hereby deliver to, and deposit with, the Custodian on behalf of the Trustee the following documents or instruments with respect to each Mortgage Loan so transferred and assigned, and the Depositor shall, in accordance with Section 2.09, deliver or cause to be delivered to the Custodian, the following documents or instruments (a "Mortgage File"):

- (i) the original Mortgage Note, endorsed in blank, without recourse, or in the following form: "Pay to the order of Wells Fargo Bank, N.A., as Trustee under the applicable agreement, without recourse," with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee, or with respect to any lost Mortgage Note, an original Lost Note Affidavit; provided however, that such substitutions of Lost Note Affidavits for original Mortgage Notes may occur only with respect to Mortgage Loans, the aggregate Cut-off Date Principal Balance of which is less than or equal to 2.00% of the Pool Balance as of the Cut-off Date;
- (ii) the original Mortgage, with evidence of recording thereon, and a copy, certified by the appropriate recording office, of the recorded [power of attorney](#), if the Mortgage was executed pursuant to a [power of attorney](#), with evidence of recording thereon;
- (iii) an original Assignment assigned in blank, without recourse;
- (iv) the original recorded intervening Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii) or the original unrecorded intervening Assignments;

The original lender was the infamous Argent Mortgage who originated mortgage loans for Ameriquest who later sold and securitized their mortgages. As reflected on page 66 of the PSA of this securitization, the depositor was PARK PLACE SECURITIES, INC. and the Master Servicer was HomeEq and trustee, Wells Fargo Bank, N.A. Thus, on the closing date, the entity that was required to transfer and assign both the note and mortgage to the trust, was Park Place Securities, Inc.

The date of the agreement was February 1, 2005 and the cutoff date was the same date as reflected on page 24 of the PSA that states:

*"Cut-off Date"*: With respect to any Mortgage Loan, the close of business on February 1, 2005. With respect to all Qualified Substitute Mortgage Loans, their respective dates of substitution. References herein to the *"Cut-off Date,"* when used with respect to more than one Mortgage Loan, shall be to the respective Cut-off Dates for such Mortgage Loans.

The evidence presented in litigation with Mary Arnold shows that there was no assignment, let alone all of the intervening assignments, and two new assignments were created using pre-notarized “blank assignments” as described above, wherein HomEq employees not only robo-signed assignments of two mortgage, but placed dates in blank spaces of the pre-notarized assignments to attempt to reflect two assignments of the mortgage.

In addition to the two assignments presented, there was no assignment of the mortgage from the Depositor, Park Place Securities, Inc. to Wells Fargo as trustee under the Pooling and Servicing Agreement dated as of February 1, 2005 Asset Backed Pass-Through Certificate Series 2005 WHQ1 as directed by the strict provisions of the PSA.

However, what’s most disconcerting and troubling about this matter are the comments and notations contained in the “Communication History” provided to Ms. Arnold and her attorneys in litigation. The following are a sample of comments and notes reflected in the Communications History that I have attached as Exhibit A to this paper:

3/23/06	SR LIEN HOLDER (Name Not Available)
4/05/06	SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS CREATED A PROCESS-LEVEL ISSUE FOR THIS LOAN. ISSUE TYPE: ORIGINAL ASSIGNMENT. ISSUE COMMENTS: WE WERE ADVISED TO COMMENCE FCL IN THE NAME OF WELLS FARGO BANK, N.A. AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2005 ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2005 WHQ1. THERE IS NO ASSIGNMENT TO WELLS FARGO. THEREFORE I WILL NEED THE FOLLOWING ASSIGNMENT: ASSIGNMENT FROM ARGENT MORTGAGE COMPANY, LLC TO WELLS FARGO BANK, N.A. AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2005 ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2005 WHQ1. PLEASE HAVE THE ASSIGNMENT EXECUTED AND SENT TO OUR OFFICE FOR RECORDING. PLEASE DO NOT SEND DIRECTLY TO THE COUNTY AS THIS WILL DELAY THE FCL. WE WILL BEGIN THE PUBLICATION NOW, BUT BEFORE THE SCHEDULED SALE DATE, I WILL NEED TO HAVE THE ASSIGNMENT RECORDED WITH THE ROD. IF YOU WOULD PREFER TO HAVE OUR OFFICE PREPARE, PLEASE LET ME KNOW. THANK YOU.
4/05/06	HOMEQ ISSUE. SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS UPDATED A PROCESS-LEVEL ISSUE FOR THIS LOAN. ISSUE UPDATED TO: ISSUE TYPE: ORIGINAL ASSIGNMENT. ISSUE COMMENTS: FROM ARGENT MORTGAGE COMPANY, LLC TO WELLS FARGO BANK, N.A. AS TRUSTEE (COUNSEL CANNOT DRAFT) STATUS ACTIVE PROJECTED END: 12:00:00 AM CHANGED TO 05/04/2006 ISSUE:

COMMENT: WE WERE ADVISED TO COMMENCE FCL IN THE NAME OF WELLS FARGO BANK, N.A. AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2005 ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2005 WHQ1. THERE IS NO ASSIGNMENT OF RECORD TO WELLS FARGO. THEREFORE I WILL NEED THE FOLLOWING ASSIGNMENT: ASSIGNMENT FROM ARGENT MORTGAGE COMPANY, LLC ASSIGNMENT TO WELLS FARGO BANK, N.A. AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2005 ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2005 WHQ1. PLEASE HAVE THE ASSIGNMENT EXECUTED AND SENT TO OUR OFFICE FOR RECORDING. PLEASE DO NOT SEND DIRECTLY TO THE COUNTY AS THIS WILL DELAY THE FCL. WE WILL BEGIN THE PUBLICATION NOW, BUT BEFORE THE SCHEDULED SALE DATE, I WILL NEED TO HAVE THE ASSIGNMENT RECORDED WITH THE ROD. IF YOU WOULD PREFER TO HAVE OUR OFFICE PREPARE, PLEASE LET ME KNOW. THANK YOU.

4/05/06

UPDATE/SUBJECT: AN ORDER WAS PLACED SUCCESSFULLY AND THE ORDER NUMBER IS; 170194/ MESSAGE YOUR ASSIGNMENT REQUEST HAS BEEN MADE WITH HOMEQ.

Here we have acknowledgement that the assignments to the trust, did not exist. In addition, according to the trust's PSA, we need a chain of "intervening" assignments of the mortgage AND endorsements on the original wet-ink promissory note. This is how a transfer in a "secured transaction" is to occur. Remember, the key to securitized transactions are to make them "bankruptcy remote" so that no creditor or trustee can attach the assets. If creditors and bankruptcy trustees challenged the facade of securitization as financings of receivables, they could reorganize these bankrupt mortgage companies. Yet, no one has done, to date.

As shown above, the note related to the Arnold property was to be transferred to the trust by a series of intervening assignments that would go from Argent Mortgage (Lender A) to Ameriquest Mortgage (Lender B) to the Depositor, Park Place Securities, Inc. (Lender C) and then to Wells Fargo as trustee under the Pooling and Servicing Agreement dated as of February 1, 2005 Asset Backed Pass-Through Certificate Series 2005 WHQ1 (Lender D) as directed by the strict provisions of the PSA by the closing date of February 1, 2005.

However, as evidenced above and in the notations and comments contained in Exhibit A (which everyone should demand in discovery) more than two-years later in April of 2006, these intervening assignments did not exist and they had to be "ordered" to be created! Exhibits B and C are the two fraudulent and robo-signed assignments that were created more than two-years after the assignments are claimed to have been executed AND NOTARIZED!!!

The notarization claims that the Assignor's agent placed their signature on each assignment on 12/22/2004. If you analyze the document on a light table, you see that the notary's signature looks like a stamp, or autopen signature since there is little, if any variation in the signature. However, without analyzing the original wet-ink assignments, I cannot reach a final conclusion since I am only reviewing second or third generation copies. Yet, in comparison with the notations and comments and viewing that "blank spaces" were left for dates, name of notary, name of Assignor, transfer, execution date, addresses, witnesses, document preparation, state, county, titles etc., it appears that "blank assignments" or copies of blank assignments existed or were recreated or pre-notarized or back-dated notarizations were used to create and execute Exhibits B and C.

Either the blank assignments were created in 2004 and pre-notarized then with Assignor and Assignee names, information, and signatures placed years later OR the notary back dated the Assignment. Also, the assignment was executed in Illinois, not in Michigan where the property was located or in the state of HomEq's servicing operation. Also, each contains a loan number and different address to return the recorded assignments to which were Argent and Ameriquest offices in California, not HomEq or Wells Fargo.

However, the most interesting fact is that even after having time to recreate assignments and fabricate a chain that did not exist according to their own records, they still didn't get it right. The last assignment to the trust had to come from the Depositor, Park Place Securities, Inc. as Lender C and then to Wells Fargo as trustee under the Pooling and Servicing Agreement dated as of February 1, 2005 Asset Backed Pass-Through Certificate Series 2005 WHQ1 as Lender D or a last endorsement in blank.

This was not done. In addition, we do not have the original wet-ink promissory note to analyze with any endorsements placed upon the note or a firmly attached allonge according to the UCC. Without the note, assignments of only the mortgage are a mere nullity. Also, one must analyze each state's recording laws and the statute of frauds. The bankers are right, they are not required to "record their assignments," but in many states, they are required to "create an assignment and place an endorsement upon a note" in order to properly negotiate and transfer title to the note and property as collateral.

### **CitiBank & CitiMortgage Placing Endorsements On Notes After The Fact**

In cases involving Citibank and CitiMortgage, we are continuing to see evidence that endorsements are being placed after the fact and after the alleged "negotiation and transfer." When we catch them with their hand in the cooking the books jar, they come and claim, no you don't it's a gummy bear jar instead.

In essence, in their pleadings and affidavits, they or their sub-servicers produce copies of notes without the required endorsements and when my team catches it, they create the endorsements after the fact and then claim the endorsements were there before. They even create affidavits that contradict other affidavits they filed.

The example I attached with my noted comments in Exhibit D will show you that on 7/6/11, a borrower was served with a summons with a “one-page” lawsuit seeking payment on a promissory note. In paragraph 3 of the complaint (Exhibit E), CitiBank claims ownership of the note. They attach a copy of the note (Exhibit F) where the original lender, Oak Street Mortgage, LLC, went out of business and declared bankruptcy in 2007.<sup>37</sup> The copy of the note contains a unique endorsement in a number of ways.

First, not only is the endorsement in “blank,” but so is the signature line of the alleged officer or agent that was supposed to sign the endorsement. Without this signature, the note was never negotiated and transferred per the UCC. It would be like a check made out to me that I then endorsed Payable to the order of \_\_\_\_\_ and never signed. No bank would take that check, but here, they attempt to collect on such a check. So, ask yourself this question, why would you create an endorsement and not sign it after you placed the stamp or typewriting and then make and scan a copy of such an “original wet-ink note” We suspect it's not an original, but a copy. We will soon see.

However, the other unusual fact is the title used for the endorser that states “Authorized Signer” for Oak Street Mortgage, LLC. I have not seen the so-called “authorized signer” designation until recent months when this title, instead of Vice President, seems to be popping up more after the robo-signing scandal.

After the note, you will see the lawyer’s response to the one-page complaint with answers, affirmative defenses, and counter-claims (Exhibit G) that question the supplied note exhibit to the complaint and its lack of a signature. Remember, this is the copy of the alleged original they supplied as of the date of their complaint. The lawyer also propounds discovery questioning the ownership and negotiation of the note. Remember, if there is no signature, this note (check) goes away. It’s like you trying to cash a check that was written to you years ago and now both the account and bank are out of business.

So, what do you think our friends at CitiBank do? They file a reply (Exhibit H) and include a new copy (Exhibit I) of the note in question that suddenly not only has a signature of an alleged agent for Oak Street, but also stamp in CitiMortgage onto the blank space provided AND create another endorsement from CitiMortgage to CitiBank in order to prove their right to collect on the note and have standing to prosecute the case.

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<sup>37</sup> [http://ml-implode.com/imploded/lender\\_OakStreetMortgage\\_2007-06-08.html](http://ml-implode.com/imploded/lender_OakStreetMortgage_2007-06-08.html)

Now, we have only seen copies and we need to go to the court and see the originals since we have seen NO assignments of mortgage on the property. If they had these signatures, why didn't they provide that copy when they filed suit? Why didn't the agent place an endorsement on a blank line for her signature before she made a copy? Why would CitiMortgage and CitiBank have an image of that copy of the note with no endorsement since if the new note came to them, presumably it would have reached them with her signature as it should have. Why would Oak Street send to CitiMortgage a note without a signature on the endorsement and a note with one? It defies all logic!

The note looked like an imaged copy of the note or copies of copies of many multi-generations since the degradation of type and lines and marks appearing on the note. It is also unusual to see marks other writing or marks placed on a note. Barcodes are more typical.

However, this is not the first time I've seen Citi pull this fraud off. When caught and questioned, they fabricate the endorsements and stamps on the note. Why do Citi and the other banks continue to play this mystical game of musical chairs, three-card monte, and the shell game? So, do we go forward with expensive ink dating to determine when the ink was placed on the note, or can Citi simply provide us cancelled checks, contracts to purchase, loans sold schedules, document certifications, and its general ledger showing the note as a note receivable or asset on its books? Stay tuned...

### **OCWEN Up to Old & New Frauds & Tricks**

I previously mentioned Ocwen and many of you know about my robo-signing report from 2008 on Scott Anderson and Ocwen. While the report focused on Ocwen since I am a shareholder and they are in my county, it documents the industry-wide fabrication of evidence and fraud the banks and servicers participate in. Now, Ocwen has been on notice by me for years now, of these frauds and abuses. In addition, I have attended an Ocwen shareholders meeting where I was the only shareholder outside of the executives and board of directors to attend the meeting. So, they can hardly say that I have not warned them.

In the past year, in communication with me, in Federal Court Admissions in GA, and in a newspaper interview with the Palm Beach Post, Ocwen's general counsel, Paul Koches has admitted that other Ocwen employees sign or initial Scott Anderson's signature and squiggle mark on assignments of mortgage and deeds to secure debt with Anderson's permission. These assignments are notarized claiming that Anderson was present and the notary is notarizing his presence and his signature. Ocwen says this is perfectly legal!

So in a recent Federal Court decision in Georgia that made news against Ocwen and MERS, Ocwen produced both an assignment of deed to secure debt (Exhibit J) and a note attached as Exhibit K in their exhibits to a motion to dismiss. The mortgage was registered with



MERS and contained MIN No. 1001196368001555898. A search I made of the MIN No. on the MERS systems is reflected on Exhibit L. Exhibit L shows Ocwen as the servicer but states that “This investor has chosen not to display their information. For assistance, please contact the servicer.” Why would the investor choose not to show their face? Perhaps the following may provide some answers and even more questions.

The copy of the note provided (Exhibit K) on the last page shows an endorsement from Taylor Bean Whitaker to blank. There is no other endorsement on the note or on any firmly placed allonge, since any such allonge would have surely been shown attached to the note and you must place endorsements on the face of the note, as you have here, until you run out of space and then create an allonge. As such, as noted in this exhibit, someone and somehow, the note was allegedly negotiated to the infamous Taylor Bean Whitaker whose CEO is serving the rest of his life in jail for multi-pledging notes.

However, this note contains no endorsement from the original lender, Guaranteed Rate, Inc. to Taylor Bean Whitaker, to Ocwen, or even to \_\_\_\_\_ (blank)! There is no evidence of negotiation and how and from whom TBW obtained this note. It could be that Guaranteed Rate may have sold it to TBW directly or it was sold to another warehouse lender then sold to TBW. This could be one of the multi-pledged Freddie Mac notes that TBW sold, who knows, but why does the investor want to conceal their face? When servicers and trustees refuse to identify the real lender, then this is a red flag that something is wrong in the file and that there may be fraud involved.

In this case, the evidence produced by the note (Exhibit K) contradicts directly the assignment of deed to secure debt in that the note shows that somehow, Taylor Bean Whitaker took possession of the note and attempted to negotiate the note, even though there is no showing of an endorsement from Guaranteed Rate to TBW. Also, we are only seeing a copy and not an original. It could very well be that copies and not originals are being used and endorsements placed upon them. Only an inspection of the original wet-ink note and all accounting and financial records that shows the note coming on and off the books of each intervening owner of the note along with other records such as note purchase and checks or wires will determine the ability for anyone, including the court, to determine its ownership and anyone’s ability to non-judicially or judicially foreclose.

I previously mentioned Ocwen and many of you know about my “Sue First, Ask Questions Later” robo-signing report<sup>38</sup> from 2008 on Scott Anderson and Ocwen. While the report focused on Ocwen since I am a shareholder, it was the document used by many of my colleagues in Florida to expose robo-signing, which I first discovered around 1995.

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<sup>38</sup> <http://www.scribd.com/doc/20955838/PMI-Ocwen-Anderson-Report-Sue-First-Ask-Questions-Later>

#### 4<sup>th</sup> & 5<sup>th</sup> Major Frauds...

Two of the largest frauds I have discovered which have enormous consequences are not revealed here, for now, since the lawyers are in settlement discussions. One of the frauds involves a no, ifs, ands, or buts proof of evidence that the note never got to the trust and fraud so pervasive, that a \$2 billion plus lawsuit was filed by investors and the U.S. Trustee's office. The fraud shows three potential owners of the note, one in bankruptcy.

The fifth example involves the creation of a "Ghost Note," with different terms and maturity than the note the borrower provided that was input into the bank and its servicing system. Then the bank, instead of foreclosing on a vacant lot, foreclosed and titled a \$2.5 million dollar home in their name and didn't foreclose on the property with the mortgage. This is one of the most egregious unlawful foreclosures conducted to date and will certainly make the front pages of our blogs and the New York Times, Wall Street Journal, AP, Mother Jones, Reuters, and Dylan Ratigan. Stay tuned... if they don't settle and the planned suits become public knowledge, we'll update this paper and provide you links to the complaints! Hope you understand.

#### **"SHOW ME THE MONEY TRAIL™"**

As illustrated in the previous pages, it is vitally important for experts and due diligence teams to not only review, inspect, and analyze original wet-ink documents contained in the collateral and custodial files, but to review all internal records, data, information, and accountings contained in the securitization, trustee, custodial, servicing, and vendor records to see what really happened and identify the owners of the notes and loans, as well as their chain of titles, possession, control, ownership, and custody since the industry is rife with fraud.

Since we know that the word and paper documents of the servicers and trustees cannot be trusted or relied upon, we must analyze and create an audit trail of all intervening transactions and determine if the claimed Ultimate owner of the note, actually owns it at all. The simple solution is to *Show Me The Money Trail™*!

Produce financial records and ledgers for the trust or other owners that show the note as an asset or note receivables on their books. Show me a contract for purchase. Show me a cancelled check or wire confirmation. Show me a schedule of loans sold. Show me the repurchases. Show me the custodial certifications and exception reports. Show me the custodial and transmittal receipts. Show me the original wet-ink notes and assignments. Show me the money trail, original documents, and data and I will be able to tell you who has standing and authority to not only accelerate and foreclose, but to stand on the other side of a contract and honor commitments such as authorities to collect, modify, mediate, rescind, settle, satisfy, and cancel the note and satisfy and release the mortgage!

Nye Lavallo

# **EXHIBIT “A”**

**Communication History**

LOAN NUMBER: 0000323081208

MORTGAGOR LAST NAME: ARNOLD

COMM DATE:      COMM TYPE:      CONTACT:  
 SEQ NU EMP ID    FOREB AMOUNT:    REASON:  
 FOREB DATE:      RESPONSE:

SEQ NU	EMP ID	FOREB DATE	FOREB AMOUNT	REASON	RESPONSE	DESCRIPTION
0000323081208	1	04/01/2006 12:34:03 PM		COMMENT LOG	0	3/31/2006 8:22:57 AM CT: FIDELITY AUTOPROC, FIDELITY NEW PROCESS - PROCESS OPENED 3/31/2006 BY USER FIDELITY AUTOPROC.
0000323081208	1	04/01/2006 12:34:08 PM		COMMENT LOG	0	SUSAN MILLER - FILE RECEIVED BY ATTORNEY - 03/31/2006
0000323081208	1	04/01/2006 12:34:07 PM		COMMENT LOG	0	3/31/2006 2:46:22 PM CT: FIDELITY AUTOPROC, FIDELITY NEWMORTGAGE ASSOCIATES, P.C. AT 3/31/2006 2:40:08 PM BY AUTOMATED TASKS
0000323081208	1	04/01/2006 12:34:08 PM		COMMENT LOG	0	3/31/2006 3:12:28 PM CT: FIDELITY AUTOPROC, FIDELITY NEWMORTGAGE ASSOCIATES, P.C. AT 3/31/2006 2:52:08 PM BY KAREN ZENCK
0000323081208	1	04/01/2006 12:34:10 PM		COMMENT LOG	0	4/1/2006 5:08:29 AM CT: FIDELITY AUTOPROC, FIDELITY NEWMORTGAGE ASSOCIATES, P.C. AT 4/1/2006 1:36:05 AM BY AUTOMATED TASKS
0000323081208	1	04/01/2006 6:50:46 PM		COMMENT LOG	0	4/1/2006 8:21:30 AM CT: FIDELITY AUTOPROC, FIDELITY NEWMORTGAGE ASSOCIATES, P.C. AT 4/1/2006 8:16:10 AM BY SUSAN MILLER
0000323081208	1	04/04/2006		LETTER HISTORY	0	STARTED LOSS MIT
0000323081208	1	04/04/2006 11:27:52 AM		COMMENT LOG	0	WORK PERFORMED ON LOSS MIT ACCOUNT
0000323081208	1	04/04/2006 11:27:54 AM		COMMENT LOG	0	SENT LSLM LETTER TO RIGHT PARTY/ALTH. SPD PARTY
0000323081208	1	04/05/2006		LETTER HISTORY	0	ZCSTERLPH REMIND LTR04/03/06
0000323081208	1	04/05/2006 8:52:13 PM		COMMENT LOG	0	4/5/2006 8:06:35 AM CT: SUSAN MILLER, AT-PROCES ISSUE - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS CREATED A PROCESS-LEVEL ISSUE FOR THIS LOAN/ISSUE TYPE ORIGINAL ASSIGNMENT ISSUE COMMENTS: WE WERE ADVISED TO COMMENCE FOL IN THE NAME OF WELLS FARGO BANK, N.A. AS TRUSTEE UNDER 2005 ASSET BACKED PASS THROUGH CERTIFICATES DATED AS OF FEBRUARY 1, 2005. THERE IS AN ASSIGNMENT OF RECORD TO WELLS FARGO, THEREFORE I WILL NEED THE FOLLOWING ASSI
0000323081208	1	04/05/2006 8:52:14 PM		COMMENT LOG	0	SUSAN MILLER - (CONT) - GNMNT: ASSIGNMENT FROM ARGENT MORTGAGE COMPANY, LLC ASSIGNMENT TO: WELLS FARGO BANK, N.A. AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2005. ASSET BACKED PASS THROUGH CERTIFICATES SERIES 2006 WHICH PLEASE HAVE THE ASSIGNMENT EXECUTED AND SENT TO OUR OFFICE FOR RECORDING. PLEASE DO NOT SEND DIRECTLY TO THE COUNTY AS THIS WILL DELAY THE FOL. WE WILL BEGIN THE PUBLICATION NOW, BUT BEFORE THE SCHEDULED SALE DATE. I WILL NEED TO
0000323081208	1	04/05/2006 8:52:15 PM		COMMENT LOG	0	SUSAN MILLER - (CONT) - HAVE THE ASSIGNMENT RECORDED WITH THE ROD. IF YOU WOULD PREFER OUR OFFICE PREPARE LET ME KNOW. THANK YOU. STATUS: ACTIVE

*Fidelity Assisted  
 the Atlys by providing  
 Fraudulent Assignments  
 of mortgages  
 (1st's 2nd)*

*Says:  
 No Assignment of  
 Record to Wells Fargo  
 Assignment from:  
 Argent mts Co to  
 Wells Fargo Bank Na.*

DESCRIPTION:

COMMENT LOG 0 3/31/2006 9:22:57 AM CT: FIDELITY AUTOPROC, FIDELITY NEW PROCESS - PROCESS OPENED 3/31/2006 BY USER FIDELITY AUTOPROC.

COMMENT LOG 0 SUSAN MILLER - FILE RECEIVED BY ATTORNEY - 03/31/2006

COMMENT LOG 0 3/31/2006 2:46:22 PM CT: FIDELITY AUTOPROC, FIDELITY NEWMIMAGE COMMENT - FORECLOSURE (NIE ID# 1615406) SENT TO POTESSTIVO & ASSOCIATES, P.C. AT 3/31/2006 2:40:06 PM BY AUTOMATED TASKS

COMMENT LOG 0 3/31/2006 3:12:28 PM CT: FIDELITY AUTOPROC, FIDELITY NEWMIMAGE POTESSTIVO & ASSOCIATES, P.C. AT 3/31/2006 2:52:06 PM BY KAREN ZECK

COMMENT LOG 0 4/1/2006 5:06:29 AM CT: FIDELITY AUTOPROC, FIDELITY NEWMIMAGE COMMENT - FORECLOSURE (NIE ID# 1615406) SENT TO POTESSTIVO & ASSOCIATES, P.C. AT 4/1/2006 1:36:35 AM BY AUTOMATED TASKS

LETTER HISTORY 0 4/1/2006 9:21:30 AM CT: FIDELITY AUTOPROC, FIDELITY NEWMIMAGE COMMENT - FORECLOSURE (NIE ID# 1615406) PICKED UP BY FIRM MILLER  
STARTED LOSS MIT

COMMENT LOG 0 WORK PERFORMED ON LOSS MIT ACCOUNT REA TO A09

COMMENT LOG 0 SENT USLM LETTER TO RIGHT PARTY/AUTH. 3RD PARTY

LETTER HISTORY 0 ZCSTER/PH REMIND LTR04/03/06

COMMENT LOG 0 4/6/2006 9:05:35 AM CT: SUSAN MILLER, AT-POTES ISSUE - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS CREATED A PROCESS-LEVEL ISSUE FOR THIS LOAN ISSUE TYPE ORIGINAL ASSIGNMENT ISSUE COMMENTS-WE WERE ADVISED TO COMMENCE FCL IN THE NAME OF WELLS FARGO BANK, N.A.S TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2005 ASSET BAKED PASS-THROUGH CERTIFICATES SERIES 2005 WHO1. THERE IS NO ASSIGNMENT OF RECORD TO WELLS FARGO; THEREFORE I WILL NEED THE FOLLOWING ASSI

COMMENT LOG 0 SUSAN MILLER - (CONT) - GINMENT: ASSIGNMENT FROM: ARGENT MORTGAGE COMPANY, LLC ASSIGNMENT TO: WELLS FARGO BANK, N.A.S TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2005 ASSET BAKED PASS-THROUGH CERTIFICATES SERIES 2005 WHO1. PLEASE HAVE THE ASSIGNMENT EXECUTED AND SENT TO OUR OFFICE FOR RECORDING. PLEASE DO NOT SEND DIRECTLY TO THE COUNTY AS THIS WILL DELAY THE FCL. WE WILL BEGIN THE PUBLICATION NOW, BUT BEFORE THE SCHEDULED SALE DATE. I WILL NEED TO

COMMENT LOG 0 SUSAN MILLER - (CONT) - HAVE THE ASSIGNMENT RECORDED WITH THE ROD IF YOU WOULD PREFER OUR OFFICE PREPARE, LET ME KNOW. THANK YOU. STATUS: ACTIVE

COMMENT LOG 0

COMMENT LOG 0

*Fidelity Assoc providing the Attys by Assignments of mortgages (1st & 2nd) Fraudulent*

*Embursed to show details*

*PS 14 of 60*

FORB. DATE: RESPONSE:

DESCRIPTION:

COMMENT LOG 0 4/5/2006 1:31:31 PM CT: SELTA KOI, HOMEQ ISSUE - SYSTEM  
 UPDATED FOR THE FOLLOWING EVENT: USER HAS UPDATED A  
 PROCESS-LEVEL ISSUE FOR THIS LOAN. ISSUE UPDATED TO: ISSUE  
 TYPE: ORIGINAL ASSIGNMENT. ISSUE COMMENTS: FROM: ARGENT  
 MORTGAGE COMPANY, LLC ASSIGNMENT TO: WELLS FARGO BANK,  
 NA AS TRUSTEE(COUNSEL CANNOT DRAFT) STATUS: ACTIVE  
 PROJECTED END: 12:00:00 AM CHANGED TO 05/04/2006 ISSUE  
 COMMENT: WE WERE ADVISED TO COMMENCE FOL IN THE NAME OF  
 WELLS FARGO BANK, NA AS TRUSTEE UNDER POOLING  
 SUSAN MILLER - (CONT) - AND SERVICING AGREEMENT DATED AS OF  
 FEBRUARY 1, 2005 ASSET BAKED PASS-THROUGH CERTIFICATES  
 SERIES 2005 WHO1. THERE IS NO ASSIGNMENT OF RECORD TO  
 WELLS-FARGO-THEREFORE I WILL NEED THE FOLLOWING  
 ASSIGNMENT: ASSIGNMENT FROM: ARGENT MORTGAGE COMPANY,  
 LLC ASSIGNMENT TO: WELLS FARGO BANK, NA AS TRUSTEE UNDER  
 2005 ASSET BAKED PASS-THROUGH CERTIFICATES SERIES 2005  
 WHO1 PLEASE HAVE THE ASSIGNMENT EXECUTED A

COMMENT LOG 0 SUSAN MILLER - (CONT) - ND SENT TO OUR OFFICE FOR RECORDING.  
 PLEASE DO NOT SEND DIRECTLY TO THE COUNTY AS THIS WILL  
 DELAY THE FOL. WE WILL BEGIN THE PUBLICATION NOW, BUT  
 BEFORE THE SCHEDULED SALE DATE. I WILL NEED TO HAVE THE  
 ASSIGNMENT RECORDED WITH THE ROD IF YOU WOULD PREFER  
 OUR OFFICE PREPARE, LET ME KNOW, THANK YOU. CHANGED TO:  
 FROM: ARGENT MORTGAGE COMPANY, LLC ASSIGNMENT TO: WELLS  
 FARGO BANK, NA AS TRUSTEE(COUNSEL CANNOT DRAFT)  
 4/5/2006 1:31:58 PM CT: SELTA KOI, HOMEQ INTERCOM. - INTERCOM  
 MESSAGE / SENT: 4/5/2006 1:31:58 PM / FROM: SELTA KOI, HOMEQ /  
 TO: SUSAN MILLER (AT-PTOTES) / CC: / MESSAGE TYPE: GENERAL  
 UPDATE / SUBJECT: AN ORDER WAS PLACED SUCCESSFULLY AND THE  
 ORDER NUMBER IS: 170194 / MESSAGE: YOUR ASSIGNMENT  
 REQUEST HAS BEEN MADE WITH HOMEQ. IN REGARDS TO 3RD PARTY  
 INVESTORS (800, 501, 602, 603, 604, 605 & 606 & MAY INCLUDE 214, 311,  
 650, 851, 852, 853 & 854), THERE IS NOT THE NECESSARY SIGN  
 SELTA KOI - (CONT) - ING AUTHORITY FOR THIS ENTITY. PLEASE  
 WAIT FOR THE ORIGINAL DOCUMENT FROM HOMEQ. THE FOLLOW UP  
 IS SCHEDULED FOR 04/19/06, AND COUNSEL IS NOT APPROVED TO  
 DRAFT THE NEEDED ASSIGNMENT ON THIS LOAN. PLEASE DO NOT  
 REPLY TO THIS INTERCOM. THANK YOU.

COMMENT LOG 0 4/5/2006 1:32:05 PM CT: SELTA KOI, HOMEQ ISSUE - SYSTEM  
 UPDATED FOR THE FOLLOWING EVENT: USER HAS APPROVED THE  
 ISSUE. ISSUE TYPE: ORIGINAL ASSIGNMENT. STATUS: ACTIVE.  
 APPROVED  
 SUSAN MILLER - SALE SCHEDULED FOR - 05/09/2006

COMMENT LOG 0 SUSAN MILLER - FIRST PUBLICATION - 04/07/2006

COMMENT LOG 0 4/7/2006 8:17:19 AM CT: SUSAN MILLER, AT-PTOTES NEW PROCESS -  
 PROCESS OPENED 4/7/2006 BY USER.

COMMENT LOG 0 TEL RES NO ANSWER

COMMENT LOG 0 NPV/TAX AUTHORITY TAXES ARE DELTA FOR CURRENT YEAR PER  
 DEBIE AT LYON TWP 248-437-2240 FOR TY05. UPDATED  
 NPV...GLJZCS

*Erin and Jim's  
 Spans*

*Pr 15 of 60*

Communication History

COMM DATE: 04/05/2008 7:31:14 PM  
 SEQ NU: 1  
 EMP ID: #S1  
 FOREB. AMOUNT: 0  
 FOREB. DATE: 04/05/2008 7:31:14 PM  
 COMMENT LOG: 0

LOAN NUMBER: 0000323081208  
 MORTGAGOR: ARNOLD  
 CONTACT: LAST NAME:  
 REASON: RESPONSE:

DESCRIPTION:	RESPONSE:	REASON:	FOREB. DATE:	FOREB. AMOUNT:	COMM TYPE:	COMM DATE:
4/6/2008 1:31:31 PM CT: SELTA KOI HOMEQ ISSUE - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS UPDATED A PROCESS-LEVEL ISSUE FOR THIS LOAN. ISSUE UPDATED TO: TYPE: ORIGINAL ASSIGNMENT. ISSUE COMMENTS: FROM: ARSENT MORTGAGE COMPANY, LLC. ASSIGNMENT TO: WELLS FARGO BANK, N.A. AS TRUSTEE/COUNSEL. CANNOT DRAFT STATUS: ACTIVE PROJECTED END: 12:00:00 AM CHANGED TO: 08/04/2008 ISSUE COMMENT: WE WERE ADVISED TO COMMENCE FCI IN THE NAME OF WELLS FARGO BANK, N.A. AS TRUSTEE UNDER POOLING SUSAN MILLER - (CONT) - AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2005 ASSET BAYED PASS-THROUGH CERTIFICATES SERIES 2005 WHICH. THERE IS NO ASSIGNMENT OF RECORD TO ASSIGNMENT. ASSIGNMENT WILL INCLUDE THE FOLLOWING LLC ASSIGNMENT TO: WELLS FARGO BANK, N.A. AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1, 2005 ASSET BAYED PASS-THROUGH CERTIFICATES WHICH PLEASE HAVE THE ASSIGNMENT EXECUTED A SUSAN MILLER - (CONT) - AND SENT TO OUR OFFICE FOR RECORDING. PLEASE DO NOT SEND DIRECTLY TO THE COUNTY AS THIS WILL DELAY THE FC. WE WILL BEGIN THE PUBLICATION NOW. BUT BEFORE THE SCHEDULED SALE DATE. I WILL NEED TO HAVE THE ASSIGNMENT RECORDED WITH THE FOD IF YOU WOULD PREFER OUR OFFICE PREPARE LET ME KNOW, THANK YOU. CHANGED TO: FROM: ARSENT MORTGAGE COMPANY, LLC. ASSIGNMENT TO: WELLS FARGO BANK, N.A. AS TRUSTEE/COUNSEL. CANNOT DRAFT MESSAGE / SENT: 4/6/2008 1:31:38 PM CT: SELTA KOI HOMEQ INTERCOM UPDATE / SUBJECT: 442008 WAS PLACED SUCCESSFULLY AND THE ORDER NUMBER IS: 170194 / MESSAGE: YOUR ASSIGNMENT REQUEST HAS BEEN MADE WITH HOMEQ. IN REGARDS TO 3RD PARTY INVESTORS (600, 601, 602, 603, 604, 605 & 608 & MAY INCLUDE 214, 311, 600, 651, 602, 603 & 654). THERE IS NOT THE NECESSARY SIGN SELTA KOI - (CONT) - ING AUTHORITY FOR THIS ENTRY. PLEASE WAIT FOR THE ORIGINAL DOCUMENT FROM HOMEQ. THE FOLLOW UP IS SCHEDULED FOR 04/19/08. AND COUNSEL IS NOT APPROVED TO DEACT THE MERGED ASSIGNMENT ON THIS LOCAL. PLEASE DO NOT REPLY TO THIS INTERCOM. THANK YOU.	0				04/06/2008 1:31:18 PM	
SUSAN MILLER - SALE SCHEDULED FOR - 06/08/2008						04/07/2008 6:55:54 PM
SUSAN MILLER - FIRST PUBLICATION - 04/07/2008						04/07/2008 6:55:54 PM
4/7/2008 8:17:19 AM CT: SUSAN MILLER AT-FOTES NEW PROCESS. PROCESS OPENED 4/7/2008 BY USER.						04/08/2008 1:30:10:2 AM
TEL RES NO ANSWER						04/10/2008 11:58:21 AM
INPT/XX AUTHORITY TAXES ARE DELQ FOR CURRENT YEAR PER DEBIT AT LYON TRMP 248-157-2240 FOR TY05. UPDATED INPT_GL/JZCS						04/10/2008 11:58:21 AM

*Order # for  
 "170194"  
 Needed under level  
 Assignment of mts  
 \* Read Carefully!*





**Communication History**      **LOAN NUMBER: 0000323081208**      **MORTGAGOR: ARNOLD**

**COMM DATE:**      **COMM TYPE:**      **CONTACT:**      **LAST NAME:**

**SEQ NU**    **EMP ID**    **FOREB. AMOUNT:**    **REASON:**

**FOREB. DATE:**      **RESPONSE:**

SEQ NU	EMP ID	FOREB. AMOUNT	REASON	RESPONSE	DESCRIPTION
1	#81	0			4/28/2008 12:34 PM COMMENT LOG 4/28/2008 12:08 #81
1	#81	0			4/28/2008 2:15:00 PM COMMENT LOG 4/28/2008 2:15:00 PM #81
1	#81	0			4/28/2008 3:18:07 PM COMMENT LOG 4/28/2008 3:18:07 PM #81
1	#81	0			4/28/2008 3:38:28 PM COMMENT LOG 4/28/2008 3:38:28 PM #81
1	#81	0			4/28/2008 4:17:46 PM COMMENT LOG 4/28/2008 4:17:46 PM #81
1	#81	0			4/28/2008 5:18:07 PM COMMENT LOG 4/28/2008 5:18:07 PM #81
1	#81	0			4/28/2008 5:38:28 PM COMMENT LOG 4/28/2008 5:38:28 PM #81
1	#81	0			4/28/2008 5:58:08 AM COMMENT LOG 4/28/2008 5:58:08 AM #81
1	#81	0			4/28/2008 6:06:08 AM COMMENT LOG 4/28/2008 6:06:08 AM #81
1	#81	0			4/28/2008 6:46:07 AM COMMENT LOG 4/28/2008 6:46:07 AM #81
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1	#81	0			4/28/2008 12:46:07 PM COMMENT LOG 4/28/2008 12:46:07 PM #81

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4/28/2008 12:08 #81

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4/28/2008 6:06:08 AM #81

4/28/2008 6:06:08 AM COMMENT LOG  
4/28/2008 6:06:08 AM #81

4/28/2008 6:46:07 AM COMMENT LOG  
4/28/2008 6:46:07 AM #81

4/28/2008 6:46:07 AM COMMENT LOG  
4/28/2008 6:46:07 AM #81

4/27/06 value #460,000 ON  
the IRS A change rd  
3/20/06

Assignments prepared  
in 4/10/06, but back  
dated to 12/04  
RT's filled in the loan

4/28/06  
Assignment to Blm  
Investment to Blm

# Communication History

LOAN NUMBER: 0000323081208

MORTGAGOR LAST NAME: ARNOLD

COMM DATE:      COMM TYPE:      CONTACT:  
 SEQ NU EMP ID    FOREB. AMOUNT:    REASON:  
 FOREB. DATE:      RESPONSE:

SEQ NU	EMP ID	FOREB. DATE	FOREB. AMOUNT	REASON	RESPONSE	DESCRIPTION
0000323081208	1	07/30/2008 10:20:14 PM				Paul Keele (1) SUPTS-K-POSTF-C-SSRR-RE - Post Sale Short Redemption Request -> many Arnold is requesting information re short sale redemption plz contact # 248 448 2940 thank! Paul 07/30/2008 14:05:17 TO: 0730/2008.1445627
0000323081208	1	08/01/2008 9:02:51 PM				Quiana Ellis (1) CSSR-REO-Redemption Amount Request-Borrower -> MARY I ARNOLD c/o vic/inf if new housing rescue bill -can help her get prop back...loan handed by firm...prov phone number 800 430 3320 -08/01/2008.0535647 TO: 08/01/2008 06:06:11
0000323081208	1	08/01/2008 9:23:44 PM				Paul Keele (1) CSSR-REO-Redemption Amount Request-Borrower -> received task back should have offered fidelity 08/01/2008 09:41:33 TO: 08/01/2008 09:48:07
0000323081208	1	08/01/2008 9:28:06 PM				Solangel Pulice (1) CSSR-REO-Tenant Requesting Information -> b7 sofbop c/o vic/infied FNM and they said they dont have her prof/ advised fwd to mgr/ was told to get a cd # and post foreclosure wcd/ saved 1 2 btt for an answer -08/01/2008.1042449 TO: 08/01/2008.1022108
0000323081208	1	08/01/2008 10:50:55 PM				Nicholas Lantieux (1) CSSR-GENINF-C-Int Rate-Pin Bal-Term-Due Die Ind/act # -> reviewed taskback with rap new rap has escalated to manager 8/1 08/01/2008 13:36:19
0000323081208	1	08/05/2008 3:21:38 PM				FOR UNIT 1, BOB WITT REPORTS: OCCUPANT NAME IS: FORMER OWNER Y. CRK INTEREST : PURCHASE INTEREST : PROPERTY MAINTAINED.
0000323081208	1	08/05/2008 3:21:39 PM				FOR UNIT 1, BOB WITT REPORTS: PROPERTY IS OCCUPIED AND FILLED WITH PERSONAL PROPERTY. ACTIVITY WAS NOTED TODAY DURING MY VISIT.
0000323081208	1	08/13/2008 10:03:20 PM				FOR UNIT 1, BOB WITT REPORTS: OCCUPANT NAME IS: FORMER OWNER Y. CRK INTEREST : PURCHASE INTEREST : PROPERTY MAINTAINED.
0000323081208	1	08/13/2008 10:03:21 PM				FOR UNIT 1 BOB WITT REPORTS: PROPERTY IS OCCUPIED AND FILLED WITH PERSONAL PROPERTY. ACTIVITY WAS NOTED TODAY DURING MY VISIT.
0000323081208	1	08/22/2008 12:00:00 PM				Hazard Line Updated
0000323081208	1	09/02/2008				REO - FORECLOSURE SALE
0000323081208	1	09/02/2008 1:37:28 PM				9/2/2008 9:09:22 AM CT: KRISTEN WYKOWSKI, AT: POTES REPROJECTION. - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS REPROJECTED THE STEP POST SALE REDEMPTION EXPRES TO 9/2/2008. REASON: OTHER COMMENTS: REDEMPTION EXP ON 9-4-08. STATUS: ACTIVE. AWAITING APPROVAL.
0000323081208	1	09/02/2008 1:37:29 PM				8/2/2008 10:05:16 AM CT: FIDELITY AUTOPROC, FIDELITY REPROJECTION. - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS APPROVED THE REPROJECTION TYPE OTHER FOR THE STEP POST SALE REDEMPTION EXPRES. STATUS: ACTIVE. APPROVED.
0000323081208	1	09/03/2008 6:28:32 PM				FOR UNIT 1, BOB WITT REPORTS: OCCUPANT NAME IS: FORMER OWNER Y. CRK INTEREST : PURCHASE INTEREST : PROPERTY MAINTAINED.
0000323081208	1	09/03/2008 6:28:33 PM				FOR UNIT 1 BOB WITT REPORTS: PROPERTY IS OCCUPIED AND FILLED WITH PERSONAL PROPERTY. ACTIVITY WAS NOTED TODAY DURING MY VISIT.
0000323081208	1	09/08/2008 9:27:30 PM				Jennifer Davis (1) CSSR-REO-Redemption Amount Request-Borrower -> Ms c/o sofbop no alt # - verified address- his requesting if we sold the property and is requesting the # for fidelity to buy back property- advised ms (see # for fidelity) 09/08/2008 05:27:09 TO: 09/08/2008.0534142

8/5/08

8/13/08

9/3/08

**Communication History**

LOAN NUMBER: 0000323081208

MORTGAGOR: ARNOLD  
LAST NAME:

COMM DATE:                      COMM TYPE:                      CONTACT:  
SEQ NU    EMP ID                      FOREB. AMOUNT:                      REASON:  
FOREB. DATE:                      RESPONSE:

DESCRIPTION:

COMM DATE	COMM TYPE	CONTACT	DESCRIPTION
09/09/2008 2:58:36 PM	COMMENT LOG		FOR UNIT 1, BOB WITT REPORTS OCCUPANT NAME IS: FORMER OWNER Y; CFK INTEREST ; PURCHASE INTEREST ; PROPERTY MAINTAINED.
09/09/2008 2:58:36 PM	COMMENT LOG		FOR UNIT 1 BOB WITT REPORTS PROPERTY IS STILL OCCUPIED.
09/09/2008 7:54:59 PM	COMMENT LOG		MO- RED ENDS EMAIL TO LP TO START FILE
09/10/2008 1:29:25 PM	COMMENT LOG		9/10/2008 10:59:13 AM CT: SUSAN KANIA, AT-POTES ISSUE. -SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS CREATED A PROCESS-LEVEL ISSUE FOR THIS LOAN ISSUE TYPE: ADDITIONAL FEE REQUEST-FC. ISSUE COMMENTS: AS REBATEDUAL HAS EXPIRED. PLEASE ADVISE IF YOU WOULD LIKE OUR OFFICE TO COMPLETE AND FILE THE REQUIRED PROPERTY TRANSFER AFFIDAVIT FOR A FEE OF \$35.00. MICHIGAN LAW REQUIRES THAT UPON ANY TRANSFER OF REAL PROPERTY, INCLUDING TRANSFERS RESULTING FROM A MORTGAGE FORECLOSURE SALE, THE TRANSFEREE MUST SIGN A PROPERTY TRANSFER AFFIDAVIT. FAILURE TO DO SO MAY RESULT IN A MAXIMUM FINE OF \$200. WE RECOMMEND THAT THIS AFFIDAVIT BE COMPLETED TO AVOID A POTENTIAL FINE. SHOULD YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT ME STATUS: ACTIVE
09/10/2008 2:46:30 PM	COMMENT LOG		LP- START LETTER TO ATTY. CFK PKG TO AGENT FOR 1500.00 TO VACATE BY 09/24/08 - 200.00 BI. EMAIL TO AGENT
09/10/2008 2:46:31 PM	COMMENT LOG		FROM: PENETON, LACEY SENT: MEDWEDSAY, SEPTEMBER 10, 2008 11:08 AM TO: BOBWITT@SBOCLDRAL.NET SUBJECT: ASSET# HOM029489/CLIENT REF# 0000323081208/2881 RICO CT WIXOM MI 48395 HELLO, THE CLIENT IS OFFERING A \$200 BROKER INCENTIVE SHOULD YOU COMPLETE A SUCCESSFUL CASH FOR KEYS TRANSACTION ON THIS PROPERTY. PLEASE PRESENT THE OFFER THAT WE JUST SENT TO YOU AND ADVISE MELISSA ORTIZ. YOUR EVICTION SPECIALIST ASAP IF THEY WILL ACCEPT OR NOT. THE DOCUMENTS CAN BE RETRIEVED ONLINE AT WWW.FNAMS.COM IF YOU HAVE ANY FURTHER QUESTIONS OR CONCERNS, CONTACT MELISSA ORTIZ AT MELISSA.ORTIZ@FNIS.COM OR PHONE 720-586-8028. PLEASE DO NOT REPLY TO THIS EMAIL. ONCE THE CFK HAS BEEN SIGNED, PLEASE FAX THOSE TO MELISSA AT 720-566-8128. THANK YOU,
09/10/2008 4:18:00 PM	COMMENT LOG		9/10/2008 4:18:00 PM CT: MELISSA ZERTMAN, FIDELITY ISSUE. -SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS APPROVED THE ISSUE. ISSUE TYPE: ADDITIONAL FEE REQUEST-FC. STATUS: ACTIVE, APPROVED
09/10/2008 7:37:35 PM	COMMENT LOG		9/10/2008 4:18:13 PM CT: MELISSA ZERTMAN, FIDELITY ISSUE. -SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS ENDED THE ISSUE ASSOCIATED WITH THIS LOAN ISSUE TYPE: ADDITIONAL FEE REQUEST-FC. COMMENTS: ADDITIONAL FEES APPROVED FOR \$35.00 FOR PROPERTY TRANSFER AFFIDAVIT.
09/10/2008 7:37:36 PM	COMMENT LOG		INTERCOM FROM: ZERTMAN, MELISSA - TO: KANIA, SUSAN; /SUBJECT: ISSUE REQUEST/
09/11/2008 7:29:20 PM	COMMENT LOG		MARCY MCCLAIN - 1098A COMPLETE/ CHANGE MAN CODE - 09/11/2008
09/12/2008	LETTER HISTORY		COMPLETED FORECLOSURE

9/9/08

9/10/08

**Communication History**

LOAN NUMBER: 0000323081208

MORTGAGOR LAST NAME: ARNOLD

COMM DATE:                      COMM TYPE:                      CONTACT:  
 SEQ NU EMP ID                      FOREB. AMOUNT:                      REASON:  
 FOREB. DATE:                      RESPONSE:

DESCRIPTION:

09/18/2008 2:50:03 PM	COMMENT LOG	0	BOB WITT REPORTS: NO CHANGE FROM PREVIOUS WEEK
0000323081208			
09/22/2008 3:23:23 PM	COMMENT LOG	0	FAXED WEEKLY OCCUPANCY REPORT TO BOB WITT AT HERITAGE REAL ESTATE / BETTER ON SEP 19 2008 5:26PM.
0000323081208			
09/25/2008 8:01:03 PM	COMMENT LOG	0	BOB WITT REPORTS: NO CHANGE FROM PREVIOUS WEEK
0000323081208			
09/29/2008 3:21:17 PM	COMMENT LOG	0	FAXED WEEKLY OCCUPANCY REPORT TO BOB WITT AT HERITAGE REAL ESTATE / BETTER ON SEP 26 2008 5:21PM.
0000323081208			
09/30/2008 3:23:03 PM	COMMENT LOG	0	BOB WITT REPORTS: NO CHANGE FROM PREVIOUS WEEK
0000323081208			
10/06/2008 3:25:58 PM	COMMENT LOG	0	FAXED WEEKLY OCCUPANCY REPORT TO BOB WITT AT HERITAGE REAL ESTATE / BETTER ON OCT 3 2008 5:18PM.
0000323081208			
10/07/2008 3:20:28 PM	COMMENT LOG	0	BOB WITT REPORTS: NO CHANGE FROM PREVIOUS WEEK
0000323081208			
10/09/2008 8:52:27 PM	COMMENT LOG	0	MO-EMAIL TO AND FROM ATTY ----- ORIGINAL MESSAGE ----- FROM: ORTIZ, MELISSA SENT: THURSDAY, OCTOBER 09, 2008 1:58 PM TO: TONYA L REID SUBJECT: RE: ARNOLD FILE NO 08-98297 LOAN NO 0000323081208 HELLO, PLEASE SEND ME THE AMOUNT PER HOUR YOU WILL NEED APPROVED. THANK YOU ----- ORIGINAL MESSAGE ----- FROM: TONYA L REID MAILTO:TREID@POTESTIVOLAW.COM SENT: THURSDAY, OCTOBER 09, 2008 11:55 AM TO: ORTIZ, MELISSA SUBJECT: ARNOLD FILE NO 08-98297 LOAN NO 0000323081208 HELLO, THE COURT A TONYA REID
0000323081208			
10/09/2008 8:52:28 PM	COMMENT LOG	0	
0000323081208			
10/09/2008 8:52:29 PM	COMMENT LOG	0	DIDJOURNED THE HEARING ON 10/08/08 TO 10/22/08. THE DEFENDANT HAS HIRED AN ATTORNEY AND THE ATTORNEY CLAIMS THAT THEY WILL BE FILING A FEDERAL LAWSUIT WITHIN THE NEXT FEW WEEKS REGARDING THE VALIDITY OF THE FORECLOSURE. WE WILL NEED APPROVAL FOR 2.5 BILLABLE HOURS TO ATTEND THE ADJOURNED HEARING ON 10/22/08. PLEASE ADVISE. THANKS! TONYA REID EVICTIONS COORDINATOR
0000323081208			
10/09/2008 8:52:30 PM	COMMENT LOG	0	MO-EMAIL TO AND FROM ATTY ----- ORIGINAL MESSAGE ----- FROM: ORTIZ, MELISSA SENT: THURSDAY, OCTOBER 09, 2008 4:29 PM TO: TONYA L REID SUBJECT: RE: ARNOLD FILE NO 08-98297 LOAN NO 0000323081208 HELLO, PLEASE ADVISE THE ADDITIONAL FEES ARE APPROVED. THANK YOU ----- ORIGINAL MESSAGE ----- FROM: TONYA L REID MAILTO:TREID@POTESTIVOLAW.COM SENT: THURSDAY, OCTOBER 09, 2008 2:59 PM TO: ORTIZ, MELISSA SUBJECT: RE: ARNOLD FILE NO 08-98297 LOAN NO 0000323081208 HELLO, \$125 AN HOUR
0000323081208			
10/10/2008 9:08:30 PM	COMMENT LOG	0	FAXED WEEKLY OCCUPANCY REPORT TO BOB WITT AT HERITAGE REAL ESTATE / BETTER ON OCT 10 2008 5:04PM.
0000323081208			
10/21/2008 5:24:13 PM	COMMENT LOG	0	BOB WITT REPORTS: NO CHANGE FROM PREVIOUS WEEK
0000323081208			

9/18/08

9/22/08

9/25/08

"

"

10/7/08

10/21/08

# Communication History

LOAN NUMBER: 0000323081208

MORTGAGOR: ARNOLD  
LAST NAME:

COMM DATE:                      COMM TYPE:                      CONTACT:  
SEQ NU EMP ID                      FOREB. AMOUNT:                      REASON:  
FOREB. DATE:                      RESPONSE:

SEQ NU	EMP ID	FOREB. DATE	FOREB. AMOUNT	REASON	RESPONSE	DESCRIPTION
1		10/23/2008 8:38:08 AM				LOCAL COUNSEL HAS ADVISED THAT THE DEBTORS ARE ATTEMPTING TO FILE A COMPLAINT AGAINST HOMEQ AND THE INVESTOR.
1	KS4	10/24/2008 8:52:15 PM				MO-ROYD EMAIL FROM ATTY WITH ATTACHED COMPLAINT FOR FEDERAL COURT FWD TO CLIENT --- ORIGINAL MESSAGE --- FROM: ORTIZ, MELISSA M SENT: FRIDAY, OCTOBER 24, 2008 1:55 PM TO: SARASBOURNE@HOMEQ.COM SUBJECT: EW-ARNOLD, ELEANOR 98297 LOAN NO 0000323081208 HELLO VALERIE PLEASE SEE BELOW, AND THE ATTACHMENT. THANK YOU --- ORIGINAL MESSAGE --- FROM: TONYA L REID MAIL TO: TREID@POTESTOLAW.COM SENT: WEDNESDAY, OCTOBER 22, 2008 2:17 PM TO: ORTIZ, MELISSA M SUBJECT: ARNOLD FILE N
1	KS4	10/24/2008 8:52:17 PM				0 06-882297 LOAN NO 0000323081208 HELLO MELISSA, WE WENT TO COURT TODAY REGARDING THIS FILE. THE DEFENDANT HAS HIRED AN ATTORNEY WHO PROVIDED US WITH A COPY OF THE COMPLAINT THAT HE IS FILING IN FEDERAL COURT. WE DID NOT ACCEPT SERVICE ON BEHALF OF HOMEQ SO HE WILL BE SERVING HOMEQ WITH THE COMPLAINT SOON. I WANTED TO PROVIDE YOU WITH A COPY OF THE COMPLAINT FOR YOUR RECORDS SO YOU ARE AWARE THAT THERE IS FORWARDING THIS TO HOMEQ'S LEGAL DEPARTMENT AS WELL. WE DID RECEIVE A JUDGMENT TODAY AT THE HEARING AND IT STATES THAT THE DEFENDANT HAS 30 DAYS TO 11/24/08 TO GET THE NECESSARY ORDERS IN FEDERAL COURT OR WE CAN FILE THE ORDER OF EVICTION ON 11/24/08. LET ME KNOW IF YOU HAVE ANY QUESTIONS. THANKS! TONYA REID EVICTIONS COORDINATOR
1	VH5	10/27/2008 8:17:13 AM				SENT EMAIL TO SPALIT REFERRAL TO ACCEPT CASE AS THE DEFENDANT HAS HIRED AN ATTORNEY WHO PROVIDED THE EVICTIONS DEPT WITH A COPY OF THE COMPLAINT THAT HE IS FILING IN FEDERAL COURT.
1	KS4	10/27/2008 3:16:22 PM				FAXED WEEKLY OCCUPANCY REPORT TO BOB WITT AT HERITAGE REAL ESTATE / BETTER ON OCT 24 2008 5:51PM.
1	KS4	10/22/2008 8:18:09 PM				BOB WITT REPORTS: NO CHANGE FROM PREVIOUS WEEK
1	KS4	10/30/2008 3:14:10 PM				DEFENDANT DID FILE FEDERAL ACTION EVEN THOUGH WE RECEIVED A JUDGMENT. THEY HAVE 30 DAYS TO SERVE HOMEQ WITH THEIR FEDERAL CLAIM
1	VH5	11/03/2008 8:57:49 AM				SPALIT REQUESTING TO SEE IF WE WERE SERVED WITH THE COMPLAINT. RESPONSE THAT I DO NOT HAVE ACCESS TO THE US COURT'S SYSTEM (ECF) TO SEE IF WE WERE SERVED.
1	KS4	11/03/2008 4:05:43 PM				FAXED WEEKLY OCCUPANCY REPORT TO BOB WITT AT HERITAGE REAL ESTATE / BETTER ON OCT 31 2008 5:44PM.
1	KS4	11/04/2008 8:24:37 PM				BOB WITT REPORTS: NO CHANGE FROM PREVIOUS WEEK
1	KS4	11/10/2008 3:06:10 PM				FAXED WEEKLY OCCUPANCY REPORT TO BOB WITT AT HERITAGE REAL ESTATE / BETTER ON NOV 7 2008 5:55PM.
1	KS4	11/10/2008 8:37:50 PM				BOB WITT REPORTS: NO CHANGE FROM PREVIOUS WEEK

10/28/08

11/10/08





**Communication History**      **LOAN NUMBER: 0000323081208**      **MORTGAGOR ARNOLD**

COMM DATE:      COMM TYPE:      CONTACT:      LAST NAME:      ARNOLD

SEQ NU EMP ID      FOREB AMOUNT:      REASON:      RESPONSE:

12/11/2008 11:35:19 AM      COMMENT LOG      0      DESCRIPTION:      SPALIT HAS ACCEPTED THE REFERRAL OF THIS MATTER. THIS MATTER IS ASSIGNED TO KELLIE ARMY.

0000323081208      1      KRP      12/11/2008 3:18:49 PM      COMMENT LOG      0      MO-EMAIL TO AND FROM

0000323081208      1      #S4      12/11/2008 3:18:50 PM      COMMENT LOG      0      FROM:      ORTIZ, MELISSA M. SENT: THURSDAY, DECEMBER 11, 2008 10:43 AM  
 TO: MUSDZALL@POTESTINOLAW.COM; SUBJECT: RE: 0000323081208  
 ARNOLD, MARY/ 52881 RICO CT, WIXOM/ OUR FILE NO: 08-022885  
 HELLO, PLEASE ADVISE HOW MUCH IT WILL COST IF YOUR OFFICE HANDLES THE LITIGATION. THANK YOU MELISSA  
 ORTIZ \_\_\_\_\_ FROM:      TONY

12/11/2008 3:18:51 PM      COMMENT LOG      0      FROM: AMY E. MUSDZALL SENT: THURSDAY, DECEMBER 11, 2008 10:31 AM  
 TO: DANA.CAMPBELL@HOMEQ.COM; KESYLA.ROBERSON-PhilPOT@HOMEQ.COM; SUBJECT: 0000323081208  
 6-ARNOLD, MARY/ 52881 RICO CT, WIXOM/ OUR FILE NO: 08-022885  
 IMPORTANCE: HIGH HI DANA & KESHA, I WAS Hoping THAT ONE OF YOU COULD PROVIDE SOME ASSISTANCE IN REGARDS TO THE ABOVE REFERENCED MATTER. OUR OFFICE IS HANDLING THE EVICTION ON THIS PROPERTY AND THE BORROWER HAS COMMENCED AFFIRMATIVE LITIGATION IN THE OAKLAND COUNTY CIRCUIT COURT. I HAVE ATTACHED A COPY OF THE PLEADINGS THAT WERE FILED. SHE IS SEEKING AN INJUNCTION STOPPING OUR EVICTION. THERE WAS A HEARING THAT WAS HELD THAT WE APPEARED TO PREVENT ANY ADVERSE ACTION AND THE JUDGE ADJOURNED THAT HEARING IN ORDER TO GIVE US A CHANCE TO CONTACT OUR CLIENT AND SEE IF OUR OFFICE WOULD BE REPRESENTING THEM ON THIS MATTER AS WELL. L.S FILE RESPONSE PLEADINGS. THE ADJOURNED HEARING IS CURRENTLY SET FOR WEDNESDAY, DECEMBER 17TH. PLEASE ADVISE IF YOU WOULD LIKE OUR OFFICE TO HANDLE THE DEFENSE OF THIS MATTER. IF YOU NEED ANYTHING FURTHER PLEASE LET ME KNOW, THANKS FOR YOUR HELP. AMY E. MUSDZALL ATTORNEY AT LAW  
 SPALIT, KELLIE ARMY, HAS OPENED A FILE ON THIS ACCOUNT.

0000323081208      1      #S4      12/11/2008 4:52:46 PM      COMMENT LOG      0      RECDV NOTICE THAT LITIGATION FILE HAS BEEN OPENED AND ASSIGNED TO KELLIE ARMY--REQ THAT SHE ADVISE VALERIE HINTON ON WHETHER THE REO PROCESS NEEDS TO BE PLACED ON HOLD AWAITING RESPONSE FROM SPALIT TO ADVISE IF REQ NEED TO BE PLACED ON HOLD.

0000323081208      1      TMB      12/11/2008 9:32:41 AM      COMMENT LOG      0      PAXED WEEKLY OCCUPANCY REPORT TO BOB WITT AT HERITAGE REAL ESTATE / BETTER ON DEC 12 2008 5:48PM.

0000323081208      1      VHS      12/17/2008 12:00:00 PM      DELQ COMMENT      0      YEC PLCD NO PRGE FLAG R DUE TO CURRNT NN CODE

0000323081208      1      #S4      12/17/2008 6:07:35 PM      COMMENT LOG      0      BOB WITT REPORTS: NO CHANGE FROM PREVIOUS WEEK

12/17/08

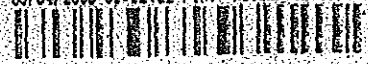
# **EXHIBIT “B”**

0323091204

LIBER 37514 7878

LIBER 37514 PAGE 876  
\$3.00 MISC RECORDING  
\$4.00 REINSTATEMENT  
05/04/2006 01:12:22 P.M. RECEIPT# 51616

When recorded mail to  
Argent Mortgage Company, LLC  
P.O. Box 14130  
Orange, CA 92863-1530



PAID RECORDED - OAKLAND COUNTY  
RUTH JOHNSON - CLERK/REGISTER OF DEEDS

Same loan number →

Loan Number: 0088398593 - 9703

# RECORD FIRST ASSIGNMENT OF MORTGAGE

In consideration of value received, the undersigned hereby sets over, assigns and transfers unto:  
Amerquest Mortgage Company

whose address is: 1100 Town and Country Road, Suite 200, Orange, CA 92868

all its rights, title and interest of undersigned in and to that certain Real Estate Mortgage dated 12/17/04,  
executed by  
EDWARD ARNOLD and MARY I ARNOLD, Husband and Wife

*Fraudulent  
Assignment  
(1)*

to Argent Mortgage Company, LLC  
and whose principal place of business is One City Boulevard West,  
Orange, CA 92868  
and recorded in Liber 34829 page(s) 776 of plats OAKLAND

County Records, State of Michigan described hereinafter as follows:  
"LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF"  
Commonly known as: 52881 RICO CT  
WIXOM, MI 48303

Witnesses By:

Dated: 12/22/2004

*[Signature]*  
Witness Laverna Dillard  
*[Signature]*  
Witness Erica Greenberg

Assignor: Argent Mortgage Company, LLC  
By: *[Signature]*  
Tracy Phinizy  
Title: Agent

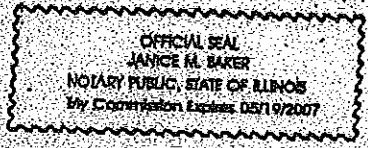
*[Handwritten initials]*

State of Illinois  
County of Cook

On 12/22/2004 before me, Janice M. Baker  
personally appeared Tracy Phinizy, Agent

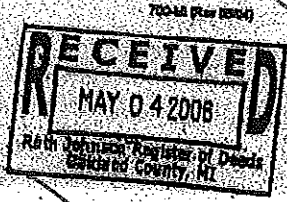
*same spacing typed \**

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed  
the same in his/hers/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument  
the person(s) or the entity upon behalf of which is the person(s) acted, executed the instrument.



WITNESS my hand and official seal  
*[Signature]* (Seal)  
Janice M. Baker

Document prepared by: Argent Mortgage Company, LLC, Tracy Phinizy  
2550 Golf Road, East Tower, 10th Floor, Rolling Meadows, IL 60008



O.K. - LG



# **EXHIBIT “C”**

LIB 37514 4880

*Fraudulent Assignment (2)*

When recorded mail to:  
Ameriquest Mortgage Company  
P.O. Box 11607,  
Santa Ana, CA 92711

*Same loan #*

\* Loan Number: 0068398593-9703

118445  
LIBER 37514 PAGE - 280  
\$13.00 NIBC RECORDING  
\$4.00 REINDEMENTATION  
05/04/2006 01:12:25 P.M. RECEIPT# 51616

# RECORD SECOND

## ASSIGNMENT OF MORTGAGE

PAID RECORDED - OAKLAND COUNTY  
RUTH JOHNSON, CLERK/REGISTRAR OF DEEDS

In consideration of value received, the undersigned hereby sets over, assigns and transfers unto:  
→ Wells Fargo Bank, NA as Trustee under Pooling and Servicing Agreement\*

whose address is: C/O HomeEq 1100 Corporate Center Drive Raleigh, NC 27607

all its rights, title and interest of undersigned in and to that certain Real Estate Mortgage dated 12/17/04,  
executed by

EDWARD ARNOLD and MARY I ARNOLD, Husband and Wife

\*dated as of February 1, 2005 Asset Backed Pass-Through Certificates  
Series 2005 WHQ1

to Argent Mortgage Company, LLC  
and whose principal place of business is One City Boulevard West,  
Orange, CA 92868.  
and recorded in Liber 34829 , page(s) 776 of plats OAKLAND

County Records, State of Michigan described hereinafter as follows:

"LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF"

Commonly known as: 52881 RIGGS CT  
WIXOM, MI 48393

*THE DATES NOR  
THE YEARS  
MATCH!  
FOR A TRUST  
2004 2005*

Witnesses By:

\* Dated: 12/22/2004

*(282)*

Witness Laverne Dillard

Assignor: Ameriquest Mortgage Company

Witness Erica Greenberg

By: Tracy Phinizy

Title: Agent

\* State of Illinois  
County of Cook

On 12/22/2004, before me, Janice M. Baker  
personally appeared Tracy Phinizy, Agent

*Same INCORRECTING SPACING error*

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed  
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s) or the entity upon behalf of which is the person(s) acted; executed the instrument.

OFFICIAL SEAL  
JANICE M. BAKER  
NOTARY PUBLIC, STATE OF ILLINOIS  
My Commission Expires 05/19/2007  
AMERIQUEST

WITNESS my hand and official seal  
Janice M. Baker (Seal)  
Janice M. Baker

Document prepared by: Ameriquest Mortgage Company, LLC, Tracy Phinizy  
2550 Golf Road, East Tower, 10th Floor Rolling Meadows, IL 60008

700-50 (Rev 05/94)  
**RECEIVED**  
MAY 04 2006  
Ruth Johnson, Registrar of Deeds  
Oakland County, MI

*O.K. - LG*

# **EXHIBIT “D”**

IN THE CIRCUIT COURT FOR THE 10TH JUDICIAL  
CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

CASE NUMBER: 53-20 11 CA-00 2824-0000-00  
SEC: 7

CITIBANK, N.A.  
Plaintiff,

vs.

JOSE H RIVERA  
Defendant.

Date: 7-6-11  
Time: am 6:48  
Served: Luis Maldonado  
Initials & ID#: J. Conner  
Sub-serv #502  
Son-in-law

**SUMMONS**  
PERSONAL SERVICE ON A NATURAL PERSON

THE STATE OF FLORIDA:  
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint in this lawsuit on defendant JOSE H RIVERA at

476 BAR CT  
KISSIMMEE FL 34759

Lawsuit Summons  
6/28/11

DATED ON JUN 28 2011

RICHARD M. WEISS  
As Clerk of said Court

By D. Nicole Patterson  
As Deputy Clerk

**IMPORTANT**

A lawsuit has been filed against you. You have 20 calendar days after this Summons is served on you to file a written response to the attached Complaint or Petition with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the Court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).



Clerk of the Circuit Court  
P.O. Box 9963, Drawer CC-12  
Hartow, FL 33831



# **EXHIBIT “E”**

IN THE CIRCUIT COURT FOR THE 10TH  
JUDICIAL CIRCUIT IN AND FOR POLK  
COUNTY, FLORIDA

CASE NUMBER: 53-20 11 CA-00 2824 -0000-00  
SEC: 7 -----

CITIBANK, N.A.  
701 EAST 60TH STREET NORTH  
SIOUX FALLS SD 57117  
Plaintiff,

vs.

JOSE H RIVERA  
476 BAR CT  
KISSIMMEE FL 34759  
Defendant.

COMPLAINT

The Plaintiff sues the Defendant(s) and alleges:

**COUNT I – PROMISSORY NOTE**

1. This is an action for damages which exceed \$15,000.00.
2. The Defendant(s) executed and delivered a note, a copy is attached hereto and incorporated herein as Exhibit A.
3. The Plaintiff is the owner and holder of the note. ← Citi Claims Ownership
4. The Defendant(s) is in default pursuant to the terms of the note in that the Defendant(s) has failed to make the installment payments pursuant to the terms thereof, thereby breaching same.
5. All conditions precedent to the institution of this action have been performed or have occurred.
6. There is now due, owing and unpaid from Defendant(s) to Plaintiff the outstanding balance of \$180168.87 with interest on the note.
7. Plaintiff is obligated to pay its attorneys a reasonable fee for their services pursuant to the terms of the note.

WHEREFORE, the Plaintiff demands judgment for damages against the Defendant(s) of \$180168.87 plus interest, costs and a reasonable attorney fee.

Zakheim & LaVrar, P.A.  
Attorney for Plaintiff  
1045 S. University Dr.  
Suite 202  
Plantation, FL 33324  
(954) 735-4455

By: COPY  
Richard Battaglino, Esquire – Fla Bar No. 587931

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

Case No.: 53-2011-CA-002824-000-00  
Sec: #7

CITIBANK, N.A.

Plaintiff,

vs.

JOSE H. RIVERA

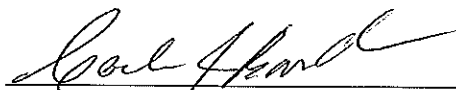
Defendant

---

**NOTICE OF SERVING PLAINTIFF'S REQUEST FOR PRODUCTION OF  
DOCUMENTS TO DEFENDANT**

COMES NOW, Defendant, JOSE H. RIVERA, by and through undersigned counsel and pursuant to Fla. R. Civ. P. 1.350, and give notice of serving his Request for Production of Documents to Plaintiff, CITIBANK, N.A., answers to which are requested within thirty (30) days from the Certificate of Service.

I HEREBY CERTIFY that one copy of the foregoing have been furnished by U.S. Mail this 10th day of August, 2011, to: Attorney Richard Battaglino, Esq. of Zakheim & LaVrar, PA, 1045 S. University Drive, Suite 202, Plantation, FL 33324.



---

CARLOS J. BONILLA  
Attorney for Defendant  
Florida Bar No. 0588717  
CARLOS J. BONILLA & ASSOCIATES, PL  
7901 KINGSPONTE PARKWAY  
SUITE 8  
ORLANDO, FL 32819  
Telephone: (407) 370-3066  
Fax: (407) 370-3105

# **EXHIBIT “F”**

**NOTE**

Note Attached To Complaint

June 26, 2006  
[Date]

KISSIMMEE  
[City]  
476 BAR COURT  
KISSIMMEE, FL 34759

Florida  
[State]

[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 190,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Oak Street Mortgage LLC ← Oak Street Bankrupt in 2007

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.5000%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on August 01, 2006

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on July 01, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at Oak Street Mortgage LLC, 11595 N MERIDIAN ST, SUITE 400, CARMEL, IN 46032

or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$ 1,460.94

**4. BORROWER'S RIGHT TO PREPAY \* See attached Addendum to Note**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

## 5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

## 6. BORROWER'S FAILURE TO PAY AS REQUIRED

### (A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **Ten** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.0000%** of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

### (B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

### (C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

### (D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

### (E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

## 7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

## 8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

## 9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

## 10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in

this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**11. DOCUMENTARY TAX**

The state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

Borrower has executed and acknowledges receipt of pages 1 through 3 of this Note.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED

Jose H. Rivera (Seal) \_\_\_\_\_ (Seal)  
JOSE H. RIVERA -Borrower -Borrower

\_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

\_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
-Borrower -Borrower

[Sign Original Only]

\*\* See ADDENDUM TO NOTE for Modifications and Additional Disclosures \_\_\_\_\_ (inits.)

\_\_\_\_\_  
Space Below Line For Lender Use Only

Without Recourse Pay To The Order Of

\_\_\_\_\_  
Oak Street Mortgage LLC

\_\_\_\_\_  
Authorized signer for Oak Street Mortgage LLC

Is this endorsement on Original Wet-Ink Note? Only "copy" produced. "Authorized Signer" title not used until recently after robo-signing scandal. Blank endorsement, but also NO signature to validate the endorsement. Company was out of business when this lawsuit was filed with no signature on endorsement. Makes the note void since no one can negotiate note.



# **EXHIBIT “G”**

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA**

Case No.: 53-2011-CA-002824-000-00  
Sec: #7

CITIBANK, N.A.

Plaintiff,

vs.

JOSE H. RIVERA

Defendant

---

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES**

Defendant JOSE H, RIVERA, (hereinafter the "Defendant"), by and through his undersigned counsel, answer Plaintiff's complaint as follows:

Count I – Promissory Note

1. Admitted for jurisdictional purposes only.
2. In response to Paragraph Two, Defendant is without knowledge as to the allegations therein and therefore denies them, and Defendant demands strict proof thereof.
3. In response to Paragraph Three, Defendant is without knowledge as to the allegations therein and therefore denies them, and Defendant demands strict proof thereof.
4. In response to Paragraph Four, Defendant is without knowledge as to the allegations therein and therefore denies them, and Defendant demands strict proof thereof.
5. In response to Paragraph Five, Defendant is without knowledge as to the allegations therein and therefore denies them, and Defendant demands strict proof thereof.
6. Denied.

7. In response to Paragraph Seven, Defendant is without knowledge as to the allegations therein and therefore denies them. Defendant specifically denies any obligation to pay Plaintiff's attorneys' fees.

**DEMAND FOR JURY TRIAL**

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

**PLAINTIFF LACKS STANDING AND CAPACITY TO SUE**

Plaintiff is not the true owner of the claim sued upon, is not the real party in interest and is not shown to be authorized to bring this action. Plaintiff therefore lacks capacity to prosecute this action. Plaintiff has not shown that it owns the note.

**SECOND AFFIRMATIVE DEFENSE**

**FAILURE TO AVER CHAIN OF TITLE, POSSESSION,  
AND OWNERSHIP OF THE NOTE**

Plaintiff has failed to show or prove that it is the owner and holder of the note, which is the subject matter of Plaintiff's complaint. Plaintiff has failed to show the complete and verified chain of title, possession, control and endorsement of the note with the specificity required by law.

**THIRD AFFIRMATIVE DEFENSE**

**FAILURE TO PRODUCE ASSIGNMENT, ORIGINAL NOTE AND ENDORSEMENTS**

Plaintiff has failed to produce the original note, or an assignment of the note with proper endorsement or affixed allonge. ← Borrower's lawyer disputes ownership of note and endorsement.

**FOURTH AFFIRMATIVE DEFENSE  
UNCLEAN HANDS**

Plaintiff is barred from accelerating the debt as a result of Plaintiff's unclean hands. Plaintiff's unclean hands result from Plaintiff's failure to properly service the mortgage securing any payments under the note as pursuant to applicable federal regulations and any contracts between the parties before filing this action. As a matter of equity, Plaintiff should be estopped from acceleration of the note because such action would be fundamentally inequitable and/or unconscionable.

#### **FIFTH AFFIRMATIVE DEFENSE**

##### **FAILURE TO COMPLY WITH DUTY OF GOOD FAITH AND FAIR DEALING**

Plaintiff is barred from accelerating the debt because of its failure to comply with its contractual duty of good faith and fair dealing. Plaintiff failed to act in good faith or to deal fairly with Defendant by failing follow the requirements and established standards of mortgage lending and servicing, thereby denying Defendants servicing options and protocols applicable to the subject note, which would have rendered moot this needless litigation.

#### **SIXTH AFFIRMATIVE DEFENSE**

##### **FAILURE OF CONDITIONS PRECEDENT**

Plaintiff has failed to comply with all conditions precedent to bringing this action, including but not limited to Plaintiff's failure to give Defendant proper notice of acceleration or default as required by all relevant instruments, laws, and regulations.

#### **SEVENTH AFFIRMATIVE DEFENSE**

##### **WAIVER**

Plaintiff has waived its right to accelerate the debt as a result of its practice of accepting late payments from Defendant and not requiring strict compliance with the terms of the note, and should therefore be estopped from enforcing the note as it would be inequitable.

**CLAIM FOR ATTORNEYS' FEES**

Defendant has retained the undersigned counsel to represent him in this action and is obligated to pay reasonable attorneys' fee for their services. Plaintiff is obligated to Defendant for those attorneys' fees in accordance with the underlying note and applicable Florida law.

WHEREFORE, the Defendant requests this honorable Court to dismiss Plaintiff's suit and prays that the Court award his costs and fees incurred in so defending same and for all such other relief as may be just and equitable.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 26<sup>th</sup> day of July, 2009 to Attorney Richard Battaglino, Esq. of Zakheim & LaVrar, PA, 1045 S. University Drive, Suite 202, Plantation, FL 33324, on this 25<sup>th</sup> Day of July, 2009.

---

CARLOS J. BONILLA  
Attorney for Defendants  
Florida Bar No. 0588717  
CARLOS J. BONILLA & ASSOCIATES, PL  
7901 KINGSPONTE PARKWAY  
SUITE 8  
ORLANDO, FL 32819  
Telephone: (407) 370-3066  
Fax: (407) 370-3105

# **EXHIBIT “H”**

CITIBANK, N.A.

Plaintiff,

vs.

JOSE H RIVERA,

Defendant.  
\_\_\_\_\_ /

**PLAINTIFF'S REPLY TO DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

The Plaintiff, CITIBANK, N.A., ("Plaintiff"), pursuant to Fla.R.Civ.P. 1.110, files this, its Reply to Defendant, JOSE H RIVERA's ("Defendant"), purported Affirmative Defenses, and states:

1. As for Defendant's FIRST purported affirmative defense that Plaintiff lacks standing and capacity to sue, Plaintiff denies and demands strict proof thereof. Plaintiff is the owner of the note that is the basis for this lawsuit. Plaintiff has provided the Note with Endorsement on this matter. ← After response, Citi Claims it has standing and has produced note and endorsements.
2. As for Defendant's SECOND purported affirmative defense that Plaintiff failed to show or prove that it's the holder of the note, Plaintiff denies and demands strict proof thereof. Plaintiff is the owner of the note that is the basis for this lawsuit. Plaintiff has provided the Note with Endorsement on this matter. ← After response, Citi Claims it has standing and has produced note and endorsements.
3. As for Defendant's THIRD purported affirmative defense that Plaintiff failed to produce the original note or assignment with proper endorsement, Plaintiff denies and demands strict proof thereof. Plaintiff is the owner of the note that is the basis for this lawsuit. Plaintiff has provided the Note with Endorsement on this matter. Further, this is not a foreclosure action; this is a suit for a money judgment based on the underlying promissory note. ← No Foreclosure, only suit on NOTE. They must own note too!
4. As for Defendant's FOURTH purported affirmative defense, that Plaintiff's cause of action is void for unclean hands, Plaintiff denies and demands strict proof thereof. Further, unclean hands

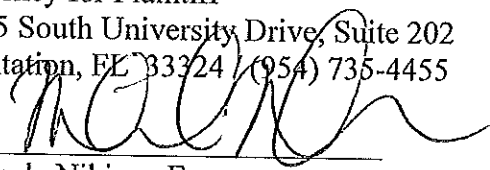


is an equitable defense which does not apply to an action at law.

5. As for Defendant's FIFTH purported affirmative defense of failure to comply with the duty of good faith and fair dealing, Plaintiff denies and demands strict proof thereof. Plaintiff states that it is not an affirmative defense under Fla.R.Civ.P. 1.110(d), and therefore denies.
6. As for Defendant's SIXTH purported affirmative defense, that Plaintiff failed to satisfy conditions precedent, Plaintiff denies and demands strict proof thereof. Plaintiff states that it is not an affirmative defense under Fla.R.Civ.P. 1.110(d), and therefore denies.
7. As for Defendant's SEVENTH purported affirmative defense, that the Plaintiff waived its right to accelerate the debt, Plaintiff denies and demands strict proof thereof. Plaintiff states that it is not an affirmative defense under Fla.R.Civ.P. 1.110(d), and therefore denies.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. Mail this \_\_\_\_\_ day of AUG 10 2011, 2011 to JOSE H RIVERA, C/O CARLOS J BONILLA, ESQ., 7901 KINGSPONTE PKWY, STE 8, ORLANDO, FL 32819.

Zakheim & LaVrar, P.A.  
Attorney for Plaintiff  
1045 South University Drive, Suite 202  
Plantation, FL 33324 (954) 735-4455

By   
Michele Nihiser, Esq.  
Fla Bar No. 84541

File Number: 9930009181

# **EXHIBIT “I”**

IN THE CIRCUIT COURT FOR THE 10TH  
JUDICIAL CIRCUIT IN AND FOR  
POLK COUNTY, FLORIDA

CASE NUMBER: 53-2011CA-002824-0000-00

CITIBANK, N.A.

Plaintiff,

vs.

JOSE H RIVERA

Defendant.

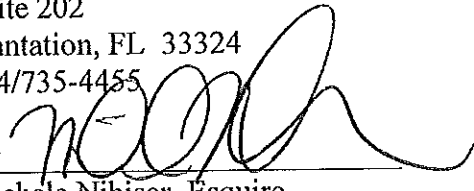
**NOTICE OF FILING**

PLEASE TAKE NOTICE that the undersigned hereby files the application and note endorsement in this cause.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. Mail this \_\_\_\_\_ day of AUG 10 2011, 2011 to JOSE H RIVERA , C/O CARLOS J. BONILLA 7901 KINGSPONTE PARKWAY, STE 8, ORLANDO FL 32819.

← Citi now files note endorsement, We Have Not Checked if Original or "Copy"

Zakheim & LaVrar, P.A.  
Attorney for Plaintiff  
1045 South University Drive  
Suite 202  
Plantation, FL 33324  
954/735-4455

By   
Michele Nihiser, Esquire  
Fla Bar No. 84541

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

File Number: 9930009181.001

Many staple marks or a "wet-ink" original.  
Perhaps various allonges removed and placed.

RIVERA

**NOTE**

LD  
9/12

June 28, 2006  
[Date]

KISSIMMEE  
[City]  
476 BAR COURT  
KISSIMMEE, FL 34759

Florida  
[State]

[Property Address]

Marks & Writing on Note indicates  
copy of copy or image, not original  
wet-ink note

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 190,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **Oak Street Mortgage LLC**

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **8.5000%**.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the **1st** day of each month beginning on **August 01, 2006**

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **July 01, 2036**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **Oak Street Mortgage LLC, 11595 N MERIDIAN ST, SUITE 400, CARMEL, IN 46032**

or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$ **1,460.94**

**4. BORROWER'S RIGHT TO PREPAY \* See attached Addendum to Note**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

*JP*

line indicates copy of copy or image, not original wet-ink note.

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

Poor quality of print text indicates copy of copy or image, not original wet-ink note.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of Ten calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.0000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

line indicate copy of copy or image, not original wet-ink note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in

More staple marks on last page, copy or allonge.

this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

11. DOCUMENTARY TAX

The state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

Borrower has executed and acknowledges receipt of pages 1 through 3 of this Note.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED

Signature of Jose H. Rivera, Borrower, with seal.

Empty line for Borrower signature and seal.

Empty line for Borrower signature and seal.

\*\* See ADDENDUM TO NOTE for Modifications and Additional Disclosures (Sign Originals)

Notice another endorsement to Citibank from CitiMortgage "hand-written," not stamped like other

Space Below Line For Lender Use Only

Notice signature appears after answer and stamps.

Without Recourse Pay To The Order Of Oak Street Mortgage, Inc. Oak Street Mortgage LLC Authorized Signer for Oak Street Mortgage LLC

Crystal F. Johnson, Funding Associate

Pay to the order of Citibank, NA without recourse on us CitiMortgage, Inc. Janet L. Sims, Senior Vice President, CitiMortgage, Inc.

line indicates copy of copy or image, not original wet-ink note.

# EXHIBIT “J”





# **EXHIBIT “K”**

Morgan  
11/22/10

MIN: 100196368001555898

**NOTE**

Loan Number: 2007152728

NOVEMBER 27, 2007  
[Date]

ALPHARETTA  
[City]

GEORGIA  
[State]

2691 TAMARACK DR, JASPER, GEORGIA 30143  
[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 87,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is GUARANTEED RATE, INC., A DELAWARE CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on JANUARY 1, 2008. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 4064 NORTH LINCOLN, #324, CHICAGO, ILLINOIS 60618

or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$ 549.90

**4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit;



and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep

the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

*Michael L Morgan* (Seal)  
MICHAEL L. MORGAN -Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

Without recourse, pay to the order of

By: Taylor, Bean & Whitaker  
Mortgage Corp.

*Eria Carter-Shaw*  
Eria Carter-Shaw, E.V.P.

[Sign Original Only]

# **EXHIBIT “L”**



**Process Loans, Not Paperwork™**

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**1 record matched your search:**

MIN: 1001963-6800155589-8 Note Date: 11/27/2007

MIN Status: Inactive

Servicer: [Ocwen Loan Servicing, LLC](#)  
West Palm Beach, FL

Phone: (800) 746-2936

Investor: This investor has chosen not to display their information. For assistance, please contact the servicer.

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