

IN THE DISTRICT COURT OF APPEAL  
STATE OF FLORIDA, SECOND DISTRICT

GEORGE E. MERRIGAN,  
Petitioner

v.

BANK OF N.Y. MELLON,  
FKA BANK OF N.Y.,  
Respondent.

Case No.: 2D11-  
L.T. Case No. 09-CA-055758

\_\_\_\_\_ /

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\* Original signed and notarized affidavits bound under separate cover.



3/9/2011 4:19 PM Filed Lee County Clerk of Courts  
IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA  
CIVIL ACTION

BANK OF NEW YORK MELLON

Plaintiff(s)

Case No : 09CA55758

and  
MERRIGAN, GEORGE E

Defendant(s)/

**NOTICE SETTING TRIAL/DOCKET SOUNDING**

This cause came before the Court on 3/9/2011 at docket sounding. *gh*

☒ The Docket Sounding has been continued for APR 27 2011 at 8:30 am

☐ This cause is set for Non-Jury Trial on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

Time reserved: \_\_\_\_\_

The above referenced matter shall take place in Courtroom 5-I, before Magistrate STELLA DIAMOND at the Lee County Justice Center, 1700 Monroe Street, Ft. Myers, FL 33901. **ALL PARTIES MUST APPEAR.** Any party may notice a Motion for Summary Judgment for the above court date.

The Docket Sounding has been continued for the following reasons:

☐ The Plaintiff shall file and notice the Motion for Summary Judgment to be heard on \_\_\_\_\_.

☐ All discovery will be completed by the next docket sounding date indicated above.

☐ All pending motion(s) to be heard prior to: \_\_\_\_\_.

☒ The Plaintiff/Defendant shall: notice & have heard Mot to Dismiss  
and before 4/27/11.

The prior order of referral to the magistrate and the order setting this matter for docket sounding is hereby ratified and confirmed. Any deadlines will be strictly adhered to by the parties unless a change is otherwise approved by the Court. The failure to abide by the requirements of the prior order setting this matter for docket sounding may result in sanctions by the Court, including the award of attorney's fees, fines, the striking of pleadings, and/or a dismissal of the action. **Stipulations between counsel shall not be effective to change this Notice absent Court Approval.**

DONE in Fort Myers, Lee County, Florida, this \_\_\_\_\_ day of MAR 09 2011 20\_\_.

*Stella Diamond*  
Magistrate STELLA DIAMOND

Copies:

A copy of this Notice has been provided to the plaintiff/plaintiff's attorney in court. The Plaintiff shall provide a copy of this Notice to each party and file a Certificate of Service in the court file.

**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Ken Kellum, Court Operations Manager, whose office is located at the Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL 33901, and whose telephone number is 239-533-1700, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.**





## Civil / Small Claims Detail Information

\* All case information on this website was last updated 4/3/2011 6:00:01 PM

**BANK OF NEW YORK MELLON, FKA BANK OF NEW YORK PLAINTIFF VS MERRIGAN,  
GEORGE E ETAL DEFENDANT**

**Case Number:** 09-CA-055758  
**Uniform Case Number:** 362009CA0557580001CH  
**Case Type:** CA Mortgage Foreclosure  
**Sub Case Type:**  
**Judge:** McHugh, Michael T  
**Filed Date:** 3/25/2009  
**Disposition:**  
**Disposition Date:**

<b><u>Plaintiffs</u></b>	
Bank of New York Mellon	Attorney: Vivien Leora Lurlene
Bank of New York Mellon	Attorney: Vivien Leora Lurlene
Bank of New York Mellon	Attorney: Vivien Leora Lurlene

<b><u>Defendants</u></b>	
Merrigan, George E	Attorney: Craig Ronald Lynd
Merrigan, Sean	Attorney: Craig Ronald Lynd
Unknown Parties	Attorney:
Mortgage Electronic Registration Systems Inc	Attorney:
Doe, John	Attorney:

App. 2



Doe, Jane

Attorney:

<b>Service Events</b>					
<b>Event Date</b>	<b>Service Text</b>	<b>Name</b>	<b>Service Date</b>	<b>Response Due Date</b>	<b>Return Date</b>
3/25/2009	Summons (20 day) Issued	Merrigan, George E	3/27/2009	4/16/2009	4/6/2009
3/25/2009	Summons (20 day) Issued	Merrigan, Sean	3/27/2009	4/16/2009	4/6/2009
3/25/2009	Summons (20 day) Issued	Mortgage Electronic Registration Systems Inc	3/30/2009	4/20/2009	4/6/2009
3/25/2009	Summons (20 day) Issued	Doe, John			4/6/2009
3/25/2009	Summons (20 day) Issued	Doe, Jane			4/6/2009

<b>Docket Lines</b>	
<b>Docket Date</b>	<b>Docket Text</b>
3/25/2009	Lis Pendens
3/25/2009	Complaint
3/25/2009	Civil Cover Sheet
3/25/2009	Summons (20 day) Issued Mortgage Electronic Registration Systems Inc (Served 03/30/2009)
3/25/2009	Summons (20 day) Issued Merrigan, Sean (Served 03/27/2009)
3/25/2009	Summons (20 day) Issued Merrigan, George E (Served 03/27/2009)
3/25/2009	Summons (20 day) Issued Doe, Jane (Returned unserved 04/06/2009)
3/25/2009	Summons (20 day) Issued Doe, John (Returned unserved 04/06/2009)
5/1/2009	Notice of Appearance
5/1/2009	Notice of Appearance
5/1/2009	Motion to Dismiss
5/1/2009	Motion to Dismiss
4/5/2010	Notice of Hearing 7-21-10 at 2:30pm

App. 3



6/9/2010	Order Granting Motion To Abate
6/9/2010	Motion to Abate
7/21/2010	Minutes
1/11/2011	Order Setting Case for Docket Sounding & Referral to GM 3/9/2011 at 1pm in Courtroom 5-E
1/19/2011	Returned Mail
2/23/2011	Stipulation for Substitution of Counsel
3/9/2011	Notice Setting Trial/Docket Sounding 4/27/2011 at 8:30am
3/15/2011	Notice of Failure To Comply

End of Civil / Small Claims Detail Information



IN THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, STATE OF FLORIDA CIVIL DIVISION

CASE NO: 09-CA-55758

**Bank of New York Mellon, fka Bank of New York**  
Plaintiff,


VS

**George E Merrigan et al.**  
Defendant  
\_\_\_\_\_

**NOTICE OF FAILURE OF PLAINTIFF TO POST NONRESIDENTIAL**  
**COST BOND ON BEHALF OF DEFENDANT**

YOU ARE HEREBY NOTIFIED that Florida Statutes 57.011 requires nonresidential Plaintiffs to post a cost bond with a surety approved by the Clerk of the Court in the amount of \$100.00. Failure to post this bond with an appropriate surety within 20 days of the Notice entitles Defendant to dismissal of this lawsuit. Defendant will seek such a dismissal and any other remedy provided for under applicable statute and rules, including taxation of costs and attorney's fees against attorneys of record for the Plaintiff.

GOVERN YOURSELF ACCORDINGLY.

  
\_\_\_\_\_  
Michele Belmont, Esq FBN 52001  
8695 College Parkway  
Suite 1112  
Fort Myers, FL 33919  
239-848-6552



**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing was sent on March <sup>14</sup>~~13~~, 2011 via  
U.S. Mail to: <sub>15</sub>

Bank of America PO BOX 5170 Simi Valley, CA 93062



Michele Belmont, Esq FBN 52001

8695 College Parkway

Suite 1112

Fort Myers, FL 33919

239-848-6552



THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE  
COUNTY, FLORIDA CIVIL ACTION

THE BANK OF NEW YORK MELLON,  
Plaintiff

VS.

CASE NO.: 09-CA-55758

GEORGE E. MERRIGAN, ET AL,  
Defendants.

**ORDER SETTING CASE FOR DOCKET SOUNDING**  
**AND ORDER OF REFERRAL TO GENERAL MAGISTRATE**  
**(Magistrate Stella Diamond)**

THE COURT ON ITS OWN MOTION DETERMINES THIS CAUSE IS AT ISSUE AND  
READY TO BE SET FOR TRIAL.

ORDERED AND ADJUDGED

1. Docket Sounding.

The Court has set a docket sounding before **Magistrate Stella Diamond** on March 9, 2011 at 1:00 P.M. in Courtroom 5-E, Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL 33901, or as soon thereafter as may be heard.

**If this case is appropriate for a Motion for Summary Judgment, either party may Notice the Summary Judgment to be heard at the Docket Sounding.** Otherwise, the day and time certain for the start of trial will be determined at docket sounding. The parties will receive at least 30 days advance notice of the trial date. A motion to continue can be heard by the Court at docket sounding. No other motions will be heard. All trial attorneys are to be present for docket sounding. **If trial attorneys are not available for the Docket Sounding, an attorney with full authority to make binding decisions must be present.** Any request for continuance of Docket sounding must be made timely, by motion, and set for hearing at a time prior to the scheduled date of the Docket Sounding. Failure of an attorney or pro-se litigant to attend the Docket Sounding will subject the attorney and/or litigant to sanction as outlined in paragraph 13, as well as potentially having the case set for trial.

2. Exchange of Expert & Lay Witnesses. If a trial date is set at docket sounding, counsel for the plaintiff shall submit to opposing counsel the names and addresses of **all** plaintiff(s) witnesses within 5 days following the date of the docket sounding. Within 10 days following the date of the docket sounding, the defense counsel shall submit to opposing counsel the names and addresses of **all** defense witnesses. The witness list shall contain a plain and concise statement regarding the subject matter of the witnesses testimony. No party shall be permitted to call any witness not so disclosed, without prior permission of the Court, or written stipulation executed by all parties.

3. Meeting before Trial. The attorneys for all parties, or the party themselves if they are representing themselves (pro se), are directed to meet together by agreement, initiated by counsel for the plaintiff, no later than 7 days before the trial to:

- a. Mark all exhibits for identification and prepare a chronological exhibit list for use by clerk and the Court at trial (actual exhibits and documentation evidence shall be available for inspection at this time). Any exhibits not so marked will not be admissible absent a stipulation of all parties.



- b. Agree to admit or not admit evidence and list specific objections, if any.
  - c. Stipulate as to any matter of fact and law about which there is no issue to avoid unnecessary proof, i.e., chain of custody or records custodian.
  - d. Review all depositions which are to be offered for any purpose other than impeachment to resolve objections to the portions to be offered in evidence.
  - e. Discuss the possibility of settlement.
  - f. Submit an itemized statement of special damages plaintiff expects to prove.
  - g. Discuss and complete any other matters which may simplify the issues or aid in the speedy disposition of this action.
4. Motions. All **motions in limine**, shall be in writing, filed and served prior to trial. They will be heard the morning of the first day of trial.
5. Discovery. All discovery shall be completed prior to the docket sounding. The conduct of discovery subsequent to the docket sounding shall be permitted only on the order of the Court for good cause shown and which will not delay the trial of this cause.
6. If counsel desires that a proceeding be reported by a court reporter, it is the responsibility of counsel to secure said services.
7. Representation and Authority. That in order for the full purpose of the pre-trial procedures to be accomplished, each party shall be represented at all meetings and hearings required herein by an attorney, unless they represent themselves (pro se), who will participate in the trial of the cause and who is vested with full authority to make admissions and disclosure of facts, and to bind the clients by agreement in respect to all matters pertaining to the trial of the cause. If a party is pro se they are mandated to be at all meetings and hearings required under this Order.
8. Exhibits. All composite exhibits shall be satisfactorily bound to avoid the loss and disintegration of component parts of pages before presentation to the Court. Exhibits to be introduced which are larger than an 8 ½ x 11" sheet of paper may be used at trial, but if practicable, same shall be reduced to 8 ½ x 11", and the reduced size copy shall be the exhibit retained by the clerk in the court file. The oversized exhibits so reduced shall be returned to counsel, or the pro se litigant, at the close of the trial.
9. Witnesses. The parties shall assure the availability of their witnesses for the trial or to otherwise preserve their testimony for trial as provided by the Florida Rules of Civil Procedure. The Court is not inclined to allow a witness to testify "out of order", over objection, or to take a recess or adjust its schedule for the convenience of such a witness.
10. Motions and Stipulations for Continuances. This Court adheres strictly to Rule of Judicial Administration 2.545(e) and Rule of Civil Procedure 1.460. Accordingly, motions for continuance and stipulations must be in writing and set forth:
- a. The signature of the party as well as the attorney.
  - b. A concise statement of the reasons for a continuance. If based on non-availability of a witness, a showing of when it is believed the witness will be available must be stated.

Any stipulation must be approved by the Court and must be heard at least ten (10) days prior to the date of trial, unless otherwise permitted by the Court. No motion will be heard that is not in compliance with this order.

11. Settlement. Counsel, or the pro se litigant, shall immediately notify this Court in the event of settlement and submit a stipulation for an order of dismissal and a final disposition form.



12. Notice. Please review this order to see that it was sent to all proper persons at proper addresses.

13. Sanctions. Failure to comply with the requirements of this Order may subject the party and/or attorney to appropriate sanctions, including the award of attorneys' fees, fines, striking of pleadings, and/or dismissal of the case.

### **ORDER OF REFERRAL TO GENERAL MAGISTRATE**

THIS CAUSE came on before the court upon the court's own motion and the Court, having been duly advised in the premises, it is now

ORDERED:

That this cause is referred to **Stella Diamond**, General Magistrate, Civil Division, Twentieth Judicial Circuit for further proceedings, pursuant to Rule 1.490 of the Florida Rules of Civil Procedure and current administrative orders of the Court. Any party wishing to object to the referral to the Magistrate must file a timely objection no later than the date of the scheduled hearing. Failure to timely object shall constitute a waiver of objection and consent to proceed in accordance with the provisions of this Order.

The General Magistrate shall hold such hearings as deemed necessary and shall file, as soon as practicable, a Report, together with a recommended order, of General Magistrate.

If required by the General Magistrate, the attorneys shall prepare a Recommended Order of General Magistrate. Failure to submit said Recommended Order of General Magistrate in a timely manner may result in sanctions being imposed by the Circuit Court Judge.

This case is referred to the General Magistrate for consideration and hearing on the following:

**NON-JURY TRIAL ON COMPLAINT TO FORECLOSURE MORTGAGE AND MOTION FOR SUMMARY JUDGMENT, IF FILED IN THIS CASE. ALL MOTIONS, RESPONSES, AND ANY OTHER MATTER IN THIS CASE ARE NOW BEING REFERRED TO THE MAGISTRATE.**

(As indicated in the ORDER SETTING CASE FOR DOCKET SOUNDING, if this case is appropriate for a Motion for Summary Judgment, either party may Notice the Summary Judgment to be heard at the Docket Sounding. A separate Order of Referral shall not be required on the Motion for Summary Judgment since this and all matters in this case are being referred to the General Magistrate at this time)

IT IS FURTHER ORDERED and noted that the above matter(s) and responses are specifically referred to the General Magistrate for further proceedings, pursuant to Rule 1.490 of the Florida Rules of Civil Procedure and current administrative orders of the court. The General Magistrate is authorized to administer oaths and conduct hearings which may include taking of evidence and shall file a Report containing findings of fact and conclusions of law, together with the recommended order as to a ruling by the Court, and shall serve copies of the Report on all parties.

A time and place shall be assigned for the proceedings as soon as is reasonably possible after this referral is made and notice shall be given to each of the parties either by the General Magistrate or one or more of the parties.

Review of the Report made by the General Magistrate shall be by exceptions filed within ten (10) days of service of the Report of the Magistrate as provided in Rule 1.490(h), Florida Rules of Civil Procedure. If no exceptions are filed within that period, the Court shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party. For the purpose



of the hearing on exceptions, a record to support the exceptions, including a transcript of all relevant proceedings if necessary for the court's review, shall be provided to the Court by the party seeking review. Except as otherwise allowed by the Court, the party seeking review shall deliver the transcript of all relevant proceedings necessary for the Court's review to the judge and provide copies to all parties within twenty (20) days of the filing of exceptions or the exceptions may be denied. All parties are advised that in this Circuit electronic recording is not provided by the court. A party may provide a court reporter at that party's expense.

DONE AND ORDERED in Lee County, Florida this 6<sup>th</sup> day of January, 2011.

  
Circuit Court Judge

**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Ken Kellum, Court Operations Manager, whose office is located at the Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL 33901, and whose telephone number is 239-533-1700, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.**

#### CERTIFICATE OF SERVICE

I certify that a copy of this document was mailed to the attorneys of record at their designated mailing addresses, on this 10<sup>th</sup> day of January, 2011.

#### Service List:

Law Offices of David J. Stem, P.A.  
900 South Pine Island Road  
Suite 400  
Plantation, FL 33324-3920

Kaufman, Englett & Lynd, LLC  
151 Wymore Rd.  
Suite 2100  
Altamonte Springs, FL 32714

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.  
C/O ELECTRONIC DATA SYSTEMS CORPORATION  
3300 SW 34TH AVE  
SUITE 101  
OCALA, FL 34474

UNKNOWN TENANT(S)  
2723 SW 17TH PLACE  
CAPE CORAL, FL 33914

  
Senior Secretary III



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA

CIVIL ACTION

Bank of New York Mellon, fka Bank of New York

Plaintiff

vs

Merrigan, George E etal

Defendant

**FILED**

JUL 21 2010

Charlie Green, Clerk Circuit  
Court Lee County, Florida  
BY: \_\_\_\_\_ D.C.

Case No.: 09-CA-055758

MINUTES

Date: 7/21/10

Deputy Clerk: Peterson

Judge: Lee Ann Schreiber

Court Reporter:

Attorney for Plaintiff: Hill ☒ Present ☐ Not Present

Attorney for Defendant: Dugan ☒ Present ☐ Not Present

☐ Present ☐ Not Present

☐ Present ☐ Not Present

Hearing Information

☒ Motion Dismiss ☐ Granted ☐ Denied ☐ Reserved

☐ Motion ☐ Granted ☐ Denied ☐ Reserved

☐ Motion ☐ Granted ☐ Denied ☐ Reserved

☐ Other: ☐ Granted ☐ Denied ☐ Reserved

Notes:

Cannot proceed case abated until

further notice from court per order dated

6/9/10

Order to be prepared by:

☒ Plaintiff's Attorney ☐ Defendant's Attorney ☐ Order signed in open court

☐ HEARING CANCELLED



IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT, IN  
AND FOR LEE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION  
CASE NO: 36-2009-CA-055758

THE BANK OF NEW YORK MELLON F/K/A  
THE BANK OF NEW YORK AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS CWALT,  
INC. ALTERNATIVE LOAN TRUST 2005-  
33CB MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2005-33CB

PLAINTIFF

VS.

GEORGE E. MERRIGAN, ET AL

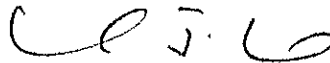
DEFENDANT(S)

**ORDER TO ABATE PROCEEDINGS**

THIS CAUSE having come before the Court on Plaintiff's Ex Parte Motion to Abate Proceedings, and the Court being fully advised in the premises, it is hereby ORDERED:

1. Plaintiff's Motion to Abate Proceedings is hereby GRANTED.
2. The file shall be placed on inactive status pending further order of the Court.

**DONE AND ORDERED** in Chambers at LEE County, Ft. Myers, this 8<sup>th</sup> day of July, 2010.



Michael T. McHugh, Circuit Court Judge

Copies to:  
LAW OFFICE OF DAVID J. STERN, P.A. *DR*  
900 SOUTH PINE ISLAND ROAD, SUITE 400  
PLANTATION, FL 33324-3920

KERRY ADAMS, ESQ.  
FOR GEORGE E. MERRIGAN  
AND SEAN MERRIGAN  
151 WYMORE RD., STE 2100  
ALTAMONTE SPRINGS, FL 32714

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.  
C/O JEFF OGDEN, AUTH TO ACCEPT SVC  
3300 SW 34TH AVENUE, SUITE 101  
OCALA, FL 34474

UNKNOWN TENANTS  
2723 SW 17TH PLACE  
CAPE CORAL, FL 33914

Case #: 09-31263 CWF



IN THE CIRCUIT COURT OF THE 20TH JUDICIAL  
CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION  
CASE NO: 36-2009-CA-055758

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW  
YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC.  
ALTERNATIVE LOAN TRUST 2005-33CB MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2005-33CB

PLAINTIFF

VS.

GEORGE E. MERRIGAN, ET AL

DEFENDANT(S)

**EX PARTE MOTION TO ABATE PROCEEDINGS**

Plaintiff, by and through its undersigned counsel, hereby files this Motion to Abate  
Proceedings and in support thereof states:

1. On March 25, 2009, the Plaintiff filed a Mortgage Foreclosure action against the  
named defendant(s).
2. This mortgage is part of a multistate initiative by the Plaintiff to review loans for  
possible qualifications for possible loss mitigation efforts under the Nationwide Home Retention  
Program.
3. Plaintiff needs additional time to complete the process.

WHEREFORE, Plaintiff respectfully requests this honorable court to abate the proceedings until  
the review is completed and the Plaintiff receives further order from the Court to reinstate the matter as  
pending.

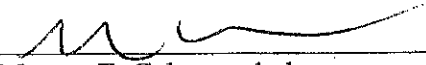
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Ex Parte Motion to Abate Proceedings  
was furnished by U.S. mail this 7 day of June 2010 to the following:

KERRY ADAMS, ESQ.  
FOR GEORGE E. MERRIGAN  
AND SEAN MERRIGAN  
151 WYMORE RD., STE 2100  
ALTAMONTE SPRINGS, FL 32714

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.  
C/O JEFF OGDEN, AUTH TO ACCEPT SVC  
3300 SW 34TH AVENUE, SUITE 101  
OCALA, FL 34474

UNKNOWN TENANTS  
2723 SW 17TH PLACE  
CAPE CORAL, FL 33914

  
Marron T. Gebremeskel  
Law Offices of David J. Stern, P.A.  
900 S. Pine Island Road, Suite 500  
Plantation, FL 33324  
(954) 233-80000  
Bar #: 68819

09-31263.ABT



IN THE CIRCUIT COURT OF THE 20TH  
JUDICIAL CIRCUIT, IN AND FOR LEE  
COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

THE BANK OF NEW YORK MELLON  
F/K/A THE BANK OF NEW YORK AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDERS CWALT, INC.  
ALTERNATIVE LOAN TRUST 2005-  
33CB MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2005-33CB

Case No.: 09-CA-055758

DIVISION: Civil

Plaintiffs,

vs.

GEORGE E. MERRIGAN, ET AL  
Defendant,

---

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that the above-styled action will be heard by the Honorable **LEE A. SCHREIBER** in Chambers at LEE COUNTY COURTHOUSE, 1700 MONROE STREET, 2ND FLOOR, FT. MYERS, FL 33901, on **July 21, 2010 at 2:30 pm** or soon thereafter as counsel may be heard, upon the following:

***Defendant's Motion to Dismiss***

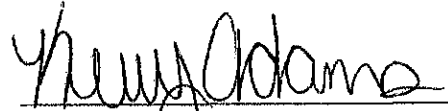
**PLEASE BE GOVERNED ACCORDINGLY.**

In accordance with the Americans with Disability Act, persons in need of a special accommodation to participate in this proceeding or to access a court service, program or activity shall, within a reasonable time prior to any proceeding or need to access a service, program or activity, contact the Court Administration, or 1-800-955-8771 (TDD) or 1-800-955-8770 (V) via Florida Relay Service within 2 working days of your receipt of this document.



**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that I have furnished a true and complete copy to all parties listed on the attached mailing list; by U.S. Mail today, this 29<sup>th</sup> day of March 2010.



Kerry Adams, Esq.

Florida Bar No. 0071367

John Schreiber

Florida Bar No. 0062249

Tara Warrington, Esq.

Florida Bar No. 57871

Kaufman, Englett & Lynd, LLC

111 N. Magnolia Ave., Suite 1500

Orlando, FL 32801

Telephone No.: (407) 513-1900

Facsimile No.: (407) 513-1972

Attorney for Defendant,

GEORGI E. MERRIGAN



Mailing List

Georgi E. Merrigan  
2723 SW 17th Place  
Cape Coral, FL 33914  
*Defendant*

Vivien Lurlene, Esq.  
Law Offices of David J. Stern, P.A.  
900 South Pine Island Road, Suite 400  
Plantation, FL 33324-3920  
*Counsel for THE BANK OF NEW YORK MELLON F/K/A*



IN THE CIRCUIT COURT OF THE  
TWENTIETH JUDICIAL CIRCUIT, IN  
AND FOR LEE COUNTY, FLORIDA

THE BANK OF NEW YORK MELLON F/K/A  
THE BANK OF NEW YORK AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS CWALT,  
INC. ALTERNATIVE LOAN TRUST 2005-  
33CB MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2005-33CB,

Case No.: 2009-CA-055758

Division:

Plaintiff,

v.

GEORGE E. MERRIGAN, et al,

Defendants.

---

**MOTION TO DISMISS FOR INSUFFICIENT  
SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION**

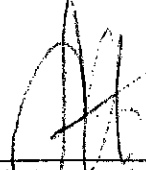
COMES NOW, Defendants, GEORGI E. MERRIGAN and SEAN MERRIGAN and files this, their Motion to Dismiss for Insufficient Service of Process and Lack of Personal Jurisdiction. Plaintiff has filed summonses that do not demonstrate that service of process was perfected upon Defendants, GEORGI E. MERRIGAN and SEAN MERRIGAN, pursuant to Section 48.031, *Florida Statutes*. Plaintiff served GEORGI E. MERRIGAN, however, the above caption notes Defendant to be GEORGE E. MERRIGAN. Therefore, service of process is insufficient or otherwise lacking for improperly identifying the correct party to this action and, therefore, the Court does not have personal jurisdiction over this Defendant and Plaintiff's Complaint must be dismissed without prejudice.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have furnished a true and correct copy of the foregoing to: Vivian Lurlene, Esq., Attorney for Plaintiff, of The Law Offices of David J. Stern, P.A.,



900 South Pine Island Rd., Suite 400, Plantation, Florida 33324-3920 by U. S. Mail today,  
April 27, 2009.



---

Craig R. Lynd, Esq.  
Florida Bar No. 122210  
Jeffrey S. Kaufman Jr., Esq.  
Florida Bar No. 099538  
Christopher H. Hunt, Esq.  
Florida Bar No. 021705  
Kristen V. Schlereth, Esq.  
Florida Bar No. 0028401  
Kaufman, Englett & Lynd, LLC  
151 Wymore Rd. Ste. 2100  
Altamonte Springs, FL 32714  
Telephone No.: (407) 513-1900  
Facsimile No.: (407) 513-1971  
Attorney for Defendant(s),  
Georgi E. Merrigan and Sean Merrigan



IN THE CIRCUIT COURT OF THE  
TWENTIETH JUDICIAL CIRCUIT, IN  
AND FOR LEE COUNTY, FLORIDA

THE BANK OF NEW YORK MELLON F/K/A  
THE BANK OF NEW YORK AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS CWALT,  
INC. ALTERNATIVE LOAN TRUST 2005-  
33CB MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2005-33CB,

Case No.: 2009-CA-055758  
Division:

Plaintiff,

v.

GEORGE E. MERRIGAN, et al,

Defendants.

---

**NOTICE OF SPECIAL APPEARANCE**

COMES NOW, JEFFREY S. KAUFMAN, JR., ESQUIRE, and enters this Notice of Special Appearance on behalf of Defendants, GEORGI E. MERRIGAN and SEAN MERRIGAN. Special Appearance is being made to file pre-answer defenses, including but not limited to, a Motion to Dismiss based upon improper identification of party and/or insufficient service of process/lack of personal jurisdiction.

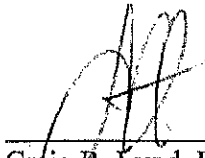
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have furnished a true and correct copy of the foregoing to: Vivian Lurlene, Esq., Attorney for Plaintiff, of The Law Offices of David J.



Stern, P.A., 900 South Pine Island Rd., Suite 400, Plantation, Florida 33324-3920 by U. S.

Mail today, April 27, 2009.



---

Craig R. Lynd, Esq.  
Florida Bar No. 122210  
Jeffrey S. Kaufman Jr., Esq.  
Florida Bar No. 099538  
Christopher H. Hunt, Esq.  
Florida Bar No. 021705  
Kristen V. Schlereth, Esq.  
Florida Bar No. 0028401  
Kaufman, Englett & Lynd, LLC  
151 Wymore Rd. Ste. 2100  
Altamonte Springs, FL 32714  
Telephone No.: (407) 513-1900  
Facsimile No.: (407) 513-1971  
Attorney for Defendant(s),  
Georgi E. Merrigan and Sean Merrigan



IN THE CIRCUIT COURT OF THE 20TH JUDICIAL  
CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION  
CASE NO:

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF  
NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS  
CWALT, INC. ALTERNATIVE LOAN TRUST 2005-33CB  
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-  
33CB

**09 - CA - 055758**  
**Judge: McHugh, Michael T**

PLAINTIFF

VS.

GEORGE E. MERRIGAN; SEAN MERRIGAN; ANY AND ALL  
UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER,  
AND AGAINST THE HEREIN NAMED INDIVIDUAL  
DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR  
ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM  
AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEEES  
OR OTHER CLAIMANTS; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.; JOHN DOE AND JANE DOE  
AS UNKNOWN TENANTS IN POSSESSION

**FILED**

**MAR 25 2009**

Charlie Green, Clerk Circuit  
Court Lee County, Florida  
BY: \_\_\_\_\_ D.C.

DEFENDANT(S)

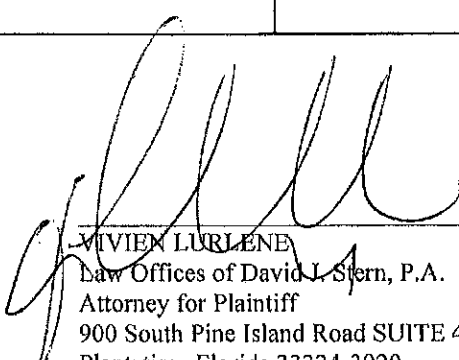
**CIVIL COVER SHEET**

DOMESTIC RELATIONS	TORTS	OTHER CIVIL
<input type="checkbox"/> SIMPLIFIED DISSOLUTION	<input type="checkbox"/> PROFESSIONAL MALPRACTICE	<input type="checkbox"/> CONTRACTS
<input type="checkbox"/> DISSOLUTION	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> CONDOMINIUM
<input type="checkbox"/> SUPPORT - IV-D	<input type="checkbox"/> AUTO NEGLIGENCE	<input checked="" type="checkbox"/> REAL PROPERTY/MORTGAGE FORECLOSURE
<input type="checkbox"/> SUPPORT - NON IV-D	<input type="checkbox"/> OTHER NEGLIGENCE	<input type="checkbox"/> EMINENT DOMAIN
<input type="checkbox"/> URESA - IV-D		<input type="checkbox"/> OTHER
<input type="checkbox"/> URESA - NON IV-D		
<input type="checkbox"/> DOMESTIC VIOLENCE		
<input type="checkbox"/> OTHER DOMESTIC RELATIONS		

Is Jury Trial Demanded in Complaint?

☐ yes  
☒ no

DATE: 3/23, 2009

  
VIVIEN LURLENE  
Law Offices of David J. Stern, P.A.  
Attorney for Plaintiff  
900 South Pine Island Road SUITE 400  
Plantation, Florida 33324-3920  
(954) 233-8000  
Bar #: 715492



IN THE CIRCUIT COURT OF THE 20TH JUDICIAL  
CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION  
CASE NO:

**09 - CA - 055758**

**Judge: McHugh, Michael T**

THE BANK OF NEW YORK MELLON F/K/A  
THE BANK OF NEW YORK AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS CWALT,  
INC. ALTERNATIVE LOAN TRUST 2005-  
33CB MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2005-33CB

PLAINTIFF

VS.

GEORGE E. MERRIGAN; SEAN MERRIGAN;  
ANY AND ALL UNKNOWN PARTIES  
CLAIMING BY, THROUGH, UNDER, AND  
AGAINST THE HEREIN NAMED  
INDIVIDUAL DEFENDANT(S) WHO ARE  
NOT KNOWN TO BE DEAD OR ALIVE ,  
WHETHER SAID UNKNOWN PARTIES MAY  
CLAIM AN INTEREST AS SPOUSES, HEIRS,  
DEWISEES, GRANTEEES OR OTHER  
CLAIMANTS; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.; JOHN DOE  
AND JANE DOE AS UNKNOWN TENANTS IN  
POSSESSION

DEFENDANT(S)

COMPLAINT TO FORECLOSE MORTGAGE  
AND TO ENFORCE LOST LOAN DOCUMENTS

Plaintiff, sues the Defendant(s) and alleges:

COUNT I

1. THIS IS AN ACTION to foreclose a Mortgage on real property in LEE County, Florida.
2. This Court has jurisdiction over the subject matter herein.
3. On MAY 3, 2005 GEORGE E. MERRIGAN AND SEAN MERRIGAN, WIFE AND HUSBAND executed and delivered a Promissory Note and a Mortgage securing payment of the Note to the Payee named thereon.
4. The Mortgage was recorded on MAY 25, 2005 in Official Records Book 4725 at page 2246, of the Public Records of LEE County, Florida, and mortgaged the property described in it, then owned by and possessed by the Mortgagors, a copy of the Mortgage IS attached hereto as "Exhibit "A". Said mortgage was subsequently assigned to THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST 2005-33CB MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-33CB by virtue of an assignment to be recorded.
5. The Plaintiff owns and holds the Note and Mortgage.
6. The property is now owned by the Defendant(s), GEORGE E. MERRIGAN AND SEAN MERRIGAN, if living and if dead, the unknown spouses, heirs and beneficiaries of GEORGE E. MERRIGAN AND SEAN MERRIGAN who hold(s) possession.
7. There is a default under the terms of the note and mortgage for the NOVEMBER 1, 2008 payment and all payments due thereafter.

**FILED**

**MAR 25 2009**

Charlie Green, Clerk Circuit  
Court Lee County, Florida  
BY: \_\_\_\_\_ D.C.



8. All conditions precedent to the acceleration of this Mortgage Note and to foreclosure of the Mortgage have been fulfilled or have occurred.
9. The Plaintiff declares the full amount payable under the Note and Mortgage to be due.
10. The borrowers owe Plaintiff \$334,948.91 that is due in principal on the Mortgage Note and Mortgage, together with interest from OCTOBER 1, 2008, late charges, and all costs of collection including title search expenses for ascertaining necessary parties to this action and reasonable attorney's fees.
11. Plaintiff is obligated to pay its attorney a reasonable fee for his services rendered.
12. Defendants, John Doe and Jane Doe, may claim an interest in the property described in the Mortgage as tenants pursuant to a lease agreement, either written or oral. Said interest is subject, subordinate, and inferior to the lien of the Mortgage held by Plaintiff.
13. In addition to all other named defendants, the unknown spouses, heirs, devisees, grantees, assignees, creditors, trustees, successors in interest or other parties claiming an interest in the subject property by, through under or against any of said defendants, whether natural or corporate, who are not known to be alive or dead, dissolved or existing, are joined as defendants herein. The claims of any of said parties are subject, subordinate, and inferior to the interest of Plaintiff.
14. The Defendant(s), MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., IS joined because IT may claim some interest in or lien upon the subject property by virtue of a MORTGAGE recorded in INSTRUMENT NO. 2007000214294 in LEE COUNTY which is inferior to Plaintiff's Mortgage described herein.

WHEREFORE, Plaintiff prays: That an accounting may be had and taken under the direction of this Court of what is due the Plaintiff for principal and interest on said Mortgage and Mortgage Note, and for the costs, charges and expenses, including attorney's fees and title search costs, and advancements which Plaintiff may be put to or incur in and about this suit, and that the Defendants found responsible for same be ordered to pay the Plaintiff herein the amounts so found to be due it; that in default of such payments, all right, title, interest, claim, demand, or equity of redemption of the Defendants and all other persons claiming by, through, under or against said Defendants since the filing of the Lis Pendens herein be absolutely barred and foreclosed and that said mortgage property be sold under the direction of this Court; that out of the proceeds of said sale, the amounts due the Plaintiff may be paid so far as same will suffice; and that a deficiency judgment be entered if applicable and only in the event no Order of Discharge of Personal Liability in Bankruptcy has been entered as to any of the Defendants who signed the subject Note and Mortgage and a Writ of Possession be issued.

#### COUNT II

15. This is an action to enforce a lost, destroyed or stolen promissory note and Mortgage under Fla.Stat. §673.3091.
16. On MAY 3, 2005, GEORGE E. MERRIGAN AND SEAN MERRIGAN, WIFE AND HUSBAND, executed and delivered a Promissory Note and a Mortgage securing payment of the Note to the payee named thereon.
17. The Mortgage was recorded on MAY 25, 2005 in Official Records Book 4725 at page 2246, of the Public Records of LEE County, Florida, a substantial copy of the Mortgage being attached hereto as composite Exhibit "A" to the Plaintiff's original Complaint herein.



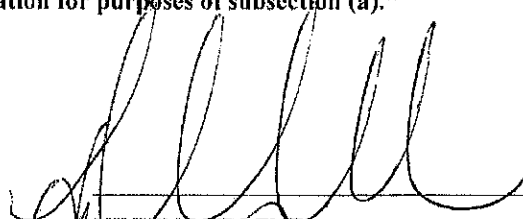
18. The Plaintiff is not presently in possession of original Note and Mortgage. However,
- a) the Plaintiff was in possession of the Note and Mortgage and was entitled to enforce THEM when the loss of possession occurred;
  - b) the loss of possession was not the result of a transfer by Plaintiff or lawful seizure; and
  - c) the Plaintiff cannot reasonably obtain possession of the Note and Mortgage because THEIR whereabouts cannot be determined.
19. The terms of the Note are shown on the attached ledger of loan marked as Exhibit "B".
20. The Plaintiff will agree to entry of a Final Judgment of Foreclosure wherein it will be required to indemnify and hold harmless Defendant(s), GEORGE E. MERRIGAN AND SEAN MERRIGAN, from any loss they may incur by reason of a claim by another person to enforce the lost Note and Mortgage.

WHEREFORE, Plaintiff requests entry of judgment confirming its right to enforce the lost Note and Mortgage under Fla. Stat. §673.3091.

**TO ALL DEFENDANTS: PLEASE NOTE EFFECTIVE OCTOBER 13, 2006, 15 U.S.C. §1692G OF THE FAIR DEBT COLLECTION PRACTICES ACT HAS BEEN AMENDED AS FOLLOWS:**

(a) **LEGAL PLEADINGS** -- Section 809 of the Fair Debt Collection Practices Act (15 U.S.C. 1692g) is amended by adding at the end the following new subsection:

"(d) **Legal Pleadings** -- A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a)."



VIVIEN LURLENE  
Law Offices of David J. Stern, P.A.  
Attorney for Plaintiff  
900 South Pine Island Road SUITE 400  
Plantation, FL 33324-3920

(954) 233-8000

Bar #: 715492

09-31263 CWF







Lender is a CORPORATION  
organized and existing under the laws of GEORGIA

Lender's address is  
1256 LAKES PARKWAY, BLDG 200, SUITE 201, LAWRENCEVILLE, GA 30043

(E) "Note" means the promissory note signed by Borrower and dated MAY 03, 2005

The Note states that Borrower owes Lender

THREE HUNDRED THIRTY FIVE THOUSAND AND NO/100 XXXXXXXXXXXXXXXXXXXX

Dollars

(U.S. \$ 335,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than JUNE 01, 2036

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the  
Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges  
due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following  
Riders are to be executed by Borrower [check box as applicable]:

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> Graduated Payment Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> Biweekly Payment Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Rate Improvement Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Other(s) [specify]		

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,  
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,  
non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments, and other  
charges that are imposed on Borrower or the Property by a condominium association, homeowners  
association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by  
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic  
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit  
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller  
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse  
transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid  
by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i)  
damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the  
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the  
value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on,  
the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the  
Note, plus (ii) any amounts under Section 3 of this Security Instrument.

VMP-6A(FL) (0005)

Page 2 of 16

Form 3010 1/01



(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2801 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the \_\_\_\_\_ COUNTY (Type of Recording Jurisdiction) of LEE (Name of Recording Jurisdiction):

SEE COMPLETE LEGAL DESCRIPTION DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: \_\_\_\_\_ which currently has the address of \_\_\_\_\_  
2723 SW 17TH PLACE (Street)  
CAPE CORAL (City), Florida 33914 (Zip Code)  
("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.



BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment



can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest



shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

*[Handwritten signature]*



If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.



6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may obtain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.



Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.



(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of



any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the 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 Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notices to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers.



unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

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.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the



purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

*[Signature]*  
S. W. J.



Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Attorneys' Fees. As used in this Security Instrument and the Note, "attorneys' fees" shall include any attorneys' fees awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.



BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.  
Signed, sealed and delivered in the presence of:

Susan E. Richey  
SUSAN E. RICHEY (Seal)  
-Borrower

John Richey  
John Richey (Seal)  
-Borrower

George E. Merrigan  
GEORGE E. MERRIGAN (Seal)  
-Borrower

Sean Merrigan  
SEAN MERRIGAN (Seal)  
-Borrower

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

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(Seal)  
-Borrower

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(Seal)  
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(Seal)  
-Borrower

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(Seal)  
-Borrower

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

(Property Address)  
2723 SW 17TH PLACE  
CAPE CORAL, FL 33914

(Mailing Address)  
2723 SW 17TH PLACE  
CAPE CORAL, FL 33914



STATE OF FLORIDA

The foregoing instrument was acknowledged before me this May 3rd <sup>Lee</sup> County ss: 2005 by  
GEORGE E. MERRIGAN AND SEAN MERRIGAN

who is personally known to me or who has produced FL Drivers License as identification.



Susan E. Richey  
Notary Public

*[Handwritten signature]*



**Exhibit "A"**

File Number: s105-305

Lots 16 and 17, Block 4790, of Cape Coral Unit 71, according to the Plat thereof, as recorded in Plat Book 22, Pages 88 through 107, inclusive, of the Public Records of Lee County, Florida.



# COUNTRYWIDE HOME LOANS, INC.

COUNTRYWIDE HOME LOANS, INC.  
7105 CORPORATE DRIVE, MAIL STOP PTX-B-35  
PLANO, TX 75024

**Loan No.:** 93007473

**Mortgagor (s), SSN:** GEORGE E. MERRIGAN, XXX-XX-3074  
SEAN MERRIGAN

**Property Address:** 2723 SW 17TH PLACE, CAPE CORAL, FL 33914

**Original Balance:** \$335,000.00

**Origination Date:** MAY 3, 2005

**Payment Amount:** \$2,308.23

**Interest Rate (Percent):** 6.25%

**Loan Term (mo/yr):** 30 YEAR term

EXHIBIT "B"



2  
9.00  
4.00

**FILED**

**MAR 25 2009**

**CHARLIE GREEN, CLERK  
CIRCUIT/COUNTY COURTS  
BY \_\_\_\_\_ D.C.**

INSTR # 2009000079608, Pages 2  
Doc Type LP, Recorded 03/27/2009 at 10:10 AM,  
Charlie Green, Lee County Clerk of Circuit Court  
Rec. Fee \$9.00  
Deputy Clerk KPERHAM  
#14

This space is for recording purposes only

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL  
CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION  
CASE NO:

**09 - CA - 055758**  
**Judge: McHugh, Michael T**

THE BANK OF NEW YORK MELLON F/K/A  
THE BANK OF NEW YORK AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS CWALT,  
INC. ALTERNATIVE LOAN TRUST 2005-  
33CB MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2005-33CB  
PLAINTIFF

VS.

GEORGE E. MERRIGAN; SEAN MERRIGAN;  
ANY AND ALL UNKNOWN PARTIES  
CLAIMING BY, THROUGH, UNDER, AND  
AGAINST THE HEREIN NAMED  
INDIVIDUAL DEFENDANT(S) WHO ARE  
NOT KNOWN TO BE DEAD OR ALIVE ,  
WHETHER SAID UNKNOWN PARTIES MAY  
CLAIM AN INTEREST AS SPOUSES, HEIRS,  
DEVISEES, GRANTEEES OR OTHER  
CLAIMANTS; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.; JOHN DOE  
AND JANE DOE AS UNKNOWN TENANTS  
IN POSSESSION  
DEFENDANT(S)

**NOTICE OF LIS PENDENS**

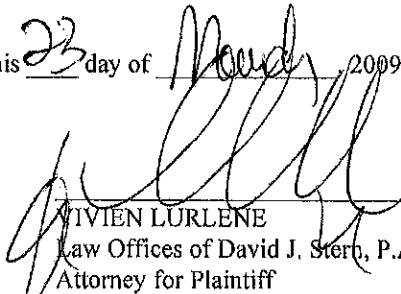
1. TO: The above named Defendants, AND ALL OTHERS WHOM IT MAY CONCERN:
2. YOU ARE NOTIFIED of the institution of this action by the Plaintiff against you seeking to foreclose the Note and Mortgage encumbering the described property and the decreeing of a sale of the property under the direction of the court in default of the payment of the amount found to be due the Plaintiff under the Note and Mortgage, and for other, further and general relief set forth in the Complaint.



3. The property involved is that certain parcel, lot or unit situate, lying and being in LEE County, Florida, as set forth in the mortgage recorded in Official Records Book 4725, at Page 2246, more particularly described as follows:

LOT 16 AND 17, BLOCK 4790, OF CAPE CORAL UNIT 71, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 22, PAGES 88 THROUGH 107, INCLUSIVE, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

Dated at Plantation, Broward County, Florida, this 23 day of March, 2009.

  
\_\_\_\_\_  
VIVIEN LURLENE  
Law Offices of David J. Stern, P.A.  
Attorney for Plaintiff  
900 South Pine Island Road SUITE 400  
Plantation, FL 33324-3920  
(954) 233-8000  
Bar #: 715492

09-31263 CWF



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK ,  
Respondent.

---

**Affidavit of Todd Allen**

I, Todd Allen, Esq., under penalty of perjury, depose and say as follows:

1. I am an attorney admitted to practice in the State of Florida. I graduated from Ave Maria Law School in May 2010, and have been licensed to practice in Florida since September 2010. I am also admitted to practice before the U.S. District Court for the Middle District of Florida.
2. My law practice focuses primarily on defending homeowners facing foreclosure. Since September 2010, I have represented 283 defendants in foreclosure actions. The majority of these cases have been before the Twentieth Judicial Circuit in Lee and Collier County.
3. In the course of defending these cases, I attend proceedings in Lee County about three to four times per week. In addition to my knowledge of my own cases, therefore, I have an opportunity to observe a wide array of foreclosure proceedings. Because the judges assigned to foreclosure cases hear them in consolidated blocks of time and tend to spend only a few minutes on each case, the structure of the "mass foreclosure" docket in Lee County allows me to observe dozens of foreclosure proceedings each time I attend a hearing in one of my own cases.
4. Among the procedural deficiencies I have observed in Lee County foreclosure proceedings is the systematic failure to enforce Florida Rule of Civil Procedure 1.510(e). The plain text of that rule requires that sworn or certified copies of all papers referred to in an affidavit submitted in connection with a motion for summary judgment must be attached to, or served with, the affidavit. The rule applies to all civil cases, including foreclosure cases.
5. Despite the uniform applicability of Rule 1.510(e), I have seen judges in Lee County routinely disregard it in foreclosure cases. I have seen many foreclosure defendants



challenge motions for summary judgment on the grounds that they do not comply with the rule, yet I have never seen that argument succeed when presented in front of Judge Thompson or Judge Starnes.

6. My understanding of the systematic failure to apply Rule 1.510(e) is shaped by my experience as counsel for the defendant in *HSBC Bank USA v. Shinneman*, No. 10-CA-50089. On November 22, 2010, I appeared in front of Judge Thompson in support of my Motion to Dismiss and Motion to Strike. Among other things, I argued that plaintiff's affidavit of amounts due and owing was deficient because it violated Rule 1.510(e). Judge Thompson stated from the bench that the court has a "policy" of not requiring plaintiffs in foreclosure cases to comply with Rule 1.510(e). Judge Thompson then directed me to prepare an appropriate order.
7. The proposed order I drafted included the following provision: "Defendant's Motion to Strike Affidavit is DENIED, Lee County is not requiring that Plaintiff's comply with Fla.R.Civ.Pro 1.510(e)." I included this language because it reflected my understanding of the ruling Judge Thompson articulated in open court, and because I wanted to ensure that the ruling was set out clearly so that I could challenge it on appeal. I also assumed that if I had misstated Judge Thompson's decision he would instruct me to revise the proposed order accordingly. I submitted the proposed order within a few days of the hearing at which the ruling was issued; before submitting it to the court, I provided it to opposing counsel, who raised no objection. Although the hearing had taken place before Judge Thompson, Judge Starnes signed the order, which was dated December 2, 2010.
8. In the weeks following the issuance of this order, it attracted significant media attention. On December 30, 2010, Judge Thompson issued an Ex Parte Corrective Order, which stated that the language contained in the original order "does not reflect the court's ruling or the court's position" and that "all parties are required to comply with Fla. R. Civ. P 1.510(e)."
9. In response to the Ex Parte Corrective Order, I moved for reconsideration on January 5, 2011. In a hearing on that motion held on February 10, 2011, Judge Starnes stated that the original order had come to Judge Thompson's attention because of the media attention it attracted. Judge Starnes also stated that the volume of orders issued by judges hearing foreclosure cases precluded judges from examining each order in detail before signing them.
10. Judge Starnes ultimately decided that he did not want to rule on my motion but would instead defer to Judge Thompson, and he instructed me to schedule another hearing in front of Judge Thompson. When I attempted to set a hearing, the first date available was not until March 21, 2011. Because I had received an order setting the case for trial on February 22, 2011, on February 14, 2011 I moved to continue the trial to a date subsequent to the hearing on my motion for reconsideration. Maintaining the original trial date seemed to me not sensible since I could not receive relief on my motion to strike plaintiff's affidavit subsequent to the trial. However, on February 18, Judge Starnes issued an order denying my motion.



11. On February 22, 2011, I appeared for trial pursuant to the court's order. The plaintiff had not timely filed an exhibit list or witness list. After waiting more than three hours for my case to be called, I argued to Judge Starnes that plaintiff's failure to make required submissions should result in dismissal. Rather than dismiss the case or make plaintiff proceed without benefit of exhibit or witness, Judge Starnes continued the trial to March 22, 2011. His willingness to grant a continuance based on plaintiff's unjustified failure to timely submit trial documents, despite having earlier denied my motion based on the court's own scheduling, represents a clear double standard.
12. Subsequent to the order I submitted in *Shinneman*, I appeared before Judge Thompson in another case raising the issue of whether Rule 1.510(e) applies in foreclosure actions. Judge Thompson stated that in his 30 years on the bench he had never understood Rule 1.510(e) to require attachment of certified or sworn copies of documents described in an affidavit, and that he did not believe the rule applied to documents referred to in an affidavit submitted in a foreclosure case. I find this statement particularly disturbing because the subject matter referred to in these affidavits is often quite complex – it typically includes detailed accounting and financial documents.
13. At this same hearing, Judge Thompson also stated that the media attention generated by the order signed by Judge Starnes in *Shinneman* had caused him to re-read the text of the rule. He further explained, however, that he would continue to deny motions invoking Rule 1.510(e) unless and until he received instructions to the contrary from the judge responsible for preparing continuing education materials for judges hearing foreclosure cases.
14. Another procedural deficiency I have observed regularly in Lee County foreclosure cases is that judges routinely grant a plaintiff's motion for summary judgment when a defendant has pending discovery requests. In my own cases and in those I have observed in open court, I have seen plaintiffs prevail on summary judgment motions even when they have failed to respond to valid discovery requests relating to central aspects of the case and when motions to compel discovery remain pending. For example, I represent the defendant in *HSBC v. Ordonez*, No. 09-CA-052969, which is currently on appeal before the Second District Court of Appeal. In *Ordonez*, the defendant filed requests for production of documents and interrogatories on August 17, 2010; on September 1, 2010, the plaintiff filed a Motion for Extension of Time to respond to those discovery requests; yet on September 7, 2010, the court heard argument on the motion for summary judgment, which it granted, despite the fact that the Motion for Summary judgment was never noticed and was not scheduled to be heard on that date. See Exhibit A (*HSBC v. Ordonez* docket sheet).
15. What I find most frustrating is that some Lee County judges have explicitly articulated the position that a homeowner's right to pursue valid discovery requests will be abrogated if he or she is not current on his or her mortgage. On several occasions, Judge Starnes has disposed of this issue by asking whether a homeowner is current on his or her mortgage; if the answer is no, Judge Starnes will state that discovery has no bearing on



the bank's right to foreclose. I have heard Judge Thompson express similar views in open court on several occasions. I have also heard Judge Carlin express this view.

16. Being current on one's mortgage is not the sole issue in a foreclosure case, nor is it dispositive. Discovery may yield evidence that refutes a plaintiff's standing, or it may reveal fraud in the process behind a particular foreclosure proceeding. Categorically refusing to allow homeowners to proceed with discovery therefore undercuts their ability to develop their case and present all defenses that may be available to them.
17. I also believe that Lee County's "docket sounding" system creates a structure that is unfair to homeowners. For cases on the docket sounding track, a trial is typically set after the second docket sounding. Because there is only between four and six weeks between docket soundings, and the trial date is often set for between one and two months after the second docket sounding, there is almost always less than six months between the first docket sounding and the trial date.
18. Based on my experience and what I have observed, the short timeframe imposed by the docket sounding system places disproportionate burdens on homeowners for two reasons. First, it makes it impossible for defendants to effectively pursue discovery. For example, a homeowner seeking a deposition of a key witness may have to oppose summary judgment or go to trial without the benefit of that evidence, because plaintiff's counsel can play out the clock by resisting compliance until two docket soundings have occurred. Second, the pace of the docket sounding system prevents defendants from setting and arguing their own motions. Motions typically advanced by foreclosure defendants – for example, motions to dismiss, motions to compel, or motions to strike – may not be heard at docket soundings and therefore must be set on a special hearing calendar. That calendar, however, is usually booked for several months at a time. As a result, it is often impossible to get a hearing on a defendant's motion within the narrow time horizon created by the docket sounding system.
19. These procedural deficiencies have led me to conclude that foreclosure cases are not administered according to the rules of procedure that govern civil cases in Florida, and that the procedural irregularities leave homeowners at a serious disadvantage when trying to present their case.

FURTHER AFFIANT SAYETH NOT.

3/28/11

Date



Todd Allen



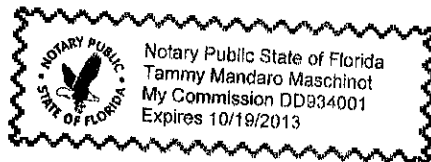
Subscribed and sworn to me on this

28 day of march, 2011.

Tammy Maschinot

Notary Public, Collier County, Florida

My commission expires:





IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK ,  
Respondent.

\_\_\_\_\_/

**AFFIDAVIT OF SHANNON ANDERSON**

I, Shannon Anderson, declare the following under penalty of perjury, based on my personal knowledge:

1. I first became involved with foreclosure proceedings in Lee County when a foreclosure case was filed against me in September, 2006. At that time, I began educating myself on the Florida Rules of Civil Procedure as well as the substantive law governing foreclosure in Florida. I first appeared in court as a pro se defendant in July, 2010. I have appeared pro se approximately four times in my own case.
2. As I became more educated on foreclosure issues, I also began attending court regularly in order to observe proceedings. Since the summer of 2010, I have observed approximately eight days of foreclosure proceedings each month. Additionally, I use Lee County's online system to research the dockets for many of the cases I have observed, in order to better understand what is happening in these cases.



3. In these various capacities, I have had ample opportunity to observe foreclosure proceedings in Lee County. I have come to believe that the judges in those proceedings are focused on speeding through foreclosure cases and that, as a result, defendants' rights are often violated.
4. I believe that the Florida Rules of Civil Procedure are routinely violated in foreclosure proceedings. On February 28<sup>th</sup>, 2011, I was observing the mass foreclosure docket held before Judge Starnes. After counsel for both parties referenced the Rules, Judge Starnes responded by saying, "Rules are made for those who do not have a better way around them."
5. Florida Rule of Civil Procedure 1.510(e), requiring that documents be attached to an affidavit referring to those documents, is routinely unenforced in Lee County. When defendants raise the argument that plaintiffs have failed to attach documents to affidavits filed in support of summary judgment, judges will state that plaintiffs are not required to comply with that rule. I have heard that statement from the bench over and over in the course of my court observation. It is the response virtually every time defendants make an argument based on failure to attach documents to affidavits, which happens at least a few times each day in foreclosure court.
6. Further, I have frequently seen the court enter summary judgment for the plaintiff or force a case to trial although defendant's discovery requests remain outstanding. When summary judgment is being argued and the defendant raises the issue of outstanding discovery, Judge Thompson's usual response is that the legislature has awarded the court money in order to get through these



foreclosures, and that he therefore cannot allow this case to continue any longer. He reminds the defendant of the amount of time that has passed since the case was filed, which he asserts has been time enough for discovery, and he states that he thus refuses to hear an argument based on outstanding discovery. I have heard Judge Thompson and other judges make these or similar statements from the bench at least a few times per week since I began observing foreclosure court.

7. At the beginning of docket sounding sessions before Judge Thompson, he always gives a short speech about the importance of moving rapidly through the cases. He states that the legislature has appropriated money to move the foreclosure cases through the court and dispose of them, and that the court has to reduce the backlog by a certain percentage in order to keep that money. As a result, once a case is placed on the docket sounding calendar, they will not remove it from the calendar until some decision is made on the file.
8. Until late January 2011, the court would regularly set trials for cases filed in 2009 or before and allow those trials to go forward even when the case was not ready for trial. When the defendant raised the issue that the case was not ready, Magistrate Hawthorne, Magistrate Diamond, Judge Thompson and Judge Starnes would all respond with some statement about how defendants had taken out a mortgage and were going to need to vacate their homes if they did not make their mortgage payments or work it out with the bank. Although the plaintiffs brought no witnesses and the trial lasted just a few minutes, the judges would then grant final judgment in favor of the plaintiff



9. In late January 2011, the trial process began to change slightly. On the day of trial, some judges and magistrates began to force plaintiffs to voluntarily dismiss cases that were set for trial but were not ready for trial. Trials are also given slightly more time now, although I have yet to observe a trial on the mass foreclosure docket before a magistrate or senior judge that lasts more than seven minutes.
10. I believe that pro se defendants are at a particular disadvantage in Lee County foreclosure proceedings. Pro se defendants are required to stand at a microphone behind the bar, meaning that they are approximately twenty feet away from the judge and the plaintiff's attorney. Further, the plaintiff's attorney stands very close to the bench, so that the pro se defendant often cannot hear conversation between them. This is especially troubling when the judge advises the plaintiff's attorney about how to proceed with the case, instructing the attorney, for example, to move for summary judgment.
11. Another way in which foreclosure court disadvantages defendants is the differing responses from the court when parties fail to appear for hearings or docket soundings. When a plaintiff fails to appear for a docket sounding, the case will generally be rescheduled for another docket sounding or set for trial. In contrast, if a pro se defendant is not present for a docket sounding, the judge will state that the defendant is apparently not contesting the foreclosure and will therefore enter summary judgment for the plaintiff. This will occur even when a pro se defendant has attended all earlier hearings and docket soundings, and despite the fact that notice may have failed to reach the defendant. I have personally seen



summary judgment entered in such situations many times; it has happened on most days I have observed foreclosure court. Based on my docket research, I estimate that it happens multiple times each day in foreclosure court.

FURTHER AFFIANT SAYETH NOT.

3/30/11  
Date

  
Shannon Anderson

Subscribed and sworn to me on this  
30 day of March 2011.



Notary Public, Lee County, Florida

My commission expires:



Michele S. Belmont  
COMMISSION # EEO18122  
EXPIRES: OCT. 08, 2014  
WWW.AARONNOTARY.COM



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK ,  
Respondent.

---

**AFFIDAVIT OF LARRY BRADSHAW**

I, Larry Bradshaw, under penalty of perjury, depose and say as follows:

1. I am a pro se foreclosure defendant in Lee County Florida. I have been a defendant in four foreclosure actions since 2006, all concerning the same property. Voluntary dismissals have been filed in three of these cases.
2. Since October, 2006 when the first of these foreclosure cases was filed, I have appeared approximately twelve to fifteen times for hearings, including approximately nine times since January, 2010. Because of the volume of foreclosure proceedings conducted each day in Lee County court rooms, I have also had the opportunity to observe many other foreclosure proceedings.
3. The first case was filed in October 2006, and voluntarily dismissed in January 2007. The second case was filed in February 2007, and voluntarily dismissed in February 2008. The third case was filed in September 2008, and dismissed over my objection by Judge Adams. I made a verbal motion for cost and fees which Judge Adams reserved judgment on pending the plaintiff's re-filing of the case.
4. The fourth case was filed in December 2008. I filed a motion for costs, which was denied.
5. Plaintiff filed a motion to compel and set the hearing with Judge McHugh on February 22, 2010 at 11:00 a.m.



6. When I arrived at Judge McHugh's court room on the fourth floor, I checked in with the judicial assistant ("JA"). I was told by the JA that I was not on Judge McHugh's docket for today. I showed her my copy of the notice of hearing that set the time and date of the hearing in Judge McHugh's docket. I was informed by the JA that the motion was scheduled to be heard by Judge Richards, whose courtroom was on the first floor.
7. My father and I hurried down to the first floor, to Judge Richards Court Room. When we arrived at his court room we found the doors were locked. Inside the locked court room were two persons. I identified one person as Gregg Goetz, an attorney who had represented the plaintiff in an another hearing.
8. We immediately returned to Judge McHugh's court to find it was not now in session. I spoke to the JA, informing her that I had gone to Judge Richard's Court as she had advised but, found the door was locked. The JA accompanied us to Judge Richard's court room. When we arrived the door was still locked but, the attorney and the unidentified man were gone. The JA asked us to wait for her and she left, returning a few minutes later with a Sheriff's Deputy, who unlocked the court room.
9. The JA went to the computer behind the Bar, and appeared to observe it. She returned to our position and stated that Judge Richard's had heard the motion and had denied it.
10. I returned to the Court a few days later to obtain a time-stamped copy of the minutes, which had an "X" in the denied box, indicating that the judge had denied the motion in court. A copy of these minutes is attached hereto as Exhibit A.
11. A few weeks passed and I received in the mail a copy of an order from Judge McHugh titled "Corrected order" which stated that Judge McHugh had heard the motion and arguments of both plaintiff and defendant and had granted the plaintiff's motion to compel discovery. This order is attached hereto as Exhibit B.
12. I immediately filed an objection and two successive motions to disqualify Judge McHugh, with affidavits. Judge McHugh denied both as legally insufficient.
13. I returned to court to check my case file on the computer docket. When I viewed the court minutes for February 22, 2010, I was shocked to discover that the minutes now had an "X" in the "granted" box, indicating that the judge had granted the motion in court. I obtained a copy of the minutes from the clerk, a copy of which is attached hereto as exhibit C.



14. My experiences in Lee County have convinced me that pro se litigants face profound disadvantages in mortgage foreclosure cases. Pro se litigants lack access to the online docket which is made available to attorneys. As a result, we must travel to the courthouse and pay printing fees of \$1 per page in order to obtain documents from our case files.
15. Additionally, pro se litigants are no longer allowed to sit at counsel's table during their own hearings. We are instead required to speak from a microphone behind the bar. There is no surface on which to place documents near this microphone. This policy undermines the credibility of pro se litigants and puts them at a disadvantage in court proceedings. In addition, pro se litigants are always given less time and leeway to present their cases than are attorneys.

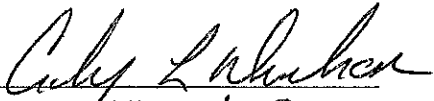
FURTHER AFFIANT SAYETH NOT.

  
Larry R. Bradshaw

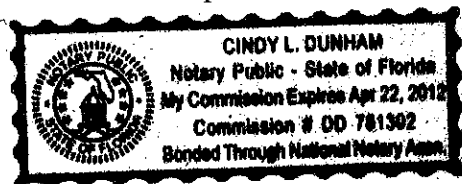
Before me this day appeared Larry R. Bradshaw, identified by State of Florida Driver license No# B632536680010, who being sworn under oath made the above affidavit.

USA PP 04774033  
5/17/05 5/16/15

Subscribed and sworn to me on this  
29<sup>th</sup> day of March, 2011.

  
Notary Public, Lee County, Florida

My commission expires:





# **EXHIBIT A**



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA

CIVIL ACTION

US Bank National Association, atf GSMPS  
Plaintiff

vs

Bradshaw, Larry R etal  
Defendant

Case No.: 08-CA-055974

MINUTES

Date: 2/22/10

Deputy Clerk: Sylvester

Judge: George Richards

Court Reporter:

Attorney for Plaintiff: Greg Goetz

☒ Present

☐ Not Present

Attorney for Defendant: Larry R. Bradshaw

☐ Present

☒ Not Present

Hearing Information

☒ Motion to Compel

☐ Granted

☒ Denied

☐ Reserved

☐ Motion \_\_\_\_\_

☐ Granted

☐ Denied

☐ Reserved

☐ Motion \_\_\_\_\_

☐ Granted

☐ Denied

☐ Reserved

☐ Other: \_\_\_\_\_

☐ Granted

☐ Denied

☐ Reserved

Notes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Order to be prepared by:

☒ Plaintiff's Attorney

☐ Defendant's Attorney

☐ Order signed in open court

☐ HEARING CANCELLED



## **EXHIBIT B**



#33

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION

US BANK NATIONAL ASSOCIATION, AS  
TRUSTEE FOR GSMPS 2004-4,  
Plaintiff,

vs.

CASE NO.: 36-2008-CA-055974  
DIVISION: G

LARRY R. BRADSHAW, et al,  
Defendant(s).

**CORRECTED ORDER ON PLAINTIFF'S MOTION TO COMPEL**

THIS CAUSE having come before the Court on February 22, 2010, on Plaintiff's Motion to Compel and having reviewed the aforementioned documents and having heard the arguments of Plaintiff's Counsel and the Defendant, and being otherwise fully advised in the premises, it is

**ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion to Compel is hereby **GRANTED**.
2. Defendant has twenty (20) days to respond to discovery.

DONE AND ORDERED in Chamber at LEE County, Florida, on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**ORIGINAL SIGNED**

**MAR 15 2010**

Circuit Court Judge

**MICHAEL T. HUGHES  
CIRCUIT JUDGE**

Conformed copies to:  
Frances E. Johnson, Esquire  
Florida Default Law Group, P.L.  
P.O. Box 25018  
Tampa, Florida 33622-5018  
All parties on the attached Service List

FILE NUMBER: F08086375

DOC\_ID: M012913





# **EXHIBIT C**



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA CIVIL ACTION

US Bank National Association, *as* GSMPS  
Plaintiff

vs  
Bradshaw, Larry R et al  
Defendant

Case No.: 08-CA-055974

MINUTES

Date: 2/22/10

Deputy Clerk: Sylvester

Judge: George Richards

Court Reporter:

Attorney for Plaintiff: Greg Goetz

☒ Present ☐ Not Present

Attorney for Defendant: Larry R Bradshaw

☐ Present ☒ Not Present

Hearing Information

☒ Motion to Compel

☒ ~~Granted~~

☐ Denied

☐ Reserved

☐ Motion \_\_\_\_\_

☐ Granted

☐ Denied

☐ Reserved

☐ Motion \_\_\_\_\_

☐ Granted

☐ Denied

☐ Reserved

☐ Other: \_\_\_\_\_

☐ Granted

☐ Denied

☐ Reserved

Notes:

Order to be prepared by:

☒ Plaintiff's Attorney

☐ Defendant's Attorney

☐ Order signed in open court

☐ HEARING CANCELLED

**FILED**

FEB 22 2010

CHARLIE GREEN, CLERK  
CIRCUIT/COUNTY COURTS

BY: \_\_\_\_\_ D.C.



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK ,  
Respondent.

\_\_\_\_\_  
I, Charles W. Cadrecha, Esq., under penalty of perjury, depose and say the following:

1. I am an attorney licensed to practice in the State of Florida. I have been licensed for 9 years. My practice focuses on consumer law, including foreclosure defense; currently, 80% of my cases are foreclosure defense matters. My practice is based in Hillsborough County, although I litigate in other counties on occasion.
2. I was retained in one Lee County foreclosure case, and I therefore appeared in Judge Starnes' courtroom in Lee County on the afternoon of January 31, 2011. During the approximately two hours that I waited for my case to be called, I had the opportunity to observe many other proceedings. At the beginning of the court session, there were upwards of fifty lawyers waiting for their cases to be called.
3. Over the course of that afternoon, I heard Judge Starnes repeatedly state that the court and the clerk's staff had been able to cut the foreclosure caseload in half over the course of eight months, reducing their backlog by more than 10,000 cases. He stated various times that the county had to keep "control" of the caseload on the docket. He mentioned, from the bench, how the courthouse staff had engaged interns and held various meetings to allow them to better clear the foreclosure dockets.
4. Several times, when a foreclosure defense attorney argued for dismissal based on a facial deficiency in the plaintiff's case, the Judge responded that the importance of reducing the caseload meant that the case needed to keep moving forward. In one instance, rather than require dismissal based on lack of verification of the original complaint, the Judge told the plaintiffs to make sure an amended complaint they were planning to file was verified. In response to defense counsel's argument that, because the original complaint had not been verified, the case warranted dismissal, the Judge responded that he understood that point. However, he went on to say that he could not dismiss the case, because keeping



cases moving forward on the docket sounding calendar with expedited procedures was the only way to keep control of the docket.

5. I found these failures to adjudicate each individual case on its merits to be an abdication of the principles of law.
6. As a result of these problems, I am skeptical about accepting future foreclosure cases in Lee County.

FURTHER AFFIANT SAYETH NOT

3-29-11

Date

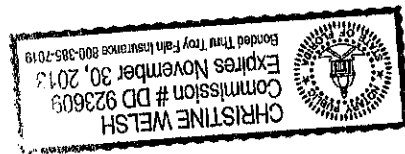


Charles W. Cadrecha, Esq.  
Fla. Bar No. 551511

Subscribed and sworn to me on this  
29<sup>th</sup> day of March, 2011.



Notary Public, Hillsborough County, Florida



My commission expires:



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKE LAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK ,  
Respondent.

---

**AFFIDAVIT OF W. JUSTIN COTTRELL, ESQ.**

I, W. Justin Cottrell, Esq declare the following under penalty of perjury, based on my personal knowledge:

1. I am an attorney licensed to practice in the State of Florida. I have been licensed for 4 years. My practice is based in Naples, Florida. I practice in the areas of foreclosure defense, bankruptcy, and real estate. Currently, approximately half of of my cases are foreclosure defense matters, and of those approximately 60% are Lee County cases; the other foreclosure defense cases are largely in other counties within the Twentieth Judicial Circuit. In total, I represent or have represented approximately 60 defendants in Lee County foreclosure proceedings.
2. Florida Rule of Civil Procedure 1.510(e), requiring that documents, including the note in a foreclosure case, be attached to an affidavit describing those documents, is routinely unenforced in Lee County. Based on my observations, I believe records are only properly attached to the affidavits approximately 10% of the time. On the occasions when I have seen defense attorneys make arguments based on failure to attach records, I have repeatedly seen judges reject this argument.



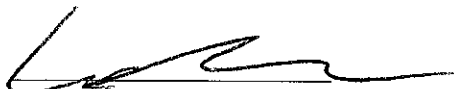
3. I have also seen judges routinely refuse to consider defendants' arguments that documentation submitted by plaintiffs is fraudulent. Motions to vacate or motions to dismiss arguing that such fraud has occurred, with documents evidencing the fraud attached, are denied without providing any reason for the denial.
4. All of my foreclosure cases are now set for docket sounding, although many of them are not at issue according to the definition in Florida Rule of Civil Procedure 1.440. However, having observed this line of argument to be fruitless when it is presented to the court, I have not raised it in my own cases. Attorneys are required to appear in person at each docket sounding, which is extremely burdensome for those who, like me, are attempting to run solo practices or small firms.
5. For both docket soundings and all other hearings in foreclosure cases, dozens of cases are set for the same hearing time, at either eight-thirty in the morning or one o'clock in the afternoon. As a result, I am regularly forced to be in court for an entire morning or an entire afternoon for a five-minute argument. Again, this procedure is extremely burdensome for those who, like me, are attempting to run solo practices or small firms.



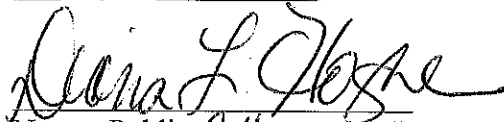
6. As a result of these failures, I am skeptical about accepting foreclosure cases in Lee County. On occasion, I have declined to represent defendants there because the procedures currently in place make it economically untenable to do so.

FURTHER AFFIANT SAYETH NOT

3-28-2011  
Date

  
W. Justin Cottrell, Esq.  
Fla. Bar. No. 27637

Subscribed and sworn to me on this  
28 day of March, 2011.

  
Notary Public, Collier County, Florida

My commission expires:





IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK,  
Respondent.

\_\_\_\_\_ /

**AFFIDAVIT OF LANE HOUK**

I, Lane Houk, declare the following under penalty of perjury, based on my personal knowledge:

1. I am a subject matter expert on foreclosure litigation and the secondary mortgage market and am employed as a Mortgage Originator and a Mortgage Loan Compliance and Securitization Analyst. *See Exhibit A.* I have nine years experience in the mortgage banking and finance profession along with over one thousand hours of research and study in the areas of the Truth in Lending Act (TILA), the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), Foreclosure Litigation, Asset-Backed Securitization and its effects and applications in Foreclosure and Loss Mitigation.
2. I maintain regular continuing education in banking and finance in the state of Florida and am registered with the Nationwide Mortgage Licensing System, NMLS No. 374936, and am highly competent with the state and federal disclosure requirements in federally related mortgage loan transactions and am required to regularly prove such competency along with maintaining a high degree of



knowledge in the mortgage-backed securitization process and transfer/conveyance aspects of mortgage loans after loan closing.

3. As a mortgage industry expert, I have been hired in dozens of foreclosure cases by defense attorneys in Lee County and in other jurisdictions in and outside of Florida. I have provided affidavits of expert opinion on at least ten foreclosure cases in Lee County alone and have reviewed documents for well over one hundred foreclosure cases in Lee County. As a mortgage industry expert, I investigate and analyze mortgage loan and related documents such as the assignment and conveyance documents and any documents produced in discovery related to the mortgage loan in any way. I render a report on the origination of the loan and the extent of its compliance with federal laws which I am required to comply with in the daily practice of originating and closing mortgage loans. I also investigate whether the lender engaged in any possible predatory lending, fraudulent inducement or misrepresentation at the time of origination depending on the testimony of the borrower during the process of my examination.
4. I developed Course No. 2567 with the Lee County Bar Association and Florida Bar Association to provide continuing legal education to attorneys, industry professionals and paralegals on the Truth in Lending Act, TILA Rescission Rights, foreclosure litigation, mortgage-backed securitization and how these issues find applicability in judicial foreclosure actions.
5. I was also the Co-Chair of the Lee County Foreclosure Taskforce (hereinafter “the Taskforce”) and held that position starting in August 2008. The Taskforce was commissioned by the Lee County Bar Association in July 2008, with a one-year



grant from the Florida Bar Association. The Taskforce was convened in order to address the foreclosure crisis that had erupted in Lee County. Its primary goal was to educate the public about the foreclosure process, and to that end we held a series of foreclosure seminars taught by attorneys, which discussed the legal rights of persons facing foreclosure.

6. In late 2008, I and several other Taskforce members became extremely concerned about the level of what appeared to be fraudulent assignments and affidavits we were witnessing in Lee County cases and requested a meeting with Chief Judge Cary to relay and address our concerns.
7. In response to our request, Nancy Aloia of the 20<sup>th</sup> Judicial Circuit, setup a meeting with Chief Administrative Judge Carlin. We met face to face with Judge Carlin, to discuss the Taskforce's concerns about fraudulent activity taking place in Lee County foreclosure courts and also the limited amount of time in hearings to actually consider the issues being presented. At that meeting, in chambers, we told Judge Carlin that we were concerned about the surge in flawed and fraudulent paperwork in foreclosure cases and I told him directly that it was highly likely that fraud was being committed in a great amount of cases to wrongfully foreclose on homeowners and that the fraud might even go as far as being labeled as systemic. We discussed lost note claims, defective affidavits, fraudulent assignments, and filing by plaintiffs who lacked standing to foreclose and were not even being held to the standard of documenting their allegations of standing in the process of legally seizing citizens' homes through foreclosure and the legal system. In addition, we told Judge Carlin that if he and/or the civil



judges selected ten to one hundred foreclosure cases at random from the Lee County docket, the Taskforce would go through those selected cases to highlight for the judiciary examples of fraud and misrepresentations.

8. At that meeting, Judge Carlin did not respond to our concerns about fraud. In fact, he noticeably avoided the issue. He told us he was “unwilling to state an opinion on the committee’s allegations of foreclosure fraud in the Lee County court system” and quickly moved on. He then proceeded to tell us that the job of a Chief Justice is the efficient disposition of cases and that he needed to dispose of all cases as quickly as possible.
9. At the time of our conversation, the foreclosure docket had already been separated from the regular civil docket in Lee County. However, the following summer, in complete deference to our raising the red flag to the systemic problems already occurring in the foreclosure dockets, Lee County implemented a new docket sounding system, further speeding up the dispensation of foreclosure cases and drastically increasing the number of summary judgment orders and final dispositions in favor of Plaintiffs.
10. I was also asked to personally call Judge Hugh Starnes on behalf of the Taskforce because Judge Starnes wanted to know more about these issues. I personally spoke with Judge Starnes via telephone for over 30 minutes during which I frankly informed him that I believed fraud and misrepresentation by mortgage servicing institutions was running rampant through the Lee County System and again offered to assist him in randomly selecting 10-100 foreclosure cases wherein a team of attorneys and industry professionals could actually examine



these files and point out the procedural and documentable issues one by one and I assured him that we would find fraud in more cases than he would think.

11. It is my firm belief that Judge Carlin and the civil judges of Lee County were aware of fraud perpetrated in Lee County foreclosure filings at least by the summer of 2009 and chose not to heed our warnings. The judiciary knew about lost note counts, false allegations of standing and fraudulent affidavits and were highly aware of the fact that in no other civil docket or proceeding in Lee County did Lee County judges award summary judgment at such a high percentage. However, rather than slowing down the foreclosure process and investigating our allegations, the judiciary instead chose to institute the docket sounding system in the summer of 2010 in order to speed up the process and dispose of foreclosure cases as quickly as possible.
12. Further, as an expert in Lee County foreclosure cases, I have reviewed files in well over one-hundred Lee County foreclosure cases. In all Lee County cases in which I was hired to investigate and evaluate, none of them had supporting documents attached to the affidavits filed in support of the Plaintiff's Motion for Summary Judgment, as required by Fla R Civ. Pro 1.1510(e). Accordingly, it is my belief that Fla. R Civ. Pro 1.510(e) is simply not being enforced in Lee County and Plaintiff's are not being required in any way to attach sworn to or certified copies any documents or records referred to in supporting affidavits.
13. It is further my belief that borrower/defendants in Lee County courts do not have access to a meaningful, fair and equitable tribunal, and are deprived of their basic constitutional rights to due process to defend the seizure of their homes by the



plaintiff and, in many cases, a plaintiff party that has merely alleged, not documented, the legal right to pursue such drastic remedy as seizure of a citizen's property through foreclosure while using the courts of the 20<sup>th</sup> Judicial Circuit as the conduit.

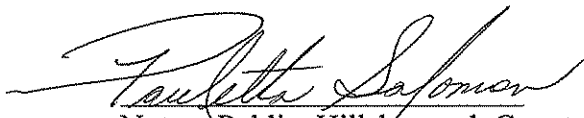
14. I believe this is being carried out even though the judiciary (and even the general public) is well aware of the massive fraud that has already made national headlines along with a progressively increased awareness of the possible systemic nature of millions of mortgage loans not being properly transferred in the securitization process. Regardless of these issues, the Lee County Court System has responded by dramatically reducing time to final disposition through its docket sounding administrative procedure in reckless disregard for the public interest and the constitutional rights of Lee County citizens.

FURTHER AFFIANT SAYETH NOT.

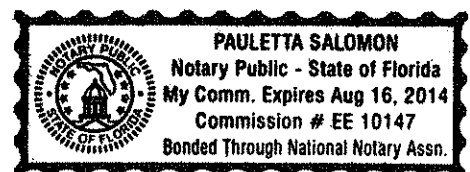
April 5, 2011  
Date

  
Lane Houk

Subscribed and sworn to me on this  
5<sup>th</sup> day of April 2011.

  
Notary Public, Hillsborough County, Florida

My commission expires: August 16, 2014





# **EXHIBIT A**



## **Curriculum Vitae**

**Lane A. Houk, CEO**

National Institute of Consumer Advocacy, LLC  
5668 FishHawk Crossing Blvd. #109 | Lithia, FL 33547  
Direct: (800) 985-4685 ext. 111  
Email: info@nioca.org

**Education/Experience/Licenses:** US Army, Ft. Sam Houston, TX, Combat Field Medic; Fitzsimmons Army Medical Center, School of Nursing, Aurora, CO; Univ. of Wisconsin Assoc. Science; Univ. of Wisconsin, School of Nursing; Florida Gulf Coast University, Executive Leadership in Non-Profits - Course Graduate; National Association of Consumer Advocates, Mortgage Lending Litigation Conference; National SAFE Act Compliance Certified; National Institute of Financial Education - Certified Liability Advisor - Course Graduate; Co-Chair Lee County Foreclosure Task Force; Nine years mortgage banking industry experience including Retail Mortgage Operations, Branch Operations and all internal policies compliance for Flagstar Bank, Cherry Creek Mortgage Company, Inc., Benchmark Mortgage, Transcontinental Lending Group and Brightgreen Home Loans; NMLS Certified, No. 374936; Florida Licensed Mortgage Broker 2002-Current, No. 0810643; FL LO(NMLS), No. LO1551; Florida Real Estate Assoc., 2002-Current (inactive status), No. SL3027518; Florida Legal Insurance, 2009-Current, No. P214293

**Academic Research Activities & Specialty:** Consumer Advocate Comprehensive Review: National Consumer Law Center 16 Volume Series; Pannabeker, James H.; Model Compliance Manual: A Template for Mortgage Professionals, Pannabeker, James H., Clontz Jr., Ralph C.; Truth - In - Lending Manual: Text and Forms, Washington, D.C.: Forensic TILA Audit, FDCPA; RESPA; UDAP, Teaching How to Stop Foreclosures, Predatory Lending, Claims against Financial Institutions, Debt Collector Claims, Substantive Consumer Defenses; Mortgage Backed Securitization and its Applicability in Foreclosure Proceedings; Complete Federal Litigation Manual - Truth in Lending Act Series, R. Dale Hollis; Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, Securities and Exchange Commission ([www.sec.gov](http://www.sec.gov)); Westlaw® Legal Database ([www.westlaw.com](http://www.westlaw.com)); Florida Practice and Procedure, Trawick, Henry P. Jr.

**Social:** Married with Two Children; Enjoy hockey and football and coaching youth sports

**Author:** Homeowner and Attorney Resource Blog - [www.thePatriotsWar.com](http://www.thePatriotsWar.com)

**References:** Mike Scott, Sheriff  
Lee County Sheriffs Dept.  
14750 Six Mile Cypress Pkwy.  
Ft. Myers, FL 33912  
(239) 477-1000

Nancy Dubois, Executive Dir.  
Lee County Bar Association  
P.O. Box 1387  
Fort Myers, Florida 33902-1387  
(239) 334-0047

George Gingo, Esq.  
Foreclosure Defense Attorneys, P.A.  
150 Cocoa Isles Blvd., Ste. 404  
Cocoa Beach, FL 32931  
Office: (321) 784-8158  
Fax: (321) 784-8159

Scott Kuhn, Esq.  
12800 University Drive, Ste 385  
Fort Myers, FL 33907  
Office: (239) 333-4529  
[www.kuhnlegal.com](http://www.kuhnlegal.com)



## Biography - Narrative

My name is Lane A. Houk. I am the President and CEO of the National Institute of Consumer Advocacy, LLC, a Florida Limited Liability Company. I have been considered a subject matter expert on foreclosure litigation, the secondary mortgage market, federal home loan compliance requirements pursuant to the Truth in Lending Act, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act and am employed as a Mortgage Fraud and Forensic Analyst. I have eight years experience in the mortgage banking and finance profession along with over one thousand (1000) hours of research and study in the areas of the Truth in Lending Act (TILA), the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), Foreclosure Litigation, Asset-Backed Securitization and its effects and applications in Foreclosure and Loss Mitigation.

I maintain regular continuing education in banking and finance in the state of Florida and nationally, am registered with the Nationwide Mortgage Licensing System, NMLS No. 374936, and am highly competent with the state and federal disclosure requirements in federally related mortgage loan transactions. I developed Course No. 2567 with the Lee County Bar Association and Florida Bar Association to provide continuing legal education to attorneys and paralegals on the Truth in Lending Act, TILA Rescission Rights, foreclosure litigation, mortgage-backed securitization and how these issues find applicability in judicial foreclosure actions.

The core of my practice involves home loan, servicing and foreclosure intervention along with problem resolution and mediation on behalf of consumers, lenders and the attorneys who often represent them. I rely upon the objective data produced incident to reviewing and auditing these transactions as the basis for my final report and findings.

Over the past three years, I have developed and reliably employed a set of auditing tools and protocols that enable me to systematically analyze the documents and disclosures provided to consumers and audit these documents for compliance with both federal and Florida state statutes. I am also proficient in using the Securities & Exchange Commission database to locate asset-backed securities and the trust documents filed with the SEC. I perform regular, ongoing research into the securitization, conveyance and transfer aspects of residential mortgage loans and mortgage-backed securities and am proficient in applying that research to the particular facts in a given foreclosure case or legal dispute.

I maintain an account with Westlaw® and use it frequently in my research. I own and often use several legal references and libraries related to civil procedure, consumer law and trust law in the course of my research, review and analysis processes.

I have been offered as an expert witness in other proceedings and have undergone depositions and testimony relative to my expert opinions filed in other mortgage lending or foreclosure cases.



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK ,  
Respondent.

**Affidavit of Thomas E. Ice**

I, Thomas E. Ice, Esq., declare the following under penalty of perjury, based on my personal knowledge:

1. I am an attorney licensed to practice in the State of Florida. I have been practicing in Florida since I graduated from University of Miami School of Law in 1985. I am also admitted to practice before the Federal District Court for the Southern District of Florida. From 1985 to 2008, I represented large corporations in personal injury and wrongful death litigation, in both state and federal court, including complex multi-district litigation. In this capacity, I often served as lead trial counsel or primary appellate counsel.
2. In March 2008, I founded a new law firm, Ice Legal, P.A. Ice Legal's practice is almost entirely devoted to foreclosure and related proceedings, including appeals of foreclosure cases and bankruptcy actions for our foreclosure clients. All nine of the lawyers employed by Ice Legal contribute to the representation of our foreclosure clients. Since its founding, Ice Legal has acted as counsel in 821 cases; currently, we have 527 active cases pending. Although our practice is primarily focused on cases before Palm Beach County's Fifteenth Judicial Circuit, we have litigated foreclosure cases in 25 counties around the State of Florida.
3. As the principal of Ice Legal, I oversee all of the firm's cases. I pay particularly close attention to cases presenting difficult issues or significant obstacles. As a result, even when I do not personally appear in court, I will usually review transcripts of proceedings in which attorneys from Ice Legal made appearances. Unlike many firms specializing in foreclosure, Ice Legal will bring a court reporter to almost all proceedings in which our attorneys appear in order to make a record for potential appeals. I make it a special



point to review transcripts in cases where the attorney who appeared in court believes that procedural deficiencies are reflected in the transcript.

4. Ice Legal has handled nine foreclosure cases in Lee County. Although I have not personally appeared in court proceedings in those cases, I have followed them closely, and through the transcripts of the hearings, have informed myself of the courtroom proceedings, particularly in the instances in which the Ice Legal attorneys who attended the hearing have reported that basic procedural requirements were ignored or even actively brushed aside. As a result, I have reviewed approximately a half dozen transcripts of foreclosure proceedings in Lee County.
5. Based on Ice Legal's experience litigating foreclosure cases in Lee County, I have concluded that judges on the foreclosure docket routinely declare, explicitly and in open court that the Florida Rules of Civil Procedure do not apply to foreclosure cases.
6. For example, in one case my firm litigated, a judge indicated that the rules governing attorneys' notices of appearance did not apply to the lawyer arguing on behalf of the plaintiff because the judge believed that, in the foreclosure context, "legal paperwork" should be minimized.
7. One judge presiding in Lee County foreclosure cases has said in open court that plaintiffs' motions would routinely be considered on an ex parte basis. The judge said that granting motions on an ex parte basis was harmless because defendants could subsequently raise objections. This position – which I understand to directly conflict with the rules of procedure and judicial administration – is particularly disturbing in the foreclosure context, where the vast majority of defendants proceed pro se and are therefore unlikely to know how to seek reconsideration of a court order entered on an ex parte basis.
8. The Lee County foreclosure docket also routinely treats cases as "at issue," including cases in which the defendant has not yet filed an answer. Specifically, Lee County courts have a practice in foreclosure cases of entering orders entitled "Order Setting Case for Docket Sounding" which explicitly find that the "cause is at issue and ready to be set for trial." The "docket sounding," therefore, is the equivalent of a calendar call at which a trial date will be set. At least one Lee County judge has stated in open court that the homeowner would not be relieved of such a "docket sounding" even though the judge acknowledged that the case was not, in fact, at issue because no answer had been filed.
9. Based on my review of court transcripts and supervision of my firm's caseload, I can only conclude that the examples cited above are not exceptional. Rather, judges presiding in foreclosure cases in Lee County give every indication that they regularly disregard basic procedural norms.



10. Aside from prematurely treating cases as being “at issue,” the docket sounding system requires the parties to appear at recurring docket sounding hearings roughly every forty-five days, regardless of whether any developments in the case warrants a court hearing. It is nearly always more burdensome for the homeowner to attend unnecessary hearings because the plaintiff banks typically use “covering counsel” who, as noted above, are not required to file appearances on behalf of any individual client bank. These covering attorneys usually attend several hearings for many different banks on the same day. Conversely, the homeowner will normally have no other business at the court, and in the case of pro se defendants, will presumably have to be absent from work or make other special arrangements to attend.
11. Additionally, the only motion that may be heard at the docket sounding is a motion for summary judgment, which in foreclosure cases, is a motion typically filed by the plaintiff bank. Therefore, the homeowner or the homeowner’s counsel is required to repeatedly attend “hearings” at which the only motion that may be heard is one which will potentially be case-dispositive against the homeowner. The homeowner cannot use these burdensome, repeated appearances to move his or her own defense of the case forward by having the court rule on the homeowner’s motions, such as those seeking to compel discovery.
12. Moreover, the docket sounding orders permit a party to simply notice a summary judgment motion to be heard at the docket sounding without coordination with opposing counsel. This creates serious prejudice for a homeowner (or his or her counsel), because it is impossible to know sufficiently far in advance whether any given docket sounding will become a hearing on a motion that could result in a final judgment against the homeowner. This puts attorneys at my firm in the position of having to either engage in intensive preparation before each docket sounding – even though many or most docket soundings will not become a hearing on summary judgment – or face the possibility of an ambush where the defense will not be adequately prepared.
13. For the reasons listed above, the very structure of the docket sounding makes it more difficult to represent homeowners. Having to make regular and extraneous appearances places a real strain on my firm’s ability to defend homeowners. Most homeowners facing foreclosure are in desperate economic circumstances; Ice Legal’s fee structure reflects this, as we do not charge an hourly fee, but rather a recurring flat fee, that cannot compensate for multiple, unnecessary court appearances. The docket sounding system, therefore, makes foreclosure cases in Lee County extremely expensive for us to litigate.
14. As a result of the economic strain caused by the docket sounding system, the management at Ice Legal has had to consider foregoing future cases in Lee



County. Although we have cases pending in 25 counties around the state, only in Lee County have we had to contemplate the possibility of ceasing to practice in front of a specific court.

FURTHER AFFIANT SAYETH NOT.

3.30.11

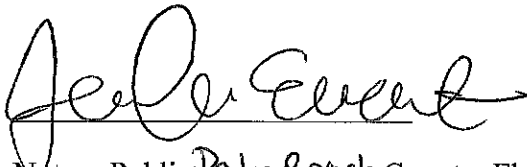
Date



Thomas E. Ice

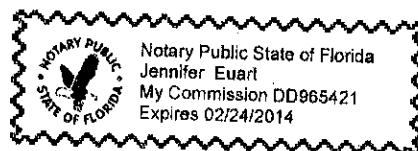
Subscribed and sworn to me on this

30<sup>th</sup> day of March, 2011.



Notary Public, Palm Beach County, Florida

My commission expires:





IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK,  
Respondent.

**Affidavit of Georgi Merrigan**

I, Georgi Merrigan, under penalty of perjury, depose and say as follows:

1. I am a resident of Lee County, Florida. In September 2003, I received a loan from Bank N.A. for \$186,000 to build a home in Cape Coral. My husband and I also paid \$110,000 as a down payment. That down payment came primarily from an inheritance I received from my grandmother. Because that home represents the bulk of the inheritance from my grandmother, it holds tremendous emotional significance for me.
2. In May 2005, I refinanced the first mortgage and received a loan from Bank N.A. for \$334,948.91. In July 2007, I received a secondary mortgage from Countrywide in the amount of \$39,460.68.
3. In 2005, my husband suffered a heart attack and subsequently had an internal pacemaker and defibrillator installed. A few months later, as he was still recovering, he was in a catastrophic car accident. The accident caused massive injuries: his face was crushed, his back and legs were broken in multiple places, his pelvis was broken in five places and he suffered injuries to his heart, lungs, and kidneys. The accident resulted in extensive hospitalization and rehabilitation, during which he was wheelchair-bound for many months. These multiple serious injuries negatively impacted my husband's overall health, and his heart condition worsened. In February 2007, we traveled to the Mayo Clinic near Minneapolis, Minnesota so that my husband could receive experimental heart surgery.
4. My husband's string of medical emergencies impacted our finances significantly. When his health problems began, I was employed as a ground and flight paramedic and I earned about \$38,000 per year. Several months after my husband's car accident, I sustained a back injury while lifting a patient and went on medical leave. When my medical leave ended, I took additional leave under the terms of the Family and Medical Leave Act (FMLA) due to my husband's ongoing recovery. After my allotted leave under the FMLA ran out, I resigned from my job as a paramedic and devoted



myself full-time to caring for my husband. Because he had to have several operations, and because he required extensive assistance during his periods of recovery, it was several months before I felt I could start looking for work again. When I did start looking, the economic downturn had made jobs very hard to come by. As a result, I was unemployed from May 2007 until February 2009.

5. I currently hold two part-time jobs and two full-time jobs; I work as a phlebotomist at two laboratories, I am a physician substitute for a pharmaceutical company, and I am an administrative assistant in a law office. In addition, I am working toward my nursing degree through an online program.
6. Until my husband's series of medical emergencies, my finances were always very well maintained. In fact, I took pride in maintaining a high credit score and keeping on top of my financial obligations. But when my husband's health took a drastic downturn, I felt nothing was more important than helping him recover.
7. As a result of the financial strains brought on by my husband's health problems and by being out of work, by October 2008, I found myself unable to continue paying my mortgage. I attempted to negotiate a loan modification with Countrywide Home Loans, which had taken over as the servicer on my mortgage. I provided all of the documentation and information requested by Countrywide. I also explained how important it was to me to stay in my home. When I started the negotiation process, however, I was informed by a Countrywide loan modification officer that the company would only negotiate with me if I was 90 days delinquent on my mortgage payments. I relied on that information and allowed myself to fall 90 days behind on my payments. But Countrywide never offered any modification that I could realistically have afforded. As a result, I went into default on my loan.



8. In March 2009, Bank of New York Mellon, N.A. filed a foreclosure lawsuit against me in the Twentieth Judicial Circuit, in Lee County. My understanding is that my case, like all foreclosure cases in Lee County, has been assigned to a special docket designed to clear the backlog of foreclosure cases. It is also my understanding that the special foreclosure docket does not treat homeowners fairly. As a result, I fear that any defenses I put forward in my foreclosure case will not get a full and fair hearing.

FURTHER AFFIANT SAYETH NOT.

4-2-11

Date

Georgi Merrigan

Georgi Merrigan

Subscribed and sworn to me on this 2<sup>nd</sup> day of APRIL, 2011.

Patti J. Iles

Notary Public, LEE County, Florida



My commission expires: 2-23-14



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKE LAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK,  
Respondent.

\_\_\_\_\_ /

**AFFIDAVIT OF MICHAEL OLENICK**

I, MICHAEL OLENICK, declare the following under penalty of perjury, based on my personal knowledge:

1. I am a software engineer specializing in applied information systems, that is, in using computers to extract and communicate meaning from large sets of data. I am also the co-founder and chief executive officer of Legalprise, Inc.

2. I am a 1989 graduate of Antioch College in Yellow Springs, Ohio, and a 1994 graduate of Hamline University School of Law in Saint Paul, Minnesota. I attended law school in order to enhance my ability to design information systems that address legal issues. I have never sought admission to the bar. My curriculum vitae is attached as an exhibit to this affidavit.

3. I have been employed in a variety of settings as a programmer and designer of information systems. My role has been to create systems capable of digesting complex or large amounts of information and distilling that information into a form more useful for either laypeople or professionals, depending on the project. Employers for whom I have built such systems include Deloitte & Touche, Merrill Corporation, General Electric, Avery Dennison, and iVillage.

4. Legalprise, founded in 2008, is a legal services company providing back-office support to attorneys. Legalprise has created and operates a database of judicial foreclosure docket data which contains docket information available online in Florida foreclosure cases. The database currently contains publicly available data from the websites of 26 of Florida's 67 counties, from which it may be retrieved by searching for a particular case number, party name, or a variety of other terms. The Legalprise database, however, aggregates docket information for all cases. In other words, the Legalprise database downloads every docket entry entered in foreclosure cases for the 26 counties we track; there are hundreds of thousands of foreclosure cases, and tens of millions of



docket entries. Retrieving aggregated data in this manner allows for analysis that reveals trends and patterns across cases.

5. Legalprise data and analysis has been cited by the Congressional Oversight Panel established as part of the Emergency Economic Stabilization Act, as well as by the New York Times, the Wall Street Journal, Bloomberg, Business Week, Time Magazine, and NBC, among other media outlets.

#### *The Legalprise Database*

6. The Legalprise database aggregates three types of data for each foreclosure case: (i) generalized case information, such as the case number and caption; (ii) information about the parties to the case, including plaintiff(s), defendant(s), and, where available, attorneys; and the docket entries themselves. The database is maintained on Legalprise's virtualized twelve CPU Linux server in a protected server farm. It runs on a Java Enterprise platform and employs a Standardized Query Language ("SQL") database, the industry standard method for the storage, retrieval and analysis of massive amounts of data. In order to perform specific analyses, we extract more manageably sized subset of relevant records which are then analyzed in Microsoft Excel. It is not uncommon for these subsets to contain tens of billions of permutations for the computers to analyze.

7. The database is created by downloading data from the servers maintained by each county. I undertake this extraction process at night and on the weekends so as not to impede the operations of county servers during business hours. To guarantee that there are no bugs in the process, which must be adjusted for the specific software in use and information available in each county, I manually spot-check that records in the database are identical with the parallel records available on the county's website.

#### *Lee County Analysis*

8. When analyzing data from Lee County, in order to make certain that the database includes information from all foreclosure cases, I began with the records of lis pendens, also available online from the Clerk of Court. Because Lee County uses tabular data to cross-reference the lis pendens to the case number of the associated foreclosure case, I am able to generate a list of all the foreclosure case numbers. Given this list, I can confirm that my Lee County database contains the docket entries for the comprehensive list of foreclosure cases active during the relevant time period. I downloaded all docket information for each of the Lee County foreclosure cases in which any docket activity occurred after January 1, 2005, totaling some 2.4 million docket entries. The process of extracting the data from Lee County was completed on January 8, 2011. Thus, the analyses that follow include only docket activity prior to that date, except where docket entries created previous to that date had been post-dated.

9. In order to perform analyses of the Lee County data, I implemented a categorization system to render the non-uniform docket entries effectively and accurately searchable. Because docket information is input by humans, there can be substantial



variation in the form that a particular entry takes. For example, a motion for summary judgment may be denominated as a “Mot for Summary Judgment,” a “Motion for Summ Judgment,” or a “Motion for Summary Judgment.” Queries that tally such motions must count all three of these entries, and other variations, as equivalents, so category labels are crucial. This methodology is common in analogous analyses of medical and insurance information, fields in which this kind of search for patterns is common.

10. For the Lee County foreclosure docket data, I utilized a three-tier categorization system. The first tier is at the highest level of generality; for example, in that tier, docket entries are categorized with labels like “motion,” “order,” or “affidavit.” The second and third tiers include increasing levels of granularity where appropriate, specifying that the “motion” is one for “summary judgment,” or that the “order” on “summary judgment” is “granting” that motion. Keyword queries were initially used and the categorizations were then iteratively refined based on result in order to properly include and categorize all docket entries.

#### *Summary Judgment Evidence*

11. In order to analyze compliance in Lee County with Florida Rule of Civil Procedure 1.510(c), which requires that a party seeking summary judgment serve the summary judgment motion and any summary judgment evidence at least twenty days before the time fixed for the summary judgment hearing, I created a list of all the docket entries representing final judgments issued after January 1, 2009. I then created two additional lists. The first contained docket entries representing six specific relevant notices of filing: Notice of Filing Original Note and Mortgage; Notice of Filing Original Mortgage Document(s); Notice of Filing Original Note; Notice of Filing Original Documents; Original Note and Mortgage; and Notice of Filing Attached Documents Copy of Assignment of Mortgage. The second contained docket entries representing two relevant affidavits: Affidavit of Indebtedness and Affidavit of Amounts Due and Owing. I then cross-referenced the list of final judgments with each of these lists by case number. This allowed me to see, for each final judgment, when the last relevant notice of filing and affidavit previous to entry of final judgment was docketed.

12. Next, for each final judgment, I had the computer compare the dates of the last affidavit and the last notice of filing before the entry of that judgment. For whichever date was latest, I had the computer compare the date of that notice of filing or affidavit with the date of entry of final judgment to determine how many days elapsed between them. I then totaled instances in which a notice of filing some piece of summary judgment evidence was docketed fewer than twenty days before the entry of final judgment. I determined that final judgment of foreclosure had been entered 5,290 times since January 1, 2009 on the same day as one of the above notices of filing or affidavits was docketed. Final judgment had been entered 1,660 times between one and nineteen days after one of the above notices of filing was docketed. In total, 6,950 final judgment orders were signed fewer than twenty days after the filing of some piece of summary judgment evidence.



13. I excluded from this query instances in which a docket entry for notice of filing was blank or contained no further specifics indicating what had been filed, although there were more than 1,100 entries of final judgment where such an unspecified notice of filing was docketed fewer than 20 days before entry of final judgment. I also excluded docket entries containing slight typographic or stylistic variations from those listed above. Thus, I believe these numbers to substantially undercount the true total.

*Summary Judgment and Outstanding Motions to Compel*

14. In order to analyze whether final judgment was being entered before discovery disputes were resolved, I began by creating a list of all motions to compel. In cases where there had been multiple motions to compel, I included only the last motion filed. I then noted whether there had been an order on the motion to compel or whether the motion to compel had been withdrawn. Finally, I limited the universe to cases in which final judgment had been entered after January 1, 2009. I determined that there were 253 instances since that date in which final judgment had been entered although there had never been a ruling on a motion to compel nor a withdrawal of that motion.

*Docket Sounding*

15. In order to determine when Lee County began setting foreclosure cases for docket sounding, I pulled a list of all orders setting cases for docket sounding. For each of these orders, I had the computer determine a "reference date," that is, the date from the text of the docket entry indicating when the docket sounding would occur. I determined that substantial numbers of docket soundings first occurred in August 2010, during which month date 1,923 cases were set for docket sounding. That number peaked in December 2010, during which 4,946 cases were set for docket sounding.

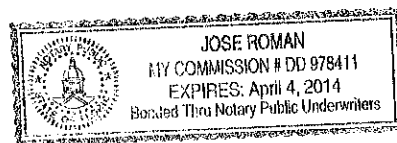
FURTHER AFFIANT SAYETH NOT

4-4-2011  
Date

Michael Olenick  
Michael Olenick

Subscribed and sworn to me on this

4 day of April, 2011.



[Signature]  
Notary Public, Palm Beach County, Florida

My commission expires: April 4, 2014

FLDL 0452-546-66-260-0



My commission expires:



# **EXHIBIT A**



**Michael F. Olenick**  
305 Puritan Rd.  
West Palm Beach, FL 33405  
Tel: 561-699-5056  
Email: [olenick@legalprise.com](mailto:olenick@legalprise.com)

## **Work History**

### 2008-2011. Legalprise, Inc. Co-Founder & CEO

Originally formed as Bankruptcy Force to build a Client Management System for consumer bankruptcy attorneys. Over time, Legalprise "morphed" into a foreclosure audit system as a critical mass of foreclosure case information was drawn into the analytics engine. Today, Legalprise has what is believed to be the deepest database of judicial docketing data, cross referenced to various other data repositories, in the country.

Legalprise data and analysis has been cited by the Congressional Oversight Committee, New York Times, Wall Street Journal, Bloomberg, Business Week, Time Magazine, NBC, and other media outlets.

### 2007-2008 (and ongoing). Blue Ocean Strategy Institute. Creator Blue Ocean Strategy Creatware

Worked with Prof. Renee Mauborgne, of INSEAD business school, co-author of the top-sell business strategy book Blue Ocean Strategy, published by Harvard Business Press. Creatware is specialized software for business strategists to help practitioners of the strategic framework use it correctly and successfully. As part of this project I also became a handful of certified Blue Ocean Strategy consultants. I occasionally write and lecture on Blue Ocean Strategy and the strategic focus continues with my work at Legalprise. My relationship with the Blue Ocean Strategy Institute (BOSI) is periodic but continues.

### 2006 - 2007. GE. Product Manager, Enterprise Security Solutions

GE licensed the Avery Photo ID System from Avery-Dennison then hired me to integrate into the GE infrastructure. The System applied business logic and cross-referenced to rules and processes to make intelligent decisions related to access control in high-risk organizations.

### 2000-2006. FormsServer / Avery Dennison. New Product Development / Knowledge Management

- Created print from the web technology after leaving Registry to create a legal expert system for immigration which, at the time, was a problematic field in California. Avery Dennison noted the label-printing mechanism, used to send the forms away, and purchased the technology. I joined Avery as part of the acquisition though quickly switched to positions more appropriately tuned to my skills; new product development and knowledge management.
- Developed various new products for Avery, including personalized postage (photo-stamps that complied to USPS printed stamp regulations), Avery Photo ID System (name badge/security system), RF-ID systems (ex: automatic tracking of file folders and exhibits), and various other products.
- Served as Avery Dennison's global Director of Knowledge Management, with responsibilities that included aggregation and dissemination of information from throughout all the various employees and data sources around the organization.



1997-2000. Registry Systems / FormsServer. *New Product Development / Legal Expert Systems*

Registry Systems was a specialized consulting business, located in the San Francisco Bay Area, with a focus on complex custom software for large insurance companies. I was hired to create a custom computer program for litigation support, auditing, and compliance. Because insurance laws vary across every state, and there are also federal laws and various administrative requirements, the system was complex. Confidentiality requirements prevent discussion of the system in more depth.

1996-1997. iVillage. *New Product Development*

Create web applications to contextualize and personalize difficult to understand healthcare information, with an emphasis on pregnancy and fetal development.

1990-1996. Merrill Corporation, Production Systems. *Special Projects*

Created custom computer programs to enable the rapid and accurate production of disclosure information, primarily for the Securities & Exchange Commission (SEC). Before working on the document systems I created a system to manage print estimating and production control of compliance forms that were printed across many locations with little or no advance notice.

1989-1990. Deloitte & Touche, Management Consulting Group, *Data Analyst / Analytics*

Create custom database systems to identify trends and patterns in large data sets for the management consulting group at Deloitte & Touche.

Prior to 1989

Various jobs creating contextually focused software and writing news.

**Education**

Hamline University School of Law, JD, 1994.

*Merrill Corporation sent me to this small, specialized ABA law school -- founded and funded by West Publishing -- and a large proportion of graduates work on legal support systems rather than practice law.*

Antioch College, BA, 1989.

*Communications with an emphasis in journalism and a focus on computer-based analysis and dissemination of information.*



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK,  
Respondent.  
\_\_\_\_\_ /

**AFFIDAVIT OF MELVA ROZIER, ESQ.**

I, Melva Rozier, Esq., under penalty of perjury, depose and say as follows:

1. I am an attorney licensed to practice in the State of Florida. I have been practicing in Florida since 2004. About 90% of my current caseload consists of representing homeowners in foreclosure proceedings.
2. My practice is based in Broward, Miami-Dade, and Palm Beach Counties. However, I litigate in other counties on occasion, including two in Lee County. I have appeared in the Lee County foreclosure court on four occasions. Because cases on the foreclosure docket are heard in discrete blocks and usually last only a few minutes, on each occasion I was in court I observed numerous proceedings besides my own. Overall, I would estimate that on the various occasions I have appeared for foreclosure matters in Lee County, I observed proceedings in approximately 40 to 50 cases.
3. On the basis of what I have observed, I am especially disturbed by the way foreclosure trials are conducted in Lee County. Typically, each trial lasts only



about three minutes. These abbreviated trials do not resemble normal trial practice. For example, I have never seen a defendant put on witnesses or cross-examine a plaintiff's witnesses. Moreover, judges in Lee County often allow trials to go forward – and ultimately issue final judgments – even where no one has appeared on behalf of the defendant. From what I have observed, when a defendant does not show up for trial, the judge does not stay the proceeding or take any action to ensure that the defendant is represented. Rather, in some instances I have seen judges in Lee County issue final judgment in favor of the plaintiff without requiring the plaintiff to put on any case at all.

4. I have also observed several summary judgment hearings where pro se defendants are treated unfairly. During these hearings, the attorney for the plaintiff appears in front of the judge while the pro se defendant sits in the gallery out of earshot of the colloquy between plaintiff's counsel and the court. I believe these procedures prevent pro se defendants from effectively presenting their case.
5. I am currently counsel for the defendant in *Bank of New York Mellon v. Bustillo*, No. 09-CA-069563, a foreclosure suit pending in Lee County. The complaint in that case was filed November 24, 2009. I filed a motion to dismiss on December 23, 2009.
6. A docket sounding in *Bustillo* was scheduled for October 20, 2010 before Magistrate Mary Hawthorne, at which the case was continued to the docket sounding, set for December 22, 2010. The stated purpose of the continuance was to allow for discovery and for all motions to be filed. On December 9, 2010,



though I had still not set nor received a ruling on the motion to dismiss, I served the plaintiff with interrogatories.

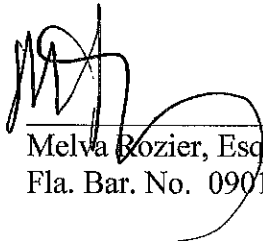
7. At the docket sounding convened on December 22, 2010 the case was set for trial on February 22, 2011, despite the fact that the court had not ruled on the motion to dismiss and the plaintiff had not responded to the pending requests for interrogatories.
8. On January 4, 2011, I filed a motion to remove the case from the trial docket. The motion argued that the case was not at issue because the motion to dismiss was pending and because I was procedurally barred from conducting discovery regarding the merits of plaintiff's case until the court decided that motion. The motion to remove the case from the trial docket was set for hearing on March 7, 2011, even though the case was scheduled to go to trial on February 22, 2011.
9. Because the court's scheduling system did not allow me to proceed with my motion to remove the case from the trial docket before the February 22, 2011 trial date, my ability to prepare for trial was compromised. I had no summary judgment affidavit available in preparing my defense and could not conduct adequate discovery. I had no idea which witnesses plaintiff would call because I still did not know which bank held the note for the mortgage in question. Accordingly, I had no way of knowing which bank plaintiff would bring to court as a witness. In addition, I could not depose any bank officials because I never received a response to my December 6, 2010 interrogatory requesting names and addresses for the plaintiff.

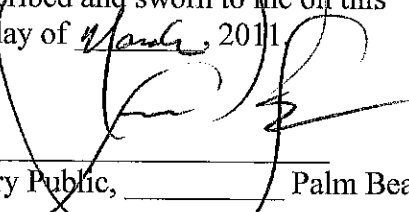


10. Pursuant to the court's order setting trial, I appeared before Magistrate Hawthorne on February 22, 2011. Plaintiff, however, failed to show up. In light of plaintiff's unexplained failure to appear at the trial date, I moved for dismissal with prejudice. Magistrate Hawthorne informed me that she could only make a recommendation, which the senior judge assigned to the case may or may not adopt and which the plaintiff had 15 days to oppose. This strikes me as unfair because it gave the plaintiff a chance at having a second shot despite failing without justification to appear as ordered, and especially because on numerous occasions I have seen the judges in Lee County rule against defendants when they failed to show up for scheduled hearings.

FURTHER AFFIANT SAYETH NOT.

3/30/11  
Date

  
Melva Rozier, Esq.  
Fla. Bar. No. 0901121

Subscribed and sworn to me on this  
30th day of March, 2011  
  
\_\_\_\_\_  
Notary Public, \_\_\_\_\_ Palm Beach County, Florida  
My commission expires:





IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK,  
Respondent.

\_\_\_\_\_ /

**AFFIDAVIT OF LAURENCE M. SCHWARTZTOL, ESQ.**

I, Laurence M. Schwartztol, Esq., declare the following under penalty of perjury, based on my personal knowledge:

1. On October 19, 2010, the American Civil Liberties Union ("ACLU") and the American Civil Liberties Union of Florida submitted to the Twentieth Judicial Circuit of Florida a formal request for public records pursuant to Florida Rule of Judicial Administration Rule 2.420 and Article I, § 24(a) of the Florida Constitution.
2. This request sought records of the judicial branch generated since January 1, 2009 regarding the establishment and maintenance of "any division, section, or case management unit ... created to manage, adjudicate, or dispose of proceedings related to foreclosure cases." It specifically sought, among other things, records regarding rules and procedures, personnel, training of judges, and case-tracking data. A copy of the request submitted to the Twentieth Circuit is attached hereto as Exhibit 1.
3. Over the ensuing months, I corresponded with Eric Fishbeck, Court Operations Consultant at the Twentieth Judicial Circuit, regarding the Twentieth Circuit's response to the ACLU's request. The Twentieth Circuit produced responsive records to the ACLU electronically, in several installments, in February and March 2011.



4. The following judicial records produced to the ACLU by the Twentieth Circuit are attached hereto –
- a. Lee County Clerk of Courts, *Mortgage Foreclosure Analysis for Backlog and Dispositions* is attached hereto as Exhibit 2
  - b. Email from Nancy Aloia, Family/Civil Court Director, to Judge Keith Cary, et al. (Oct. 5, 2010) is attached hereto as Exhibit 3
  - c. Email from Judge John S. Carlin to Judge Stella Diamond (Oct. 15, 2010) is attached hereto as Exhibit 4
  - d. Email from Judge John S. Carlin to Nancy Aloia, Family/Civil Court Director (Aug. 20, 2010) is attached hereto as Exhibit 5
  - e. Email from Ellen Conderman, Judicial Assistant, to Kimberly Cambareri, Computer Programmer/Analyst (Mar. 8, 2010) is attached hereto as Exhibit 6
  - f. Email from Judge John S. Carlin to Linda Johnston, Senior Court Clerk (July 17, 2009) is attached hereto as Exhibit 7
  - g. Email from Judge John S. Carlin to Judge Michael McHugh (Apr. 23, 2009) is attached hereto as Exhibit 8
  - h. Email from Judge Lee Ann Schreiber to Judge George Richards (Sept. 10, 2010) is attached hereto as Exhibit 9
  - i. Email from Judge John S. Carlin to Nancy Aloia, Family/Civil Court Director (June 25, 2010) is attached hereto as Exhibit 10
  - j. Email from Judge George Richards to Judge Lee Ann Schreiber (Apr. 13, 2010) is attached hereto as Exhibit 11
  - k. Email from Judge Sherra Winesett to Judge Michael McHugh (Mar. 16, 2010) is attached hereto as Exhibit 12
  - l. Email from Judge John S. Carlin to Sandi Sauls, Civil Division Manager (May 5, 2010) is attached hereto as Exhibit 13
  - m. Email from Judge John S. Carlin to Penelope Rose (May 21, 2010) is attached hereto as Exhibit 14
  - n. Email from Judge Hugh Starnes to Judge John S. Carlin (Aug. 13, 2010) is attached hereto as Exhibit 15



- o. Email from Judge John S. Carlin to Sandi Sauls, Civil Division Manager, and Linda Johnson, Senior Court Clerk, (Sept. 1, 2010) is attached hereto as Exhibit 16
- p. Email from Judge John S. Carlin to Judge Stella Diamond (Oct. 15, 2010) is attached hereto as Exhibit 17
- q. Model Docket Sounding Order, Twentieth Judicial Circuit, is attached hereto as Exhibit 18

FURTHER AFFIANT SAYETH NOT

4/5/11  
Date

  
Laurence Schwartztol, Esq.

Subscribed and sworn to me on this  
5th day of April, 2011.

  
Notary Public, New York County, New York

My commission expires: 9/5/13

**Sheryl A. Douglas**  
**Notary Public, State of New York**  
**No. 01DO5049085**  
**Qualified in King County**  
**Commission Expires September 5, 2013**



# **EXHIBIT 1**





LARRY SCHWARTZTOL  
STAFF ATTORNEY  
RACIAL JUSTICE PROGRAM  
T/212.519.7849.  
LSCHWARTZTOL@ACLU.ORG

October 19, 2010

Chief Judge G. Keith Cary  
Twentieth Judicial Circuit Court of Florida  
Lee County Justice Center  
1700 Monroe Street  
Fort Myers, Fl. 33901

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2500  
WWW.ACLU.ORG

OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

RICHARD ZACKS  
TREASURER

Dear Chief Judge Cary:

The following is a formal request for public records pursuant to Florida Rule of Judicial Administration Rule 2.420 (2010) and Article I, § 24(a) of the Florida Constitution. We hereby request copies of public records dating from January 1, 2009 until the present that contain the information enumerated below.

1. All records of the judicial branch relating to the establishment of any division, section, or case management unit within the Twentieth Judicial Circuit created to manage, adjudicate, or dispose of proceedings related to foreclosure cases,<sup>1</sup> including but not limited to administrative orders, memoranda, correspondences, and minutes of meetings.
2. All records of the judicial branch relating to the rules, procedures, and practices established to manage, adjudicate or dispose of foreclosure cases in the Twentieth Judicial Circuit.
3. All records of the judicial branch indicating the names, job titles, and responsibilities of all judges, senior judges, magistrates, and clerks assigned to preside in any division, section, or case management unit within the Twentieth Judicial Circuit created to manage, adjudicate, or dispose of foreclosure cases.
4. All records of the judicial branch relating to the training of general magistrates or senior judges to preside over foreclosure cases. This request includes, but is not limited to, any manuals or other training materials provided to general magistrates or senior judges assigned to preside over foreclosure cases.

<sup>1</sup> For purposes of these requests, "foreclosure case" means any civil litigation initiated to foreclose on residential real property.



5. All records of the judicial branch relating to the rules governing public access to civil proceedings in the Twentieth Judicial Circuit, including but not limited to public access to proceedings in foreclosure cases.
6. All records of the judicial branch containing data maintained in the Case Tracking System for submission to the Office of State Court Administration, as provided in the State Courts System FY 2010-2011 Foreclosure and Economic Recovery Funding Plan. This data includes, but is not limited to, clearance rates, the number of cases disposed, the percent of backlogged cases, and the average age of target cases. This request encompasses each tracking workbook provided to the Office of State Court Administration from June 30, 2010 until the present.

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UNION FOUNDATION

"Records of the judicial branch" is defined, under Florida Rule of Judicial Administration 2.420(b)(1), to mean all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity.

Please provide this information on a CD-ROM or in an electronic format. Where electronic records cannot be provided, please supply instead paper copies of all responsive documents. Please direct all records to:

Rachel Goodman  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10024

If you believe that an exemption applies to any portion of the records requested, Florida Rule of Judicial Procedure 2.420(i)(2) requires you to state in writing the reasons for your conclusion that the record is exempt. Please also state the basis for any alleged exemptions with specificity as to the reasons for your assertions and excise or delete from the records only that portion of the record for which an exemption is being asserted and validly applies.

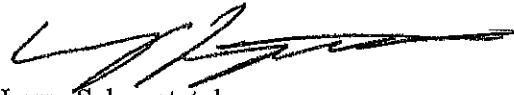
Please note that Rule 2.420(i) requires that your response to this request be reasonable. We therefore request that you produce these records within 20 days from the date of this request.

The American Civil Liberties Union is a non-profit organization, and the disclosure of the data requested in this letter is pursuant to the public interest. Therefore, we request that your compliance with this request be provided free of charge. However, if you are unable to do so, and if the fee will exceed \$100.00, please contact us before the charges are incurred.



If you have any questions regarding this request, please feel free to contact Rachel Goodman at (212) 549-2588 or [rgoodman@aclu.org](mailto:rgoodman@aclu.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Schwartz", with a long horizontal flourish extending to the right.

Larry Schwartzol  
Rachel Goodman  
ACLU Racial Justice Program

Muslima Lewis  
ACLU of Florida

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION



# **EXHIBIT 2**



# Lee County Clerk of Courts Mortgage Foreclosure Analysis for Backlog and Dispositions

## Estimates for backlog on June 2010 Without Mass Foreclosures and With Mass Foreclosures

24,335	Foreclosure backlog as of April 2009
1900	new filings per month
22800	new filings per year
523	dispositions per month w/o mass foreclosures
6276	dispositions per year w/o mass foreclosures
16524	increase in one year
40,859	June 2010 total w/o mass foreclosure docket
2100	dispositions per month with mass foreclosures *
25200	dispositions per year with mass foreclosures
2,400	decrease in one year
21,935	June 2010 with mass foreclosure docket

\*Note: 2100 estimated foreclosure dispositions include dispositions/sales processed by Clerk (1849 estimated) and dispositions by other means, redemptions for example (251 estimated).



# **Lee County Clerk of Courts** **Mortgage Foreclosure Case Processing Activity & Personnel Costs Analysis**

Case Initiation (not included in calculations)		Avg time
1	Open case/ scan/record Lis Pendens/ issue summonses/notices of action	20 minutes
2	Case verification	5 minutes
3	Service Returns/scan/data entry/filing	20 minutes
4	Subsequent Constructive Service	20 minutes
5	General Docketing/scanning/filing	40 minutes
6	Defaults	20 minutes
Processing of Sale and Disposition (included in calculations)		
7	Clerk time in court	10 minutes
8	Judgment/sale date/Notice of Sale/send for publication/copies/data entry/recording/filing	40 minutes
9	Calendaring JACS	5 minutes
10	Judicial Sale/bid sheet/Cert of Sale/copies of Affidavit/fees	25 minutes
11	Outside bidder	10 minutes
12	Cert of Disbursements/Cert of Title/recording/copies	20 minutes
13	Disbursements	10 minutes
14	Surplus trustees	20 minutes
15	Rescheduled/data entry/calendaring/copies/scanning/filing	15 minutes
* 45 Minutes only on cases with outside bidders/surpluses/reschedules		
Total		155 minutes to process individually

**63 minutes to process in mass**

## Increase in case processing due to mass foreclosure exclusively

number cases for the regular dockets (average for 1 year prior to mass hearings)  
number of cases for regular dockets plus mass foreclosure dockets (average)  
**total foreclosure cases to process per month over the regular docket**

523
1849
<b>1326</b>

## FTEs needed to process mass foreclosures

83538 minutes per month	
1392.3 hours per month	
16707.6 hours per year needed	
2080 hours per year per FTE	
<b>8.03 FTE's needed for mass foreclosure proc</b>	
4	\$28,000
4	\$45,000
<b>\$292,000 Total budget needed</b>	

Temp services FTEs for less complex tasks (annual costs)  
Employee FTEs for more complex tasks (salary + benefits)



# **EXHIBIT 3**



**From:** Carlin, John S. </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JSC5225>

**To:** Starnes, Hugh E

Thompson, James

Diamond, Stella

Hawthorne, Amy

**CC:** Cary, G. Keith

Callanan, Richard

Aloia, Nancy K

**Date:** 10/5/2010 10:24:40 AM

**Subject:** ?FW: Foreclosure project/Sept clearance rate

---

Hugh, Jim, Stella and Amy,

Thank you for the outstanding job that you all are performing with foreclosures. The below disposition and clearance rates are a tribute to all of you and the great job that you are doing with foreclosures. Many, many thanks!

John

---

**From:** Aloia, Nancy K

**Sent:** Tuesday, October 05, 2010 11:19 AM

**To:** Cary, G. Keith; Carlin, John S.; Callanan, Richard; McHugh, Michael; Sauls, Sandi

**Subject:** Foreclosure project/Sept clearance rate

Hello

The foreclosure clearance rate for September is 249% (933 filed/2,327 disposed). This is still great news! The clearance rate is affected by the higher filings this month so it appears lower than last. However, our goal for this project is to dispose of the same number of filings per month plus 1,040 additional cases. So, for September we met our 100% clearance rate and disposed of 1,394 additional cases which is 354 more cases than our reduction goal....so, great news!

**To-date:**

**We have met our 100% clearance rate every month**

**We have met the reduction goal of 1,040 cases every month**

**We have disposed of 1,410 additional cases over our goals**

Thank you-Nancy



# **EXHIBIT 4**



**From:** Carlin, John S. </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JSC5225>

**To:** Diamond, Stella

**CC:**

**Date:** 10/15/2010 9:53:14 AM

**Subject:** ?RE: abatements

---

We do not want to abate. They can always dismiss the case but we don't want to abate. Keep them on a DS because they cannot cancel our DS. I know that Judge Starnes has given some 60 days continuances to review the affidavits. I believe that when these come back in December they need to be resolved by Summary Judgment or set for a trial. The banks are cancelling a lot of Summary Judgment hearings set on our high volume Friday dockets and they can do this since it is their motion. Happy to talk further if it would be helpful. My backline is § 119.071, F.S. § 119.071, F.S. § How was your trip? Welcome back!

---

**From:** Diamond, Stella

**Sent:** Friday, October 15, 2010 10:34 AM

**To:** Carlin, John S.

**Subject:** abatements

How should we handle motions for abatement in these foreclosure cases? If the attorneys are told not to proceed with the case by their client, should I be recommending abatement or dismissal? (I'm referring to the cases where they are reviewing the affidavits). Thanks.



# **EXHIBIT 5**



**From:** Aloia, Nancy K </O=SAO20/OU=CACJS/CN=RECIPIENTS/CN=NKW2884>  
**To:** Carlin, John S.  
**CC:**  
**Date:** 8/24/2010 2:39:44 PM  
**Subject:** ?RE: Draft Schedule

---

Updated report attached.

1. The % of continuances for August is 62% (1,253 heard/727 continued). *Please note that the report displays a running total and shows 42% for Aug. since it is comparing against the total # of DS scheduled.*
2. I would estimate continuances in the early months of this project to be high: 70%.

JACS training set is scheduled this Thursday for the clerk's office.

Thank you

---

**From:** Carlin, John S.  
**Sent:** Tuesday, August 24, 2010 11:38 AM  
**To:** Aloia, Nancy K  
**Subject:** RE: Draft Schedule

If you need anything regarding the JACS training just let me know.

As we develop the Nov. and Dec. calendars, it might be helpful to answer a few questions:

1. What percent of cases are continuing from DS? My guess is 50% but I wanted to know your thoughts.
2. Is there a way for you to easily share with me the current number of DS cases set for Judges and Magistrates for September and October? I would like to see the exact number currently set per session. This would be helpful as we plan for November and December.

I would appreciate these items being answered today if you have the time. I want to get this schedule resolved this week to give staff sufficient time to get the new DS dates out to the parties with 60 days notice so hopefully we will get a lot of SJ hearings set in November and December. Thanks, Nancy.

---

**From:** Aloia, Nancy K  
**Sent:** Tuesday, August 24, 2010 11:18 AM  
**To:** Carlin, John S.  
**Subject:** RE: Draft Schedule

Thank you for the offer. I will be able to resolve this matter today and identify a training date for this week. Sandi has identified a point person on the foreclosure project who is now getting these matters resolved for their office.

---

**From:** Carlin, John S.  
**Sent:** Tuesday, August 24, 2010 10:40 AM  
**To:** Aloia, Nancy K  
**Subject:** RE: Draft Schedule

How long have we been waiting? Do you want me to meet with Sandi? This needs to happen asap for the good of everyone. Please keep me posted. Thank you.

-- Sent from my Palm Pre

---

On Aug 24, 2010 10:06 AM, Aloia, Nancy K <NAloia@CA.CJIS20.ORG> wrote:

Yes- I am waiting on the clerks to provide me a date for training. It is important that we get this done so I will make sure this



---

**From:** Carlin, John S.  
**Sent:** Tuesday, August 24, 2010 7:49 AM  
**To:** Aloia, Nancy K  
**Subject:** RE: Draft Schedule

The clerks will not be thrilled to look at JACS in the courtroom but this info is critical to setting next DS. LJ told me yesterday that 2 clerks are needed in court for DS due to volume. I agree and this will help with our JACS request of clerks. Can we set up this training this week?

-- Sent from my Palm Pre

---

On Aug 23, 2010 10:41 PM, Aloia, Nancy K <NAloia@CA.CJIS20.ORG> wrote:

Yes. I have already thought about that and have offered a JACS training session for the clerks. As soon as they identify the training date for the new clerks we will allow them access to view JACS. This should help with the courtroom.

---

**From:** Carlin, John S.  
**Sent:** Friday, August 20, 2010 8:34 PM  
**To:** Aloia, Nancy K <NAloia@CA.CJIS20.ORG>  
**Subject:** RE: Draft Schedule

I want to talk with you about a system where the clerk informs the judge or mag the next available date for a DS that has room for the case to keep our numbers at 100 per session. Could they access JACS in the courtroom for this info? Just wanted to get this idea to you for your thoughts.

-- Sent from my Palm Pre

---

On Aug 20, 2010 3:37 PM, Aloia, Nancy K <NAloia@CA.CJIS20.ORG> wrote:

Please disregard the previous attached Word document. Updated changes in this revision. Thank you

---

**From:** Aloia, Nancy K  
**Sent:** Friday, August 20, 2010 3:31 PM  
**To:** Carlin, John S.  
**Subject:** RE: Draft Schedule

Attached calendar with changes. Notes below

I have changed the docket soundings to the 100/100 formula for Nov/Dec. With the continued DS that may mean they hear about 250-280 DS per day --possibly higher because of the numbers of DS set in Sept.

I changed the 2 trial dates on the calendar for Mag. Hawthorne which now reflects DS. If she schedules a trial at DS she will need to roll it to Mag. Diamond's docket unless we keep one trial date open per month for her.  
Thank you -- Have a great week-end!

---

**From:** Carlin, John S.  
**Sent:** Friday, August 20, 2010 2:14 PM  
**To:** Aloia, Nancy K  
**Subject:** RE: Draft Schedule

A few ideas regarding the schedule:

I think that the Senior Judges and Magistrates can each do 100 cases per session of docket sounding. We have scheduled



the Senior Judges for 100 in October and the Magistrates for 75 in October. Based upon my experience and seeing some court recently, 100 cases is a good number. Done

For SR Judge hearings, 75 in the a.m. and 100 in the p.m. is reasonable and that is how we have scheduled in the past. Your calendar has only 75 in the p.m. Done

On Nov. 22 and Dec. 27, it has Trial days for Mag. Hawthorne which I believe is a mistake. She is only doing DS and these dates need to reflect DS for her. Done-notes above

On November 19, I would like to change that to a DS instead of trial for Mag. Diamond since we are short on a DS due to holiday and she has plenty of other trial days in the month. Done

In November, we need to add one more day of a SR Judge docket sounding as we have 9 days in Oct. but only 8 on the draft November schedule. Done - 11/3

Is Nov. 12 a trial day for a SR Judge in addition to a Friday foreclosure day for another SR Judge? Yes- Nov is a short month for us. Logic: If trial is not needed we already have a Snr Judge to sign on Friday.

On Nov. 19, the SR Judge calendar from Penelope has Starnes doing UFH and McIver doing Friday foreclosures. This is an error and I believe that we can cancel out McIver and have Starnes do the Friday foreclosure docket. Am I correct? Done-spoke with Penelope and email sent: Judge Starnes to cover/Judge McIver cancelled

In December we need to add one more day for docket sounding to get 9 days. Done -12/22 added

On the calendar, Dec. 10 has Starnes doing trial and Friday foreclosure. Do you want to keep trial day and find another SR Judge? If so, that allows for 2 trial days with Judges. If not, then we need to add a second date on the calendar to get 2 trial days with SR Judges. Yes - keep the trial date. The holiday shortened available days in this month. Logic: If trial is not needed we already have a Snr Judge to sign on Friday.

When you have a minute, please let me know your thoughts and make any changes to a new calendar that you agree with. We can talk about any areas of disagreement. I want us to have everything resolved early next week so that we can begin noticing these dates giving ample time for the SJ to be set at the DS. Thanks, Nancy. Have a good week-end!

---

**From:** Aloia, Nancy K

**Sent:** Thursday, August 19, 2010 6:28 PM

**To:** Carlin, John S.

**Subject:** FW: Draft Schedule

## ***November***

### ***Senior Judge Schedule:***

Hearing dates: November 1, 2, 8, 15, 22, 29 - (75 cases at 8:30 and 100 cases at 1:00)

Docket soundings: November 4, 9, 10, 16, 17, 18, 23, 30- 75 cases at 8:30 and 75 cases at 1:00

Trial Days Available: Nov. 12, 24

Friday Summary Judgment dockets: Nov. 5, 12, 19 at 8:30 and 250 cases at 1:00

### ***Magistrate Diamond Schedule:***

Hearing dates: November 30

Docket soundings: November 2, 3, 4, 9, 10, 16, 17, 18, 23, 24, with 60 at 8:30 and 60 cases at 1:00

Trial Days Available: Nov. 1, 5, 8, 12, 15, 19, 22, 29

### ***Magistrate Hawthorne Schedule:***

Docket soundings: November 2, 3, 4, 9, 10, 16, 17, 18, 23, 24, 30 with 60 at 8:30 and 60 cases at 1:00

Trial Days Available: Nov. 22

## ***December***

### ***Senior Judge Schedule:***

Hearing dates: December 6, 7, 13, 14, 27, 28 - (75 cases at 8:30 and 100 cases at 1:00)

Docket soundings: Dec 1, 2, 8, 9, 15, 16, 20, 21, 29 at 75 cases at 8:30 and 75 cases at 1:00

Trial Days Available: Dec. 10, 21

Friday Summary Judgment dockets: Dec 3, 10, 17 at 8:30 and 250 cases at 1:00

### ***Magistrate Diamond Schedule:***

Hearing dates: Dec. 30 (15 mins. or longer) at 8:30, 9:30, 10:30, 1:00, 2:00, 3:00 and 4:00- set four hearings per hour

Docket soundings: Dec., 1, 2, 7, 8, 9, 14, 15, 16, 21, 22, 28, 29 with 60 at 8:30 and 60 cases at 1:00

Trial Days Available: Dec. 3, 6, 10, 13, 17, 20, 27

### ***Magistrate Hawthorne Schedule:***



Docket soundings: Dec. 1, 2, 7, 8, 9, 14, 15, 16, 20, 21, 22, 28, 29 with 60 at 8:30 and 60 cases at 1:00

Trial Days Available: Dec. 27

Thank you

*Nancy Aloia*

*Family/Civil Director*

*Twentieth Judicial Circuit*

*1700 Monroe Street, Ft. Myers, FL 33901*

*239-533-2991/Mobile 357-5641*



# **EXHIBIT 6**



**From:** Cambareri, Kimberly </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=KCAMBARERI>  
**To:** Conderman, Ellen  
**CC:** Schreiber, Lee Ann  
**Date:** 3/9/2010 8:26:16 AM  
**Subject:** ?RE: Judge Schreiber Jacs templates in Lee Co

---

Ellen,

I have modified your template that corresponds to the last Wednesday of the month. This is the breakdown -

09:00am - 25 timeslots (5 min)

10:30am - 25 timeslots(5 min)

01:30pm -25 timeslots (5min)

03:00pm, -25 timeslots (5min)

03:30pm - 5 timeslots (15 min)

Kimberly Cambareri  
Computer Programmer/Analyst  
(239) 533-9103 work  
(239) 357-4506 mobile  
mailto:kcambareri@ca.cjis20.org

From: Conderman, Ellen  
Sent: Monday, March 08, 2010 3:17 PM  
To: Cambareri, Kimberly  
Subject: RE: Judge Schreiber Jacs templates in Lee Co

Hi Kim,

Judge Schreiber says to please change the template after 8/23/10. 5 minute hearings in the am and 10 & 15 in the pm.  
Yes, to confirm we want a total of 100 slots.

Ellen Conderman  
Judicial Assistant  
Judge Lee Ann Schreiber  
239-533-2603 Lee County  
941-833-3033 Charlotte County  
econderman@ca.cjis20.org

From: Cambareri, Kimberly  
Sent: Monday, March 08, 2010 8:25 AM  
To: Conderman, Ellen  
Cc: Schreiber, Lee Ann; McLean, Craig  
Subject: RE: Judge Schreiber Jacs templates in Lee Co

Ellen,

I can adjust your templates, but they are already deployed through the week ending August 23, 2010. If you would like the timeslots to be adjusted now, perhaps we can look at the hearings on her calendar that are scheduled and try to insert some new timeslots. Please give me a call and we can discuss it.

Please call me if you have any questions.

Kimberly Cambareri



Computer Programmer/Analyst

Page 2

(239) 533-9103 work  
(239) 357-4506 mobile  
mailto:kcambareri@ca.cjis20.org

From: Conderman, Ellen  
Sent: Friday, March 05, 2010 4:35 PM  
To: Cambareri, Kimberly  
Cc: Schreiber, Lee Ann  
Subject: Judge Schreiber Jacs templates in Lee Co

Hi Kim,

Judge Schreiber is requesting to change her residential mortgage foreclosure docket in Lee County to the following timeslots:

On the Wednesday of the Fourth FULL week of the month (or the 2nd Lee Co week) and the Fifth Wednesday (if there is one):

9:00 am

10:30 am

1:30 am

3:00 pm

25 cases in each timeslot (for a total of 100 cases per day) with 10 and 15 minute hearings in the afternoon as we have now. If you have any questions, give me call.

Ellen Conderman  
Judicial Assistant  
Judge Lee Ann Schreiber  
239-533-2603 Lee County  
941-833-3033 Charlotte County  
econderman@ca.cjis20.org



# **EXHIBIT 7**



**From:** Carlin, John S. </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JSC5225>

**To:** Johnston, Linda

**CC:**

**Date:** 2/17/2009 2:20:00 PM

**Subject:** ?RE: New Dates for Foreclosure Hearings

---

Let's go with 200 per session. Can you advise Kim? Thanks.

---

**From:** Linda Johnston [mailto:ljohnston@leeclerk.org]

**Sent:** Tuesday, February 17, 2009 1:58 PM

**To:** Carlin, John S.

**Subject:** RE: New Dates for Foreclosure Hearings

Unless you want it to be 250 per session?

---

**From:** Carlin, John S. [mailto:Fla. R. Court 2.420]

**Sent:** Tuesday, February 17, 2009 1:53 PM

**To:** Kim Cambareri; Linda Johnston

**Subject:** RE: New Dates for Foreclosure Hearings

You can go ahead and create the time slots and use the judges names below and we can always change out a name if needed. LJ, is it 250 per session?

---

**From:** Cambareri, Kimberly

**Sent:** Tuesday, February 17, 2009 1:28 PM

**To:** Carlin, John S.; Johnston, Linda

**Subject:** RE: New Dates for Foreclosure Hearings

Judge Carlin and LJ,

Shall I wait until these dates are secured before creating timeslots in JACS. Also do all of these judges have the 250 in the am and 250 in the pm?

Thank you

Kim Cambareri

---

**From:** Carlin, John S.

**Sent:** Tuesday, February 17, 2009 1:12 PM

**To:** Johnston, Linda

**Cc:** Davis, Dana; Kellum, Ken; Cambareri, Kimberly

**Subject:** New Dates for Foreclosure Hearings

LJ-

I would like to add foreclosure dates with Senior Judges for May 7, May 14, May 21, May 28, June 4, June 11, June 18 and June 25. We can notice them for Courtroom C. I am copying this email to Dana with a request to secure Senior Judges for these dates. I have reviewed the Senior Judge calendar and believe that Judge Schoonover is available May 7, Judge Thompson is available May 14, 21, 28 and June 25, Judge Starnes is available June 4 and June 18 and Judge Pellecchia is available June 11. Please contact these judges to see if they are available for these dates and then let me know who will be covering these dates. Please do not forward this email to the judges but write to them separately and copy me with your email. Please let me know if you have any questions. Thank you.

Judge Carlin

---

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# **EXHIBIT 8**



**From:** Carlin, John S. </O=SAO20/OU=CACJS/CN=RECIPIENTS/CN=JSC5225>

**To:** McHugh, Michael

**CC:**

**Date:** 4/23/2009 2:07:18 PM

**Subject:**

---

Mike-

LJ said that she thought that we would have enough volume to keep setting Monday hearings, one Senior Judge hearing 400 cases and one civil judge rotating in weekly for 400 cases or whatever the civil judges are comfortable hearing. Judge Cary offered to be part of the rotation. Let me know if I can be of any further assistance. Thanks for taking the lead with the civil judges on the foreclosure matter.



# **EXHIBIT 9**



From: Richards, George </O=SAO20/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=GRICHARDS>

To: Schreiber, Lee Ann

CC: Embury, Jon

Shelton, Jaremy

Davis, Dana

Date: 9/12/2010 11:04:50 AM

Subject: ?RE: Motions For Continuance of trials

---

I think resetting it for trial on the next trial docket is a great idea, but what if the party states they cannot be ready by then. I suggest a status in 45-60 days. No progress, then #1 for trial on the next docket.

George

From: Schreiber, Lee Ann

Sent: Friday, September 10, 2010 4:55 PM

To: Richards, George

Cc: Embury, Jon; Shelton, Jaremy

Subject: Motions For Continuance of trials

I wanted to share my thoughts on motions for continuances and let you know how I intend to approach these motions. With a view towards trying to be relatively uniform Yes, we have a firm policy against continuances, especially on these old cases, but we cannot have blanket no continuance rule in all cases

I am finding the request for continuances (mostly from Plaintiffs) to fall into a couple categories:

- 1) we wish to pursue settlement
- 2) there is insufficient time to set the motion for SJ (even though when we served the Order, we allowed sufficient time; they sat on it)
- 3) Discovery is not concluded
- 4) A Counter-claim is pending and a responsive pleading or motion direct to that counterclaim has not been filed &/or disposed; i.e. a Mo Dismiss)
- 5) I have a (documented) schedule conflict (which cannot be resolved by Admin Order 2.10) and my client will be prejudiced (I've gotten these from Defendant's attorneys because they are scheduled to be on other foreclosure trials (Collier County) on older cases than ours)



I will deny the Mo Continue on all but the last 2.

If the case is not at issue under Rule 1.440, it is reversible error to compel them to go to trial. This may happen on occasion given that MANY old foreclosure cases were set for trial on the Court's own motion (and upon cursory review that made the case appear as if it was at issue and ready to be placed on the trial docket when, in fact, it is not "at issue" within the meaning of the Rule). If a counterclaim is pending and the Complaint is set for trial, I am converting the 10" trial to a 10" case management conference on the Court's own motions and entering an Order accordingly.

If there is a documented, genuine conflict with the trial date, I am granting the motion to continue to another trial date. In other words I'm not just granting the motion and letting the case sit. It will automatically be set on the next trial docket approx 30 days away and the Order granting continuance will re-set the date and time for trial.

Because of the # of requests for continuances, I have developed a couple of templates that I just started using today. The templates for Order Denying Mo Continuance and Order Granting Continuance/convert to Case management conference are attached in cases you might find them helpful or something you could enhance. Either Ellen or I are hand-writing the case name & number and hand writing in the blanks which helps it go faster. On the "service list" we copy the one attached to the motion for continuance (doctor it up on copier if needed) and serve all parties.

Jon/Jeremy, is there a way to streamline these Orders (including the Order setting trial date) so that the case style & # and ALL the attorneys/parties names do not have to be re-typed? We have software capabilities in Lee County to do this (Kim Cambareri wrote the program to integrate with the family court docket in Lee County ). Is there a way to have a forms data base that we populate w standard info? I think Jeremy had to hand type all the trial orders? Not an efficient good use of his or our time.

Your thoughts?

LAS



# **EXHIBIT 10**



**From:** Carlin, John S. </O=SAO20/OU=CACJS/CN=RECIPIENTS/CN=JSC5225>

**To:** Aloia, Nancy K

McHugh, Michael

**CC:**

**Date:** 6/25/2010 12:16:56 PM

**Subject:** ?RE: procedure for telephonic hearings

---

Yes, I agree that we will not have any telephonic hearings for any foreclosure hearings for ones that are currently scheduled or will be scheduled in the future with a Magistrate or Senior Judge. You can give names of local counsel who handle cases if that would be helpful to the out of town attorney. If anybody gives you a difficult time, you can tell them that is per the Admin. Judge in Lee County. Let me know if you get any complaints.

---

**From:** Aloia, Nancy K

**Sent:** Friday, June 25, 2010 1:11 PM

**To:** McHugh, Michael; Carlin, John S.

**Subject:** procedure for telephonic hearings

Hello

I have a request for attorney to appear by phone in foreclosure hearing set before the Magistrate.

I would like to set protocol requiring all to appear in person for foreclosure cases that are set before wither the Senior Judge or Magistrate.

Do you foresee any problems with this? Thank you

*Nancy Aloia*

*Family/Civil Director*

*Twentieth Judicial Circuit*

*1700 Monroe Street, Ft. Myers, FL 33901*

*239-533-2991/Mobile 357-5641*



# **EXHIBIT 11**



**From:** Richards, George </O=SAO20/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=GRICHARDS>

**To:** Schreiber, Lee Ann

**CC:**

**Date:** 4/13/2010 1:41:52 PM

**Subject:** ?RE: CHARLOTTE COUNTY Clerk of Court filings related to foreclosure cases

---

Vacation is always good, but the paperwork piles up!!

From: Schreiber, Lee Ann

Sent: Tuesday, April 13, 2010 2:38 PM

To: Richards, George

Subject: RE: CHARLOTTE COUNTY Clerk of Court filings related to foreclosure cases

Thanks for the prompt reply. It does not sound like you are having the same problem - that of original docs not being physically placed in the court file prior to hearing when originals were docketed a few weeks before.

Welcome back! I trust you had a great vacation?!

From: Richards, George

Sent: Tuesday, April 13, 2010 1:02 PM

To: Schreiber, Lee Ann; Embury, Jon

Cc: Kyle, Keith

Subject: RE: CHARLOTTE COUNTY Clerk of Court filings related to foreclosure cases

I try to have the attorney file them on the day of hearing. You may get an objection from a defense attorney, but those are few and far between. I also say that if a copy was attached to the complaint then it is not new evidence, thus what is the harm. At worst, it gets reset more than 20 days out. I know Judge Schoonover cancels the note, but other judges do not. Cancelling the note may also cause more problems for the home owner. I have seen where it is "worked out" after the MSJ. There is then a motion cancelling the MSJ and requesting return of the note and mortgage. I believe both Judge Winesett and Gerald allow the return of these documents if the case is dismissed.

I have had the law firm send the note and mortgage to me, and we return them. I also let local counsel know that is wiser filing the original on the day of hearing. Even more reason for not allowing the telephonic hearings on the MSJ and having an attorney present with the documents.



From: Schreiber, Lee Ann  
Sent: Tuesday, April 13, 2010 12:43 PM  
To: Embury, Jon  
Cc: Kyle, Keith; Richards, George  
Subject: CHARLOTTE COUNTY Clerk of Court filings related to foreclosure cases

Last week I had 4 cases and yesterday, 2 cases, where the original note and mortgage were docketed (as reflected on docket screen) but were NOT in the Court file at the time of the summary judgment hearing. This was despite the fact that the docketing occurred a few weeks before the hearing.

Last week, the attorney went to the clerk's office and was able to back track where his originals were located.

Yesterday, I asked the trial Clerk to email the Clerks' office for them to locate the originals downstairs and bring them to the Court room. One arrived in about 30 minutes; the other did not arrive until the afternoon session. Technically, the original Note (unless the court determines the instrument is lost) must be tendered to the Court and the court is supposed to stamp the Note as cancelled.

I'm not sure where the originals are being "stored" in the Clerk's office &/or why they are not being placed in the Court filed after they are docketed. I'm not sure if this is an isolated problem or an ongoing one (so I've copied Judge Richards since he has this docket prior to may assuming same), but it is creating inefficiencies which are probably avoidable. I have all the case names & #s of you need them.

George, do you recall such scenarios when you had the foreclosure docket? I just don't want this to be an ongoing (aggravating) problem when there may well be a simple solution.

Thank you,  
Lee



# **EXHIBIT 12**



**From:** Winesett, Sherra </O=SAO20/OU=CACIIS/CN=RECIPIENTS/CN=SWINESETT>

**To:** McHugh, Michael

**CC:**

**Date:** 3/16/2010 12:03:20 PM

**Subject:** ?RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

I've started the 4 day jury trial but am out till 1:30 for lunch. You can call me at 32601 with your question if convenient for you. SW

---

**From:** McHugh, Michael

**Sent:** Tuesday, March 16, 2010 10:11 AM

**To:** Winesett, Sherra

**Subject:** RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

They are coming to my office at noon on Friday. I have a question I wanted to ask about our Civil Case Management Group when you have a chance.

---

**From:** Winesett, Sherra

**Sent:** Friday, March 12, 2010 10:43 AM

**To:** McHugh, Michael

**Subject:** RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

Wed. or Friday work best for me. I have a 4 day jury trial beginning next Tues. so I may be in the middle of voir dire on Tuesday at noon. Just let me know. SW

---

**From:** McHugh, Michael

**Sent:** Friday, March 12, 2010 10:16 AM

**To:** Winesett, Sherra

**Subject:** RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

I was thinking about setting up a meeting with Goetz, Hill, and Chilpala for next Tues, Wed, or Fri. at lunch. I was wondering if you would like to attend and if so which of those days work for you.

---

**From:** Winesett, Sherra

**Sent:** Wednesday, March 10, 2010 11:12 AM

**To:** McHugh, Michael

**Subject:** RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

Yes, I agree with setting up a meeting. I was thinking about how we were going to get the information out yesterday when I had a typical motion to cancel but no request to reset. Are there any other attorneys that should be included that regularly do these foreclosures? Like Baitson, Chilpala, ?. Perhaps, I could do a memo or notice that could be used to notify others.

---

**From:** McHugh, Michael

**Sent:** Wednesday, March 10, 2010 10:43 AM

**To:** Winesett, Sherra

**Subject:** RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

I did not receive any additional input about the issue of cancelling and rescheduling foreclosure sales. Do you think I should set up a meeting with Hill and Goetz to go over the proposed new requirements and Judge Gerald's idea about the certification with the final judgment?

---

**From:** Winesett, Sherra

**Sent:** Friday, March 05, 2010 11:20 AM

**To:** McHugh, Michael; Gerald, Lynn; Fuller, Joseph; Schreiber, Lee Ann; Rosman, Jay

**Cc:** Sauls, Sandi; English, Sharon; Crongeyer, Robert L.

App. 1233 2010



**Subject:** RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

Page 2

As I read the opinion, the 60 day comment period only applies to the new final judgment form, Form 1.996(a), not the new form on the Motion to Cancel and Reschedule Foreclosure Sale, so its effective as of 2/11/10. However, I do agree we need to give a prospective date when we will require the new form. Otherwise, we're going to have a lot of motions to set aside sales that didn't get cancelled under the prior procedures allowed, or worse, hearings on whether the form is procedural and not mandatory.

I've also copied our new case manager and magistrate with this e-mail because they attended the meeting where the Sup.Ct. opinion was brought up, and although we don't anticipate them being involved with foreclosures, they should be in the loop. Sorry, I overlooked you on the first e-mail.

---

**From:** McHugh, Michael

**Sent:** Friday, March 05, 2010 10:20 AM

**To:** Winesett, Sherra; Gerald, Lynn; Fuller, Joseph; Schreiber, Lee Ann; Rosman, Jay

**Cc:** Sauls, Sandi

**Subject:** RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

Judge Winesett and I had a conversation about the cancellation and rescheduling of foreclosure sales issue. It was our opinion that since the Supreme Court has promulgated the new form for the cancellation and rescheduling of sales, we should require the plaintiffs in these cases to use it. The rule adopted appears to be purely procedural, therefore not needing any enabling statute. The rule is effective immediately, with the understanding that there is a 60 day comment period. Our proposal is to require the form beginning April 1<sup>st</sup>. This is roughly consistent with the comment period and will give us an opportunity to make the plaintiff firms aware of our requirement in this regard, presumably through Mr. Hill and Mr. Goetz. This would mostly effect the cancellations that occur when the plaintiff firm calls the clerk's office and asks to cancel the sale before any motion has been filed or order signed. Under the new procedure the clerk's office would decline to cancel the sale and tell them the appropriate motion needs to be filed. Let me know your thoughts on this issue so we can decide the appropriate way to proceed.

Thanks,  
Mike.

---

**From:** Winesett, Sherra

**Sent:** Thursday, March 04, 2010 6:12 PM

**To:** Gerald, Lynn; McHugh, Michael; Fuller, Joseph; Schreiber, Lee Ann; Rosman, Jay; Winesett, Sherra

**Subject:** Re: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

I reviewed the opinion in the consolidated Fla. Sup. Ct. Case No. SC09-1460 entitled In Re: Amendments to the Florida Rules of Civil Procedure and Case No. SC09-1579 entitled In Re: amendments to the Florida Rules of Civil Procedure – Form 1.996 (Final Judgment of Foreclosure).

Case No. SC 09-1460 amends rule 1.110(b) to require verification of mortgage foreclosure complaints involving residential real property, adopts new form 1.924, Affidavit of Diligent Search and Inquiry and new form 1.996(b), Motion to Cancel and Reschedule Foreclosure Sale which provides for a reason to be checked to explain why the foreclosure sale needs to be cancelled and rescheduled. Fla. Sup. Ct. Case SC 09-1579 amends Form 1.996, the Final Judgment of Foreclosure form and numbers it Form 1.996(b).

As I read the opinion on the consolidated cases, the amendments made by SC 09-1460 were effective immediately upon the release of the opinions on Feb. 11, 2010. However, there is a 60 day period from that date during which comments on the amendments made to form 1.996(a) may be filed.

I think the question is, Is the use of these forms, or the information required by them, mandatory? If so, effective immediately, we need to make sure new Complaints filed are verified, Diligent Search affidavits in compliance with the new rule are filed for constructive service, and a reason is stated in a motion for cancellation of the sale.

You should note in its opinion, the Court rejected including a provision in the Final Judgment form that the sale be cancelled if Plaintiff's representative is not present at the sale, finding that to be in conflict with the new form for Motion to Cancel and Reschedule Foreclosure Sale.



Judge Gerald has suggested that with respect to the Final Judgment Form we require the Plaintiff's attorney to file a certification with the proposed final judgment, listing any provisions in the proposed judgment that are not in Form 1.996(a) so that the presiding judge can quickly review those additional provisions to determine if they are allowable provisions.

Comments or suggestions? Sherra



# **EXHIBIT 13**



**From:** Carlin, John S. </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JSC5225>  
**To:** Sauls, Sandi  
**CC:**  
**Date:** 5/5/2010 10:30:14 AM  
**Subject:** ?RE: ForeclosureStats(April10).pdf

---

With 21,200 cases, I would like for someone to contact the big foreclosure firms and get them to schedule at least 500 cases each Friday. Can you make the contact or have LJ make the contact? We have plenty of time during the month for contested foreclosure hearings. Happy to talk more if you want to. Thanks, Sandi.

---

**From:** Sandi Sauls [mailto:ssauls@leedclerk.org]  
**Sent:** Wednesday, May 05, 2010 11:21 AM  
**To:** Carlin, John S.  
**Subject:** RE: ForeclosureStats(April10).pdf

21,200 cases. We are starting to see a slow down in the request for uncontested hearing time. Would it be possible to use a few hours every Friday for contested foreclosure Judgment hearings?

---

**From:** Carlin, John S. [mailto:Fla. R. Court 2.420]  
**Sent:** Wednesday, May 05, 2010 11:18 AM  
**To:** Sandi Sauls  
**Subject:** RE: ForeclosureStats(April10).pdf

Good news.....what is our current backlog?

---

**From:** Sandi Sauls [mailto:ssauls@leedclerk.org]  
**Sent:** Wednesday, May 05, 2010 8:23 AM  
**To:** Carlin, John S.; Aloia, Nancy K  
**Cc:** Doggett, Linda  
**Subject:** ForeclosureStats(April10).pdf

As our new filings go down, we are finally able to reduce the backlog significantly.)

Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

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[www.symantec.com](http://www.symantec.com)



# **EXHIBIT 14**



**Starnes, Hugh E**

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**From:** Carlin, John S.  
**Sent:** Friday, May 21, 2010 2:30 PM  
**To:** Rose, Penelope  
**Cc:** Johnston, Linda; Kellum, Ken; McHugh, Michael; Aloia, Nancy K; Starnes, Hugh E; Thompson, James  
**Subject:** Contested Foreclosure hearings In July

Penelope-

Please book Judge Thompson for July 19, 20, 26, 27 for contested foreclosure hearings.

Please book Judge Starnes for July 21, 22, 23, 29 and 30 for contested foreclosure hearings.

Please confirm with me that Judge Starnes and Thompson are available on all of these July dates.

LJ- We can book 40 contested hearings for the morning session beginning at 8:30 a.m. and 40 contested hearings for the afternoon session beginning at 1:00 p.m. Can you let FL Default group know of these dates today since there is a timeline for summary judgment hearings. Do you also want to contact other firms regarding this time availability for contest foreclosure hearings in July? We really need to book 80 hearings each day to make this work.

Ken- Please respond to all with the 5<sup>th</sup> floor courtroom for these hearings so LJ can get the word out today as she is out of the office next week.

Please let me know if anybody has any questions. Thank you.



# **EXHIBIT 15**



**Starnes, Hugh E**

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**From:** Carlin, John S.  
**Sent:** Friday, August 13, 2010 12:57 PM  
**To:** Aloia, Nancy K  
**Cc:** Starnes, Hugh E; Thompson, James  
**Subject:** FW: Lunch Meeting Tuesday, Aug. 17

Can you order signature stamps for Judge Starnes and Judge Thompson? I would order 2 for each. Thanks.

**From:** Starnes, Hugh E  
**Sent:** Friday, August 13, 2010 12:01 PM  
**To:** Carlin, John S.  
**Subject:** RE: Lunch Meeting Tuesday, Aug. 17

One more thing to add: We could use a signature stamp for use at docket soundings to allow the Clerk to stamp the order for the new date without running over to the bench.

**From:** Starnes, Hugh E  
**Sent:** Friday, August 13, 2010 10:57 AM  
**To:** 'Carlin, John S.'  
**Subject:** RE: Lunch Meeting Tuesday, Aug. 17

Actually, the hearings are going well from my standpoint, and I have nothing to raise. The flow and nature of the paper work is an area of concern.

1. The volume is at such a rate that there is an issue as to whether the existing personnel can handle it on a sustained basis. I have been at the courthouse until anywhere from 6PM to 8PM each day this week. One of those days both Jim Thompson and I were working on the signing and it still went after normal hours. The staff is working probably harder than we are.
2. I would estimate a third of the signing involves cancellation or rescheduling of sales. I am wondering if we might need to communicate with the plaintiff's attorneys about some alternative to this chaotic cycle which would allow them to get a SJ, but no sale date with the right to request a sale date at their option at a later date (within a specified time range). This could avoid a huge headache for the staff and the signing judges.
3. Plaintiff attorneys are naming GAL's in their motions from around the state; the GAL attorneys are unknown to us. I have talked to Greg Burns and Ryan Dugan, who are willing to serve, and I have started filling in their names.
4. We get a substantial number of continuance requests for docket soundings based on scheduling conflicts with other cases, as well as requests for telephone conferences. We generally deny these requests, but Burns and Dugan have agreed to let us give out their names as defense attorneys who will "stand in" at a reasonable rate. That way, we can give a helpful response to some meritorious requests for some relief.
5. I am hearing from the local plaintiff attorneys (Hill and Greg Goetz) that they are getting burned out (my choice of language) because of the pace of the multiple hearing calendars each week, and we should probably think about discussing if there is a need to discuss any ways to give them some relief or help them in some way.

**From:** Carlin, John S.  
**Sent:** Thursday, August 12, 2010 9:56 PM  
**To:** Starnes, Hugh E  
**Subject:** RE: Lunch Meeting Tuesday, Aug. 17



Can you email a list of problems that you have encountered at docket soundings, Friday SJ hearings and motion days? Also, any other issues for the group to discuss. Thanks.

Carlin from my Palo Alto Fire

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On Aug 12, 2010 7:36 PM, Starnes, Hugh E <[HStarnes@CA.CJIS20.ORG](mailto:HStarnes@CA.CJIS20.ORG)> wrote:

I am covering Archie Hayward's docket that day, and am not sure what I will be doing, but I assume I will be ok for lunch.

---

**From:** Carlin, John S.

**Sent:** Thursday, August 12, 2010 1:41 PM

**To:** Starnes, Hugh E; Thompson, James; McHugh, Michael; Diamond, Stella; Hawthorne, Amy; Aloia, Nancy K

**Cc:** Atkins, Joanne; Repperger, Kathryn

**Subject:** Lunch Meeting Tuesday, Aug. 17

I would like to get our group together on Tuesday, Aug. 17 at 11:45 at the Veranda to discuss how things are going in our first month with foreclosures. Please let me know if you are available on this date. Also, please email a list of topics that you would like to discuss at our meeting i.e. plaintiff's counsel not showing for docket sounding and how do we best handle? I will compile the list of issues for our discussion. Thank you.



# **EXHIBIT 16**



**From:** Carlin, John S. </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JSC5225>

**To:** Sauls, Sandi

Johnston, Linda

**CC:** Aloia, Nancy K

**Date:** 9/1/2010 3:08:50 PM

**Subject:** Foreclosure time available in October on Fridays

---

Hello,

I noticed that for October Friday Summary Judgment dates, we have very few hearings currently scheduled. We have 198 cases set for Oct. 1, 98 cases on Oct. 8, 102 cases on Oct. 15, 50 cases set on Oct. 22 and 58 cases set for Oct. 29. This is a month with 5 Fridays so it would be great to set as many cases as possible on these Fridays. Would you all be willing to call your contacts at the foreclosure firms and see if they would set a lot of hearings for these dates. We allow 500 cases per Friday which is 250 in the a.m. and 250 in the p.m. Any other ideas would also be appreciated. Thank you!

John

P. S. Sandi- Do we have the August clearance rate yet for foreclosures?



# **EXHIBIT 17**



**From:** Carlin, John S. </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JSC5225>

**To:** Diamond, Stella

**CC:**

**Date:** 10/15/2010 9:53:14 AM

**Subject:** ?RE: abatements

---

We do not want to abate. They can always dismiss the case but we don't want to abate. Keep them on a DS because they cannot cancel our DS. I know that Judge Starnes has given some 60 days continuances to review the affidavits. I believe that when these come back in December they need to be resolved by Summary Judgment or set for a trial. The banks are cancelling a lot of Summary Judgment hearings set on our high volume Friday dockets and they can do this since it is their motion. Happy to talk further if it would be helpful. My backline is [REDACTED] How was your trip? Welcome back!

---

**From:** Diamond, Stella

**Sent:** Friday, October 15, 2010 10:34 AM

**To:** Carlin, John S.

**Subject:** abatements

How should we handle motions for abatement in these foreclosure cases? If the attorneys are told not to proceed with the case by their client, should I be recommending abatement or dismissal? (I'm referring to the cases where they are reviewing the affidavits). Thanks.

11\_29\_2010

App. 146



# **EXHIBIT 18**



THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY,  
FLORIDA  
CIVIL ACTION

CASE NO: 08CA

PLAINTIFF,

vs.

DEFENDANT.

**ORDER SETTING CASE FOR DOCKET SOUNDING**

THE COURT ON ITS OWN MOTION DETERMINES THIS CAUSE IS AT ISSUE AND  
READY TO BE SET FOR TRIAL  
ORDERED AND ADJUDGED

1. Docket Sounding.

The Court has set a docket sounding before the **Honorable James Thompson** on **August 24, 2010 at 8:30 A.M. in Courtroom 5F**, Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL 33901, or as soon thereafter as may be heard.

**If this case is appropriate for a Motion for Summary Judgment, either party may Notice the Summary Judgment to be heard at the Docket Sounding.** Otherwise, the day and time certain for the start of trial will be determined at docket sounding. The parties will receive at least 30 days advance notice of the trial date. A motion to continue can be heard by the Court at docket sounding. No other motions will be heard. All trial attorneys are to be present for docket sounding.

2. Exchange of Expert & Lay Witnesses. If a trial date is set at docket sounding, counsel for the plaintiff shall submit to opposing counsel the names and addresses of all plaintiff(s) witnesses within 5 days following the date of the docket sounding. Within 10 days following the date of the docket sounding, the defense counsel shall submit to opposing counsel the names and addresses of all defense witnesses. The witness list shall contain a plain and concise statement regarding the subject matter of the witnesses testimony. No party shall be permitted to call any witness not so disclosed, without prior permission of the Court, or written stipulation executed by all parties.

3. Meeting before Trial. The attorneys for all parties, or the party themselves if they are representing themselves (pro se), are directed to meet together by agreement, initiated by counsel for the plaintiff, no later than 7 days before the trial to:

- a. Mark all exhibits for identification and prepare a chronological exhibit list for use by clerk and the Court at trial (actual exhibits and documentation evidence shall be available for inspection at this time). Any exhibits not so marked will not be admissible absent a stipulation of all parties.
- b. Agree to admit or not admit evidence and list specific objections, if any.
- c. Stipulate as to any matter of fact and law about which there is no issue to avoid unnecessary proof, i.e., chain of custody or records custodian.



- d. Review all depositions which are to be offered for any purpose other than impeachment to resolve objections to the portions to be offered in evidence.
  - e. Discuss the possibility of settlement.
  - f. Submit an itemized statement of special damages plaintiff expects to prove.
  - g. Discuss and complete any other matters which may simplify the issues or aid in the speedy disposition of this action.
4. Motions. All **motions in limine**, shall be in writing, filed and served prior to trial. They will be heard the morning of the first day of trial.
5. Discovery. All discovery shall be completed prior to the docket sounding. The conduct of discovery subsequent to the docket sounding shall be permitted only on the order of the Court for good cause shown and which will not delay the trial of this cause.
6. If counsel desires that a proceeding be reported by a court reporter, it is the responsibility of counsel to secure said services.
7. Representation and Authority. That in order for the full purpose of the pre-trial procedures to be accomplished, each party shall be represented at all meetings and hearings required herein by an attorney, unless they represent themselves (pro se), who will participate in the trial of the cause and who is vested with full authority to make admissions and disclosure of facts, and to bind the clients by agreement in respect to all matters pertaining to the trial of the cause. If a party is pro se they are mandated to be at all meetings and hearings required under this Order.
8. Exhibits. All composite exhibits shall be satisfactorily bound to avoid the loss and disintegration of component parts of pages before presentation to the Court. Exhibits to be introduced which are larger than an 8 ½ x 11" sheet of paper may be used at trial, but if practicable, same shall be reduced to 8 ½ x 11", and the reduced size copy shall be the exhibit retained by the clerk in the court file. The oversized exhibits so reduced shall be returned to counsel, or the pro se litigant, at the close of the trial.
9. Witnesses. The parties shall assure the availability of their witnesses for the trial or to otherwise preserve their testimony for trial as provided by the Florida Rules of Civil Procedure. The Court is not inclined to allow a witness to testify "out of order", over objection, or to take a recess or adjust its schedule for the convenience of such a witness.
10. Motions and Stipulations for Continuances. This Court adheres strictly to Rule of Judicial Administration 2.085(c) and Rule of Civil Procedure 1.460. Accordingly, motions for continuance and stipulations must be in writing and set forth:
- a. The signature of the party as well as the attorney.
  - b. A concise statement of the reasons for a continuance. If based on non-availability of a witness, a showing of when it is believed the witness will be available must be stated.

Any stipulation must be approved by the Court and must be heard at least ten (10) days prior to the date of trial, unless otherwise permitted by the Court. No motion will be heard that is not in compliance with this order.



11. Settlement. Counsel, or the pro se litigant, shall immediately notify this Court in the event of settlement and submit a stipulation for an order of dismissal and a final disposition form.
12. Notice. Please review this order to see that it was sent to all proper persons at proper addresses.
13. Sanctions. Failure to comply with the requirements of this order will subject the party and/or attorney to appropriate sanctions.

DONE AND ORDERED in Chambers, Fort Myers, Lee County, Florida on July 7, 2010.

\_\_\_\_\_  
Circuit Judge

Copies furnished to:

Sharon English, Atty., Civil Case Manager, 1700 Monroe Street, Fort Myers, FL 33901

BY:

\_\_\_\_\_  
Administrative Assistant

### **AMERICANS WITH DISABILITIES ACT**

**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Ken Kellum, Court Operations Manager whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901 and whose telephone number is (239) 533-1700, within two working days of your receipt of this notice; if you are hearing or voice impaired, call 711.**



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK,  
Respondent.

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**Affidavit of Mark P. Stopa**

I, Mark P. Stopa, Esq., declare the following under penalty of perjury, based on my personal knowledge:

1. I am an attorney admitted to practice law in Florida, where I have been licensed since 2002. My law firm handles approximately 1,000 foreclosure cases throughout the state of Florida. I personally have handled approximately twelve foreclosure cases in Lee County. I have appeared in person in Lee County foreclosure cases approximately five times; an associate under my supervision has appeared approximately ten times.
2. All the procedures in place to adjudicate foreclosures in Lee County seem geared toward advancing them rapidly toward judgment. This pressure begins at the outset of each case, when a judge signs orders referring the case to a magistrate and setting the case for docket sounding. Although the docket sounding order asserts that the case is at issue and ready for trial, such orders are filed in every case, regardless of whether it is indeed at issue under Florida Rule of Civil Procedure 1.440. Cases are set for docket sounding even when a motion to dismiss is pending and no answer has been filed. I have repeatedly argued to the court that this procedure violates Rule 1.440, but these arguments have been unsuccessful.
3. Appearing for docket soundings is extremely burdensome for foreclosure defendants. Telephonic appearances are prohibited, and large numbers of cases are scheduled at the same time. As a result, an attorney will often have to spend several hours in court to appear for a two-minute hearing at which no substantive legal argument occurs. When, at a first docket sounding, it becomes clear that the case is not ready for trial, a second docket sounding is



nonetheless scheduled, so that an attorney will have to go through this process a second time.

4. When, at a docket sounding, I or my associate argue that the case cannot be set for trial because there are motions outstanding, the court responds by ordering that we set the motions for hearing before the next docket sounding. However, the unavailability of hearing slots on the court's calendar often makes that impossible.
5. The docket sounding order also imposes a discovery cutoff, which is typically just two or three months from the date the case was filed. This cutoff does not leave enough time to conduct even basic discovery to which the plaintiff objects; even when the defendant is diligent about prosecuting a motion to compel, it is often impossible to secure a hearing date before the cutoff date. Further, I have seen motions to compel denied even when the plaintiff has not produced any discovery.
6. The cutoff date frequently passes before the defendant has filed an answer. It leaves absolutely no time for depositions or third-party subpoenas. This incredible compression of discovery substantially prejudices defendants, who are unable to present factual defenses.
7. Although the court rushes to set foreclosure cases for trial, I have never seen an actual contested trial go forward in Lee County. When both parties appear and there are contested issues, the trial is generally continued.
8. When a plaintiff's attorney fails to appear for a docket sounding, I request that the case be dismissed. However, the court will instead allow any plaintiff's attorney who happens to be in the courtroom to stand up and represent the plaintiff. Because I believe the law holds any action by a lawyer other than the counsel of record to be a nullity, this strikes me as a particularly problematic policy.
9. These procedures make it extremely difficult to defend foreclosure cases in Lee County. I am forced to pass along to my clients the cost of appearing in person for multiple docket soundings at which nothing substantive occurs. As a result, I, and my clients, cannot afford to adequately defend these cases. For this reason, I find myself steering away from accepting further cases in Lee County.

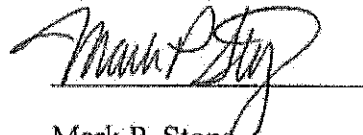


10. Judges in Lee County assert that employing these procedures is the only way for them to handle the volume of foreclosure cases pending in Lee County. However, in counties around the state, I see functioning systems for adjudicating foreclosure cases that do not rush defendants toward judgment in the same way.

FURTHER AFFIANT SAYETH NOT.

4-4-11

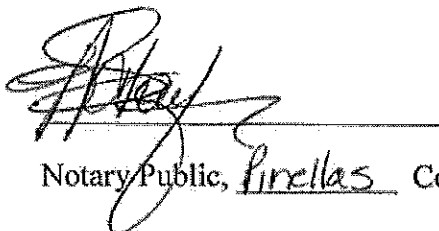
Date



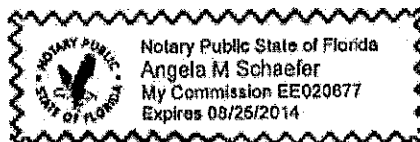
Mark P. Stopa  
Fla Bar. No. 550507

Subscribed and sworn to me on this

4<sup>th</sup> day of April, 2011.



Notary Public, Pinellas County, Florida



My commission expires: 08/25/14



IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, LAKELAND, FLORIDA

GEORGE E. MERRIGAN,  
Petitioner

L.T. Case No. 09-CA-055758

v.

Case No.: 2D11-

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK ,  
Respondent.

**Affidavit of Matthew S. Toll**

I, Mathew S. Toll, under penalty of perjury, depose and say as follows:

1. I am a member at the law firm of Lusk, Drasites, Tolisano & Smith, P.A. in Cape Coral. I have been admitted to practice in Florida since 2004. I am also admitted to practice before the Federal District Court for the Middle District of Florida. I maintain a general civil litigation docket, about a third of which is devoted to defending homeowners in foreclosure actions. Since joining my firm in 2005, I have worked on approximately 100 foreclosure cases, most of which have been before the Twentieth Judicial Circuit in Lee County.
2. In addition to cases I have personally litigated, I have observed proceedings in dozens of other foreclosure cases being heard on the "mass foreclosure" docket when I am in court on my own matters. Furthermore, I am responsible for managing three associates in my office, and frequently am involved in discussions and strategy associated with their cases. These associates also devote a substantial portion of their practice to foreclosure defense. In the course of my own practice and in supervising my office's associates, I have observed serious procedural problems in Lee County's mass foreclosure docket.
3. One of the most significant sources of unfairness in foreclosure cases is Lee County's use of the "docket sounding" system. Technically, a case is eligible for docket sounding only once it is "at issue." This requirement is routinely disregarded. I have seen instances of cases set for docket sounding where the defendant has not yet been served or the pleadings remain open (including when there is a pending motion to dismiss).
4. Once on the docket sounding track, plaintiffs are encouraged to bring summary judgment motions. When summary judgment is not granted, cases



move swiftly toward trial, regardless of whether they have progressed to the point that trial is appropriate. For example, I have observed and participated in cases that were set for trial even though a defendant has outstanding discovery requests, the court has issued an order compelling the plaintiff to respond, and the request remains unanswered. Cases are also routinely set for trial when the pleadings remain open and when mediation has not been completed.

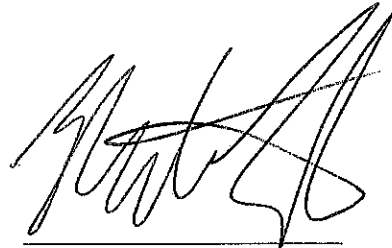
5. Once at trial, foreclosure cases continue to depart from established rules of procedure, typically to the disadvantage of defendants. Although the orders setting trial require plaintiffs to produce witness and exhibit lists within five days of the order's issuance, plaintiffs routinely ignore that rule. In my own cases and based on my observations of trials, I have frequently seen plaintiffs put forward witnesses or introduce exhibits that were not disclosed until the very eve of trial, or even on the trial date itself. Yet judges presiding in foreclosure cases routinely ignore objections to such evidence being untimely presented, creating a situation where defendants cannot properly prepare to refute evidence at trial. As a result, foreclosure trials proceed as if they were hearings in small claims court, notwithstanding the very high stakes involved for homeowners facing the prospect of foreclosure.
6. Procedures at the trial itself also put homeowners at a disadvantage. Cross-examination is sometimes prohibited, and plaintiff's counsel is often given many opportunities to re-open their cases when it is clear that they have not proven their cases. Furthermore, even when the defendant homeowner "prevails," the Court almost always asserts that the dismissal is without prejudice, even though the matter had been fully adjudicated at trial.
7. Another persistent procedural deficiency in Lee County foreclosure courts is the granting of ex parte motions submitted by plaintiffs. In my experience, this happens constantly. For example, plaintiffs will routinely file ex parte motions for extensions of time to respond to discovery or ex parte motions to substitute party plaintiffs. In my cases, Lee County judges typically sign the proposed orders accompanying these motions even though I have not been served and there is no representation that I have consented to the motion. In many instances, the motions are served directly to my client rather than to me, even though I have entered a notice of appearance and appeared as counsel of record on court filings. Very often I do not learn of a motion until I receive the court's endorsement of the plaintiff's proposed order. In some instances, after I have filed a motion to dismiss, the plaintiff submits an ex parte proposed order denying the motion, which the court grants.



FURTHER AFFIANT SAYETH NOT.

3/28/11

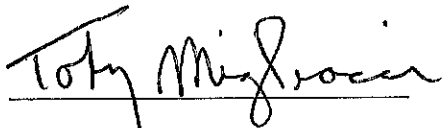
Date



Mathew S. Toll

Subscribed and sworn to me on this  
28<sup>th</sup> day of March, 2011.





Notary Public, Lee County, Florida

My commission expires: 7/30/2011



MT021511ASGHAR

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

CHASE HOME FINANCE, LLC,  
Plaintiff(s),

vs.

CASE NO. 09-CA-71071

NAVEED ASGHAR,  
Defendant(s).

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TRANSCRIPT OF PROCEEDINGS

Before the Honorable Hugh E. Starnes,  
Circuit Judge, at a hearing in the above-styled action  
at the Lee County Justice Center, Fort Myers, Florida,  
commencing at 4:59 p.m., on the 15th day of February,  
2011.

---

FORT MYERS COURT REPORTING  
2231 First Street  
Fort Myers, Florida 33901  
(239) 334-1411  
FAX (239) 334-1476

□

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

JAMES L. GOETZ, ESQUIRE  
Post Office Box 6844  
Fort Myers, Florida 33911  
Page 1



MT021511ASGHAR

ON BEHALF OF THE DEFENDANT:

(No Appearance)

FORT MYERS COURT REPORTING (239) 334-1411

3

1 THE CLERK: No. 85, Chase Home versus Asghar.  
2 MR. GOETZ: What number did you just say?  
3 THE CLERK: 85.  
4 MR. GOETZ: Asghar. I have --  
5 THE CLERK: Clay Holtsinger, Kass Shuler.  
6 MR. GOETZ: I'll stand in for Kass Shuler.  
7 I have nothing on it, Your Honor.  
8 THE COURT: Again, no Defendant here.  
9 THE CLERK: This is the second docket sounding

Page 2



10 today.

11 THE COURT: Okay.

12 MR. GOETZ: I have nothing. It's an '09 case.

13 THE COURT: I'll put this on the trial docket  
14 for March 22nd at 8:30.

15 - - -

16 (Thereupon, at 5:00 p.m., the proceedings  
17 were concluded.)

18 - - -

19

20

21

22

23

24

25

FORT MYERS COURT REPORTING (239) 334-1411

4

CERTIFICATE OF REPORTER

I, MARI B. TEMPLE, Registered Professional  
Reporter, do hereby certify that I was authorized to and  
did report the foregoing proceedings, and that the  
transcript, pages 1 through 3, is a true and correct  
record of my stenographic notes.

DATED this \_\_\_\_\_ day of \_\_\_\_\_,  
2011, at Fort Myers, Lee County, Florida.



MT021511ASGHAR

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Mari B. Temple, RPR, CMRS

FORT MYERS COURT REPORTING (239) 334-1411



LB022111FEDERAL V CHAMPELOVIER

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

CASE NO. 09-CA-68753

SANDRA CHAMPELOVIER,

Defendant.

/

TRANSCRIPT OF PROCEEDINGS

Before the Honorable William C. McIver,  
Circuit Judge, at the hearing of the  
above-styled action in the Lee County Justice  
Center, Fort Myers, Florida, on February 21,  
2011.

FORT MYERS COURT REPORTING  
2231 First Street  
Fort Myers, Florida 33901  
(239) 334-1411 FAX (239) 334-1476

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A P P E A R A N C E S

2

Page 1



LB022111FEDERAL v CHAMPELOVIER  
ON BEHALF OF THE PLAINTIFF:

JOHN SALCEDO, Esquire  
Law Offices of Marshall C. Watson  
1800 N.W. 49th Street, Suite 120  
Fort Lauderdale, Florida, 33309

ON BEHALF OF THE DEFENDANT:

Appearing In Propria Persona

---

I N D E X

WITNESS	DIR	CROSS	RED	REC
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(No testimony)

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E X H I B I T S

Plaintiff's 1 & 2	Note and Mortgage
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3

MR. SALCEDO: I'm here for the plaintiff.

THE COURT: Very well. Your name?

MR. SALCEDO: John Salcedo.

THE COURT: There is no one opposing?

MR. SALCEDO: Ms. Champelovier.

THE COURT: You can have a seat right there.

Page 2



7 Counsel, I have no objection to you being seated as  
8 well to address the Court. Unless you feel more  
9 forceful standing.

10 MR. SALCEDO: I've got the original, if I  
11 could present it to you to be filed. As well as a  
12 couple others.

13 THE COURT: So this is the original note? The  
14 mortgage is here as well, note and mortgage?

15 MR. SALCEDO: Yes.

16 THE COURT: The note and mortgage, they will  
17 be 1 and 2 respectfully. But they are attached.

18 MR. SALCEDO: I've got copies for the Court  
19 for my exhibits. Those are just originals to be  
20 filed.

21 THE COURT: Very well.

22 The property, is that your home?

23 MS. CHAMPELOVIER: It is.

24 Mr. Salcedo, let me ask Ms. Champelovier, are  
25 you resisting the entry of judgment?

4

1 MS. CHAMPELOVIER: Your Honor, I'm not  
2 prepared. And the reason is -- may I read this?  
3 I'm very nervous.

4 THE COURT: Go ahead.

5 MS. CHAMPELOVIER: I'm still awaiting answers  
6 to the interrogatories, and without these answers I  
7 have not been given sufficient information to  
8 complete my discovery. The general request was  
9 October 4, 2010. We had a reminder on December 16th  
10 of this docket sounding. I called them for a verbal  
11 request on January 15th, again a reminder, and

Page 3



12 motion to compel was set on February 14th.

13 So I have none of the answers to my questions.  
14 I have followed the rules of civil procedure to  
15 substantiate the plaintiff's claim, and the  
16 plaintiffs failed to respond to my request to  
17 produce evidence and answer the interrogatories, of  
18 which I have filed a motion to compel. Therefore, I  
19 would like to request the Court to dismiss this  
20 case.

21 THE COURT: All right. Did you file a motion  
22 for sanctions?

23 MS. CHAMPELOVIER: I'm not a lawyer, and I  
24 didn't -- the last one was a motion to compel.

25 THE COURT: Motion to compel the production of

5

1 the -- all right.

2 Mr. Salcedo, are you aware of this?

3 MR. SALCEDO: Yes. Actually one of the  
4 documents I filed with the Court today was our  
5 responses, and I provided Ms. Champelovier with a  
6 copy of our responses. There has not been an order  
7 compelling our responses answered as of yet. They  
8 are outstanding. A motion to compel has been filed,  
9 but no order has been entered. And was informed at  
10 previous docket sounding that all motions had to be  
11 heard by this trial date or else waived. One hasn't  
12 been heard, hadn't been set, and we did --

13 THE COURT: Did you make efforts to set the  
14 hearing on the motion to compel?

15 MS. CHAMPELOVIER: Your Honor, they came to me



16 about a half hour ago and presented the information  
17 for this, and they said, you know, here's a copy of  
18 it. And I said, no, we'll talk to the judge about  
19 it. They were trying to give me that information at  
20 that time, a half hour ago.

21 THE COURT: This is your residence?

22 MS. CHAMPELOVIER: Yes, sir.

23 THE COURT: Mr. Salcedo, you know, I know that  
24 on both sides it would appear that the Court  
25 processes have been accelerating considerably than

□

6

1 what you are used to, and part of it has to do with  
2 the enormous pressure of the volume of cases. But I  
3 still think that due process requires whatever it  
4 takes to allow each party to inform itself, himself,  
5 herself of what the other side has. And if the  
6 effort has been taken, and apparently it has for  
7 her, it might be appropriate for us to address the  
8 discovery issue today, and then I will set the case  
9 for trial say March 22nd.

10 MR. SALCEDO: I wouldn't object to that, Your  
11 Honor.

12 THE COURT: We're not going to do the trial  
13 today. Now, I would like to address today at this  
14 time, so we can get some traction in the case, what  
15 your discovery demands were and what you've  
16 received. What haven't you received?

17 MS. CHAMPELOVIER: I'm not prepared to --

18 THE COURT: You're not ready to talk about it  
19 today?

20 MS. CHAMPELOVIER: No.  
Page 5



21 THE COURT: Do you think you could probably --  
22 do we have days specifically for motion calendar  
23 hearings?

24 THE CLERK: We just have docket sounding and  
25 trial.

7

1 THE COURT: At docket sounding though a lot of  
2 times we're not listening to motions.

3 THE CLERK: She can call Judge Winesett's  
4 office since that's her judge.

5 THE COURT: Let's do this, the problem seems  
6 to me that the court processes are insufficient to  
7 allow motion time, and so -- and it's confusing,  
8 especially to a pro se litigant. So the motion to  
9 compel can be set -- the judge that was assigned to  
10 your case was Judge Winesett.

11 You can call her office and talk to her JA and  
12 inform her that you want to have a hearing on your  
13 motion to compel. You of course should file -- have  
14 you already filed your motion to compel and have you  
15 submitted a copy of it to the other side?

16 MS. CHAMPELOVIER: Yes, Your Honor.

17 THE COURT: So you would give a courtesy copy  
18 of the motion to the Court and your request for  
19 hearing time, and hopefully get a hearing between  
20 now and March 22nd.

21 MS. CHAMPELOVIER: Is there a way for it to be  
22 longer?

23 THE COURT: What I'm going to do -- yes. I'm  
24 going to set this for a docket sounding instead of a



25 trial. So that's going to be early April.

8

1 THE CLERK: April 14th at 8:30.

2 THE COURT: I'm going to put this back on the  
3 docket sounding. But you have to assert yourself on  
4 this. You know, the problem with a pro se litigant  
5 is that the Court can't be your coach. The other  
6 side wonders why they hired a lawyer if the judge  
7 starts coaching the pro se litigant.

8 I can tell you about procedural things such as  
9 you've got to do this and you've got to do that.  
10 But to tell you how to proceed and what you should  
11 do next is not my job, unfortunately. I don't know  
12 whose it is. In civil cases we don't get free  
13 lawyers.

14 Maybe some day there will be a civil  
15 defender -- well, actually it would be defending or  
16 pursuing. So I guess some kind of place you could  
17 go if you have a need for a lawyer you can get one.  
18 But also I can tell you this, that there are lawyers  
19 in the community, don't ask me who they are, but  
20 they've become -- some are getting awards for doing  
21 pro bono work. And they're required to at least pay  
22 some attention to that area.

23 But, you know, you just have to do your own  
24 search on that. There may be somebody out there. I  
25 think this lady that appeared before me a little

9

1 earlier today, someone heard her plight and decided  
2 to help her. So we'll see.

Page 7



3 MS. CHAMPELOVIER: Pro bono?

4 THE COURT: I don't know. who knows what the  
5 arrangements are. I mean, you can -- in the early  
6 days of my lawyer career I had a friend in LaBelle,  
7 an attorney in LaBelle who accepted payment for his  
8 services with pistols, chainsaws, and broken down  
9 twenty-year old pickup trucks. But I don't know,  
10 whatever, you make your own arrangements.

11 MS. CHAMPELOVIER: So docket sounding April  
12 14th?

13 THE CLERK: April 14th.

14 THE COURT: I'm supposed to be signing it  
15 instead of yakking.

16 THE CLERK: At 8:30.

17 MS. CHAMPELOVIER: That's not a hearing, Your  
18 Honor, that's just another docket sounding?

19 THE COURT: Well, this is a docket sounding to  
20 find out when your trial date is going to be. So  
21 what I've done effectively, this will be three  
22 months out before it gets tried, but that gives you  
23 ample time to follow through. And if you don't,  
24 it's shame on you.

25 (Hearing concluded.)

10

CERTIFICATE OF REPORTER

I, LISA M. BOYD, Registered Professional  
Reporter, Florida Professional Reporter, do hereby  
certify that I was authorized to and did report the



LB022111FEDERAL V CHAMPELOVIER  
foregoing proceedings, and that the transcript pages 1  
through 9, is a true and correct record of my  
stenographic notes.

DATED this \_\_\_\_\_ day of March, 2011.

LISA M. BOYD, RPR, FPR

□



Page 1	Page 3
<p>IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA</p> <p>BANKUNITED, ASSIGNEE OF THE FDIC, AS RECEIVER FOR BANKUNITED, FSB,</p> <p>Plaintiffs,</p> <p>Case No. 09-CA-069295</p> <p>-vs-</p> <p>ANNE-MARIE PONS; PAUL CONNOLLY, UNKNOWN SPOUSE OF PAUL CONNOLLY, UNKNOWN SPOUSE OF ANNE-MARIE PONS; WESTMINSTER COMMUNITY ASSOCIATION, INC.; UNKNOWN PERSON(S) IN POSSESSION OF THE SUBJECT PROPERTY,</p> <p>Defendants.</p> <hr/> <p>HEARING BEFORE: The Honorable Hugh Stames</p> <p>DATE: October 5, 2010</p> <p>TIME: 2:32 p.m. to 2:48 p.m.</p> <p>LOCATION: Lee County Justice Center Fort Myers, Florida</p> <p>REPORTER: Michele Benza, RPR</p> <p>APPEARANCES:</p> <p>For the Plaintiffs: ROBERT C. HILL, ESQ. Robert C. Hill, P.A. 2131 First Street Fort Myers, FL 33901</p> <p>For the Defendants: AMANDA LUNDERGAN, ESQ. Ice Legal, P.A. 1015 N. State Road 7, Suite D Royal Palm Beach, FL 33411</p>	<p>1 well-established Florida case law holds that if I am 2 present with the file that that is the end of the 3 inquiry.</p> <p>4 MS. LUNDERGAN: Your Honor, we would object to 5 it. Just want a ruling on the record.</p> <p>6 THE COURT: Okay. Well, I will overrule your 7 objection. And I guess I will just state that I come 8 to court probably 12 days a month and Mr. Hill is here 9 every day representing the same clients. So there 10 really isn't any question about his representing as 11 co-counsel this particular client or any 12 misapprehension.</p> <p>13 MS. LUNDERGAN: Your Honor, we would just ask 14 that if he's going to appear that he file a notice of 15 appearance as such.</p> <p>16 THE COURT: Well --</p> <p>17 MR. HILL: It's not required by the law.</p> <p>18 THE COURT: Yeah. I'm not aware of anything that 19 would require. If this was an individual case, 20 there's so much about foreclosure, it would be 21 different if it was one individual case. But the 22 worst thing I would want to do is have anybody file 23 any extra on legal paperwork in a foreclosure case, 24 and that would really be unnecessary in this case. In 25 fact, I think the appearances of all these local</p>
Page 2	Page 4
<p>1 THE COURT: What's up here? Motion to vacate? 2 Quash?</p> <p>3 MS. LUNDERGAN: Good morning, your Honor. I'm 4 Amanda Lundergan from Ice Legal representing the 5 defendants, Anne-Marie Pons, Paul Connolly, and Sasha 6 Kaminik. This is our motion to quash constructive 7 service of process, motion to set aside the final 8 judgment, and motion to arrest the judgment and 9 withhold execution.</p> <p>10 MR. HILL: Robert Hill for the Plaintiff.</p> <p>11 MS. LUNDERGAN: Your Honor, at this time I would 12 like to state my objection on the record to Mr. Hill's 13 appearance here today. He does not work for Kahane &amp; 14 Associates. He has not complied with the rules 15 regarding appearance here today.</p> <p>16 THE COURT: He doesn't work for who?</p> <p>17 MS. LUNDERGAN: Kahane &amp; Associates, which is the 18 attorney of record. He has not filed a notice of 19 appearance and therefore has not filed -- or has not 20 complied with the Florida Rules of Judicial 21 Administration. We would like a ruling on the record 22 as far as allowing him to appear here today.</p> <p>23 MR. HILL: In response, A, I am a contract 24 attorney employed by Kahane &amp; Associates; B, the rule 25 applies only to the filing of pleadings, and the</p>	<p>1 counsel, it's actually assimilated by the court's 2 request. It wasn't me, but the administrative judge 3 wanted a local counsel be present on a regular basis 4 and would represent as an officer of the court that 5 they have reviewed all the files that come up and 6 would represent that everything was in order and they 7 have operated in that capacity.</p> <p>8 MS. LUNDERGAN: Thank you, your Honor.</p> <p>9 THE COURT: So what's next?</p> <p>10 MS. LUNDERGAN: If we can, we would like to 11 address the motion to quash first. Obviously that 12 seems the most important. There are three clients 13 here. As to Anne-Marie Pons, the plaintiff's process 14 server by his own admission never attempted to serve 15 her at her residence.</p> <p>16 Florida Statute Section 49.021 provides that 17 constructive service is only available when the 18 regular means of process cannot be had. It is a very 19 extremely high burden for the plaintiff to meet. It 20 is a threshold. It is basically if there is nothing 21 else available that should be their only other option.</p> <p>22 We have filed affidavits in support of our motion 23 to quash on all three clients. As to Anne-Marie Pons, 24 she does live at the address.</p> <p>25 MR. HILL: Objection. Counsel's testifying. The</p>



Page 5	Page 7
<p>1 affidavit doesn't say where she lives. In fact, it 2 very clearly and fraudulently evades that question. 3 THE COURT: Just one second. You will have to 4 make your argument based on whatever is in the written 5 record. 6 MS. LUNDERGAN: Yes. You'll note the record 7 states that the process server did not serve 8 Anne-Marie at her address, but the address is clearly 9 available; that she did receive correspondence from 10 Bankunitied at that address, and since Bankunitied knew 11 of her home address and did not attempt to serve her 12 there, the constructive service should be quashed. It 13 should not be available. 14 As to the Connollys, the process server's return 15 of service says the defendants do not reside there. 16 We ask this Court to take judicial notice of another 17 case with the same plaintiff, the same process server, 18 and the same law firm where they did serve the 19 Connollys at their home address. 20 Plaintiff obviously knows where the Connollys' 21 home address is. They know where Anne-Marie's home 22 address is since they've had correspondence with her 23 at that address. And for the process server to not 24 serve them at their home address, and instead use 25 constructive service, that should not be available to</p>	<p>1 THE COURT: Just one second. 2 Okay, going back to the other portions of her 3 argument. 4 MR. HILL: Well, as a whole, judge, this motion 5 and the affidavits in support of it are redolent of 6 fraud. If you read the motion, it's very craftily 7 drafted to give the impression that the defendants are 8 claiming that their home -- what their home address 9 is. But it doesn't actually say what their home or 10 residence address is. 11 And if you look at the affidavits, they're 12 conspicuous by the fact that the affidavit does not 13 recite, or any of the defendants' three affidavits, 14 none of them recite what their residence is. It just 15 says, "I was not served at my residence." There is 16 nothing in the motion or the affidavit which actually 17 states what their residence is. 18 They're attempting -- the drafter of this motion 19 is attempting to give the Court the impression that 20 it's 8739 Caraway Lake Court, Boynton Beach, Florida. 21 But there is nothing in the motion which actually 22 states that that is their address. 23 And the affidavits, as I said, they simply do not 24 state what the residence address is. They just state, 25 "We were not served at our residence address." So</p>
Page 6	Page 8
<p>1 them. Constructive service is only a last resort when 2 their home address is not available. 3 MR. HILL: If I can request -- 4 THE COURT: Just one second. When you say 5 constructive notice of another case, what is the case? 6 MS. LUNDERGAN: Your Honor, it's in our motion. 7 I have a copy of it here for you. 8 MR. HILL: It's a Miami-Dade County case, judge, 9 and there is no indication in her motion -- 10 THE COURT: Just one second. Let her make her -- 11 MS. LUNDERGAN: Your Honor, the case is cited 12 right here. The same plaintiff, the same process 13 server. They've served them at their home before and 14 now they're claiming that they can't find their home. 15 THE COURT: Okay, Mr. Hill. 16 MR. HILL: Judge, she claims that and she cites a 17 Miami-Dade County case. However, she does not -- they 18 do not attach a copy of any return service from that 19 court file. So none of this is anything but hearsay 20 testimony by counsel unsupported by any sworn 21 testimony or certified copy of a return of service 22 from the Dade County court file. So you cannot take 23 judicial notice of that fact because there is no fact 24 that has been put on the record to take notice of. 25 MS. LUNDERGAN: Your Honor, I believe --</p>	<p>1 there is no evidence before the Court as to what the 2 residence address of these defendants is. 3 THE COURT: Any rebuttal. 4 MS. LUNDERGAN: Your Honor, as to the Connollys' 5 affidavit, they do state that the address is their 6 home address. It's listed in our motion what the 7 Connollys' home address is. The plaintiff has served 8 them before at their home address, and now they're 9 attempting to allege that they don't live there. 10 As to Anne-Marie Pons, the plaintiff listed three 11 addresses that they attempted to serve her at. Her 12 affidavit states, "Those are not my residence. They 13 have corresponded with me at my residence, so 14 therefore, they do know what my residence is." 15 The rules are very clear that a person must be 16 served at their primary place of residence. The 17 plaintiff cannot come before the court and say, "We 18 don't know their primary place of residence. We 19 attempted to serve A, B and C, but we know D is her 20 primary place of residence, we just didn't go to D." 21 You can see that very clearly from the affidavits 22 were filed both from the Connollys and from Anne-Marie 23 Pons, the return of service was addressed for 24 Anne-Marie Pons. They did try to serve those and not 25 her home address. They did list the home address for</p>



Page 9	Page 11
<p>1 the Connollys but stated the Connollys didn't live 2 there. They know the Connollys live there. The 3 Connollys stated they never tried to evade service and 4 that they have in fact served them before in that 5 home. 6 MR. HILL: Judge, there's not a single statement 7 in an affidavit of what these defendants' residence 8 address is. Counsel is again trying to bootstrap by 9 referring to this Miami-Dade County case where she 10 didn't bother to attach a copy of a return of service, 11 if it indeed shows what address they were served at 12 then for what little relevancy that might have. But 13 it's simply not there. 14 And this whole thing is just too slickly crafted 15 by half with the motion giving the implication but not 16 stating what the residence address is and the 17 affidavits being completely silent as to what their 18 residence address is. 19 THE COURT: You all are both going over the 20 things you already have covered. 21 MR. HILL: And I would also say the law is 22 well-established in Florida that the return of service 23 of the process server is given an extremely strong 24 presumption of correctness, can only be refuted by, A, 25 sworn testimony that directly refutes it; and B,</p>	<p>1 MR. HILL: I would I stipulate that if you grant 2 the motion quash, the final judgment should be set 3 aside and then there would have been no jurisdiction 4 for its entry. So the key issue is the validity of 5 the constructive service. 6 THE COURT: If there's any, okay. So I'll try 7 and do that later this afternoon or tomorrow. 8 MS. LUNDERGAN: Thank you, your Honor. 9 (Proceedings concluded at 2:48 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 10	Page 12
<p>1 corroborating testimony to the clear and convincing 2 standard. And there is a total absence of, A, any 3 testimony that directly contradicts the return of 4 service; or B, there is total absence of any 5 corroborated testimony. 6 THE COURT: Do you have any final argument? 7 MS. LUNDERGAN: Your Honor, I would just argue 8 that the burden is on plaintiff to prove that a due 9 and diligent search occurred. Our affidavits refute 10 that a due and diligent search occurred. This is an 11 evidentiary issue that should be decided by the Court. 12 Constructive service should not have been available. 13 THE COURT: Okay. I'm going to take a moment and 14 read what's here and see if I'm in a position to rule 15 today of whether they've been served. 16 I have read through the motion and the 17 affidavits. I'm going to have to look through the 18 court file before I can make a ruling. 19 Would you give me each your e-mail addresses and 20 I will send you -- 21 MR. HILL: Rhill@attyhill.com. 22 MS. LUNDERGAN: Amanda@icelegal.com. 23 Your Honor, since the remaining portion of the 24 argument hinges on the motion to quash, should we 25 argue that today or have it reheard?</p>	<p>1 COURT CERTIFICATE 2 STATE OF FLORIDA 3 COUNTY OF LEE 4 5 I, Michele Benza, Registered Professional Reporter, 6 certify that I was authorized to and did stenographically 7 report the foregoing proceedings and that the transcript 8 is a true and complete record of my stenographic notes. 9 10 Dated this _____ day of _____, 2010. 11 12 13 14 Michele Benza, RPR 15 16 17 18 19 20 21 22 23 24 25</p>



<p><b>A</b></p> <p>absence 10:2,4            address 4:11,24              5:8,8,10,11,19              5:21,22,23,24              6:2 7:8,10,22              7:24,25 8:2,5,6              8:7,8,25,25 9:8              9:11,16,18            addressed 8:23            addresses 8:11              10:19            administration              2:21            administrative              4:2            admission 4:14            affidavit 5:1              7:12,16 8:5,12              9:7            affidavits 4:22              7:5,11,13,23              8:21 9:17 10:9              10:17            afternoon 11:7            allege 8:9            allowing 2:22            amanda 1:23              2:4 10:22            annemarie 1:6,7              2:5 4:13,23 5:8              8:10,22,24            annemaries 5:21            anybody 3:22            appear 2:22              3:14            appearance 2:13              2:15,19 3:15            appearances              1:18 3:25            applies 2:25         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CITIMORTGAGE, INC., SUCCESSOR BY  
MERGER TO ABN AMRO MORTGAGE  
GROUP, INC.,

Plaintiff,

vs.

RUSSELL GALPIN, et. al.,

Defendants.

IN THE CIRCUIT COURT OF THE  
TWENTIETH JUDICIAL CIRCUIT OF  
THE STATE OF FLORIDA, IN AND FOR  
LEE COUNTY, FLORIDA

**CASE NO. 10-CA-055328**

---

**DEFENDANT RUSSELL GALPIN'S  
OBJECTION TO REFERRAL TO MAGISTRATE  
AND MOTION TO VACATE ORDER  
SETTING CASE FOR DOCKET SOUNDING**

**A. Objection to Magistrate**

Pursuant to Rule 1.490(c), Florida Rules of Civil Procedure, Defendant Russell Galpin, by and through his undersigned attorney, objects to this Court's referral of the case to the Magistrate and asks the Court to resolve all matters properly before it.

**B. Motion to Vacate Order for Docket Sounding**

**a. Procedural Background**

1. This residential mortgage foreclosure case was filed on May 18, 2010 for the property located at 8148 Country Road #101, Fort Myers, FL 33919.
2. On June 2, 2010, Defendant Russell Galpin moved this Court to Dismiss the Plaintiff's Complaint for failure to properly verify it in accordance with Fla. R. Civ. P. 1.110(b) (2010).
3. On September 13, 2010, Defendant Russell Galpin moved this Court to Dismiss the Plaintiff's Complaint for failure to post a non-resident cost bond in accordance with Fla. Stat. § 57.011.
4. Defendant Russell Galpin has not filed an Answer in this case.



5. On September 29, 2010, after determining that this case is "at issue," this Court issued an Order Setting Case for Docket Sounding.

6. On October 29, Plaintiff served Defendant with its Notice of Filing of Non-Resident Cost Bond.

7. On November 1, 2010, this Court entered an Order (Exhibit "A") granting Defendant's Motion to Dismiss for Failure to Verify, with Leave for Plaintiff to file a new Complaint within 30 days of that Order. That same Order gives Defendant 20 days to respond to amended Complaint and denied Defendant's Motion to Dismiss for Failure to Post Non-Resident Cost Bond.

**b. Argument**

Rule 1.440 of the Florida Rules of Civil Procedure provides that "[a]n action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading." Strict compliance with Rule 1.440 is mandatory and failure to conform to it is reversible error. *Bennett v. Continental Chemicals, Inc.*, 492 So.2d 724, 728 (Fla. 1st DCA 1986) (en banc); *See also Int'l Jai-Alai Players Ass'n v. Dania Jai-Alai Div. of the Aragon Group, Inc.*, 563 So.2d 1117 (Fla. 4th DCA 1990).

Due to the dismissal of the Plaintiff's Complaint, there are no served pleadings in this case and therefore, this case cannot possibly be at issue. Until Plaintiff has filed its new Complaint and Defendant has filed an answer or had a decree entered against him, this case is not at issue and it would be clear error to rule otherwise. *Rountree v. Rountree*, 72 So.2d 794, 795 (Fla. 1954).



WHEREFORE, Defendant Russell Galpin respectfully requests this Court to enter an Order Vacating the Order Setting Case for Docket Sounding because the case is not legally at issue.

### **CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. mail, postage prepaid, on the 4th day of November, 2010 to the following parties:

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Gladiolus Gardens Recreational And Maintenance Assoc., Inc.  
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By:   
T. John Costello, Jr., Fla. Bar No. 68542



CITIMORTGAGE, INC., SUCCESSOR BY  
MERGER TO ABN AMRO MORTGAGE  
GROUP, INC.,

Plaintiff,

vs.

RUSSELL GALPIN, et. al.,

Defendants.

IN THE CIRCUIT COURT OF THE  
TWENTIETH JUDICIAL CIRCUIT OF  
THE STATE OF FLORIDA, IN AND FOR  
LEE COUNTY, FLORIDA

CASE NO. 10-CA-055328

**COPY**

**ORDER ON DEFENDANT'S MOTIONS TO DISMISS**

This action came before the Court on the Defendant's Motion to Dismiss for Plaintiff's Failure to Verify Complaint and Defendant's Motion to Dismiss for Plaintiff's Failure to Post Non-Resident Cost Bond and

Having found that the Plaintiff's Complaint was not properly verified in pursuant to Fla. R. Civ. P. 1.110(b) and that the Plaintiff has now filed the required Non-Resident Cost Bond pursuant to Florida Statute Section 57.011,

**IT IS ORDERED AND ADJUDGED THAT**

- (1) Defendant's Motion to Dismiss for Plaintiff's Failure to Post Non-Resident Cost Bond is **DENIED**.
- (2) Defendant's Motion to Dismiss for Plaintiff's Failure to Verify Complaint is **GRANTED** with Leave for Plaintiff to file an amended verified complaint that complies with Rule 1.110(b) within 30 days of this Order; and
- (3) Defendant shall have 20 days to respond from the date of Plaintiff's Amended Verified Complaint.

Done and Ordered in Chambers, Lee County Courthouse, Fort Myers, Florida, this  
\_\_\_\_\_ day of November, 2010.

**ORIGINAL SIGNED**

**NOV - 1 2010**

**HUGH E. STARNES  
CIRCUIT JUDGE**

Circuit Judge

**EXHIBIT "A"**



Copies furnished to:  
John Costello, Esq.  
Costello, Royston & Wicker, LLP  
P.O. Box 60205, Fort Myers, FL 33906-6205

Jonny Kousa, Esq.  
The Law Office of David J. Stern, P.A.  
900 South Pine Island Rd, Suite 400  
Plantation, FL 33324

Gladiolus Gardens Condominium Assoc., Section II, Inc.  
C/O Turnkey Management, Registered Agent  
11595 Kelly Road, Suite 115  
Fort Myers, FL 33908

Gladiolus Gardens Recreational And Maintenance Assoc., Inc.  
C/O Turnkey Management, Registered Agent  
11595 Kelly Road, Suite 115  
Fort Myers, FL 33908

By: \_\_\_\_\_  
Judicial Assistant

Date: \_\_\_\_\_



COPY

IN THE DISTRICT COURT OF APPEAL OF THE  
SECOND DISTRICT OF FLORIDA

ONEWEST BANK, F.S.B.,

Plaintiff

vs.

CASE NO 09-CA-068784

CARMEN M. GARCIA,

Defendant

## ORDER

THIS CAUSE came on upon the Court's sui sponta order for docket sounding:

## FINDINGS OF FACT

1. Defendant failed to set for hearing it's Motion to Dismiss as instructed by this Court at the prior docket sounding;
2. Although the Defendant did not comply with the Court's previous Order the Court's attention was directed to the fact that there was no record activity for over ten months and Plaintiff has been put on notice as to Rule 1.420 Failure to Prosecute;
3. Additionally, it was brought to the Court's attention that setting Defendant's Motion to Dismiss for a hearing as directed by the Court would obviate the Defendant's right to a dismissal for Lack of Prosecution;
4. The Court determines that the case has not moved forward for over ten (10) months and, for that reason, this Court elects to set this matter to the next trial docket.



**ORDERED and ADJUDGED:**

1. Defendant's Motion to Dismiss is waived by the Court;;
2. The Defendant is to file an Answer and Affirmative Defenses within 20 days of the date of this order;
3. The matter is hereby set for trial February 22, 2011. Lee County is not requiring compliance with *Fla. R. Civ. P* 1.440 and does not consider the holding in *Leeds v. C. Chemical Corp.*, 280 So.2d 718 (Fla. 3<sup>rd</sup> DCA 1973) controlling in foreclosure matters.

**DONE AND ORDERED** in chambers in Fort Myers, Lee County, Florida this

DEC 29 2010, 201    .

/s/ Hugh E. Starnes  
Honorable James Thompson

cc:

Marshall C. Watson, P.A.

K. Jack Breiden, Esq.



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA                      CIVIL DIVISION

BAC HOME LOANS SERVICING LP,  
fka COUNTRYWIDE HOME LOANS  
SERVICING LP,

Plaintiff,

vs.

CASE NO. 09-CA-070652

CECIL HANES AND JENNIFER HANES, et al.

Defendants.

---

TRANSCRIPT OF PROCEEDINGS

Before the Honorable James R. Thompson,  
Circuit Judge, at a hearing in the above-styled  
action at the Lee County Justice Center, Fort Myers,  
Florida, commencing at 2:10 p.m., on the 27th day of  
October, 2010.

---

FORT MYERS COURT REPORTING  
2231 First Street  
Fort Myers, Florida 33901  
(239) 334-1411  
FAX (239) 334-1476



A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

SALLY A. ROOT, ESQUIRE  
Law Offices of Marshall C. Watson  
1800 NW 49th Street, 120  
Fort Lauderdale, Florida 33309  
(954) 647-3747

IN PROPRIA PERSONA:

Cecil Hanes and Jennifer Hanes  
6900 Daniels Parkway, Suite 29  
Fort Myers, Florida 33912

---

FORT MYERS COURT REPORTING (239) 334-1411



1 P R O C E E D I N G S

2 THE COURT: What is noticed for hearing today?  
3 Anything besides the docket sounding?

4 MS. ROOT: There's a motion -- there's a  
5 motion by the defendant to strike the complaint.

6 THE COURT: Are you folks the Hanes?

7 MS. HANES: Yes, sir.

8 THE COURT: Okay. Nothing's going to happen  
9 today, but it looks like you have some defensive  
10 motions that need to be addressed.

11 MS. HANES: Yes, they do.

12 THE COURT: What's going to happen is the  
13 docket is going to be continued, be set for -- set  
14 for another docket sounding. In the mean time,  
15 you-all are instructed to go ahead and set your  
16 motions for hearings and get those heard.

17 MS. HANES: Can we discuss them today, Your  
18 Honor? I mean, we have a couple questions for you.

19 THE COURT: All right.

20 MS. HANES: I guess I filed -- we filed an  
21 objection in the court on Monday. Have you had a  
22 chance to look at that?

23 THE COURT: Objection to what?

24 MS. HANES: Our objection that we were here  
25 for today that should be in our case file.

FORT MYERS COURT REPORTING (239) 334-1411



1 THE COURT: I'm sorry?

2 MS. HANES: Our objection that should be in  
3 the case file.

4 THE COURT: In the case file?

5 MS. HANES: Yes. Our notice of objection to  
6 the order setting the case for docket sounding as  
7 the court has no personal or subject matter  
8 jurisdiction, which -- that was what our objection  
9 was today, because the original reason for the  
10 docket sounding was to set -- to see if it was  
11 ready or at issue for trial.

12 THE COURT: Right.

13 MS. HANES: And I guess I'd like for you to  
14 reiterate exactly what you said earlier addressing  
15 the court about what the docket sounding is and --

16 THE COURT: Well, we're treating this a little  
17 differently than what you might get the impression  
18 from the order bringing you here. That is, the  
19 first couple of these are treated as case  
20 management conferences. In this case, the case  
21 management conference would be -- in your case, you  
22 have outstanding defense motions, so we're going to  
23 direct you to either have those heard or have those  
24 waived. They've been around since January, 2010,  
25 that would suggest that, you know, you're not

FORT MYERS COURT REPORTING (239) 334-1411



1           serious about it or you're imposing a delay  
2           perhaps.

3           MS. HANES: Well, Your Honor, we're waiting  
4           for the Court. The motion has never been heard.

5           THE COURT: It's not going to be heard until  
6           you set it. You've got to set the motion for  
7           hearing in order to be heard. We don't go out and  
8           get these things normally to have them heard. The  
9           way you'll do that is we have -- for residential  
10          foreclosure proceedings now there is a website,  
11          it's leeclerk.org and it will explain to you how to  
12          get a hearing date on that.

13          MS. HANES: All right. I know how to get a  
14          hearing.

15          THE COURT: And then you'll file a notice of  
16          hearing for that day and send a copy to the other  
17          side.

18          MS. HANES: Okay.

19          THE COURT: It's leeclerk.org and that will  
20          give you a way to set it.

21          MS. HANES: To calendar it? Okay. Earlier  
22          you had mentioned about the docket sounding.

23          THE COURT: Right.

24          MS. HANES: So I guess my question is: Can  
25          you explain to me who gave the authority initially

FORT MYERS COURT REPORTING (239) 334-1411



1 to do the docket sounding, because it says it's  
2 case management, but obviously case management  
3 refers to 1.440 in the Florida Rules of Civil  
4 Procedure, which actually is different than a  
5 docket sounding. So therefore Judge Carlin signed  
6 the back of all of the docket soundings and says if  
7 an intern actually did it --

8 THE COURT: The intern didn't sign the docket.  
9 The intern sent them out.

10 MS. HANES: No, but if the intern did create  
11 it -- and as an attorney or as a judge, I'm sure he  
12 read over this before he signed it, I'm quite sure.  
13 So I guess my -- my question is from there -- where  
14 do we go from here? In the initial pleadings and  
15 stuff that we've put in and motions and stuff,  
16 obviously, under the register of actions, doesn't  
17 give it any ground today for it to be even anywhere  
18 near summary judgment or to be heard if that was  
19 the case had this not happened today.

20 THE COURT: Nobody set it for summary  
21 judgment.

22 MS. HANES: Not today.

23 THE COURT: When you ask where we get the  
24 authority for docket sounding, that is subject to  
25 debate. All right? And the Court is taking the

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1 position and I'm taking the position that the Court  
2 has the inherent authority in the management of its  
3 docket to move cases forward and compel the parties  
4 to move them forward.

5 MS. HANES: Okay.

6 THE COURT: That is subject to debate, not  
7 every attorney agrees with it. If it's a matter  
8 you want to address on appeal, you're certainly at  
9 liberty to do that, but that's the explanation we  
10 have at this point, that the Court has the inherent  
11 authority under the management of its docket to do  
12 it, and as I say, that's debatable.

13 MS. HANES: So you're basically -- Your Honor,  
14 then you're basically saying the Court has  
15 jurisdiction over the subject matter today and  
16 the -- and the personal matter of --

17 THE COURT: Well, we have --

18 MS. HANES: -- of the docket sounding.

19 THE COURT: We have jurisdiction over the  
20 subject matter. Whether we have jurisdiction over  
21 you personally, whether you got served or not is --

22 MS. HANES: We did not get served.

23 THE COURT: It appears you were served.

24 MS. HANES: We weren't served even on the  
25 notice. I happen to be down at the law library and

FORT MYERS COURT REPORTING (239) 334-1411



1           went to check the docket. As you can see, I have  
2           copies that I came on Friday to the court --

3           THE COURT: I'm talking about the initial  
4           complaint and -- complaint and summons.

5           MS. HANES: Oh.

6           THE COURT: If you were served with the  
7           summons, we have jurisdiction over your person. If  
8           you were not served with the summons and it was  
9           defective, then you would file a motion to quash.  
10          We would not have service over you personally --  
11          jurisdiction over your person. We have  
12          jurisdiction over the subject matter of this  
13          lawsuit because it's a mortgage foreclosure and  
14          those are heard in the circuit court, so we have  
15          jurisdiction over the subject matter of the  
16          lawsuit. I believe we have jurisdiction over your  
17          person, so -- and then the issue about whether we  
18          can set this for docket sounding, that's what I  
19          discussed before and that is, we believe, under the  
20          inherent authority the Court has --

21          MS. HANES: So you say you believe, but is it  
22          written anywhere prior to today's --

23          THE COURT: I'm telling you that's the ruling  
24          of the Court.

25          MS. HANES: Okay, but the ruling was today in

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1 a sense, if you're implementing it today.

2 THE COURT: No.

3 MS. HANES: No, I mean -- what I'm saying is,  
4 you're addressing it today in court.

5 THE COURT: I'm addressing it because you're  
6 asking me to.

7 MS. HANES: Okay. But prior to today, Your  
8 Honor, it was not written anywhere in an  
9 administrative order, judicial order, any of the  
10 orders of --

11 THE COURT: Not that I am aware of.

12 MS. HANES: So it wasn't written prior to  
13 today, something that's come about this past  
14 weekend?

15 THE COURT: No, it's not something that's  
16 coming about. Inherent authority of the court is a  
17 concept that I'm going to leave to full explanation  
18 of others. The court has certain authority just by  
19 being a court to manage its dockets and that's  
20 recognized at least. Whether it's applicable in  
21 this case is subject to debate. I'm taking the  
22 position that it is, and so you're stuck with that  
23 unless you elect to appeal it.

24 MS. HANES: I -- I understand that, but  
25 typically when you search -- research any of the

FORT MYERS COURT REPORTING (239) 334-1411



1 rules for the court -- court proceedings, it's  
2 written prior before it's ever implemented to it,  
3 and according to what this says by Judge Carlin's  
4 signature that I have right here, obviously it was  
5 implemented by him, so therefore -- typically  
6 there's an authority that it's written somewhere so  
7 that the attorneys and the general public have some  
8 idea what a docket sounding is so if they research  
9 as I did.

10 So then I guess I need to set a hearing to  
11 discuss my motion -- my verified motion to dismiss  
12 to strike the plaintiff's complaint for standing --  
13 lack of standing upon the fraud in the court and to  
14 dismiss the action with prejudice and sanctions.  
15 So you're not to going to hear that motion or  
16 anything?

17 THE COURT: It's not set today, so the other  
18 side's not prepared to address it.

19 MS. HANES: Okay. How do I get a copy of the  
20 order once you guys get it -- once the Court has  
21 decided how it's going? How do I get a copy of the  
22 order stating exactly what the revised docket  
23 sounding is?

24 THE COURT: There is no order.

25 MS. HANES: I'm sorry? Well, you said that

FORT MYERS COURT REPORTING (239) 334-1411



1           you were going to address an order at the beginning  
2           of the -- about it, an order that had come down or  
3           something. How do I find it in the general public?

4           THE COURT: I'm not sure what you're referring  
5           to. Are you referring to my opening remarks?

6           MS. HANES: Yes, Your Honor.

7           THE COURT: Okay. I think there's already  
8           that order in this case. That was a problem that  
9           occurred in some cases, it did not occur in your  
10          case. Your case there is an initial order in here.  
11          Some of the cases, what happened is when the order  
12          was signed, the interns, in mailing it, sent the  
13          original to the parties and didn't send -- put a  
14          copy in the court file. That's not your situation.

15          MS. HANES: Okay. Well, we didn't receive a  
16          notice of the docket sounding anyway. Can you tell  
17          me who the intake specialist is, Your Honor, that  
18          signed all these?

19          THE COURT: Let me make sure what I said was  
20          correct.

21          THE CLERK: Her order was returned. Cecil  
22          Hanes.

23          THE COURT: Apparently the mailing was --

24          MS. HANES: Yeah, I have copies of that to let  
25          you know I was not actually served in the mail. I

FORT MYERS COURT REPORTING (239) 334-1411



1           happened to be here, otherwise I wouldn't --  
2           THE COURT: That cures any defect in that.  
3           MS. HANES: At the bottom of this that Judge  
4           Carlin signed (indicating), can you tell me who the  
5           intake specialist one would be?  
6           THE COURT: What?  
7           MS. HANES: The intake specialist.  
8           THE COURT: What about him?  
9           MS. HANES: Whoever did this and drafted it, I  
10          mean, who the intake specialist is, because  
11          typically there's a name there. There is a  
12          signature with no name. Do you want to see it?  
13          THE COURT: Not really, but I'll look at it.  
14          MS. HANES: I'm just inquisitive. I'm sorry,  
15          Your Honor.  
16          THE COURT: Somebody signed it. I can't read  
17          everybody's signature. I've got no idea who that  
18          is. All they're saying -- all they're signing is  
19          saying that they mailed it. They ensured it was  
20          mailed.  
21          MS. HANES: Right. Certified -- certification  
22          of service.  
23          THE COURT: Certified that it was mailed.  
24          MS. HANES: That it was sent to those  
25          addresses. Okay. So I need to set then, I guess,

FORT MYERS COURT REPORTING (239) 334-1411



1 a trial?

2 THE COURT: No.

3 MS. HANES: A hearing? I'm sorry.

4 THE COURT: Set a hearing. Coming back on  
5 another docket sounding and before that you are  
6 going to set hearings on the motions and we'll get  
7 those resolved. And then depending on how those  
8 are resolved we're going to continue on with the  
9 litigation until it reaches its conclusion.

10 MS. HANES: And -- and again on the -- on the  
11 order itself that's coming down to change the  
12 docket sounding, the verbiage, all that kind of  
13 stuff; how will I find that later?

14 THE COURT: Order coming down?

15 MS. HANES: Well, the docket sounding itself,  
16 as you've referenced, 1.440 is for case management.  
17 There is nothing for docket sounding. Docket  
18 sounding is for criminal procedures.

19 THE COURT: There's not any orders coming out  
20 in your case right now other than those that are  
21 already filed. You're not waiting on anything  
22 except the new order for the next docket sounding.  
23 You'll get that in just a moment.

24 MS. HANES: And the attorney that is here  
25 today, are you Barbara Gonzalez?

FORT MYERS COURT REPORTING (239) 334-1411



1 MS. ROOT: No. My name is Sally Root and I  
2 work for Marshall Watson. I'll give you a card.

3 MS. HANES: Because I was told -- I was told  
4 yesterday by Sonya that Barbara Gonzalez would be  
5 here.

6 MS. ROOT: We have a large firm. People cover  
7 each other's stuff.

8 MS. HANES: I understand.

9 THE COURT: The bottom line of all this is you  
10 need to set your motions for hearing before the  
11 next docket sounding, and nothing else is going to  
12 happen today. They'll give you a new date over  
13 here.

14 MS. HANES: Your Honor, at that hearing, what  
15 is the requirement? I mean, obviously, if it's  
16 being set for December 10th, or whatever they're  
17 setting it for, full disclosure of discovery would  
18 not have time to be done by then, so what will be  
19 the purpose of the docket sounding on December  
20 10th? Can you tell me what the purpose of that is?

21 THE COURT: It's going to be determined what  
22 else is necessary to advance this case, and that  
23 would depend, in part, on what happens to your  
24 motions, so basically --

25 MS. HANES: So no motions will be heard at

FORT MYERS COURT REPORTING (239) 334-1411



1           that docket sounding; is that right?

2           THE COURT: Pardon?

3           MS. HANES: No motions will be heard at the  
4 docket sounding, it's going to be a separate  
5 hearing?

6           THE COURT: I can't say that. The order that  
7 brought you here authorizes the filing of motions  
8 for summary judgment to be heard at these hearings  
9 if they file a motion for summary judgment. If you  
10 file a motion for summary judgment and notice it,  
11 either side, then that will be heard at the  
12 hearing. That's the only motion that's going to be  
13 heard at hearing. Every other motion has to be set  
14 on a normal motion calendar.

15          MR. HANES: Your Honor, does it have to be  
16 noticed prior to the hearing?

17          THE COURT: Prior?

18          MR. HANES: Does summary judgment have to be  
19 noticed prior to the hearing?

20          THE COURT: Oh, yes. Yes.

21          MR. HANES: How many days, sir?

22          THE COURT: I believe it's 20 days. The  
23 motion has to be filed in 20 days. I forgot what  
24 the notice requires. We can look it up or we can  
25 bring it up if that happens --

FORT MYERS COURT REPORTING (239) 334-1411



1           MR. HANES: Just curious.  
2           THE COURT: Okay.  
3           MS. HANES: I think that is it. You've  
4 clarified a few things for me. Thank you, Your  
5 Honor.  
6           THE CLERK: December 10th at 1:00.  
7           MS. HANES: You have a paper for me?  
8           MR. HANES: I've got it.  
9           MS. HANES: You got it? Okay.  
10                   - - -  
11           (Thereupon, at 2:24 p.m., the proceedings  
12 were concluded.)  
13                   - - -  
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FORT MYERS COURT REPORTING (239) 334-1411



CERTIFICATE OF REPORTER

I, JACQUELINE T. HILLMAN, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings, and that the transcript, pages 1 through 16, is a true and correct record of my stenographic notes.

DATED this 1st day of November, 2010, at Fort Myers, Lee County, Florida.

---

Jacqueline T. Hillman

FORT MYERS COURT REPORTING (239) 334-1411



MT021511MCCARTY

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

BANK OF NEW YORK MELLON,  
Plaintiff(s),

vs.

CASE NO. 10-CA-50102

TERRANCE MCCARTY,  
Defendant(s).

---

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Hugh E. Starnes,  
Circuit Judge, at a hearing in the above-styled action  
at the Lee County Justice Center, Fort Myers, Florida,  
commencing at 5:02 p.m., on the 15th day of February,  
2011.

---

FORT MYERS COURT REPORTING  
2231 First Street  
Fort Myers, Florida 33901  
(239) 334-1411  
FAX (239) 334-1476

□

2

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

JAMES L. GOETZ, ESQUIRE  
Post Office Box 6844  
Fort Myers, Florida 33911  
Page 1



MT021511MCCARTY

ON BEHALF OF THE DEFENDANT:

(No Appearance)

FORT MYERS COURT REPORTING (239) 334-1411

3

1 THE CLERK: No. 90, Bank of New York versus  
2 McCarty.

3 MR. GOETZ: well, that's -- Ashley is with  
4 Kass Shuler --

5 THE CLERK: Kass Shuler.

6 MR. GOETZ: -- and I'll stand in for Kass  
7 Shuler and Ashley.

8 I don't have anything on it, Your Honor.  
9 Seems like the end of the day I --

Page 2



10 THE CLERK: I'm sorry.  
11 THE COURT: Could you just look at the docket,  
12 LJ, and see --  
13 MR. GOETZ: See what's --  
14 THE COURT: -- any answers or -- we have no  
15 Defendant here.  
16 THE CLERK: There was an answer by Terrance  
17 McCarty.  
18 MR. GOETZ: Oh, okay. That's one of the  
19 Defendants.  
20 THE CLERK: Hardship.  
21 THE COURT: So pro se answer.  
22 THE CLERK: Motion for summary was filed  
23 December 17th.  
24 THE COURT: Of 2010?  
25 THE CLERK: Uh-huh.

FORT MYERS COURT REPORTING (239) 334-1411

□

4

1 THE COURT: So it sounds like it's capable of  
2 a summary judgment. The Defendant hasn't  
3 appeared --  
4 MR. GOETZ: Uh-huh.  
5 THE COURT: -- and the hardship answer sounds  
6 like it's not a valid defense. So if you think the  
7 Plaintiff's -- new Plaintiff's attorney, Mr. Goetz,  
8 is going to move on a motion for summary judgment,  
9 I'm willing to put it on a docket sounding.  
10 MR. GOETZ: Yes, if you would, please. I mean  
11 it's --  
12 THE COURT: April 14th at 8:30.  
13 - - -



14 MT021511MCCARTY  
(Thereupon, at 5:04 p.m., the proceedings  
15 were concluded.)  
16

17 - - -  
18  
19  
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25

FORT MYERS COURT REPORTING (239) 334-1411

5

CERTIFICATE OF REPORTER

I, MARI B. TEMPLE, Registered Professional  
Reporter, do hereby certify that I was authorized to and  
did report the foregoing proceedings, and that the  
transcript, pages 1 through 4, is a true and correct  
record of my stenographic notes.

DATED this \_\_\_\_\_ day of \_\_\_\_\_,  
2011, at Fort Myers, Lee County, Florida.

\_\_\_\_\_  
Mari B. Temple, RPR, CMRS



MT021511MCCARTY

FORT MYERS COURT REPORTING (239) 334-1411

□



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT OF THE  
STATE OF FLORIDA, IN AND FOR LEE COUNTY  
CIVIL DIVISION

FIFTH THIRD MORTGAGE COMPANY,

Plaintiff,

vs.

CASE NO. 36-2009-CA-  
066527

RONALD H. OLSSON A/K/A HANS R. OLSSON, et al.

Defendant(s)

---

CROSS-NOTICE OF HEARING

TO: All parties on the attached Master Civil Service List

YOU WILL PLEASE TAKE NOTICE that on the 13th day of October at 8:30 am EST, or as soon thereafter as counsel may be heard, the plaintiff will call up for hearing Plaintiff's Motion for File Amended Complaint before the Magistrate Stella Diamond, Circuit Court Judge, at:

1700 Monroe Street  
Ft. Myers, FL 33901  
Courtroom 1B

James Goetz, Esquire will appear on behalf of the plaintiff

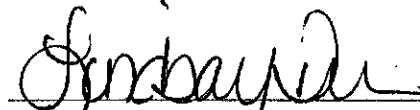
PLEASE BE GOVERNED ACCORDINGLY

TIME RESERVED: 5 Minutes



### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Hearing has been furnished by U. S. Mail this 11 day of Sept., 2010, to all parties listed on the attached service list. 20



Law Offices of Dantiel C. Consuegra  
Lindsay R. Dunn/Florida Bar #55740  
9204 King Palm Drive  
Tampa, Florida 33619-1328  
Tel (813) 915-8660  
Fax (813) 915-0559

cc: Magistrate Stella Diamond

If you are a person with a disability who needs any accommodation in order to participate in this proceedings, you are entitled, at no cost to you, to the provisions of certain assistance. Please contact Ken Kellum, Court Operations Manager whose office is located at the Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1700 within two working days of your receipt of this notice; if you are hearing or voice impaired, call 1-800-995-8771.

**"THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION  
OBTAINED WILL BE USED FOR THAT PURPOSE."**



## MASTER CIVIL SERVICE LIST

RONALD H. OLSSON A/K/A HANS R. OLSSON  
C/O SCOTT A. KUHN, ESQ.  
KUHN LAW FIRM, P.A.  
12800 UNIVERSITY DRIVE, SUITE 385  
FORT MYERS, FL 33907

CELESTE M. OLSSON  
C/O SCOTT A. KUHN, ESQ.  
KUHN LAW FIRM, P.A.  
12800 UNIVERSITY DRIVE, SUITE 385  
FORT MYERS, FL 33907

FIFTH THIRD BANK D/B/A FIFTH THIRD BANK (SOUTH FLORIDA)  
C/O MATTHEW L. KAHL, ESQ.  
MORRIS HARDWICK SCHNEIDER, LLC  
P.O. BOX 262378  
TAMPA , FL 33685

THE FOREST OAKS HOMEOWNERS ASSOCIATION, INC.  
C/O DAVID FULLEN, PRESIDENT  
16431 FAIRWAY WOODS, #104  
FT. MYERS, FL 33908



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT OF THE  
STATE OF FLORIDA, IN AND FOR LEE COUNTY  
CIVIL DIVISION

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE  
FOR CSMC 2006-2

Plaintiff,

vs.

CASE NO. 36-2009-CA-  
066527

RONALD H. OLSSON A/K/A HANS R. OLSSON, et al

Defendant.

---

ORDER GRANTING MOTION TO FILE AMENDED COMPLAINT

THIS MATTER came on for consideration upon Motion to File an Amended  
Complaint. The Court reviewed the matter and was fully advised in the premises.

ORDERED and ADJUDGED;

1. Plaintiff's Motion to file this Amended Complaint, change the plaintiff  
name from U.S. Bank National Association As Trustee for CSMC 2006-2  
to Fifth Third Mortgage Company be, and the same, is hereby granted.



2. The Amended Complaint is accepted and ratified by the Court as though previously filed.
3. Any answers that were filed as to the Complaint shall stand as answers to the Amended Complaint and that the parties need not file additional answers although they shall have leave to do so.

DONE AND ORDERED in Lee County, Florida, this 17 day of

Sept 2010



The Honorable Lynn Gerald  
Circuit Judge

cc:

Law Office of Daniel C. Consuegra  
9204 King Palm Dr.  
Tampa, FL 33619

and

All parties on Master Civil Service List

No Copies/Envelopes  
Provided



### MASTER CIVIL SERVICE LIST

RONALD H. OLSSON A/K/A HANS R. OLSSON  
C/O SCOTT A. KUHN, ESQ.  
KUHN LAW FIRM, P.A.  
12800 UNIVERSITY DRIVE, SUITE 385  
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TAMPA , FL 33685

THE FOREST OAKS HOMEOWNERS ASSOCIATION, INC.  
C/O DAVID FULLEN, PRESIDENT  
16431 FAIRWAY WOODS, #104  
FT. MYERS, FL 33908

CURRENT RESIDENTS:  
16160 FOREST OAKS DRIVE  
FORT MYERS, FL 33908



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT OF THE  
STATE OF FLORIDA, IN AND FOR LEE COUNTY  
CIVIL DIVISION

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE  
FOR CSMC 2006-2

Plaintiff,

vs.

CASE NO. 36-2009-CA-  
066527

RONALD H. OLSSON A/K/A HANS R. OLSSON, et al

Defendant.

---

MOTION TO FILE AMENDED COMPLAINT

COMES NOW the, Plaintiff, U.S BANK NATIONAL ASSOCIATION AS  
TRUSTEE FOR CSMC 2006-2, by and through its undersigned attorney and moves this  
Honorable Court for an Order granting Plaintiff leave to file an amended complaint and  
to accept and ratify the complaint as though previously filed, and in support thereof  
would state that this amendment is necessary to change the plaintiff name from U.S.  
Bank National Association As Trustee for CSMC 2006-2 to Fifth Third Mortgage  
Company and that the granting of the motion would promote Judicial Economy and



would result in the inexpensive and timely resolution of this matter, that no party would be prejudiced by such an order and that fairness and justice would require such an order.

Lindsay R. Dunn  
#55740



Law Offices of Daniel C. Consuegra

- ☐ Kelley A. Cramer/Florida Bar #590665
- ☐ Jessica D. Morrow/Florida Bar #0058855
- ☐ Tahirah R. Payne/Florida Bar #Pending
- ☐ Scott G. Layden/Florida Bar #73871

9204 King Palm Drive

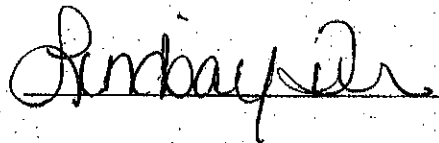
Tampa, Florida 33619-1328

Tel (813) 915-8660

Fax (813) 915-0559

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to File Amended Complaint has been furnished by U.S. Mail to all parties on the attached Master Civil Service List this 14 day of Sept. 2010.





## MASTER CIVIL SERVICE LIST

RONALD H. OLSSON A/K/A HANS R. OLSSON  
C/O SCOTT A. KUHN, ESQ.  
KUHN LAW FIRM, P.A.  
12800 UNIVERSITY DRIVE, SUITE 385  
FORT MYERS, FL 33907

CELESTE M. OLSSON  
C/O SCOTT A. KUHN, ESQ.  
KUHN LAW FIRM, P.A.  
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FORT MYERS, FL 33907

FIFTH THIRD BANK D/B/A FIFTH THIRD BANK (SOUTH FLORIDA)  
C/O MATTHEW L. KAHL, ESQ.  
MORRIS HARDWICK SCHNEIDER, LLC  
P.O. BOX 262378  
TAMPA , FL 33685

THE FOREST OAKS HOMEOWNERS ASSOCIATION, INC.  
C/O DAVID FULLEN, PRESIDENT  
16431 FAIRWAY WOODS, #104  
FT. MYERS, FL 33908

CURRENT RESIDENTS:  
16160 FOREST OAKS DRIVE  
FORT MYERS, FL 33908



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL DIVISION

---

HSBC BANK USA, NA,

Plaintiff,

vs.

CASE NO. 09-CA-052969

MAURICIO A. ORDONEZ, et al.

Defendant,

---

**DEFENDANTS REQUEST FOR STAY OF ENTRY OF JUDGMENT,  
MOTION FOR REHEARING AND RECONSIDERATION OF SUMMARY FINAL  
JUDGMENT OF FORECLOSURE, AND REQUEST FOR STAY OF FORECLOSURE SALE  
PENDING REHEARING**

COMES NOW, Defendants, through the undersigned and pursuant to Florida Rules of Civil Procedure 1.530, hereby move the Court to stay entry of its Summary Final Judgment of Foreclosure, rehear and/or reconsider the matters set forth in its Judgment in Favor of HSBC BANK USA, NA and stay the foreclosure sale pending rehearing and in support thereof states as follows:

1. On February 12, 2009, Plaintiff HSBC BANK USA, NA filed its complaint.
2. Count One of the complaint is an equitable cause of action seeking foreclosure.
3. On July 30, 2009, Plaintiff filed its Motion for Summary Judgment
4. On September 23, 2009, Defendant filed a Motion to Set Aside Default and Motion to Dismiss. Defendant relied on the representations of Plaintiff's counsel that the mortgage foreclosure was on hold due to loss mitigation and that an agreed order setting aside the default was unnecessary. See Exhibit "A" email from Plaintiff's counsel, Exhibit "B" proposed order, Exhibit "C" Affidavit.
5. On July 22, 2010 this Court set the case for Docket Sounding, scheduled for September 7, 2010.
6. On August 17, 2010, Defendant filed its Request for Interrogatories and Request for Production.
7. On September 1, 2010, Plaintiff filed a Motion for Extension of Time in which to respond to Defendant's discovery requests.
8. On September 7, 2010 this Court heard argument of counsel on Plaintiff's Motion for Summary Judgment, which it granted.



9. However, Plaintiff's Motion for Summary Judgment was never noticed and was never scheduled to be heard at the docket sounding.
10. Defendant's counsel has reviewed the docket entries recorded by the Clerk of this Court and the docket does not indicate that Defendants Motion to Dismiss has ever been heard or ruled upon.
11. Also, the docket does not indicate that Defendants Motion to Set Aside Default has ever been heard or ruled upon.
12. Furthermore, Defendant's request for discovery has not been answered.
13. Florida Rule of Civil Procedure 1.530 specifically provides: On a motion for rehearing of matters heard without a jury, **including summary judgments**, the court may open the judgment if one has been entered, take additional testimony, and enter a new judgment. (Emphasis added).
14. Almost **any** additional evidence, whether newly discovered or not, is sufficient for relief on a timely motion for rehearing of a summary judgment if in the discretion of the trial judge it presents a triable issue of a material fact. *Fatherly v. California Federal Bank, FSB*, 703 So. 2d 1101 (Fla. 2d DCA 1997); *Kash N'Karry Wholesale Supermarkets, Inc. v. Garcia*, 221 So. 2d 786 (Fla. 2d DCA 1969). (Emphasis added).
15. Almost **any additional evidence** of a material fact, whether newly discovered or not, is sufficient for relief on a timely filed motion for rehearing of a summary judgment. Thus, if the record reflects the existence of **any** genuine issue of material fact or even the **slightest possibility** of any issue, or if the record raises even the **slightest doubt** that an issue might exist, that doubt must be resolved against the moving party and the summary judgment must be denied. *Hervey v. Alfonso*, 650 So. 2d 644 (Fla. 2d DCA 1995); *Burroughs Corp. v. American Druggists' Ins. Co.*, 450 So. 2d 540 (Fla. 2d DCA 1984).
16. Upon information and belief MARTI NORIEGA, who signed the Assignment of Mortgage as an Assistant Vice President of MERS, is not an employee of MERS or HSBC BANK USA, NA, but is in fact an employee of LITTON LOAN SERVICING. See Exhibit "D" LinkedIn.com Profile and Exhibit "E" Spoke.com Profile.
17. Upon Information and belief DENISE BAILEY who signed the Assignment of Mortgage as an Assistant Secretary of MERS, is not an employee of MERS or HSBC BANK USA, NA, but is in fact an employee of LITTON LOAN SERVICING. See Exhibit "F" LinkedIn.com Profile and Exhibit "G" Spoke.com Profile.
18. Defendant requested materials in its discovery request to establish MARTI NORIEGA and DENISE BAILEY'S authority to sign on behalf of MERS.
19. Defendant has also requested information regarding DOUG POLLOCK'S authority to bind FREMONT INVESTMENT, when he endorsed the Note in question.



20. Furthermore, upon information and belief Plaintiff failed to satisfy conditions precedent to filing the instant foreclosure action. Plaintiff has failed to attach any acceleration notice as required in Section 22 of the attached mortgage.
21. Finally, Plaintiff is in violation of rule 1.510 of the Florida Rules of Civil Procedure by failing to serve Defendant with the Assignment of Mortgage twenty (20) days before the Motion for Summary Judgment. Plaintiff filed the Assignment of Mortgage on September 7, 2010, the day the Docket Sounding was scheduled for hearing.
22. Summary judgment should not be granted until these facts have been sufficiently developed for the court to be reasonably certain that no genuine issue of material fact exists. *Singer v. Star*, 510 So. 2d 637, 639 (Fla. 4th DCA 1987).
23. In addition, as a general rule, a court should not enter summary judgment when the opposing party has not completed discovery. *See Singer; Colby v. Ellis*, 562 So. 2d 356 (Fla. 2d DCA 1990).
24. Moreover, it is an abuse of discretion for a trial court to grant summary judgment where the opposing party has not had an opportunity to complete discovery. *Crowell, M.D. v. Kaufmann, M.D.*, 845 So.2d 325 (Fla. 2d DCA 2003), *citing Brandauer v. Publix Super Markets, Inc.*, 657 So.2d 932 (Fla. 2d DCA 1995).
25. Summary judgment may be granted, even though discovery has not been completed, when the future discovery will not create a disputed issue of material fact." Further, "[a] trial court has the discretion to deny a continuance of a summary judgment hearing where the outstanding discovery items are immaterial to the dispositive issues in the case." *Barco Holdings, LLC v. Terminal Inv. Corp.*, 967 So. 2d 281, 289 (Fla. 3d DCA 2007).
26. However, where, as here, the opposing party has not had a chance to discover material facts relevant to establishing Plaintiff's standing it is error for the trial court to pretermitt discovery by a summary judgment hearing. *E.g., Torres v. MK Tours, Inc.*, 10 So. 3d 672, 2009 WL 1066056, (Fla. 3d DCA April 22, 2009); *Erace v. Erace*, 683 So. 2d 1114, 1114-15 (Fla. 3d DCA 1996); *Scherr v. Andrews*, 497 So. 2d 970 (Fla. 3d DCA 1986); *A&B Pipe & Supply Co. v. Turnberry Towers Corp.*, 500 So. 2d 261 (Fla. 3d DCA 1986); *Cullen v. Big Daddy's Lounges, Inc.*, 364 So. 2d 839, 840 (Fla. 3d DCA 1978).
27. The Florida Supreme Court has decreed the legal standard for trial courts to apply when presented with motions for rehearing. In *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966), the Florida Supreme Court stated:

**"The granting or denial of rehearing is a matter within the sound discretion of the trial court, but it is never an arbitrary discretion. When the motion is filed by one against whom a summary judgment has been entered, the discretion not to grant is narrowed and every disposition should be indulged in favor of granting the motion."**
28. Based upon the above and forgoing this Court should not enter Summary Final Judgment of Foreclosure, grant Defendant's Motion for Rehearing and Reconsideration of Plaintiff's Summary Final Judgment of Foreclosure, and stay the judicial sale of the real property at issue.



WHEREFORE, the Defendant respectfully requests the Court:


- A. Grant Defendant's Motion for Rehearing and Reconsideration.
- B. Stay the Judicial Sale of the real property at issue;
- C. Vacate the Summary Judgment of Foreclosure; and
- D. Grant any and all such further relief as the Court deems appropriate under the circumstances.

By: 

Conrad Willkomm  
Bar No. 0697338  
Attorney for Defendant  
LAW OFFICE OF CONRAD WILLKOMM, P.A.  
590 11<sup>th</sup> Street South  
Naples, FL 34102  
Tel: (239) 262-5303  
Fax: (239) 262-603

**CERTIFICATE OF SERVICE**

I hereby certify that a copy hereof has been furnished via facsimile to (813) 880-8800 and first class mail to Benjamin J. Mollo, Esq., of Shapiro & Fishman, LLP, 10004 N. Dale Mabry Highway, Suite 112, Tampa, Florida 33618 on September 7, 2010.

  
Conrad Willkomm, Esq.  
LAW OFFICE OF CONRAD WILLKOMM, P.A.  
590 11<sup>th</sup> Street South.  
Naples, FL 34102  
Tel: (239) 262-5303  
Fax: (239) 262-6030



## Brandon Bytnar

---

**From:** Craig Smith <Csmith@logs.com>  
**Sent:** Monday, June 28, 2010 4:32 PM  
**To:** Brandon Bytnar  
**Subject:** RE: Agreed Order - HSBC v. Ordonez (Lee County; Your File Number: 09-126863; Case Number: 09-CA-052969)

No problem. Have a good day.

### Craig Smith

Attorney - Foreclosure  
813-880-8888 Office  
813-880-8800 Fax  
[Csmith@logs.com](mailto:Csmith@logs.com) | [www.logs.com](http://www.logs.com)

Pursuant to the Fair Debt Collection Practices Act, you are advised that this office is deemed to be a debt collector and any information obtained may be used for that purpose.

---

**From:** Brandon Bytnar [<mailto:brandon@swfloridalaw.com>]  
**Sent:** Monday, June 28, 2010 4:30 PM  
**To:** Craig Smith  
**Subject:** RE: Agreed Order - HSBC v. Ordonez (Lee County; Your File Number: 09-126863; Case Number: 09-CA-052969)

Thank you very much. I just received your fax.

Brandon

Brandon R. Bytnar, Esq.  
Law Office of Conrad Willkomm, P.A.  
590 11th Street South  
Naples, FL 34102  
Tel: (239) 262-5303  
Fax: (239) 262-6030  
[brandon@swfloridalaw.com](mailto:brandon@swfloridalaw.com)  
[www.swfloridalaw.com](http://www.swfloridalaw.com)



THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. It should be read or retained only by the intended recipient. If you have received this transmission in error, please notify the sender immediately and delete the transmission from your system. In addition, in order to comply with Treasury Circular 230, we are required to inform you that unless we have specifically stated to the contrary in writing, any advice we provide in this email or any attachment



concerning federal tax issues or submissions is not intended or written to be used, and cannot be used, to avoid federal tax penalties.

**From:** Craig Smith [mailto:Csmith@logs.com]

**Sent:** Monday, June 28, 2010 4:21 PM

**To:** Brandon Bytnar

**Subject:** RE: Agreed Order - HSBC v. Ordonez (Lee County; Your File Number: 09-126863; Case Number: 09-CA-052969)

I've already signed a Notice of Cancellation of tomorrow's hearing, which is headed your way by facsimile. Our file is on hold due to loss mitigation. As such, the need to move forward and enter any kind of order is unnecessary and moot right now.

**Craig Smith**

Attorney - Foreclosure

813-880-8888 Office

813-880-8800 Fax

Csmith@logs.com | [www.logs.com](http://www.logs.com)

Pursuant to the Fair Debt Collection Practices Act, you are advised that this office is deemed to be a debt collector and any information obtained may be used for that purpose.

---

**From:** Brandon Bytnar [mailto:brandon@swfloridalaw.com]

**Sent:** Monday, June 28, 2010 4:14 PM

**To:** Craig Smith

**Subject:** Agreed Order - HSBC v. Ordonez (Lee County; Your File Number: 09-126863; Case Number: 09-CA-052969)

Craig,

I have attached an agreed order withdrawing our motion to dismiss and setting aside default, scheduled to be heard tomorrow. If you agree with the terms, please sign it and send it back to me (via email, mail, or fax, whichever is easier). Please keep me posted.

Thanks,

Brandon

Brandon R. Bytnar, Esq.

Law Office of Conrad Willkomm, P.A.

590 11th Street South

Naples, FL 34102

Tel: (239) 262-5303

Fax: (239) 262-6030

[brandon@swfloridalaw.com](mailto:brandon@swfloridalaw.com)

[www.swfloridalaw.com](http://www.swfloridalaw.com)



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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL DIVISION

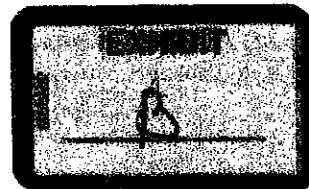
HSBC BANK USA, NA,  
Plaintiff,

vs.

MAURICIO A. ORDONEZ, et al.,  
Defendants.

**COPY**

CASE NO. 09-CA-052969



**AGREED ORDER WITHDRAWING MOTION TO DISMISS AND SETTING ASIDE  
DEFAULT JUDGMENT**

Florida Rule of Civil Procedure 1.500(d) permits the court to set aside a default judgment. Florida Rule of Judicial Administration 2.505(d) permits the parties to stipulate to an agreement in writing signed by the parties or the parties' attorneys.

THIS CAUSE, having come before the Court upon MAURICIO A. ORDONEZ and MELBA L. MONTES' ("Defendants") Motion to Dismiss and Motion to Set Aside Default, and the Court being fully advised the parties agree to entry of this Order, it is thereupon:

**ORDERED:**

1. That the Default Judgment entered against the Defendants on June 2, 2009 be set aside;
2. That the Defendants' Motion to Dismiss is hereby WITHDRAWN; and
3. That the Defendants shall file an Answer 30 days from the date this Order is adopted.

**DONE and ORDERED** in Chambers at Fort Myers, Lee County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Joseph C. Fuller, Judge

The parties agree that faxed and scanned copies will be treated as originals.  
Stipulated and agreed to by and between:

Law Office of Conrad Willkomm, P.A.  
590 11<sup>th</sup> Street South  
Naples, Florida 34102

Shapiro & Fishman, LLP  
10004 North Dale Mabry Highway, Suite 112  
Tampa, Florida 33618

By: \_\_\_\_\_  
Conrad Willkomm, Esq.  
Florida Bar Number: 697338

By: \_\_\_\_\_  
Farzad M. Milani, Esq.  
Florida Bar Number: 59327

Copies to: Law Office of Conrad Willkomm, P.A.  
Shapiro & Fishman, LLP; Attn: Farzad M. Milani, Esq.



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL DIVISION

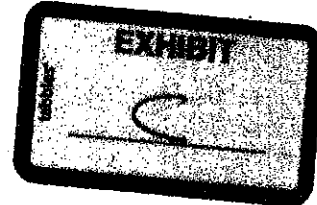
\_\_\_\_\_  
HSBC BANK USA, NA,

Plaintiff,

vs.

MAURICIO A. ORDONEZ, et al.,

\_\_\_\_\_  
Defendants.



CASE NO. 09-CA-052969

COPY

AFFIDAVIT IN SUPPORT OF  
DEFENDANTS' MOTION TO SET ASIDE DEFAULT JUDGMENT

BEFORE ME, the undersigned authority, personally appeared Affiant, BRANDON R. BYTNAR, ESQ., who, upon being first duly sworn according to law, states:

1. That I am an associate attorney employed by the Law Office of Conrad Willkomm, P.A., attorneys for MAURICIO A. ORDONEZ and MELBA MONTES ("Defendants"), and I am familiar with the matters set forth herein. I make this Affidavit in support of Defendants' Motion to Set Aside Default Judgment.
2. That, on June 29, 2010, Defendants' Motion to Dismiss, Defendant's Motion to Dissolve Lis Pendens, and Defendants' Motion to Set Aside Default were scheduled to be heard.
3. That, on June 28, 2010, I emailed a proposed Agreed Order (attached as Exhibit "A") stating that the Default Judgment entered against the Defendants would be set aside, that the Defendant's Motion to Dismiss would be withdrawn, and that the Defendants would file an Answer 30 days from the date the order was adopted. The email, which requested the Plaintiff's response upon review, is attached as Exhibit "B."
4. That, on June 28, 2010, shortly thereafter I emailed said Agreed Order, Plaintiff's counsel responded to my request via email (see Exhibit "B"), stating that he would cancel the hearings scheduled for June 29, 2010.



5. That, in the same corresponding email, Plaintiff represented to me that, "Our file is on hold due to loss mitigation. As such, the need to move forward and enter any kind of order is unnecessary and moot right now." (see Exhibit "B").

6. Plaintiff's counsel subsequently cancelled the hearing on the Defendants' Motion to Dismiss, Defendant's Motion to Dissolve Lis Pendens, and Defendants' Motion to Set Aside Default. A copy of said Notice of Cancellation is attached as Exhibit "C."

7. That I, in good faith reliance, perceived the Plaintiff's response to my email and subsequent cancellation of the hearing as acquiescence to my Agreed Order.

8. That, at the September 7, 2010 Docket Sounding, Plaintiff's counsel alleged that the Defendants never took appropriate action to set aside the Default Judgment previously entered against them.

9. That this affidavit is given to prove to this Honorable Court that I had excusable neglect, due to my reasonable reliance upon the evidence provided herein, in not scheduling a hearing on the Defendants' Motion to Set Aside Default. Alternatively, this affidavit is given to prove to this Honorable Court that Plaintiff's counsel's actions indicate that he stipulated to the Defendants' default being set aside when he cancelled the hearing on Defendants' Motion to Set Aside Default after having had time to review the proposed Agreed Order and responding that an order was unnecessary.

Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

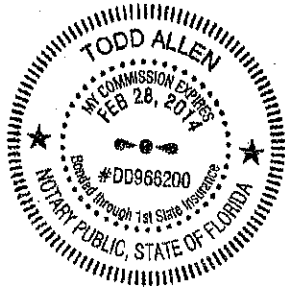
  
\_\_\_\_\_  
BRANDON R. BYTNAR, ESQ.

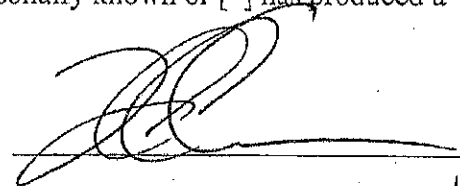


State of FLORIDA  
County of COLLIER

The foregoing instrument was sworn to and subscribed before me this 8<sup>th</sup> day of September, 2010 by BRANDON R. BYTNAR, ESQ., who [ X ] is personally known or [ ] has produced a driver's license as identification.

[Notary Seal]

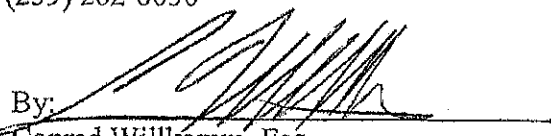


  
Notary Public: TODD ALLEN

**CERTIFICATE OF SERVICE**

I hereby certify that a copy hereof has been furnished by facsimile to (813) 880-8800 and by first class mail to Benjamin J. Mollo, Esq. of Shapiro & Fishman, LLP, 10004 North Dale Mabry Highway, Suite 112, Tampa, Florida 33618 on September 8<sup>th</sup>, 2010.

LAW OFFICE OF CONRAD WILLKOMM, P.A.  
Attorneys for Defendants  
590 11<sup>th</sup> Street South  
Naples, Florida 34102  
Tel: (239) 262-5303  
Fax: (239) 262-6030

By:   
Conrad Willkomm, Esq.  
Florida Bar No. 697338



## Marti Noriega

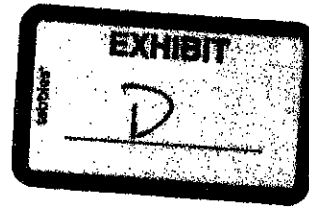
AVP Foreclosurs at Litton

Houston, Texas Area

**Current** • AVP Foreclosurs at Litton

**Connections** 2 connections

**Industry** Financial Services



## Marti Noriega's Experience

### AVP Foreclosurs

Litton

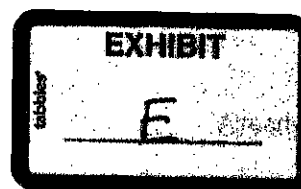
(Privately Held; 10,001 or more employees; Financial Services industry)

Currently holds this position





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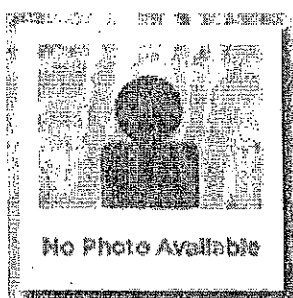
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## Marti Noriega

Title and Company:  
at Litton Loan Servicing Lp

Company Address:  
4828 Loop Central Drive  
Houston, TX 77081-2212

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Marti Noriega

View Background  
Information on Marti  
Noriega

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for Marti Noriega

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824 employees in  
Litton Loan  
Servicing Lp  
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### Marti Noriega's Biography

Tags: Litton Loan Servicing Lp, TX, Loan broker

**Marti Noriega's Job History** Join to view all  
Litton Loan Servicing Lp

**Marti Noriega's Coworkers** Join to view all (824)



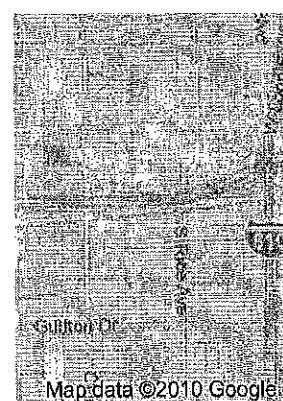
Manager, Human Re...



Senior VP, Loan A...



HR Manager





Larry Litton  
Coo



Jitesh Patel  
AVP Offshore Rela...

Liz Hopkins  
SVP, Human Resour...



Stacey Bayley  
Vp Rec

Diane Dixon  
Assistant Vice Pr...



VP, Deputy Counse...

Has this info changed?

#### Recent Job Posts

Litton Loan Servicing Lp  
jobs

Litigation Processor, Sr  
Houston, TX - Litton Loan  
Servicing

Field Manager  
Houston, TX - Litton Loan  
Servicing

Self Motivated Field  
Manager  
Tampa, FL - Litton Loan  
Servicing

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#### MORTGAGE

May 6, 2010 ...  
American Home  
Mortgage Servicing.  
TEXAS - HARRIS  
COUNTY. Litton  
Loan Servicing, LP.  
Marti Noriega,  
Denise Bailey, Diane  
Dixon and others ...  
stopforeclosurefraud  
.com

#### Erica Johnson Seck

Jul 7, 2010 ...  
American Home  
Mortgage Servicing.  
TEXAS - HARRIS  
COUNTY. Litton  
Loan Servicing, LP.  
Marti Noriega,  
Denise Bailey, Diane  
Dixon and others ...  
stopforeclosurefraud  
.com

#### NY Judge Orders

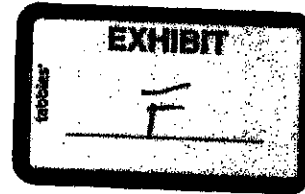
Jul 12, 2010 ... Two  
questions were  
answered by Marti



## Denise Bailey

FC manager at Litton Loan

Houston, Texas Area



**Current** • FC manager at Litton Loan  
• Foreclosure Manager at Litton Loan Servicing

**Past** • FC Manager at Litton Loan

**Education** • Syracuse University

**Connections** 3 connections

**Industry** Banking

## Denise Bailey's Experience

### FC manager

#### Litton Loan

(Public Company; Banking industry)

Currently holds this position

### Foreclosure Manager

#### Litton Loan Servicing

(Banking industry)

1996 — Present (14 years )

### FC Manager

#### Litton Loan

(Public Company; Banking industry)

1996 — 2008 (12 years )

## Denise Bailey's Education

### Syracuse University





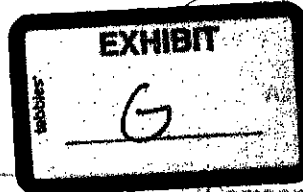
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Title

Company

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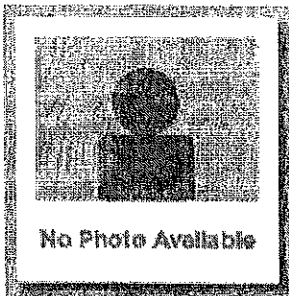
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**Obamas Mortgage Bailout** 9 Million Homeowners Can Benefit! Do  
**Foreclosure Defense Law** Former Bank Lawyers Now Defending S



## Denise Bailey

Title and Company:

Foreclosure Support Supervisor, (Department) at  
Litton Loan Servicing Lp

Company Address:

4828 Loop Central Drive  
Houston, TX 77081-2212

Learn more about  
Denise Bailey

View Background  
Information on  
Denise Bailey

View Social Profiles  
for Denise Bailey

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Denise

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824 employees in  
Litton Loan  
Servicing Lp  
Join to view

### Denise Bailey's Biography

Tags: Litton Loan Servicing Lp, TX, Loan broker, Foreclosure Support  
Supervisor, (Department)

### Denise Bailey's Job History [Join to view all](#)

**Litton Loan Servicing Lp** 2006  
Foreclosure Support Supervisor, (Department) (since 2006)  
Supervisor Foreclosure

**Credit Based Asset Servicing & Securitization Llc** 2006



Recent Job Posts


### Denise Bailey's Coworkers [Join to view all \(824\)](#)


Manager, Human  
Re...


Senior VP, Loan  
A...


HR Manager





 **Larry Litton**  
Coo

 **Liz Hopkins**  
SVP, Human  
Resour...

 **Diane Dixon**  
Assistant Vice  
Pr...

 **Jitesh Patel**  
AVP Offshore  
Rela...

 **Stacey Bayley**  
Vp Reo

 **VP, Deputy**  
Counse...

Has this info changed?



**REGISTER OF ACTIONS****CASE NO. 09-CA-052969**

**HSBC Bank USA National Association, att Fremont Home Loan Trust Plaintiff vs Ordonez, Mauricio A etal Defendant**

§  
§  
§  
§  
§  
§

Case Type: **CA Mortgage Foreclosure**  
Date Filed: **02/12/2009**  
Location: **Div L**  
Judicial Officer: **Fuller, Joseph C**

**RELATED CASE INFORMATION****Related Cases**

09-CADCA-052969 (Appeal)

**PARTY INFORMATION**

<b>Defendant</b>	<b>Florida Development Partners LC</b> dba Club at Grandezza	<b>Lead Attorneys</b> <b>Maria Francesca Passeri</b>  <i>Retained</i>  239-552-4100(W)
<b>Defendant</b>	<b>Grandeza Master Property Owners Association Inc</b>	<b>James Robert Caves</b>  <i>Retained</i>  239-433-7707(W)
<b>Defendant</b>	<b>Montes, Melba L</b>	
<b>Defendant</b>	<b>Ordonez, Mauricio A</b>	<b>W. Conrad Willkomm</b>  <i>Retained</i>  239-262-5303(W)
<b>Defendant</b>	<b>Unknown Parties</b> Removed: 06/02/2009 Dismissed	
<b>Defendant</b>	<b>Unknown Parties 1</b> Removed: 06/02/2009 Dismissed	
<b>Defendant</b>	<b>Unknown Parties 2</b> Removed: 06/02/2009 Dismissed	
<b>Defendant</b>	<b>Villa Grande Homeowners Association Inc</b>	<b>James Robert Caves</b>  <i>Retained</i>  239-433-7707(W)
<b>Plaintiff</b>	<b>HSBC Bank USA National Association</b> att Fremont Home Loan Trust	<b>Benjamin James Mollo</b>  <i>Retained</i>



## EVENTS &amp; ORDERS OF THE COURT

## DISPOSITIONS

06/02/2009 **Notice of Dropping Party** (Judicial Officer: Fuller, Joseph C)  
 09/07/2010 **Final Judgment** (Judicial Officer: Fuller, Joseph C)  
 12/13/2010 **Order of Dismissal** (Judicial Officer: Fuller, Joseph C)  
 Comment (Appeal #2D10-5177)

## OTHER EVENTS AND HEARINGS

02/12/2009 **Complaint**  
 02/12/2009 **Lis Pendens**  
 02/12/2009 **Summons (20 day) Issued**  
 API  
 Ordonez, Mauricio A Returned Unserved 04/03/2009  
 Returned 04/03/2009  
 Montes, Melba L Returned Unserved 04/02/2009  
 Returned 04/02/2009  
 Florida Development Partners LC Served 02/16/2009  
 Response Received 03/10/2009  
 Returned 04/02/2009  
 Villa Grande Homeowners Association Inc Served 02/16/2009  
 Response Received 02/23/2009  
 Returned 04/03/2009  
 Grandezza Master Property Owners Association Served 02/16/2009  
 Inc Response Received 03/06/2009  
 Returned 04/03/2009  
 Unknown Parties 1 Returned Unserved 04/03/2009  
 Returned 04/03/2009  
 Unknown Parties 2 Returned Unserved 04/03/2009  
 Returned 04/03/2009  
 02/12/2009 **Civil Cover Sheet**  
 02/23/2009 **Answer and Affirmative Defenses**  
 03/06/2009 **Answer and Affirmative Defenses**  
 03/10/2009 **Answer and Affirmative Defenses**  
 04/14/2009 **Notice of Action**  
 04/14/2009 **Affidavit of Diligent Search and Inquiry**  
 04/14/2009 **Affidavit of Diligent Search and Inquiry**  
 04/14/2009 **Affidavit of Diligent Search and Inquiry**  
 04/14/2009 **Affidavit of Diligent Search and Inquiry**  
 04/16/2009 **Affidavit of Publication Foreclosure**  
 Ordonez, Mauricio A Served 04/23/2009  
 Response Received 06/02/2009  
 Returned 05/11/2009  
 Montes, Melba L Served 04/23/2009  
 Response Received 06/02/2009  
 Returned 05/11/2009  
 04/16/2009 **Copy of Notice of Action Mailed**  
 04/20/2009 **Returned Mail**  
 04/20/2009 **Returned Mail**  
 06/02/2009 **Motion for Default and Default (Issued)**  
 06/02/2009 **Affidavit of Non-Military Service**  
 07/23/2009 **Affidavit of Attorneys Fees**  
 07/23/2009 **Notice of Filing**  
 07/30/2009 **Notice of Filing Original Note and Mortgage**  
 07/30/2009 **Affidavit in Support of the Motion for Summary Judgment**  
 07/30/2009 **Affidavit of Costs**  
 07/30/2009 **Affidavit of Attorney**  
 07/30/2009 **Motion for Summary Judgment**  
 09/23/2009 **Affidavit**  
 09/23/2009 **Motion to Dismiss**  
 09/23/2009 **Motion to Set Aside Default**  
 10/30/2009 **Notice of Change of Address**  
 01/21/2010 **Affidavit in Support of the Motion for Summary Judgment**  
 01/21/2010 **Notice of Filing**



01/21/2010	<b><u>Notice of Hearing</u></b> 2-17-10 at 8:30am
02/03/2010	<b><u>Notice of Hearing</u></b> 6-28-10 at 3:30pm
02/15/2010	<b><u>Notice of Cancellation</u></b>
03/01/2010	<b><u>Notice of Hearing</u></b> 6-29-10 at 2:30pm
03/24/2010	<b><u>Notice of Change of Address</u></b>
06/29/2010	<b><u>Notice of Cancellation of Hearing</u></b> 6-29-10
06/29/2010	<b><u>Minutes</u></b>
07/12/2010	<b><u>Notice of Change of Address</u></b>
07/22/2010	<b><u>Order Setting Case for Docket Sounding</u></b> 9/7/2010 at 8:30am in Courtroom 5-F
08/17/2010	<b><u>Interrogatories</u></b>
08/17/2010	<b><u>Request for Production</u></b>
08/17/2010	<b><u>Certificate of Service</u></b>
08/17/2010	<b><u>Notice of Hearing</u></b> 9-7-10 at 8:30am
09/01/2010	<b><u>Motion for Extension of Time</u></b>
09/07/2010	<b><u>Notice of Filing Attached Documents</u></b> Copy of assignment of mortgage
09/07/2010	<b><u>Final Disposition Form</u></b>
09/07/2010	<b><u>Notice of Sale Issued</u></b>
09/13/2010	<b><u>Motion to Stay</u></b>
09/13/2010	<b><u>Affidavit in Support</u></b>
09/27/2010	<b><u>Affidavit of Publication of Notice of Sale</u></b>
09/29/2010	<b><u>Notice of Hearing</u></b> 10/11/10 @ 8:30
10/21/2010	<b><u>Notice of Appeal</u></b> copy provided to the Judge
10/22/2010	<b><u>Notice of Appeal with Filing Fee Mailed to DCA</u></b>
10/22/2010	<b><u>Motion to Cancel Foreclosure Sale</u></b>
10/26/2010	<b><u>Order Cancelling Foreclosure Sale</u></b> unclear
11/05/2010	<b><u>Order from DCA</u></b> directing appellant to show cause within 15 days as to why appeal should not be dismissed as untimely
11/05/2010	<b><u>Acknowledgment from DCA</u></b> 2D10-5177
11/08/2010	CANCELED <b>Online Foreclosure Sale</b> (9:00 AM) () No Sale Fee
11/19/2010	CANCELED <b>Certificate of Title</b> (2:00 PM) () Clerk's Error
12/02/2010	<b><u>Stipulation for Substitution of Counsel</u></b>
12/03/2010	<b><u>Order Substituting Counsel</u></b>
01/20/2011	<b><u>Order from DCA</u></b> appellant has 20 days to supplement the 12-28-10 motion for reconsideration
01/27/2011	<b><u>Order Denying Motion</u></b>

---

**FINANCIAL INFORMATION**

---

**Plaintiff** HSBC Bank USA National Association

Total Financial Assessment

443.00

Total Payments and Credits

443.00

**Balance Due as of 01/28/2011**

**0.00**

02/12/2009 Transaction Assessment

393.00

02/16/2009 Court Fees & Fines

Receipt # ODFM-2009-31297

Mollo, Benjamin James

(393.00)

10/22/2010 Transaction Assessment

50.00

10/25/2010 Court Fees & Fines

Receipt # ODFM-2010-202389

Shapiro & Fishman

(50.00)



**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA CIVIL ACTION**

**AURORA LOAN SERVICES, LLC**

**Plaintiff,**

**vs.**

**CASE NO. 10-CA-050448**

**JENNIFER D. SCHAAFF, et al,**

**Defendants.**

---

**EXCEPTIONS TO THE REPORT AND RECOMMENDATIONS OF THE  
MAGISTRATE**

*COME NOW*, the Defendants, JENNIFER D. SCHAAFF and LEWIS ANDREWS HARDEN, JR., by and through the undersigned attorney and hereby file this Exceptions to the Report and Recommendations of the Magistrate dated December 14, 2010, and in support thereof, state as follows:

**I. FACTUAL BACKGROUND.**

1. On or about January 13, 2010, Plaintiff filed a Complaint in the above captioned case.
2. On or about October 11, 2010, Plaintiff filed an Amended Complaint.
3. On or about February 1, 2010, Defendant filed a Motion to Dismiss the original Complaint.
4. On or about November 30, 2010, the Court entered an order granting a stipulation between the parties withdrawing Defendant's Motion to Dismiss.
5. On or about December 14, 2010, at a Docket Sounding, the Magistrate set the case for trial on February 8, 2011.
6. As of the date that the Magistrate set the case for trial, Defendants had not filed an Answer and Affirmative Defenses, because these pleadings were not yet due.



II. **SETTING THE CASE FOR TRIAL WAS ERROR.** It was error for the Magistrate to set the case for trial in the absence of the Defendant's answer to Plaintiff's Amended Complaint, when the answer was not yet due.

7. In this case, the Defendants have not yet filed an answer to the Complaint. At the time this case was set for trial, the pleadings phase was not over, and it was uncertain whether there were any issues in the case which even necessitated a trial.
8. Fla. R. Civ. P. 1.440 governs the setting of an action for trial. It states, "[A]n action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading." Fla. R. Civ. P. 1.440(a).
9. An action is "at issue" after the pleading phase of the case is over, that is, following the 20 day period after service of the last pleading. Until the case is at issue, it is error to schedule a trial. See *Precision Constructors, Inc. v. Valtec Constr. Corp.*, 825 So.2d 1062, 1063 (Fla. 3d DCA 2002).
10. In *Alabau v. Town of Lake Park*, the Fourth District Court of Appeal stated, "[T]he provisions in the civil rules requiring pleadings and the proper setting of trials on the merits are not merely a convenience for the trial judge and parties to dispense with over the objection of an adverse party. They are mandatory..." *Alabau v. Town of Lake Park*, 617 So.2d 872, 873 (Fla. 4<sup>th</sup> DCA 1993).
11. Setting this case for trial was premature. Until the pleadings are closed and issues to be tried are identified, it is improper for this court to set this case for trial.

**WHEREFORE**, for the above and foregoing facts and resulting errors, the Defendants respectfully request this Court to enter an Order reversing the order which set the case for trial, and for such other and further relief as the Court deems just and proper under the circumstances.



**CERTIFICATE OF SERVICE**

***I HEREBY CERTIFY*** that a copy of the above and foregoing has been furnished by regular U.S. Mail to Aurora Loan Services, LLC C/O IBM Lender Process Services, Inc., 14523 SW Milikan Way, Suite 200, Beaverton, OR 97005 on this 20<sup>th</sup> day of December, 2010.



\_\_\_\_\_  
J. REX POWELL

Florida Bar No. 041932

Burandt, Adamski, Grossman & Powell, PL

Attorneys for Defendants

1714 Cape Coral Parkway East

Cape Coral, Florida 33904

(239) 542-4733 (telephone)

(239) 542-5203 (facsimile)



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA - CIVIL ACTION

HSBC BANK USA, NA AS  
TRUSTEE FOR WELLS FARGO  
ASSET SECURITIES CORPORATION,  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2007-ARS

Plaintiff,

v.

Case No. 10-CA-050089

SCOTT SHINNEMAN, et al.

Defendant(s)

**EXPARTE CORRECTIVE ORDER**

**(Entered to correct erroneous statement in Order dated 12/2/10)**

THIS CAUSE comes before the Court for hearing on Defendant's Motion to Dismiss and Motion to Strike.

After the court ruled on the defendant's motions counsel was to submit a proposed order memorializing those rulings. The proposed order contained a statement "Lee County is not requiring that Plaintiff's comply with Fla. R. Civ. P 1.510(e). The proposed order was signed by another senior judge assigned to the special residential foreclosure docket.

That statement does not reflect the court's ruling or the court's position. It is and was the court's ruling and position that all parties are required to comply with Fla. R. Civ. P 1.510(e). The court ruled that Plaintiff's Affidavit of Indebtedness complied with Fla. R. Civ. P 1.510(e).

The court being otherwise fully advised in the premises enters a corrective order as follows. It is

ORDERED AND ADJUDGED as follows:

1. Defendant's Motion To Dismiss is hereby WITHDRAWN.
2. The defendant is to file his Answer and Affirmative Defenses within 20 days of the date of this order.
3. Defendant's Motion To Strike Affidavit is Denied.



5. As this order is being entered exparte any party wishing to be heard on its propriety may set this matter for further hearing within 30days.

**DONE AND ORDERED** at Fort Myers, Lee County, Florida this 30th day of December 2010.

**/s/ James R. Thompson**

---

James R. Thompson, Senior Circuit Judge

Copies:

Christina N. Riley, Esq.  
Florida Default Law Group  
P.O. Box 25018  
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Michael S. Tobin, Esq.  
Rothman & Tobin  
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Suite 740  
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Conrad Willkomm, P.A.  
Law Office of Conrad Willkomm, P.A.  
590 11Street South  
Naples, FL 34102

Robert A. Cooper, Esq.  
Hahn, Loeser & Parks, LLP  
2532 East First Street  
Fort Myers, FL 33901

Mortgage Electronics Registration Systems  
3300 SW 34<sup>th</sup> Avenue  
Suite 101  
Ocala, FL 34474



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL DIVISION

HSBC BANK USA, NA AS  
TRUSTEE FOR WELLS FARGO  
ASSET SECURITIES CORPORATION,  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2007-ARS  
Plaintiff,

VS.

CASE NO. 10-CA-50089

SCOTT SHINNEMAN, et al.  
Defendants.

ORDER

THIS CAUSE came on upon SCOTT SHINNEMAN'S ("Defendant") Motion to Dismiss and Motion to Strike, and the undersigned, having considered the findings and recommendation therein contained, it is thereupon,

**ORDERED and ADJUDGED:**

1. Defendant's Motion to Dismiss is hereby WITHDRAWN.
2. The Defendant is to file his Answer and Affirmative Defenses within 20 days of the date of this order.
3. Defendant's Motion to Strike Affidavit is DENIED, Lee County is not requiring that Plaintiff's comply with Fla.R.Civ.Pro 1.510(e).

DONE AND ORDERED in chambers in Fort Myers, Lee County, Florida this \_\_\_\_ day of  
DEC - 2 2010, 2010.

/s/ Hugh E. Starnes

Honorable James Thompson

cc: Law Office of Conrad Willkomm, P.A.  
Florida Default Law Group, P.L.



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

US BANK NATIONAL ASSOCIATION,  
TRUSTEE,

Plaintiff,

vs.

CASE NO. 09-CA-059070

CANDY SHIVELY, et al.,

Defendants.

---

TRANSCRIPT OF PROCEEDINGS

Before Magistrate Stella Diamond, at a  
hearing in the above-styled action at the Lee County  
Justice Center, Fort Myers, Florida, commencing at  
9:13 a.m., on the 24th day of March, 2011.

---

FORT MYERS COURT REPORTING  
2231 First Street  
Fort Myers, Florida 33901  
(239) 334-1411  
FAX (239) 334-1476



## APPEARANCES

## ON BEHALF OF THE PLAINTIFF:

BARRIE JOY KRUMHOLZ, ESQUIRE  
Law Offices of Marshall C. Watson, P.A.  
1800 NW 49th Street, Suite 120  
Fort Lauderdale, Florida 33309  
(954) 453-0365

## ON BEHALF OF THE DEFENDANTS CANDY AND DARRELL SHIVELY:

MICHELE S. BELMONT, ESQUIRE  
Law Offices of Michele S. Belmont  
8695 College Parkway, Suite 1112  
Fort Myers, Florida 33919  
(239) 848-6552

FORT MYERS COURT REPORTING (239) 334-1411

1 MS. BELMONT: That's true, Your Honor. I was  
2 retained yesterday at 3:30 in the afternoon and  
3 filed an appearance at 4:30 and faxed it to  
4 co-counsel. As the motion in limine will show, we  
5 have many different issues of things that were not  
6 done in a timely fashion.

7 THE COURT: I'm going to allow it.

8 MS. BELMONT: Thank you, Your Honor.

9 THE COURT: Okay. It seems -- one, obviously,  
10 is the late filing of the witness and exhibit list,  
11 one ground, and the second ground -- let me just  
12 read this again. The other ground is that you  
13 don't want them to be able to present the  
14 promissory note?

15 MS. BELMONT: The original, Your Honor, which  
16 I was informed this morning that they have now  
17 found the original. But the fundamental issue that  
18 we have with this case, Your Honor, is that at the  
19 time the complaint was filed there's a lost note  
20 count, and the note that is attached to the  
21 complaint has a blank endorsement on it. This is  
22 page 34 of 37 of the complaint that we discussed  
23 earlier.

24 At some point during discovery -- my client  
25 was pro se until yesterday -- they produced this  
FORT MYERS COURT REPORTING (239) 334-1411

1 THE COURT: Number 12, US Bank versus Shively.

2 MS. KRUMHOLZ: Barrie Krumholz on behalf of  
3 the plaintiffs, Your Honor. Barrie Krumholz.

4 THE COURT: Spell your last name for me.

5 MS. KRUMHOLZ: K-R-U-M-H-O-L-Z, and the first  
6 is B-A-R-R-I-E.

7 MS. BELMONT: Good morning, Your Honor.

8 Michele Belmont on behalf of the defendants.

9 THE COURT: Belmont or Beaumont?

10 MS. BELMONT: B-E-L-M-O-N-T.

11 THE COURT: Is this your witness,

12 Ms. Krumholz?

13 MS. KRUMHOLZ: Yes, it is.

14 I believe she has a preliminary motion.

15 MS. BELMONT: Yes, your Honor. I filed a  
16 motion in limine this morning.

17 THE COURT: Okay. Just a second. I don't  
18 have it -- okay, there is one dated January 31st.

19 MS. BELMONT: No. I have another one, Your  
20 Honor. You're welcome to my copy. It was just  
21 filed this morning.

22 MS. KRUMHOLZ: Your Honor, I'm going to object  
23 to the motion. The pleadings were closed. It  
24 wasn't timely filed. She filed it this morning. I  
25 got a copy this morning.

FORT MYERS COURT REPORTING (239) 334-1411

1 (indicating), Which is the one that they're now  
2 claiming is the original that they say that they  
3 have in their possession now. With the fact that  
4 the --

5 THE COURT: You're saying that the  
6 endorsements are different, so that you don't think  
7 they should be able to present it?

8 MS. BELMONT: That they shouldn't be able to  
9 present it, and there was a lost note count in the  
10 complaint.

11 Now, in the hallway this morning I asked  
12 plaintiff's counsel, "When was this endorsement  
13 done?" Because of course that becomes an issue if  
14 we have two different notes that were presented,  
15 and I was told that it was certainly endorsed prior  
16 to the filing of the complaint. The complaint has  
17 a lost note count, and the note attached to the  
18 complaint has a blank endorsement. So if the note  
19 attached to the complaint, if we're to believe that  
20 one, it's blank. If we're to believe what I was  
21 told by plaintiff's counsel, that the one that was  
22 specially endorsed was actually endorsed prior to  
23 the filing of the complaint, then the complaint  
24 itself is based on a fraudulent statement and the  
25 complaint should be stricken.

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1 THE COURT: I'm not going to exclude the note  
2 without -- I mean, they can present the note into  
3 evidence, you can cross-examine their witness about  
4 the note, and then I can make a decision based on  
5 that. I'm just not going to automatically exclude  
6 it because of the difference in the endorsements  
7 before I hear any testimony about it.

8 The second thing is that you're saying that a  
9 witness list wasn't timely presented. The  
10 problem -- you're right, it wasn't filed within the  
11 time constraints on the pretrial orders, but I'm  
12 not automatically striking them anymore. Okay?  
13 Because as a practical matter it's just -- it's  
14 impractical to do that.

15 Were your clients represented before this?

16 MS. BELMONT: They were in the very beginning  
17 of the case, Your Honor. They've been pro se for  
18 quite some time, I believe. The Shivelys are in  
19 the courtroom, and they can fill me in on that  
20 again. Just several hours of having been retained,  
21 I'm not exactly sure when their last attorney  
22 resigned, but it was certainly before the last  
23 trial date was set.

24 The last trial date was set for January 31st.

25 They didn't file the witness list and exhibit list

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1 until the day after trial.

2 THE COURT: Yeah, I'm not going to strike it,  
3 but let me take a look at the pleadings for a  
4 minute just to see what's going on here.

5 MS. BELMONT: Okay.

6 THE COURT: Has this case been mediated now?

7 MS. BELMONT: No, Your Honor. And that's  
8 another issue. At the last hearing Mr. Shively and  
9 Mrs. Shively were pro se, and Your Honor told the  
10 plaintiff that they were to schedule a mediation  
11 prior to the trial date. The Shivelys are here.  
12 They never heard from plaintiff's counsel. The  
13 mediation was never scheduled, so --

14 THE COURT: Do you know anything about that?

15 MS. KRUMHOLZ: I -- I don't, Your Honor. To  
16 be honest, I'm the covering attorney on the file.  
17 We have no objection to mediating the case. I  
18 don't know that they've ever reached out to us. I  
19 do understand that we were supposed to schedule it.  
20 However, it doesn't appear that they reached out to  
21 us to attempt to coordinate it either, so --

22 THE COURT: Well, the report and  
23 recommendation and the order adopting it stated the  
24 plaintiff should schedule mediation which shall be  
25 held prior to the next date of March -- next trial

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1 date of March 24th, 2011.

2 MS. KRUMHOLZ: Correct.

3 THE COURT: What I'm going to do is I'm going  
4 to continue it, but I'm not going to continue it  
5 for a great deal of time. All right?

6 MS. KRUMHOLZ: Okay.

7 THE COURT: That way you'll have an  
8 opportunity to look into your questions about the  
9 note, and it can be mediated prior to the next  
10 trial date. I'm not going to put in -- on my order  
11 that it's going to be mediated prior to the next  
12 trial date. The parties are just going to do it,  
13 and if it doesn't happen, it doesn't happen,  
14 because this is now the second continuance and I'm  
15 not going to continue it anymore after this. All  
16 right?

17 MS. BELMONT: Respectfully, Your Honor, given  
18 that the plaintiffs did not -- specifically did not  
19 comply with the last court order which stated, "The  
20 plaintiff shall schedule mediation," we would  
21 request that you do make it part of the order,  
22 because they've -- I mean, I'm on the verge of  
23 asking for damages for attorney's fees for their  
24 failure --

25 THE COURT: Well, what I'm going to do is --

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1 MS. KRUMHOLZ: Based on what?

2 THE COURT: -- since it hasn't happened, is  
3 I'm going to ask you to schedule the mediation, and  
4 that way it will be done --

5 MS. BELMONT: Okay.

6 THE COURT: -- and you won't have to worry  
7 about it.

8 MS. BELMONT: That's fine.

9 Are we able to schedule that today?

10 MS. KRUMHOLZ: Sure.

11 MS. BELMONT: Great.

12 THE COURT: All right. So we're going to  
13 continue it for -- this isn't an RMFM mediation,  
14 right?

15 MS. KRUMHOLZ: I don't believe so.

16 THE COURT: I'm sorry. It's 2009.

17 All right. So I can continue it for -- I'll  
18 give you a three-week continuance, and that should  
19 give everybody enough time to do what they want to  
20 do. And I do want to stress that this is the last  
21 continuance, so we're all clear on that.

22 MS. KRUMHOLZ: Absolutely.

23 THE COURT: You'll get a date right now. Hold  
24 on for a moment.

25 MS. KRUMHOLZ: Okay.

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1 THE COURT: Okay. The new trial date's  
2 April 14th at 8:30.  
3 I'm going to give you your motion in limine  
4 back. Do you need it? Ms. Belmont, do you want  
5 that back?

6 MS. BELMONT: Thank you, Your Honor.

7 MS. KRUMHOLZ: Thank you, Your Honor.

8 ---  
9 (Thereupon, at 9:22 a.m., the proceedings  
10 were concluded.)  
11 ---

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COURT CERTIFICATE

STATE OF FLORIDA )  
COUNTY OF LEE )

I, Kimberly T. Westberry, RPR, CRR, do  
hereby certify that I was authorized to and did  
report the foregoing proceedings, and that the  
transcript, pages 1 through 10, is a true and  
correct record of my stenographic notes.

Dated this 25th day of March, 2011.

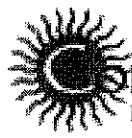
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Kimberly T. Westberry, RPR, CRR  
Fort Myers Court Reporting

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<p>IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION</p> <p>U.S. BANK, NA AS TRUSTEE FOR CHEVY CHASE FUNDING LLC MORTGAGE BACKED CERTIFICATES SERIES 2006-3,</p> <p>Plaintiff,</p> <p>vs. CASE NO. 09-CA-063473</p> <p>JASON G. WEBSTER; THE UNKNOWN SPOUSE OF JASON G. WEBSTER; CARA D. WEBSTER; THE UNKNOWN SPOUSE OF CARA D. WEBSTER; IF LIVING, INCLUDING ANY UNKNOWN SPOUSE OF SAID DEFENDANT(S), IF REMARRIED, AND IF DECEASED, THE RESPECTIVE UNKNOWN HEIRS, DEVISEES, GRANTEES, ASSIGNEES, CREDITORS, LIENORS, AND TRUSTEES, AND ALL OTHER PERSONS CLAIMING BY, THROUGH, UNDER OR AGAINST THE NAMED DEFENDANT(S); BRANCH BANKING AND TRUST COMPANY; BELLE LAGO HOMEOWNERS ASSOCIATION, INC.; WHETHER DISSOLVED OR PRESENTLY EXISTING TOGETHER WITH ANY GRANTEES, ASSIGNEES, CREDITORS, LIENORS, OR TRUSTEES OF SAID DEFENDANT(S) AND ALL OTHER PERSONS CLAIMING BY, THROUGH, UNDER, OR AGAINST DEFENDANT(S); UNKNOWN TENANT #1; UNKNOWN TENANT #2,</p> <p>Defendants.</p> <p>PROCEEDINGS: MOTION HEARING BEFORE: Honorable Hugh E. Stames DATE: February 10, 2011 TIME: 8:50 a.m. to 9:00 a.m.</p>	<p>1 PROCEEDINGS</p> <p>2 MR. RAMIREZ: Good morning, Your Honor.</p> <p>3 THE COURT: Good morning.</p> <p>4 MR. RAMIREZ: This is Fernando Ramirez from</p> <p>5 Ice Legal on behalf of the defendants, the</p> <p>6 Websters.</p> <p>7 THE COURT: Who is the plaintiff's law firm?</p> <p>8 MR. RAMIREZ: Daniel Consuegra.</p> <p>9 THE COURT: Is anyone here for them? Have</p> <p>10 they checked in?</p> <p>11 THE CLERK: Nobody has checked in from that</p> <p>12 firm.</p> <p>13 MR. HILL: Judge, they've usually had their</p> <p>14 own attorney, but Mr. Goetz has represented them</p> <p>15 when they haven't. You could pass now, send him</p> <p>16 an E-mail and ask if he's going to do it today.</p> <p>17 THE COURT: Well, this --</p> <p>18 MR. HILL: I know their attorney has been</p> <p>19 coming here.</p> <p>20 THE COURT: Right.</p> <p>21 MR. HILL: She left the firm, and Tuesday was</p> <p>22 her last day, so --</p> <p>23 THE COURT: Is that Ms. Dunn?</p> <p>24 MR. HILL: Yes.</p> <p>25 THE COURT: The motion is a motion to vacate?</p>
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<p>1 LOCATION: Lee County Courthouse</p> <p>2 1700 Monroe Street, 5-F</p> <p>3 Ft. Myers, FL 33901</p> <p>4 APPEARANCES:</p> <p>5 For the Plaintiff: (No Appearance)</p> <p>6 For the Defendants: FERNANDO RAMIREZ, ESQ.</p> <p>7 Ice Legal, P.A.</p> <p>8 1015 N. State Rd. 7</p> <p>9 Suite D</p> <p>10 Royal Palm Beach, FL 33411</p> <p>11 REPORTER: Christi K. Cole,</p> <p>12 Certified Professional</p> <p>13 Court Reporter</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 MR. RAMIREZ: An ex parte order, Your Honor.</p> <p>2 Do you want me to proceed?</p> <p>3 THE COURT: Well, it says, correct</p> <p>4 scrivener's error. Is this your motion?</p> <p>5 MR. RAMIREZ: No, that was plaintiff's</p> <p>6 motion.</p> <p>7 THE COURT: Okay.</p> <p>8 MR. RAMIREZ: However, plaintiff --</p> <p>9 THE COURT: Tell me what you understand</p> <p>10 they're seeking, and I'll see if it's something</p> <p>11 that we need to --</p> <p>12 MR. RAMIREZ: This is what happened.</p> <p>13 Plaintiff filed a motion to correct that</p> <p>14 scrivener's error in the complaint caption in the</p> <p>15 lis pendens, and to reform the assignment of</p> <p>16 mortgage. However, plaintiff moved ex parte, and</p> <p>17 the Court granted the order.</p> <p>18 However, plaintiff went behind defendants'</p> <p>19 back. We were not aware they were trying to do</p> <p>20 that. And right now --</p> <p>21 THE COURT: Okay. What was it -- what was it</p> <p>22 exactly that they were correcting, because that is</p> <p>23 something that we do on an ex parte -- or what we</p> <p>24 do on an ex parte basis if it's clear that it's</p> <p>25 some mistake in the name or there's been a change</p>





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<p>1 of ownership. We do that ex parte, with the 2 understanding that if there is some alleged 3 prejudice, the defendant can raise it. 4 So, first, what specifically did they change? 5 MR. RAMIREZ: This is our motion for you. 6 THE COURT: Okay. 7 MR. RAMIREZ: On the title you can see -- 8 THE COURT: Is it something you set today? 9 MR. RAMIREZ: We sent it -- we filed it with 10 the Court December 21st. So this is -- 11 THE COURT: Okay. But did you set this 12 today? 13 MR. RAMIREZ: Yes, for today, yes. 14 THE COURT: Okay. Let me read this. 15 Okay. So they're saying they had the name 16 wrong, correct? 17 MR. RAMIREZ: That's right. 18 THE COURT: Okay. 19 MR. RAMIREZ: Not only in the complaint, but 20 also in the assignment of the mortgage. However, 21 Your Honor, when they filed their motion -- 22 THE COURT: Not only in the name, but in 23 what? 24 MR. RAMIREZ: In the assignment of the 25 mortgage. They were trying to also reform --</p>	<p>1 nothing -- there's no ruling on the merits that 2 that's correct. That's basically their 3 allegation. 4 MR. RAMIREZ: Well, Judge, at the very least, 5 we should have an opportunity to contest what 6 they're saying. 7 THE COURT: Well, you do have the 8 opportunity. 9 MR. RAMIREZ: Right. And it's not only that 10 they substitute a party plaintiff, they're saying 11 that it was a scrivener's error, apparently some 12 excusable neglect argument. They need affidavits. 13 Actually, I have an affidavit saying that somebody 14 else is the plaintiff. 15 As I was saying, when they filed their motion 16 for summary judgment, the affidavit they submitted 17 to the Court said that the previous name was the 18 actual owner and holder of the note. 19 So I have an affidavit. They don't. And how 20 could that order be entered? At the very least, 21 we should have a hearing. 22 THE COURT: You have an affidavit from whom? 23 MR. RAMIREZ: It's from the plaintiff. This 24 is the affidavit they filed, affidavit in support 25 of motion for summary judgment. And if you go</p>
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<p>1 THE COURT: Okay. 2 MR. RAMIREZ: -- the assignment of the 3 mortgage. 4 THE COURT: Okay. 5 MR. RAMIREZ: When plaintiff filed its motion 6 for summary judgment -- this is the affidavit 7 that's submitted to the Court, if you would like 8 to look at it. 9 THE COURT: Okay. I just need to know kind 10 of the status. So the ex parte order that came in 11 was after judgment? 12 MR. RAMIREZ: No, final judgment hasn't been 13 entered. 14 THE COURT: Okay. So where is the prejudice 15 from your side? 16 MR. RAMIREZ: Because we haven't had a chance 17 to actually contest that. When they filed -- 18 THE COURT: Well, you do now. I mean, 19 nothing has been -- the order that I've entered -- 20 I'm sure it's the same form that I've usually 21 seen -- does not take any position on whether the 22 name is correct. 23 All we're doing is saying, you can, in 24 effect, substitute the party. If you have an 25 objection and you think that's not right, there's</p>	<p>1 to -- 2 THE COURT: Okay. But this motion for 3 summary judgment hasn't been filed. 4 MR. RAMIREZ: No, it has been filed. 5 THE COURT: I mean, hasn't been heard. I'm 6 sorry. 7 MR. RAMIREZ: That is correct. However, the 8 affidavit has been filed with the Court. 9 THE COURT: I think that's the place for you 10 to challenge it. If they seek a summary judgment 11 and you submit these, you have the right to ask 12 that the summary judgment not be granted. And 13 they've got a pleading asking for something that I 14 presume the judge would say there's a dispute on. 15 I mean, I understand what you're saying. 16 MR. RAMIREZ: Right. 17 THE COURT: And, again, sometimes I feel 18 apologetic in making this statement, but I don't 19 really think there's any need to apologize under 20 the circumstances. 21 We have a caseload that is unmanageable in 22 normal circumstances. We simply don't have the 23 luxury on every thing that if we had individual 24 cases we may say, yes, we'll set up a hearing on 25 this. And our policy is, both Judge Thompson and</p>



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<p>1 myself, if somebody is alleging something that's</p> <p>2 in effect, the way I deem this, it's comparable to</p> <p>3 amending a complaint, and we liberally allow that</p> <p>4 to be done.</p> <p>5 This is no ruling on the merits. It's no</p> <p>6 ruling that they can prove that that's the</p> <p>7 appropriate person. It's their allegation. And</p> <p>8 we've allowed them to substitute that party. If</p> <p>9 that party cannot prove they -- they are the owner</p> <p>10 or the properly named person in the note, then</p> <p>11 they get no relief.</p> <p>12 MR. RAMIREZ: Judge, I appreciate that you're</p> <p>13 trying to move the cases along, but this is the</p> <p>14 law, too. In the Florida Rules of Judicial</p> <p>15 Administration it says that an ex parte order are</p> <p>16 only left for emergency situations.</p> <p>17 There was no emergency to change the name of</p> <p>18 the plaintiff or to change the actual assignment.</p> <p>19 They're changing an assignment that they didn't</p> <p>20 even file with the Court. That's an issue that</p> <p>21 also is going to be probably relevant for a</p> <p>22 standing.</p> <p>23 So in this case, there was no emergency. In</p> <p>24 the past when we have seen that they have moved ex</p> <p>25 parte, we usually set the hearing, and if we lose,</p>	<p>1 COURT CERTIFICATE</p> <p>2 STATE OF FLORIDA</p> <p>3 COUNTY OF LEE</p> <p>4</p> <p>5 I, Christi K. Cole, Certified Professional Court</p> <p>6 Reporter, certify that I was authorized to and did</p> <p>7 stenographically report the foregoing proceedings and</p> <p>8 that the transcript is a true and complete record of</p> <p>9 my stenographic notes.</p> <p>10</p> <p>11 Dated this 10th day of February, 2011.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Christi K. Cole Certified Professional Court Reporter</p>
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<p>1 we lose, and if we win, we win. But in this case,</p> <p>2 they cannot go behind our backs.</p> <p>3 It's not just the name, it's an actual</p> <p>4 assignment of mortgage that they're trying to</p> <p>5 correct, and there's nothing in the record showing</p> <p>6 that they filed the original assignment to begin</p> <p>7 with. And now they're trying to correct that</p> <p>8 assignment without we having even seen it. At the</p> <p>9 very least, we should have the right to contest</p> <p>10 that. It should be --</p> <p>11 THE COURT: I'll grant -- I'm sorry. I</p> <p>12 wasn't trying to push that on you. I grant your</p> <p>13 relief. You can prepare an order.</p> <p>14 MR. RAMIREZ: Thank you.</p> <p>15 (Proceedings concluded at 9:00 a.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	



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IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT  
IN AND FOR LEE, FLORIDA

CASE NO: 09-CA63473

US BANK NA	)
Plaintiff,	)
	)
vs.	)
	)
JASON G. WEBSTER	)
Defendant.	)
_____	)

TRANSCRIPT OF PROCEEDINGS

Volume 1 of 1

Pages 1 through 6

Wednesday, December 8, 2010  
8:35 a.m. to 8:37 a.m.  
LEE COUNTY COURTHOUSE  
1700 Monroe Street  
Fort Myers, Florida 33901

REPORTED BY:  
DANIELLE AHREN, FPR  
Florida Professional Reporter



<p style="text-align: right;">2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 On Behalf of the Plaintiff (s):</p> <p>4 Robert Hill</p> <p>5 P.O. Box 1086</p> <p>6 Fort Myers, Florida 33902</p> <p>7 239-332-2996</p> <p>8 rhill@attyhill.com</p> <p>9 By: Robert Hill, Esquire</p> <p>10</p> <p>11 On Behalf of the Defendant (s):</p> <p>12 Ice Legal, P.A.</p> <p>13 1015 N. State Road 7</p> <p>14 Suite D</p> <p>15 Royal Palm Beach, Florida 33411</p> <p>16 561-729-0530</p> <p>17 steve@icelegal.com</p> <p>18 By: Steven Brotman, Esquire</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 appearing for them today?</p> <p>2 MR. HILL: Yes, sir.</p> <p>3 JUDGE THOMPSON: Okay. That's acceptable</p> <p>4 to me.</p> <p>5 MR. BROTMAN: Thank you, Your Honor. We</p> <p>6 agree that the case is not ready to set for</p> <p>7 trial yet, although we would object to a</p> <p>8 continuance on the basis that this case is not</p> <p>9 at issue as we have not filed our answer yet.</p> <p>10 We only just recently accepted service.</p> <p>11 JUDGE THOMPSON: No answer has been filed</p> <p>12 yet?</p> <p>13 MR. BROTMAN: No. It's due on the 13th,</p> <p>14 Your Honor.</p> <p>15 MR. HILL: Okay. Well, let's set it for</p> <p>16 another docket sounding. That will give you a</p> <p>17 chance to file your answer. Our new docket</p> <p>18 sounding date will be February 1st at 8:30 in</p> <p>19 the morning.</p> <p>20 MR. BROTMAN: If I could clarify, Your</p> <p>21 Honor, docket sounding on the order requires</p> <p>22 that the case be at issue. Are you claiming</p> <p>23 our case is at issue today?</p> <p>24 JUDGE THOMPSON: No. The case is not at</p> <p>25 issue because you haven't filed an answer yet.</p>
<p style="text-align: right;">3</p> <p>1</p> <p>2</p> <p>3 --- PROCEEDINGS ---</p> <p>4 JUDGE THOMPSON: Mr. Hill, you want to</p> <p>5 call the case for the court reporter?</p> <p>6 MR. HILL: Yes, Your Honor. US Bank</p> <p>7 versus Jason Webster, 09-CA63473. Robert Hill</p> <p>8 for the plaintiff.</p> <p>9 MR. BROTMAN: Steven Brotman for the</p> <p>10 defendant, Jason Webster.</p> <p>11 JUDGE THOMPSON: Good morning.</p> <p>12 MR. HILL: Good morning, Judge.</p> <p>13 JUDGE THOMPSON: This is set for a</p> <p>14 continued docket sounding. We do not have a</p> <p>15 package. Cross continuance of the docket</p> <p>16 sounding.</p> <p>17 MR. BROTMAN: First of all Your Honor, we</p> <p>18 object to the appearance of Mr. Hill in this</p> <p>19 case since he has not filed a notice of</p> <p>20 appearance, especially considering your order.</p> <p>21 These docket soundings should require someone</p> <p>22 here that can --</p> <p>23 JUDGE THOMPSON: Who hired you, Mr. Hill?</p> <p>24 MR. HILL: Dan Consuego's Office.</p> <p>25 JUDGE THOMPSON: All right. You're</p>	<p style="text-align: right;">5</p> <p>1 MR. BROTMAN: Thank you, Your Honor.</p> <p>2 JUDGE THOMPSON: If it was at issue, I'd</p> <p>3 set it for trial.</p> <p>4 MR. BROTMAN: Thank you, Your Honor.</p> <p>5 (Whereupon, hearing concluded at 8:37</p> <p>6 a.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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CERTIFICATE OF REPORTER



STATE OF FLORIDA

COUNTY OF LEE

I, Danielle Ahren, Court Reporter and Notary  
Public, certify that I was authorized to and did  
stenographically report the proceedings and that it is a  
true record of my stenographic notes.

I further certify that I am not a relative,  
employee, attorney, or counsel of any of the parties, nor am  
I a relative or employee of any of the parties' attorneys or  
counsel connected with the action, nor am I financially  
interested in the action.

Dated this 8th day of September, 2010.

DANIELLE AHREN, Notary Public



<b>A</b>	<b>courthouse</b> 1:15 <b>cross</b> 3:15	<b>icelegal</b> 2:11 <b>id</b> 5:2 <b>interested</b> 6:16 <b>issue</b> 4:9,22,23,25 5:2	<b>R</b>	<b>vs</b> 1:6
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## Rocket Docket Investigation

*Updated: Dec 13, 2010 7:09 PM EST*

By Liza Fernandez, Weekend Meteorologist / Reporter

More concerns about Lee county's Rocket Docket.

If a bank were trying to take your home away in a foreclosure lawsuit, you'd think there were certain facts that must be confirmed... like how much money you owe the bank. But that doesn't seem to be the case.

We're about to introduce you to a man who's trying to do the right thing. Scott Shinneman's been working with the bank to minimize both its and his losses, but, he says, that's kind of hard when no one's really sure how much those losses equal in a dollar amount.

"A man's home is his castle," Scott exclaims.

But right now his Estero condo seems more like a prison. Hurting in this economy like so many others, Scott lost his lucrative businesses in the construction and remodeling industry. He bought in 2005 and is now working on a loan modification with his lender, Wells Fargo.

"I was set up on a trial modification, made payments as were requested on time every times, but some of those payments were not applied," Scott explains.

...At least 4 payments of \$900 unaccounted for.

Scott says it's frustrating: "They don't know what our home's worth, they don't know how much we owe, we don't know what we owe. I can't get an answer as to what we owe."

That's why Scott's lawyer - Todd Allen - has asked the court to require the lender to attach documentation showing where those payments went and how much Scott currently owes. But that request was denied. And the judge stated, in black and white, Lee county wasn't requiring the bank to comply with state rules of court procedure.

"The court basically said we're not making them to comply with that rule. What's troubling is they're going to possibly foreclose on this property with less than complete evidence," he adds.

Lee county Clerk of Courts Charlie Green denies that could be going on, "I've never seen or courts step outside what their own procedures."

Green adds, "you have to make an effort to make the payments."

Liza Fernandez: "This guy has been making payments."

Charlie Green: "Did he show you canceled checks?"

Liza Fernandez: "He showed me bank statements, showing payments made that haven't been applied. All they want is proof from the bank as to where this money is. That's all they want."

And after further research, the clerk of courts gave us a statement: "We have not required, in the past, nor do I think we will, to have copies (of those documents) attached. It's not mandatory."

No consolation for a man whose family is also searching for answers.

"The boys are asking me, are we moving this week? Are we going to stay? Next year, am I going to go to school here or somewhere else?" "I don't know buddy," says Scott, "we'll be in it together."



4/1/2011

Rocket Docket Investigation - FOX 4 Ne...

Scott has another hearing in January. He and his attorney say, they're appealing regardless. And clerk of court Charlie Green says, if you make payments during a foreclosure or loan modification, make sure to register them with the court.



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## 4 In Your Corner investigates Lee County's "Rocket Docket" program

Updated: Sep 15, 2010 11:01 AM EDT Sep 15, 2010 11:01 AM EDT

We're digging deeper into Lee County's controversial "Rocket Docket" program. The brainchild of Clerk of Courts Charlie Green. Hundreds of foreclosure cases are heard each day, giving homeowners only a few minutes to plead their case. Monday 4 In Your Corner's Liza Fernandez told you about complaints judges were steam rolling constitutional rights of due process in order to clear the backlog of foreclosure cases. Tonight she investigate complaints judges aren't following basic rules of evidence.

"It makes you feel ashamed, and it makes you feel very angry at a system that's so disgustingly corrupt," says Frank Scarola as he gets choked up about getting evicted from this historic Fort Myers home. He says he asked his bank for a loan modification - and it agreed, but that he then got the runaround after his mortgage was bought and sold twice - finally landing in a rocket docket courtroom. That's when Scarola asked for an unbroken chain of ownership - a document that proves the current bank is in fact the owner of the debt after so many sales between banks.

"In 80 percent of the cases that I have, there's no assignment being shown, and the judges are letting them get by without showing the original note," complains attorney Michael Chionopoulos. "I was specifically told by one judge, counselor stop. I have 180 cases on my docket this morning. I've heard all the evidence I'm going hear. The defendant didn't pay the mortgage, we're done here, he continues.

Liza Fernandez: "The banks then come to court and can't provide the original documents..."

Clerk of Courts Charlie Green: "The debt is still the debt. The note is supposed to be present, and that's a problem for the lender. It comes back to both parties, the party who borrowed the money, who signed the note agreed to pay.

...Even if the other party can't be determined.

Frank Scarola tells 4 In Your Corner he's suing the bank that foreclosed on his home and Lee County for fraud, "absolutely, institutionalized fraud this was. There's some kind of deal between banks and the judges or banks and the court system. they absolutely stole my house without proving it was ever theirs.

Contact Lee County judges: <http://www.ca.cjis20.org/web/main/leejudges.asp>



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Fort Myers



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Section: **FORECLOSURE**

**Move is on for non-court Florida foreclosures**

January 31, 2010

dhogan@news-press.com

Plug in: Join the discussion and learn more about dealing with **foreclosure** on our special page.

A proposal by the **Florida** Bankers Association to allow **foreclosures** without a court hearing is arousing violent sentiments on both sides of the issue in Southwest **Florida**.

Proponents say so-called "non-judicial" **foreclosure**, which would take as little as four months, could help clear a glut of court cases and speed the recovery of the housing market.

Opponents say it's a way for banks to take people's houses without legal safeguards built into the court system - even when a lender's claim to foreclose is shaky.

"They're trying to keep people from their day in court," said real estate agent Jeff Tumbarello, who tracks **foreclosures** in Lee County and is director of the Southwest **Florida** Real Estate Association.

"They'd prefer not to face a judge with what they do to people," Tumbarello said.

He noted that in recent court cases, judges in **Florida** have thrown out **foreclosure** suits because the bank couldn't prove it owned the loan.

But county Clerk of Court Charlie Green, who's struggling to stay ahead of a flood of new **foreclosures** and a 23,000-case backload, said there should be a way to foreclose quickly against deadbeats who are destroying neighborhoods by neglecting or abandoning their homes.

"There are people who have not made any payments, any effort to pay, and they've been living there a year to a year and a half and not helping anybody," he said. "I agree with the banks: Those people need to go."

Alex Sanchez, president of the bankers association, said his group has been shopping the idea with legislators but



doesn't have an actual bill introduced or a sponsor.

State Rep. Gary Aubuchon, R-Cape Coral, a builder, said he's withholding judgment on the association's plan until he sees something on paper.

"There is not a bill filed yet," he said. "I don't yet quite know, honestly."

Under the association's proposal, a bank could go the judicial route and file a lawsuit as it would at present - that would allow the lender to file a deficiency judgment against the borrower for any money not recovered from the sale of the foreclosed house, he said.

But under the non-judicial alternative, the bank would file a delinquency notice and as early as 30 days later could then file a **foreclosure** notice. After 90 days the bank could ask for the property to be sold in an auction held by the Clerk of Court, as is done now, Sanchez said.

Under the non-judicial process, generally the bank would not be allowed to file a deficiency judgment, he said.

Sanchez said the concept of non-judicial **foreclosure** is sound and he takes issue with the argument that banks just want to kick people out of their homes without recourse.

"Their last option is the **foreclosure** ejection button," Sanchez said. "We'd rather keep that family in the home until they get back on their feet."

The people being harmed by the current system are the ones living in the neighborhoods where banks can't get control of a vacant home, he said.

"If you've got an eyesore property next to you, you won't like that," Sanchez said.

But April Charney of Jacksonville Legal Aid, an expert in **foreclosure** issues, said bankers are disingenuous when they claim to be working in the public interest.

"Oh the things that money will try to buy," she said, suggesting that the high fees for **foreclosure** filings and mandatory mediation in **Florida** are more of a factor in the attempt to circumvent the courts.

Lenders just want to get as much money out of **foreclosures** as quickly as possible to stay afloat, Charney said.

"When you're drowning, you just try to drown someone else so you can breathe one more breath," she said.

Kevin Jursinski, a Fort Myers-based attorney who handles **foreclosure** cases, said the association's proposal "is like George Orwell's 1984: It just eliminates all due process rights in **Florida**, which is the most protective state for person's home in my opinion. It's just all one-sided for the bank."

But Green said the current situation calls for a new approach - most borrowers being foreclosed on have simply given up anyway.

"Of the 23,000 cases backlogged in Lee County," he said, "I venture to say 20,000 have made no effort to save their property."



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**THE WALL STREET JOURNAL.**

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**HEADLINE:** A Florida Court's 'Rocket Docket' Blasts Through Foreclosure Cases ---- 2 Questions, 15 Seconds, 45 Days to Get Out;  
'What's to Talk About?' Says a Judge

**BYLINE:** By Michael Corkery

**BODY:**

FORT MYERS, Fla. -- Hoping to save her house, Sandra Hill Scott arrived at the county courthouse clutching dog-eared mortgage bills and letters from her lender.

She need not have bothered. The foreclosure hearing lasted less than 20 seconds, with Judge John Carlin asking her two questions: Are you current on your mortgage and are you living in the home? She answered no and yes and then offered to show him her paperwork.

"I don't need to see that. That's between you and the bank," he said as he gave Ms. Hill Scott, her husband and three grandchildren 60 days to work out a deal with their lender or vacate their three-bedroom house.

While the Obama administration prepares to unveil on Wednesday its plan to rescue the U.S. housing market, officials here in Lee County have come up with their own unique plan for dealing with the crisis. To clear a huge backlog of foreclosures, judges are hearing "rocket dockets" of nearly 1,000 cases a day and calling retired colleagues back to the bench to help ease the workload.

The housing crisis has been pounding the Florida court system like a Category 5 hurricane. Not only does the state have among the highest default rates in the country, its legal system, unlike many other states with devastated housing markets, requires judges to sign off on foreclosures. The combination has created a monster glut of cases that are overwhelming the courts. The Obama plan to encourage more loan modifications nationally may stem the flood of



A Florida Court's 'Rocket Docket' Blasts Through Foreclosure Cases --- 2 Questions, 15 Seconds, 45 Days to Get Out;  
'What's to Talk About?' Says a Judge The Wall Street

foreclosures in Florida somewhat, but Lee County officials say that the area's large number of unemployed residents and housing speculators may end up losing their properties anyway.

Charlie Green, Lee County's clerk of the circuit courts, says the county is still on pace in February to exceed new filings in January and there's a hearing on Thursday with 800 foreclosure cases. "All these plans that the government has come up with are great," says Mr. Green. "But it doesn't help us get these cases off our books."

No area has been hit harder than Lee County, a largely working-class and second-home enclave, where Ponce de Leon is believed to have wandered in search of gold and conquest in the 16th century.

Modern-day treasure seekers invaded this area during the recent housing boom, snapping up houses and parcels of land, hoping to flip them to retirees and working families. Millionaire University, an unaccredited program in nearby Cape Coral, taught speculators from around the country how to buy and sell properties for huge profits. From 2000 to 2005, house prices in Cape Coral more than doubled.

Two years ago, the Lee County court system had about 1,900 foreclosure cases on the books. That number swelled to 24,000 by the beginning of this year. "We have to move these cases out of here," says Mr. Green. "That's how we get these houses back on the market and get to the bottom faster."

Many defendants in Fort Myers are speculators who never lived in the houses and don't bother to show up for the hearings or respond to court summonses. But some of the homeowners who do come to court are annoyed that they're given only a few seconds to speak to the judge.

"The judge didn't want to hear from me," said a frustrated Reed Morgan, a self-employed business consultant, wearing loafers and a blue oxford shirt, after Judge Carlin gave him 60 days to work out a modification plan with his lender or vacate his three-bedroom house.

Minutes after the bailiff opened the courtroom doors at a recent hearing, every seat was filled with delinquent homeowners: a mechanic with two pierced ears and a goatee, a young woman in a car-rental uniform, a gray-haired landlord who rehearsed his lines with the woman next to him.

"It's like the Exodus," said Ms. Hill Scott, a middle-school teacher who went into default after her monthly payments on her adjustable-rate mortgage reset. She now owes \$3,300 a month, up from the \$1,600 she was paying a year ago. She says she hasn't made a mortgage payment since January 2008 and is in negotiations with her lender seeking a modification.

During a break in the hearing, lawyers used dollies to wheel in boxes containing hundreds of case files, which they piled onto tables and on the floor.

One lawyer, wearing a dark suit and untucked white shirt ran between the judge's bench and the dozens of open boxes on the floor. His colleagues sat cross-legged on the courtroom floor, sorting through files.

The judge signed dozens of them without discussion and passed them to a row of court employees to process the paperwork.

"Case No. 136," the clerk intoned. "Wells Fargo versus Edward Callahan."

Judge Carlin asked whether the man was living in the house and was current on his mortgage. He answered no to both questions.

"Your house will be sold in 45 days," said the judge. "That's all for today."

Case time: 15 seconds.



A Florida Court's 'Rocket Docket' Blasts Through Foreclosure Cases --- 2 Questions, 15 Seconds, 45 Days to Get Out;  
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The judges say they sympathize with the homeowners' hardships, but often the cases can be decided after a brief hearing because there are no legal issues in dispute which would warrant a lengthy trial. Some homeowners don't understand they are required to file paperwork before the hearing to challenge the lender's case. Many of them never file the documents or hire lawyers, the judges say.

Many judges, including Judge Carlin, are giving homeowners much more time to stay in their houses than the law requires.

"That's pretty humane considering that many homeowners have been living rent-free for more than a year," says Robert Hill Jr., a Fort Myers lawyer who represents lenders.

Lee County judges say they are trying to screen for cases that would benefit from mediation, but Chief Judge G. Keith Cary opposes making such a requirement. "A guy hasn't paid his mortgage in over a year," says Judge Cary. "What's there to talk about?"

Homes around Lee County have suffered one of the steepest price drops in the country, down almost 50% from the peak. Empty houses and shuttered storefronts line city streets.

In nearby Bonita Springs, Mr. Morgan says his neighbor vanished from his house in the middle of the night. "He loaded up a U-haul and was gone," Mr. Morgan says. "I have known him for six years and he never said goodbye."

The court itself hasn't been immune to the pain. The county clerk's budget is shrinking even as overtime has added about \$60,000 in costs since October.

To save money, Mr. Green, the Lee County clerk, has removed light bulbs from around the court building, put printers on draft mode to save ink and forbidden employees from making long-distance phone calls, even business calls.

The lawyers are doing well, though. They can earn as much as \$100 per foreclosure to present cases to the judge that have been prepared by big law firms in Miami and Tampa, which are hired by out-of-state lenders.

But speed is of the essence. Lee County lawyers speak in hushed tones of one firm that made the mistake of not being organized enough at a rocket-docket hearing. The judge postponed their foreclosure actions for an additional 60 days. "Lenders don't like delays," says Mr. Hill, who averages 1,900 foreclosure cases a month.

Economists say Florida's housing recovery will likely be stalled until the properties stuck in legal limbo are cleared. In California, where judges are typically not involved in the foreclosure process, some housing markets are showing some signs of stabilizing.

Mr. Green says his courts are making progress. They cleared more cases out of the backlog last month than they received in new foreclosures. In light of President Obama's plans, it's possible that lenders could cancel the foreclosure even though the judge has signed off. "The problem is that the lenders have spent all this money on attorneys and filing fees," says Judge Cary. "You are so far into it, would you really stop it at that point? It's an expensive proposition."

The last homeowner to show up in Judge Carlin's courtroom spoke through a Spanish interpreter. She said she wasn't current on her mortgage, but was living in the house. The judge gave her 60 days to vacate. She didn't say anything and returned to her seat "That's all for today. Thank you for coming in," the judge said.

The woman sat in the empty courtroom, covered her eyes and cried. Judge Carlin called a brief recess and returned to his chambers. Lawyers stacked more foreclosure cases on his bench for him to sign when he returned.

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### **In Court: Boom drops on homeowners**

December 5, 2008

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More than 800 foreclosure properties are on their way to the auction block after Lee Circuit Judge John Carlin on Thursday held a daylong marathon of hearings.

It was the first day of a monthlong push to start clearing a backlog of foreclosure cases that has flooded the court system since the collapse of the residential real estate market three years ago.

Carlin and other circuit judges want to process 4,000 of the roughly 29,000 cases in the system in December. They hope to keep up the pace until the backlog is gone.

One man being foreclosed on said he believes the system was fair.

"The judge did his job," said Ervin Shuaipi, who had a foreclosure sale scheduled for 60 days from now on his home in Bonita Springs.

Shuaipi and his wife, Elda, are behind on their mortgage from Fifth Third Bank for \$175,000 on their condominium at Gardens at Bonita Springs.

In most of the cases Thursday, the defendant either did not contest the foreclosure or didn't show up. In those cases, Carlin ordered a date set for a foreclosure sale.

For those who, like the Shuaipis, were still living in the foreclosed home, Carlin ordered the date set in 60 days to give them more time to leave. Most of the rest were set for 45 days or less.

Most of the defendants did not show up but a few did - and some were fighting for their homes.

"I'm going to contest it," said Dennis Balik, 47, a flooring contractor whose Bonita Springs house is being foreclosed on by Citimortgage. "I'm trying to work something out."



Being in construction is tough these days, said Balik.

"I had great credit until May, when everything shut down," he said.

Now the once-thriving new-home flooring part of his business is gone and jobs are few and far between.

"I'm down to one cell phone," he said. "I turned my cable off."

Ken Kellum, court operations director, said 841 cases were on Thursday's schedule and the judge signed orders for 825 of those to be sold. The rest were typically cases being contested.

Lloyd Hendry, an attorney who was representing the National Credit Union Administration on four cases, said he believed the process went well.

"We've got to get ahead of the docket" of unresolved cases, he said.

Hendry said he'll be back at the foreclosure hearings as they proceed throughout the month and into next year until the backlog is cleared out.

"I do have a lot more," he said. "I have a block of about 100 or so."

Even as the court system here is pushing through cases, Gov. Charlie Crist and state banking leaders announced Monday a voluntary 45-day moratorium on foreclosure sales or new filings of foreclosure actions.

Lee Clerk of Court Charlie Green said he hasn't seen any indication sales or foreclosure actions were being delayed by creditors.

Kellum said the time it will take to get rid of the backlog will depend in part on how many more are filed.

But, he said, "We're hoping to substantially clear them out by the end of 2009."

--- INDEX REFERENCES ---

COMPANY: NATIONAL CREDIT UNION ADMINISTRATION

NEWS SUBJECT: (Legal (1LE33))

Language: EN

OTHER INDEXING: (CIRCUIT; COURT CHARLIE GREEN; IN COURT; NATIONAL CREDIT UNION ADMINISTRATION) (Balik; Carlin; Charlie Crist; Dennis Balik; Elda; Ervin Shuaipi; Hendry; John Carlin; Kellum; Ken Kellum; Lee Clerk; Lloyd Hendry; Shuaipi; Shuaipis)

EDITION: all

Word Count: 589

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12/1/08 News-Press (Fort Myers Fla.) A1  
2008 WLNR 26699283

News-Press, The (Fort Myers, FL)  
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December 1, 2008

Section: A

### Courts tackle housing crisis

December 1, 2008

rlengerich@news-press.com

This week the circuit court in Lee County launches its assault on more than 25,000 foreclosures backed up in the system.

Two circuit and four senior judges will start the process with a docket of 902 foreclosure cases Thursday. A recent typical day might have about 100 or more, said Wendy McCabe, civil supervisor.

During the next three to four months, judges will try to work down the buildup caused by more than 2,000 foreclosure filings per month.

"I went to the judges and said 'We are going to have one hell of a problem if we don't get moving,'" Clerk of Court Charlie Green said.

Lee Circuit Judge John Carlin and Green are spearheading the effort.

Lee County is among the leaders nationwide in foreclosures. The Cape Coral-Fort Myers area was first in the state and second only to Las Vegas nationwide for percentage of foreclosures filed in October, according to statistics released by Irvine, Calif.-based RealtyTrac.

One in every 75 housing units received a foreclosure filing in October here. Las Vegas had one in 62.

Cape Coral-Fort Myers had 2,352 foreclosure actions filed in October, according to RealtyTrac.

Green said he has heard concerns getting the properties onto the market would drive down prices. He said he would rather fix the problem now, because houses are going to get through the system eventually. Holding them in the court system means homes are abandoned and become dilapidated, creating neighborhood blight.

"You have all this indecision," Green said. "You have all this uncertainty. Nothing good comes from uncertainty."



Suzanne Sherer, president-elect for the Realtor Association of Greater Fort Myers and the Beach Inc., said moving houses through the courts serves the greater good.

"We need to do what is best for the community," Sherer said. "The greater problem is that you have a lot of blight out there right now.

"For the city and county as a whole, it is a good thing to get some ownership into these properties."

Gov. Charlie Crist could have a plan as early as this week to forestall foreclosures on homes during the holiday season. McCabe said until more details come out, it's unclear how it would affect the court system.

Circuit Court Judge Michael McHugh, who will hear cases, said the judges will do all they can to dedicate time to hearing foreclosures. However, law firms handling the cases also are backed up, which could slow down the process.

In coming weeks, McHugh said, the courts will ask the Lee County Commission to add a few staff members to screen the cases to better decide which are best for mediation and which need to be sent to a hearing.

"Our job, quite frankly, is to handle the cases that come in," McHugh said. "And do so timely."

"For the city and county as a whole, it is a good thing to get some ownership into these properties."

- Suzanne Sherer, president-elect for the Realtor Association of Greater Fort Myers and the Beach Inc.

---- INDEX REFERENCES ---

COMPANY: REALTYTRAC INC

INDUSTRY: (Housing (1HO38); Real Estate (1RE57))

REGION: (North America (1NO39); Florida (1FL79); Americas (1AM92); Nevada (1NE81); USA (1US73))

Language: EN

OTHER INDEXING: (BEACH INC; CHARLIE; CIRCUIT COURT; COURT CHARLIE GREEN; GREEN; REALTOR ASSOCIATION; REALTYTRAC) (Gov; John Carlin; McCabe; McHugh; Michael McHugh; Nothing; Sherer; Suzanne Sherer; Wendy McCabe)

EDITION: All

Word Count: 587

12/1/08 NEWSPRESSFL A1

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## 20th Judicial Circuit

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## 20th JUDICIAL CIRCUIT

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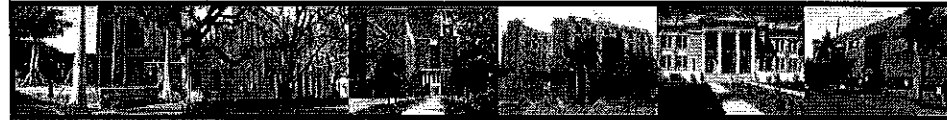
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Foreclosure Dockets:

Select Foreclosure Docket



## LEE COUNTY FORECLOSURE INFORMATION PAGE:

## Lee County - Foreclosure Cases

*Scheduling of cases in Lee County: Motion Guidelines*

If you are requesting hearing times for Residential Mortgage Foreclosures, please use the following guidelines established for Lee County.

For hearing time on **Uncontested Motions for Summary Judgment**, please e-mail [Massforeclosure@leeclerk.org](mailto:Massforeclosure@leeclerk.org) (Please do not place dashes in the case number for e-mailed requests. Example: 04CA20008)

For hearing time on all other Residential Mortgage Foreclosure cases, please e-mail [Massforeclosure@leeclerk.org](mailto:Massforeclosure@leeclerk.org)

## Downloads

- Order of Referral to Magistrate
- Instructions and Final Disposition Form

## Links

- Managed Foreclosure Mediation Page

In your e-mail please identify the case number, type of Motion(s) to be heard, duration of time requested and any information that would affect the calendaring of your case. *Please do not place dashes in the case number; Example: 04ca20008.*

You will receive an email confirmation with a hearing date and time. Your case will be scheduled before a Senior Judge or Civil Magistrate. You are required to prepare, mail, and file a **Notice of Hearing** in your case. If your case is scheduled before a Magistrate, you must prepare an **Order of Referral to Magistrate** form (please see section below on instructions: Civil Magistrate).

**Telephonic Appearances**

Attorneys and self-represented parties must be present for hearings. No telephonic appearances will be permitted in foreclosure cases.

**Civil Magistrate**

The Judge may refer your case to be heard before the General Magistrate. The General Magistrate is appointed by the Chief Judge to administer oaths and conduct hearings. If your case has been scheduled before the General Magistrate, you must prepare a **Notice of Hearing** and an **Order of Referral to Magistrate**.

The **Order of Referral to Magistrate** must be submitted to:

Lee County Justice Center  
ATTN: Civil Case Management - Foreclosure  
1700 Monroe Street Room 3404  
Ft. Myers, FL 33901

You must submit the order within 5-days of your email confirmation identifying your hearing information;

You must complete the *Certificate of Service* on the order including all names and addresses of the parties being noticed; and

You must provide a pre-addressed and stamped envelope for each party being noticed. *A return address will be provided on the envelope.*

**Final Disposition Form**



4/1/2011

## 20th Circuit Florida: Lee County Foreclo...

**Effective 1/1/10** - You are now required to file a **Final Disposition Form** in your case (*Instructions provided with form*). The form is for use by the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075.

### **Standards of Professional Courtesy**

Please read and follow the Standards of Professional Courtesy and Conduct for Lawyers Practicing in the Twentieth Judicial Circuit found at [www.ca.cjis20.org/pdf/lao/lao\\_2\\_20.pdf](http://www.ca.cjis20.org/pdf/lao/lao_2_20.pdf).

For additional information, please contact :

### **Civil Case Management**

Lee County Justice Center  
1700 Monroe Street Room 3404  
Fort Myers, Florida 33901  
Phone: (239) 533-8421

### **Nancy Aloia, Court Director (Family/Civil)**


Lee County Justice Center  
1700 Monroe Street Room 3404  
Fort Myers, Florida 33901  
Phone: (239) 533-2536


For Additional Foreclosure Information: [Link to Managed Foreclosure Mediation Page](#)

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### TRANSLATE PAGE

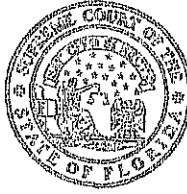
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Last Update: 03/31/2011





# Supreme Court of Florida

500 South Duval Street  
Tallahassee, Florida 32399-1925

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BARBARA J. PARIENTE  
R. FRED LEWIS  
PEGGY A. QUINCE  
RICKY L. POLSTON  
JORGE LABARGA  
JAMES B.C. PERRY  
JUSTICES

THOMAS D. HALL  
CLERK OF COURT

KEVIN WHITE  
ACTING MARSHAL

## MEMORANDUM

**TO:** Chief Judges of the Circuit Courts

**FROM:** Chief Justice Charles T. Canady *CTC*

**DATE:** November 17, 2010

**SUBJECT:** Mortgage Foreclosure Proceedings

---

Enclosed for your review and action is a letter dated November 12, 2010, that I received from the Florida Press Association and other organizations. The letter alleges that in some instances, members of the public and/or press either have been advised that they cannot attend mortgage foreclosure proceedings or have been prevented from attending such proceedings.

As the chief administrative officer of the Florida judicial branch, I am directing all chief judges to examine the current practices within their respective circuits to ensure that those practices are entirely consistent with the constitutional, statutory, procedural rule, and case law requirements of this state regarding the presumption that state court proceedings are open to the public.

I also ask that you communicate with all judges and court staff in your circuit to remind them of the relevant provisions relating to open court proceedings. It is important for you to communicate with the clerks of court and bailiffs within your circuit as well to ensure that those offices provide any visitors



Chief Judges of the Circuit Courts  
November 17, 2010  
Page Two

or callers with the correct information about attendance at mortgage foreclosure or other court proceedings.

I would also like to take this opportunity to clarify the Supreme Court's understanding of the goals of the Foreclosure and Economic Recovery Funding Initiative, which was partially funded by the Legislature during the 2010 Legislative Session. I have reviewed Judge John Laurent's memorandum of October 28, 2010, a copy of which is attached and incorporated herein by reference. I agree with his description of the 62-percent goal established by the Trial Court Budget Commission as a means to help measure the court system's progress in the initiative and to document how the appropriation for the foreclosure initiative is being spent. There is no reason why the 62-percent goal should interfere with a judge's ability to adjudicate each case fairly on its merits. Each case must be adjudicated in accordance with the law.

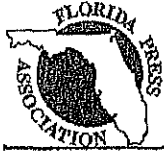
Thank you for your ongoing efforts to appropriately administer and resolve the avalanche of mortgage foreclosure cases that have been overwhelming the court system during the past few years. I recognize that the challenge you face in assuring that these cases are resolved properly is unprecedented. I am confident that with the cooperation of all judges and court staff—along with the tools of the revised rules of court procedure, implementation of the managed mediation program, and the influx of court resources through the Foreclosure and Economic Recovery Funding Initiative—the Florida courts will be able to meet this challenge in a manner that protects and preserves the rights of all parties as well as interested observers.

CTC/LG/dgh

Enclosures

cc: Trial Court Administrators





Florida Press Association  
336 E. College Avenue, Suite 203  
Tallahassee, FL 32301  
(850) 521-1199  
Fax (850) 577-3629

Chief Justice Charles T. Canady  
Florida Supreme Court  
500 South Duval Street  
Tallahassee, FL 32399-1925

November 12, 2010

Dear Chief Justice Canady,

We write to express our concern that the right to open access to judicial proceedings is being unduly impeded in foreclosure proceedings around the state. Our organizations have received numerous reports that extraordinary barriers to access are preventing members of the general public, as well as representatives of the news media, from observing foreclosure proceedings in judicial circuits around the state. We believe these barriers undercut the transparency of the judicial process; they also violate the strong presumption of open access to judicial proceedings under Florida law. We urge you to take action to secure the public's right to observe the workings of the judicial system.

As you know, Florida law recognizes a strong presumption in favor of open access to judicial proceedings. We have no objection, of course, to ordinary security screening measures. We are concerned, however, that the barriers to access here go far beyond such measures, leaving members of the public and press subject to the discretion of individual foreclosure judges to admit or exclude them.

The reports we have received come from all around the state, and although the precise nature of the barriers to access varies, a troubling pattern emerges: foreclosure divisions recently established by the judicial circuits have been operating under a presumption of closure to members of the general public, rather than the presumption of openness mandated by Florida law. An illustrative, but not exhaustive, list of encounters that have been reported to our organizations since August 2010 follows:

- A court observer in Hillsborough County called the court to ask about the rules governing attendance at foreclosure proceedings and was told that the proceedings were not open to the public.
- A pro se defendant in Duval County was told by a member of court security that she could not access foreclosure proceedings because only attorneys were permitted.
- A court observer called the Orange County courthouse to ask about attending foreclosure proceedings. She was informed that foreclosure hearings were held "in private chambers" and therefore not open to the public.



- In Citrus County, an individual preparing to mount a pro se defense in his own foreclosure case attempted to attend foreclosure hearings in advance of his own so that he could know what to expect when his case was heard. He was told that foreclosure hearings are "private" and take place in judges' chambers, and that he would not be permitted to observe them.
- Most recently, a legal aid attorney in Jacksonville attended a foreclosure proceeding accompanied by a reporter from Rolling Stone Magazine. Neither the attorney nor the reporter did anything disruptive to the proceedings. At one point the reporter left the proceedings in order to interview a pro se litigant whose case had just been heard. Later that day, the judge sent an email to the attorney castigating her for bringing the reporter into the proceedings. He stated that, while "attorneys are welcome in Chambers at their leisure," members of the media are "permitted" entry only upon "proper request to the security officer." He further informed the attorney that she "did not have authority to take anyone back to chambers without proper screening" and stated that her "apparent authorization that the reporter could pursue a property owner immediately out of Chambers into the hallway for an interview" may be "sited [sic] for possible contempt charges in the future."<sup>1</sup>

In raising our concerns about this pattern of exclusion, we rely on the extensive body of case law that has made Florida a model for open government. Systematically excluding members of the press and public from judicial foreclosure proceedings violates the robust guarantee of open access to courts provided by Florida law. This Court has held that "both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records." *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988); see also Fla. R. Jud. Admin. 2.420 (codifying public right of access to records of the judiciary). *Barron* articulated this right of access in forceful terms. It emphasized that "a strong presumption of openness exists for all court proceedings" and outlined the carefully circumscribed exceptions to this broad rule:

[C]losure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.

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<sup>1</sup> Since the incident in Duval County was particularly egregious, we have also asked that Chief Judge Moran consider appropriate action.



*Id.*, at 118. Even in these exceptional circumstances, “before entering a closure order, the trial court shall determine that no reasonable alternative is available to accomplish the desired result, and, if none exists, the trial court must use the least restrictive closure necessary to accomplish its purpose.” *Id.*

The protection of public access to judicial proceedings serves fundamental constitutional values. In particular, the “value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.” *Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 12 (Fla. 2d DCA 2005) (quoting *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 508 (1984)). “A trial courtroom is a public place where people have a general right to be present, and what transpires in the courtroom is public property.” *Plaintiff B v. Francis*, No. 5:08-cv-79, 2010 WL 503067, \*2 (N.D. Fla. Feb. 5, 2010). Foreclosure proceedings are currently a matter of intense public interest. Indeed, the media has, in recent months, scrutinized them for possible procedural deficiencies. *See, e.g.*, Gretchen Morgenson and Geraldine Fabrikant, *Florida's High-Speed Answer to a Foreclosure Mess*, N.Y. TIMES, Sept. 14, 2010; Polyana da Costa, *Before Foreclosing, Judges Must Hear Out Homeowners*, MIAMI DAILY BUS. REV., Oct. 14, 2010.

As the examples outlined above show, Florida’s presumption of openness is being inverted in the context of foreclosure proceedings: courts across the state are effectively imposing a presumption of closure, which may be overcome only by special permission to observe proceedings. In effect, only those who actively assert their right of access in the face of initial barriers, and then ultimately receive permission, may exercise their right to observe foreclosure hearings.

Under Florida law, there are few justifications that can counterbalance the right to access. Even when those exceptional circumstances exist, the court must still determine that no more narrowly tailored alternative is available. *Barron*, 531 So. 2d at 118; *see also Globe Newspaper Co. v. Super. Ct. for the County of Norfolk*, 457 U.S. 596 (1982) (invalidating statute closing trials for certain sex offenses involving minors where state had a “compelling” interest in protecting minors’ privacy but where the court “offered no empirical support” that closure would effectively further that interest). There is no indication that closure of foreclosure courts occurs only when such rigorous analysis has taken place. Indeed, the opposite appears to be true: by choosing to conduct foreclosure hearings in “private” conference rooms or judicial chambers and treat those as closed proceedings, the burden shifts to members of the press or public to convince the court to allow access.

We recognize that the heavy volume of foreclosure cases has led to difficulties finding judges and courtrooms to hear the cases. As a result, some cases are being held in chambers for lack of an available traditional courtroom. Nevertheless, the proceedings must be open, even if they are held temporarily in a smaller and less formal physical



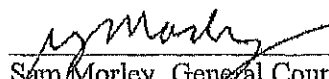
setting than usual. While we understand the necessity for ordinary and uniform security screening procedures, the unavailability of a traditional courtroom cannot justify a deprivation of the rights established under Florida law and the U.S. Constitution.

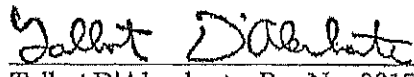
This Court has noted that the press plays an indispensable role in maintaining "the judicial system's credibility in a free society." *Barron*, 531 So. 2d at 116. That credibility cannot be maintained when members of the public and media are dependent on the indulgence of the presiding judge to allow them to observe important judicial proceedings.

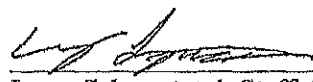
It is our sincere hope that we, and other representatives of the media, will be able to avoid instituting litigation over the issue of access to foreclosure proceedings. We do face certain time constraints, however, because Florida Rule of Appellate Procedure 9.100(d) provides for expedited review of orders excluding the public and media from judicial proceedings, and it requires such petitions to be filed within 30 days of an exclusion order.<sup>2</sup>


Accordingly, we respectfully urge you to take corrective action to ensure citizen and press access as guaranteed by Florida's right-of-access jurisprudence. In particular, we ask that you promulgate an Administrative Order or take other expeditious and appropriate action to ensure that both the public and media may observe proceedings consistent with Florida law and subject only to ordinary security measures

We thank you for your attention to this important matter.

  
Sam Morley, General Counsel  
The Florida Press Association

  
Talbot D'Alemberte, Bar No. 0017529  
The Florida Press Association

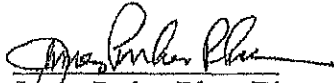
  
Larry Schwartz, Staff Attorney  
The American Civil Liberties Union

  
Randall Marshall, Legal Director  
The American Civil Liberties Union of Florida

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<sup>2</sup> The incident in Duval County occurred on October 26<sup>th</sup>. Accordingly, the last day to file a petition for review pursuant to Rule 9.100(d) is November 29<sup>th</sup>.

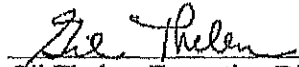




James Parker Rhea, Director & General Counsel  
The First Amendment Foundation



C. Patrick Roberts, President & CEO  
Florida Association of Broadcasters



Gil Thelen, Executive Director  
The Florida Society of Newspaper Editors



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**500 South Duval Street**

**Tallahassee, FL 32399-1900**

**[www.flcourts.org](http://www.flcourts.org)**

**MEMORANDUM**

**TO:** Chief Judges of the Circuit Courts

**FROM:** John Laurent

**DATE:** October 28, 2010

**SUBJECT:** Foreclosure Initiative

In follow up to the Judicial Administration Committee conference call held on October 18, 2010, I am writing to reiterate the Trial Court Budget Commission's purpose for tracking the progress of cases the trial courts are hearing using funding provided for the foreclosure and economic recovery initiative. When the Florida Legislature appropriated special funding of \$6 million to help the trial courts with the significant backload of foreclosure cases, the Trial Court Budget Commission established a measurement of progress that corresponded to the funding received: 62% of the backlog cases potentially could be processed because the Legislature funded 62% of the original request from the courts. A simple case tracking system was set up to monitor the progress and identify any reasons for delays. This is so that we will be able to report to the Legislature on how these funds were used. However, the Legislature has not specifically directed us to make such a report.

The 62% rate is not a quota. The 62% rate is simply a goal set by the TCBC to help measure the courts' progress in this initiative and document how the appropriation for the foreclosure initiative is being spent. The 62% rate was set before the initiative began and, most notably, before many of the lender moratoriums and other delays occurred. Please assure judges working on this project that the 62% rate was never intended to interfere with their ability to adjudicate each case fairly on its merits.

We will continue to monitor the progress of this initiative because we have an obligation to account for how these funds have been used. But we also will document all issues related to any difficulties that prevent or delay the court from hearing and disposing of cases before them.

JL/ks

cc: TCBC Members



# **STATE COURTS SYSTEM**

**FY 2010 – 11**

## **FORECLOSURE AND ECONOMIC RECOVERY FUNDING PLAN**



**STATE COURTS SYSTEM  
FORECLOSURE AND ECONOMIC RECOVERY  
FUNDING PLAN  
FY2010-11**

The Legislature appropriated to the State Courts System \$6,000,000 of the original \$9,570,528 request for the Foreclosure and Economic Recovery Proposal. These non-recurring funds will be used in FY 2010/11 to provide temporary resources in the trial courts to reduce backlog in civil areas.

**FY 2010/11 Funding Allocations approved by the TCBC**

- 1) Approved the FY 2010/11 circuit allocations for the Foreclosure and Economic Recovery Funding. The allocation chart is attached.
- 2) Approved effective date for the implementation of the circuits' plans so resources can be deployed on July 1, 2010, using existing FY 2009/10 funds for advertising if necessary.

**Types of Cases and Disposition Goals**

- 1) Approved real property/mortgage foreclosure cases as the focus of this initiative. If a circuit has cleared all real property/mortgage foreclosure cases from backlog, the circuit may request in writing to the TCBC Chair, with a copy to the TCBC Budget Management Committee Chair, and to the State Courts Administrator, asking to use the funds to handle contracts and indebtedness cases, and county civil cases valued from \$5,001 to \$15,000.
- 2) Approved a targeted goal for the disposition of backlog cases of 62%, which corresponds to the reduction in funding (\$9.6 million proposal reduced down to \$6.0 million appropriation is a 38% reduction).

The attached chart indicates the targeted backlog reduction for the estimated Real Property/Mortgage Foreclosure backlog cases for each circuit. The actual number of backlog cases will need to be produced at the beginning of the initiative for tracking purposes.

**Funding/Plan Monitoring**

- a) The Budget Management Committee (BMC) will monitor expenditures on a monthly basis to ensure that resources are only being used for the purpose of backlog reduction for the approved case types. In addition, the BMC will monitor case event data to ensure that expenditures correlate with the TCBC approved activities.
- b) The Supreme Court Inspector General will also be reviewing the Foreclosure and Economic Recovery initiative for potential inclusion in the branch's FY 2010/11 audit plan.



### **Clerk Assistance**

Information on in-courtroom resources (general magistrates and senior judges) that will be assigned in each county and the maximum number of courtrooms that will be scheduled at any one time in each county was shared with clerks. The chief judge in each circuit worked with their clerks to ensure the clerks' resources were distributed to appropriately support their plan.

### **Case Tracking System**

In order to monitor the success of this initiative, data will be collected by the clerks and court administration so that the following statistics can be calculated:

- Clearance rates
- The number of cases disposed
- The percent of backlogged cases
- The average age of target cases

In order to ensure that each circuit has a complete list of pending cases as of July 1, 2010, the OSCA has worked with clerks of court and the FACC to develop a list of all cases, non-disposed or reopened (i.e. pending), as of June 30, 2010. A joint letter from Lisa Goodner and Ken Kent was sent out on June 11, 2010 to the Clerks of Court requesting this information. Court administration will provide an updated copy of these tracking workbooks to the OSCA at least bi-weekly for monitoring, analysis and reporting.



**Target Backlog Reduction**  
**Foreclosure and Economic Recovery Funding**  
**Backlog Cases**  
**FY 2006/07 through Estimated FY 2010/11**

<b>Circuit</b>	<b>Estimated Real Property/ Mortgage Foreclosure Backlog Cases</b>	<b>62% of Estimated Real Property/ Mortgage Foreclosure Backlog Cases</b>
1	12,960	8,035
2	4,385	2,719
3	1,325	822
4	21,523	13,344
5	19,931	12,357
6	39,394	24,424
7	21,585	13,383
8	2,575	1,597
9	50,600	31,372
10	12,979	8,047
11	87,955	54,532
12	25,557	15,845
13	38,180	23,672
14	4,634	2,873
15	63,402	39,309
16	2,671	1,656
17	57,514	35,659
18	31,052	19,252
19	20,717	12,844
20	41,005	25,423
<b>Total</b>	<b>559,945</b>	<b>347,165</b>



# Foreclosure and Economic Recovery Funding Proposal FY 2010/11 Circuit Allocations

Circuit	General Magistrate/Senior Judge				Case Management			General Magistrate/Senior Judge Administrative Support			Mediation Administrative Support			Total	
	GM OPS	GM Contracted Services	GM/Senior Judge Expense	Senior Judge Days	OPS	Contracted Services	Expenses	OPS	Contracted Services	Expenses	OPS	Contracted Services	Expenses		
1			\$2,700	\$37,100	\$63,179		\$3,386							\$106,365	
2			\$2,426	\$21,180	\$40,142		\$4,800	\$34,217		\$3,600				\$106,365	
3					\$38,171			\$26,090						\$64,261	
4				\$172,729				\$40,000						\$212,729	
5				\$72,100				\$140,430		\$199				\$212,729	
6			\$6,514	\$82,950	\$221,738		\$6,550							\$317,752	
7			\$3,351	\$91,000	\$117,378		\$1,000							\$212,729	
8		\$37,035	\$2,500	\$17,500	\$39,126		\$5,204		\$5,000					\$106,365	
9				\$246,750	\$178,707									\$425,457	
10				\$18,200	\$38,871		\$11,336	\$26,623		\$11,335				\$106,365	
11	\$82,481		\$2,597	\$171,500	\$457,782	\$4,860	\$16,065	\$120,568		\$6,200				\$862,053	
12			\$2,000	\$94,500	\$116,229									\$212,729	
13			\$2,500	\$195,000	\$168,477		\$5,355	\$56,172						\$427,504	
14			\$3,000	\$32,430	\$36,115		\$2,500	\$27,820		\$2,500				\$106,365	
15			\$10,000	\$250,604	\$272,103		\$20,000	\$83,833		\$10,000				\$646,540	
16		\$14,400	\$12,725	\$49,700				\$27,989		\$1,551				\$106,365	
17				\$87,500	\$505,378		\$33,662							\$646,540	
18				\$260,643				\$58,451						\$319,094	
19			\$12,000	\$84,000	\$84,238		\$4,405	\$28,086						\$212,729	
20	\$135,470			\$153,300	\$39,126			\$97,562						\$425,458	
Sub Total	\$217,951	\$51,435	\$64,313	\$2,138,686	\$2,416,760	\$4,860	\$134,263	\$767,841	\$5,000	\$35,385	\$0	\$0	\$0	\$5,836,494	
2% Expense Contingency															\$119,112
Executive Direction															\$44,394
Grand Total															\$6,000,000



**Budget Amendment Request**  
**Fiscal Year 2010-11**  
**Current Status: Draft - Initial Data Entry**  
**EOG Log Number:**  
**State Court System**

Agency Log Number 0001 11

**Request Type(s)**

TI - Lump sum allocation of trust fund appropriations - Stat. Auth.216.181(6)(a) and (b), F.S.

**Request Summary**

Allocation of Economic Recovery lump sum appropriation to OPS, Expense, Comp to Retired Judges and Cont. Svcs.

**LBC Approval is not required**

**Consultation/Review Period** 14 Consecutive Day Consultation

**Dates:**

**Signature**

*[Handwritten Signature]* 6/14/10

**State Court System**

**Agency Fund Summary**

Fund Title	Net Total for this Request		
	Appropriation	Reserve	Release
State Courts Revenue Tf	\$0	\$0	\$0

**Agency Budget Detail**

Req Type	Line Item #	Budget Entity	Appropriation Category	Acct Code Yr	Fund	Cert Fwd	Appropriation	Reserve	Release
<b>State Court System</b>									
<b>Pgm: Trial Courts</b>									
TI	3241A	22300100 Ct Oper/Circuit Cts	090084 Foreclose & Econ. Recovery	0000	2057 State Courts Revenue Tf		(\$6,000,000)	\$0	(\$6,000,000)
TI	3239	22300100 Ct Oper/Circuit Cts	030000 Other Personal Services	0000	2057 State Courts Revenue Tf		\$3,402,552	\$0	\$3,402,552
TI	3240	22300100 Ct Oper/Circuit Cts	040000 Expenses	0000	2057 State Courts Revenue Tf		\$353,073	\$0	\$353,073
TI	3244	22300100 Ct Oper/Circuit Cts	100630 Comp To Retired Judges	0000	2057 State Courts Revenue Tf		\$2,138,686	\$0	\$2,138,686
TI	3245	22300100 Ct Oper/Circuit Cts	100777 Contracted Services	0000	2057 State Courts Revenue Tf		\$61,295	\$0	\$61,295
<b>Pgm: Supreme Court</b>									
TI	3215	22010200 Executive Dir/Support Svcs	030000 Other Personal Services	0000	2057 State Courts Revenue Tf		\$23,014	\$0	\$23,014
TI	3216	22010200 Executive Dir/Support Svcs	040000 Expenses	0000	2057 State Courts Revenue Tf		\$21,380	\$0	\$21,380
<b>Total</b>							<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**Chief Justice Budget Explanation/Purpose**

The Fiscal Year 2010-11 General Appropriations Act (Chapter 2010-152, L.O.F.) appropriated lump sum funding to the State Courts System in the Court Operations - Circuit Courts budget entity from the State Courts Revenue Trust Fund to implement a Foreclosure

EOG Log #:

Page 1 of 2

6/10/2010



and Economic Recovery program.

This request is to allocate the \$6,000,000 lump sum appropriation to the Other Personal Services category in the amount of \$3,402,552, to the Expense category in the amount of \$353,073, to the Compensation to Retired Judges category in the amount of \$2,138,686 and to the Contracted Services category in the amount of \$61,295 within the Court Operations – Circuit Courts budget entity, and to allocate \$23,014 in the Other Personal Services category and \$21,380 in the Expense category in the Executive Direction and Support Services budget entity, all within the State Courts Revenue Trust Fund.

#### **Agency Problem Statement**

The Fiscal Year 2010-11 General Appropriations Act (Chapter 2010-152, L.O.F.) appropriated lump sum funding to the State Courts System in the Court Operations – Circuit Courts budget entity from the State Courts Revenue Trust Fund to implement a Foreclosure and Economic Recovery program.

#### **Agency Request**

This request is to allocate the \$6,000,000 lump sum appropriation to the Other Personal Services category in the amount of \$3,402,552, to the Expense category in the amount of \$353,073, to the Compensation to Retired Judges category in the amount of \$2,138,686 and to the Contracted Services category in the amount of \$61,295 within the Court Operations – Circuit Courts budget entity, and to allocate \$23,014 in the Other Personal Services category and \$21,380 in the Expense category in the Executive Direction and Support Services budget entity, all within the State Courts Revenue Trust Fund.

#### **Fiscal Impact**

None – allocation to traditional categories from lump sum appropriation nets to zero.

#### **Other Considerations**

Pursuant to section 216.181(6)(a), Florida Statutes, a detailed plan allocating the lump-sum appropriation to traditional appropriation categories is being submitted to the chair and vice chair of the Legislative Budget Commission concurrent with this budget amendment and is attached as a supporting document.



## **Attachment A**

### **Foreclosure and Economic Recovery Initiative Data Collection Plan**

#### **Clerk of Court Data Request:**

In order to ensure that each circuit has a complete list of pending real property/mortgage foreclosure cases as of July 1, 2010, OSCA will work with Clerks of Court and the FACC to develop a list of all cases, non-disposed or reopened; i.e. pending, as of June 30, 2010. Circuit court administrations are currently identifying the resources needed to implement this initiative. The list of pending cases will serve to focus and direct the Courts' efforts to move these cases and provide a method for tracking progress. It is critical that this case list be available for distribution by OSCA to trial court administrators no later than close of business July 9, 2010 so that work can begin as soon as possible.

To ensure accurate tracking, the initial case list data file should contain the following information and will be submitted to OSCA as a standard ASCII text file in pipe delimited format.

1. Uniform Case Number
2. The date the case was initiated
3. The applicable SRS case type of the case
4. The date the case was reopened, if applicable
5. The date the case was originally disposed (for reopened cases only)
6. The SRS disposition category (for reopened cases only)

It is understood that there are issues with identifying cases classified as reopened and/or pending due to the differences among the Clerks of Court in how these terms are defined or implemented in their various systems. Since the intent of the initiative is to identify conclusively those languishing cases that can legitimately be moved through to disposition and sale, it is better to extract more rather than fewer records at this point. However, to keep things manageable, we ask that each county exercise due care in their extraction.

OSCA will divide the cases by circuit and county and initially populate the Foreclosure and Economic Recovery Case Tracking System workbooks for each circuit. OSCA will transmit the data collection workbooks to each trial court administrator. Cases transferred into the program after July 1, 2010 will have to be entered manually by court administration staff. Court administration will provide an updated copy of these tracking workbooks to OSCA at least bi-weekly for monitoring, analysis and reporting.

Data files may be emailed to P.J. Stockdale at [stockdap@flcourts.org](mailto:stockdap@flcourts.org) with the subject line "Foreclosure and Economic Recovery Initiative Initial Case Data List." Please contact Mr. Stockdale by email or by phone (850-410-1523) if you have any questions concerning this data submission.



## **Attachment A**

### **Foreclosure and Economic Recovery Initiative Data Collection Plan**

Please use the following text values for SRS case type and SRS disposition Category

#### **SRS Case Type**

Real Prop/Mort Foreclosure (Pre2010)  
Real Prop/Mort Foreclosure-Commercial \$0-50K  
Real Prop/Mort Foreclosure-Commercial \$50-249K  
Real Prop/Mort Foreclosure-Commercial \$250K+  
Real Prop/Mort Foreclosure-Homestead, Residential \$0-50K  
Real Prop/Mort Foreclosure-Homestead, Residential \$50-249K  
Real Prop/Mort Foreclosure-Homestead, Residential \$250K+  
Real Prop/Mort Foreclosure-Non-Homestead, Residential \$0-50K  
Real Prop/Mort Foreclosure-Non-Homestead, Residential \$50-249K  
Real Prop/Mort Foreclosure-Non-Homestead, Residential \$250K+  
Real Prop/Mort Foreclosure-Other Real Property \$0-50K  
Real Prop/Mort Foreclosure-Other Real Property \$50-249K  
Real Prop/Mort Foreclosure-Other Real Property \$250K+

Please use the "Real Prop/Mort Foreclosure (pre2010)" category only for those cases initiated prior to January 2010 that cannot be associated with one of the more detailed case types implemented in January 2010. All cases initiated in or after January 2010 must reflect the more detailed case types.

#### **SRS Disposition Types**

Dismissed Before Hearing-Settlement  
Dismissed Before Hearing-Mediated Settlement  
Dismissed Before Hearing-Other  
Dismissed After Hearing-Settlement  
Dismissed After Hearing-Mediated Settlement  
Dismissed After Hearing-Other  
Disposed by Default  
Disposed by Judge  
Disposed by Non-Jury Trial  
Disposed by Jury Trial  
Disposed by Other  
Dismissed Before Hearing (Pre2010)  
Dismissed After Hearing (Pre2010)

Those disposition categories labeled as Pre2010 are only valid for those cases disposed prior to January 2010 that cannot be assigned to one of the newer (post 2010) disposition types. All cases disposed in or after January 2010 must reflect the more detailed disposition categories.



**Foreclosure and Economic Recovery  
Real Property/Mortgage Foreclosure Backlog  
Status Report - First Quarter of Fiscal Year 2010-11**

<b>Circuit</b>	<b>Real Property/ Mortgage Foreclosure Backlog as of June 30, 2010<sup>1</sup></b>	<b>First Quarter of FY 2010-11 Initiative Dispositions<sup>2</sup></b>	<b>Balance of Backlog After First Quarter of FY 2010-11<sup>3</sup></b>
1	10,979	717	10,262
2	3,460	183	3,277
3	1,115	120	995
4	17,916	2,948	14,968
5	16,281	840	15,441
6	31,791	2,730	29,061
7	18,440	3,837	14,603
8	1,926	522	1,404
9	39,700	6,048	33,652
10	11,045	3,004	8,041
11	75,326	4,920	70,406
12	21,617	1,878	19,739
13	32,843	4,364	28,479
14	3,897	823	3,074
15	46,438	9,846	36,592
16	2,259	133	2,126
17	48,675	9,585	39,090
18	27,117	2,768	24,349
19	19,061	951	18,110
20	32,453	9,613	22,840
<b>Total</b>	<b>462,339</b>	<b>65,830</b>	<b>396,509</b>

<sup>1</sup> Real Property/Mortgage Foreclosure Backlog as of June 30, 2010 was determined by subtracting the number of SRS dispositions from the number of SRS filings for July 1, 2006 through June 30, 2010.

<sup>2</sup> First Quarter of FY 2010-11 Initiative Dispositions are based on data that is provided to the OSCA on a monthly basis by each trial court. These data are the reported information on cases disposed from July 1, 2010 through September 30, 2010 using the new resources. In addition, Desoto County and Okeechobee County did not receive Foreclosure and Economic Recovery funding and are not included above; Circuit 4 has not submitted data during the initiative (The data provided above for Circuit 4 represents the number of SRS dispositions for July 2010 through September 2010.); July 2010 data is incomplete for Pinellas County; and September 2010 data is incomplete for Orange County, Circuit 18 and Circuit 19.

<sup>3</sup> Balance of Backlog After First Quarter of Fiscal Year 2010-11 was determined by subtracting the number of First Quarter of FY 2010-11 Initiative Dispositions from the number of Real Property/Mortgage Foreclosure Backlog as of June 30, 2010.

Note: First Quarter of Fiscal Year 2010-11 includes data from July 1, 2010 to September 30, 2010.



**Foreclosure and Economic Recovery**  
**Real Property/Mortgage Foreclosure Type of Dispositions<sup>1</sup>**  
**Status Report - First Quarter of Fiscal Year 2010-11**

<b>Circuit</b>	<b>Dismissed</b>	<b>Summary/ Final Judgment</b>	<b>Trial</b>	<b>Unidentified</b>	<b>Total Disposed</b>
1	192	522	1	2	717
2	32	151	0	0	183
3	50	70	0	0	120
4	1,176	1,772	0	0	2,948
5	249	547	0	44	840
6	19	2,710	1	0	2,730
7	1,213	2,569	2	53	3,837
8	175	320	6	21	522
9	1,635	4,401	1	11	6,048
10	859	2,125	1	19	3,004
11	3,566	1,354	0	0	4,920
12	127	1,744	5	2	1,878
13	230	3,986	0	148	4,364
14	342	471	0	10	823
15	2,849	6,956	1	40	9,846
16	23	100	0	10	133
17	2,381	7,105	1	98	9,585
18	983	1,779	3	3	2,768
19	281	399	1	270	951
20	643	7,859	0	1,111	9,613
<b>Total</b>	<b>17,025</b>	<b>46,940</b>	<b>23</b>	<b>1,842</b>	<b>65,830</b>

<sup>1</sup> Type of Dispositions are based on the initiative data that is provided to the OSCA on a monthly basis by each trial court. These data represent the reported information on cases disposed from July 1, 2010 through September 30, 2010 using the new resources. In addition, Desoto County and Okeechobee County did not receive Foreclosure and Economic Recovery funding and are not included above; Circuit 4 has not submitted data during the initiative (The data provided above for Circuit 4 represents the number of SRS dispositions for July 2010 through September 2010.); July 2010 data is incomplete for Pinellas County; and September 2010 data is incomplete for Orange County, Circuit 18 and Circuit 19. Note: First Quarter of Fiscal Year 2010-11 includes data from July 1, 2010 to September 30, 2010.



**Foreclosure and Economic Recovery**  
**Real Property/Mortgage Foreclosure Case Status<sup>1</sup>**  
**Status Report - First Quarter of Fiscal Year 2010-11**

Case Status as of September 30, 2010				
Circuit	Cases Disposed	Cases Active <sup>2</sup>	Cases Inactive <sup>3</sup>	Cases Stayed <sup>4</sup>
1	717	162	10,172	0
2	183	353	3,758	2
3	120	1,168	17	0
4	2,948	NA	18,291	NA
5	840	3,639	13,639	2
6	2,730	6	33,638	9
7	3,837	13	15,352	0
8	522	357	1,503	2
9	6,048	4,645	39,754	1
10	3,004	9,701	2,047	7
11	4,920	45,455	33,219	0
12	1,878	265	19,921	0
13	4,364	1	28,846	0
14	823	2,214	1,957	11
15	9,846	0	43,026	0
16	133	615	1,727	4
17	9,585	23,583	28,403	0
18	2,768	662	23,937	116
19	951	0	20,523	0
20	9,613	20,628	4,623	6
<b>Total</b>	<b>65,830</b>	<b>113,467</b>	<b>344,353</b>	<b>160</b>

<sup>1</sup> Cases Status is based on the initiative data that is provided to the OSCA on a monthly basis by each trial court. These data represent the reported information on cases disposed in July 2010 through September 2010 using the new resources and the status of the remaining pending cases. In addition, Desoto and Okeechobee Counties did not receive Foreclosure and Economic Recovery funding and are not included above; Circuit 4 has not submitted data during the initiative (The number of Cases Disposed provided above for Circuit 4 represents the number of SRS dispositions for July 2010 through September 2010.); July 2010 data is incomplete for Pinellas County; and September 2010 data is incomplete for Orange County, Circuit 18 and Circuit 19.

<sup>2</sup> Cases Active represents those cases the court is actively working to resolve. Court administration may not be made aware immediately when a case moves from inactive to active status.

<sup>3</sup> Cases Inactive represents cases where judicial action cannot be concluded due to extenuating circumstances. This includes, but is not limited to, cases inactive due to attorney inactivity, cases with insufficient pleadings or documentation, cases involved in mediation/settlement negotiations, and other similar matters. All cases at the beginning of the initiative in July 2010 were identified as inactive.

<sup>4</sup> Cases Stayed includes bankruptcy cases, cases pending resolution of another case, cases where there is an agreement of the parties, and cases pending appeal.

Note: First Quarter of Fiscal Year 2010-11 includes data from July 1, 2010 to September 30, 2010.



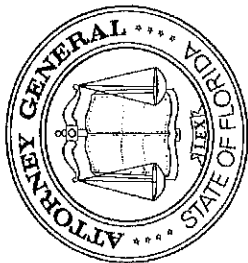
**Foreclosure and Economic Recovery**  
**Number of Additional Real Property/Mortgage Foreclosure Cases**  
**Added to Backlog and Percent of Cases Disposed**  
**Quarter Ending September 2006 through September 2010**

<b>Quarter</b>	<b>Number of Additional Backlog Cases Added<sup>1</sup></b>	<b>Clearance Rate<sup>2</sup></b>
July -September 2006	4,199	78.6%
October - December 2006	8,702	64.5%
January - March 2007	13,811	56.9%
April - June 2007	16,852	54.6%
July -September 2007	26,234	45.9%
October - December 2007	38,845	39.7%
January - March 2008	34,319	38.4%
April - June 2008	51,034	43.8%
July -September 2008	53,250	45.5%
October - December 2008	49,532	49.9%
January - March 2009	50,158	53.6%
April - June 2009	36,553	63.0%
July -September 2009	35,034	64.0%
October - December 2009	29,000	69.4%
January - March 2010	14,423	82.0%
April - June 2010	-11,872	125.1%
July -September 2010	-14,615	123.1%

<sup>1</sup> Number of Additional Backlog Cases Added was determined by subtracting the number of SRS dispositions from the number of SRS filings for the quarters ending September 30, 2006 through September 30, 2010.

<sup>2</sup> Clearance Rate was determined by dividing the number of SRS dispositions by the number of SRS filings for the quarters ending September 30, 2006 through September 30, 2010.





Office of the Attorney General  
*Economic Crimes Division*



**UNFAIR, DECEPTIVE  
AND UNCONSCIONABLE  
ACTS IN  
FORECLOSURE CASES**

Prepared by: June M. Clarkson, Theresa B. Edwards and Rene D. Harrod



## Overview of Foreclosure Industry



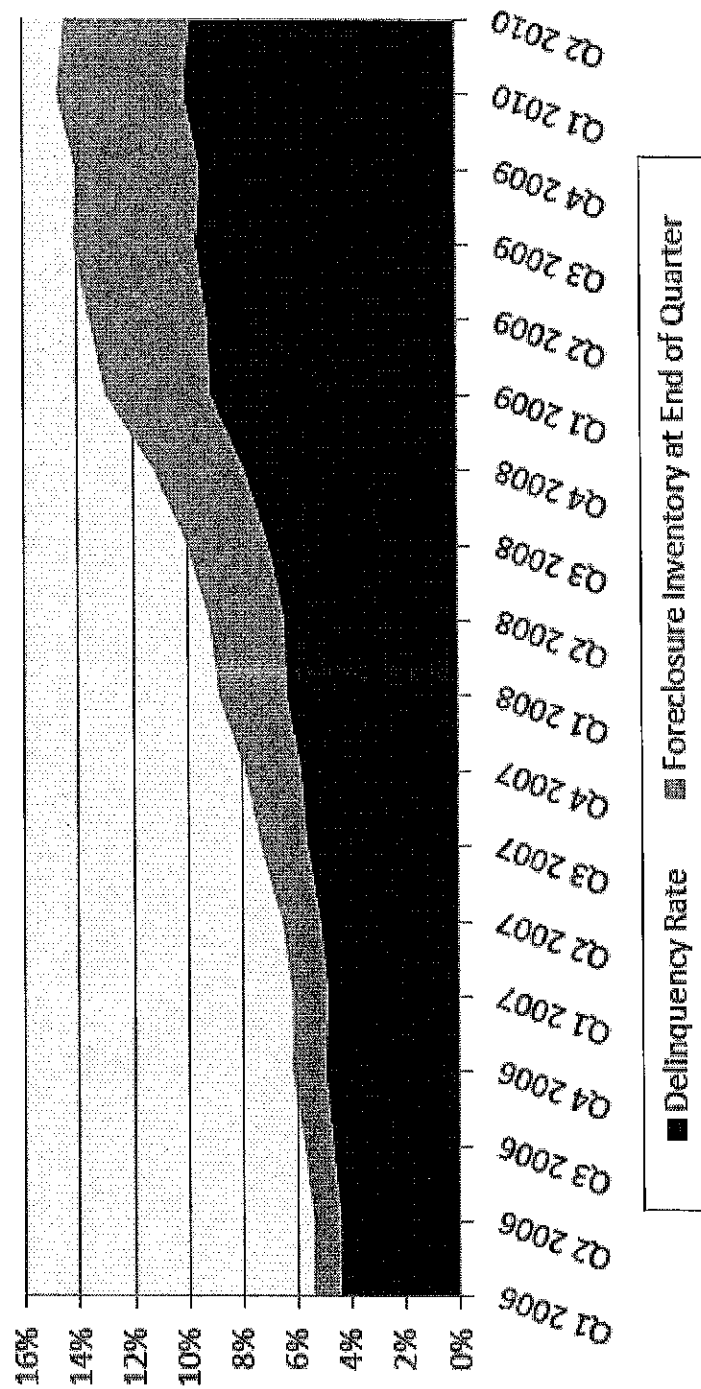
- Florida Attorney General investigation
- 50 State Multi-State Team Investigation
- Law firms began withdrawing documents
- Banks suspended foreclosures



# Delinquency & Foreclosure Rates 2006-2010

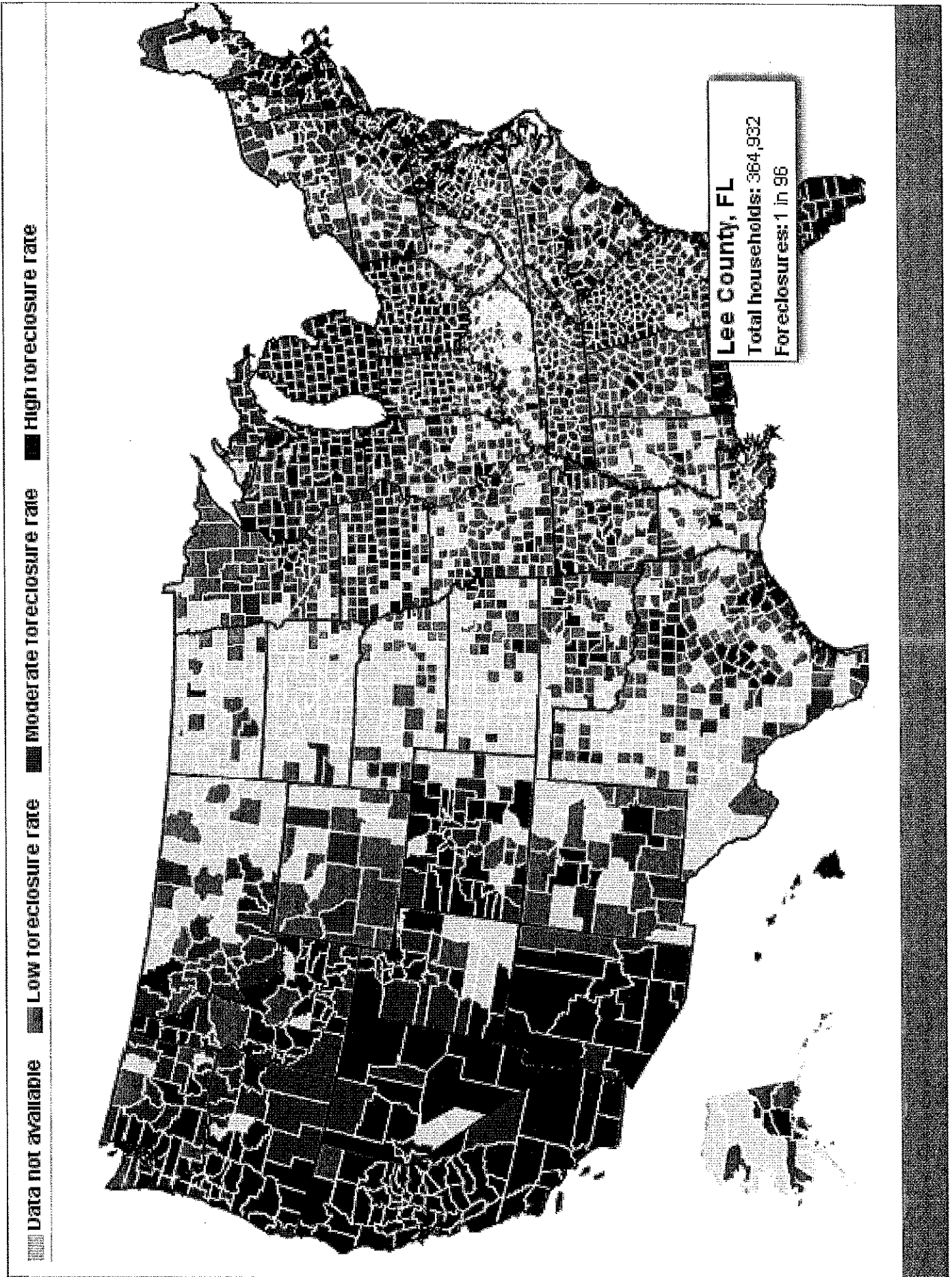


Figure 3: Delinquency and Foreclosure Rates (2006-2010)<sup>200</sup>



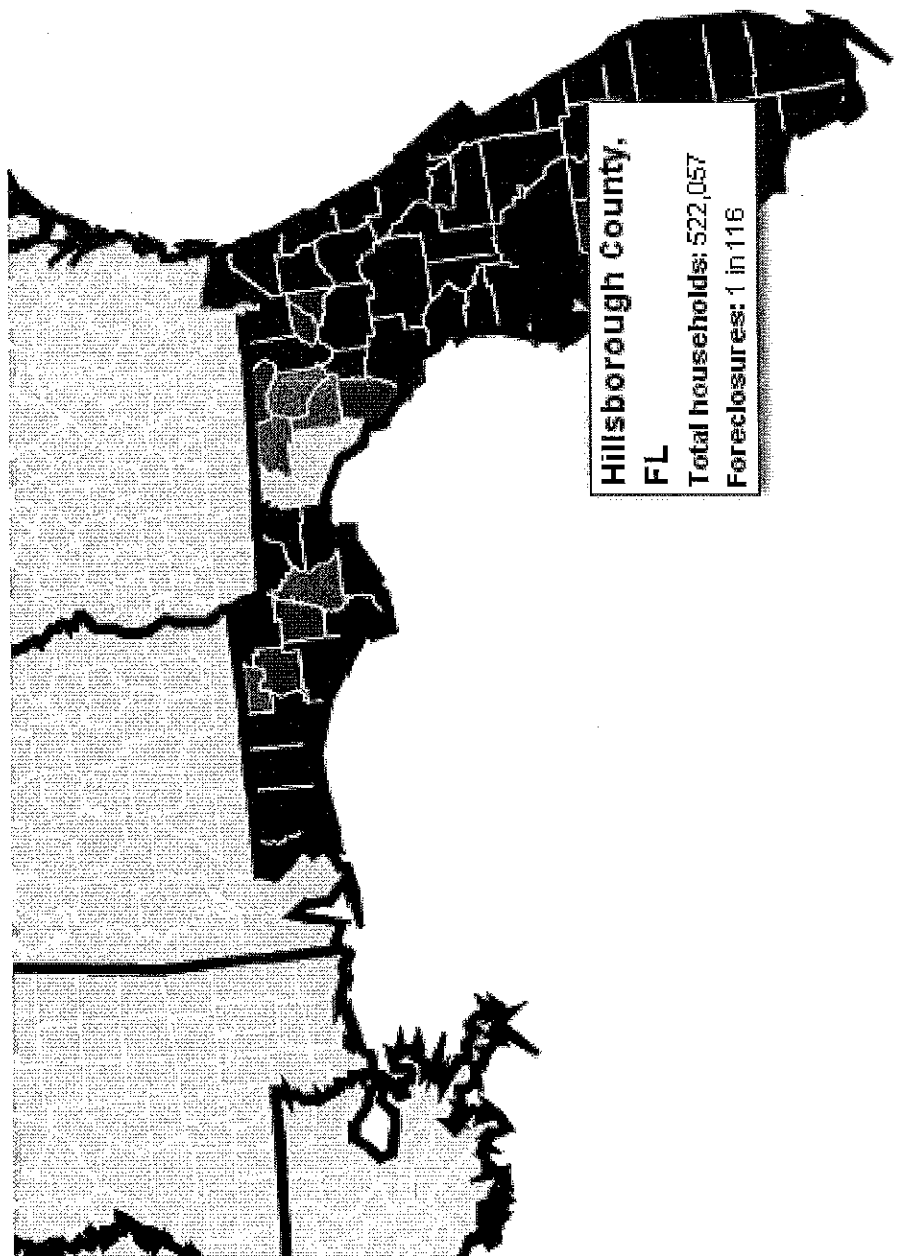
Source: Oversight Panel Oversight Report, Examining the Consequences of Mortgage Irregularities for Financial Stability and Po







Foreclosure Rates	Unemployment Rates	Median Household Income
<div> <div></div> Data not available </div> <div> <div></div> Low foreclosure rate </div> <div> <div></div> Moderate foreclosure rate </div> <div> <div></div> High foreclosure rate </div>		





Foreclosure Rates

Unemployment Rates

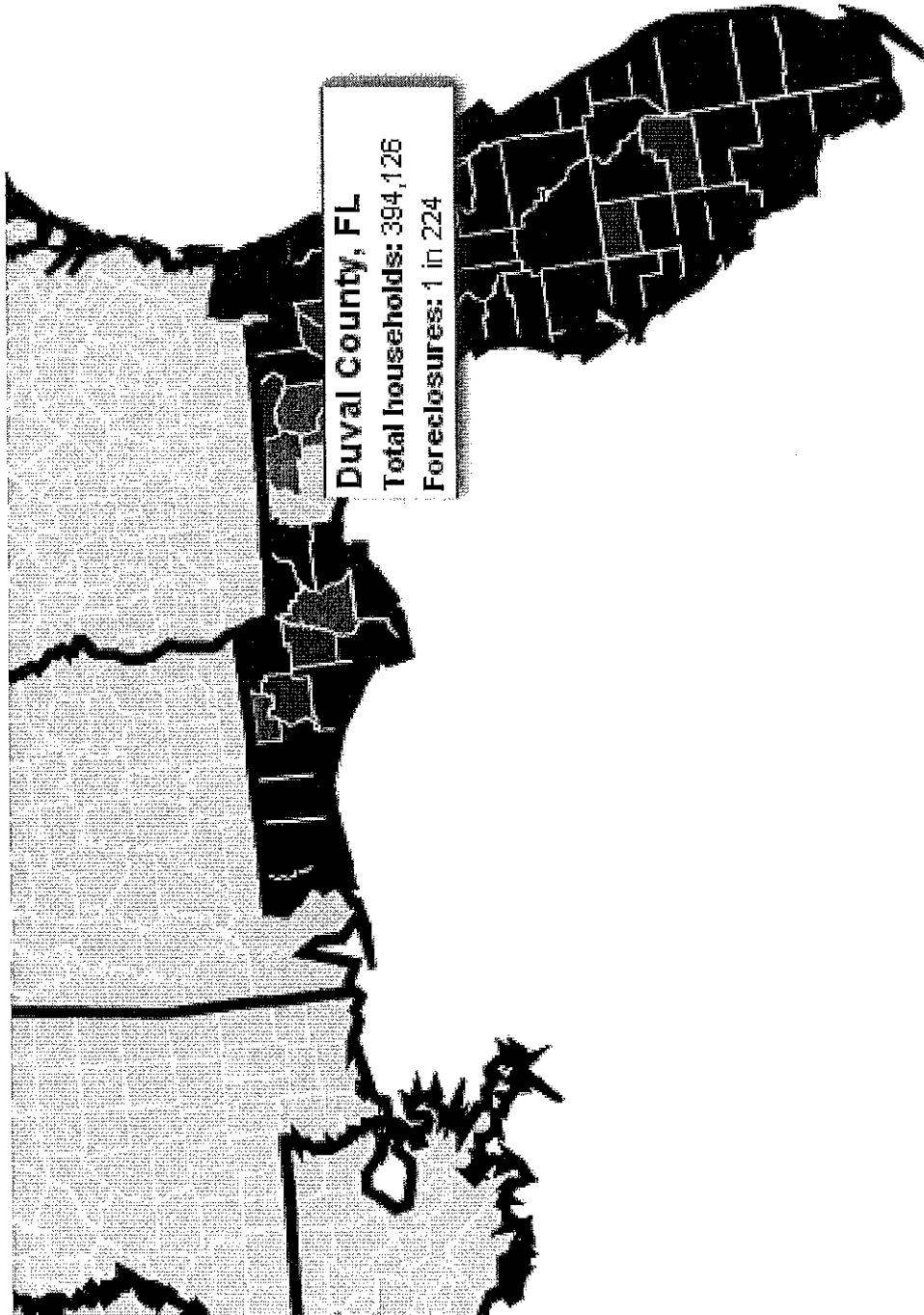
Median Household Income

■ Data not available

■ Low foreclosure rate

■ Moderate foreclosure rate

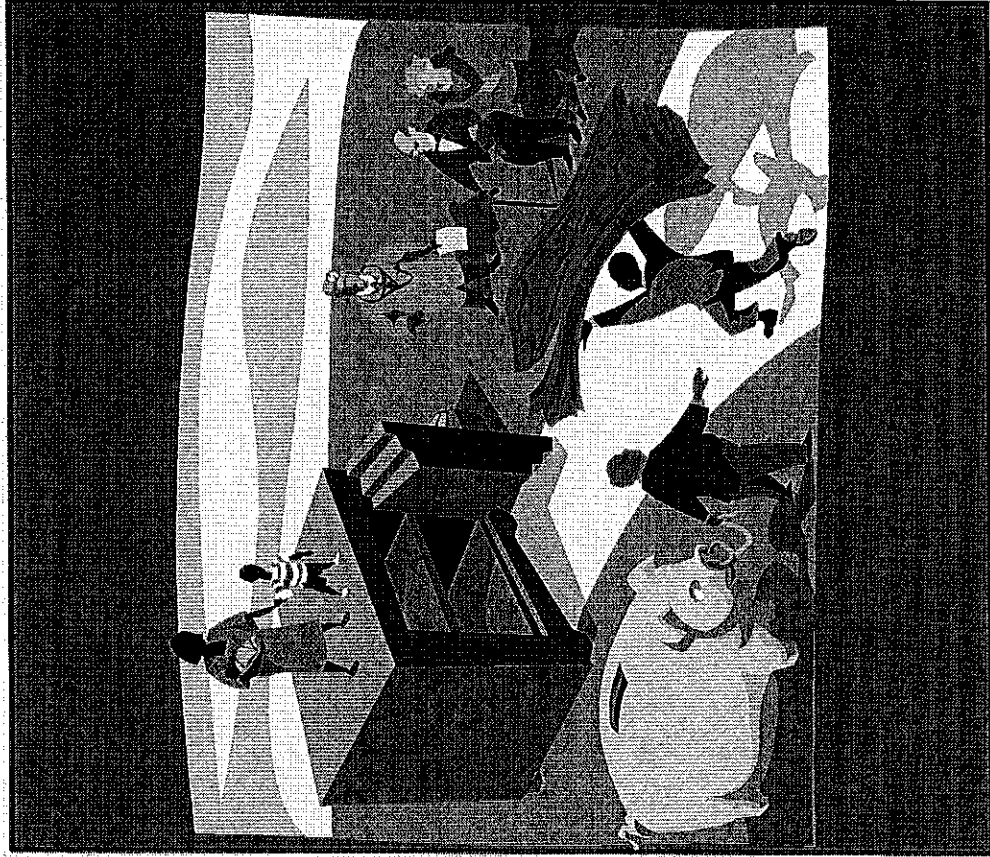
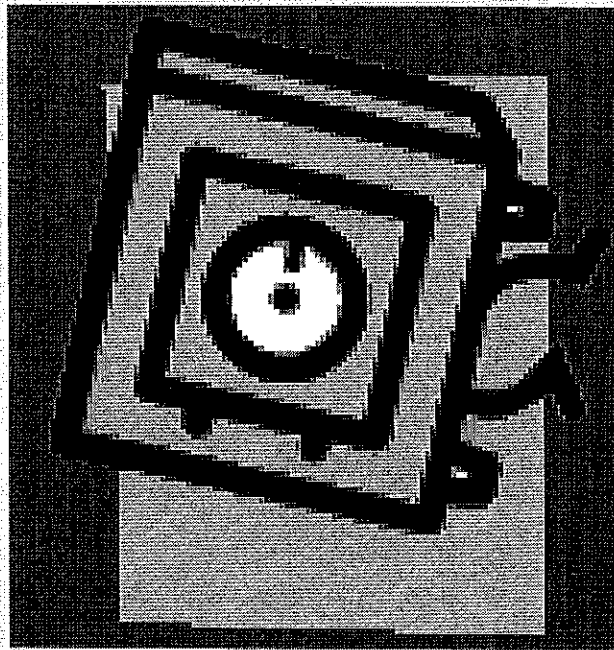
■ High foreclosure rate





# The History of Mortgages in America

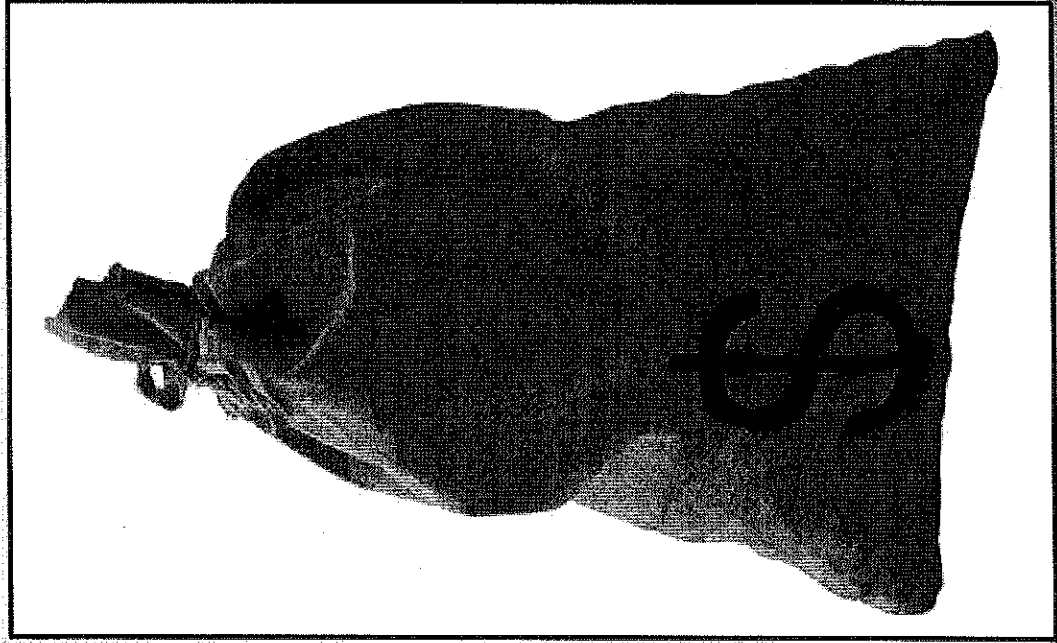
- Bankers used to take the original note and mortgage and secure it in the bank vault.





# Mortgage-Backed Trusts

- As the mortgage industry grew, bankers began securing the notes in mortgage-backed trusts
- Trusts are a bundle of 5,000 notes secured by mortgages
- A bundle of notes may contain 5,000 notes and mortgages with a face value of \$1.5 Billion

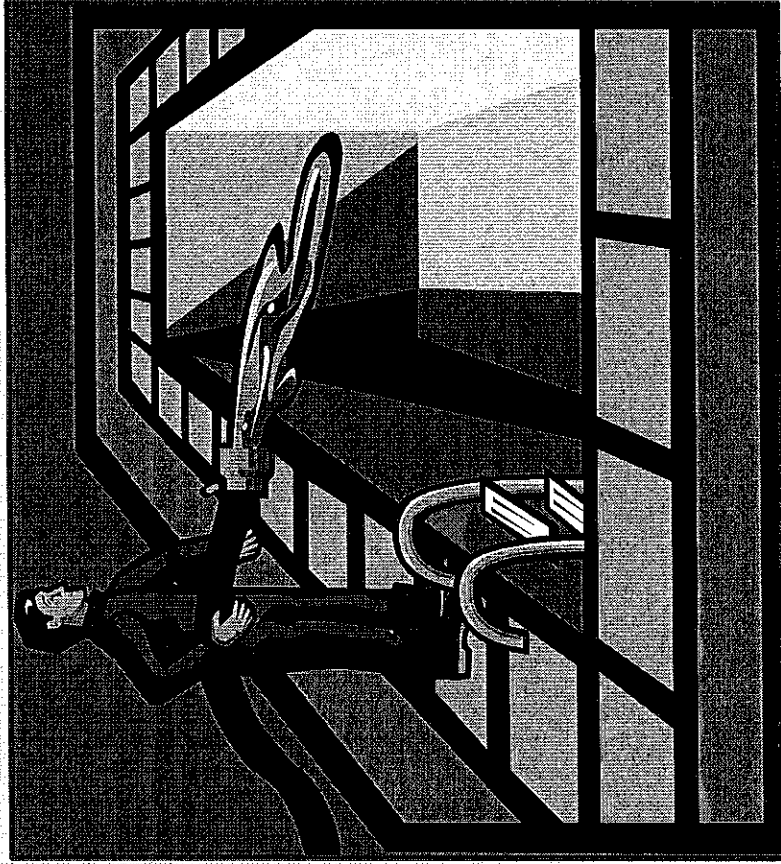




# Sales & Servicing of Trusts



- These Trusts were packaged as Residential Mortgage-Backed Securities (“RMBS”) and could be sold to investors in bite-sized pieces
- The rules for the operation of these RMBS trusts were set forth in “Pooling and Servicing Agreements”





# The Travels of a RMBS bundle



- Trust bundles travel from:
  - The Lender
  - To the Depositor
  - To the Securities Company
  - To the Trustee



When it doesn't work quite right . . .



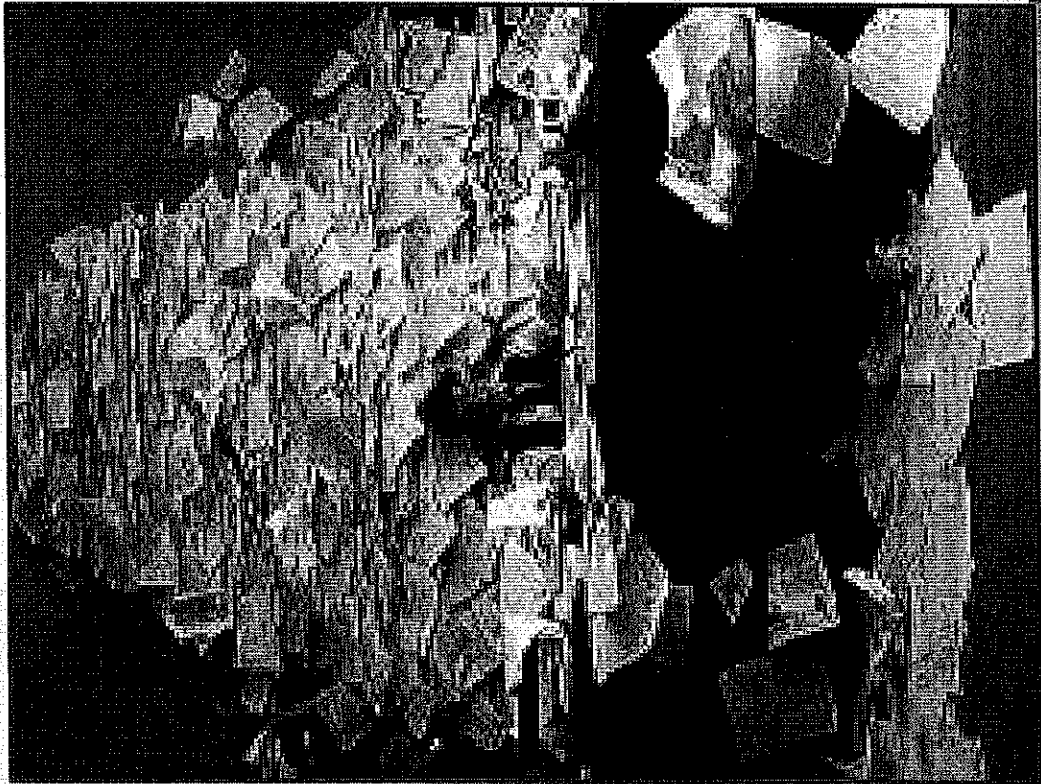
- Sometimes a note or a mortgage gets lost.





When it doesn't work quite right...

- Sometimes the document custodians are lax about their procedures.
- That appears to be the situation here in Florida as well as across the nation.

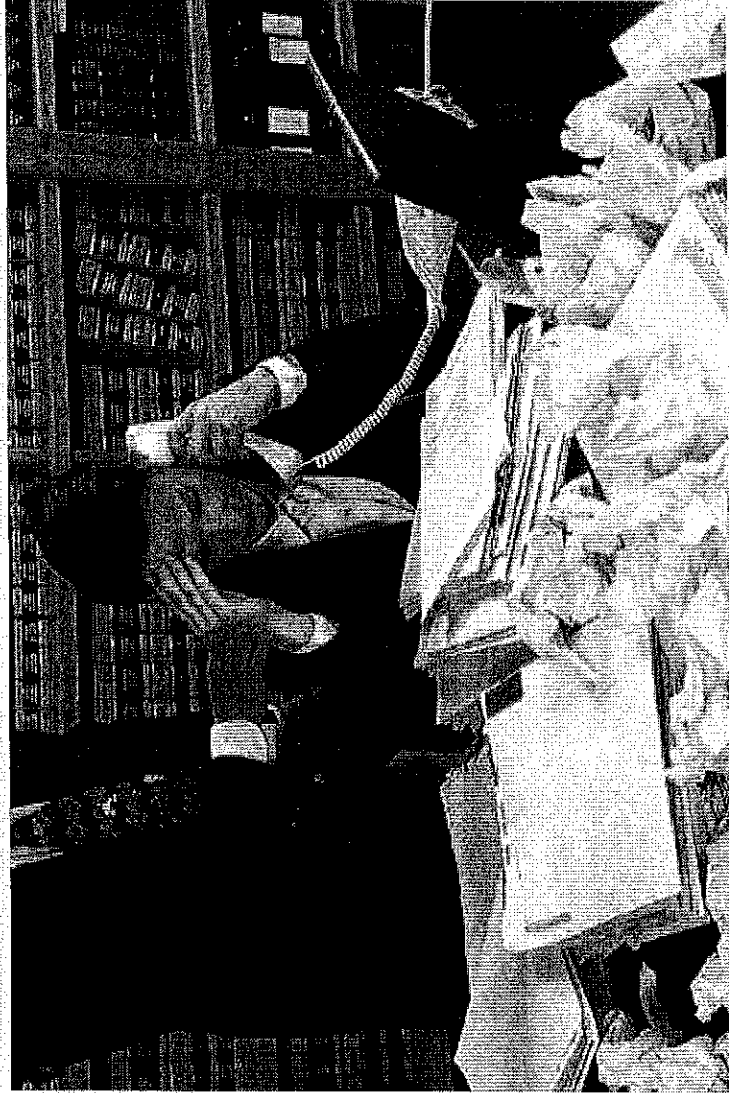




When it doesn't work quite right . . .



- Sometimes there are just too many documents to keep track of any single Note or Mortgage.

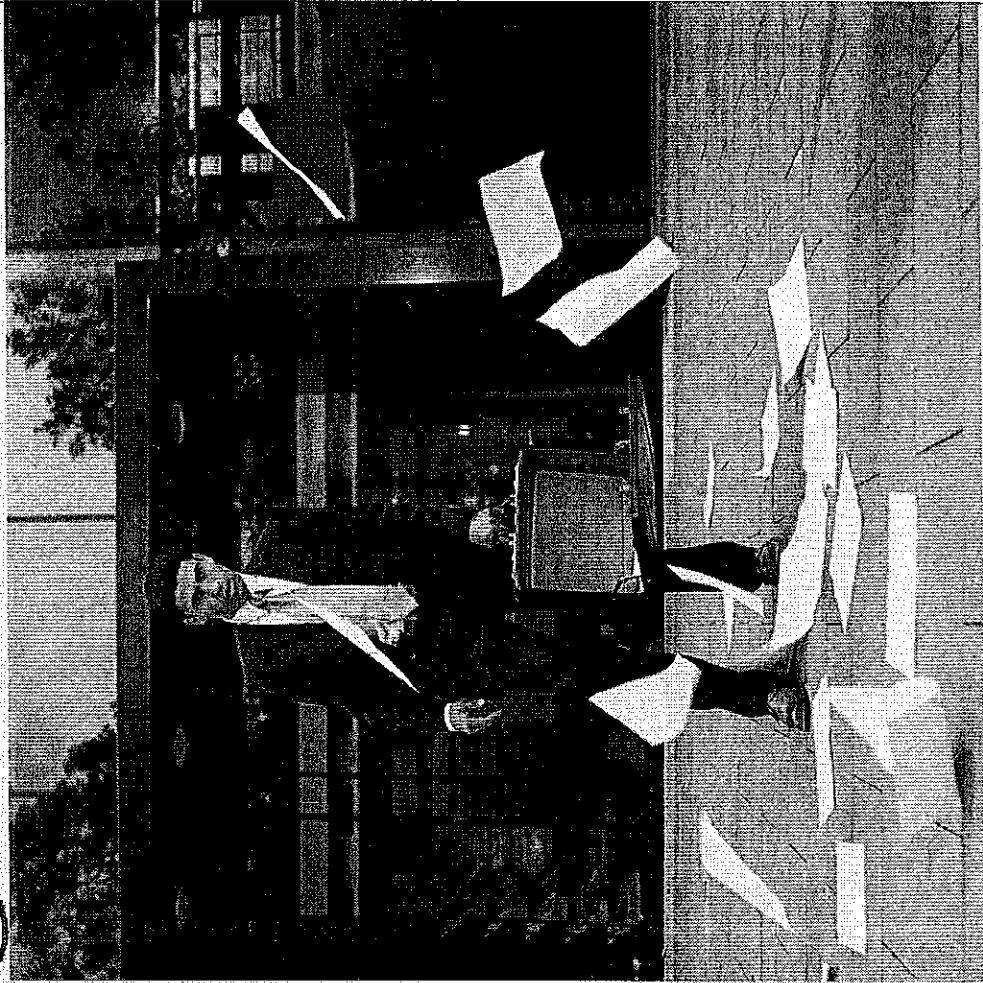
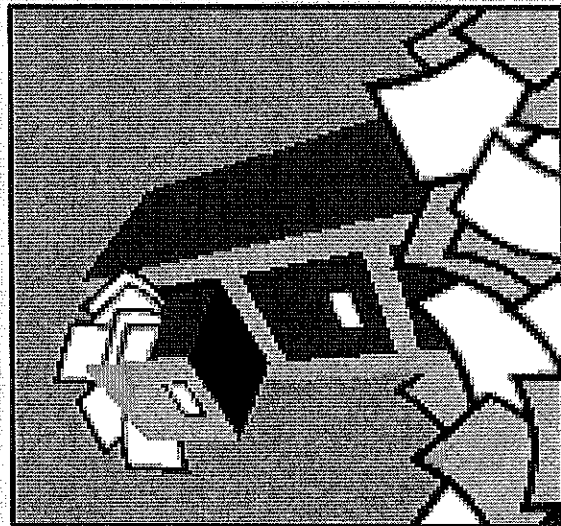




When it doesn't work quite right . . .



- Keep in mind these are some of the largest banks in the country . . . losing ownership paperwork!!

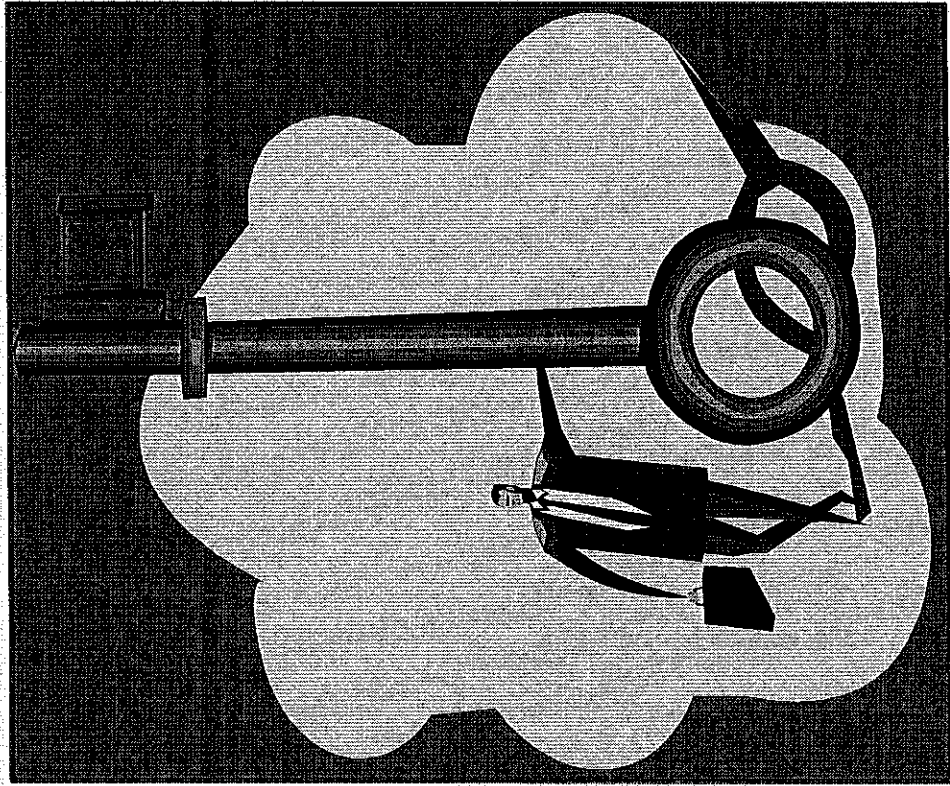




# IMPORTANT: The Key



- The key to the problems regarding foreclosures of mortgages are the **ASSIGNMENTS** of mortgage.

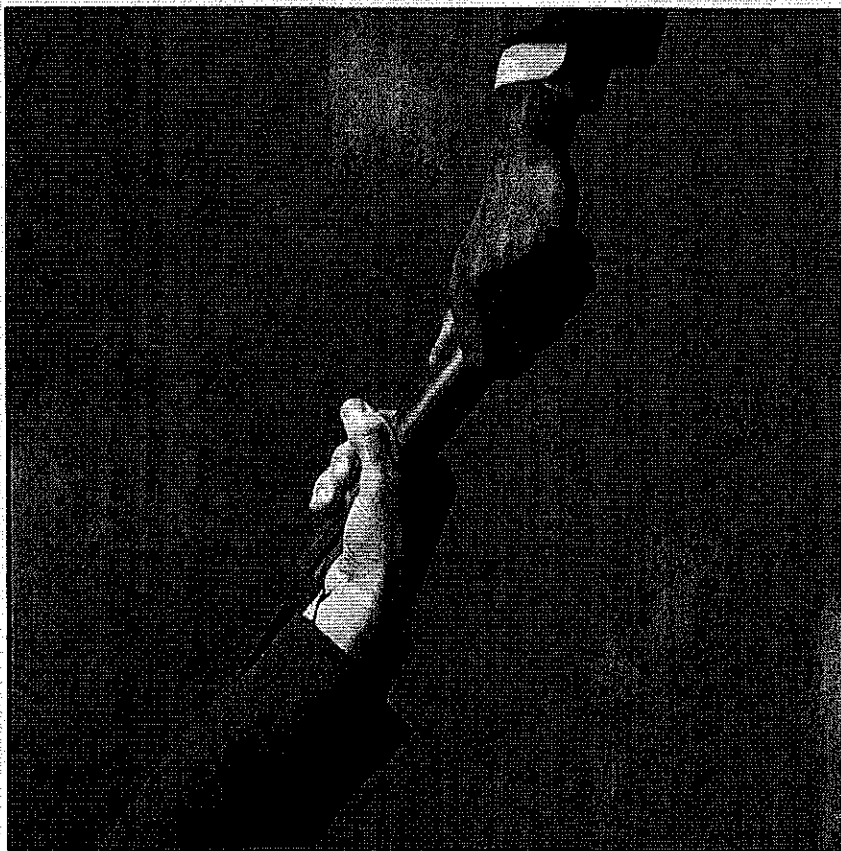




# IMPORTANT: The Key



- Assignments of mortgage operate to transfer ownership of the mortgage from one bank to another.
- You sue on the note but foreclose under the mortgage.
- 

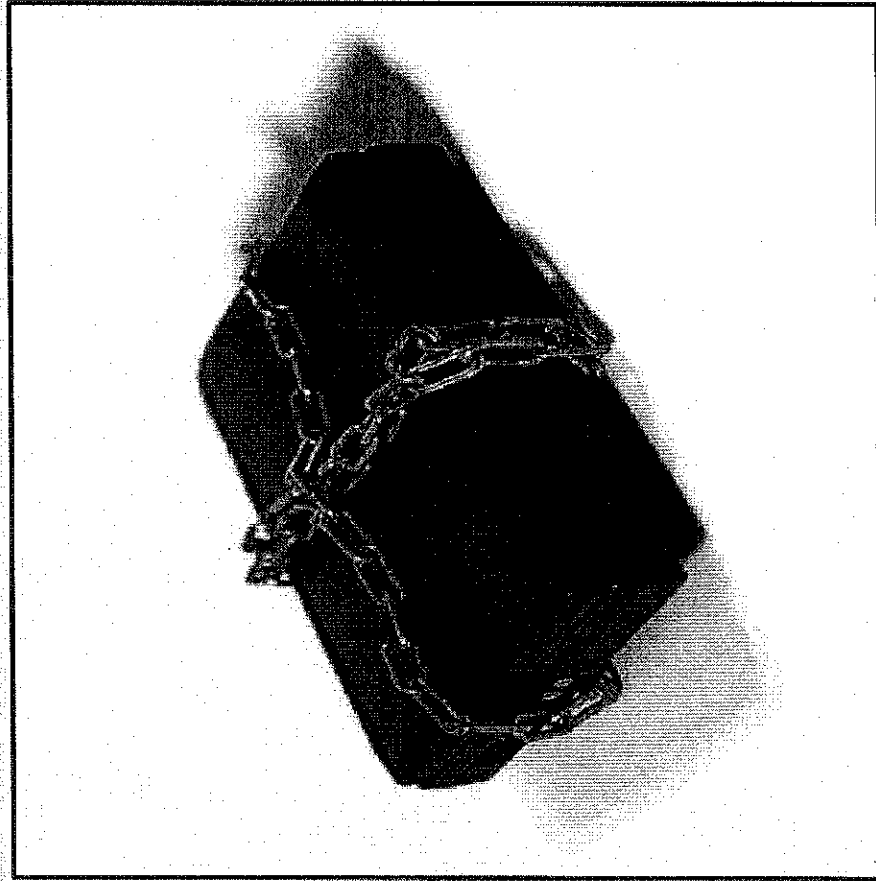




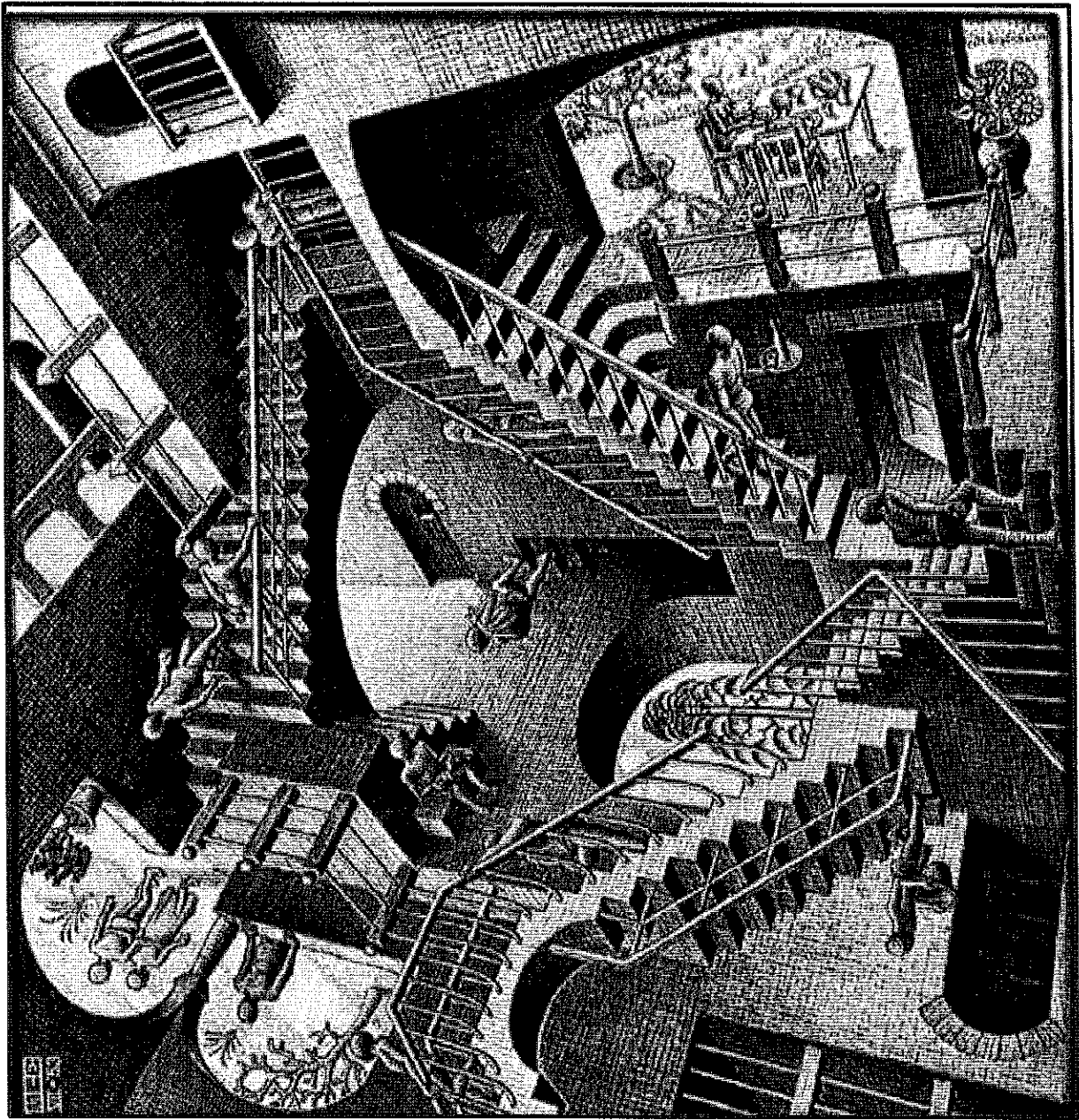
## What if there is no valid assignment?



- A valid assignment transfers the ownership of the mortgage and allows the assignee of the assignment to begin a foreclosure action.
- Only the holder/owner of the note and mortgage can institute a foreclosure action if the homeowner stops making their mortgage payments.



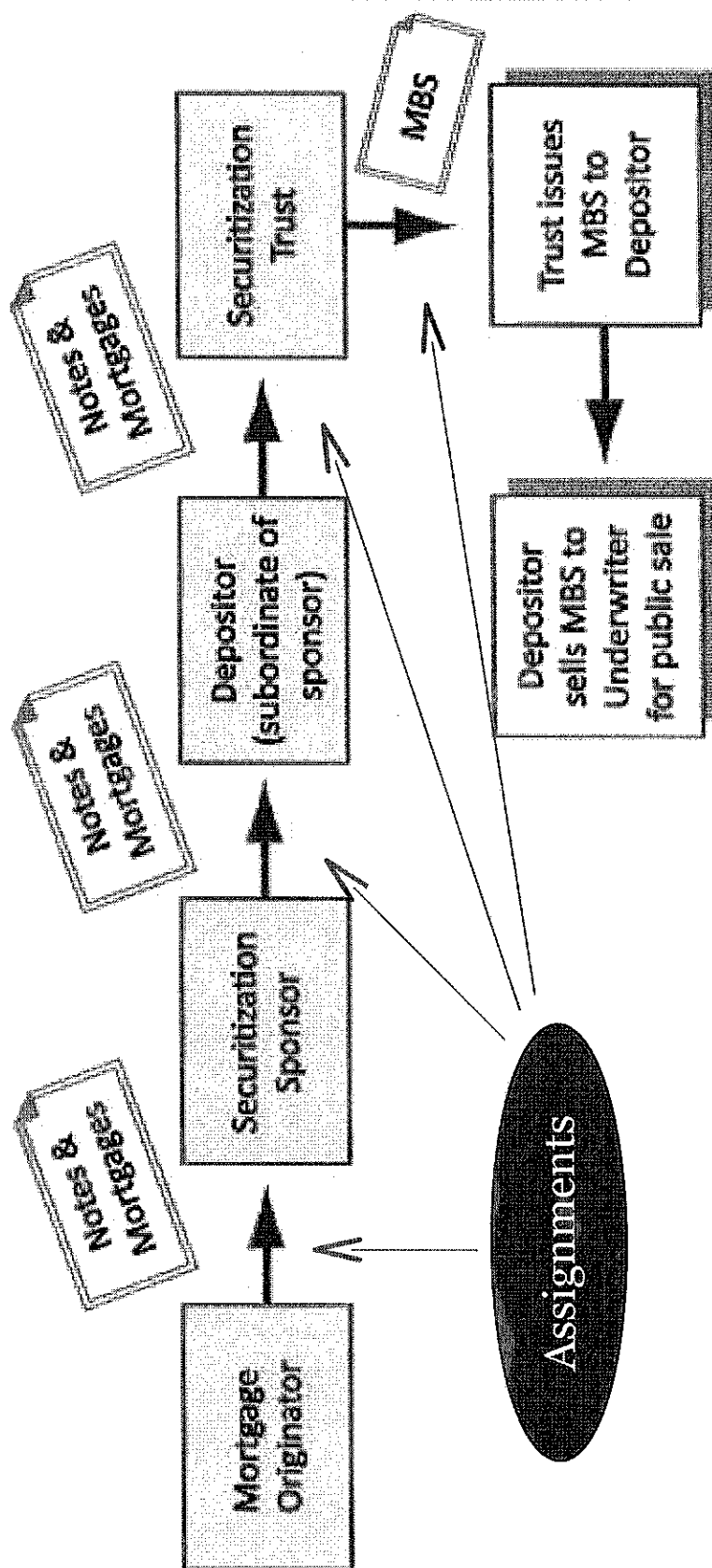




If the  
mortgage is  
not  
properly  
assigned....  
the result is  
chaos.



# The Paperwork in Securitization Process



Source: Oversight Panel Oversight Report, Examining the Consequences of Mortgage Irregularities for Financial Stability and Po



# Sample Assignment of Mortgage

CR#10/28/2008-PR#A030-POF

Date: 10/16/2008-Print Batch ID: 2679

Property Address:

3281W LAKE DR

FORT PIERCE, FL 34982

This Space for Recorder's Use Only

## ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc., whose address is 6501 Irvine Center Drive, Irvine, CA 92618, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto AMERICAN HOME MORTGAGE SERVICING, INC., a DELAWARE CORPORATION, F/K/A AH MORTGAGE ACQUISITION CO., INC., whose address is 6501 Irvine Center Drive Irvine, CA 92618, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Borrower(s): RIGOBERTO GUERRERO

Original Mortgage: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR AMERICAN HOME MORTGAGE ACCEPTANCE, INC.

Date of Mortgage: 07/09/2004

Recording Date: 08/04/2004 Book: 2035

Page: 1387 Document #: 2454536

Misc. Comments: LEGAL DESCRIPTION: THE NORTH HALF OF LOT 2 AND ALL OF LOT 72, BLOCK 1 OF SILVER LAKES PARK, ACCORDING TO THE PLAT HEREOF AS RECORDED IN PLAT BOOK 10, PAGE(S) 4, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

and recorded in the official records of the County of St. Lucie, State of Florida affecting Real Property and more particularly described on said Mortgage referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of 10/21/2008.

Mortgage Electronic Registration Systems, Inc. as nominee for  
American Home Mortgage Acceptance, Inc.



# Execution of the Assignments

- The Banks appointed individuals to execute the assignments

## JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

### INCUMBENCY CERTIFICATE

I HEREBY CERTIFY that I am an Assistant Secretary of JPMorgan Chase Bank, N.A. and that the following individual, holding the title set forth opposite his/her name, is a duly elected officer of JPMorgan Chase Bank, N.A. and is authorized to sign deeds, endorsements, assignments, leases, affidavits, modification and assumption agreements, substitutions of trustee, documents relating to foreclosures and bankruptcies, contracts and any other instruments that are appropriate in the ordinary course of servicing loans including but not limited to, instruments to convey, sell, assign, encumber, lease, release, discharge, disclaim or otherwise transfer any interest in real or personal property ownership by the Company or in which the Company has a security or other interest.

#### Name

#### Title to which appointed:

Karlina Adams	Vice President
Colleen Wray	Vice President
Deborah Blynn	Vice President
Heaven-Jen Cris	Vice President
Helen Kornupelt	Vice President
Shelonda Anderson	Vice President
Barbara Bollen	Vice President
Sharon Beatty	Vice President
Blaise Belz	Vice President
Jennifer Berion	Vice President
Rodger Berry	Vice President
Elizabeth Boushon	Vice President
Tammy Brown	Vice President
Cherie Michelle Buckner	Vice President
Robyn Cartmell	Vice President
J. Jonathan Couson	Vice President
Margaret Dalton	Vice President
Jeanne Dwyer	Vice President



Doc 4004 Pg 219 Doc VOTM  
Page 1 of 1 Generated 06/29/11

Attested hereby  
*Francis M. Roache*  
 Francis M. Roache  
 Register of Deeds





# Example Appointments through a Limited Power of Attorney for executing Assignments

## LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that JPMorgan Chase Bank, National Association ("JPMorgan Chase"), successor in interest to the loans and mortgage notes formerly serviced by Washington Mutual Bank, by and through its officers hereby constitutes and appoints LPS Default Solutions, Inc. ("LPS") its true and lawful Attorney-in-Fact, in its name, place and stead and for its benefit, with full power of substitution in connection with mortgage loans or mortgage notes serviced by JPMorgan Chase on its own behalf or those serviced for others that are referred by JPMorgan Chase to LPS to provide administrative default support services.

LPS shall discharge its duties and exercise the authority granted under this Limited Power of Attorney by and through the following employees of LPS:

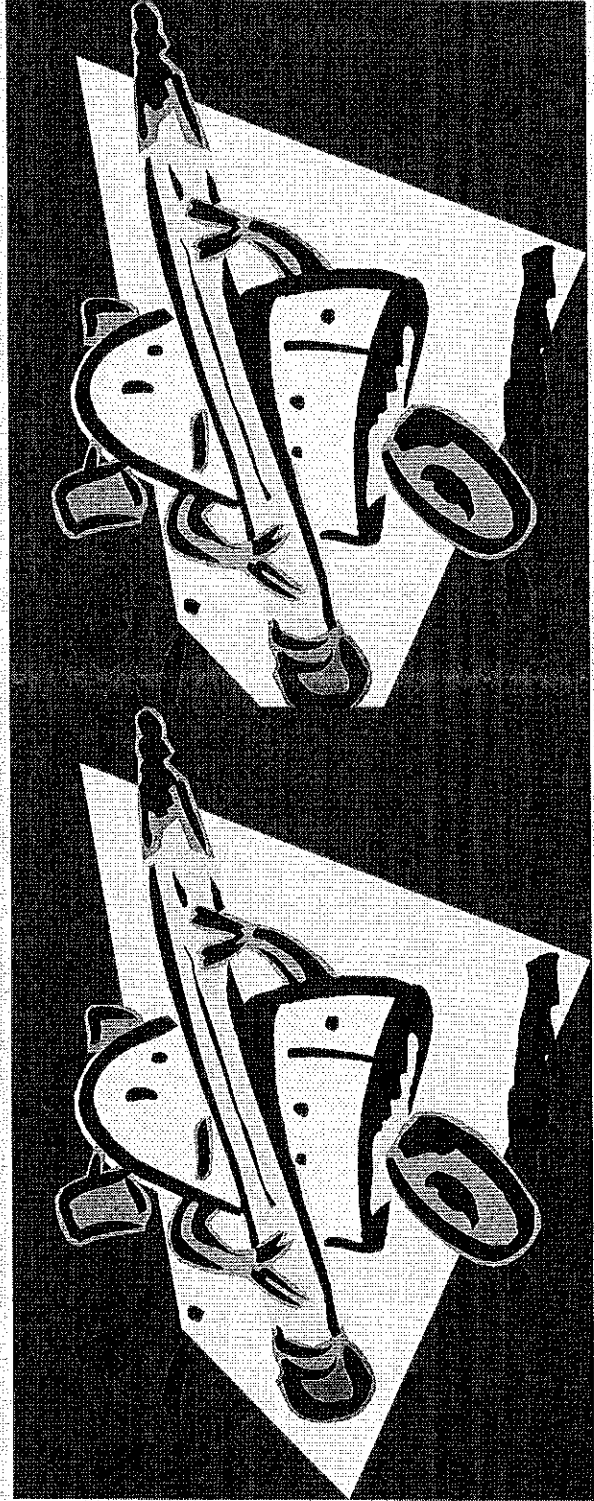
Bill Newland	1 <sup>st</sup> Vice President	Christina Affan	Manager
Chris Hyman	1 <sup>st</sup> Vice President	Eric Tate	Manager
Greg Lyons	Vice President	Jennifer Gray	Manager
Matthew Rogina	Vice President	Jodi Sobotta	Manager
Scott Walter	Vice President	Laura Hecox	Manager
Amy Wells	Assistant Vice President	Lizavinda Allioley	Manager
Christina Anderson	Assistant Vice President	Matthew Casey	Manager
Chrys Houston	Assistant Vice President	Reginald Lynch	Manager
Dory Goebel	Assistant Vice President	Rick Wilken	Manager
John Cady	Assistant Vice President		

JPMorgan Chase hereby grants to LPS the authority to act in any manner necessary and proper to exercise the powers enumerated in the paragraph below and in accordance with that certain Default Services Agreement, as it may be amended or extended from time to time (the "Agreement") between Washington Mutual Bank and LPS (and its predecessor FNPS), pursuant to which LPS is providing certain foreclosure, bankruptcy and other mortgage loan related administrative support services to



## Execution of the Assignments

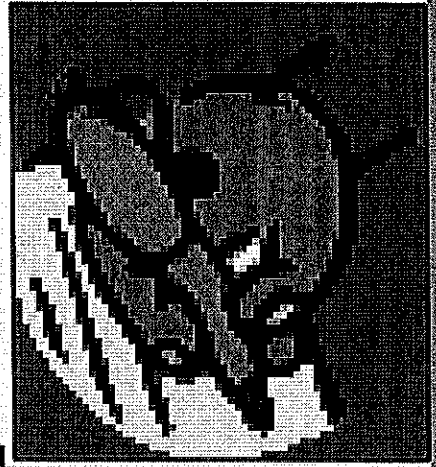
- Many individuals who executed the assignments knew nothing about the documents they were signing, these individuals are referred to as “robo-signers”





## Execution of the Assignments

- Individuals included bank employees, law firm employees (lawyers, paralegals, and even secretaries) and document preparation and processing company employees
- Thousands and thousands and thousands of assignments . . . signed weekly.





Fraudulent Practices come in all shapes and sizes



- Robo-signers
- Fake witnesses
- Fake notaries
- Fake documents
- False affidavits





## Problems with Assignments



- Not executed by the authorized person
- Signatures not witnessed properly by the “witnesses”
- Signatures not properly notarized by a notary







- American Home Mortgage Servicing, Inc. as  
successor-in-interest to Option One Mortgage Corporation**

  
Linda Green  
Vice President

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 06-08-2007 BY 60322  
UCBAW/BJS

For further information, contact the  
 American Psychological Association, 750 First Street, N.E., Washington, D.C. 20002-4242.  
 Tel: 202/336-5500. Fax: 202/336-6000.

ARMA 647	60000000
----------	----------

7517 SW 14TH ST  
MIAMI, FL 33175  
305-271-1751

[illegible]

THE UNIVERSITY OF CHICAGO PRESS

[illegible][illegible]

Date of Mortgage: 11/15/2005  
 Lender: FARMERS  
 Document: 100001150505  
 Book: 215641  
 Page: 215641

PLANTATION, ASSIGNMENT EFFECTIVE DATE, NEGOTIATING BANK, ADDRESS, PHONE, CREDIT RATING, DOCUMENT, ASSOCIATED PARTY

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the County of Mendocino, State of California, this 11th day of January, 1964.

महाराष्ट्र शासन, न्याय विभाग, मुंबई

10-11-1972

**THE**

1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765







Signature 4

**Vice President**

Joseph C. ...  
Just 5 months







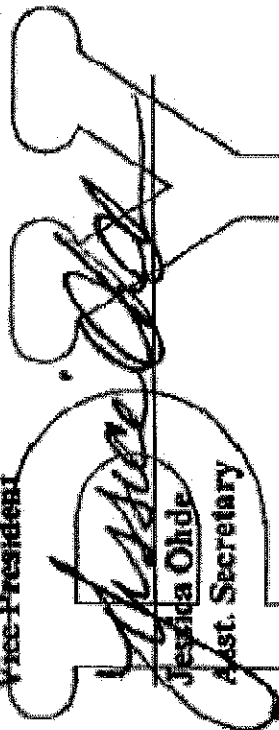
# Vice President Linda Green Signature



Sample One


Home Mortgage Acceptance, Inc.

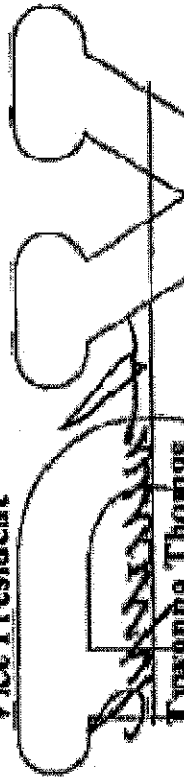
  
Linda Green  
Vice President

  
Jessica Ohde  
Asst. Secretary

Sample Two

in-interest to Option One Mortgage Corporation

  
Linda Green  
Vice President

  
Tywanda Thomas  
Asst. Vice-President




# Who is the Real Linda Green?




American Home Mortgage Servicing, Inc. as  
successor-in-interest to Option One Mortgage Corporation

  
Linda Green  
Vice President

Amtrust Funding Services, Inc., by American Home  
Mortgage Servicing, Inc as Attorney-in-fact.

  
Linda Green  
Vice President

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.  
AS NOMINEE FOR AMERICAN BROKERS CONDUIT

  
Linda Green  
Vice President

American Home Mortgage Servicing, Inc. as  
successor-in-interest to Option One Mortgage Corporation

  
Linda Green  
Vice President

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.  
AS NOMINEE FOR AMERICAN BROKERS CONDUIT

  
Linda Green  
Vice President

ALL THESE PRESENTS to be executed on this date of 01/29/2007.  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

  
LINDA GREEN  
VICE PRESIDENT



# Linda Green



- Linda Green’s “signature” appears on hundreds of thousands of mortgage assignments.

.

- She is listed as an officer of dozens of banks and mortgage companies.



# A Few of Linda Green's Many Job Titles



- Vice President, American Home Mortgage Servicing, Inc.
- Vice President, Amtrust Funding
- Vice President, Argent Mortgage Company
- Vice President, American Brokers Conduit
- Vice President, Bank of America
- Vice President, Citi Residential Lending
- Vice President, First Franklin, a Division of National City Bank of Indiana
- Vice President, Mortgage Electronic Registration Systems, Inc. (MERS), as Nominee for American Home Mortgage Acceptance
- Vice President, MERS, as Nominee for Family Lending Services
- Vice President, MERS, as Nominee for HLB Mortgage
- Vice President, Option One Mortgage Corporation
- Vice President, Sand Canyon Corporation
- Vice President, Seattle Mortgage Company
- Vice President, Wells Fargo Bank, N.A.

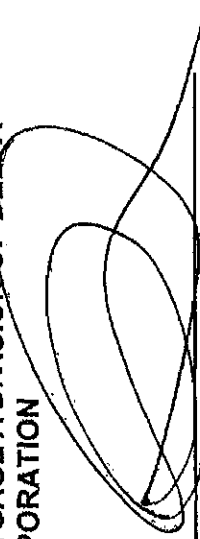


# Scott Anderson, Ocwen employee


MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR  
DELTA FUNDING CORPORATION

By:   
Name: Scott W. Anderson  
Title: Vice President

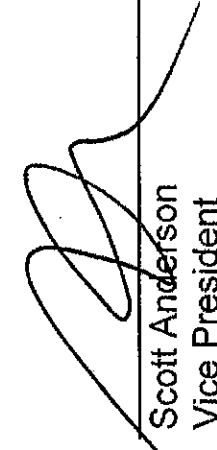
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR  
FIDELITY MORTGAGE A DIVISION OF DELTA  
FUNDING CORPORATION

By:   
Name: Scott Anderson  
Title: Vice President

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR  
DELTA FUNDING CORP.

By:   
Name: Scott Anderson  
Title: Vice President

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR  
DELTA FUNDING CORPORATION

By:   
Name: Scott Anderson  
Title: Vice President

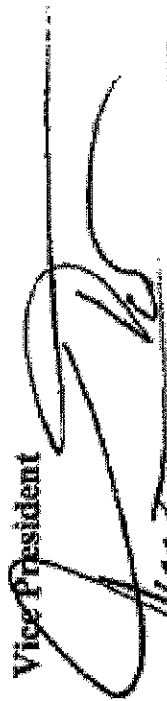


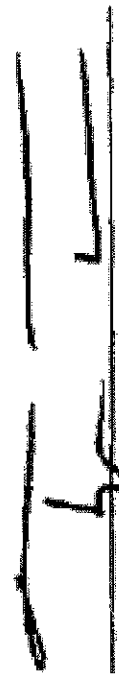
# Forgeries by Mortgage Servicers




Who is Tywanna Thomas?


  
Tywanna Thomas  
Asst. Vice President

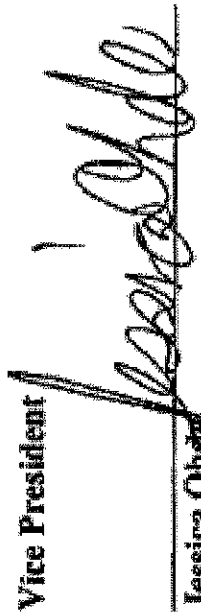
  
Tywanna Thomas  
Asst. Secretary

  
Tywanna Thomas  
Asst. Secretary

Who is Jessica Ohde?

  
Jessica Ohde  
Asst. Secretary

  
Jessica Ohde  
Asst. Vice President

  
Jessica Ohde  
Asst. Secretary



## A Mortgage Servicing Company

- Mortgage servicing companies help banks obtain foreclosure by preparing documents necessary to facilitate the foreclosure in Court.
- These companies hire robo-signers who execute the documents by the tens of thousands per month.



## Mortgage Servicing Companies

- DocX had offices employing dozens of workers producing thousands of fraudulent assignments.
- Lender Processing Services produced 2,000 assignments each working day.
- GMAC (including its first famous robo-signer, Jeffrey Stephan) also produces 2,000 assignments every day.
- Nationwide Title Clearing out of the Tampa area also produces 2,000 assignments every day.
-



# Forgeries in Other Documents



WHEN RECORDED MAIL TO:

Prepared by:

OPTION ONE MORTGAGE CORPORATION

P.O. BOX 57036

IRVINE, CA 92613-7036

ATTN: RECORDS MANAGEMENT

Loan Number: 561005223

Loan Number: 561005223

Servicing Number: 002080902-6

Date: 02/03/06

ALLONGE TO NOTE  
(INVESTOR)

OR-BK-19933-PB-1827

RECORDED 02/15/2006 00:20:13

Palm Beach County, Florida

LOT 700, 000.00

Deed Rec 2,730.00

Intang 1,560.00

Sharon R. Book, CLERK & COMPTROLLER

Pgs 1827 - 1840; (14pgs)

ALLONGE TO NOTE  
(INVESTOR)

ED, PALM BEACH GARDENS, FL 33418-



# Forgeries in Other Documents



WHEN RECORDED MAIL TO:

Prepared by:

OPTION ONE MORTGAGE CORP.  
P.O. BOX 57096  
IRVINE, CA 92619-7096  
ATTN: RECORDS MANAGEMENT

Loan Number: 561005223  
Servicing Number: 002080902

CFN 20060092890  
OR BK 19933 PE 1827  
RECORDED 02/15/2006 09:27:13

Palm Beach County, Florida

AMT 780,000.00

Deed Doc 2,730.00

Intang 1,560.00

Sharon R. Bock, CLERK & COMPTROLLER  
Pg 1827 - 1840; (14pgs)

MORTGAGE

**MORTGAGE**

on February 23, 2006. The mortgage is

whose address is 8268 NW 10th Rd., Palm Beach Gardens, FL 33418.

("Bottoms").

ANDREW D. KOLCHRA, JR.  
210 University Drive, Suite 500  
Coral Springs, FL 33071  
407-400-0000



# ASSIGNMENT OF SCHEDULE

!! 2008-06-04 11:11:11

К. М. Мухоморов

[illegible]

Helene Thompson  
Helene Thompson

**THE NEW YORK PUBLIC LIBRARY**  
**ASTOR LENOX TILDEN FOUNDATION**  
**455 FIFTH AVENUE, NEW YORK, N. Y.**



# Examples of Bogus Documents



The Grantor is identified as "A Bad Bene."

ASSIGNMENT OF INTEREST:  
FOR DEED AND VALUABLE CONSIDERATION, the terms and conditions of which are hereby  
acknowledged, A BAD BENE, whose address is

domestic, hereby, legal, assigns, transfers, conveys, releases and delivers unto said A BAD BENE

04/27/2009.

A BAD BENE

  
Witness: Dawn Williams

Witness: Christina Huang

Korell Harp  
Vice President

Signed for  
A BAD BENE

Korell Harp and Tywanna Thomas, known to me (or  
ce) that they are the Vice President and Asst. Vice Pres

that they had no report, executed and delivered said instrument for the consideration, value and purposes  
therein expressed and set forth.  
Witness my hand and official seal on the date hereinafter set forth.

A BAD BENE



# Examples of Bogus Documents

HARVEY RUWIN, CLERK OF COURT.  
MIAMI-DADE COUNTY, FLORIDA  
LOST PAGE

Document Prepared By:  
Ron Micharz, 338-662-9638

Don Mithard, 338-662-9638  
When Recorded Return To:

1111 Alderman Dr.  
Suite 350

Alpharetta, GA 30005	YEMA	647	04
----------------------	------	-----	----

CR#14:05257008-PRC#1:AD

Date:08/13/2008-Print Batch  
Property Address:  
00000 NINE AN CT

MIAMI, FL 33147  
1566 NW 35th St

FOR GOOD AND VALU

bargeing, sell, assign, transfer, c

**SASMTS**, whose address is XXXXXXXX, payment of a certain provision.

Original Borrower

Original Mortgage:  
Date of Mortgage:  
Revolutions Per Year: 84

Recording Date: \_\_\_\_\_  
Misc. Comments: \_\_\_\_\_  
TO THE PLAT

RECORDS OF M  
and recorded in the of  
no more information of ne

IN WITNESS W  
08/14/2008.

✓

2/1/2015: Korell Hart

\_\_\_\_\_

2

10

10

...evidence) that they are  
Violence & Assault

instrument for and in  
and further sound and

Witness my hand

5/11/15



МОНАСТЫРЬ И МАТРИЦА



100

100

1. *Introduction*  
 2. *Methodology*  
 3. *Results*  
 4. *Discussion*  
 5. *Conclusion*  
 6. *References*  
 7. *Appendix*  
 8. *Index*  
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 11. *Table of Tables*  
 12. *Table of Equations*  
 13. *Table of Symbols*  
 14. *Table of Abbreviations*  
 15. *Table of Acronyms*  
 16. *Table of Units*  
 17. *Table of Constants*  
 18. *Table of Variables*  
 19. *Table of Parameters*  
 20. *Table of Functions*  
 21. *Table of Operators*  
 22. *Table of Notation*  
 23. *Table of Symbols*  
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 226. *Table of Units*  
 227. *Table of Constants*  
 228. *Table of Variables*

App. 335



# Examples of Bogus Documents



The effective date is in the year 9999.

ASSIGNMENT OF MORTGAGE  
FOR GRANT AND VALUE CONSIDERATION, the receipt and sufficiency of which is hereby  
acknowledged, American Home Mortgage Servicing, L.P., whose address is 6301 Ervick Center Drive,

**Mortgagee: HOMEBANC MORTGAGE CORPORATION**

**Loan Amount: \$**

**Date: 05/03/2007**      **Book: N/A**      **Page: N/A**      **Document #: 200**

**Assignment Effective Date: 9/9/9999**

**DESCRIPTION: CONDOMINIUM PARCEL: UNIT NO. A-1**

**NUM DESCRIBED IN THAT CERTAIN DECLARATION**

**AS RECORDED IN OFFICIAL RECORDS BOOK 231, I**

**DITIONS AND AMENDMENTS TO SAID DECLARATION**

  
Kerill Harp  
Vice President

  
Denise Dawn Williams  
Witness



# Examples of Bogus Documents



The blank line, witnessed and notarized.

above particularly described and duly certified to be correct by me.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of  
11/25/2008.

American Home Mortgage Servicing, Inc. as successor-in-interest  
to Option One Mortgage Corporation

*[Signature]*  
Witness, Korell Harp

*[Signature]*  
Linda Green  
Vice President

*[Signature]*  
Tywana Thomas  
Asst. Vice President

State of Georgia  
County of Fulton  
On this date of 11/25/2008, before me, the undersigned authority, a Notary Public duly sworn, and  
qualified and acting within and for the above-specified date and county, personally appeared the within-  
named Linda Green and Tywana Thomas, who with me do hereby declare to me on the basis of satisfactory  
evidence that they are the Vice President and Asst. Vice President respectively of American Home  
Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation and were duly  
authorized to bear respective capacities to execute the foregoing Notarization and of the above eight books  
of said corporation and that said corporation executed the same, and further stated and acknowledged that  
they had all signed, executed and delivered said instrument for the consideration, intent and purposes therein  
expressed and set forth.

I accept my hand and official seal on the date hereabove set forth.

*[Signature]*  
Notary Public  
Korell Harp  
Notary Public  
Fulton County  
State of Georgia  
My Commission Expires  
April 7, 2012

**CERTIFIED!**



# Assignment of Mortgage



## ASSIGNMENT OF MORTGAGE

CFN 2009BR0364085  
DR-05 26871 Pg 17475 (JBS)  
RECORDED 05/19/2009 12:08:00  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA  
LAST PAGE

SPACE FOR A

FOR VALUE RECEIVED, on or before October 04, 2008, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR LITTON LOAN SERVICING, LP, ("Assignor") whose address is 1818 Library Street, Suite 300, Reston, VA 20190 assigned, transferred and conveyed to: LITTON LOAN SERVICING LP, AS SERVICER FOR GSAA HOME EQUITY TRUST 2007-2, ("Assignee") whose address is 4828 Loop Central Drive, , Houston, TX 77081-2226, its successors and/or assigns, all of the right, title and interest of Assignor in and to that certain Mortgage (the "Mortgage") dated

FOR VALUE RECEIVED, on or before October 04, 2008, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR LITTON LOAN SERVICING, LP, ("Assignor") whose address is 1818 Library Street, Suite 300, Reston, VA 20190 assigned, transferred and conveyed to: LITTON LOAN SERVICING LP, AS SERVICER FOR GSAA HOME EQUITY TRUST 2007-2, ("Assignee") whose address is 4828 Loop Central Drive, , Houston, TX 77081-2226, its successors and/or

*[Signature]*

Witness  
Typed Name Patricia Hutchens

*[Signature]*

Witness  
Typed Name Yanel A. Hernandez

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS INCORPORATED AS NOMINEE FOR  
LITTON LOAN SERVICING LP

By: *[Signature]*

Typed Name: Kim Litchfield

Title: Certified Officer



# Corrective Assignment of Mortgage



THIS DOCUMENT CONTAINS INFORMATION THAT IS UNCLASSIFIED

CFN 2010R0010406  
 OR BK 27141 Pg 14921 (1pg)  
 RECORDED 01/07/2010 11:38:38  
 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA  
 LAST PAGE

CFN 27141  
 OR BK 27141  
 RECORDED 01/07/2010 11:38:38  
 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA  
 LAST PAGE

## CORRECTIVE ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, on or before October 04, 2009, the undersigned, MORTGAGE REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR "AXIOM FINANCIAL SERVICES, ("Assignor") whose address is \_\_\_\_\_

FOR VALUE RECEIVED, on or before October 04, 2009, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR "AXIOM FINANCIAL SERVICES, ("Assignor") whose address is \_\_\_\_\_

assigned, transferred and conveyed by "MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR "AXIOM FINANCIAL SERVICES, ("Assignor") whose address is \_\_\_\_\_

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR AXIOM FINANCIAL SERVICES  
 BY: Matthew Miller  
 Print Name: MATTHEW MILLER  
 Witness: Shirley B. Boush  
 Print Name: SHIRLEY BOUSH  
 BY: Harvey Ruvin  
 Print Name: HARVEY RUVIN  
 Title: Assistant Secretary



# Filing Lis Pendens Without Standing

IN THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA  
CIVIL ACTION

US BANK NATIONAL ASSOCIATION AS SUCCESSOR TRUSTEE  
TO WACHOVIA BANK, NA, AS TRUSTEE FOR WEASC 2005-  
ARIA

CFN 2008RD811447  
OR Bk 26596 Pg 37717 (1pg)  
RECORDED 10/03/2008 15:56:10  
HARVEY MUVIN, CLERK OF COURT

CFN 2008RD811447  
OR Bk 26596 Pg 37717 (1pg)  
RECORDED 10/03/2008 15:56:10  
HARVEY MUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA  
LAST PAGE

## NOTICE OF LIS PENDENS

AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES, OR OTHER CLAIMANTS; WELLS FARGO BANK, NA; THE GRANDVIEW PALACE CONDOMINIUM ASSOCIATION, INC.; TENANT #1, TENANT #2, TENANT #3, and TENANT #4 the names being fictitious to account for parties in possession

Defendant(s).

### NOTICE OF LIS PENDENS

To the above-named Defendant(s) and all others whom it may concern:

You are notified of the institution of this action by the above-named Plaintiff, against you seeking to foreclose a mortgage recorded in Official Records Book 23278, Page 3642, on the following property in DADE County, Florida: UNIT NO. 407, THE GRANDVIEW PALACE CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF, AS RECORDED IN OFFICIAL RECORDS BOOK 21423, PAGE 3980, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, TOGETHER WITH ANY AND ALL AMENDMENTS TO THE DECLARATION AND ANY UNDIVIDED INTEREST IN THE COMMON ELEMENTS OR APPURTENANCES THERETO.

Dated this 25<sup>th</sup> day of September, 2008.

Florida Default Law Group, P.L.  
P.O. Box 25018  
Tampa, Florida 33622-5018  
(813) 251-4766



# Assignments After Lis Pendens



CFN 2008R0954129  
OR BK 3663 P. 2791 (1st)  
RECORDED 11/25/2008 10:14:33  
HARVEY KAVIN, CLERK OF COURT



CFN 2008R0954129  
OR BK 3663 P. 2791 (1st)  
RECORDED 11/25/2008 10:14:33  
HARVEY KAVIN, CLERK OF COURT  
MIAMI-DASE COUNTY, FLORIDA  
LAST PAGE

## ASSIGNMENT OF MORTGAGE

## ASSIGNMENT OF MORTGAGE

and interest of Assignor in and to the certain Mortgage (the "M")  
15, 2005 in Official Records Book 23278 at Page 3642 of  
encumbering the following-described real property:

UNIT NO. 407, THE GRANDVIEW PALACE CONDOMINIUM, ACCORDING TO THE  
DECLARATION OF CONDOMINIUM THEREOF, AS RECORDED IN OFFICIAL  
RECORDS BOOK 1162, PAGE 399, OF THE PUBLIC RECORDS OF MIAMI-DADE  
COUNTY, FLORIDA, TOGETHER WITH ANY AND ALL AMENDMENTS TO THE  
DECLARATION AND ANY UNDIVIDED INTEREST IN THE COMMON ELEMENTS  
OR APPURTENANCES THERETO.

as the same may have been amended from time to time; together with the Note and Indemnities secured thereby.

MORTGAGOR(S): ROBERT PRINE, and INES PRINE

IN WITNESS WHEREOF, Assignor has executed and delivered this instrument on  
October 13, 2008.

Witness Typed Name	<u>Patricia Hutchens</u>
Witness Typed Name	<u>Yanet A. Hernandez</u>

WELLS FARGO BANK, NA  
By: [Signature]  
Typed Name: Ron Wolfe  
Title: Attorney-in-Fact  
9119 Corporate Lake Drive, Suite 300  
Tampa, FL 33634



# Filing Lis Pendens Without Standing

IN THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY,  
FLORIDA  
CIVIL ACTION

CHASE HOME FINANCE LLC,  
Plaintiff,

vs.

CASE NO.  
DIVISION

09-15337 CA 01

SPACE FOR RECORDING ONLY E.S. #0425

CFM 2009R0452997  
OR BK 26771 P. 4057; (1P3)  
RECORDED 03/03/2009 09:49:18  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA  
LAST PAGE

## NOTICE OF LIS PENDENS

### NOTICE OF LIS PENDENS

To the above-named Defendant(s) and all others whom it may concern:

You are notified of the institution of this action by the above-named Plaintiff, against you seeking to foreclose a mortgage recorded in Official Records Book 25537, Page 712, on the following property in MIAMI-DADE County, Florida:

LOT 39, IN BLOCK 2, OF SHOMA HOMES AT TAMiami II, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 145, AT PAGE 71, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

Dated this 24 day of February, 2009.

Florida Default Law Group, P.L.  
P.O. Box 25018  
Tampa, Florida 33629-0018

CARLOS A. BOJAS, NTERA NAVOR, ANY AND ALL UNKNOWN PARTIES CLAIMING BY, D INDIVIDUAL DEFENDANT(S) WHO ARE D UNKNOWN PARTIES MAY CLAIM AN , OR OTHER CLAIMANTS; JPMORGAN , and TENANT #4 the names being fictitious to



CFN 2009R0344296  
OR BK 26814 PM 49511 (198)  
RECORDED 04/03/2009 08:59:02  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA  
LAST PAGE

FOR VALUE RECEIVED, on or before February 18, 2009, I have und

# ASSIGNMENT OF MORTGAGE

PROPERTY OF PUBLIC RECORDS  
 interest of Assignor in and to that certain  
 mortgage (the "mortgage") dated April 26, 2007 and recorded May 23, 2007 in Official Records Book 25387 at  
 Page 712 of the public records of MIAMI-DADE County, Florida, encumbering the following-described real  
 property:

LOT 39, IN BLOCK 2, OF SHOMA HOMES AT TAMiami II, ACCORDING TO THE  
 PLAT THEREOF AS RECORDED IN PLAT BOOK 145, AT PAGE 71, OF THE  
 PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

as the same may have been amended from time to time; together with the Notes and indebtedness secured thereby.

**MORTGAGOR'S: CARLOS A. ROJAS, and NEIFIA NAYOR**

IN WITNESS WHEREOF, Assignor has executed and delivered this instrument on \_\_\_\_\_, 2009.

~~SECRET~~ 2009



# Affidavit of Amounts Due

APR2009

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CYRELACTON

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE  
FOR REMISE 2007S1,  
Plaintiff,

vs.

ERIC SIVERSON, et al.,  
Defendant(s).

CASE NO.: CACEB022986  
DIVISION: 09

## AFFIDAVIT AS TO AMOUNTS DUE AND OWING

STATE OF

FL

Mortgage

COUNTY OF

Jeffrey Stephens  
Notary Public

## AFFIDAVIT AS TO AMOUNTS DUE AND OWING

GMAC MORTGAGE, LLC is the servicer of the loan. GMAC MORTGAGE, LLC is responsible for the collection of this loan transaction and pursuant of any delinquency in payments. I am familiar with the books of account and have examined all books, records, and documents kept by GMAC MORTGAGE, LLC concerning the transactions alleged in the Complaint. All of these books, records and documents are kept by GMAC MORTGAGE, LLC in the regular course of its business as servicer of the loan transaction and are made at or near the time by, and from information transmitted by, persons with personal knowledge of the facts such as your Affidavit. It is the regular practice of GMAC MORTGAGE, LLC to make and keep these books, records, and documents. The books, records, and documents which



# Affidavit of Amounts Due

APR 2009

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CIVIL ACTION

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE  
FOR RMBSL2M7S1,  
Plaintiff,

vs.

ERIC SIVERSON, et al.,  
Defendant(s).

CASE NO.: CA09022986  
DIVISION: 09

AFFIDAVIT AS TO AMOUNTS DUE AND OWING

STATE OF

Montgomery

COUNTY OF

Jeffrey Stephan  
Clerk

I am familiar with the books of account and have

examined all books, records, and documents kept by GMAC MORTGAGE, LLC concerning the transactions alleged in

the Complaint. All of these books, records and documents are kept by GMAC MORTGAGE, LLC in the regular course

of its business as servicer of the loan transaction and are made at or near the time by, and from information transmitted  
by, persons with personal knowledge of the facts such as your Affiant. It is the regular practice of GMAC  
MORTGAGE, LLC to make and keep these books, records, and

FURTHER AFFIANTS SAYETH NOT.

Type Name Here  Jeffrey Stephan  
Limited Signing Officer



# Withdrawal of Affidavits of Amounts Due



IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CIVIL ACTION

U.S. BANK NATIONAL ASSOCIATION AS  
TRUSTEE FOR REMSI 2007SL,

Plaintiff,

vs.

CASE NO.: CA CE-09-022986  
DIVISION: 09

## **NOTICE**

### **NOTICE**

Professional Conduct of the Rules Regulating The Florida Bar, the undersigned

law firm hereby notifies the Court as follows:

1. An affidavit of indebtedness was served in the above-styled matter in support of Plaintiff's motion for summary judgment, ("the Affidavit").
2. The undersigned law firm has recently been notified that the information in the Affidavit may not have been properly verified by the affiant; and accordingly, the Affidavit is hereby withdrawn.
3. The undersigned law firm was not aware of the foregoing information when the Affidavit was filed with the Court.
4. The undersigned law firm drafted the Affidavit based upon the information and business records provided by its client, and to the best of its knowledge and information, believes, in good faith, that the amounts reflecting the indebtedness contained therein accurately reflected the information provided by its client and were believed to be correct when filed.
5. A new, properly verified affidavit will be filed when and as appropriate.



# Withdrawal of Affidavits of Amounts Due



IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CIVIL ACTION

U.S. BANK NATIONAL ASSOCIATION AS  
TRUSTEE FOR RFMSI 2007S1,  
Plaintiff,

vs.

ERIC SIVERSON, et al,

Defendant(s).

CASE NO.: CA99-022986  
DIVISION: 09

## NOTICE

Pursuant to Rule 4-3.3, Rules of Professional Conduct of the Rules Regulating The Florida Bar, the undersigned law firm hereby notifies the Court as follows:

2. The undersigned law firm has recently been notified that the information in the Affidavit may not have been properly verified by the affiant, and accordingly, the Affidavit is hereby withdrawn.

WITH THE COURT

4. The undersigned law firm drafted the Affidavit based upon the information and business records provided by its client, and to the best of its knowledge and information, believes, in good faith, that the amounts reflecting the indebtedness contained therein accurately reflected the information provided by its client and were believed to be correct when filed.
5. A new, properly verified affidavit will be filed when and as appropriate.



# ASSIGNMENT OF MORTGAGE

1. Note the address of the Assignor, Home Savings of America F. A. (HSA) is blank. HSA was acquired in 1998 by Washington Mutual Bank (WAMU) they no longer exist.

FOR VALUE RECEIVED, on or before December 12, 2002, the undersigned, HOME SAVINGS OF AMERICA F.A. ("Assignor") whose address is [redacted] assigned, transferred and conveyed to: JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, ("Assignee") whose address is 7255 Baymeadows Way, Mailstop Jaxa 2035, Jacksonville, FL 32256, its successors and/or assigns, all of the right, title, and interest of Assignor in and to that certain Mortgage (the "Mortgage") dated August 26, 1988 and recorded September 06, 1988 in Official Records Book 5495 at Page 1186 of the public records of HILLSBOROUGH COUNTY, Florida, encumbering the following-described real property:

LOT 3, BLOCK G, REVISED MAP OF BAY CITY, ACCORDING TO MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 54, OF THE PUBLIC RECORDS OF HILLSBOROUGH COUNTY, FLORIDA. TOGETHER WITH THE NORTH 1/2 OF CLOSED 18.00 FOOT ALLEY ABUTTING ON THE SOUTH.

as the same may have been amended from time to time; together with the Note and indebtedness secured thereby.

MORTGAGOR(S): GRADY B. SYKES II



CLOSED 18.00 FOOT ALLEY ABUTTING ON THE SOUTH.

as the same may have been amended from time to time; together with the Note and indentures secured thereby.

MORTGAGOR(S): GRADY B. SYKES II

2. Note the date of the assignment, December 22, 2008 which is after the lawsuit was filed on December 18, 2008.

4. Notice the Notary, D. Pekusic and the witness, Rushir Causevic, both attesting to the fact that, known to them, Patricia Miner is an Asst Vice President of HSA and that Ann Garbis is a Vice President of HSA. Home Savings was acquired in 1998 by Washington Mutual Bank (WAMU) they no longer exist.

3. Note the signers for the Assignor, Home Savings of America F.A. (HSA). They are not employed by Home Savings, they are employed by the Plaintiff, J.P. Morgan. Home Savings was acquired in 1998 by Washington Mutual Bank (WAMU) they no longer exist.

IN WITNESS WHEREOF, Assignor has executed and delivered this Instrument on this 22 day of December, 2008.

Witness  
Typed Name: Diana Pekusic  
Witness  
Typed Name: RUSHIR CAUSEVIC

HOME SAVINGS OF AMERICA F.A.  
Typed Name: PATRICIA MINER  
Title: VP, Vice President  
Typed Name: Ann Garbis  
Title: Vice President  
(After Corporate Seal)

STATE OF Florida  
COUNTY OF MIAMI

BEFORE ME, the undersigned, personally appeared PATRICIA MINER and Ann Garbis as Asst Vice President and Vice President respectively, and known to me to be the persons that executed the foregoing instrument, and acknowledged that they executed the foregoing as its duly authorized officers and that such execution was done as the free act and deed of HOME SAVINGS OF AMERICA F.A. this 22 day of December, 2008.

Notary Public: D. Pekusic  
My commission expires: Commission # 00435407 Expires May 30, 2009

Recording requested by, prepared by and return to:  
Hendrys Cabrera  
Florida Default Law Group, P.L.  
P.O. Box 25013  
Tampa, Florida 33622-5013  
F0818906-WASHINGTON MUTUAL BANK, 862 WASHINGTON MUTUAL BANK, FA



# Sample Notice of Lis Pendens



This space is for recording purposes only

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL  
CIRCUIT, IN AND FOR PALM BEACH COUNTY,  
FLORIDA  
GENERAL JURISDICTION DIVISION  
CASE NO: 2010 APR -1 PM 1:50  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY  
CIRCUIT CIVIL

US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MASTR  
ASSET BACKED SECURITIES TRUST 2006-NC1  
PLAINTIFF

VS.

VICTORIA R. MUNNIAL, UNKNOWN SPOUSE OF VICTORIA R.  
MUNNIAL IF ANY; ANY AND ALL UNKNOWN PARTIES CLAIMING  
BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED  
INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD  
OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN  
INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES OR OTHER  
CLAIMANTS; THE TRAILS AT ROYAL PALM BEACH, INC.; JOHN  
DOE AND JANE DOE AS UNKNOWN TENANTS IN POSSESSION  
DEFENDANT(S)

## NOTICE OF LIS PENDENS

1. TO: The above named Defendants, AND ALL OTHERS WHOM IT MAY CONCERN:

2. YOU ARE NOTIFIED of the institution of this action by the Plaintiff against you seeking to foreclose the Note and Mortgage encumbering the described property and the decreeing of a sale of the property under the direction of the court in default of the payment of the amount found to be due the Plaintiff under the Note and Mortgage, and for other, further and general relief set forth in the Complaint.

3. The property involved is that certain parcel, lot or unit situate, lying and being in PALM BEACH County, Florida, as set forth in the mortgage recorded in Official Records Book 19434, at Page 1244, more particularly described as follows:

1, Broward County, Florida, this 31 day of April, 2010.

*Copy*  
MARIE A. FOX  
Bar #: 41909

Miriam Mendiea  
Bar #: 0866880  
Law Offices of David J. Stern, P.A.  
Attorney for Plaintiff  
900 South Pine Island Road, Suite 400  
Plantation, FL 33324-3920  
(954) 233-8000

10-17198 ASCF



Florida Assignment of Mortgage  
 (File Assignment Judgment)  
 2020-0904W (FL) 21-1103  
 15187  
 1005710035  
 © 2020 FRED PORTER ACCOUNTS - MAIL09172994



ASSIGNMENT  
undersigned holder  
A 92612  
transfer and convey  
to the  
existing under the  
JUL 20 2006  
and MARION A  
Mary Mortgage C  
tuted in public be  
Attached hereto

as certain Mortgage dated July 21, 2005

County, State of Florida,

such Mortgage having been given to secure payment of TWO HUNDRED  
(\$ 200,000 00)  
(Include the Original Principal Amount)

**Palm Beach County, State of Florida**

2025/05/20

1503

State of California  
County of Grange

# 1950

[illegible]

# Applied I Nanotechnology



# Stamped Signatures



This form was prepared by: New Century Mortgage Corporation  
address: 19400 Von Karman, Suite 1000  
Irvine, CA 92612

File # 10-17176

## ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 19400 Von Karman, Suite 1000, Irvine, CA 92612 does hereby grant, sell, assign, transfer and convey, unto US Bank National Association, AS TRUSTEE FOR NATION'S MORTGAGE SECURITIES TRUST 2006-NC1 a corporation organized and existing under the laws of Florida whose address is 11111 N. 11th Street, Suite 200, Ft. Lauderdale, FL 33305 a certain Mortgage dated October 8, 2005 Victoria R. Munniala, A Single Woman FT. MILL, SC 29715, made and executed by

to and in favor of New Century Mortgage Corporation  
following described property situated in Palm Beach  
See Legal Description Attached Hereto and Made a Part Hereof  
County, State of Florida

such Mortgage having been given to secure payment of the  
sum of \$ 150,450.00  
No. 19434, at page 1244 (for advice  
Palm Beach County,  
described and the money due and to become due thereon will  
TO HAVE AND TO HOLD the same unto Assignor,  
conditions of the above-described Mortgage.

IN WITNESS WHEREOF the undersigned

10/12/05

NEW CENTURY MORTGAGE CORPORATION

(Assignor)

*Stephen L. Nagy*

(Signature)

Stephen L. Nagy / A.V.P. Vault Services

Witness  
*Stephen L. Nagy*

Witness  
*Stephen L. Nagy*

Witness  
*Stephen L. Nagy*

Witness  
*Stephen L. Nagy*

Witness  
*Stephen L. Nagy*

Witness  
*Stephen L. Nagy*

Witness  
*Stephen L. Nagy*

Attest: Notary Public



# Affidavit of Correction due to assignment of a mortgage that had been fully paid (St. Lucie Co.)

## AFFIDAVIT OF CORRECTION

Each undersigned affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the AFFIDAVIT OF MISSING ASSIGNMENT, recorded on 01/15/2009, in Book 3051, Page 2129, Instrument Number 3300532, in the County of ST. LUCIE, State of FL regarding property know as: 1174 SW IRVING STREET, PORT SAINT LUCIE, FL 34983, contained the following error:

3. That the undersigned, having received final payment for the sum secured by the above mentioned Mortgage/Deed of Trust, is recording this document solely for the purpose of effecting a Discharge/Satisfaction/Reconveyance/Release of the Mortgage/Deed of Trust as this loan has been satisfied, and the undersigned indemnifies against any loss which may occur in regards to the releasing/discharging and/or reconveying of this Mortgage/Deed of Trust.

Affiant makes this affidavit for the purpose of giving notice correcting the above-described instrument as follows:

3. That the undersigned is recording this document solely for the purpose of effecting a foreclosure on the above listed property.

Affiant is knowledgeable of the agreement and the intention of the parties in this regard. Affiant is the drafter of the original instrument being corrected.

Signature of Affiant

Linda Green  
Print or Type Name



Affidavit of Correction due to an assignment of mortgage  
that had been fully paid. (Palm Beach Co.)

### AFFIDAVIT OF CORRECTION

Each undersigned affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the AFFIDAVIT OF MISSING ASSIGNMENT, recorded on 01/13/2009, in Book 23034, Page 0986, Instrument Number 20090015260, in the County of PALM BEACH, State of FL regarding property know as: 3720 37TH WAY, WEST PALM BEACH, FL 33407, contained the following error:

3. That the undersigned, having received final payment for the sum secured by the above mentioned Mortgage/Deed of Trust, is recording this document solely for the purpose of effecting a Discharge/Satisfaction/Reconveyance/Release of the Mortgage/Deed of Trust as this loan has been satisfied, and the undersigned indemnifies against any loss which may occur in regards to the releasing/discharging and/or reconveying of this Mortgage/Deed of Trust.

Affiant makes this affidavit for the purpose of giving notice correcting the above-described instrument as follows:

3. That the undersigned is recording this document solely for the purpose of effecting a foreclosure on the above listed property.



# Affidavits of Correction due assignments of mortgage that had been fully paid (Broward Co. and Palm Beach Co.)

RECORD & RETURN TO:  
DOCK  
1111 ALDERMAN DR.  
SUITE 300  
ALBUQUERQUE, NM 87106  
255-8887

## AFFIDAVIT OF CORRECTION

Each undersigned affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the AFFIDAVIT OF MISSING ASSIGNMENT, recorded on 07/29/2009 in Book 45943, Page 723, Instrument 198376154, in the county of BROWARD, FL, regarding property known as: 12112 SAINT ANDREWS PLACE #108, MIRAMAR, FL 33025, contained the following paragraph in error which should be struck completely:

3. That the undersigned, having received final payment for the sum secured by the above mentioned Mortgage/Deed of Trust, is recording this document solely for the purpose of effecting a Discharge/Release/Rescission/Release of the Mortgage/Deed of Trust as this loan has been satisfied, and the undersigned indemnifies against any loss which may occur in respect to the missing/discrepancy/erroneous recording of this Mortgage/Deed of Trust.

Affiant makes this affidavit for the purpose of giving notice of the above-described instrument by striking paragraph 3 entirely, as the subject mortgage has not yet been fully paid, discharged or satisfied and remains of record.

Original recorded affidavit, assigning Mortgage/Deed of Trust from COUNTRYWIDE HOME LOANS to FIDELITY BANK, INC., as LENDER, MICHAEL SCARNE, as TRUSTEE, and JAMES SCARNE, as TRUSTEE, (ONE MORTGAGE CORPORATION, a Florida limited liability company, a married woman and ROBERT SCARNE, her husband, as the original Mortgagee/Trustee).

Affiant is knowledgeable of the agreement and the intention of the parties in this regard. Affiant is the drafter of the original instrument being corrected.

*[Signature]*  
Signature of Affiant  
Print & Type Name

STATE OF GA  
COUNTY OF FULTON

On this day, 2/19/09, being my birthday, a notary public in the state of Georgia, personally appeared Elizabeth Green, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Witness my hand and official seal on the date hereabove set forth.

*[Signature]*  
Notary Public  
My Commission Expires:  
Elizabeth Green  
Notary Public  
Fulton County  
State of Georgia  
My Commission Expires  
Address: 1111 Alderman Drive, Suite 300, Alpharetta, GA 30005  
Phone Number: 770-753-4373



RECORD & RETURN TO:  
DOCK  
1111 ALDERMAN DR.  
SUITE 300  
ALBUQUERQUE, NM 87106  
255-8887

## AFFIDAVIT OF CORRECTION

Each undersigned affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the AFFIDAVIT OF MISSING ASSIGNMENT, recorded on 07/13/2008, in Book 23634, Page 6946, Instrument Number 2009015260, in the County of PALM BEACH, State of FL, regarding property known as: 3720 37TH WAY, WEST PALM BEACH, FL 33407, contained the following error:

3. That the undersigned, having received final payment for the sum secured by the above mentioned Mortgage/Deed of Trust, is recording this document solely for the purpose of effecting a Discharge/Release/Rescission/Release of the Mortgage/Deed of Trust as this loan has been satisfied, and the undersigned indemnifies against any loss which may occur in respect to the missing/discrepancy/erroneous recording of this Mortgage/Deed of Trust.

Affiant makes this affidavit for the purpose of giving notice of the above-described instrument as follows:

3. That the undersigned is recording this document solely for the purpose of effecting a rescission on the above listed property.

Affiant is knowledgeable of the agreement and the intention of the parties in this regard. Affiant is the drafter of the original instrument being corrected.

*[Signature]*  
Signature of Affiant  
Print & Type Name

STATE OF GA  
COUNTY OF FULTON

On this, 8/12/07, being my birthday, a notary public in the state of Georgia, personally appeared Elizabeth Green, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Witness my hand and official seal on the date hereabove set forth.

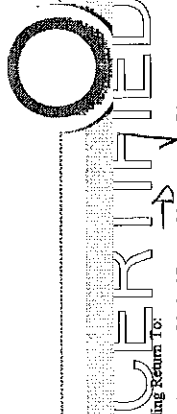
*[Signature]*  
Notary Public  
My Commission Expires:  
Elizabeth Green  
Notary Public  
Fulton County  
State of Georgia  
My Commission Expires  
May 21, 2011



Prepared by: Shelly Schaffner, 770-753-4373 ext. 2245



# \$164k Question



After Recording Return To:  
Sebring Capital Partners, Limited Partnership  
4000 International Drive, #3000  
Carrollton, Texas 75007

Signature Title  
8455 W Linebaugh Ave  
Tampa, FL 33625

PAT FRANK CLERK OF COURT  
HILLSBOROUGH COUNTY  
JULY TAX PD (F.S. 201.08) 577.15  
JULY TAX PD (F.S. 199) 329.80  
DEPUTY CLERK S. Edison

[Space Above This Line For Recording Data]

Loan Number 511655  
MERS Number 10026560005116558

## MORTGAGE

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated JULY 26, 2006, together with all Rides to this document.  
(B) "Borrower" is KARLENE LUDWIG, A SINGLE PERSON and ALFRED H. EASTBORN, A SINGLE PERSON.  
(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized under the laws of Delaware and has an address and telephone number of P.O. Box 7076, First National Bank Building, Wilmington, Delaware 19880.

(E) "Note" means the promissory note signed by Borrower and dated JULY 26, 2006. The Note states that Borrower owes Lender ONE HUNDRED SIXTY-FOUR THOUSAND NINE HUNDRED AND 00/100ths Dollars (U.S.\$164,900.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 1, 2036.

- (F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."  
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.  
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input checked="" type="checkbox"/> Condominium Rider   | <input type="checkbox"/> Second Home Rider           |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Planned Unit Development Rider | <input checked="" type="checkbox"/> Floor Rate Rider |
| <input checked="" type="checkbox"/> 1-4 Family Rider      | <input type="checkbox"/> Biweekly Payment Rider         |  |

\* where address is: 12516 Eagles Entry Dr., Odessa, FL 33556



And you thought your mortgage was high?

Prepared by: **ROBIN SUVARNA**  
Covent Loan Services, LLC  
1691 Worthington Road, Suite 100  
West Palm Beach, FL 33406  
Phone Number: 561-582-5835

ORIGINAL COPY

ALLONGE

BORROWERS: KARLENE LUDWIG AND ALFRED H. EASTBUEN

PRESENTOWNER AND HOLDER: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR SEBRING CAPITAL PARTNERS, LIMITED PARTNERSHIP

NOTE EXECUTION DATE: JULY 26, 2006

NOTE AMOUNT: \$42,214,400.00

This allonge shall be annexed to the original Note (or to a copy of the Note with a Lost

Note Affidavit) same from the REGISTRAR PARTNERS, LIMITED PARTNERSHIP of said transfer SOLELY AS N

no further inter Date: MARCH

BORROWERS: KARLENE LUDWIG AND ALFRED H. EASTBUEN


PRESENTOWNER AND HOLDER: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR SEBRING CAPITAL PARTNERS, LIMITED PARTNERSHIP

NOTE EXECUTION DATE: JULY 26, 2006

NOTE AMOUNT: \$42,214,400.00

EQUITY LOAN TRUST 2007-HF1 ASSET BACKED PASS-THROUGH CERTIFICATES, without recourse, representation or warranty expires as implied this 24TH day of January 2008.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR SEBRING CAPITAL PARTNERS, LIMITED PARTNERSHIP

By:   
Name: Scott Anderson  
Title: Vice President

OFB Loan Number: 80280977



# Assignment for Defunct Assignee

Prepared by and Return to:  
Morris Hardwick, Schneider  
1303 Hightower Trail, Suite 315  
Sand Springs, GA 30350  
Phone Number: 12295989

RECORDED 06/05/2010 14:07:02  
Palm Beach County, Florida  
Sharon R. Bock, CLERK & COMPTROLLER  
Pgs 1144 - 1145; (2pgs)

## Assignment of Mortgage

Assignor, Mortgage Electronic Registration Systems Inc., as nominee for AMERICAN

Assignor, Mortgage Electronic Registration Systems Inc., as nominee for AMERICAN  
BROKERS CONDUIT, whose address is c/o CitiMortgage, Inc., 1000 Technology Dr., O'Fallon,  
MO 63368

10, 2006, recorded among the Land Records of PALM BEACH County, Florida in Book 20057,  
Page 0677, as Instrument # 20060153122 in the original principle amount of \$222,205.00

Property Address: 3201 RENAISSANCE WAY, BOYNTON BEACH, FL 33426

Witness this

July 28, 2010

Mortgage Electronic Regi  
for AMERICAN BROKERS CONDUIT

Scott Scheiner, Assistant Secretary

Property Address: 3201 RENAISSANCE WAY, BOYNTON BEACH, FL 33426

Witness this

July 28, 2010



# American Brokers Conduit BANKRUPT 8/7/2007

Official Form 1 (04/07)

United States Bankruptcy Court DISTRICT OF DELAWARE		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): American Home Mortgage Holdings, Inc.	Name of Joint Debtor (Spouse) (Last, First, Middle):	
All Other Names used by the Debtor in the last 5 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 5 years (include married, maiden, and trade names):	
Last four digits of Soc. Sec./Complete EIN or other Tax ID. No. (if more than one, state all): 13-4056303	Last four digits of Soc. Sec./Complete EIN or other Tax ID. No. (if more than one, state all):	
Street Address of Debtor (No. and Street, City, and State): 538 Broadhollow Road Medville, NY	Street Address of Joint Debtor (No. and Street, City, and State):	

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

Type of Debtor (Form of Organization) (Check one)	Chapter 11
<input type="checkbox"/> Individual (includes Joint) See Exhibit D on page 2	
<input checked="" type="checkbox"/> Corporation (includes LLC)	
<input type="checkbox"/> Partnership	
<input type="checkbox"/> Other (if debtor is not on check this box and state	
In re:	X
AMERICAN HOME MORTGAGE HOLDINGS, INC., a Delaware corporation, et al.,	Case No. 07-11047 (CSS)
Debtors.	Joint Administration Pending
	X

AGENDA OF MATTERS SCHEDULED FOR FIRST DAY HEARING ON  
AUGUST 7, 2007 AT 3:00 P.M. (ET)



# Assignment by a defunct institution

This Instrument Prepared By  
And Returned To:  
Daniel C. Consuegra, Esquire  
9204 King Palm Drive  
Tampa FL 33619-1328

OWB-OneWestBank, FSB v. Gutierrez, Uriel & Evette

File No.: 38410  
Loan No.: 1007889361

Sharon R. Bock, CLERK & CO  
Pgs 1039 - 1041; (3pgs)

## ASSIGNMENT OF MORTGAGE

COMES NOW, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS

NOMINEE FOR INDYMAC BANK, F.S.B. (hereinafter assignor), and further in consideration of the

sum of  
USA, N  
to Janu  
assigne

HSBC BA  
signee), pri  
gained, so  
nsfer and:

IN WITNESS WHEREOF, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,  
AS NOMINEE FOR INDYMAC BANK, F.S.B., has hereunto set its hand and seal this

day of July, 2010.

Signed, sealed and delivered  
in the presence of:  
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., AS NOMINEE FOR INDYMAC  
BANK, F.S.B.

AS NOMINEE FOR INDYMAC BANK, F.S.B.,

day of July, 2010.



# IndyMac, out of business CLOSED July 2008



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## Federal regulators seize crippled IndyMac Bank

*A run on the Pasadena thrift ends in one of the biggest financial failures ever. Doors will reopen Monday.*

July 12, 2008 | Kathy M. Kristof and Andre

July 12, 2008

The federal government took control of Pasadena-based IndyMac Bank on Friday in what regulators called the second-largest bank failure in U.S. history.

\* \* \*

The bank's 33 branches will be closed over the weekend, but the Federal Deposit Insurance Corp. will reopen the bank on Monday as IndyMac Federal Bank, said the Office of Thrift Supervision in Washington.



# Assignment for Defunct Assignee



Prepared by and Return to:  
Morris, Hardwick, Schneider  
1303 Highway Trail, Suite 315  
Sandy Springs, GA 30350  
File # 3431-10

RECORDED 08/09/2010 14:07:02  
Palm Beach County, Florida  
Sharon E. Bock, CLERK & COMPTROLLER  
Pgs 1142 - 1143; (2pgs)

## Assignment of Mortgage

Assignor: Mortgage Electronic Registration Systems Inc., as nominee for LEHMAN BROTHERS BANK, FSB, A FEDERAL SAVINGS BANK, whose address is c/o CitiMortgage, Inc., 1000 Technology Dr., O'Fallon, MO 63368

Assignor: Mortgage Electronic Registration Systems Inc., as nominee for LEHMAN BROTHERS BANK, FSB, A FEDERAL SAVINGS BANK, whose address is c/o CitiMortgage, Inc., 1000 Technology Dr., O'Fallon, MO 63368

Assignee: CitiMortgage, Inc., whose address is 1000 Technology Dr., O'Fallon, MO 63368

Witness this July 22, 2010

Witness this July 22, 2010



Mortgage Electronic Registration Systems Inc., as nominee for LEHMAN BROTHERS BANK, FSB, A FEDERAL SAVINGS BANK

Scott Schneider, Assistant Secretary



# Lehman Brothers



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**Lehman Files for Bankruptcy; Merrill Is Sold**  
By ANDREW ROSS SORKIN  
Published: September 14, 2008

*This article was reported by Jenny Anderson, Eric Dash and Andrew Ross Sorkin and was written by Mr. Sorkin.*

TWITTER COMMENTS (0)

## Lehman Files for Bankruptcy; Merrill Is Sold

By ANDREW ROSS SORKIN  
Published: September 14, 2008







# Impossible Notaries- Stamps are only good for *four years* in Florida

Prepared by: Jaicee Wyende  
OCWEN LOAN SERVICING, LLC  
1661 Worthington Road, Suite 100  
West Palm Beach, FL 33409  
Phone Number: 561-682-8835  
497172887727  
Attorney Code: 24079

## ASSIGNMENT OF

FLORIDA  
This ASSIGNMENT OF MORTGAGE is from N  
whose address is c/o Ocwen Loan Servicing, LLC, 1661 Wor  
("Assignor") to DEUTSCHE BANK NATIONAL TRUS  
ESTATE CAPITAL TRUST 2005-HE3 MORTGAGE P  
HE3 address is C/O OCWEN LOAN SERVICING, LLC, 1  
Florida, 33409 ("Assignee").

For good and valuable consideration, the receipt a  
Assignor does by these presents hereby grant, bargain, sell, transfer and  
transferees and assigns forever, all of the right, title and interest of said A  
describing land therein, duly recorded in the Office of the Public Rec  
FLORIDA, as follows:

Mortgagor: RUFINO AQUINO AND VILMA AQUINO  
Mortgagee: NEW CENTURY MORTGAGE CORPORATION  
Document Date: JUNE 08, 2005

Amount: \$ 200,000.00

Recording Date: JUNE 23, 2005

Book/Volume/Docket/Liber: 18793

Page/Folio: 1479

Instrument: 20050388757

Property Address: 1201 PINE SAGE CIRCLE, WEST PALM BEACH, FL

## LEGAL DESCRIPTION:

Lot 1, of THE PALM CLUB, A RESIDENTIAL  
DEVELOPMENT, according to the Plat there  
of the Clerk of the Circuit Court in and for Pa  
Florida, recorded in Plat Book 45, Page 131.

Mortgagee: NEW CENTURY MORT  
Document Date: JUNE 08, 2005  
Amount: \$ 200,000.00  
Recording Date: JUNE 23, 2005  
Book/Volume/Docket/Liber: 18793  
Page/Folio: 1479

for NEW CENTURY  
He/She is personally k

is my hand and official seal.

NOTARY PUBLIC-STATE OF FLORIDA  
Elsie Ramirez  
Commission #LD0914833  
Expires: AUG. 09, 2013  
BONDED thru Atlantic Surety Co., Inc.

Notary Public



# Impossible Notaries



**NOT A NOTARIAL COPY**

KNOW ALL MEN BY THESE PRESENTS:

THAT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

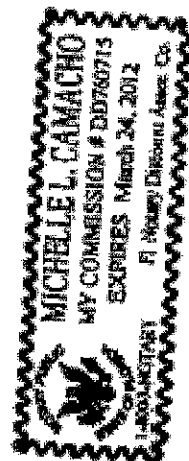
HEREBY CERTIFIES THAT THE SIGNATURE OF MICHELLE L. CAMACHO, 518 100, MINNEAPOLIS, MN 55423, HEREIN DESIGNATED AS THE DESIGNER, FOR AND IN CONNECTION WITH THE 2007 OF 31.00 DOLLAR AND OTHER BOOK AND VARIOUS OTHER INSTRUMENTS, WHICH IS BEING RECORDED, IS THE SIGNATURE OF MICHELLE L. CAMACHO, 518 100, MINNEAPOLIS, MN 55423, WHO IS THE DESIGNER OF THE INSTRUMENTS, AND THAT THE SIGNATURE OF MICHELLE L. CAMACHO, 518 100, MINNEAPOLIS, MN 55423, IS THE SIGNATURE OF MICHELLE L. CAMACHO, 518 100, MINNEAPOLIS, MN 55423, WHO IS THE DESIGNER OF THE INSTRUMENTS, AND THAT THE SIGNATURE OF MICHELLE L. CAMACHO, 518 100, MINNEAPOLIS, MN 55423, IS THE SIGNATURE OF MICHELLE L. CAMACHO, 518 100, MINNEAPOLIS, MN 55423, WHO IS THE DESIGNER OF THE INSTRUMENTS.

**NOT A NOTARIAL COPY**

Print Name: Michelle L. Camacho  
 STATE OF FL  
 COUNTY OF Brow

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 1 day of OCT., 2007, within my jurisdiction, the within named Casely Samuels who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 1 day of OCT., 2007  
Michelle L. Camacho  
 NOTARY PUBLIC









# Sworn Testimony of Tammie Lou Kapusta



Page 1

STATE OF FLORIDA  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LEGAL AFFAIRS  
AG # L10-3-1145

IN RE:  
INVESTIGATION OF LAW OFFICES  
OF DAVID J. STERN, P.A.

ORIGINAL

DEPOSITION OF TAMMIE LOU KAPUSTA

12:11 p.m. - 1:58 p.m.  
September 22, 2010  
Office of the Attorney General  
110 Southeast 6th Street, 10th Floor  
Fort Lauderdale, Florida 33301



**Testimony of Tammie Lou Kapusta,**  
former employee of Law Offices of David J. Stern, P.A.

Q Would these notaries be there watching her [Cheryl Samons] as she signed?

A No.

Q She would just sit there and sign stacks of them?

A Correct. As far as notaries go in the firm I don't think any notary actually used their own notary stamp. The team used them.

Q There were just stamps around?

A Yes.

Q And you actually saw that?

A I was part of that.



# Sample Assignment of Mortgage

## ASSIGNMENT OF MORTGAGE

### KNOW ALL MEN BY THESE PRESENTS:

#### THAT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Residing at 60 WELLS FARGO BANK, N.A., 3476 STATVIEW BLVD., FT. MILL, SC 29715 herein designated as the assignor, for and in consideration of the sum of \$1.00 Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto US BANK NATIONAL ASSOCIATION, NOT INDIVIDUALLY BUT SILENTLY AS TRUSTEE FOR THE HOLDER DEAR STEAKS ASSET BACKED SECURITIES TRUST 2004-AM1 residing or located at: CO AMERICA'S SERVING COMPANY, 476 STATVIEW BLVD., FT. MILL, SC 29715 herein designated as assignee, the mortgage entered by THOMAS F. GRUBER located in Lee County, Florida at Book INSTRUMENT # 20030001134 and page immediately preceding as follows:

CONDOMINIUM UNIT NO. E8B, IN BEAU RIVAGE, A CONDOMINIUM, ACCORDING TO THE DECLARATION THEREOF, RECORDED IN OFFICIAL RECORDS BOOK 468, PAGES 74-76, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AS AMENDED AND/OR SUPPLEMENTED FROM TIME TO TIME;

together with the note and each and every other obligation described in said mortgage and the money due and to become due thereon TO HAVE AND TO HOLD the same unto the said assignee, its successors and assigns, forever, but without recourse, on the undersigned.

Pursuant to the provisions of Sec. 489.071, Florida Statutes, the within named Trustee has the power and authority to execute, convey and to sell, or to lease, or to encumber, or otherwise to mortgage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereon affixed.

Signed in the presence of:

ATTEST:

WITNESSES:

Print Name:

WITNESS:

WITR NAME:

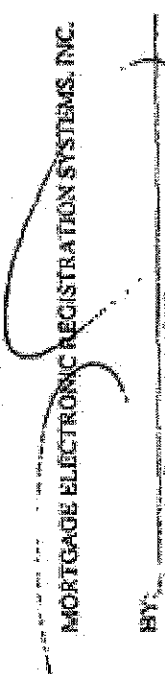
STATE OF FLORIDA

COUNTY OF DROWARD

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 3RD day of MAY, 2008, within my jurisdiction, the within named CHERYL SAMONS who acknowledged to me and to me as ASSISTANT SECRETARY and had her and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. acknowledged the foregoing assignment, after first having been duly advised by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State has aforesaid this 3RD day of MAY, 2008.



By:  MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

PRINT NAME: CHERYL SAMONS  
TITLE: ASSISTANT SECRETARY



# Testimony of Tammie Lou Kapusta, former employee of Law Offices of David J. Stern, P.A.



- Q So this was an assignment signing table?
- A Correct. Assignments or Affidavit A's that she was signing.
- Q What's an Affidavit A?
- A The indebtedness affidavit.
- Q Okay.
- A I think that's all Cheryl signed for. I think Beth signed for the rest. There's your Exhibit E's. We had different exhibits. That's how they signed them. When Cheryl was out of the office Tammie would sign them or Beth would go sign them.
- Q Beth would sign but it would say Cheryl Samons?
- A Correct.
- Q And Beth would be the signer?
- A Correct.
- Q Or Tammie Sweat?
- A Right.



# Testimony of Kelly Scott,

former employee of Law Offices of David J. Stern, P.A.



Page 1

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: L10-31095

IN RE:  
INVESTIGATION OF THE LAW OFFICES OF  
DAVID J. STERN, P.A.

STATE OF FLORIDA, OFFICE  
OF THE ATTORNEY GENERAL,

Plaintiff,

vs.

FLORIDA DEFAULT LAW GROUP,

Defendant.

SWORN STATEMENT  
OF  
KELLY SCOTT

Office of the Attorney General  
110 S.E. 6th Street, 10th Floor  
Fort Lauderdale, Florida 33301  
October 4th, 2010

ORIGINAL



# Testimony of Kelly Scott,

former employee of Law Offices of David J. Stern, P.A.



- Q. Other than Cheryl going around twice a day to sign the documents that she was reading, was there anyone else that did that, as well?
- A. Only Cheryl. And only when Cheryl was out of town, that she would go on vacation, there was someone else that would sign on her behalf. Who was it? I really don't know.
- Q. But they signed Cheryl's name?
- A. Yes.
- Q. And when you said those were the papers that were up on the long table on the four floors, what types of documents were those?
- A. Motions for Summary Judgment and Assignments of Mortgage.
- \* \* \*
- Q. But whatever was on those long tables, nobody was reading? They were just putting their names on them?
- A. Yes, they were just putting their names.
- Q. Yes, there was no one reading them?
- A. Yes, there was no reading them.



# Cheryl Samons "signature"

Pursuant to the provisions of Sec. 689.071, Florida Statutes, the within named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed.

Signed in the presence of:

ATTEST:

WITNESS:

Print Name: Barbara L. Green

WITNESS: [Signature]

Print Name: Barbara L. Green

STATE OF Florida

COUNTY OF Broward

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 19th day of September, 2007, within my jurisdiction, the within named CHERYL SAMONS who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and us its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 19 day of September, 2007.

NOTARY PUBLIC

BY: [Signature]  
PRINT NAME: CHERYL SAMONS  
TITLE: ASSISTANT SECRETARY  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.



# Cheryl Samons "signature"

Pursuant to the provisions of Sec. 689.041, Florida Statutes, the within-named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereon affixed, this 15 day of May, 2009, but effective as of the 17th day of July, 2008.

ATTEST:

WITNESS:

Print Name:

WITNESS:

Print Name:

STATE OF  
COUNTY OF

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 15 day of May, 2009, within my jurisdiction, the within named CHERYL SAMONS who is personally known to me and who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 15 day of May, 2009.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereon affixed, this 15 day of May, 2009, but effective as of the 17th day of July, 2008.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.  
(CORPORATE SEAL)

BY:

PRINT NAME: CHERYL SAMONS

TITLE: ASSISTANT SECRETARY

STATE OF FLORIDA  
COUNTY OF BROWARD

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 15 day of May, 2009, within my jurisdiction, the within named CHERYL SAMONS who is personally known to me and who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 15 day of May, 2009.



# Cheryl Samons "signature"

Pursuant to the provisions of Sec. 689.071, Florida Statutes, the within named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof

Pursuant to the provisions of Sec. 689.071, Florida Statutes, the within named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed, this 20 day of January, 2008.

Signed in the presence of:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

ATTEST:

WITNESS:

Print Name: AMANDA A MITCHELL

WITNESS:

Print Name: AMANDA A MITCHELL

STATE OF Florida

COUNTY OF Polk

WITNESS my hand and official seal in the County and State last aforesaid this 15 day of March, 2008.

by its proper corporate officers and its corporate seal to be hereto affixed, this 20 day of January, 2008.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

county and state, on this day of March, 2008, at Polk, Florida, I, Cheryl Samons, who is personally known to me, being duly sworn, depose and say that the foregoing instrument, after due execution, was signed by the within named Trustee, and that the contents of the foregoing instrument are true and correct to the best of my knowledge and belief.

day of

BY:

PRINT NAME: CHERYL SAMONS

TITLE: ASSISTANT SECRETARY



# Cheryl Samons "signature"

Pursuant to the provisions of  
conserve and to sell, or to lease,  
property encumbered thereby

In Witness Whereof, the undersigned has hereunto set his hand and seal, and the seal of the said corporation, on this 15 day of March, 2009.

Pursuant to the provisions of  
conserve and to sell, or to lease,  
property encumbered thereby

In Witness Whereof, the said  
officers and its corporate seal  
January 1, 2009.

Signed in the presence of:

ATTEST:

WITNESS: STATE OF FLORIDA  
COUNTY OF BROWARD

Print Name: AMANDA A MITCHELL

WITNESS:

Print Name: AMANDA A MITCHELL

STATE OF Florida

COUNTY OF Broward

WITNESS my hand and official seal in the County and State last aforesaid this 15 day of March, 2009.

Pursuant to the provisions of Sec. 689.071, Florida Statutes, the within named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and to seal, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby on this 15 day of March, 2009, but effective as of the 14 day of March, 2009.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.  
(CORPORATE SEAL)

BY: [Signature]  
PRINT NAME: CHERYL SAMONS  
TITLE: ASSISTANT SECRETARY

a county and state, on this  
day of March, 2009, at  
[Signature]  
who is personally known  
to me, and who is known  
to be the person who is  
behalf of MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC., after  
reading the foregoing instrument, after  
to do so.



# Cheryl Samons "signature"

Pursuant to the provisions of the Florida Statutes, Chapter 689, the undersigned hereby certifies that the foregoing instrument is the true and correct copy of the original instrument as the same appears of record in the public records of the State of Florida.

In Witness Whereof, the said Assignor has hereunto set his hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Pursuant to the provisions of the Florida Statutes, Chapter 689, the undersigned hereby certifies that the foregoing instrument is the true and correct copy of the original instrument as the same appears of record in the public records of the State of Florida.

In Witness Whereof, the said Assignor has hereunto set his hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Signed in the presence of:

ATTEST:

STATE OF FLORIDA  
COUNTY OF BROWARD

Print Name: Elizabeth Lee

WITNESS:

Print Name: AMANDA A MITCHELL  
STATE OF FLORIDA  
COUNTY OF BROWARD

WITNESS my hand:

In Witness Whereof, the said Assignor has hereunto set his hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

BY: \_\_\_\_\_  
(PRINT NAME: CHERYL SAMONS)  
TITLE: ASSISTANT SECRETARY

Signed in the presence of:

ATTEST:

WITNESS:

Print Name: Elizabeth Lee

WITNESS:

Print Name: Elizabeth Lee

STATE OF FLORIDA  
COUNTY OF BROWARD

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2007, within my jurisdiction, the within named \_\_\_\_\_ who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

NOTARY PUBLIC - STATE OF FLORIDA  
Elizabeth Lee  
Commission # DD625623  
Expires: APR. 26, 2011  
NOTARY PUBLIC



# Sample Assignment of Mortgage

**COPY**

Document Prepared By:  
Ron Michals 888-352-9638  
When Recorded Return To:  
DOCK  
1111 Alderman Dr.  
Suite 359  
Alpharetta, GA 30005  
AEM/A 647 3022586

COPY 08/09/2009 Printed: 08/04/09  
Doc# 07272109-Print Order ID: 5129  
Printed At:  
2401 W LAKE DR  
FORT WORTH, TX 76102  
LAWSON, S. J. (2009, 8/04/09) 1009 by DOCK, LLC

**ASSIGNMENT OF MORTGAGE**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, American Home Mortgage Servicing, Inc., as successor-in-interest to Option One Mortgage Corporation, whose address is 6501 Irvine Center Drive, Irvine, CA 92618, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto Citibank, N.A., as Trustee for American Home Mortgage Investment Trust 2004-3 Mortgage Backed Notes, Series 2004-3, whose address is 111 Wall Street, 5th Floor/Zone 2, New York, New York 10005, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights secured or to accrue under such mortgage:

Original Borrower(s): **RIGOBERTO GUERRERO**  
Original Mortgage: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR AMERICAN HOME MORTGAGE ACCEPTANCE, INC.**  
Book of Mortgage: **07692104** Loan Amount: **\$97,550.00**  
Recording Date: **08/04/2004** Book: **203** Page: **1387** Document #: **2454356**  
Mort. Commencement: **ASSIGNMENT EFFECTIVE DATE: 8/26/2009**

**LEGAL DESCRIPTION: THE NORTH HALF OF LOT 121 AND ALL OF LOT 122, BLOCK 4 OF SINGER LAKES PARK, ACCORDING TO THE PLAT HEREOF AS RECORDED IN PLAT BOOK 10, PAGE(S) 4 OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.**  
and recorded in the official records of the County of St. Lucie, State of Florida affecting Real Property and more particularly described on said Mortgage referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of 03/03/2009.

American Home Mortgage Servicing, Inc. as  
successor-in-interest to Option One Mortgage Corporation

*Lisa Whitfield*  
Witness: Lisa Whitfield

*Limbo Green*  
Vice President

*Christina Huang*  
Witness: Christina Huang

*Twynisha Thomas*  
Assistant Vice President

**COPY**



## Misuse of Falsified Assignments

- Improper assignments were recorded in the county land records offices
- Improper assignments were submitted to the Court in support of foreclosure motions
- Improper assignments were accepted by the Court as valid assignments that substantiated the foreclosure
- Homeowners were foreclosed upon based upon falsified assignments, by a bank who was not the true holder of the note.
- If the foreclosure judgment is obtained by a bank that does not hold the note, then the homeowner risks a second lawsuit by the real note holder, and possibly a having a second judgment against them on one property.



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL ACTION

DEUTSCHE BANK TRUST COMPANY  
AMERICAS AS TRUSTEE,  
Plaintiff,

vs.

MICHAEL PETERS, et al,

Defendant(s).

CASE NO.: 50-2008-CA-018381  
DIVISION: AW

MOTION TO RATIFY FINAL SUMMARY JUDGMENT  
OF MORTGAGE FORECLOSURE *nunc pro tunc*

COMES NOW Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE ("Plaintiff"), by and through the undersigned counsel and files this Motion to Ratify Final Summary Judgment of Mortgage Foreclosure *nunc pro tunc* (the "Motion") and in support thereof states as follows:

BACKGROUND FACTS

1. On May 24, 2010 this Court entered a Final Summary Judgment of Mortgage Foreclosure in favor of Plaintiff. A judicial sale is scheduled for December 30, 2010.
2. The undersigned law firm has recently been advised that the information contained in the affidavit as to Amounts Due and Owing submitted in support of Plaintiff's Motion for Summary Judgment may not have been properly verified by the affiant.
3. A Notice to this effect has been filed with the Court by the undersigned law firm.
4. Plaintiff has also submitted a new, properly verified affidavit by affiant which shows that the amounts reflecting the indebtedness contained in the original affidavit were accurate when filed. (The new, properly verified affidavit is attached hereto and incorporated by reference as Exhibit "A").
5. Based on the foregoing Plaintiff has sought to notify the Court of the foregoing verification issues and now seeks the ratification of the Final Summary Judgment of Mortgage Foreclosure *nunc pro tunc* as an additional reasonable remedial measure.
6. For the reason more fully set forth below, Plaintiff believes that entry of an Order granting this Motion

in the Affidavit is appropriate.



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL ACTION

DEUTSCHE BANK TRUST COMPANY  
AMERICAS AS TRUSTEE,  
Plaintiff,

vs.

MICHAEL PETERS, et al,  
Defendant(s).

CASE NO.: 50-2008-CA-018381  
DIVISION: AW

MOTION TO RATIFY FINAL SUMMARY JUDGMENT  
OF MORTGAGE FORECLOSURE *NUNC PRO TUNC*

COMES NOW Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE ("Plaintiff"), by and through the undersigned counsel and files this *Motion to Ratify Final Summary Judgment of Mortgage Foreclosure Nunc Pro Tunc* and in support thereof states as follows:

— BACKGROUND FACTS —

2. The undersigned law firm has recently been advised that the information contained in the Affidavit of Assets Due and Owing submitted in support of Plaintiff's Motion for Summary Judgment may not have been properly verified by the affiant,

reflecting the indebtedness contained in the original affidavit were accurate when filed. (The new, properly verified affidavit is attached hereto and incorporated by reference as Exhibit "A").

5. Based on the foregoing Plaintiff has sought to notify the Court of the foregoing verification issues and now seeks the ratification of the *Final Summary Judgment of Mortgage Foreclosure nunc pro tunc* as an additional reasonable remedial measure.

6. For the reason more fully set forth below, Plaintiff believes that entry of an Order granting this Motion in the *affidavit is accurate*



# Notices to Court of Improper Affidavits



Law Offices of David J. Stern, P.A.

900 South Pine Island Road, Suite 400  
Plantation, Florida 33324-3920

Primary Phone (954) 211-8060  
Auto Attendant (954) 211-8060  
Primary/Facsimile Fax (954) 211-8233  
Internet E-Mail [djstern@stern.com](mailto:djstern@stern.com)

*David J. Stern*  
Attorney at Law

*November 1*, 2010

Dear Judge

Pursuant to Rule 4-3.3, Rules of Professional Conduct of the Rules Regulating the Florida Bar, the undersigned law firm is filing the attached notice in the court file and providing a courtesy copy to your Honor in accordance with its ethical obligation of candor toward the tribunal.

As outlined in the attached notice, the undersigned law firm has recently been informed that the information contained in the Affidavit in support of Plaintiff's Motion for Summary Judgment may not have been properly verified by the affiant.

The undersigned law firm was not aware of the foregoing information when the Affidavit was filed with the court.

The undersigned law firm drafted the Affidavit based upon the information and business records provided by its client, and to the best of its knowledge and information, believes, in good faith, that the amounts reflecting the indebtedness contained therein accurately reflected the information provided by its client and were believed to be correct when filed.

Respectfully submitted,

*David J. Stern*  
David J. Stern, Esq.



# Notices to Court of Improper Affidavits



Law Offices of David J. Stern, P.A.

990 South Pine Island Road, Suite 400  
Plantation, Florida 33324-3920

Primary Phone (954) 231-8090  
Axis Attendant (954) 231-8608  
Primary/Facsimile Fax (954) 231-4333  
Internet E-Mail [dster@dstern.com](mailto:dster@dstern.com)

*DAVID J. STERN*  
Associate Attorney

*November 1*, 2010

Pursuant to Rule 4-3.3, Rules of Professional Conduct of the Rules Regulating the Florida Bar, the undersigned law firm is filing the attached notice in the court file and providing a courtesy copy to your Honor in accordance with its ethical obligation of candor toward the tribunal.

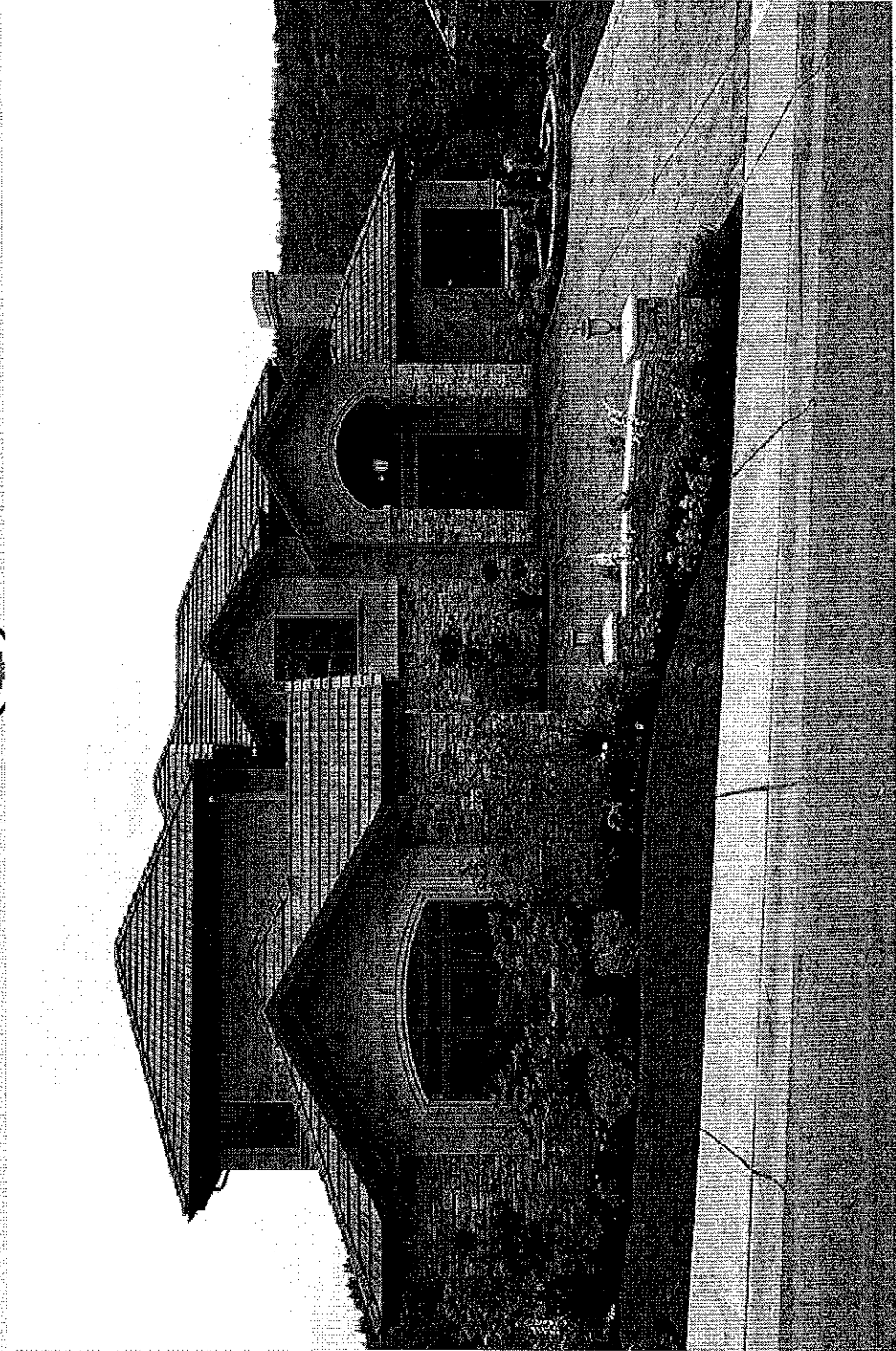
As outlined in the attached notice, the undersigned law firm has recently been informed that the information contained in the Affidavit in support of Plaintiff's Motion for Summary Judgment may not have been properly verified by the affiant.

*David J. Stern*  
DAVID J. STERN



# Real Estate in Florida (in pictures)

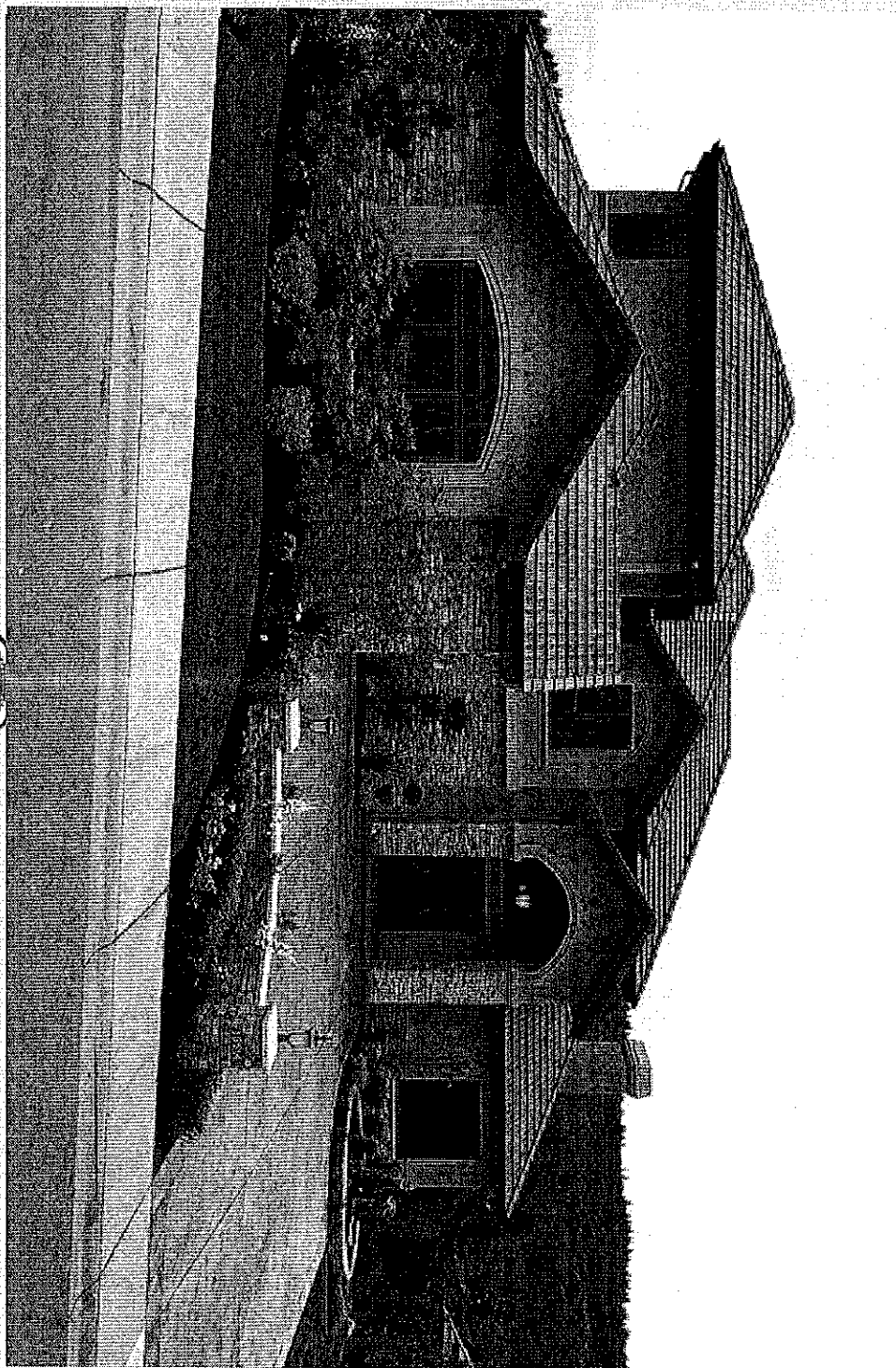
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# Real Estate in Florida (in pictures)

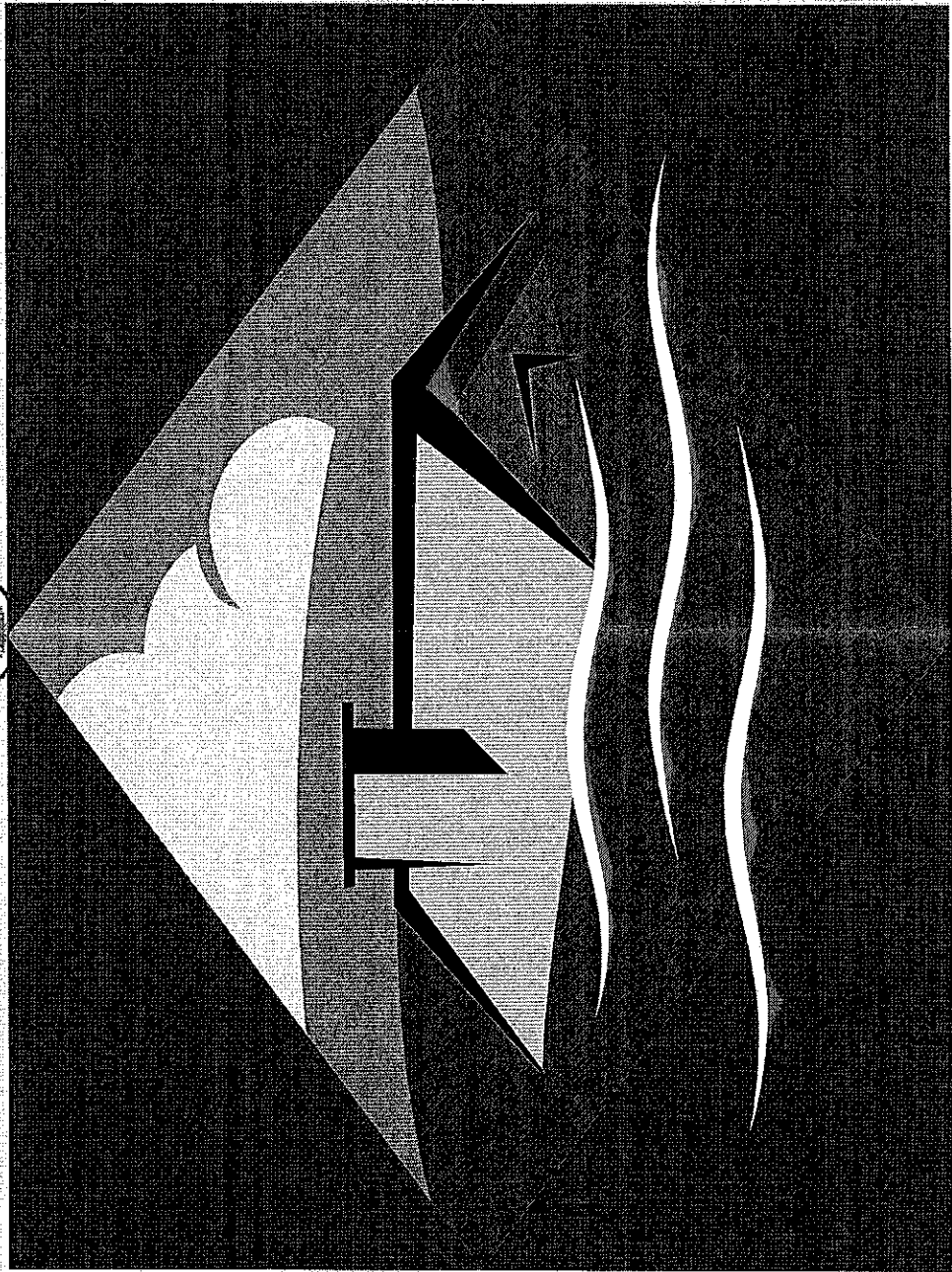
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# Real Estate in Florida (in pictures)

O





# Solutions for Foreclosures in Florida???

## ● Any solution must include:

- Assuring the integrity to the judicial foreclosure process
  - Documents submitted must be true and accurate
    - Affidavits must be proper in substance and form
    - Assignments must be properly executed and accurate
- Due process rights to the foreclosed homeowners
  - Proper service of process on the homeowner
  - Proper standing to sue by the plaintiff Bank
  - Substantive review of paperwork prior to foreclosure
- Foreclosures will have to go forward and there will be many more next year, but they need to be done within the law.



1                   STATE OF FLORIDA  
2                   OFFICE OF THE ATTORNEY GENERAL  
3                   DEPARTMENT OF LEGAL AFFAIRS

4                   AG # L10-3-1145

5 IN RE:

6 INVESTIGATION OF LAW OFFICES  
7 OF DAVID J. STERN, P.A.

8 \_\_\_\_\_ /

9

10

11

12               DEPOSITION OF TAMMIE LOU KAPUSTA

13

14

15

16               12:11 p.m. - 1:58 p.m.  
17               September 22, 2010  
18               Office of the Attorney General  
19               110 Southeast 6th Street, 10th Floor  
20               Fort Lauderdale, Florida 33301

21

22

Reported By:



23 Kalandra Smith  
24 Notary Public, State of Florida  
Apex Reporting Group  
25 Phone - 954.467.8204

2

1 APPEARANCES:

2 ON BEHALF OF THE STATE:

3 JUNE M. CLARKSON, ASSISTANT ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
4 110 Southeast 6th Street, 9th Floor  
Fort Lauderdale, Florida 33301

5 THERESA B. EDWARDS, ASSISTANT ATTORNEY GENERAL  
6 OFFICE OF THE ATTORNEY GENERAL  
110 Southeast 6th Street, 9th Floor  
7 Fort Lauderdale, Florida 33301

8 MARK R. BRIESMEISTER, FINANCIAL INVESTIGATOR  
OFFICE OF THE ATTORNEY GENERAL  
9 110 Southeast 6th Street, 9th Floor  
Fort Lauderdale, Florida 33301

10 ON BEHALF OF MS. KAPUSTA:

11 DOUG LYONS, ESQUIRE (TELEPHONIC)  
12 LYONS & FARRAR  
325 North Calhoun Street  
13 Tallahassee, Florida 32301

14 MARSHA LYONS, ESQUIRE (TELEPHONIC)  
LYONS & FARRAR  
15 325 North Calhoun Street  
Tallahassee, Florida 32301

16 HAROLD REGAN, ESQUIRE (TELEPHONIC)  
17 241 John Knox Road, Suite 100  
Tallahassee, Florida 32303

18

19 INDEX



20 Name Direct Cross Redirect Recross

21 Ms. Kapusta 3

22

23 EXHIBITS

24 Item Page

25 Copy of subpoena 3

3

1 PROCEEDINGS

2 ---

3 Deposition taken before Kalandra Smith, Court

4 Reporter and Notary Public in and for the State of

5 Florida at Large, in the above cause.

6 ---

7 THEREUPON:

8 TAMMIE LOU KAPUSTA

9 having been first duly sworn or affirmed, was examined

10 and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. CLARKSON:

13 Q State your name for the record, please.

14 A Tammie Kapusta.

15 Q I'd like you to take a look at this.

16 MS. CLARKSON: I'm handing the witness a copy



17 of the subpoena.

18 BY MS. CLARKSON:

19 Q Is that a copy of the subpoena that you  
20 received and are you here today due to that?

21 A Yes.

22 MS. CLARKSON: I'd like to mark this as A.

23 BY MS. CLARKSON:

24 Q Have you ever had your statement taken before,  
25 deposition or a sworn statement?

4

1 A No.

2 Q You just need to answer the questions verbally  
3 so that the court reporter can take them down. If you  
4 need to use the restroom or want some water just let me  
5 know. If you don't understand a question ask me to  
6 repeat it and I'll do the best I can so that you can  
7 understand the question. I'm not going to ask you to  
8 guess. Just answer it if you know.

9 A Okay.

10 Q What is your employment background for the  
11 past two years?

12 A I'm a paralegal.

13 Q Where did you get your education at?



14 A David Stern.  
15 Q You worked for David Stern; is that correct?  
16 A That's correct.  
17 Q You no longer work for him?  
18 A No.  
19 Q When did you start working for him?  
20 A '08.  
21 Q '08?  
22 A May, March of '08.  
23 Q Through when?  
24 A July of '09.  
25 Q What were your job titles at David Stern?

5

1 A I was the senior paralegal.  
2 Q What were your duties there at the firm?  
3 A I was responsible for my team from initiation  
4 to sale.  
5 Q What team?  
6 A I had Aurora Loan Services, Fannie Mae,  
7 Freddie Mac, broken down into alphabetical --  
8 Q Aurora, Freddie, and --  
9 A TCFM, which is Citibank and any client A  
10 through L.



11 Q That was a lot of clients.  
12 A I had twelve thousand files.  
13 Q How many were on your team?  
14 A Twelve girls.  
15 Q All paralegals?  
16 A Juniors is what they were.  
17 Q What were your duties?  
18 A I was responsible for everything for the file  
19 from beginning of initiation to --  
20 Q Explain to me what you did with the file.  
21 Just walk me through a file from start to finish.  
22 A When we would get the files they would be  
23 checked in by Cheryl Samons and her crew. Then they  
24 would come to us and we would have to file the motion  
25 for summary judgement, all the affidavits required to

6

1 file that, any contested issues I handed on the files,  
2 all assignments of mortgages, anything pertaining to the  
3 file itself to make sure that it was done in the correct  
4 manner.

5 Q Were lis pendens filed in the cases?

6 A Yes. Those were filed in a different  
7 department.



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Pages Omitted From

*In re: Investigation of Law Offices of David J. Stern, P.A.,*

AG No. L10-3-1145, Tammie Lou Kapusta Dep.

Sept. 22, 2010

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14     A   No. A lot of times we never did the  
15   substitution of plaintiff. Until almost to the time  
16   that I was leaving there is when things started to get  
17   ugly for them for the assignments. We were starting to  
18   have to do substitutions of plaintiff. If Nation Star  
19   had the file and they turned it over to Citibank we were  
20   foreclosing in Nation Star and not Citibank and we would  
21   need to do a substitution of plaintiff for that.

22     Q   Right. Would those be ex parte for the most  
23   part?

24     A   Yeah.

25     Q   They wouldn't dismiss the lawsuit and start

21

1   over?

2     A   No.

3     Q   They just substituted?

4     A   Yeah.

5     Q   They made it a practice to give the defendant  
6   notice?

7     A   I mean we would mail them to the defendant.

8     Q   The notice of substitution of party?

9     A   Yes.

10    Q   Would you file an assignment at that time?



11 A Sometimes. Sometimes they were already filed.  
12 Sometimes we would have to change it. It depended on  
13 the file. It depended on how long it had been with the  
14 firm. Those were business decisions that Cheryl made on  
15 a regular basis.

16 Q Do you know what her business decisions were  
17 based on?

18 A Nope. Nobody questioned that.

19 Q Can you tell me the execution of the  
20 assignments, how it worked?

21 A Assignments were prepared again from the  
22 casesum. All of our stuff comes from the casesum. They  
23 would be stamped and signed by a notary or not. Per  
24 floor we had a designated spot to place them and Cheryl  
25 would come once a day and sign them.

22

1 Q Sign them as what?

2 A As --

3 Q For the bank?

4 A Correct.

5 Q Or for MERS or whoever it was for?

6 A Correct.

7 Q Would these notaries be there watching her as



8 she signed?

9 A No.

10 Q She would just sit there and sign stacks of  
11 them?

12 A Correct. As far as notaries go in the firm I  
13 don't think any notary actually used their own notary  
14 stamp. The team used them.

15 Q There were just stamps around?

16 A Yes.

17 Q And you actually saw that?

18 A I was part of that.

19 Q You did it? Are you a notary?

20 A No, I'm not.

21 Q Did you sign as a witness?

22 A I did not. I signed as a witness on one  
23 document and after that I decided that I didn't want to  
24 put my name as a witness anymore.

25 Q Tell me about the stamps. You stamped them?

23

1 A Yeah, I had stamps. Each team had a notary on  
2 them or notaries that I was aware of. Whether they were  
3 or weren't wasn't --

4 Q You had stamps?



5 A Correct. We would stamp them and they would  
6 get signed.

7 Q Stamp them in blanks?

8 A Yes.

9 Q Who would sign them?

10 A Other people on the team that could sign the  
11 signature of the person or just a check on there or  
12 whatever.

13 Q Was that common practice?

14 A Yes.

15 Q Was that standard practice?

16 A Pretty much.

17 Q What about the witnesses?

18 A Those would be signed by juniors who were --

19 Q Standing there?

20 A Here, sign this. It has to go to Cheryl, sign  
21 it. Then it would go and sit at the desk where Cheryl  
22 would sign everything.

23 Q Out of view of the notary and out of view of  
24 the witnesses?

25 A Correct.

1 Q Do you know who implemented this procedure?



2 A Cheryl.

3 Q Cheryl did?

4 A Um-hum.

5 Q Did anybody else sign with the firm for the  
6 banks?

7 A Yes.

8 Q Who was that?

9 A There were people that were responsible for  
10 signing Cheryl's name. Cheryl, Tammie Sweat, and Beth  
11 Cerni. Those were the only three people that could sign  
12 Cheryl's name. If you ever look at assignments you'll  
13 see that they are not all the same.

14 MS. EDWARDS: What are the names again?

15 Cheryl, Tammie?

16 THE WITNESS: Tammie Sweat and Beth Cerni.

17 MS. EDWARDS: Could you spell that.

18 MS. CLARKSON: C-E-R-N-I.

19 BY MS. CLARKSON:

20 Q Did they practice Cheryl's signature?

21 A I would assume so.

22 Q Did you ever see them?

23 A Not practicing but I've seen them sign it.

24 Q Did you see somebody sign Cheryl's name?

25 A Yes.



1 Q That wasn't Cheryl?

2 A Yes. All the time.

3 Q Did Cheryl know about this?

4 A Yes.

5 Q Was it at her direction?

6 A Yes.

7 Q What was her position with the firm?

8 A When I started she was David's paralegal and  
9 had the team that I had. When we transferred into the  
10 new building she became this COO of the company.

11 Q Was that going on when you transferred  
12 buildings and when she was the COO?

13 A She was always the COO. She just never had  
14 the title.

15 Q But now she has the title?

16 A Correct.

17 Q Did the practice still continue?

18 A Oh yes.

19 Q With the signatures?

20 A Correct.

21 Q So even though she became the COO her job  
22 description didn't change?



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Pages Omitted From

*In re: Investigation of Law Offices of David J. Stern, P.A.,*

AG No. L10-3-1145, Tammie Lou Kapusta Dep.

Sept. 22, 2010

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2 A She was the team lead. She was a manager in  
3 the building on the fifth floor.

4 Q What else was on the fifth floor?

5 A GMAC and Homecomings I believe were the only  
6 ones that occupied the fifth floor if I'm not mistaking.  
7 Beth Cerni was -- GMAC was her team when she started  
8 with Stern many years ago.

9 MR. REGAN: Are you saying GMAC like G-M-A-C?

10 THE WITNESS: Yes.

11 MR. REGAN: Like General Motors Acceptance  
12 Corporation?

13 THE WITNESS: Correct.

14 MR. REGAN: Thank you.

15 BY MS. EDWARDS:

16 Q Did you ever hear any conversations in the  
17 firm about any particular judges or jurisdictions where  
18 there were problems with getting the foreclosures?

19 A Oh yeah. We knew what judges were what. We  
20 had what they called a bible. The bible contained every  
21 bit of information about every judge and what they were  
22 looking for. It made our job twice as difficult because  
23 you had to go by the bible.

24 Q Was there any arrangements made with any  
25 particular judges or jurisdictions on how the



1 foreclosures would be handled by Stern's office?

2 A I believe the only one that I'm well aware of  
3 that is just a large cluster of something is Lee County  
4 judges. They used to do what they call a rocket docket.  
5 It was five hundred files from our firm every other  
6 Friday.

7 BY MS. CLARKSON:

8 Q Would be filed or heard?

9 A Would be heard.

10 BY MS. EDWARDS:

11 Q Who arranged that?

12 A As far as I know Cheryl Samons and the county.

13 Q Cheryl and who?

14 A The county. I wasn't privy to that.

15 Q So how would you find out that --

16 A Because they would call them rocket dockets.  
17 We had to have five hundred files from our firm prepared  
18 for it. Originally we had an in-house counsel there or  
19 local counsel there. Then it went to our attorneys.  
20 Two attorneys from our firm or two attorneys per floor  
21 would go over to Lee County and do the rocket docket.  
22 We would load their files into the car.



23 Q So that was coordinated with Cheryl with the  
24 county?

25 A As far as I know. They were put on the rocket

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1 docket basically.

2 Q What I'm trying to find out was is Cheryl  
3 involved in the implementation of the rocket docket?

4 A Oh yes. She was responsible for all  
5 scheduling anywhere. Her Beverly McComas and Miriam  
6 Mendieta.

7 Q How was it that the rocket docket was created?

8 A I am not sure. That's what they called it.  
9 They were going to do a rocket docket. Lee County I  
10 guess was our largest county for foreclosures at the  
11 time.

12 Q Were you aware of her having any meetings with  
13 anyone there to implement or to come up with the idea to  
14 come up with the rocket docket?

15 A No, I'm not aware of any meetings?

16 Q Do you know who did that?

17 A My guess would be Miriam Mendieta and Beverly  
18 McComas because they were the controlling attorneys.

19 Q They would have been involved in the original



20 implementation of the rocket docket?

21 A Correct. They are the one who assigned  
22 attorneys. They're pretty much the ones that oversaw  
23 the scheduling for that. There's a few counties that we  
24 would just send over a sheet of paper that would have  
25 your unpaid, who was defaulted, when it was defaulted,

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1 and basic information. From what my understanding is  
2 when you go over there, as long as there was no response  
3 from anybody and it isn't contested the judges would  
4 just sign off on them as far as I know.

5 Q The final judgements?

6 A Correct.

7 Q So there would be a faxed over document with  
8 the basic information about the foreclosure on it and if  
9 nobody appeared in opposition the judges would sign the  
10 final judgements?

11 A Correct.

12 Q This was in Lee County?

13 A Yes. It wasn't faxed. The attorneys brought  
14 them. So if the judge wanted to look at something the  
15 files were there. That's my assumption. The files were  
16 just loaded into these attorneys cars and they were



17 elected to drive over there. It wasn't a choice. They  
18 picked which attorneys were going to go each week or  
19 ever other week whenever they decided to do the rocket  
20 docket.

21 Q And they decided that it would be five hundred  
22 that would be handled?

23 A It was five hundred from our firm, yes.

24 Q Was it also other firms?

25 A As far as I know. I'm not privy to that

60

1 information. I didn't work with other firms.

2 Q Were you aware of comparable practices to  
3 those you have just described with any other law firms  
4 in Florida?

5 A No. It wasn't something I discussed about  
6 other firms.

7 Q Are you aware of any payments that were made  
8 by David Stern's firm to any companies as a result of  
9 receiving the referrals of the foreclosure cases?

10 A Not that I'm aware of. I know that one  
11 particular bank that we dealt with, which was Aurora  
12 Leman Brothers, he had his own employees there in  
13 Aurora.



14 Q For that purpose?

15 A That was not something we knew. There's four  
16 employees that are there. I would have to look through  
17 some documents for their names. They worked for Aurora  
18 and were paid by David Stern if that makes sense. They  
19 worked in Aurora's building, ALS, but they were paid by  
20 David Stern to be there.

21 Q But you don't know what they did?

22 A It was to oversee the practice that was going  
23 on. I could tell you that Aurora did not want them  
24 there. They were not very nice to them. They constantly  
25 had issues with them. It was more or less for us like

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1 if we needed assignments to get them like that; whatever  
2 we needed to get them back immediately. Aurora was his  
3 baby and always has been.

4 Q Why is that?

5 A I believe that's what started his company.

6 Q So he had his own employees in Aurora?

7 A He went over there and hired them. They lived  
8 there. I think it's in Minneapolis. I'm not sure.

9 Q So David Stern personally went there and hired  
10 people to work in Aurora?



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Pages Omitted From

*In re: Investigation of Law Offices of David J. Stern, P.A.,*

AG No. L10-3-1145, Tammie Lou Kapusta Dep.

Sept. 22, 2010

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO. 50 2008 CA 040805XXXX MB

GMAC MORTGAGE, LLC,

Plaintiff,

-VS-

ANN M NEU A/K/A ANN MICHELLE  
PEREZ; DOUGLAS WILLIAM NEU;  
UNKNOWN TENANT (S) IN  
POSSESSION OF THE SUBJECT  
PROPERTY,  
Defendants.

---

DEPOSITION OF JEFFREY STEPHAN

Thursday, December 10, 2009  
1:00 p.m. - 2:30 p.m.

Conсор & Associates  
1655 Palm Beach Lakes Blvd., Ste. 500  
West Palm Beach, Florida 33401

Reported By:  
Jamie Reynolds Bentley, Court Reporter  
Notary Public, State of Florida  
Conсор & Associates  
1655 Palm Beach Lakes Blvd., Suite 500  
West Palm Beach, Florida 33401  
(561) 682-0905

Ph. 561.682.0905 - Fax. 561.682.1771  
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1 APPEARANCES:

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7

8 On behalf of the Defendant:

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- - -  
I N D E X  
- - -

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
JEFFREY STEPHAN				
BY MR. IMMEL	4			54
JEFFREY STEPHAN				
BY MS. ARROYAVE		51		

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1 PROCEEDINGS

2 - - -

3 Deposition taken before Jamie Reynolds Bentley, Court  
4 Reporter and Notary Public in and for the State of Florida  
5 at Large, in the above cause.

6 - - -

7 THE COURT REPORTER: Do you swear or affirm that  
8 the testimony you are about to give will be the truth,  
9 the whole truth and nothing but the truth?

10 THE WITNESS: I do.

11 Thereupon,

12 (JEFFREY STEPHAN)

13 having been first duly sworn or affirmed, was examined  
14 and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. IMMEL:

17 Q. All right. We are here on GMAC Mortgage, LLC  
18 versus Neu. This is the deposition of Jeffrey Stephan.  
19 I'm sure your attorney has gone over things with you a  
20 little bit. But if you could just keep one thing in  
21 mind, to answer, not to simply nod your head or anything  
22 like that. We need for your answers to be clear for the  
23 court reporter that way.

24 A. Yes.

25 Q. Could you please state your name for the



1 record.

2 A. My name is Jeffrey Stephan.

3 Q. Okay. And who do you work for?

4 A. GMAC, LLC.

5 Q. And is there a difference between GMAC, LLC  
6 and GMAC Mortgage, LLC?

7 A. GMAC, LLC -- I'm trying to think of the word  
8 to use -- the most recent name.

9 Q. Okay.

10 A. It's GMCA Mortgage Corporation.

11 Q. Okay.

12 A. I'm not sure how you would word that.

13 Q. Okay. So are they -- does GMAC, LLC -- now  
14 has that basically taken over these other entities --

15 A. Yes.

16 Q. -- that formerly existed?

17 A. Yes.

18 Q. So these entities no longer currently exist?

19 A. Right.

20 Q. Okay. And how long then have you been  
21 employed by GMAC, LLC?

22 A. Five years.

23 Q. Okay. And prior to that, it was GMAC Mortgage  
24 and GMAC Corporation?

25 A. That was as the whole five years.



1 Q. Oh, okay.

2 A. Yes.

3 Q. As the whole five years. And what is your  
4 title?

5 A. I'm a team leader in the foreclosure  
6 department.

7 Q. Okay. And what are your responsibilities?

8 A. I am the team lead of the document execution  
9 unit.

10 Q. Okay.

11 A. And also the service transfer unit.

12 Q. And so what type of documents do you  
13 ordinarily execute?

14 A. I execute on a daily basis assignments of  
15 mortgage, affidavits of any type that might be needed,  
16 deeds. Any type of the document that would need a  
17 signature of an officer of GMAC.

18 Q. Okay. And who do you report to?

19 A. I report to Margie Kwiatkowski.

20 Q. Could you spell that?

21 A. Yes. It's K-W-I-A-T-A-N-O-W-S-K-I.

22 Q. Okay. And approximately how many employees  
23 does GMAC Mortgage, LLC have?

24 A. I couldn't guess. I don't know.

25 Q. Sure. Okay. And as part of your



1 responsibilities, you execute assignments as a vice  
2 president of MERS?

3 A. Yes, that's correct.

4 Q. And in executing affidavits as a vice  
5 president, do you receive any compensation from MERS?

6 A. No.

7 Q. Have you had any training from MERS?

8 A. No.

9 Q. Okay. How many documents would you say you  
10 sign on an average week as far as executing affidavits  
11 and things of that nature?

12 A. It's very tough to estimate that to be honest  
13 with you.

14 Q. In a given month, would that be easier to say  
15 --

16 A. I would say --

17 Q. -- one hundred, 500?

18 A. -- in a month, my team brings to me  
19 approximately, I'd say a round number of 10,000. That's  
20 just an estimate, of course.

21 Q. Okay. And so, 10,000 your team brings to you.  
22 How many people do you oversee?

23 A. A team of 13 people.

24 Q. Okay. Now, would these people be given the  
25 duties of actually preparing the documents that you



1 ultimately sign and execute?

2 A. They would review the document that is given  
3 to them through our computer systems.

4 Q. Okay.

5 A. So they don't actually prepare it per se.  
6 They review it for the accuracy of what type of entity  
7 I'm signing as.

8 Q. Okay. How many different entities do you sign  
9 as?

10 MS. ARROYAVE: Objection: Form.

11 BY MR. IMMEL:

12 Q. Can you name what entities you sign --

13 A. I sign presently as MERS.

14 Q. Okay.

15 A. And under MERS as vice president or an  
16 assistant secretary. Also, I sign for GMAC Mortgage.  
17 And to be honest with you, it's too many entities for me  
18 to actually quote under GMAC. But it is as a limited  
19 signing officer.

20 Q. Okay. And earlier you stated that right now  
21 it's GMAC, LLC.

22 A. Uh-huh.

23 Q. You do still currently sign documents as GMAC  
24 Mortgage, LLC?

25 A. Yes, I do.



1 Q. Okay. And also as a corporation --

2 A. Yes.

3 Q. -- and some of the others that we've seen your  
4 signature on?

5 A. Yes, I do.

6 Q. Okay. Where then does the information that  
7 goes into the system that your team reviews --

8 A. Yes.

9 Q. -- where does that information come from?

10 A. The process that we use is -- and this is to  
11 my knowledge -- a file is referred to a foreclosure  
12 attorney stating exactly what entity would be needed  
13 through the referral unit. And at that point, the  
14 attorney receives the file to proceed with the  
15 foreclosure. That foreclosure name is generated upon  
16 GMAC supplying it on the referral. I'm not 100 percent  
17 sure of what that process is.

18 Q. Okay.

19 A. The documentation, as you stated, that you're  
20 asking about, is given to us after the attorney has been  
21 instructed on what name to foreclose in.

22 Q. And who instructs the attorney as to what name  
23 to foreclose it in?

24 A. It comes to our referral unit. Which is  
25 another process to my knowledge.



1           Q.    Okay.  Approximately, if 10,000 are signed in  
2           a given month, you know, on an average, how long would  
3           you say you spend executing each one and actually  
4           signing?

5           A.    It's tough to say.

6           Q.    Okay.  Would it be accurate to say that when  
7           these documents have been presented to you by your team  
8           --

9           A.    Uh-huh.

10          Q.    -- you take the face value that they are --  
11          they have been checked by your team?

12          A.    That would be a correct statement, yes.

13          Q.    So these documents wouldn't be actually  
14          executed on your own personal knowledge?

15          A.    Right.

16          Q.    It would be based on knowledge that came  
17          through --

18          A.    Right.

19          Q.    -- the chain --

20          A.    I'm sorry.

21                MS. ARROYAVE:  Can I interrupt just for a  
22                second?  I just want to make sure that he finishes  
23                his question before you answer.

24                THE WITNESS:  Sure.  Sorry.

25



1 BY MR. IMMEL:

2 Q. Yes, yes, that's true, too.

3 So the information that your team obtains  
4 isn't based on their personal knowledge either, it's  
5 located within the computer networks?

6 MS. ARROYAVE: Objection: Form.

7 BY MR. IMMEL:

8 Q. The information on the documents that you  
9 execute is stored within your data base?

10 A. No, somewhere else.

11 Q. No. Okay. The information then is that --  
12 your team, they get that from a computer network that  
13 you have, correct?

14 A. No.

15 Q. Where does your team get that information?

16 A. That information is first given to the  
17 attorney to foreclose under which name as needed. If we  
18 are stating some type of assignment, for example, the  
19 attorney, to my knowledge, and I'm not 100 percent sure  
20 of their process because I don't work for the attorney,  
21 they would do a title check to verify what name the lien  
22 is presently in.

23 Q. Okay.

24 A. At that point is when it would initial if an  
25 assignment would be needed or not.



1 Q. So at the direction of the attorney, your team  
2 creates these documents and then you execute them?

3 MS. ARROYAVE: Objection: Form.

4 BY MR. IMMEL:

5 Q. So your team executes documents at the request  
6 of attorneys?

7 MS. ARROYAVE: Objecting: Form. You can  
8 still answer it if you understand the question.

9 BY MR. IMMEL:

10 Q. Do you understand what I'm asking?

11 A. Yes, I understand what you're asking. My team  
12 does not create any documents.

13 Q. These documents are then sent from the  
14 attorney?

15 A. Yes.

16 Q. Okay. And you're -- so then the team that you  
17 oversee --

18 A. Uh-huh.

19 Q. -- simply reviews them for accuracy?

20 A. That's correct.

21 Q. Okay. And how do they verify the information  
22 is accurate?

23 A. They do not go into the system and verify the  
24 information as accurate. We are relying on our attorney  
25 network to ensure that they are asking for the correct



1 information.

2 Q. So the attorney creates these documents and  
3 you are relying that the attorney is correct?

4 A. Yes.

5 MS. ARROYAVE: Objection: Form.

6 BY MR. IMMEL:

7 Q. Okay. And then they are required to be  
8 notarized. Are they notarized in your office?

9 A. Yes.

10 Q. Is the notary present with you or is it down  
11 the hall?

12 A. The notary is in the same department.

13 Q. Same department. Okay. Are they physically  
14 present when you (sic) notarize this -- or when they  
15 notarize and then you execute it?

16 A. No, they are not physically present. But I  
17 will -- I do deliver them to the notary.

18 Q. All right.

19 A. And I wait for them to notarize it to hand  
20 them back to my team.

21 Q. Okay. All right. What department then? You  
22 said your department?

23 A. Right.

24 Q. And as part of their job responsibilities,  
25 would notarizing be their sole responsibility, or do



1       they have other responsibilities?

2           A.    They have other responsibilities.

3           Q.    Are any of the members of your team, people  
4       that also notarize documents that you execute?

5           A.    Yes.

6           Q.    Yes. Okay. Is there a job requirement that  
7       certain employees become notaries?

8           A.    I don't know.

9           Q.    Okay. And what type of -- what level of a  
10       type of employee would it typically be that is a notary?

11          A.    I don't know that either.

12          Q.    All right. Does the company pay for the  
13       process of becoming a notary or the renewal fees?

14          A.    Yes.

15          Q.    Okay. If a notary feels that they are being  
16       asked to notarize something that's done improperly, is  
17       there a process which they can, you know, raise that to  
18       anybody's attention?

19          A.    I honestly don't know.

20          Q.    You are not sure. Do you notarize any  
21       assignments of mortgage or other documents yourself?

22          A.    No.

23          Q.    Are you a notary?

24          A.    No.

25          Q.    How are witnesses ordinarily chosen?



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Pages Omitted From  
*GMAC Mortgage v. Neu*  
No. 08-CA-040805, Jeffrey Stephan Dep.  
Dec. 9, 2010

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