

**Case No. 75890**

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC,  
A NEVADA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

NATIONSTAR MORTGAGE, LLC, A  
DELAWARE LIMITED LIABILITY  
COMPANY,

Respondent.

Electronically Filed  
Nov 26 2018 09:45 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

From the Eighth Judicial District Court, Clark County  
The Honorable MICHAEL VILLANI, District Judge  
District Court Case No. A-13-684715-C

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**JOINT APPENDIX  
VOLUME I**

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JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593

DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580

KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301

**ALPHABETICAL INDEX**

<b>Vol.</b>	<b>Tab</b>	<b>Date Filed</b>	<b>Document</b>	<b>Bates Number</b>
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1	4	08/15/2013	Answer to Nevada Association Services and Counterclaim	JA_0035
1	5	08/19/2013	Answer to SFR's Counterclaim and Third Party Complaint	JA_0038
1	6	10/08/2014	Answer to Third Party Complaint	JA_0044
1	2	08/02/2013	Answer, Counterclaim and Third Party Complaint for Quiet Title and Injunctive Relief	JA_0011
1	1	07/08/2013	Complaint	JA_0001
5	18	01/31/2018	Court Minutes	JA_1107
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1	9	11/15/2017	Nationstar's Renewed Motion for Summary Judgment	JA_0062
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4	15	01/10/2018	Nationstar's Reply in Support of Motion for Summary Judgment and to Oppose Countermotion to Strike	JA_0964
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4	12	12/14/2017	Nationstar's Response in Opposition to SFR's Motion for Summary Judgment	JA_0931
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5	21	05/14/2018	Notice of Appeal	JA_1135
5	20	04/11/2018	Notice of Entry Order Granting Nationstar's Renewed Motion for Summary Judgment	JA_1121
5	19	04/11/2018	Order Granting Nationstar's Renewed Motion for Summary Judgment	JA_1111
1	8	08/01/2017	Recorder's Transcript of Hearing	JA_0056
5	17	01/23/2018	Recorders Transcript of Hearing	JA_1080
2	10	11/16/2017	SFR's Motion for Summary Judgment	JA_0337
3	10	Continued	SFR's Motion for Summary Judgment	JA_0491
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4	11	12/14/2017	SFR's Opposition to Nationstar's Motion for Summary Judgment and Counter Motion to Strike	JA_0853
5	16	01/12/2018	SFR's Reply in Support of Countermotion to Strike	JA_1062
4	13	12/28/2017	SFR's Reply in Support of Its Motion for Summary Judgment	JA_0943
5	23	05/09/2014	Stipulation and Order Dismissing Ignacio Gutierrez without Prejudice	JA_1144
5	24	05/12/2014	SFR's Notice of Entry of Stipulation and Order	JA_1148

### CHRONOLOGICAL INDEX

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1	4	08/15/2013	Answer to Nevada Association Services and Counterclaim	JA_0035
1	5	08/19/2013	Answer to SFR's Counterclaim and Third Party Complaint	JA_0038
1	6	10/08/2014	Answer to Third Party Complaint	JA_0044
1	7	07/21/2015	Nationstar's Answer to SFR's Third Party Complaint	JA_0049
1	8	08/01/2017	Recorder's Transcript of Hearing	JA_0056
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4	10	Continued	SFR's Motion for Summary Judgment	JA_0736
4	11	12/14/2017	SFR's Opposition to Nationstar's Motion for Summary Judgment and Counter Motion to Strike	JA_0853
4	12	12/14/2017	Nationstar's Response in Opposition to SFR's Motion for Summary Judgment	JA_0931

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5	15	Continued	Nationstar's Reply in Support of Motion for Summary Judgment and to Oppose Countermotion to Strike	JA_0981
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5	18	01/31/2018	Court Minutes	JA_1107
5	19	04/11/2018	Order Granting Nationstar's Renewed Motion for Summary Judgment	JA_1111
5	20	04/11/2018	Notice of Entry Order Granting Nationstar's Renewed Motion for Summary Judgment	JA_1121
5	21	05/14/2018	Notice of Appeal	JA_1135
5	22	05/14/2018	Amended Case Appeal Statement	JA_1138
5	23	05/09/2014	Stipulation and Order Dismissing Ignacio Gutierrez without Prejudice	JA_1144
5	24	05/12/2014	SFR's Notice of Entry of Stipulation and Order	JA_1148
5	25	02/14/2014	Nevada Association Services' Order Granting Motion to Dismiss Plaintiff's Complaint	JA_1154
5	26	02/15/2014	Nevada Association Services Notice of Entry of Order	JA_1158

# **TAB 1**

## CIVIL COVER SHEET

A - 13 - 684715 - C

Clark County, Nevada

XVII

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone):

Ignacio Gutierrez

Attorney (name/address/phone):

Law Offices of P. Sterling Kerr

2450 St. Rose Parkway #120

Henderson, NV 89074

Defendant(s) (name/address/phone): SFR INVESTMENTS POOL 1, LLC

Attorney (name/address/phone):

Howard C. Kim, Esq.

400 N. Stephanie St, Suite 160

Henderson, NV 89014

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<b>Negligence</b> <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

- ☐ NRS Chapters 78-88  
☐ Commodities (NRS 90)  
☐ Securities (NRS 90)

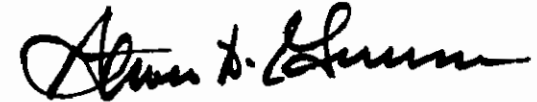
- ☐ Investments (NRS 104 Art. 8)  
☐ Deceptive Trade Practices (NRS 598)  
☐ Trademarks (NRS 600A)

- ☐ Enhanced Case Mgmt/Business  
☐ Other Business Court Matters

7/8/13

Date

Signature of initiating party or representative



CLERK OF THE COURT

P. STERLING KERR, ESQ.  
Nevada Bar No. 003978  
LAW OFFICES OF P. STERLING KERR  
2450 St. Rose Parkway, Suite 120  
Henderson, Nevada 89074  
Telephone No. (702) 451-2055  
Facsimile No. (702) 451-2077  
Email: psklaw@aol.com  
Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual  
  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;  
NEVADA ASSOCIATION SERVCIES INC.,  
HORIZON HEIGHTS HOMEOWNERS,  
ASSOCIATION, KB HOME MORTGAGE  
COMPANY a foreign corporation, DOE  
Individuals I through X; ROE Corporations  
and Organizations I through X;

Defendant

Case No.: A - 13 - 684715 - C  
Dept: X V I I

**EXEMPT FROM ARBITRATION**  
**(Title to Real Property)**

**COMPLAINT**

COMES NOW, Plaintiff, IGNACIO GUTIERREZ, an individual, by and through his attorney, the LAW OFFICES OF P. STERLING KERR, and complains and alleges as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff, IGNACIO GUTIERREZ, an individual, (hereinafter "GUTIERREZ"), at all times relevant herein, is a resident of the County of Clark, State of Nevada, and did own certain real property, the subject of this litigation, known as 668 Moonlight Stroll Street, Henderson, NV 89002 (hereinafter the "subject property"), and is more particularly described as follows:



1 HORIZON HGTS PHASE 2 PLAT BOOK 119 PAGE 62 LOT 166 CLARK  
2 COUNTY.

3 APN 179-31-714-046

4 2. Defendant, SFR INVESTMENTS POOL, 1, LLC, (hereafter "SFR" is and, at  
5 all times relevant herein, was licensed to do business in the State of Nevada and was  
6 engaged in business in such State.

7 3. Defendant, NEVADA ASSOCIATION SERVICES, INC., a Nevada  
8 Corporation (hereinafter "NAS"), is and, at all times relevant herein, was licensed to do  
9 business in the State of Nevada and was engaged in business in such State.

10 4. Defendant, HORIZON HEIGHTS HOMEOWNERS ASSOCIATION.,  
11 (hereinafter "HORIZON HEIGHTS HOA"), is and, at all times relevant herein, was licensed  
12 to do business in the State of Nevada and was engaged in business in such State.

13 5. Defendant, KB HOME MORTGAE COMPAN, a foreign corporation. At all  
14 times material to this Complaint, KB Home Mortgage Company was doing business in the  
15 State of Nevada. KB Home Mortgage Company is an interested party in this suit as the  
16 holder of the mortgage on the subject property.

17 6. Pursuant to Nevada Rules of Civil Procedure, Rule 10(a) and Nuremberger  
18 Hercules-Werke GMBH v. Virostek, 107 Nev. 873, 822 P.2d 1100 (1991), the true names  
19 and capacities, whether individual, corporate, associate or otherwise, of Defendants named  
20 herein as DOE Individuals I through X and ROE Corporations and Organizations I through  
21 X, are unknown at the present time; however, it is alleged and upon information and belief,  
22 that these Defendants were involved in the initiation, approval, support, or execution of the  
23 wrongful acts upon which this litigation is premised, or of similar actions directed against  
24 Plaintiff about which they were presently unaware. As the specific identity of these parties  
25 are revealed through the course of discovery, the Plaintiff will ask leave of the Court to  
26 amend the Complaint so that the DOE and/or ROE appellations will be replaced to identify  
27 these parties by their true names and capacities.  
28

**FACTS**

7. Plaintiff incorporates by reference each of the statements set forth in paragraphs 1 through 6 as though they were fully set forth herein.

8. On or about July 20, 2005, GUTIERREZ purchased the subject property, receiving a Deed from KB Home Nevada, Inc.

9. The Deed from KB Home Nevada, Inc. was recorded on July 20, 2005, in the Office of the Clark County Recorder, document number 20050720-0004599.

10. The subject property is governed by Defendant HORIZON HEIGHTS HOA.

11. On February 20, 2013, Defendant NAS recorded a Notice on the Subject Property.

13. Upon information and belief, the subject property was sold during a Trustee Sale to Defendant SFR INVESTMETNS POOL 1, LLC.

14. GUTIERREZ is unaware of when the trustee's sale took place, as no Trustee's Deed on Sale has been recorded on the title of the subject property.

15. GUTIERREZ was NOT notified of the trustee's sale until May 11, 2013, when he received a THREE-DAY NOTICE TO QUIT DUE TO FORECLOSURE from the purported purchaser of the property, Defendant SFR INVESTMENTS POOL 1, LLC.

16. The THREE-DAY NOTICE TO QUIT DUE TO FORECLOSURE gives the reason as "On April 5, 2013, the property you occupy was sold at an HOA foreclosure sale which extinguished your interest in the property pursuant to NRS 116.31166.

17. NRS 107.080, NRS 107.085, and NRS 21.130 prescribe specific notice requirements before a trustee's sale can lawfully take place in the state of Nevada.

18. GUTIERREZ received no notice of the pending foreclosure sale from Defendant HORIZON HEIGHTS HOA or NAS prior to the trustee's sale taking place.

19. Defendants HORIZON HEIGHTS HOA and NAS failed to comply with the statutorily imposed notice requirements with regard to the above-referenced property before allowing the Trustee Sale to occur.

1           20.     Because the statutorily imposed notice requirements were not followed by the  
2 Defendants, the Trustee's Sale should be set aside and any transfer of interest should be  
3 voided by the Court.

4           21.     With no other recourse to protect GUTIERREZ property rights,  
5 GUTIERREZ filed the instant Complaint.

6                               **FIRST CLAIM FOR RELIEF**

7                               **(Wrongful Foreclosure)**

8           22.     Plaintiff incorporates by reference each of the statements set forth in  
9 paragraphs 1 through 22, as if fully set forth herein.

10          23.     HORIZON HEIGHTS HOA and NAS failed to comply with NRS 107.080,  
11 NRS 107.085, and NRS 21.130's statutorily imposed notice requirements with regard to the  
12 Subject Property before allowing the Trustee's Sale to occur such that there existed a defect  
13 in the foreclosure sale proceedings of the subject property.

14          24.     HORIZON HEIGHTS HOA and NAS failed to give GUTIERREZ personal  
15 notice with regard to the Subject Property before allowing for this Trustee's sale to occur  
16 such that there existed a defect in the foreclosure sale proceedings of the subject property.

17          25.     HORIZON HEIGHTS HOA and NAS failed to give GUTIERREZ a  
18 meaningful opportunity to dispute the foreclosure and Trustee Sale with regard to the above-  
19 referenced property before allowing for this Trustee's Sale to occur such that there exists a  
20 defect in the foreclosure sale proceedings of the subject property.

21          26.     Upon information and belief, the Subject Property was sold for a grossly  
22 inadequate selling price.

23          27.     Upon information and belief, a causal connection between the defect and the  
24 grossly inadequate selling price exists.

25          28.     That as a result of NEVADA HEIGHTS HOA and NAS's Wrongful  
26 Foreclosure as described above, GUTIERREZ have been damaged in an amount in excess of  
27 \$10,000.00, together with fees, costs, interest thereon at the maximum legal rate until paid in  
28 full and other such damage according to proof.

1           29.     That as a result of the Wrongful Foreclosure, GUTIERREZ has been required  
2 to retain an attorney to prosecute this matter and as such are entitled to reasonable attorneys'  
3 fees in this regard.

4  
5                                   **SECOND CLAIM FOR RELIEF**

6                                   **(Declaratory Judgment)**

7           30.     Plaintiff incorporates by reference each of the statements set forth in  
8 paragraphs 1 through 30, as if fully set forth herein.

9           31.     HORIZON HEIGHTS HOA and NAS failed to adequately notify  
10 GUTIERREZ of the foreclosure and Trustee Sale as described above.

11          32.     Nonetheless, HORIZON HEIGHTS HOA, through its agent, NAS, carried  
12 forward with foreclosure proceedings in spite of its failure to provide any notice.

13          33.     As a result of the Wrongful Foreclosure sale, Defendant SFR  
14 INVESTMENTS POOL 1, LLC., purportedly purchased defective title to the subject  
15 property at the Trustee Sale.

16          34.     Pursuant to NRS Chapter 30.040, GUTIERREZ seek a Declaratory Judgment  
17 setting aside the Trustee Sale of the Subject Property.

18          35.     These failures by the Defendants have damaged GUTIERREZ in an amount  
19 in excess of \$10,000.00.

20          36.     That as a result of the actions by Defendants, that GUTIERREZ has been  
21 required to retain an attorney to prosecute this matter and as such are entitled to reasonable  
22 attorneys' fees in addition to his damages.

23  
24           WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

- 25           1.     For an order setting aside the trustee sale.  
26           2.     For general damages in an amount in excess of \$10,000.00;  
27           3.     For attorneys' fees, costs of suit, and interest for bringing the suit; and  
28

1           5.       For such other and further relief as the Court may deem just and proper in the  
2 premises.

3  
4                               Dated this 8th day of July, 2013

5                               /s/ P. Sterling Kerr  
6                               P. STERLING KERR, ESQ.  
7                               Nevada Bar No. 003978  
8                               LAW OFFICES OF P. STERLING KERR  
9                               2450 St. Rose Parkway, Suite 120  
10                              Henderson, Nevada 89074  
11                              Telephone No. (702) 451-2055  
12                              Facsimile No. (702) 451-2077  
13                              Email: psklaw@aol.com  
14                              Attorneys for Plaintiff  
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1 P. STERLING KERR, ESQ.  
2 Nevada Bar No. 003978  
3 LAW OFFICES OF P. STERLING KERR  
4 2450 St. Rose Parkway, Suite 120  
5 Henderson, NV 89074  
6 Telephone No. (702) 451-2055  
7 Attorneys for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 IGNACIO GUTIERREZ, an individual

11 Plaintiff(s),

CASE NO.

12 -vs-

DEPT. NO.

13 SFR INVESTMENTS POOL, 1, LLC;  
14 NEVADA ASSOCIATION SERVCIES  
15 INC., HORIZON HEIGHTS  
16 HOMEOWNERS, ASSOCIATION, KB  
17 HOMES MORTGAGE COMPANY, a  
18 foreign corporation, DOE Individuals I  
through X; ROE Corporations and  
Organizations I through X;

19 Defendant(s).

20 INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

21 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are  
22 submitted for parties appearing in the above entitled action as indicated below:  
23

New Complaint Fee	1 <sup>st</sup> Appearance Fee
<input type="checkbox"/> \$1530 <input type="checkbox"/> \$520 <input type="checkbox"/> \$299 X \$270.00	<input type="checkbox"/> \$1483.00 <input type="checkbox"/> \$473.00 x \$223.00
Name: IGNACIO GUTIERREZ	
\$30	
<input type="checkbox"/> \$30	

28 Initial Appearance Fee Disclosure/7/8/2013

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☐ \$30

☐ \$30

☐ Total of Continuation Sheet Attached

☐ \$ \_\_\_\_\_

TOTAL REMITTED: (Required)

Total Paid

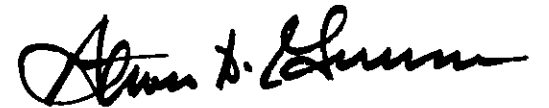
\$ 270.00

DATED this 8<sup>th</sup> day of July, 2013.

/s/ P. Sterling Kerr  
P. STERLING KERR, Esq.

# **TAB 2**





CLERK OF THE COURT

1 **AACC**  
HOWARD C. KIM, ESQ.  
2 Nevada Bar No. 10386  
E-mail: howard@hkimlaw.com  
3 DIANA S. CLINE, ESQ.  
Nevada Bar No. 10580  
4 E-mail: diana@hkimlaw.com  
VICTORIA L. HIGHTOWER, ESQ.  
5 Nevada Bar No. 10897  
E-mail: victoria@hkimlaw.com  
6 HOWARD KIM & ASSOCIATES  
400 N. Stephanie St, Suite 160  
7 Henderson, Nevada 89014  
Telephone: (702) 485-3300  
8 Facsimile: (702) 485-3301  
Attorneys for SFR Investments Pool 1, LLC  
9

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **IGNACIO GUTIERREZ, an individual,**

13 **Plaintiff,**

14 **vs.**

15 **SFR INVESTMENTS POOL 1, LLC;**  
16 **NEVADA ASSOCIATION SERVICES INC.,**  
17 **HORIZON HEIGHTS HOMEOWNERS**  
18 **ASSOCIATION, KB HOME MORTGAGE**  
19 **COMPANY, a foreign corporation, DOE**  
20 **Individuals I through X; ROE Corporations**  
21 **and Organizations I through X;**

22 **Defendants.**

Case No. A-13-684715-C

Dept. No. XVII

**ANSWER, COUNTERCLAIM, AND  
THIRD PARTY COMPLAINT FOR QUIET  
TITLE AND INJUNCTIVE RELIEF**

**ARBITRATION EXCEPTION CLAIMED:  
TITLE TO REAL ESTATE**

23 **SFR INVESTMENTS POOL 1, LLC, Nevada**  
24 **limited liability company,**

25 **Counter-Claimant and Third Party Plaintiff,**

26 **vs.**

27 **IGNACIO GUTIERREZ, an individual;**  
28 **NATIONSTAR MORTGAGE, LLC., a**  
**Delaware limited liability company;**  
**COUNTRYWIDE HOME LOANS, INC., a**  
**foreign corporation; DOES I-X; and ROES 1-**  
**10, inclusive,**

**Counter-Defendant/ Third Party Defendants.**

**HOWARD KIM & ASSOCIATES**

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 SFR INVESTMENTS POOL 1, LLC (“SFR”), by and through its attorneys of record,  
2 the law firm HOWARD KIM AND ASSOCIATES, hereby answers IGNACIO GUTIERREZ’s  
3 (“Gutierrez” or “Plaintiff”) complaint as follows:

4 **INTRODUCTION**

5 1. SFR admits the allegations contained in paragraph 1 of the complaint, upon information  
6 and belief.

7 2. SFR admits the allegations contained in paragraph 2, upon information and belief.

8 3. SFR is without sufficient knowledge or information to form a belief as to the truth of the  
9 factual allegations contained in paragraphs 3, 4, 5 and 6 of the complaint, and therefore denies  
10 said allegations.

11 **FACTS**

12 4. SFR repeats and realleges its answers to paragraphs 1 through 6 of the complaint as  
13 though fully set forth herein.

14 5. The documents referenced in paragraphs 8 and 9 of the complaint speak for themselves  
15 and SFR denies any allegations inconsistent with the documents.

16 6. SFR admits the allegations contained in paragraphs 10, 11, 13[sic] upon information and  
17 belief.

18 7. SFR is without sufficient knowledge or information to form a belief as to the truth of the  
19 factual allegations contained in paragraph 14, 15 and 16 of the complaint, and therefore denies  
20 said allegations. The documents referenced in paragraphs 14, 15 and 16 of the complaint speak  
21 for themselves and SFR denies any allegations inconsistent with the documents.

22 8. The allegations contained in paragraphs 17, 18, 19, 20 and 21 of the complaint call for a  
23 legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR  
24 denies the factual allegations contained in paragraph 17, 18, 19, 20 and 21 of the complaint.

25 **FIRST CLAIM FOR RELIEF**  
26 **(Wrongful Foreclosure)**

27 9. SFR repeats and realleges its answers to paragraphs 1 through 21 of the complaint as  
28 though fully set forth herein.

10. The allegations contained in paragraphs 23, 24, 25, 26, 27, 28 and 29 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 23, 24, 25, 26, 27, 28 and 29 of the complaint.

**SECOND CLAIM FOR RELIEF**  
**(Declaratory Judgment)**

11. SFR repeats and realleges its answers to paragraphs 1 through 29 of the complaint as though fully set forth herein.

12. The allegations contained in paragraphs 31, 32, 33, 34, 35 and 36 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraph 31, 32, 33, 34, 35 and 36 of the complaint.

**AFFIRMATIVE DEFENSES**

1. Plaintiff fails to state a claim upon which relief may be granted.

2. Plaintiff is not entitled to relief from or against SFR, as Plaintiff has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR.

3. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Plaintiff.

4. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control.

5. Plaintiff has failed to satisfy and/or cannot satisfy conditions precedent to setting aside the HOA foreclosure sale.

6. Any and all acts alleged to have been committed by SFR, if any, were reasonably undertaken to protect the tangible and intangible assets of SFR and therefore, were justified and/or privileged.

7. SFR did not breach any statutory or common law duties allegedly owed to Plaintiff.

8. Plaintiff's claims are barred because SFR complied with applicable statutes and with the requirements and regulations of the State of Nevada.

9. Plaintiff's causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

10. Plaintiff is not entitled to equitable relief because it has an adequate remedy at law.

11. Plaintiff's damages, if any, were the result of intervening, superseding, concurrent, and/or contributing causes. Any alleged action or alleged omission on the part of SFR was not the proximate cause of Plaintiff's alleged damages.

12. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend this Answer to assert any affirmative defenses if subsequent investigation warrants.

## COUNTERCLAIM AND THIRD PARTY COMPLAINT

### FOR QUIET TITLE AND INJUNCTIVE RELIEF

SFR INVESTMENTS POOL 1, LLC ("SFR"), by and through its attorneys of record, the law firm HOWARD KIM AND ASSOCIATES, hereby demands quiet title, requests injunctive relief and claims unjust enrichment against Counter-defendant IGNACIO GUTIERREZ, Third Party Defendant, NATIONSTAR MORTGAGE, LLC and Third Party Defendant, COUNTRYWIDE HOME LOANS, INC. as follows:

#### I. PARTIES

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **668 Moonlight Stroll Street, Henderson, NV 89015; Parcel No. 179-31-714-046** (the "Property").

2. Upon information and belief, Counter-Defendant IGNACIO GUTIERREZ ("Gutierrez"), an individual who is the former homeowner that may claim an interest in the Property.

3. Upon information and belief, Third Party Defendant NATIONSTAR MORTGAGE, LLC, is a Delaware limited liability company that may claim an interest in the Property via a 2005 deed of trust.

4. Upon information and belief, Third Party Defendant COUNTRYWIDE HOME LOANS, INC. is a foreign corporation that may claim an interest in the Property via a 2005 deed of trust.

5. Upon information and belief, each of the Defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

6. Upon information and belief, each of the Defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim to insert the true names, identities and capacities together with proper charges and allegations.

## II. GENERAL ALLEGATIONS

### **SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts**

7. SFR acquired the Property on April 5, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, et. seq. ("Association foreclosure sale"). Since the Association foreclosure sale, SFR has expended additional funds and resources in relation to the Property.

8. On or about April 8, 2013, the resulting foreclosure deed was recorded in the Official Records of the Clark County Recorder as Instrument Number 201304080001036 ("Association Foreclosure Deed").

1 9. The foreclosure sale was conducted by Nevada Association Services, Inc. ("NAS"), agent  
2 for Horizon Heights (the "Association"), pursuant to the powers conferred by the Nevada  
3 Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164, the Association's governing  
4 documents (CC&R's) and a Notice of Delinquent Assessment Lien, recorded on July 10, 2012 in  
5 the Official Records of the Clark County Recorder as Instrument Number 201207100001296  
6 ("Association Lien").

7 10. As recited in the Association Foreclosure Deed, the Association foreclosure sale  
8 complied with all requirements of law, including but not limited to, recording and mailing of  
9 copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and  
10 publication of the Notice of Sale.

11 11. Pursuant to NRS 116.3116(2), the entire Association Lien

12 is prior to all other liens and encumbrances of unit except:

13 (a) Liens and encumbrances recorded before the recordation of the declaration  
14 and, in a cooperative, liens and encumbrances which the association creates,  
assumes or takes subject to;

15 (b) A first security interest on the unit recorded before the date on which the  
16 assessment sought to be enforced became delinquent or, in a cooperative, the first  
security interest encumbering only the unit's owner's interest and perfected before  
the date on which the assessment sought to be enforced became delinquent; and

17 (c) Liens for real estate taxes and other governmental assessments or charges  
against the unit or cooperative.

18 12. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over  
19 even a first security interest in the Property:

20 [the Association Lien] is also prior to all security interests described in paragraph  
21 (b) to the extent of any charges incurred by the association on a unit pursuant to  
NRS 116.310312 and to the extent of the assessments for common expenses  
22 based on the periodic budget adopted by the association pursuant to NRS  
116.3115 which would have become due in the absence of acceleration during the  
23 9 months immediately preceding institution of an action to enforce the lien[.]

24 13. Upon information and belief, the Association took the necessary action to trigger the  
25 super-priority portion of the Association Lien.

26 14. Upon information and belief, no party still claiming an interest in the Property recorded a  
27 lien or encumbrance prior to the declaration creating the Association.

28 15. Upon information and belief, SFR's bid on the Property was in excess of the amount

1 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

2 16. Upon information and belief, the Association or its agent NAS distributed or should have  
3 distributed the excess funds to lien holders in order of priority pursuant to NRS 116.3114(c).

4 17. Upon information and belief, Counter-Defendant and Third Party Defendants had actual  
5 or constructive notice of the requirement to pay assessments to the Association and of the  
6 Association Lien.

7 18. Upon information and belief, Counter-Defendant and Third Party Defendants had actual  
8 or constructive notice of the Association's foreclosure proceedings.

9 19. Upon information and belief, prior to the Association foreclosure sale, no individual or  
10 entity paid the full amount of delinquent assessments described in the Notice of Default.

11 20. Upon information and belief, Counter-Defendant Gutierrez had actual or constructive  
12 notice of the super-priority portion of the Association Lien.

13 21. Upon information and belief, Counter-Defendant Gutierrez knew or should have known  
14 that its interest in the Property could be extinguished through foreclosure if he failed to cure the  
15 super-priority portion of the Association Lien representing 9 months of assessments for common  
16 expenses based on the periodic budget adopted by the association which would have become due  
17 in the absence of acceleration for the relevant time period.

18 22. Upon information and belief, prior to the Association foreclosure sale, no individual or  
19 entity paid the super-priority portion of the Association Lien representing 9 months of  
20 assessments for common expenses based on the periodic budget adopted by the association  
21 which would have become due in the absence of acceleration for the relevant time period.

22 23. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR "without equity or  
23 right of redemption," and the Foreclosure Deed is conclusive against the Property's "former  
24 owner, his or her heirs and assigns, and all other persons."

25 **Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien**

26 24. Upon information and belief, Counter-Defendant, Gutierrez, first obtained title to the  
27 Property in July of 2005 through a Grant, Bargain Sale Deed from KB Home Mortgage  
28 Company.

1       25. On or about July 20, 2005, KB Home Mortgage Company ("KB Home Mortgage")  
2 recorded a deed of trust against the Property in the Official Records of the Clark County  
3 Recorder as Instrument No. 200507200004600 ("First Deed of Trust").

4       26. Upon information and belief, the Association was formed and its declaration of CC&Rs  
5 was recorded in the Official Records of the Clark County Recorder before the First Deed of Trust  
6 was recorded.

7       27. Upon information and belief, KB Home Mortgage had actual or constructive notice of the  
8 Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

9       28. On or about July 20, 2005, KB Home Mortgage Company ("KB Home Mortgage")  
10 recorded a second deed of trust against the Property in the Official Records of the Clark County  
11 Recorder as Instrument No. 200507200004601 ("Second Deed of Trust").

12       29. Upon information and belief, the Association was formed and its declaration of CC&Rs  
13 was recorded in the Official Records of the Clark County Recorder before the Second Deed of  
14 Trust was recorded.

15       30. Upon information and belief, KB Home Mortgage had actual or constructive notice of the  
16 Association Lien and NRS 116.3116 before it funded the loan secured by the Second Deed of  
17 Trust.

18       31. Mercedes Judilla, Collateral Processing Officer for Countrywide Bank, N.A., FKA  
19 Countrywide Document Services, a Division of Treasury Bank, N.A. executed an assignment,  
20 dated September 6, 2005 that transferred the beneficial interest in the Second Deed of Trust,  
21 together with the underlying promissory note, to Countrywide Home Loans, Inc.  
22 ("Countrywide"). The assignment was recorded on March 13, 2006 against the Property in  
23 Official Records of the Clark County Recorder as Instrument No. 200603130004142.

24       32. Upon information and belief, Countrywide had actual or constructive notice of the  
25 Association Lien and NRS 116.3116 before it obtained an interest in the Second Deed of Trust.

26       33. Miguel Romero, Vice President for Mortgage Electronic Registration Systems, Inc.,  
27 executed an assignment, dated April 17, 2012 that transferred the beneficial interest in the First  
28 Deed of Trust, together with the underlying promissory note, to Bank of America, N.A.



1 (“BofA”). The assignment was recorded on April 23, 2012 against the Property in Official  
2 Records of the Clark County Recorder as Instrument No. 201204230000265.

3 34. Upon information and belief, BofA had actual or constructive notice of the Association  
4 Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

5 35. Susan Lindhorst, assistant secretary for Bank of America, executed an assignment, dated  
6 November 21, 2012 that transferred the beneficial interest in the First Deed of Trust, together  
7 with the underlying promissory note, to Nationstar Mortgage, LLC (“Nationstar”). The  
8 assignment was recorded on November 28, 2012 against the Property in Official Records of the  
9 Clark County Recorder as Instrument No. 201211280003539.

10 36. On or about, July 8, 2013, Gutierrez filed a Complaint for wrongful foreclosure and  
11 declaratory relief.

12 37. Counter-Defendant Gutierrez’s interest in the Property was extinguished by the  
13 foreclosure of the Association Lien.

14 38. Third Party Defendant Nationstar’s security interest in the Property was extinguished by  
15 the foreclosure of the super priority portion of the Association Lien.

16 39. Third Party Defendant Countrywide’s security interest in the Property was extinguished  
17 by the foreclosure of the super priority portion of the Association Lien.

18 **III. FIRST CLAIM FOR RELIEF**  
19 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. seq., NRS 40.10 & NRS**  
20 **116.3116)**

21 40. SFR repeats and realleges the allegations of paragraphs 1-39 as though fully set forth  
22 herein and incorporates the same by reference.

23 41. Pursuant to NRS 30.010, et. seq. and NRS 40.10, this Court has the power and authority  
24 to declare the SFR’s rights and interests in the Property and to resolve the Counter-Defendant  
25 and Third Party Defendants’ adverse claims in the Property.

26 42. SFR acquired the Property on April 5, 2013 by successfully bidding on the Property at a  
27 publicly-held foreclosure auction in accordance with NRS 116.3116, et. seq. and the resulting  
28 Association Foreclosure Deed vesting title in SFR was recorded on April 8, 2013.

43. Upon information and belief, Counter-Defendant, Gutierrez, may claim an ownership

1 interest in the Property.

2 44. Upon information and belief, Third Party Defendant Nationstar may claim an interest in  
3 the Property via the First Deed of Trust against the Property even after the Association  
4 foreclosure sale.

5 45. Upon information and belief, Third Party Defendant Countrywide may claim an interest  
6 in the Property through the Second Deed of Trust even after the Association foreclosure sale.

7 46. A foreclosure sale conducted pursuant to NRS 116.31162, 116.31163 and 116.31164, like  
8 all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and  
9 encumbrances, including deeds of trust.

10 47. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has  
11 priority over the First and Second Deeds of Trust.

12 48. Counter-Defendant and Third Party Defendants were duly notified of the Association  
13 foreclosure sale and failed to act to protect their interests in the Property, if any legitimately  
14 existed.

15 49. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title  
16 owner of the Property; (2) the Association Foreclosure Deed is valid and enforceable; (3) the  
17 Association foreclosure sale extinguished Counter-Defendant and Third Party Defendants'  
18 ownership and security interests in the Property; and (4) SFR's rights and interest in the Property  
19 are superior to any adverse interest claimed by Counter-Defendant and Third Party Defendants.

20 50. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

21 **IV. SECOND CLAIM FOR RELIEF**  
22 **(Unjust Enrichment)**

23 51. SFR repeats and realleges the allegations of paragraphs 1- 50 as though fully set forth  
24 herein and incorporate the same by reference.

25 52. SFR has expended funds and resources in connection with the acquisition and  
26 maintenance of the Property.

27 53. Counter-Defendant and Third Party Defendants have benefitted or will benefit from the  
28 funds and resources expended by SFR.

1 54. If SFR does not maintain title to and possession of the Property, Counter-Defendant and  
2 Third Party Defendants will have been unjustly enriched by the funds and resources expended by  
3 SFR.

4 55. SFR will be damaged if Counter-Defendant and Third Party Defendatns retain the benefit  
5 of the funds and resources expended by SFR.

6 56. SFR has been required to hire attorneys to protect its rights in the Property and to pursue  
7 this action.

8 57. SFR is entitled to general and special damages in excess of \$10,000.00.

9 **V. THIRD CLAIM FOR RELIEF**  
10 **(Preliminary and Permanent Injunction)**

11 58. SFR repeats and realleges the allegations of paragraphs 1- 57 as though fully set forth  
12 herein and incorporate the same by reference.

13 59. SFR properly acquired title to the Property at the Association foreclosure sale on April 5,  
14 2013.

15 60. Counter-Defendant, Gutierrez, as former title owner of the Property may claim an  
16 ownership interest in the Property.

17 61. Third Party Defendant Nationstar may claim that it maintained an interest in the Property  
18 through the First Deed of Trust which was extinguished by the Association foreclosure sale.

19 62. Third Party Defendant Countrywide may claim that it maintained an interest in the  
20 Property through the Second Deed of Trust which was extinguished by the Association  
21 foreclosure sale.

22 63. A foreclosure sale based on the First or Second Deeds of Trust is invalid as Counter-  
23 Defendant and Third Party Defendants lost their interest in the Property, if any, at the  
24 Association foreclosure sale.

25 64. Any sale or transfer of title to the Property by Counter-Defendant and Third Party  
26 Defendants would be invalid because their interest in the Property, if any, was extinguished by  
27 the Association foreclosure sale.

28 65. Any attempt to take or maintain possession of the Property by Counter-Defendant and

1 Third Party Defendants would be invalid because their interest in the Property, if any, was  
2 extinguished by the Association foreclosure sale.

3 66. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-  
4 Defendant and Third Party Defendants would be invalid because their interest in the Property, if  
5 any, was extinguished by the Association foreclosure sale.

6 67. On the basis of the facts described herein, SFR has a reasonable probability of success on  
7 the merits of its claims and has no other adequate remedies at law.

8 68. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-  
9 Defendant and Third Party Defendants from beginning or continuing any eviction proceedings  
10 that would affect SFR's possession of the Property.

11 69. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-  
12 Defendant and Third Party Defendants from any sale or transfer that would affect the title to the  
13 Property.

14 **VI. PRAYER FOR RELIEF**

15 SFR requests judgment against Counter-Defendant and Third Party Defendants as  
16 follows:

17 1. For a declaration and determination that SFR Investments Pool 1, LLC is  
18 the rightful owner of title to the Property, and that Counter Defendant and Third Party  
19 Defendants be declared to have no right, title or interest in the Property.

20 2. For a preliminary and permanent injunction that Counter-Defendant and  
21 Third Party Defendants are prohibited from initiating or continuing foreclosure  
22 proceedings, and from selling or transferring the Property;

23 3. For general and special damages in excess of \$10,000.00

24 4. For an award of attorney's fees and costs of suit; and

25 ///

26 ///

27 ///

28 ///

5. For any further relief that the Court may deem just and proper.

DATED August 1st, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower  
Howard C. Kim, Esq.  
Nevada Bar No. 10386  
Diana S. Cline, Esq.  
Nevada Bar No. 10580  
Victoria L. Hightower, Esq.  
Nevada Bar No. 10897  
400 N. Stephanie St., Suite 160  
Henderson, Nevada 89014  
Attorneys for SFR Investments Pool 1, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of August, 2013, pursuant to NRCP 5(b), I served the following parties listed below by depositing via U.S. mail first class a true and correct copy of the foregoing **Answer, Counterclaim and Third Party Complaint for Quiet Title and Injunctive Relief**, filed on August 1, 2013, postage prepaid and addressed to:

P. Sterling Kerr, Esq.  
LAW OFFICES OF P. STERLING KERR  
2450 St. Rose Parkway, Suite 120  
Henderson, NV 89074  
Attorneys for Ignacio Gutierrez

/s/ Andrew M. David  
An employee of Howard Kim & Associates

**IAFD**

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

E-mail: howard@hkimlaw.com

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

E-mail: diana@hkimlaw.com

VICTORIA L. HIGHTOWER, ESQ.

Nevada Bar No. 10897

E-mail: victoria@hkimlaw.com

HOWARD KIM & ASSOCIATES

400 N. Stephanie St, Suite 160

Henderson, Nevada 89014

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

Attorneys for SFR INVESTMENTS POOL 1, LLC

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;  
NEVADA ASSOCIATION SERVICES INC.,  
HORIZON HEIGHTS HOMEOWNERS  
ASSOCIATION, KB HOME MORTGAGE  
COMPANY, a foreign corporation, DOE  
Individuals I through X; ROE Corporations  
and Organizations I through X;

Defendants.

Case No. A-13-684715-C

Dept. No. XVII

**INITIAL APPEARANCE FEE  
DISCLOSURE (NRS CHAPTER 19)**

SFR INVESTMENTS POOL 1, LLC, Nevada  
limited liability company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC., a  
Delaware limited liability company;  
COUNTRYWIDE HOME LOANS, INC., a  
foreign corporation; DOES I-X; and ROES 1-  
10, inclusive,

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Counter-Defendant/ Third Party Defendants.

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above-entitled action as indicated below:

SFR INVESTMENTS POOL 1, LLC	\$358.00
<b>TOTAL</b>	<b>\$358.00</b>

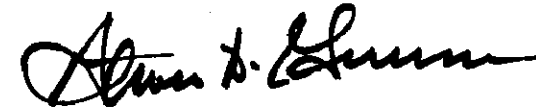
DATED August 2nd, 2013.

HOWARD KIM & ASSOCIATES

/s/ Victoria L. Hightower  
Howard C. Kim, Esq.  
Nevada Bar No. 10386  
Diana S. Cline, Esq.  
Nevada Bar No. 10580  
Victoria L. Hightower, Esq.  
Nevada Bar No. 10897  
400 N. Stephanie St., Suite 160  
Henderson, Nevada 89014  
Attorneys for SFR Investments Pool 1, LLC

# **TAB 3**





CLERK OF THE COURT

Richard Vilkin, Esq.  
Nevada Bar No. 8301  
Law Offices of Richard Vilkin, P.C.  
1286 Crimson Sage Ave.  
Henderson, NV 89012  
Phone: (702) 476-3211  
Fax: (702) 476-3212  
Email: [Richard@vilkinlaw.com](mailto:Richard@vilkinlaw.com)  
*Attorneys for defendant and counterclaimant*  
*Nevada Association Services, Inc.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

v.

SFR INVESTMETNS POOL I, LLC;  
NEVADA ASSOCIATION SERVICES, INC.,  
HORIZON HEIGHTS HOMEOWNERS  
ASSOCIATION, KB HOME MORTGAGE  
COMPANY, a foreign corporation, DOE  
Individuals I through X; ROE Corporations  
and Organizations I through X,

Defendants.

Case No.: A-13-684715-C

Dept.: XVII

ANSWER OF DEFENDANT NEVADA  
ASSOCIATION SERVICES, INC. AND  
COUNTERCLAIM

COMES NOW defendant NEVADA ASSOCIATION SERVICES, INC. ("NAS"), and  
responds to the Complaint of plaintiff as follows :

1. Answering paragraphs 8, 9, 15, 18, 19, 20, 21, 23, 24-29 and 31-36 of the  
Complaint, this answering defendant denies the factual allegations therein alleged.
2. Answering paragraphs 1, 2, 4, 5, 6, 10, 14 and 16, 17 of the Complaint, this  
answering defendant is without sufficient knowledge or information to form a belief as to the  
truth or falsity of the allegations contained therein, or as contained therein against parties other

1 than NAS, or finds said statements and allegations to be vague and ambiguous, and, on that  
2 basis, denies said allegations.

3 3. Answering paragraphs 7, 22 and 30 of the Complaint, this answering defendant  
4 repeats its responses as stated herein to each of the paragraphs of the Complaint realleged by  
5 plaintiff in paragraphs 7, 22 and 30.  
6

7 4. Answering paragraphs 3, 11 and 13 of the Complaint, this answering defendant  
8 admits said allegations.  
9

10 FIRST AFFIRMATIVE DEFENSE

11 Plaintiffs have failed to state any cause of action upon which relief can be granted.  
12

13 SECOND AFFIRMATIVE DEFENSE

14 The recovery sought is barred by the doctrines of waiver, unclean hands, laches and  
15 failure to do equity.  
16  
17

18 THIRD AFFIRMATIVE DEFENSE

19 Plaintiff was more than 50 percent negligent in and about the acts complained of in her  
20 Complaint and therefore is barred from recovery pursuant to NRS 41.141.  
21  
22

23 FOURTH AFFIRMATIVE DEFENSE

24 Plaintiff was negligent in and about the acts complained of in her Complaint and  
25 therefore her claims are subject to the rules and law in Nevada governing comparative  
26 negligence.  
27  
28

1                                    FIFTH AFFIRMATIVE DEFENSE

2            Plaintiff should be estopped from making her claims due to her own dishonesty, illegal  
3 conduct, lack of good faith and fraud.

4  
5                                    SIXTH AFFIRMATIVE DEFENSE

6  
7            The acts complained of by plaintiff, if wrongful, were committed by parties other than  
8 NAS.

9  
10                                  SEVENTH AFFIRMATIVE DEFENSE

11           Plaintiff failed to mitigate her damages.  
12

13  
14                                  EIGHTH AFFIRMATIVE DEFENSE

15           Plaintiff failed to pay her homeowner assessments and other charges as required by her  
16 governing documents.  
17

18  
19                                  NINTH AFFIRMATIVE DEFENSE

20           This answering defendant complied with all notice and other requirements for a non-  
21 judicial foreclosure as required by NRS 116, NRS 107 and other Nevada law.  
22

23  
24                                  TENTH AFFIRMATIVE DEFENSE

25  
26           Defendant NAS is entitled to recover in this action all of its costs, fees, attorneys fees and  
27 other collection costs from plaintiff as per NRS 116.31164(c)(2), NAC 116.470, other Nevada  
28 law, and the Covenants, Conditions and Restrictions ("CC&Rs") governing said property.

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ELEVENTH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged in this Answer insofar as sufficient facts were not available after reasonable inquiry prior to it being filed, and therefore, defendant hereby reserve the right to amend this Answer to allege additional affirmative defenses if subsequent investigation so warrants.

COUNTERCLAIM

BREACH OF CONTRACT AND FAILURE TO PAY ACCOUNT STATED

1. The contents of plaintiff's Complaint, paragraph 1, is reiterated herein on information and belief.
2. NAS was, at all times relevant herein, acting as a collection agent for a homeowner's association of which plaintiff was a member.
3. Plaintiff failed to pay his HOA assessments and the fees and charges incurred by NAS per plaintiff's agreements with his homeowner's association through their CC&Rs and other governing documents and Nevada law.
4. Per plaintiff's agreements and the CC&Rs with the HOA and Nevada law, NAS is entitled to be paid such fees and charges. In addition, NAS is entitled to be paid its attorneys fees and costs in prosecuting and defending this action pursuant to NRS 116.31164(c)(2), NAC 116.470 and other Nevada law.

PRAYER

WHEREFORE, defendant and counterclaimant NAS prays for Judgment against plaintiff and counterdefendant as follows:

1. That plaintiff receive nothing and his Complaint be dismissed with prejudice;

- 1           2. That NAS recover the fees, costs, attorneys fees and other charges it incurred because  
2           of plaintiffs' failure to abide by his agreements and CC&Rs with the homeowners  
3           association herein and pursuant to NRS 116.31164(c)(2), NAC 116.470 and other  
4           Nevada law;  
5  
6           3. That NAS recover its attorneys fees and costs in defending this action; and  
7  
8           4. For such other and further relief as the court deems just and proper.

9           Date: August 12, 2013

LAW OFFICES OF RICHARD VILKIN, P.C.

10           By: \_\_\_\_\_

11           Richard Vilkin

12           Nevada Bar No. 8301

13           1286 Crimson Sage Ave.

14           Henderson, NV 89012

15           Phone: (702) 476-3211

16           Attorneys for defendant and counterclaimant  
17           Nevada Association Services, Inc.  
18  
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Richard Vilkin, Esq.  
Nevada Bar No. 8301  
Law Offices of Richard Vilkin, P.C.  
1286 Crimson Sage Ave.  
Henderson, NV 89012  
Phone: (702) 476-3211  
Fax: (702) 476-3212  
Email: [Richard@vilkinlaw.com](mailto:Richard@vilkinlaw.com)  
*Attorneys for defendant and counterclaimant*  
*Nevada Association Services, Inc.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,  
  
Plaintiff,

Case No.: A-13-684715-C

Dept.: XVII

v.

INITIAL APPEARANCE FEE DISCLOSURE  
BY DEFENDANT NEVADA  
ASSOCIATION SERVICES, INC.

SFR INVESTMENTS POOL I, LLC;  
NEVADA ASSOCIATION SERVICES, INC.,  
HORIZON HEIGHTS HOMEOWNERS  
ASSOCIATION, KB HOME MORTGAGE  
COMPANY, a foreign corporation, DOE  
Individuals I through X; ROE Corporations  
and Organizations I through X,  
  
Defendants.

COMES NOW defendant Nevada Association Services, Inc., a Nevada corporation, and  
provides its Initial Appearance Fee Disclosure as follows:

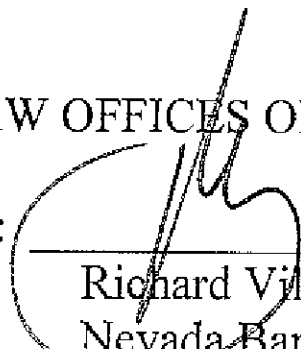
Plaintiff Nevada Association Services, Inc.: \$223.00

Total: \$223.00

Date: August 12, 2013

LAW OFFICES OF RICHARD VILKIN, P.C.

By:

  
Richard Vilkin

Nevada Bar No. 8301

1286 Crimson Sage Ave.

Henderson, NV 89012

Phone: (702) 476-3211

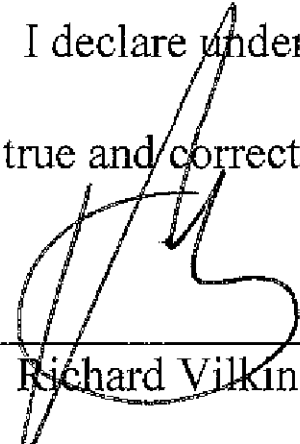
*Attorneys for defendant and counterclaimant*  
*Nevada Association Services, Inc.*

Certificate of Mailing

I hereby certify that on August 12, 2013, I put copies of the ANSWER OF  
DEFENDANT NEVADA ASSOCIATION SERVICES, INC. AND COUNTERCLAIM (with  
Initial Appearance Fee Disclosure attached) in sealed envelopes, postage prepaid, and deposited  
said envelopes in the U.S. Mail, addressed as follows, to counsel in the case of *Ignacio Gutierrez*  
*v. SFR Investments Pool I, LLC et al.* (Nev. Dist. Ct. Case No. A-13-684715-C):

P. Sterling Kerr, Esq.  
Law Offices of P. Sterling Kerr  
2450 St. Rose Parkway, Suite 120  
Henderson, NV 89074

Executed this 12th day of August, 2013 at Henderson, NV. I declare under penalty of  
perjury under the laws of the State of Nevada that the foregoing is true and correct.



Richard Vilkin

# **TAB 4**





CLERK OF THE COURT

ANS

P. STERLING KERR, ESQ.  
Nevada Bar No. 003978  
LAW OFFICES OF P. STERLING KERR  
2450 St. Rose Parkway, Suite 120  
Henderson, Nevada 89074  
Telephone No. (702) 451-2055  
Facsimile No. (702) 451-2077  
Email: psklaw@aol.com  
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY NEVADA

IGNACIO GUTIERREZ, an individual

Plaintiff,

vs.

SFR INVESTMENT POOL 1, LLC;  
NEVADA ASSOCIATION SERVICES INC.,  
HORIZON HEIGHTS HOMEOWNERS,  
ASSOCIATION, KB HOME MORTGAGE  
COMPANY a foreign corporation, DOE  
Individuals I through X; ROE Corporations  
and Organizations I through X;

Defendant

Case No.: A-13-684715-C

Dept. No.: IV

**ANSWER TO DEFENDANT NEVADA  
ASSOCIATION SERVICES, INC. AND  
COUNTERCLAIM**

COMES NOW Plaintiff IGNACIO GUTIERREZ, by and through his attorneys of  
record, the Law Offices of P. Sterling Kerr, and in Answer to the Plaintiff's Complaint on  
file herein, admits, denies and alleges as follows:

1. Answering Paragraphs 1 and 2 Defendant is without information or knowledge  
sufficient to ascertain the truth of the allegations contained therein and therefore  
denies same.
2. Answering Paragraphs 3 and 4, Defendant denies each and every allegation  
contained therein.

LAW OFFICES OF P. STERLING KERR  
ATTORNEYS AT LAW  
2450 St. Rose Parkway, Suite 120, Henderson, Nevada 89074  
Telephone: (702) 451-2055 Facsimile: (702) 451-2077

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**CERTIFICATE OF MAILING**

I hereby certify that on the 15<sup>th</sup> day of August, 2013, a true and correct copy of the within **ANSWER TO DEFENDANT NEVADA ASSOCIATION SERVCIES, INC. AND COUNTERCLAIM** was enclosed in a pre-addressed envelope, and deposited in the United States mail, with first-class postage affixed thereto, as follows:

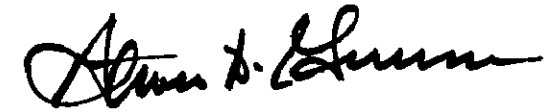
THE LAW OFFICES OF DAVID M. JONES  
Anthony L. Ashby, Esq.  
7455 Arroyo Crossing Parkway, Suite 200  
Las Vegas, NV 89113

LAW OFFICES OF RICHARD VILKIN, P.C.  
Richard Vilkin, Esq.  
1286 Crimson Sage Ave  
Henderson, NV 89012

HOWARD KIM & ASSOCIATES  
Victoria L. Hightower, Esq.  
400 N. Stephanie Street, Suite 160  
Henderson, NV 89014

/s/ Lisa Peters  
An employee of the  
Law Offices of P. Sterling Kerr

# **TAB 5**



CLERK OF THE COURT

**ANS**

P. STERLING KERR, ESQ.  
Nevada Bar No. 003978  
LAW OFFICES OF P. STERLING KERR  
2450 St. Rose Parkway, Suite 120  
Henderson, Nevada 89074  
Telephone No. (702) 451-2055  
Facsimile No. (702) 451-2077  
Email: psklaw@aol.com  
Attorneys for Ignacio Gutierrez  
Plaintiff/Counter-Defendant

DISTRICT COURT  
CLARK COUNTY NEVADA

IGNACIO GUTIERREZ, an individual

Plaintiff,

vs.

SFR INVESTMENT POOL 1, LLC;  
NEVADA ASSOCIATION SERVICES INC.,  
HORIZON HEIGHTS HOMEOWNERS,  
ASSOCIATION, KB HOME MORTGAGE  
COMPANY a foreign corporation, DOE  
Individuals I through X; ROE Corporations  
and Organizations I through X;

Defendant

SFR INVESTMENT POOL 1, LLC, a Nevada  
limited liability company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a  
Delaware limited liability company;  
COUNTRYWIDE HOME LOANS, INC., a  
foreign corporation, DOES I-X; ROES 1-10,  
inclusive,

Counter-Defendant/ Third Party Defendants

Case No.: A-13-684715-C

Dept. No.: IV

**ANSWER TO DEFENDANT SFR  
INVESTMENT POOL 1, LLC'S  
COUNTERCLAIM AND THIRD PARTY  
COMPLAINT**

LAW OFFICES OF P. STERLING KERR  
ATTORNEYS AT LAW  
2450 St. Rose Parkway, Suite 120, Henderson, Nevada 89074  
Telephone: (702) 451-2055 Facsimile: (702) 451-2077

1 COMES NOW Plaintiff/Counter-Defendant IGNACIO GUTIERREZ, by and  
2 through his attorneys of record, the Law Offices of P. Sterling Kerr, and in Answer to  
3 Defendant SFR INVESTMENT POOL 1, LLC'S Answer, Counterclaim, and Third Party  
4 Complaint on file herein, admits, denies and alleges as follows:

- 5 1. Answering Paragraphs 1, 2, 24, 25, 28, 36, 43, and 60, Plaintiff/Counter-  
6 Defendant admits each and every allegation contained therein.
- 7 2. Answering Paragraphs 5, 6, 7, 9, 10, 13, 20, 21, 23, 37, 40, 42, 49, 50, 51, 53, 54,  
8 55, 56, 57, 58, 59, 67, 68, and 69, Plaintiff/Counter-Defendant denies each and  
9 every allegation contained therein.
- 10 3. Answering Paragraphs 3, 4, 8, 14, 15, 16, 19, 22, 16, 27, 29, 30, 31, 32, 33, 34,  
11 35, 38, 39, 44, 45, 52, 61, 62, and 63, Plaintiff/Counter-Defendant is without  
12 information or knowledge sufficient to ascertain the truth of the allegations  
13 contained therein and therefore denies same.
- 14 4. Answering Paragraphs 17, 18, 48, 64, 65, and 66, as to allegations contained  
15 therein regarding Plaintiff/Counter-Defendant, Plaintiff/Counter-Defendant  
16 denies each and every allegation. As to allegations contained therein regarding  
17 Defendants or Third-Party Defendants other than Plaintiff/Counter-Defendant,  
18 Plaintiff/Counter-Defendant is without information or knowledge sufficient to  
19 ascertain the truth of those allegations and therefore denies the same.
- 20 5. Answering Paragraphs 11, 12, 41, 46, and 47, Plaintiff/Counter-Defendant  
21 admits the statute referenced speaks for itself, and Plaintiff/Counter-Defendant  
22 denies any attempt by Defendant/Counter-Claimant/Third-Party Plaintiff to  
23 characterize that statute. Plaintiff/Counter-Defendant is without knowledge or  
24 information sufficient to ascertain the truth of the remaining allegations  
25 contained therein and therefore denies the same.

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SEVENTH AFFIRMATIVE DEFENSE

Pursuant to Rule 15 of the Nevada Rules of Civil Procedure, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer. Therefore, Defendants reserve the right to amend this Answer, including, to add affirmative defenses, based upon discovery, review of documents, and development of evidence in this case.

Dated this 19<sup>th</sup> day of August, 2013



---

P. STERLING KERR, ESQ.  
Nevada Bar No. 003978  
LAW OFFICES OF P. STERLING KERR  
2450 St. Rose Parkway, Suite 120  
Henderson, Nevada 89074  
Telephone No. (702) 451-2055  
Facsimile No. (702) 451-2077  
Email: psklaw@aol.com  
Attorneys for Ignacio Gutierrez  
Plaintiff/Counter-Defendant

**CERTIFICATE OF MAILING**

I hereby certify that on the 19 day of August, 2013, a true and correct copy of the  
within **ANSWER TO DEFENDANT SFR INVESTMENT POOL 1, LLC'S**  
**COUNTERCLAIM AND THIRD PARTY COMPLAINT** was enclosed in a pre-  
addressed envelope, and deposited in the United States mail, with first-class postage affixed  
thereto, as follows:

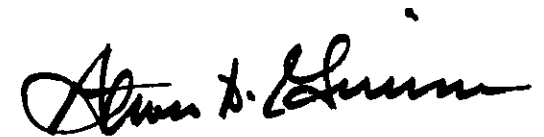
HOWARD KIM & ASSOCIATES  
Howard C. Kim, Esq.  
Diana S. Cline, Esq.  
Victoria L. Hightower, Esq.  
400 N. Stephanie St., Ste. 160  
Henderson, NV 89014



An employee of the  
Law Offices of P. Sterling Kerr



# **TAB 6**



CLERK OF THE COURT

1 **ANS**  
2 **DARREN T. BRENNER, ESQ.**  
3 Nevada Bar No. 8386  
4 **ALLISON R. SCHMIDT, ESQ.**  
5 Nevada Bar No. 10743  
6 **AKERMAN LLP**  
7 1160 Town Center Drive, Suite 330  
8 Las Vegas, Nevada 89144  
9 Telephone: (702) 634-5000  
10 Facsimile: (702) 380-8572  
11 Email: darren.brenner@akerman.com  
12 Email: allison.schmidt@akerman.com

13 *Attorneys for Bank of America, N.A., as Successor*  
14 *by Merger to BAC Home Loans Servicing, LP fka*  
15 *Countrywide Home Loans, Inc., incorrectly sued*  
16 *as Countrywide Home Loans, Inc.*

17 **EIGHTH JUDICIAL DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 **IGNACIO GUTIERREZ, an individual,**  
20  
21 **Plaintiff,**

22 **Case No.: A-13-684715-C**  
23 **Dept.: XVII**

24 **ANSWER**

25 **v.**

26 **SFR INVESTMENTS POOL 1, LLC; NEVADA**  
27 **ASSOCIATION SERVICES, INC., HORIZON**  
28 **HEIGHTS HOMEOWNERS ASSOCIATION, KB**  
29 **HOME MORTGAGE COMPANY, a foreign**  
30 **corporation, DOE Individuals I through X; ROE**  
31 **Corporations and Organizations I through X,**

32 **Defendants.**

33 **SFR INVESTMENTS POOL 1, LLC, Nevada**  
34 **limited liability company,**

35 **Counter-Claimant and Third Party Plaintiff,**

36 **v.**

37 **IGNACIO GUTIERREZ, an individual;**  
38 **NATIONSTAR MORTGAGE, LLC, a Delaware**  
39 **limited liability company; COUNTRYWIDE**  
40 **HOME LOANS, INC., a foreign corporation;**  
41 **DOES I-X; AND ROES 1-10, inclusive,**

42 **Counter-Defendant and Third Party Defendants**

1 Third-Party defendant Bank of America, N.A., as Successor by Merger to BAC Home Loans  
2 Servicing, LP fka Countrywide Home Loans, Inc. (**Bank of America**), incorrectly sued as  
3 Countrywide Home Loans, Inc. hereby answers the third-party complaint filed by SFR investments.

4 1. Bank of America lacks sufficient knowledge or information to admit or deny the allegations  
5 set forth in paragraphs 1-3, 5-7, 9, 10, 14-16, 19-22, 24, 26, 29, 36, 37, 42-44, 50, 52, 53, 60 and 61 of  
6 the complaint and denies each allegation contained in those paragraphs on that basis.

7 2. Bank of America denies the allegations set forth in paragraphs 13, 17, 18, 27, 30, 32, 34, 38,  
8 39, 48, 49, 54-57, 59, and 62-69 of the complaint.

9 3. Bank of America admits the allegations contained in paragraph 4 of the complaint.

10 4. With respect to paragraphs 8, 25, 28, 31, 33, and 35 of the complaint, Bank of America  
11 responds that the documents referenced speak for themselves.

12 5. With respect to paragraphs 11, 12, 23, 41, and 47 of the complaint, the allegations are pure  
13 statements of law, to which no response is required.

14 **WHEREFORE**, Bank of America prays for the following:

- 15 1. That SFR takes nothing by way of its complaint;  
16 2. For attorney's fees and costs of defending this action; and  
17 3. For such other and further relief as this Court deems just and proper.

18 **AFFIRMATIVE DEFENSES**

19 1. Plaintiff fails to state claims upon which relief may be granted.

20 2. The foreclosure sale at issue cannot eliminate a senior deed of trust because it was  
21 commercially unreasonable.

22 3. The HOA failed to conduct the sale in good faith.

23 4. The HOA failed to provide proper notice of the foreclosure.

24 5. Due to plaintiff's own actions, plaintiff is estopped from asserting the claims in the  
25 complaint.

26 6. Any act or omission on the part of Bank of America was not the proximate cause of  
27 the alleged injuries or damages, if any, sustained by plaintiff.

28 7. Bank of America owed no duty to plaintiff.

8. Bank of America did not breach any duty, if any, owed to plaintiff.
9. Bank of America was unaware of any wrongdoing by any other defendant or third party.
10. Plaintiff did not justifiably or reasonably rely on any representation made by any party
11. Plaintiff has failed to do equity.
12. Plaintiff acted with unclean hands.
13. Plaintiff assumed the risks when it purchased the property.
14. Bank of America did not make any false representations to plaintiff.
15. No agents of Bank of America made any misrepresentations to plaintiff.
16. Plaintiff has not stated any basis to rescind any instruments or liens encumbering the property.
17. The assessment lien did not properly attach.
18. Bank of America reserves the right to assert additional affirmative defenses that become apparent during discovery.

DATED this 8th day of October, 2014.

**AKERMAN LLP**

*/s/ Allison R. Schmidt*

DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
ALLISON R. SCHMIDT, ESQ.  
Nevada Bar No. 10743  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144

*Attorneys for Bank of America, N.A., as Successor  
by Merger to BAC Home Loans Servicing, LP fka  
Countrywide Home Loans, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 8th day of October, 2014, 2014 I caused to be served a true and correct copy of foregoing **ANSWER**, in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

P. Sterling Kerr, Esq.  
LAW OFFICES OF P. STERLING KERR  
2450 St. Rose Parkway, Suite 120  
Henderson, NV 89074

Richard J. Vilkin, Esq.  
LAW OFFICES OF RICHARD J. VILKIN, P.C.  
1286 Crimson Sage Ave.  
Henderson, NV 89012

*Attorneys for Plaintiff and Counter Defendant*

*Attorneys for Defendant and Counterclaimant  
Nevada Association Services, Inc.*

Victoria L. Hightower, Esq.  
Howard C. Kim, Esq.  
Diana S. Cline, Esq.  
HOWARD KIM & ASSOCIATES  
400 N. Stephanie Street, Suite 160  
Henderson, NV 89014

*Attorneys for Defendant and Counterclaimant  
Nevada Association Services, Inc.*

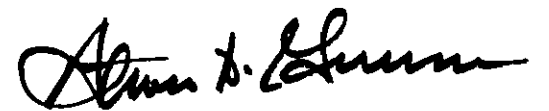
**(UNITED STATES MAIL)** By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written:

Anthony L. Ashby, Esq.  
THE LAW OFFICES OF DAVID M. JONES  
7455 Arroyo Crossing Parkway, Suite 200  
Las Vegas, NV 89113

*Attorney for Defendant Horizon Heights HOA*

/s/ Lucille Chiusano  
An employee of AKERMAN LLP

# **TAB 7**



CLERK OF THE COURT

1 **ANS**  
2 **DARREN T. BRENNER, ESQ.**  
3 Nevada Bar No. 8386  
4 **ALLISON R. SCHMIDT, ESQ.**  
5 Nevada Bar No. 10743  
6 **AKERMAN LLP**  
7 1160 Town Center Drive, Suite 330  
8 Las Vegas, Nevada 89144  
9 Telephone: (702) 634-5000  
10 Facsimile: (702) 380-8572  
11 Email: darren.brenner@akerman.com  
12 Email: allison.schmidt@akerman.com

13 *Attorneys for Bank of America, N.A., as Successor*  
14 *by Merger to BAC Home Loans Servicing, LP fka*  
15 *Countrywide Home Loans, Inc., incorrectly sued*  
16 *as Countrywide Home Loans, Inc. and Nationstar*  
17 *Mortgage, LLC*

18 **EIGHTH JUDICIAL DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 **IGNACIO GUTIERREZ, an individual,**  
21 **Plaintiff,**

22 **v.**

23 **SFR INVESTMENTS POOL 1, LLC; NEVADA**  
24 **ASSOCIATION SERVICES, INC., HORIZON**  
25 **HEIGHTS HOMEOWNERS ASSOCIATION, KB**  
26 **HOME MORTGAGE COMPANY, a foreign**  
27 **corporation, DOE Individuals I through X; ROE**  
28 **Corporations and Organizations I through X,**

**Defendants.**

**SFR INVESTMENTS POOL 1, LLC, Nevada**  
**limited liability company,**

**Counter-Claimant and Third Party Plaintiff,**

**v.**

**IGNACIO GUTIERREZ, an individual;**  
**NATIONSTAR MORTGAGE, LLC, a Delaware**  
**limited liability company; COUNTRYWIDE**  
**HOME LOANS, INC., a foreign corporation;**  
**DOES I-X; AND ROES 1-10, inclusive,**

**Counter-Defendant and Third Party Defendants**

Case No.: A-13-684715-C  
Dept. No.: XVII

**NATIONSTAR MORTGAGE, LLC's**  
**ANSWER TO SFR INVESTMENTS**  
**POOL 1, LLC'S THIRD-PARTY**  
**COMPLAINT**

1 Third-Party defendant Nationstar Mortgage, LLC (**Nationstar**), hereby answers the third-  
2 party complaint filed by SFR investments.

3 1. Nationstar lacks sufficient knowledge or information to admit or deny the allegations set  
4 forth in paragraphs 1, 2, 4-7, 9, 10, 14-16, 19-22, 24, 26, 29, 36, 37, 42-4450, 52, 53, 60 and 61 of  
5 the complaint and denies each allegation contained in those paragraphs on that basis.

6 2. Nationstar denies the allegations set forth in paragraphs 13, 17, 18, 27, 30, 32, 34, 38, 39, 48,  
7 49, 54-57, 59, and 62-69 of the complaint.

8 3. Nationstar admits the allegations contained in paragraph 3 of the complaint.

9 4. With respect to paragraphs 8, 25, 28, 31, 33, and 35 of the complaint, Nationstar responds  
10 that the documents referenced speak for themselves.

11 5. With respect to paragraphs 11, 12, 23, 41, and 47 of the complaint, the allegations are pure  
12 statements of law, to which no response is required.

13 **WHEREFORE**, Nationstar prays for the following:

- 14 1. That SFR takes nothing by way of its complaint;  
15 2. For attorney's fees and costs of defending this action; and  
16 3. For such other and further relief as this Court deems just and proper.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 **(Failure to State a Claim)**

20 Plaintiff has failed to state facts sufficient to constitute any cause of action against  
21 Nationstar.

22 **SECOND AFFIRMATIVE DEFENSE**

23 **(Void for Vagueness)**

24 To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute and  
25 Chapter 116 are void for vagueness as applied to this matter.

26 //

27 //

28 //



**THIRD AFFIRMATIVE DEFENSE****(Due Process Violations)**

A senior deed of trust beneficiary cannot be deprived of its property interest without due process.

**FOURTH AFFIRMATIVE DEFENSE****(Assumption of Risk)**

Plaintiff, at all material times, calculated, knew and understood the risks inherent in the situations, actions, omissions and transactions upon which it now bases its various claims for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is consequently barred from all recovery by such assumption of risk.

**FIFTH AFFIRMATIVE DEFENSE****(Tender, Estoppel, Laches, or Waiver)**

The super-priority lien may have been satisfied prior to the homeowner's association foreclosure under the doctrines of tender, estoppel, laches, or waiver.

**SIXTH AFFIRMATIVE DEFENSE****(Commercial Reasonableness and Violation of Good Faith – NRS 116.1113)**

The homeowner's association foreclosure sale was not commercially reasonable, and the circumstances of sale of the property violated the homeowner's association's obligation of good faith under NRS 116.1113 and duty to act in a commercially reasonable manner.

**SEVENTH AFFIRMATIVE DEFENSE****(Failure to Mitigate Damages)**

Plaintiff's claims are barred in whole or in part because of his failure to take reasonable steps to mitigate its damages, if any.

**EIGHTH AFFIRMATIVE DEFENSE****(Third Party Fault)**

The damages complained of, if there were any, were proximately contributed to or caused by the carelessness, negligence, fault or defects resulting from acts/omissions of other persons unknown

1 to Nationstar at this time, and were not caused in any way by Nationstar or by persons for whom  
2 Nationstar is legally responsible.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Reduction of Damages Based on Third Party Fault)**

5 Nationstar is entitled to have any award against it reduced or eliminated to the extent that the  
6 negligence, carelessness, or defect resulted from the acts/omissions or comparative fault of other  
7 persons that contributed to plaintiff's damages, if any.

8 **TENTH AFFIRMATIVE DEFENSE**

9 **(No Standing)**

10 Plaintiff lacks standing to bring some or all of his claims and causes of action.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 **(Unclean Hands)**

13 Nationstar avers the affirmative defense of unclean hands.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(Failure to Provide Notice)**

16 Nationstar was not provided proper notice of the "super-priority" assessment amounts and the  
17 homeowner's association foreclosure sale, and any such notice provided to Nationstar failed to  
18 comply with the statutory and common law requirements of Nevada and with state and federal  
19 constitutional law.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 **(Plaintiff is Not Entitled to Relief)**

22 Nationstar denies plaintiff is entitled to any relief for which it prays.

23 **FOURTEENTH AFFIRMATIVE DEFENSE**

24 **(Failure to Do Equity)**

25 Nationstar avers the affirmative defense of failure to do equity.

26 //

27 //

**FIFTEENTH AFFIRMATIVE DEFENSE****(Plaintiff is not a Bona Fide Purchaser for Value)**

Plaintiff purchased the property with record notice of the interest of the senior deed of trust recorded against the property.

**SIXTEENTH AFFIRMATIVE DEFENSE****(Void Foreclosure Sale)**

The HOA foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116 and other provisions of law.

**SEVENTEENTH AFFIRMATIVE DEFENSE****(Federal Preemption)**

Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes an HOA sale from extinguishing the Deed of Trust on the Property and preempts any state law to the contrary

**EIGHTEENTH AFFIRMATIVE DEFENSE****(Additional Affirmative Defenses)**

Pursuant to NRCP 11, Nationstar reserves the right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

DATED this 21st day of July, 2015.

**AKERMAN LLP**

*/s/ Allison R. Schmidt*

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

ALLISON R. SCHMIDT, ESQ.

Nevada Bar No. 10743

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

*Attorneys for Bank of America, N.A., as Successor  
by Merger to BAC Home Loans Servicing, LP fka  
Countrywide Home Loans, Inc. and Nationstar  
Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of July, 2015 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **NATIONSTAR MORTGAGE, LLC's ANSWER TO SFR INVESTMENTS POOL 1, LLC'S THIRD-PARTY COMPLAINT** addressed to:

P. Sterling Kerr, Esq.  
LAW OFFICES OF P. STERLING KERR  
2450 St. Rose Parkway, Suite 120  
Henderson, NV 89074  
psklaw@aol.com

Richard J. Vilkin, Esq.  
LAW OFFICES OF RICHARD J. VILKIN, P.C.  
1286 Crimson Sage Ave.  
Henderson, NV 89012  
richard@vilkinlaw.com

*Attorneys for Plaintiff Ignacio Gutierrez*

*Attorneys for Counterclaimant Nevada Association Services, Inc.*

Howard C. Kim, Esq.  
Diana S. Cline, Esq.  
HOWARD KIM & ASSOCIATES  
400 N. Stephanie Street, Suite 160  
Henderson, NV 89014  
diana@hkimlaw.com  
sarah@hkimlaw.com  
tomas@hkimlaw.com  
eserve@hkimlaw.com

*Attorneys for Defendant and Counterclaimant  
SFR Investments Pool 1 LLC*

/s/ Lucille Chiusano

An employee of AKERMAN LLP

# **TAB 8**

DISTRICT COURT  
CLARK COUNTY, NEVADA

CASE NO.: A-13-684715-C

DEPT. XVII

# TRANSCRIPT OF PROCEEDINGS

Defendant.

And all related claims

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE  
WEDNESDAY, JULY 19, 2017

## STATUS CHECK: SUPREME COURT REMAND

APPEARANCES:

DARREN T. BRENNER, ESQ.

ZACHARY CLAYTON, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 19, 2017

2 [Proceedings commenced at 8:30 a.m.]

3 THE COURT: Anyone else?

4 MR. BRENNER: Good morning, Your Honor, Darren Brenner for Nationstar.

5 MR. CLAYTON: And good morning, Your Honor, Zachary Clayton for SFR  
6 Investments.

7 THE COURT: And this is a status check, a Supreme Court remand. Did we  
8 need any supplemental briefing or where are we at on this case? I understand from  
9 the remand I got to make a determination on whether a regulated entity owned the  
10 loan in question; correct?

11 MR. BRENNER: I think --

12 MR. CLAYTON: Go ahead.

13 MR. BRENNER: -- Judge Bixler did it on your behalf, --

14 THE COURT: Oh.

15 MR. BRENNER: -- if that makes a difference, but, Your Honor, you --

16 THE COURT: I like that when you have a senior judge appear, when it's a  
17 reverse or remand they put the originating judge on this, so --

18 MR. BRENNER: Of course.

19 THE COURT: -- okay.

20 MR. BRENNER: Of course. You know, Your Honor, there are a lot of judges  
21 who rule this way. This the first order we have gotten on the HERA preemption issue  
22 and it's -- as you've probably seen, it's not dispositive. It only resolves the issue of  
23 standing and it says there's two factual issues that remain; ownership and the  
24 servicing relationship between the servicer and the GSE. And then there's a legal  
25 issue that remains. The Supreme Court decided it was still going to leave whether

1 the legal issue of federal preemption to the district court and not resolve that issue.

2           What I can tell Your Honor is this is, not surprisingly, the first order -- it's  
3 one of the first cases that addressed the issue. We do not brief them the same way  
4 and we do not use the same evidence that we used to in order to address the  
5 issues. I think what my client would like to have is an opportunity to present the  
6 evidence in the form it would today based on the actual issues presented and  
7 decided for the first time by the Supreme Court, and then re-brief the matter and that  
8 would require some additional disclosures on our part.

9           If Your Honor wasn't willing to do that at a status check, and I think it's  
10 the easiest way is just to re-open deadlines and do it today, but if you weren't willing  
11 to do it a status check then I think we would at least need some additional briefing  
12 and the opportunity to explain why 56(f) relief is appropriate in this circumstance  
13 given how everything has changed.

14           MR. CLAYTON: And if I may, Your Honor, I agree with Counsel's description  
15 of the case from the Nevada Supreme Court. However, being that factual issues is  
16 the -- really the servicing relationship and then ownership, those -- that's all  
17 evidence that should be presented at the underlying trial. I mean this is a quiet title  
18 action. So, while I agree with briefing, I do not think we need to re-open discovery. I  
19 think we can get right to the briefing in deciding these issues.

20           THE COURT: Specifically, what discovery are you seeking?

21           MR. BRENNER: Let me tell you what happened in this case, Your Honor.  
22 We -- the evidence we presented was in the form of testimony from Nationstar  
23 saying it was the servicer and it -- and that Freddie owns the loan. And you  
24 probably saw the concurrence from Judge Stigler. She said that's enough to prove it  
25 and think -- and I think the Supreme Court decided it. The Supreme Court didn't say,



1 no, that's not enough. The Supreme Court remanded on the procedural issue of the  
2 Court didn't decide whether that's enough and I -- and we want the Court to decide  
3 first. So, it's not that we don't think that's enough. It's that we want it to be  
4 consistent.

5           So, what we do today is -- that's different two years later after this is all  
6 developed and especially if we have this new opinion, is we supply testimony from a  
7 corporate representative of Freddie. We supply all of the servicing guides. We  
8 supply the business records that the individual from Freddie relies on. And really  
9 what we're trying to do is just get to the merits here and this is how its evolved two  
10 years since this motion after dealing with these issues, and ultimately, yes, Counsel  
11 is right that that was the record that was presented to the Court, but I think there's  
12 this unique situation of Nevada HOA where there is no precedence, where  
13 everything is a moving target. We just want to submit the best record to the Court so  
14 it can be decided on the merits. And absolutely, no problem; once we make those  
15 disclosures with Plaintiff doing anything and everything they need -- they believe is  
16 necessary to evaluate that evidence, take depositions, do what it is that they think  
17 they need to do in order to assess.

18           MR. CLAYTON: Well, I would just say that in a quiet title action it's always  
19 been you had to present evidence of your interest in the property superior to other  
20 parties, so that should have been the underlying record. However, if the Court is  
21 inclined to grant them, we would need to take depositions of their -- whoever they're  
22 going to disclose.

23           THE COURT: How much time do you need?

24           MR. BRENNER: I think we could do it in 90 days.

25           THE COURT: All right, we'll re-open discovery for 90 days, thereafter either

1 party is free to file any new briefing on this matter; okay?

2 MR. CLAYTON: Thank you.

3 THE COURT: All right, thank you, Counsel.

4 MR. BRENNER: Thank you, Your Honor.

5 THE COURT: And I remember when I saw this, I didn't remember ruling on  
6 this and so that's why -- but they put my name on it, so.

7 MR. CLAYTON: Thank you, Your Honor.


8 MR. BRENNER: Thank you, Your Honor.

9 THE COURT: Thank you.

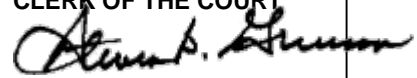
10  
11 [Proceedings concluded at 8:35 a.m.]

12 \* \* \* \* \*

13  
14 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
15 audio/video recording in the above-entitled case to the best of my ability.

16   
17 CYNTHIA GEORGILAS  
18 Court Recorder/Transcriber  
19 District Court Dept. XVII  
20  
21  
22  
23  
24  
25

# **TAB 9**



**MSJD**  
MELANIE D. MORGAN, ESQ.  
Nevada Bar No. 8215  
TENESA S. SCATURRO, ESQ.  
Nevada Bar No. 12488  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
Email: [tenesa.scaturro@akerman.com](mailto:tenesa.scaturro@akerman.com)

*Attorneys for Bank of America, N.A., as Successor  
by Merger to BAC Home Loans Servicing, LP fka  
Countrywide Home Loans, Inc., incorrectly sued  
as Countrywide Home Loans, Inc. and Nationstar  
Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IGNACIO GUTIERREZ, an individual,  
  
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA  
ASSOCIATION SERVICES, INC.; HORIZON  
HEIGHTS HOMEOWNERS ASSOCIATION;  
KB HOME MORTGAGE COMPANY, a foreign  
corporation; DOE Individuals I through X; ROE  
Corporations and Organizations I through X,

Defendants.

Case No.: A-13-684715-C

Dept. No: XVII

**NATIONSTAR MORTGAGE, LLC'S  
RENEWED MOTION FOR SUMMARY  
JUDGMENT**

**Hearing Date:** 01/03/18

**Hearing Time:** 8:30 AM

AKERMAN LLP  
1160 TOWN CENTER DRIVE, SUITE 330  
LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 SFR INVESTMENTS POOL 1, LLC, Nevada  
2 Limited Liability Company,

3 Counter-Claimant and Third Party Plaintiff,

4 vs.

5 IGNACIO GUTIERREZ, an individual;  
6 NATIONSTAR MORTGAGE, LLC, a Delaware  
7 limited liability company; COUNTRYWIDE  
8 HOME LOANS, INC., a foreign corporation;  
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

9 Nationstar Mortgage LLC moves for summary judgment under NRCP 56.

10 **NOTICE OF MOTION**

11 TO: ALL PARTIES AND COUNSEL OF RECORD:

12 PLEASE TAKE NOTICE that Nationstar Mortgage LLC, will bring the foregoing,  
13 **NATIONSTAR MORTGAGE, LLC'S RENEWED MOTION FOR SUMMARY**  
14 **JUDGMENT**, on for hearing before the Court on the 03 day of January, <sup>2018</sup>~~2017~~, at the  
15 hour of 8:30 a.m., or as soon thereafter as counsel can be heard.

16 DATED this 15th day of November, 2017.

17 AKERMAN LLP

18 /s/ Tenesa S. Scaturro, Esq.

19 MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

20 TENESA S. SCATURRO, ESQ.

Nevada Bar No. 12488

21 1160 Town Center Drive, Suite 330

22 Las Vegas, NV 89144

23 *Attorneys for Nationstar Mortgage LLC*

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **INTRODUCTION**

26 The Nevada Supreme Court has confirmed that Nationstar “may argue that the Federal  
27 Foreclosure Bar preempts NRS 116.3116, and that neither Freddie Mac nor the FHFA need be  
28

1 joined as a party.” *Nationstar Mortg., LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 758  
2 (Nev. 2017). Its decision tasks this Court to determine on remand whether (i) Freddie Mac owned  
3 the loan in question, and (ii) Nationstar was in a contractual relationship with Freddie Mac to service  
4 the loan. *See id.* at 758. Given the evidence before this Court, the answer to both questions must be  
5 “yes.”

6 The evidence before this Court demonstrates that, at the time of the HOA Sale, Nationstar  
7 was beneficiary of record of a deed of trust encumbering the property as a contractually authorized  
8 servicer of Freddie Mac, which owned the deed of trust and therefore had a property interest in the  
9 collateral. The Ninth Circuit and many state and federal trial courts have already held that such  
10 materially identical evidence is sufficient to establish Freddie Mac’s property interests under Nevada  
11 law; in circumstances, like here, where a servicer appeared as record beneficiary, Freddie Mac  
12 retains a “valid and enforceable” interest in the property. *See, e.g., Elmer v. JPMorgan Chase &*  
13 *Co.*, No. 15-17407, 2017 WL 3822061 (9th Cir. Aug. 31, 2017); *Berezovsky v. Moniz*, 869 F.3d 923  
14 (9th Cir. 2017).

15 SFR alleges that it purchased property at a homeowners’ association foreclosure sale (“HOA  
16 Sale”), which it contends extinguished a deed of trust then encumbering the property. SFR relies on  
17 NRS 116.3116(2) (“State Foreclosure Statute”), which allows properly conducted HOA Sales to  
18 extinguish all junior interests. But, a federal statute provides that while Freddie Mac is in  
19 conservatorship of the Federal Housing Finance Agency (“FHFA”), none of its property “shall be  
20 subject to . . . foreclosure . . . without the consent of [FHFA].” 12 U.S.C. § 4617(j)(3) (the “Federal  
21 Foreclosure Bar”). Here, Freddie Mac has been in FHFA conservatorship at all relevant times, and  
22 FHFA did not consent to the extinguishment of Freddie Mac’s property interest. Under the  
23 Supremacy Clause, the Federal Foreclosure Bar preempts the State Foreclosure Statute, and the  
24 HOA Sale did not extinguish Freddie Mac’s interest.

25 Additionally, the sale was commercially unreasonable and the HOA’s trustee never sent  
26 Nationstar the notice of sale.

27 For these reasons, summary judgment should be entered in favor of Nationstar.

28 ...

## **BACKGROUND**

### **The Secondary Mortgage Market**

In 1970, Congress chartered Freddie Mac to facilitate the nationwide secondary mortgage market, and thereby to enhance the equitable distribution of mortgage credit throughout the nation. *See City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014). Freddie Mac’s federal statutory charter authorizes it to purchase and deal only in secured “mortgages,” not unsecured loans. *See* 12 U.S.C. §§ 1451(d), 1454; *see also Lightfoot v. Cendant Mortg. Corp.*, 580 U.S. \_\_\_, 2017 WL 182911, at \*3 (Jan. 18, 2017) (discussing similarly situated Fannie Mae’s role as a purchaser of mortgages); *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 599-600 (D.C. Cir. 2017) (same). Freddie Mac has purchased millions of mortgages nationwide, including hundreds of thousands of mortgages in Nevada.

While Freddie Mac fills this role in the market, it is not in the business of managing the mortgages themselves, such as handling day-to-day borrower communications. Rather, like other investors in loans, Freddie Mac contracts with servicers to act on its behalf, and these servicers often are assigned deeds of trust as record beneficiary to facilitate their efficient management of those loans. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1038-39 (9th Cir. 2011) (describing how loan owners contract with servicers and the servicers’ role); Restatement (Third) of Prop.: Mortgages § 5.4 cmt. c (“Restatement”) (discussing the common practice where investors in the secondary mortgage market designate their servicer to be assignee of the mortgage); Freddie Mac’s Single-Family Seller/Servicer Guide (“Guide”) at 1101.2(a) (discussing Freddie Mac’s relationship with servicers to manage the loans Freddie Mac purchases).<sup>1</sup> The Nevada Supreme Court has recognized the importance of these relationships by adopting the Restatement approach.

---

<sup>1</sup> The Guide is publicly available on Freddie Mac’s website. An interactive version is available at [www.freddiemac.com/singlefamily/guide](http://www.freddiemac.com/singlefamily/guide), and archived prior versions of the Guide are available at [www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html](http://www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html). While the cited sections of the Guide have been amended over the course of Freddie Mac’s ownership of the Loan, none of these amendments have materially changed the relevant sections. A static, PDF copy of the most recent version of the Guide is available at <http://www.allregs.com/tpl/Viewform.aspx?formid=00051757&formtype=agency>. The Court may take judicial notice of the Guide. *See, e.g., Berezovsky*, 869 F.3d at 932, n.9 (taking judicial notice of Freddie Mac’s servicing guide); *Charest v. Fannie Mae*, 9 F. Supp. 3d 114, 118 & n.1 (D. Mass. 2014); *Cirino v. Bank of Am., N.A.*, No. CV 13-8829, 2014 WL 9894432, at \*7 (C.D. Cal. Oct. 1, 2014).

1 See *In re Montierth*, 131 Nev. Adv. Op. 55, 354 P.3d 648, 650-51 (2015). *Montierth* holds that  
2 when a loan owner has an agent or contractual relationship with an entity who acts as the beneficiary  
3 of record of a deed of trust, the loan owner (though not the recorded beneficiary) maintains a secured  
4 property interest. *Id.*

5 Freddie Mac and its servicers also work with Mortgage Electronic Registration System  
6 (“MERS”). The Ninth Circuit has noted that while “MERS, as the ‘nominee’ of the lender and of  
7 any assignee of the lender, is designated . . . as the ‘beneficiary’ . . . under the deed of trust,” a  
8 “lender *owns* the home loan borrower’s . . . promissory note.” *In re Mortg. Elec. Registration Sys.,*  
9 *Inc.*, 754 F.3d 772, 776 (9th Cir. 2014) (emphasis added). The “obvious advantage” of the system is  
10 that “it allows residential lenders to avoid the bother and expense of recording every change of  
11 ownership of promissory notes.” *Id.* at 776-77 (emphasis added); see also *Higgins v. BAC Home*  
12 *Loans Servicing, LP*, 793 F.3d 688, 689 (6th Cir. 2015) (holding that sale of note to new owner  
13 while MERS remains beneficiary of record of a mortgage does not trigger Kentucky recordation  
14 requirement). The true owner of the loan is the lender, its successor, or its assignee—not MERS.  
15 See *Cervantes*, 656 F.3d at 1039.

#### 16 FHFA and Freddie Mac in Conservatorship

17 In July 2008, Congress passed the Housing and Economic Recovery Act of 2008, Pub. L. No.  
18 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq.*), which established FHFA. FHFA is  
19 an independent federal agency with regulatory and oversight authority over Freddie Mac, Federal  
20 National Mortgage Association (“Fannie Mae”), and the Federal Home Loan Banks. In September  
21 2008, FHFA placed Freddie Mac and Fannie Mae (together, “the Enterprises”) into conservatorships  
22 “for the purpose of reorganizing, rehabilitating, or winding up [their] affairs.” 12 U.S.C.  
23 § 4617(a)(2). Congress authorized the Conservator “to undertake extraordinary economic measures”  
24 out of a concern that “a default by Fannie and Freddie would imperil the already fragile national  
25 economy.” *Perry*, 864 F.3d at 599. Accordingly, Congress granted FHFA an array of powers,  
26 privileges, and exemptions from otherwise applicable laws when acting as Conservator. Among  
27 these is a section providing that “[n]o property” of FHFA conservatorships “shall be subject to . . .  
28 foreclosure . . . without the consent of [FHFA].” 12 U.S.C. § 4617(j)(3).



1 The Conservator has stated that it supports invocation of the Federal Foreclosure Bar by  
2 “authorized servicers” such as Nationstar in litigation such as this one: “FHFA supports the reliance  
3 on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of [Freddie  
4 Mac] to preclude the purported involuntary extinguishment of [Freddie Mac’s] property interest by  
5 an HOA foreclosure sale.” Ex. L, FHFA, Statement on Servicer Reliance on the Housing and  
6 Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations (Aug. 28,  
7 2015), [http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf)  
8 [Servicers-Reliance.pdf](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf).

### 9 Undisputed Facts Specific to this Case

#### 10 A. The Subject Property, Note, and Deed of Trust

- 11 1. A Deed of Trust listing Ignacio Gutierrez as the borrower (“Borrower”); KB Home Mortgage  
12 Company (“KB Home”) as the lender (“Lender”); and MERS, as beneficiary solely as  
13 nominee for Lender and Lender’s successors and assigns, was executed on July 6, 2005, and  
14 recorded on July 20, 2005. **Ex. A.** The Deed of Trust granted Lender a security interest in  
15 real property known as 668 Moonlight Stroll Street, Henderson, NV 89015 (the “Property”)  
16 to secure the repayment of a loan in the original amount of \$271,638.00 to the Borrowers (the  
17 “Loan”). *Id.*
- 18 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed of  
19 Trust on or about August 22, 2005. Freddie Mac Decl., **Ex. B** at ¶ 5(d). Freddie Mac  
20 maintained that ownership at the time of the HOA Sale on April 5, 2013. *Id.* at ¶ 5(i).
- 21 3. On April 23, 2012, MERS, as nominee for Lender and Lenders successors and assigns,  
22 recorded an assignment of the Deed of Trust to Bank of America, N.A. **Ex. C.**
- 23 4. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed of Trust  
24 to Nationstar. **Ex. D.**
- 25 5. At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the Loan for  
26 Freddie Mac. *See* Ex. B at ¶ 5(i); *see also* Nationstar Decl., **Ex. E** at ¶¶ 5,6.

**B. Freddie Mac's Contract with Its Servicers, Including Nationstar**

6. The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, is governed by the Guide, a central governing document for Freddie Mac's relationship with servicers nationwide. Among other things, the Guide provides that Freddie Mac's servicers may act as record beneficiaries for the deeds of trust owned by Freddie Mac and requires that servicers assign these deeds of trust to Freddie Mac upon Freddie Mac's demand. *See* Ex. B; Ex. E at ¶ 7 (Guide at 1101.2(a)).

7. The Guide provides that:

For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordings of any of the Mortgage documents so as to reflect the interests of Freddie Mac.

Ex. B (Guide at 1301.10).

8. The Guide also provides that:

The Seller/Servicer is not required to prepare an assignment of the Security Instrument to Freddie Mac. However, *Freddie Mac may, at its sole discretion and at any time, require a Seller/Servicer, at the Seller/Servicer's expense, to prepare, execute and/or record assignments of the Security Instrument to Freddie Mac.*

Ex. B (Guide at 6301.6) (emphasis added).

9. The Guide authorizes servicers to foreclose on the Deed of Trust on behalf of Freddie Mac. *See, e.g.,* Ex. B (Guide at 8105.3, 9301.1, 9301.12, 9401.1).

10. Accordingly, the Guide also provides for a temporary transfer of possession of the note when necessary for servicing, including foreclosure. *See* Ex. B (Guide at 8107.1, 8107.2, 9301.11). However, when in "physical or constructive possession of a Note," the Servicer must "follow prudent business practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at 8107.1(b). Furthermore, when transferring documents in a mortgage file, including a note, the servicer must ensure the receiver acknowledges that the note is "Freddie Mac's property." Ex. B (Guide at 3302.5).

...

...

11. The Guide also includes chapters regarding how and when servicers should appear as parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 (“Routine and non-routine litigation”), 9501 (“Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters.”). Included among the types of “non-routine” litigation in which servicers may appear as a party to represent loan interests of Freddie Mac is that concerning “[a]ny issue involving Freddie Mac’s conservatorship.” Guide at 9402.2.

12. The Guide provides that:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Ex. B (Guide at 1201.9).

13. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Ex. B (Guide at 7101.15(c)).

14. Finally, the Guide provides that:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments . . .

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Ex. B (Guide at 7101.6).

### C. The HOA Foreclosure Sale and SFR’s Purported Acquisition of the Property

15. On July 10, 2012, the HOA recorded a Notice of Delinquent Assessment Lien. **Ex. F.**

16. On August 30, 2012, the HOA recorded a Notice of Default and Election to Sell under the Deed of Trust. **Ex. G.**

17. On February 20, 2013, the HOA recorded a Notice of Foreclosure Sale. **Ex. H.**

18. On April 8, 2013, a foreclosure deed was recorded against the Property. **Ex. I.** The foreclosure deed states that the Property was sold in an HOA foreclosure sale on April 5, 2013 to SFR with a purchase price of \$11,000.

1 19. Nationstar's expert opines that the fair market value at the time of the sale was \$138,000.00.

2 **Ex. J.**

3 20. Nevada Association Services did not mail a copy of the notice of sale to Nationstar. **Ex. K** at  
4 38:22-41:17 and NAS78-79.

5 21. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing Freddie  
6 Mac's interest in the Property. **Ex. L.** (FHFA's Statement on HOA Super-Priority Lien  
7 Foreclosures (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)  
8 [Super-Priority-Lien-Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)).

9 **LEGAL STANDARD**

10 A motion for summary judgment should be granted "when the pleadings and other evidence  
11 on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party  
12 is entitled to judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 729; 121 P.3d 1026,  
13 1029 (2005); NRCP 56(c). Materiality is dependent on the underlying substantive law, and includes  
14 only those factual disputes that could change the outcome of a case. *Id.*

15 ...

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## ARGUMENT

### **The Federal Foreclosure Bar Defeats SFR's Claim to an Interest in the Property Free and Clear of the Deed of Trust**

#### **D. The Federal Foreclosure Bar Preempts Contrary State Law**

As the Ninth Circuit recently held, the Federal Foreclosure Bar preempts the State Foreclosure Statute that would otherwise permit the HOA's foreclosure of its superpriority lien to extinguish the Enterprises' interest in property while the Enterprises are under FHFA's conservatorship. *Berezovsky*, 869 F.3d at 930-31; *Elmer*, 2017 WL 3822061, at \*1 (same). Indeed, at least twenty related cases in the U.S. District Court of Nevada agree.<sup>2</sup> Similarly, Nevada state courts have resolved similar claims in favor of Freddie Mac, Fannie Mae, and their servicers in eighteen cases.<sup>3</sup>

<sup>2</sup> See *Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D. Nev. 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015 WL 4276169 (D. Nev. July 14, 2015); *Williston Inv. Grp., LLC v. JP Morgan Chase Bank, NA*, No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 14, 2015); *My Glob. Vill., LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220 (D. Nev. July 28, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 29, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *FHFA v. SFR Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016); *G & P Inv. Enters., LLC v. Wells Fargo Bank, N.A.*, No. 2:15-cv-0907-JCM-NJK, 2016 WL 4370055 (D. Nev. Aug. 4, 2016); *Saticoy Bay LLC, Series 2714 Snapdragon v. Flagstar Bank, FSB*, No. 2:13-CV-1589-JCM-VCF, 2016 WL 1064463 (D. Nev. Mar. 17, 2016); *Koronik v. Nationstar Mortg. LLC*, No. 2:13-CV-2060-GMN-GWF, 2016 WL 7493961 (D. Nev. Dec. 30, 2016); *Nevada Sand Castles, LLC v. Green Tree Servicing LLC*, No. 2:15-CV-0588-GMN-VCF, 2017 WL 701361 (D. Nev. Feb. 22, 2017); *Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-CWH, 2017 WL 773872 (D. Nev. Feb. 27, 2017); *FHFA v. Nevada New Builds, LLC*, No. 2:16-cv-1188-GMN-CWH, 2017 WL 888480 (D. Nev. Mar. 6, 2017); *LN Mgmt. LLC v. Pfeiffer*, No. 2:13-cv-1934-JCM-PAL, 2017 WL 955184 (D. Nev. Mar. 9, 2017); *Order, Vita Bella Homeowners Ass'n v. Fannie Mae*, No. 2:15-cv-0515-JCM-VCF (D. Nev. Mar. 9, 2017) (ECF No. 54); *JP Morgan Chase Bank, N.A. v. Las Vegas Dev't Grp., LLC*, No. 2:15-cv-1701-JCM-VCF, 2017 WL 937722 (D. Nev. Mar. 9, 2017); *Freddie Mac v. Donel*, No. 2:16-cv-176, 2017 WL 2692403 (D. Nev. June 21, 2017); *Cohen v. Bank of America, N.A.*, No. 2:15-cv-01393-GMN-GWF, 2017 WL 4185464 (D. Nev. Sept. 21, 2017).

<sup>3</sup> *Saticoy Bay LLC Series 9641 Christine View vs. Fannie Mae*, No. A-13-690924-C (Nev. Dist. Ct. Dec. 8, 2015); *5312 La Quinta Hills LLC, vs. BAC Home Loans Serv'g LP*, No. A-13-693427-C (Nev. Dist. Ct. Jan. 6, 2016); *NV West Servicing LLC v. Bank of America, N.A.*, No. A-14-705996-C (Nev. Dist. Ct. Jan. 25, 2016); *Fort Apache Homes, Inc. vs. JPMorgan Chase Bank, N.A.*, No. A-13-691166-C (Nev. Dist. Ct. Feb. 5, 2016); *RLP-Buckwood Court, LLC, v. GMAC Mortg., LLC*, No. A-13-686438-C, (Nev. Dist. Ct. May 24, 2016); *A&I LLC Series 3 v. Lowry*, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016); *Gavirati v. Washington Mutual Bank, FA*, No. A-13-690263-C (Nev. Dist. Ct. Sept. 1, 2016); *Nevada New Builds, LLC v. Nationstar Mortg. LLC*, No. A-14-704924-C (Nev. Dist. Ct. Sept. 27, 2016); *Daisy Trust v. Wells Fargo*; No. A-13-679095-C (Oct. 14, 2016); *SFR Inv. Pool 1, LLC v. Green Tree Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016); *Summit Canyon Resources LLC v. Kraemer*, No. A-15-714882-C (Nev. Dist. Ct. Nov. 22, 2016); *Nevada Sandcastles, LLC, v. Nationstar Mortg., LLC*, No. A-14-701775-C (Nev. Dist. Ct.

1 The State Foreclosure Statute is preempted either through express or conflict preemption. A  
2 federal statute expressly preempts contrary law when it “explicitly manifests Congress’s intent to  
3 displace state law.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). This is the  
4 case here: the text of HERA declares that “[n]o property of the Agency shall be subject to levy,  
5 attachment, garnishment, foreclosure, or sale.” 12 U.S.C. § 4617(j)(3). The Federal Foreclosure Bar  
6 automatically bars any nonconsensual limitation or extinguishment through foreclosure of any  
7 interest in property held by Freddie Mac while in conservatorship. All of these “adverse  
8 actions . . . could otherwise be imposed on FHFA’s property under state law. Accordingly,  
9 Congress’s creation of these protections clearly manifests its intent to displace state law.” *Skylights*,  
10 112 F. Supp. 3d at 1153.

11 The Federal Foreclosure Bar also preempts the State Foreclosure Statute under a theory of  
12 conflict preemption because “state law is naturally preempted to the extent of any conflict with a  
13 federal statute.” *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat’l Foreign Trade Council*,  
14 530 U.S. 363, 372 (2000)). Congress’s clear and manifest purpose in enacting Section 4617(j)(3)  
15 was to protect FHFA conservatorships from actions, such as the HOA Sale, that otherwise would  
16 deprive them of their property interests. Accordingly, “the Federal Foreclosure Bar implicitly  
17 demonstrates a clear intent to preempt [the State Foreclosure Statute].” *Berezovsky*, 869 F.3d at 930;  
18 *see also Elmer*, 2017 WL 3822061, at \*1 (same).

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25 Dec. 21, 2016); *Saticoy Bay LLC Series 338 Flying Colt v. Nationstar Mortg., LLC*, No. A-13-684192-C  
26 (Nev. Dist. Ct. Dec. 21, 2016); *Honeybadgers Holdings LLC v. Karimi*, No. A-15-718824-C (Nev. Dist. Ct.  
27 Mar. 22, 2017); *Choctaw Avenue Trust v. JPMorgan Chase Bank N.A.*, No. A-12-667762-C (Nev. Dist. Ct.  
28 June 12, 2017); *Saticoy Bay LLC Series 4930 Miners Ridge v. JPMorgan Chase Bank N.A.*, No. A-13-  
681090-C (Nev. Dist. Ct. June 27, 2017); *RJRN Holdings, LLC v. Green Tree Servicing LLC*, A-14-704682-C  
(Nev. Dist. Ct. July 21, 2017); *Nevada Sandcastles LLC v. Green Tree Servicing LLC*, A-13-691521-C (Nev.  
Dist. Ct. Aug. 14, 2017). Nationstar does not cite these cases as precedential authority but rather, consistent  
with Nev. R. App. P. 36(c)(3), cites them for their persuasive value.

**E. The Federal Foreclosure Bar Protected Freddie Mac's Property Interest**

To successfully invoke the Federal Foreclosure Bar's protection, Nationstar needs to establish two things: First, that Freddie Mac owned the Loan at the time of the HOA Sale, and second, that ownership of the Loan was a property interest covered by the Federal Foreclosure Bar's protection. Nationstar satisfies both here. Furthermore, while it is not Nationstar's burden to establish this fact, it is undisputed that FHFA has not consented to the extinguishment of Freddie Mac's property interest in this case.

**1. Freddie Mac Had a Property Interest at the Time of the HOA Sale**

On or about August 22, 2005, Freddie Mac purchased the Loan, and thereby acquired ownership of both the promissory note and the Deed of Trust. Freddie Mac maintained that ownership at the time of the HOA Sale, while Nationstar acted as Freddie Mac's authorized loan servicer and beneficiary of record of the Deed of Trust for the Loan. **Ex. E.** As Freddie Mac's servicer of the Loan, Nationstar was in a contractual relationship with Freddie Mac requiring Nationstar, upon Freddie Mac's request, to assign all of its interest to Freddie Mac. Under Nevada law, Freddie Mac owned the Deed of Trust and thereby maintained a property interest in the underlying collateral at the time of the HOA Sale in April 2013.

Freddie Mac's acquisition and continued ownership of the Loan at the time of the HOA Sale are amply supported by the business records data derived from MIDAS, a database that Freddie Mac uses in its everyday business to track millions of loans that it acquires and owns nationwide. It is also supported by the business records of Nationstar, also derived from a database Nationstar uses to track the loans that it services. Under the applicable rules of evidence, business records are, by their nature, admissible to prove the truth of their contents when introduced by a qualified witness, as they are here. *See* NRS 51.135; Fed. R. Evid. 803 (advisory committee's note to 1972 proposed rules) (noting that business records, including electronic database records, have "unusual reliability"). The Ninth Circuit's decisions in *Berezovsky* and *Elmer* confirmed that materially identical evidence is sufficient to establish an Enterprise's property interest. *See Berezovsky*, 869 F.3d at 932-33; *Elmer*, 2017 WL 3822061, at \*1.

1                   a.     **Freddie Mac Owned the Note and Deed of Trust Under Nevada**  
2                             **Law**

3                             (i)     **Nevada Adopts the Restatement Approach that**  
4                                     **Acknowledges the Loan Owner-Servicer Relationship**

5                   Under Nevada law, when Freddie Mac purchased the Loan on or about August 22, 2005,  
6                   Freddie Mac acquired ownership of the note and Deed of Trust. Nevada law incorporates the  
7                   Restatement, which describes the typical arrangement between investors in mortgages, such as  
8                   Freddie Mac, and their servicers:

9                             Institutional purchasers of loans in the secondary mortgage market often  
10                            designate a third party, not the originating mortgagee, to collect payments on  
11                            and otherwise “service” the loan for the investor. In such cases the  
12                            promissory note is typically transferred to the purchaser, but an assignment of  
13                            the mortgage from the originating mortgagee *to the servicer* may be executed  
14                            and recorded. This assignment is convenient because it facilitates actions that  
15                            the servicer might take, such as releasing the mortgage, at the instruction of  
16                            the purchaser. The servicer may or may not execute a further unrecorded  
17                            assignment of the mortgage to the purchaser.

18                   Restatement § 5.4 cmt. c (emphasis added). The Restatement then emphasizes that this arrangement  
19                   preserves the investor’s ownership interest:

20                            *It is clear in this situation that the owner of both the note and mortgage is the*  
21                            *investor and not the servicer.* This follows from the express agreement to this  
22                            effect that exists among the parties involved. The same result would be  
23                            reached if the note and mortgage were originally transferred to the  
24                            institutional purchaser, who thereafter designated another party as servicer and  
25                            executed and recorded a mortgage assignment to that party for convenience  
26                            while retaining the promissory note.

27                   *Id.* (emphasis added). Thus, the Restatement acknowledges that the assignment of a deed of trust to  
28                   a servicer does not alter the fact that the purchaser of the loan remains the owner of the note and  
29                   deed of trust. The Restatement approach also is a recognition of the realities of the mortgage  
30                   industry: Freddie Mac and Fannie Mae can more efficiently support the national secondary  
31                   mortgage market if they can contract with servicers to manage loans without relinquishing  
32                   ownership of deeds of trust.

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1 The Nevada Supreme Court reaffirmed that it adopted the entirety of the Restatement  
2 approach, and specifically cited to the sections cited above. *See Montierth*, 354 P.3d at 650-51.  
3 *Montierth* explained that where the record beneficiary of the deed of trust has contractual or agency  
4 authority to foreclose on the note owner's behalf, the note owner maintains a property interest in the  
5 collateral. *See id.*<sup>4</sup> Moreover, in its decision reversing this Court's previous decision, the Nevada  
6 Supreme Court confirmed *Montierth*'s applicability to Nationstar's relationship with Freddie Mac.  
7 *Nationstar v. SFR*, 396 P.3d at 757.

8 In *Montierth*, the court applied the Restatement to a situation where MERS, as nominee for  
9 the original lender and its successors and assigns, served as record beneficiary of a deed of trust,  
10 while Deutsche Bank had acquired the related promissory note from the original lender. *Id.* at 649.  
11 The Nevada Supreme Court concluded that the relationship between MERS and Deutsche Bank,  
12 wherein MERS had authority to foreclose on Deutsche Bank's behalf, ensured that Deutsche Bank  
13 remained a "secured creditor" with a "fully-secured, first priority deed" that could be enforced. *Id.*  
14 at 650-51. Deutsche Bank, like Freddie Mac here, accordingly retained a property interest while  
15 another entity was beneficiary of record of the deed of trust.

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25 <sup>4</sup> Accordingly, *Montierth* clarified the earlier Nevada Supreme Court decision in *Edelstein v. Bank of New*  
26 *York Mellon*, 128 Nev. Adv. Op. 48, 286 P.3d 249, 257-58 (2012), which had discussed a general rule about  
27 what happens when a note and deed of trust are split without needing to consider the exception when a  
28 contractual or agency relationship exists between the entity who owns the loan and the entity who serves as  
record beneficiary of the deed of trust. *Montierth*, 131 Nev. Adv. Op. 55, 354 P.3d at 651 ("Because it was  
not pertinent to [the Nevada Supreme Court's] analysis in *Edelstein*, [the court] did not include the exceptions  
provided in the Restatement.").

1 The Ninth Circuit, in addition to various state and federal trial courts, already have  
2 recognized that under the approach articulated by *Montierth* and the Restatement (Third) of Prop.:  
3 Mortgages (“Restatement”), Freddie Mac need not have been beneficiary of record of a deed of trust  
4 in order to have a protected property interest. *See, e.g., Berezovsky*, 869 F.3d at 932; *Elmer*, 2017  
5 WL 3822061, at \*1-2; *Koronik*, 2016 WL 7493961, at \*1; *FHFA v. SFR*, 2016 WL 2350121, at \*6  
6 (granting FHFA, Fannie Mae, and Freddie Mac summary judgment regarding five properties). The  
7 Ninth Circuit rejected any argument that, under Nevada law, a loan owners’ property interest  
8 depends on its name appearing in the public property records: “[a]lthough the recorded deed of trust  
9 here omitted Freddie Mac’s name, Freddie Mac’s property interest is valid and enforceable under  
10 Nevada law” because Freddie Mac owned the note and its servicer was beneficiary of record of the  
11 deed of trust. *Berezovsky*, 869 F.3d at 932. This Court should do the same here.

(ii) **Nevada Adopts the Uniform Commercial Code, Which Is  
Consistent with the Restatement Approach**

12 The Restatement approach, acknowledging that different entities might be *owner* or *record*  
13 *beneficiary* of a Deed of Trust, is consistent with Nevada’s adoption of Uniform Commercial Code  
14 Article 3, which provides that “[a] person may be a person entitled to enforce [a promissory note]  
15 even though the person is not the owner of the [that note].” NRS 104.3301. A “person entitled to  
16 enforce” a note may be a “holder” of the note or even a “nonholder in possession of the [note] who  
17 has the rights of the holder.” *Id.* Accordingly, “the status of holder merely pertains to one who may  
18 enforce the debt and is a separate concept from that of ownership.” *Thomas v. BAC Home Loans*  
19 *Servicing, LP*, No. 56587, 2011 WL 6743044, at \*3 n.9 (Nev. Dec. 20, 2011). That is because  
20 “[o]wnership rights in instruments may be determined by principles of the law of property . . . which  
21 do not depend upon whether the instrument was transferred.” UCC § 3-203 cmt. 1. For that reason,  
22 a transfer of a note has no bearing on ownership, but instead “vests in the transferee any right of the  
23 transferor to enforce the instrument.” NRS 104.3203.<sup>5</sup>

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26 <sup>5</sup> Similarly, Uniform Commercial Code Article 9 provides that “[t]he attachment of a security interest in a  
27 right to payment or performance secured by a security interest or other lien on personal or real property is also  
28 attachment of a security interest in the security, mortgage or other lien.” NRS 104.9203(7). Thus, “a  
transferee of a mortgage note” such as Freddie Mac “whose property right in the note has attached also  
automatically *has an attached property right in the mortgage* that secures the note.” Report of the Permanent

1 In fact, the Nevada Supreme Court has applied this principle in a similar circumstance, where  
2 Freddie Mac claimed to own a note while BAC was the holder of the note and the record beneficiary  
3 of the associated deed of trust. The court held there was nothing inconsistent with this situation  
4 under Nevada law. *See Thomas*, 2011 WL 6743044, at \*1, 3 & n.9. Here, too, there is nothing  
5 inconsistent with Freddie Mac being the owner of the note and the Deed of Trust, while Nationstar,  
6 its servicer, was beneficiary of record of the Deed of Trust.

7 **b. The Guide Confirms that Freddie Mac Retains Ownership of the**  
8 **Deed of Trust While Nationstar Is Record Beneficiary**

9 The Guide serves as a central document governing the contractual relationship between  
10 Freddie Mac and its servicers nationwide, including Nationstar. *See Guide* at 1101.2(a) (Ex. B).  
11 The provisions of the Guide demonstrate that Freddie Mac and its loan servicers maintain the type of  
12 relationship described in the Restatement and *Montierth*. *See Berezovsky*, 869 F.3d at 932-33;  
13 *Montierth*, 354 P.3d at 651 (looking to whether a loan owner can “compel an assignment of the deed  
14 of trust”).

15 For example, the Guide provides that “Freddie Mac may, at any time and without limitation,  
16 require the Seller or the Servicer ... to make such ... assignments and recordations of any of the  
17 Mortgage documents so as to reflect the interests of Freddie Mac.” *Guide* at 1301.10; *see also*  
18 *Guide* at 6301.6 (similar). The Guide also authorizes servicers to protect the interests of Freddie  
19 Mac in the Loan, including in foreclosure proceedings. *See Guide* at 8107.1, 8107.2, 9301.11. Ex.  
20 B. Nevertheless, the Guide is clear that ownership always lies with Freddie Mac. For example,  
21 “[a]ll documents in the Mortgage file, ... and all other documents and records related to the  
22 Mortgage of whatever kind or description ... will be, and will remain at all times, the property of  
23 Freddie Mac.” *Guide* at 1201.9, Ex. B, *see also id.* at 3302.5, 8107.1(b).

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28 Editorial Board for the UCC, Application of the UCC to Selected Issues Relating to Mortgage Notes at 14  
(Nov. 14, 2011) (emphasis added).

1 Thus, the fact that Freddie Mac’s servicer Nationstar was the beneficiary of record of the  
2 Deed of Trust at the time of the HOA Sale does not negate the fact that Freddie Mac remained the  
3 owner of the note and the Deed of Trust at that time. Accordingly, the Federal Foreclosure Bar,  
4 which protects Freddie Mac’s property interests, protected the Deed of Trust from extinguishment,  
5 and Freddie Mac continued to own both the Deed of Trust and the note after the HOA Sale.

6 **2. The Federal Foreclosure Bar’s Protection Extends to Freddie Mac’s**  
7 **Property Interest Here**

8 **a. The Federal Foreclosure Bar Provides Broad Protection to**  
9 **Freddie Mac’s Lien Interests**

10 Federal law defines the scope of property interests protected by statutes such as the Federal  
11 Foreclosure Bar broadly. *See Matagorda Cty. v. Russell Law*, 19 F.3d 215, 221 (5th Cir. 1994).  
12 Courts have repeatedly held that mortgage liens constitute property for purposes of the analogous  
13 FDIC statute, 12 U.S.C. § 1825(b)(2).<sup>6</sup> “[T]he term ‘property’ in § 1825(b)(2) encompasses all  
14 forms of interest in property, including mortgages and other liens.” *Simon v. Cebrick*, 53 F.3d 17, 20  
15 (3d Cir. 1995). This reflects Congress’s intent to provide the greatest possible scope of protection to  
16 Freddie Mac and Fannie Mae in the midst of a severe housing crisis. *Cf. Cambridge Capital Corp.*  
17 *v. Halcon Enters., Inc.*, 842 F. Supp. 499, 503 (S.D. Fla. 1993) (“This Court need look no further  
18 than [Section 1825(b)(2)] itself to determine that Congress has expressed its intent that no property  
19 of the FDIC—fee or lien—be subject to foreclosure without the FDIC’s consent.”); *Trembling*  
20 *Prairie Land Co. v. Verspoor*, 145 F.3d 686, 691 (5th Cir. 1998) (“In deference to the will of  
21 Congress, we hold that the tax sale at issue was conducted without the consent of the FDIC . . . [and]  
22 violated 12 U.S.C. § 1825(b)(2).”). Therefore, Freddie Mac’s interest here—ownership of both the  
23 Deed of Trust and the note—was a protected property interest under the Federal Foreclosure Bar.

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27 <sup>6</sup> When analyzing HERA’s provisions, courts have frequently turned to precedent interpreting FDIC’s  
28 analogous receivership authority. *See, e.g., Cty. of Sonoma v. FHFA*, 710 F.3d 987, 993 (9th Cir. 2013); *In re*  
*Fed. Home Loan Mortg. Corp. Derivative Litig.*, 643 F. Supp. 2d 790, 795 (E.D. Va. 2009), *aff’d sub nom.*  
*La. Mun. Police Emps. Ret. Sys. v. FHFA*, 434 F. App’x 188 (4th Cir. 2011).

**b. The Federal Foreclosure Bar Extends to Freddie Mac When It Is Under FHFA's Conservatorship**

The Federal Foreclosure Bar necessarily protects the Deed of Trust because the Conservator has succeeded by law to all of Freddie Mac's "rights, titles, powers, and privileges," 12 U.S.C. § 4617(b)(2)(A)(i). "Accordingly, the property of [Freddie Mac] effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)'s exemptions." *Skylights*, 112 F. Supp. 3d at 1155. This interpretation is supported by the text and structure of HERA. *See id.* Section 4617 concerns FHFA's "[a]uthority over" Freddie Mac and Fannie Mae when they are "critically undercapitalized" and thus must be placed into conservatorship or receivership. Furthermore, the protections of Section 4617(j)(3) apply in "any case in which [FHFA] is acting as a conservator or a receiver." 12 U.S.C. § 4617(j)(1).

Indeed, courts uniformly have rejected any argument that the immunities provided by Section 4617(j) do not apply to the property of Freddie Mac or Fannie Mae while in FHFA conservatorship. *See Skylights*, 112 F. Supp. 3d at 1155 (collecting cases); *Nevada v. Countrywide Home Loans Servicing, LP*, 812 F. Supp. 2d 1211, 1218 (D. Nev. 2011) ("[W]hile under the conservatorship with the FHFA, Fannie Mae is statutorily exempt from taxes, penalties, and fines to the same extent that the FHFA is."); *FHFA v. City of Chicago*, 962 F. Supp. 2d 1044, 1064 (N.D. Ill. 2013) (argument is "meritless"). Courts have also rejected similar arguments in the context of FDIC receiverships. *See, e.g., In re Cty. of Orange*, 262 F.3d 1014, 1020 (9th Cir. 2001); *Cty. of Fairfax v. FDIC*, Civ. A. No. 92-0858, 1993 WL 62247, at \*4 (D.D.C. Feb. 26, 1993).

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### 3. FHFA Did Not Consent to the Extinguishment of the Deed of Trust

Because Freddie Mac had a protected property interest at the time of the HOA foreclosure sale, the Federal Foreclosure Bar precluded SFR from acquiring free-and-clear title unless SFR obtained FHFA's consent to the extinguishment of Freddie Mac's interest. SFR cannot show that it received such consent. To the contrary, the Conservator has publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens." *See* Ex. L.<sup>7</sup> Thus, "it is clear that FHFA did not consent to the extinguishment of [the Enterprise's] property interest through the HOA's foreclosure sale." *Alessi & Koenig*, 2017 WL 773872, at \*3 (citing and relying on cases in which FHFA's statement was sufficient to show FHFA's lack of consent); *see also Berezovsky*, 869 F.3d at 929 (holding that FHFA's consent can only be manifested affirmatively). Accordingly, the Federal Foreclosure Bar protected Freddie Mac's interest, and the HOA foreclosure sale could not have extinguished the Deed of Trust.

#### F. Nationstar May Assert the Federal Foreclosure Bar to Protect Its Interest and Freddie Mac's Interest in the Deed of Trust

The Nevada Supreme Court's decision in this case confirmed that Nationstar "may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [the Enterprise] nor the FHFA need be joined as a party." *Nationstar*, 396 P.3d at 758. *Nationstar* also confirmed that "private parties," like Nationstar here, "may argue federal law preempts state law." *Id.* Rather, in these cases servicers invoke the Federal Foreclosure Bar as a rule of decision to resolve a claim properly before the court; in such circumstances, "*judges are bound by federal law.*" *Id.* (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1384 (2015)) (emphasis in *Nationstar*).

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<sup>7</sup> This public statement on a government website is subject to judicial notice. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

1 The evidence in this case confirms that Freddie Mac is the owner of the Loan and that  
2 Nationstar is Freddie Mac's contractually authorized servicer. Pursuant to its contract with Freddie  
3 Mac, Nationstar has the authority to represent Freddie Mac's interests in litigation in which  
4 Nationstar is a party with respect to the loans it services. *See, e.g.*, Guide at 8105.3, 9301.1,  
5 9301.12, 9401.1, 9402.2-4, Chapter 9500. Furthermore, the Conservator has publicly supported  
6 invocation of the Federal Foreclosure Bar by servicers in litigation such as this one. *See* Ex. L. SFR  
7 can present no contrary evidence to create a genuine dispute about these facts. Accordingly,  
8 Nationstar may invoke the Federal Foreclosure Bar in this litigation without joining Freddie Mac or  
9 FHFA as a party.

10 **II. The record beneficiary was not sent notice of the HOA Sale.**

11 Prior to the 2015 amendments, Chapter 116 did not mandate notice of HOA foreclosure sales  
12 to holders of first deeds of trust. Instead, the statute contained "request-notice" or "opt-in" notice  
13 provisions, requiring notice *only* if lienholders requested it in advance. NRS 116.31163(2) (2014);  
14 NRS 116.311635 (2014). The Ninth Circuit recently struck the pre-2015 statute as facially  
15 unconstitutional for this very reason-- because it did not require HOAs to give holders of first deeds  
16 of trust prior notice of a HOA sale. *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d  
17 1154, 1158-59 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 2296 (2017).

18 While Nationstar recognizes there is a competing interpretation of the pre-2015 statute that  
19 requires notice, in this case the difference is immaterial. Here, it is undisputed that NAS failed to  
20 send notice to Nationstar, the record beneficiary of the deed of trust at the time the notice of sale was  
21 mailed and recorded. **Ex. K** at 38:22-41:17 and NAS78-79.

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1     **III.     The Foreclosure Sale Was Commercially Unreasonable.**

2             The lack of notice renders the HOA Sale void because the failure to provide notice to the  
3     record deed of trust holder is per se commercially unreasonable. *See, e.g., Levers v. Rio King Land*  
4     & *Inv. Co.*, 93 Nev. 95, 97, 560 P.2d 917, 919 (finding a sale by a secured party commercially  
5     unreasonable where sufficient notice is not provided). The UCC also provides a useful comparison  
6     as to what notice is required for a sale to be commercially reasonable. Under the UCC, a secured  
7     creditor in possession of collateral after default has a duty to conduct a commercially reasonable  
8     sale. NRS 104.9610. "[E]very aspect of the disposition, including the method, manner, time, place,  
9     and terms, must be commercially reasonable." *Levers v. Rio King Land & Inv. Co.*, 93 Nev. 95, 98,  
10    560 P.2d 917, 920 (1977). Pursuant to NRS 104.9627(2)(c), a disposition of collateral is made in a  
11    commercially reasonable manner if the disposition is made "in conformity with reasonable  
12    commercial practices amount dealers in the type of property that was the subject of the disposition."  
13    The efforts of the secured party must include **reasonable notice**. NRS 104.9611; NRS 104.9612.

14            When a sales price is demonstrably inadequate, a court may invalidate a sale upon a showing  
15    of *any slight defect* in the sale. *Ballentyne v. Smith*, 205 U.S. 285, 290 (1907) ("if there be great  
16    inadequacy, slight circumstances of unfairness in the conduct of the party benefited by the sale will  
17    be sufficient to justify setting it aside. It is difficult to formulate any rule more definite than this, and  
18    each case must stand upon its own peculiar facts."); *id.* (citing *Graffam v. Burgess*, 117 U.S. 180,  
19    191-92 (1996)). *See also Meng v. CitiMortgage, Inc.*, No. 4:12-cv-514-CAS, 2013 WL 1319008, at  
20    \*5 (E.D. Mo. Mar. 29, 2013); *In re Krohn*, 52 P.3d 774, 782 (Ariz. 2002) ("where the price thus bid .  
21    . . is greatly disproportionate to its actual value, *very slight* evidence of unfairness or irregularity will  
22    suffice to authorize the relief sought") (citation omitted).

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1 The requirement that the sale be commercially reasonable stems from the statute. Every duty  
2 under NRS 116 contains "an obligation of good faith in its performance or enforcement." NRS  
3 116.1113. While the statute does not define good faith, the official commentary provides guidance:

4 This section sets forth a basic principle running throughout this act: in transactions  
5 involving common interest communities, good faith is required in the performance  
6 and enforcement of all agreements and duties. Good faith, as used [sic—the  
7 comment plainly meant to say "used"] in this Act, means observance of two  
8 standards: 'honesty in fact', and *the observance of reasonable standards of fair  
dealing*. While the term is not defined, the term is derived from and used in the same  
manner as in Section 1-201 of the Uniform Simplification of Land Transfers Act, and  
Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

9 1982 UCIOA § 1-113 cmt. 1 (emphasis added); *see also SFR Invs. Pool 1*, 334 P.3d at 413 ("An  
10 official comment written by the drafters of a statute and available to a legislature before the statute is  
11 enacted has considerable weight as an aid to statutory construction." (citation omitted)). The  
12 UCIOA confirms the term "good faith" as used in NRS 116.1113 has the same meaning as in the  
13 Uniform Commercial Code. The UCC's definition of good faith, now found at NRS 104.1201(2)(t),  
14 is "honesty in fact and the observance of *reasonable commercial* standards of fair dealing." NRS  
15 104.1201(2)(t) (emphasis added). The phrase "commercial reasonableness" emanates from these  
16 statutory authorities, and its formulation is a short-hand for them. The good faith—i.e., honesty in  
17 fact and observance of reasonable commercial standards of fair dealing—required by NRS 116.1113  
18 is distinct from the courts' equitable powers to set sales aside for inadequate price.

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1 The Vermont supreme court applied the good faith requirement of the UCIOA in *Will v. Mill*  
2 *Condo. Owners' Ass'n*, 176 Vt. 380, 848 A.2d 336 (Vt. 2004). *Mill Condo.* involved a UCIOA  
3 foreclosure where the purchase price was \$3,510.10, and the fair market value of the property was  
4 \$70,000. *Id.* at 383, A.2d 338. The court recognized that the good faith standard set forth in the  
5 UCC was imported into the UCIOA. *Id.* at 386, 848 A.2d at 341. The court then applied its pre-  
6 existing rules for determining commercial reasonableness in UCC collateral foreclosures and found  
7 the sale commercially unreasonable. *Id.* at 388-89, 848 A.2d at 342-43 ("Although the rules  
8 generally applicable to real estate mortgages do not impose a commercial reasonableness standard  
9 on foreclosure sales, the UCIOA does provide for this additional layer of protection [in UCIOA  
10 section 1-113]."). *Mill Condo* cited two factors that made the sale commercially unreasonable: low  
11 price (15% of fair market value after deducting a \$45,000 mortgage loan from the \$70,000 fair  
12 market value) and the apparent presence of only one bidder.

13 Because NRS 116.1113 incorporates the commercial reasonableness standard from the UCC,  
14 the Nevada supreme court's precedents from UCC decisions are relevant. The Nevada supreme  
15 court considered commercial reasonableness in *Levers v. Rio King Land & Inv. Co.*, 93 Nev. 95, 560  
16 P.2d 917 (1977). In that case, the court stated

17 Every aspect of the disposition, including the method, manner, time, place, and terms,  
18 must be commercially reasonable. NRS 104.9504(3). Although the price obtained at  
19 the sale is not the sole determinative factor, nevertheless it is one of the relevant factors  
20 in determining whether the sale was commercially reasonable. *First National Bank of*  
21 *Bellevue v. Rose*, 188 Neb. 362, 196 N.W.2d 507 (1972). A wide discrepancy between  
the sale price and the value of the collateral compels close scrutiny into the commercial  
reasonableness of the sale.

22 *Id.* at 98, 560 P.2d at 919-20 (further citing *In Re Zsa Zsa Limited*, 352 F.Supp. 665 (S.D.N.Y.  
1972); *Mercantile Fin. Corp. v. Miller*, 292 F. Supp. 797 (E.D. Pa. 1968)). In *Levers*, the Nevada  
23 supreme court held the collateral sale was commercially unreasonable because there were only two  
24 bidders, there was no evidence the secured party publicized the sale in any manner or otherwise took  
25 steps to ensure the best price possible would be obtained, and the buyer paid \$100 for the collateral  
26 and re-sold it for \$10,000. "Under these circumstances, we conclude the sale was not commercially  
27 reasonable." *Id.* at 99, 560 P.2d at 920.

1 The Nevada Supreme Court has held that an association's foreclosure sale must be set aside  
2 if the sale fetched an inadequate price and there is evidence of "fraud, unfairness, or oppression."  
3 *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Rep. 5, 366  
4 P.3d 1105, 1114 (2016). The Supreme Court cited to the Restatement (Third) of Property  
5 (Mortgages) in *Shadow Wood*, which states that under the gross inadequacy standard: "a court is  
6 warranted in invalidating a sale where the price is less than 20 percent of fair market value." Section  
7 8.3 cmt. b. Further, "in extreme cases a price may be so low (typically well under 20% of fair  
8 market value) that it would be an abuse of discretion for the court to refuse to invalidate it." *Id.*

9 Here, the HOA's sale for less than 8% of the fair market value was grossly inadequate as a  
10 matter of law. In addition to the grossly inadequate price, the sale was unfair and oppressive  
11 because the HOA failed to provide notice to Nationstar. Ex. K at 38:22-41:17 and NAS78-79.  
12 Under the totality of circumstances, it would be unfair for SFR to obtain title free and clear of the  
13 deed of trust.

#### 14 CONCLUSION

15 For these reasons, the Court should grant Nationstar's motion for summary judgment and  
16 enter a declaration that SFR's interest in the Property, if any, is subject to the Deed of Trust.

17 DATED this 15th day of November, 2017.

18  
19 AKERMAN LLP

20 /s/ Tenesa S. Scaturro, Esq.

21 MELANIE D. MORGAN, ESQ.

22 Nevada Bar No. 8215

23 TENESA S. SCATURRO, ESQ.

24 Nevada Bar No. 12488

25 1160 Town Center Drive, Suite 330

26 Las Vegas, NV 89144

27 *Attorneys for Nationstar Mortgage LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 15th day of November, 2017 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE, LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT**, in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

P. Sterling Kerr, Esq.  
LAW OFFICES OF P. STERLING KERR  
2450 St. Rose Parkway, Suite 120  
Henderson, NV 89074

*Attorneys for Ignacio Gutierrez*

Diana S. Ebron, Esq.  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 200  
Las Vegas, Nevada 89139

*Attorneys for Nevada Association Services, Inc.*

Richard J. Vilkin, Esq.  
LAW OFFICES OF RICHARD J. VILKIN, P.C.  
1286 Crimson Sage Ave.  
Henderson, NV 89012

*Attorneys for Nevada Association Services, Inc.*

/s/ Allen G. Stephens  
An employee of AKERMAN LLP

# **EXHIBIT A**

# **EXHIBIT A**

20050720-0004600

Assessor's Parcel Number: 179-31-714-046

Fee: \$36.00  
N/C Fee: \$25.00

Recording Requested By:  
KB HOME MORTGAGE COMPANY

07/20/2005 15:25:56  
T20050131524

Requestor:  
FIRST AMERICAN TITLE COMPANY OF NEVADA

And When Recorded Return To:

KB HOME MORTGAGE COMPANY  
C/O VALENCIA CARUTH  
7660 SOUTH INDUSTRIAL ROAD, SUITE 201B  
LAS VEGAS, NEVADA 89139  
Loan Number: 1140028613

Frances Deane BGN  
Clark County Recorder Pgs: 23

110-2189567

[Space Above This Line For Recording Data]

## DEED OF TRUST

MIN: 1000721-1140028613-0

### 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 6, 2005, together with all Riders to this document.

(B) "Borrower" is IGNACIO A GUTIERREZ, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.


(C) "Lender" is KB HOME MORTGAGE COMPANY

Lender is a ILLINOIS CORPORATION organized  
and existing under the laws of ILLINOIS  
Lender's address is 7660 S. INDUSTRIAL ROAD, SUITE 201, LAS VEGAS,  
NEVADA 89139

(D) "Trustee" is FIRST AMERICAN TITLE COMPANY OF NEVADA  
3760 PECOS MCLEOD INTERCONNECT, SUITE#7, LAS VEGAS, NEVADA  
89121-4253

(E) "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 beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JULY 6, 2005

Borrower Initials: 

NEVADA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
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The Note states that Borrower owes Lender TWO HUNDRED SEVENTY-ONE THOUSAND SIX HUNDRED THIRTY-EIGHT AND 00/100 Dollars (U.S. \$ 271,638.00 ) 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, 2035

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

(H) "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.

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

(J) "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.

(K) "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.

(L) "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.

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


(N) "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.

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

(P) "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.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 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.

(R) "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.

Borrower Initials: 

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## TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. 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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of CLARK :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".  
A.P.N. #: 179-31-714-046

which currently has the address of 668 MOONLIGHT STROLL STREET  
[Street]

HENDERSON, Nevada 89015 ("Property Address"):  
[City] [Zip Code]


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 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

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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

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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

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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.

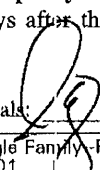
If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not 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

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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.

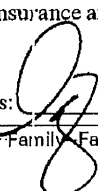
**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (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 attain 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

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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

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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.

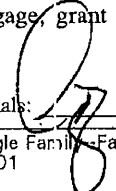
If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized 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 19, 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

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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 notice 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.

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**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

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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.

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 and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. 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.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lenders' election to cause the Property to be sold, and shall

Borrower Initials \_\_\_\_\_

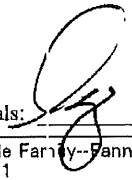
cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

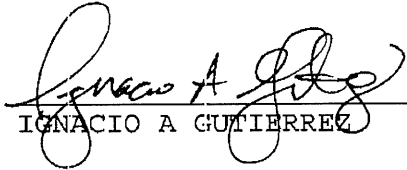
**23. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Substitute Trustee.** Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

**25. Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$

Borrower Initials: 

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.

  
\_\_\_\_\_  
IGNACIO A GUTIERREZ (Seal)  
-Borrower

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

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

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

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

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

Witness:

Witness:

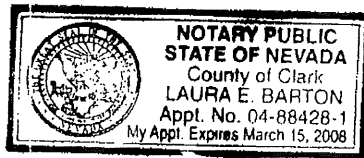
\_\_\_\_\_

\_\_\_\_\_

State of Nevada  
County of CLARK

This instrument was acknowledged before me on  
by IGNACIO A GUTIERREZ

7/7/05



(Seal)

*Laura E. Barton*

Notary Public

My commission expires: 3/15/08

**EXHIBIT 'A'**

**Lot 64 of Russell/Grand Canyon, as shown by map thereof on file in Book 118 of Plats,  
Page 85, in the Office of the County Recorder of Clark County, Nevada.**

Assessor's Parcel Number: 179-31-714-046

After Recording Return To:  
KB HOME MORTGAGE COMPANY  
C/O VALENCIA CARUTH  
7660 SOUTH INDUSTRIAL ROAD, SUITE 201B  
LAS VEGAS, NEVADA 89139

Prepared By:

\_\_\_\_\_[Space Above This Line For Recording Data]\_\_\_\_\_

## FIXED/ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

DOC ID #: 1140028613

THIS FIXED/ADJUSTABLE RATE RIDER is made this 6<sup>th</sup> day of JULY 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to KB HOME MORTGAGE COMPANY, AN ILLINOIS CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

668 MOONLIGHT STROLL STREET, HENDERSON, NEVADA 89015  
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

Conv

• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family  
INTEREST ONLY  
FE-4266 (0309)

Page 1 of 4

Initials: 

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an initial fixed interest rate of 6.750 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

**4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of AUGUST, 2010, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND 250/1000 percentage points ( 2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 11.750 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying preceding 12 months. My interest rate will never be greater than 11.750 %.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

Conv

• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family INTEREST ONLY

FE-4266 (0309)

Page 2 of 4

Initials: 

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

**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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

**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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

Conv

• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family  
INTEREST ONLY  
FE-4266 (0309)

Page 3 of 4

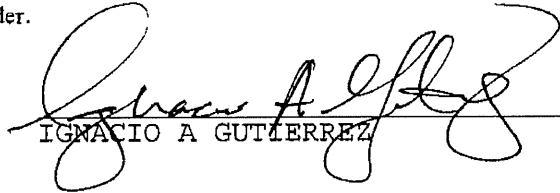
Initials 



To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

  
\_\_\_\_\_  
IGNACIO A GUTIERREZ (Seal)  
-Borrower

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

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

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

Conv

• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family  
INTEREST ONLY

FE-4266 (0309)

Page 4 of 4

Loan Number: 1140028613

## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 6th day of JULY, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to KB HOME MORTGAGE COMPANY, AN ILLINOIS CORPORATION (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

668 MOONLIGHT STROLL STREET, HENDERSON, NEVADA 89015

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

COVENANTS, CONDITIONS AND RESTRICTIONS OF RECORD

(the "Declaration"). The Property is a part of a planned unit development known as

HORIZON HEIGHTS


[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and 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, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Borrower Initials: 

MULTISTATE PUD RIDER--Single Family  
Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Form 3150 1/01

Page 1 of 3

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www.docmagic.com

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.


In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

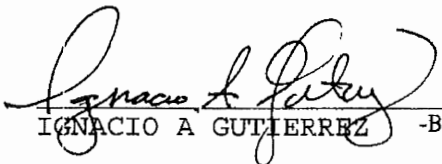
Borrower Initials: 

MULTISTATE PUD RIDER- Single Family  
Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Form 3150 1/01

Page 2 of 3

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

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

  
\_\_\_\_\_  
IGNACIO A GUTIERREZ (Seal)  
-Borrower

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

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

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

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

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

# **EXHIBIT B**

# **EXHIBIT B**

1 **MSJD**  
2 MELANIE D. MORGAN, ESQ.  
3 Nevada Bar No. 8215  
4 TENESA S. SCATURRO, ESQ.  
5 Nevada Bar No. 12488  
6 AKERMAN LLP  
7 1160 Town Center Drive, Suite 330  
8 Las Vegas, Nevada 89144  
9 Telephone: (702) 634-5000  
10 Facsimile: (702) 380-8572  
11 Email: melanie.morgan@akerman.com  
12 Email: tenesa.scaturro@akerman.com  
13 *Attorneys for Bank of America, N.A., as Successor*  
14 *by Merger to BAC Home Loans Servicing, LP fka*  
15 *Countrywide Home Loans, Inc., incorrectly sued*  
16 *as Countrywide Home Loans, Inc. and Nationstar*  
17 *Mortgage, LLC*

18 **DISTRICT COURT**  
19 **CLARK COUNTY, NEVADA**

20 IGNACIO GUTIERREZ, an individual,  
21  
22 Plaintiff,

Case No.: A-13-684715-C  
Dept. No: XVII

23 vs.

24 SFR INVESTMENTS POOL 1, LLC;  
25 NEVADA ASSOCIATION SERVICES, INC.;  
26 HORIZON HEIGHTS HOMEOWNERS  
27 ASSOCIATION; KB HOME MORTGAGE  
28 COMPANY, a foreign corporation; DOE  
Individuals I through X; ROE Corporations and  
Organizations I through X,

**FEDERAL HOME LOAN MORTGAGE  
CORPORATION'S DECLARATION IN  
SUPPORT OF NATIONSTAR  
MORTGAGE, LLC'S RENEWED  
MOTION FOR SUMMARY  
JUDGMENT**

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada  
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;  
NATIONSTAR MORTGAGE, LLC, a  
Delaware limited liability company;  
COUNTRYWIDE HOME LOANS, INC., a  
foreign corporation; DOES I through X; and

1 ROES 1-10, inclusive,  
2 Counter-Defendant and Third Party Defendants.  
3

4  
5 I, Dean Meyer, under penalty of perjury, declare as follows:

6 1. My name is Dean Meyer. I have personal knowledge of and am competent to  
7 testify as to the matters stated herein by virtue of my position as Director, Loss Mitigation for  
8 Federal Home Loan Mortgage Corporation ("Freddie Mac"), a corporation organized and  
9 existing under the laws of the United States.  
10

11 2. As Director, Loss Mitigation for Freddie Mac, I am familiar with certain Freddie  
12 Mac systems and databases that contain data regarding loans acquired and owned by Freddie  
13 Mac. The systems and databases include Freddie Mac's Loan Status Manager and MIDAS  
14 system, which includes and stores information concerning Freddie Mac's servicers and the  
15 purchase of loans. I also am familiar with Freddie Mac's Single-Family Seller/Servicer Guide  
16 (the "Guide"). This declaration is based upon my review of Freddie Mac's systems, databases  
17 containing loan information and data, and the Guide.  
18

19 3. Entries in Freddie Mac's systems and corresponding databases are made at or near  
20 the time of the events recorded by, or from information transmitted by, persons with knowledge.  
21 Freddie Mac's systems and databases are maintained and kept in the course of Freddie Mac's  
22 regularly conducted business activity, and it is the regular practice of Freddie Mac to keep and  
23 maintain information regarding loans owned by Freddie Mac in Freddie Mac's databases.  
24 Freddie Mac's systems and databases consist of records that were made and kept by Freddie Mac  
25 in the course of its regularly conducted activities pursuant to its regular business practice of  
26 creating such records. These systems and databases are Freddie Mac's business records.  
27  
28

1           4.     I have reviewed Nationstar Mortgage LLC's Renewed Motion for Summary  
2 Judgment and accompanying exhibits filed simultaneously herewith (collectively, the  
3 "Documents"). I have also reviewed Freddie Mac's systems and corresponding databases,  
4 including the documents referenced below, which are print-outs from Freddie Mac systems  
5 reflecting the contents of those databases, as well as portions of the Guide.  
6

7           5.     Freddie Mac's systems, corresponding databases, and the Documents reflect the  
8 following:  
9

- 10           a.     On or about July 6, 2005, Ignacio Gutierrez ("Borrower") obtained a loan  
11 from KB Home Mortgage Company ("Lender") in the amount of  
12 \$271,638.00. As part of the loan, the Borrower executed a note dated July  
13 6, 2005 in favor of Lender (the "Note"). The Note is secured by real  
14 property located at 668 Moonlight Stroll Street, Henderson, Nevada 89015  
15 (the "Property").  
16
- 17           b.     Borrower executed a deed of trust (the "Deed of Trust" and collectively  
18 with the Note and any other documents executed by Borrower in  
19 connection with the loan, the "Loan") on or about July 7, 2005 in  
20 connection with the Note, which was recorded on or about July 20, 2005.  
21
- 22           c.     Mortgage Electronic Registration Systems, Inc. ("MERS") was  
23 beneficiary under the Deed of Trust in a nominee capacity for the Lender  
24 and the Lender's successors and assigns.  
25
- 26           d.     As indicated by the "Funding Date" appearing midway down on the  
27 second column of Page 1 of 2 of the print-out from Freddie Mac's MIDAS  
28 system pertaining to Freddie Mac's purchase of the Loan, Freddie Mac



1 acquired ownership of the Loan, which specifically includes the Note and  
2 the Deed of Trust, on or about August 22, 2005. A true and correct copy  
3 of the print-out from Freddie Mac's MIDAS system pertaining to Freddie  
4 Mac's purchase of the Loan is attached hereto as Exhibit 1. The Guide  
5 defines "Funding Date" as the date when Freddie Mac disburses payment  
6 to the seller for a Loan Freddie Mac purchased.  
7

8 e. As indicated by the "Seller Nbr 204305" appearing near the top of the first  
9 column of Page 1 of 2 of the print-out from Freddie Mac's MIDAS system  
10 attached hereto as Exhibit 1, which identifies the entity that sold Freddie  
11 Mac the loan by "Seller Number," Bank of America, N.A. ("BANA") sold  
12 the Loan to Freddie Mac. A true and correct copy of the print-out from  
13 Freddie Mac's MIDAS system identifying BANA by Seller Number is  
14 attached hereto as Exhibit 2.  
15

16 f. The "Part. Pct." or "Participation Percentage" appearing above the  
17 Funding Date on Page 1 of 2 of the print-out from Freddie Mac's MIDAS  
18 system attached hereto as Exhibit 1, reflects "1.0," which means that  
19 Freddie Mac owns 100% of the Loan. If the Participation Percentage was  
20 anything less than 100%, then a number less than 1.0 would appear on the  
21 print-out from Freddie Mac's MIDAS system.  
22

23 g. On April 23, 2012, an Assignment of Deed of Trust was recorded,  
24 whereby MERS, in its capacity as nominee, assigned the Deed of Trust to  
25 BANA, successor by merger to BAC Home Loans Service, LP fka  
26 Countrywide Home Loans Servicing LP.  
27  
28

- 1           h.     On November 28, 2012, an Assignment of Deed of Trust was recorded,  
2                 whereby BANA assigned the Deed of Trust to Nationstar Mortgage LLC  
3                 ("Nationstar").  
4
- 5           i.     Nationstar was servicing the Loan, pursuant to the Guide, on behalf of  
6                 Freddie Mac on April 5, 2013. A true and correct copy of the print-out  
7                 from Freddie Mac's Loan Status Manager is attached hereto as Exhibit 3,  
8                 which reflects BANA serviced the Loan, pursuant to the Guide, on behalf  
9                 of Freddie Mac from on or about August 22, 2005 when Freddie Mac  
10                purchased the Loan until July 16, 2012 when servicing of the Loan was  
11                transferred from BANA to Nationstar. If there had been any other change  
12                in servicer after July 16, 2012, the change would have been entered into  
13                and would be reflected in Freddie Mac's Loan Status Manager. Consistent  
14                with the fact that no change in servicer occurred after servicing was  
15                transferred to Nationstar on July 16, 2012, no such information appears in  
16                Loan Status Manager, which evidences the fact that the Loan has been  
17                serviced by Nationstar since July 16, 2012. Additionally, as indicated by  
18                the "Servicer Nbr 157328" appearing near the top of the first column of  
19                Page 1 of 2 of the print-out from Freddie Mac's MIDAS system attached  
20                hereto as Exhibit 1, which identifies the current servicer by "Servicer  
21                Number," Nationstar is currently servicing the Loan, pursuant to the  
22                Guide, on behalf of Freddie Mac. A true and correct copy of the print-out  
23                from Freddie Mac's MIDAS system identifying Nationstar by Servicer  
24                Number 157328 is attached hereto as Exhibit 4.  
25
- 26           j.     A true and correct copy of the print-out from Freddie Mac's Loan Status  
27                 Manager is attached hereto as Exhibit 5, which reflects the mortgage  
28                 payment history (the "Mortgage Payment History") for the Loan. The

1 "Date Reported" in the second column of Exhibit 5 indicates the date that  
2 Freddie Mac's servicer reported information on the Loan to Freddie Mac.  
3 The Mortgage Payment History reflects that the servicer provided Freddie  
4 Mac with reports on the Loan, pursuant to the Guide which requires  
5 servicers to report regularly to Freddie Mac on Freddie Mac-owned loans,  
6 on a monthly basis from September 2005 through July 2017 when the  
7 report was generated. The servicer would not send regular monthly  
8 reports on the Loan to Freddie Mac if Freddie Mac did not own the Loan.

9 k. The Guide, a publicly accessible document found at  
10 [www.freddiemac.com/singlefamily/guide](http://www.freddiemac.com/singlefamily/guide), serves as a central document  
11 governing the contractual relationship between Freddie Mac and its  
12 servicers nationwide, including BANA and Nationstar. Archived prior  
13 versions of the Guide are available at  
14 [www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html](http://www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html).  
15

16 Attached hereto as Exhibit 6 are copies of relevant sections of the Guide  
17 that were in effect on April 5, 2013. Copies of the current version of each  
18 of the relevant sections of the Guide are attached hereto as Exhibit 7.  
19

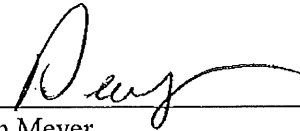
20 l. At the time Freddie Mac acquired the Loan and at all times thereafter, the  
21 Guide was in effect and governed the relationship between Freddie Mac,  
22 on the one hand, and BANA and Nationstar on the other, with respect to  
23 the Loan.  
24

25 m. Since it acquired the Loan on or about August 22, 2005, Freddie Mac did  
26 not sell the Loan and never authorized MERS, BANA or Nationstar to  
27 convey the Loan to any other entity.  
28

1  
2  
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I declare under penalty of perjury under the law of the State of Nevada that the foregoing  
is true and correct.

Executed on November 10, 2017.



Dean Meyer  
Director, Loss Mitigation  
Federal Home Loan Mortgage Corporation

95218456

# EXHIBIT 1

1 - Default 3270 (172.24.166.229)

File Edit Transfer Fonts Options Tools View Window Help

LOAN BASIC INQUIRY (ORU0010S1) 07/26/17 1328

F <==FUNCTION PAGE 1 OF 2

LOAN NUMBER	: [REDACTED] 2250	SSR LOAN NBR	: [REDACTED] 3363
SERVICER NBR	: 157328	ORIG AMT PRIN	: 271,638
SELLER NBR	: 204305	PURCHASE UPB	: 271,638.00
APPROVAL STATE	: NV	INT BRG UPB	: 0.00
FALMC REGION	: 11	DFRD UPB	: 0.00
PRODUCT	: K06	NOTE RATE	: 06.750
GROUP NBR	: 0343765	PART. PCT.	: 1.00
CONTRACT NBR	: 0508126006	FUNDING DATE (YYMMDD)	: 050822
LOAN DATA TYPE	: S	NOTE DATE (YYMMDD)	: 050706
LOAN TYPE	: 3	MATURITY DATE (YYMMDD)	: 350801
LOAN PROPERTY TYPE	: P1	LOAN ACCTNG NET YIELD	: [REDACTED]
LOAN STATUS	: 3	PAY OFF DATE (YYMMDD)	: 000000
OWNERSHIP CODE	: W	PAY OFF TYPE	:
REF CODE	: 0012	LTV RATIO	: 0.00
LOAN ORIGINATOR	:	ASSOC FM LOAN NBR	: 000000000
APPR ST LIC	:	LN ORIGINATION COMPANY	:
LAST CHG DATE (YYMMDD)	: 170703	SPVR APPR ST LIC	:
		MOD/CONV DATE (YYMMDD)	: 100901

F - PAGE FORWARD R - RETURN TO LOAN DATABASE INQUIRY ONLY MENU  
M - RETURN TO LOAN / GROUP / POOL DATABASES INQUIRY ONLY MENU  
PF4/16 GSE/HMOR

1 - Sess 1: 172.24.166.229 FMAC2225 1/2

1 - Default 3270 (172.24.166.229)

File Edit Transfer Fonts Options Tools View Window Help

LOAN BASIC INQUIRY (ORU0010S1) 07/26/17 1328

R <==FUNCTION PAGE 2 OF 2

LOAN NUMBER	: [REDACTED] 2250		
BORROWER NAME	: GUTIERREZ, I		
PROPERTY STREET	: 668 MOONLIGHT STROLL STREET		
CITY	: HENDERSON		
STATE	: NV		
ZIP	: 890150000	ORIG COMMITMENT FEE TAX	: 0000000.00
CENSUS TRACT	:	LOAN DATE INTEREST PAID TO	: 050801
INDEX SOURCE	: 041	MONTHLY PRIN AND INT	: 001527.96
INDEX VALUE	: 00.000	BALLOON TERM	: 000
ADJ. PERIOD	: 12	DATE BALLOON DUE (YYMMDD)	: 000000
ADJ. NOTE RATE	: 00.000	SF MORTGAGE INS CODE	: 000
LL SERV FEE	: 00.375	GUAR MORTGAGE INS CODE	:
CAP AMOUNT	: 0.0	INITIAL ADJ. DATE (YYMMDD)	: 000000
FLEX MONTHS	: 000	DISCOUNT	: 00000.00
FLEX PAYMT DATE (YYMMDD)	: 000000	PREMIUM	: 00000.00

R - RETURN TO LOAN DATABASE INQUIRY ONLY MENU  
M - RETURN TO LOAN / GROUP / POOL DATABASES INQUIRY ONLY MENU  
PF4/16 GSE/HMOR

1 - Sess 1: 172.24.166.229 FMAC2225 1/2

## EXHIBIT 2

Default 172 17224166.229

File Edit Transfer Fonts Options Tools View Window Help

R <=FUNCTION S/S PROFILE INQUIRY LSC60IK 0865  
PAGE 001 OF 001 AS OF: 07/26/17 1330

S/S NUMBER: 204305 STATUS: ACTIVE  
S/S NAME: BANK OF AMERICA, N.A.  
S/S ADDRESS: STEVEN W. SORGE, SENIOR VICE PCHARLOTTE CA 91332  
S/S PHONE: 980 388 7934 POWER OF ATTORNEY: YES

APPROVAL STATES (FROM 100 ENTRY )

FUNCTIONS: F=PAGE FORWARD B=PAGE BACKWARD R=RETURN TO MENU  
0176N- NO LOAN PROD STATS FOR THIS S/S

1 Sess-1 17224166.229 1MAC2225 172



## EXHIBIT 3

Loan StatusManager  
TOS Summary Report

Report generated on Wednesday, July 26, 2017 at 1:04 pm.

SQL returned 1 rows

Fhlmc Loan Number: 2250									
Date Requested	Status	Status Date	Date Effective	Servicer From	Servicer To	Servicer Family From	Servicer Family To	Global Family From	Global Family To
06/27/2012	APPROVED	07/27/2012	07/16/2012	125949 - BANK OF AMERICA, N.A.	157328 - NATIONSTAR MORTGAGE, LLC	121898 - BANK OF AMERICA, N.A.	157328 - NATIONSTAR MORTGAGE, LLC	121898 - BANK OF AMERICA, N.A.	152360 - NATIONSTAR MORTGAGE, LLC



## EXHIBIT 4

1 - Default 22/01/224166229

File Edit Transfer Fonts Options Tools View Window Help

F <==FUNCTION S/S PROFILE INQUIRY LSC60IK 0065  
PAGE 001 OF 011 AS OF: 1706 07/26/17 1930

S/S NUMBER: 157328 STATUS: SERVONLY  
S/S NAME: NATIONSTAR MORTGAGE LLC  
S/S ADDRESS: 8950 CYPRESS WATERS BLVD. COPPELL TX 75067  
S/S PHONE: 469 549 2192 POWER OF ATTORNEY: NO

APPROVAL STATES (FORM 100 ENTRY 1  
AK AL AR AZ CA CO CT DE FL GA GU HI IA ID IL IN KS KY LA  
MA MD ME MI MN MO MS MT NC ND NE NH NJ NM NY OH OK OR PA  
RI SC SD TN TX UT VA VT WA WI WV WY

SVCG	PRD	DTL	PRD	#LOANS	#GROUPS	\$ VOLUME	TOT REQ	REQ \$ VOL
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FUNCTIONS: F=PAGE FORWARD B=PAGE BACKWARD R=RETURN TO MENU

1 - Seq 1 17224166229 IMAC225 17

## EXHIBIT 5

Loan StatusManager  
Mortgage Payment History Report

Report generated on Wednesday, July 26, 2017 at 1:04 pm.

SQL returned 144 rows

Fhlmc Loan Number 2250																			
Accounting Cycle	Date Reported	Date DDLP1 Reported	Last Payment Received	Monthly P&I Due Date	Monthly P&I	Principal Due	Interest Due	Ending UPB	Int Bearing UPB	Non-Int Bearing UPB	Non-Int Bearing Principal Curtailment	Borrower Incentive	Negam Balance	Prepay Penalty	Proceeds	ANY Rate	Note Rate	Code Exception	Date Exception
07/15/2017	07/17/2017	03/01/2010	01/30/2012	07/19/2017	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
06/15/2017	06/16/2017	03/01/2010	01/30/2012	06/20/2017	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
05/15/2017	05/16/2017	03/01/2010	01/30/2012	05/18/2017	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
04/15/2017	04/17/2017	03/01/2010	01/30/2012	04/19/2017	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
03/15/2017	03/16/2017	03/01/2010	01/30/2012	03/20/2017	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
02/15/2017	02/16/2017	03/01/2010	01/30/2012	02/21/2017	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
01/15/2017	01/17/2017	03/01/2010	01/30/2012	01/19/2017	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
12/15/2016	12/16/2016	03/01/2010	01/30/2012	12/20/2016	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
11/15/2016	11/17/2016	03/01/2010	01/30/2012	11/18/2016	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
10/15/2016	10/18/2016	03/01/2010	01/30/2012	10/19/2016	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
09/15/2016	09/20/2016	03/01/2010	01/30/2012	09/20/2016	\$1,524.75	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.500%		
08/15/2016	08/18/2016	03/01/2010	01/30/2012	08/18/2016	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
07/15/2016	07/19/2016	03/01/2010	01/30/2012	07/20/2016	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
06/15/2016	06/17/2016	03/01/2010	01/30/2012	06/20/2016	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
05/15/2016	05/17/2016	03/01/2010	01/30/2012	05/18/2016	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
04/15/2016	04/19/2016	03/01/2010	01/30/2012	04/20/2016	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
03/15/2016	03/18/2016	03/01/2010	01/30/2012	03/18/2016	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
02/15/2016	02/17/2016	03/01/2010	01/30/2012	02/18/2016	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
01/15/2016	01/20/2016	03/01/2010	01/30/2012	01/21/2016	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
12/15/2015	12/17/2015	03/01/2010	01/30/2012	12/18/2015	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
11/15/2015	11/17/2015	03/01/2010	01/30/2012	11/18/2015	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
10/15/2015	10/19/2015	03/01/2010	01/30/2012	10/20/2015	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
09/15/2015	09/18/2015	03/01/2010	01/30/2012	09/18/2015	\$1,287.72	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		3.000%		
08/15/2015	08/18/2015	03/01/2010	01/30/2012	08/19/2015	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		2.750%		
07/15/2015	07/20/2015	03/01/2010	01/30/2012	07/20/2015	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		2.750%		
06/15/2015	06/18/2015	03/01/2010	01/30/2012	06/18/2015	\$1,258.85	\$0.00	\$0.00	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		2.750%		


05/15/2015	05/19/2015	03/01/2010	01/30/2012	05/20/2015	\$1,258.85	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
04/15/2015	04/17/2015	03/01/2010	01/30/2012	04/20/2015	\$1,258.85	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
03/15/2015	03/17/2015	03/01/2010	01/30/2012	03/18/2015	\$1,258.85	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
02/15/2015	02/19/2015	03/01/2010	01/30/2012	02/19/2015	\$1,258.85	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
01/15/2015	01/21/2015	03/01/2010	01/30/2012	01/21/2015	\$1,258.85	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
12/15/2014	12/18/2014	03/01/2010	01/30/2012	12/18/2014	\$1,258.85	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
11/15/2014	11/18/2014	03/01/2010	01/30/2012	11/19/2014	\$1,258.85	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
10/15/2014	10/17/2014	03/01/2010	01/30/2012	10/20/2014	\$1,258.85	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
09/15/2014	09/18/2014	03/01/2010	01/30/2012	09/18/2014	\$1,258.85	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.750%
08/15/2014	08/20/2014	03/01/2010	01/30/2012	08/20/2014	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
07/15/2014	07/18/2014	03/01/2010	01/30/2012	07/18/2014	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
06/15/2014	06/19/2014	03/01/2010	01/30/2012	06/18/2014	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
05/15/2014	05/20/2014	03/01/2010	01/30/2012	05/20/2014	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
04/15/2014	04/18/2014	03/01/2010	01/30/2012	04/18/2014	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
03/15/2014	03/19/2014	03/01/2010	01/30/2012	03/19/2014	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
02/15/2014	02/20/2014	03/01/2010	01/30/2012	02/20/2014	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
01/15/2014	01/17/2014	03/01/2010	01/30/2012	01/21/2014	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
12/15/2013	12/19/2013	03/01/2010	01/30/2012	12/18/2013	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
11/15/2013	11/20/2013	03/01/2010	01/30/2012	11/20/2013	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
10/15/2013	10/16/2013	03/01/2010	01/30/2012	10/18/2013	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
09/15/2013	09/17/2013	03/01/2010	01/30/2012	09/18/2013	\$1,273.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	2.875%
08/15/2013	08/19/2013	03/01/2010	01/30/2012	08/20/2013	\$1,337.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
07/15/2013	07/18/2013	03/01/2010	01/30/2012	07/18/2013	\$1,337.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
06/15/2013	06/18/2013	03/01/2010	01/30/2012	06/19/2013	\$1,337.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
05/15/2013	05/20/2013	03/01/2010	01/30/2012	05/20/2013	\$1,337.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
04/15/2013	04/17/2013	03/01/2010	01/30/2012	04/18/2013	\$1,337.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
03/15/2013	03/19/2013	03/01/2010	01/30/2012	03/20/2013	\$1,337.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
02/15/2013	02/20/2013	03/01/2010	01/30/2012	02/21/2013	\$1,337.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
01/15/2013	01/17/2013	03/01/2010	01/30/2012	01/18/2013	\$1,337.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
12/15/2012	12/18/2012	03/01/2010	01/30/2012	12/19/2012	\$1,337.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
11/15/2012	11/19/2012	03/01/2010	01/30/2012	11/20/2012	\$1,337.64	\$0.00	\$677.67	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
10/15/2012	10/17/2012	03/01/2010	01/30/2012	10/18/2012	\$1,337.64	\$0.00	\$677.67	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
09/15/2012	09/19/2012	03/01/2010	01/30/2012	09/19/2012	\$1,337.64	\$0.00	\$677.67	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.375%
08/15/2012	08/17/2012	03/01/2010	01/30/2012	08/20/2012	\$1,287.80	\$0.00	\$592.96	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
																	Inactivate loan

07/15/2012	07/19/2012	03/01/2010	01/30/2010	07/18/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
06/15/2012	06/21/2012	03/01/2010	01/30/2010	06/20/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
05/15/2012	05/21/2012	03/01/2010	01/30/2010	05/18/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
04/15/2012	04/19/2012	03/01/2010	01/30/2010	04/18/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
03/15/2012	03/21/2012	03/01/2010	01/30/2010	03/20/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
02/15/2012	02/22/2012	03/01/2010	01/30/2010	02/21/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
01/15/2012	01/20/2012	01/01/2010	05/25/2011	01/19/2012	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
12/15/2011	12/21/2011	01/01/2010	05/25/2011	12/20/2011	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
11/15/2011	11/21/2011	01/01/2010	05/25/2011	11/18/2011	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
10/15/2011	10/19/2011	01/01/2010	05/25/2011	10/19/2011	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
09/15/2011	09/21/2011	01/01/2010	05/25/2011	09/20/2011	\$1,287.80	\$0.00	\$592.96	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.000%
08/15/2011	08/19/2011	01/01/2010	05/25/2011	08/18/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
07/15/2011	07/20/2011	01/01/2010	05/25/2011	07/20/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
06/15/2011	06/21/2011	01/01/2010	05/25/2011	06/20/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
05/15/2011	05/19/2011	12/01/2009	04/08/2011	05/18/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
04/15/2011	04/21/2011	12/01/2009	04/08/2011	04/20/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
03/15/2011	03/21/2011	09/01/2009	02/01/2010	03/18/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
02/15/2011	02/18/2011	09/01/2009	02/01/2010	02/18/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
01/15/2011	01/21/2011	09/01/2009	02/01/2010	01/20/2011	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
12/15/2010	12/21/2010	09/01/2009	02/01/2010	12/20/2010	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
11/15/2010	11/19/2010	09/01/2009	02/01/2010	11/18/2010	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
10/15/2010	10/20/2010	09/01/2009	02/01/2010	10/20/2010	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
09/15/2010	09/21/2010	09/01/2009	02/01/2010	09/20/2010	\$1,357.02	\$0.00	\$705.90	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	3.500%
08/15/2010	08/18/2010	09/01/2009	02/01/2010	08/18/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
07/15/2010	07/22/2010	09/01/2009	02/01/2010	07/20/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
06/15/2010	06/18/2010	09/01/2009	02/01/2010	06/18/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
05/15/2010	05/19/2010	09/01/2009	02/01/2010	05/19/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
04/15/2010	04/21/2010	09/01/2009	02/01/2010	04/20/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
03/15/2010	03/19/2010	09/01/2009	02/01/2010	03/18/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
02/15/2010	02/19/2010	09/01/2009	02/01/2010	02/18/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
01/15/2010	01/21/2010	08/01/2009	10/19/2009	01/21/2010	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
12/15/2009	12/21/2009	08/01/2009	10/19/2009	12/18/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
11/15/2009	11/19/2009	08/01/2009	10/19/2009	11/18/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
10/15/2009	10/19/2009	07/01/2009	08/06/2009	10/20/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%



09/15/2009	09/17/2009	07/01/2009	08/06/2009	09/18/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
08/15/2009	08/18/2009	07/01/2009	08/06/2009	08/19/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
07/15/2009	07/20/2009	06/01/2009	07/10/2009	07/20/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
06/15/2009	06/18/2009	04/01/2009	05/29/2009	06/18/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
05/15/2009	05/20/2009	03/01/2009	05/01/2009	05/20/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
04/15/2009	04/21/2009	02/01/2009	03/27/2009	04/20/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
03/15/2009	03/18/2009	01/01/2009	02/20/2009	03/18/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
02/15/2009	02/18/2009	12/01/2008	02/12/2009	02/19/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
01/15/2009	01/22/2009	11/01/2008	12/22/2008	01/21/2009	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
12/15/2008	12/19/2008	10/01/2008	11/21/2008	12/18/2008	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
11/15/2008	11/19/2008	08/01/2008	10/20/2008	11/19/2008	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
10/15/2008	10/20/2008	07/01/2008	08/29/2008	10/20/2008	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
09/15/2008	09/18/2008	07/01/2008	08/29/2008	09/18/2008	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
08/15/2008	08/20/2008	06/01/2008	06/27/2008	08/20/2008	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
07/15/2008	07/18/2008	06/01/2008	06/27/2008	07/18/2008	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
06/15/2008	06/18/2008	05/01/2008	05/29/2008	06/18/2008	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
05/15/2008	05/20/2008	04/01/2008	04/30/2008	05/20/2008	\$1,524.75	\$0.00	\$1,440.04	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
04/15/2008	04/18/2008	03/01/2008	03/25/2008	04/18/2008	\$1,524.75	\$484.63	\$1,442.62	\$271,066.83	\$271,066.83	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
03/15/2008	03/18/2008	02/01/2008	02/28/2008	03/19/2008	\$1,527.48	\$76.40	\$1,443.02	\$271,551.46	\$271,551.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
02/15/2008	02/21/2008	01/01/2008	01/30/2008	02/21/2008	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
01/15/2008	01/18/2008	12/01/2007	12/27/2007	01/18/2008	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
12/15/2007	12/18/2007	11/01/2007	11/30/2007	12/19/2007	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
11/15/2007	11/20/2007	10/01/2007	10/29/2007	11/20/2007	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
10/15/2007	10/18/2007	09/01/2007	10/01/2007	10/18/2007	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
09/15/2007	09/19/2007	08/01/2007	08/30/2007	09/19/2007	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
08/15/2007	08/20/2007	07/01/2007	07/27/2007	08/20/2007	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
07/15/2007	07/18/2007	06/01/2007	06/29/2007	07/18/2007	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
06/15/2007	06/20/2007	05/01/2007	05/30/2007	06/20/2007	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
05/15/2007	05/18/2007	04/01/2007	04/27/2007	05/18/2007	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
04/15/2007	04/19/2007	03/01/2007	03/12/2007	04/18/2007	\$1,527.91	\$0.00	\$1,443.02	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
03/15/2007	03/20/2007	03/01/2007	03/12/2007	03/20/2007	\$1,527.91	\$3.60	\$1,443.04	\$271,627.86	\$271,627.86	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
02/15/2007	02/22/2007	01/01/2007	01/25/2007	02/21/2007	\$1,527.93	\$0.00	\$1,443.04	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
01/15/2007	01/19/2007	12/01/2006	12/21/2006	01/18/2007	\$1,527.93	\$0.00	\$1,443.04	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
12/15/2006	12/20/2006	11/01/2006	11/29/2006	12/20/2006	\$1,527.93	\$0.00	\$1,443.04	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
11/15/2006	11/21/2006	10/01/2006	10/19/2006	11/20/2006	\$1,527.93	\$0.00	\$1,443.04	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%

10/15/2006	10/19/2006	09/01/2006	09/15/2006	10/18/2006	\$1,527.93	\$0.00	\$1,443.04	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
09/15/2006	09/21/2006	09/01/2006	09/15/2006	09/20/2006	\$1,527.93	\$0.00	\$1,443.04	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
08/15/2006	08/21/2006	07/01/2006	07/27/2006	08/18/2006	\$1,527.93	\$0.00	\$1,443.04	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
07/15/2006	07/20/2006	06/01/2006	06/16/2006	07/19/2006	\$1,527.93	\$0.00	\$1,443.04	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
06/15/2006	06/20/2006	05/01/2006	05/10/2006	06/20/2006	\$1,527.93	\$0.00	\$1,443.04	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
05/15/2006	05/18/2006	05/01/2006	05/10/2006	05/18/2006	\$1,527.93	\$6.54	\$1,443.08	\$271,631.46	\$271,631.46	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
04/15/2006	04/19/2006	03/01/2006	04/03/2006	04/19/2006	\$1,527.96	\$0.00	\$1,443.08	\$271,638.00	\$271,638.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
03/15/2006	03/20/2006	02/01/2006	03/01/2006	03/20/2006	\$1,527.96	\$0.00	\$1,443.08	\$271,638.00	\$271,638.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
02/15/2006	02/21/2006	01/01/2006	02/02/2006	02/21/2006	\$1,527.96	\$0.00	\$1,443.08	\$271,638.00	\$271,638.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
01/15/2006	01/19/2006	12/01/2005	12/15/2005	01/19/2006	\$1,527.96	\$0.00	\$1,443.08	\$271,638.00	\$271,638.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
12/15/2005	12/20/2005	12/01/2005	12/15/2005	12/20/2005	\$1,527.96	\$0.00	\$1,443.08	\$271,638.00	\$271,638.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
11/15/2005	11/18/2005	10/01/2005	10/14/2005	11/18/2005	\$1,527.96	\$0.00	\$1,443.08	\$271,638.00	\$271,638.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
10/15/2005	10/19/2005	10/01/2005	10/14/2005	10/19/2005	\$1,527.96	\$0.00	\$1,443.08	\$271,638.00	\$271,638.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
09/15/2005	09/21/2005	09/01/2005	09/07/2005	09/20/2005	\$1,527.96	\$0.00	\$1,443.08	\$271,638.00	\$271,638.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%
08/15/2005	09/02/2005				\$0.00	\$0.00	\$0.00	\$271,638.00	\$271,638.00	\$0.00	\$0.00	\$0.00	\$0.00	6.750%

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## EXHIBIT 6

Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 1 / Chs. 1-A1: Introduction / Chapter 1: Introduction / 1.2: Legal effect of the Single-Family Seller/Servicer Guide (09/24/13)

**REVISION HISTORY 07/20/12 [HIDE]**

**REVISION NUMBER:** 07202012

**DATE:** 07/20/2012

**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

**1.2: Legal effect of the *Single-Family Seller/Servicer Guide*  
(Effective: 07/20/12)**

**ARCHIVED VERSION**

**(a) Status as a contract**

1. **Effect of the Guide.** The *Single-Family Seller/Servicer Guide* ("Guide") governs the business relationship between a Seller and Freddie Mac relating to the sale and Servicing of Mortgages. Each Seller/Servicer must complete and submit a Form 16SF, Annual Eligibility Certification Report, that certifies that the Seller/Servicer has access to the Electronic version of the Guide as an Electronic Record, as those terms are defined in Chapter 3, and is in compliance with all requirements of the Purchase Documents.
2. **Volume 1 of the Guide.** In connection with the sale of Mortgages to Freddie Mac, the Seller agrees that each transaction is governed by the Guide, the applicable Purchase Contract and all other Purchase Documents.

3. **Volume 2 of the Guide.** A Seller must service all Mortgages that the Seller has sold to Freddie Mac and/or has agreed to service for Freddie Mac in accordance with the standards set forth in the Seller's Purchase Documents. All of a Seller's obligations to service Mortgages for Freddie Mac are considered to constitute, and must be performed pursuant to a unitary, indivisible master Servicing contract, and the Servicing obligations assumed pursuant to any contract to sell Mortgages to Freddie Mac are deemed to be merged into, and must be performed pursuant to, such unitary, indivisible master Servicing contract.

A Seller acknowledges that Freddie Mac's agreement to purchase Mortgages from the Seller pursuant to any individual Purchase Contract is based upon the Seller's agreement that the Mortgages purchased will be serviced by the Seller pursuant to the unitary, indivisible master Servicing contract. The Seller agrees that any failure to service any Mortgage in accordance with the terms of the unitary, indivisible master Servicing contract, or any breach of any of the Seller's obligations under any aspect of the unitary, indivisible master Servicing contract, shall be deemed to constitute a breach of the entire contract and shall entitle Freddie Mac to terminate all or a portion of the Servicing. The termination of a portion of the Servicing shall not alter the unitary, indivisible nature of the Servicing contract.

If a Servicer who services Mortgages for Freddie Mac is not also the Seller of the Mortgages to Freddie Mac, the Servicer must agree to service Mortgages for Freddie Mac by separate agreement, which incorporates the applicable Purchase Documents. In such case, the separate agreement shall be deemed to be one of the "Purchase Documents" that constitute the unitary, indivisible master Servicing contract.

In addition, in certain cases, a Seller and/or Servicer who uses certain Freddie Mac services will, by virtue of the provisions of the Guide, be deemed to have agreed upon certain terms and conditions related to such services and their use.

4. **Amendments to the Guide.** Freddie Mac may, in its sole discretion, amend or supplement the Guide from time to time. Amendments to the Guide may be a paper Record or an Electronic Record, as those terms are defined in Chapter 3. The Guide may not be amended orally. Freddie Mac may amend the Guide by:

- Publishing Bulletins, which apply to all Sellers/Servicers, or
- Entering into a Purchase Contract or other written or Electronic agreement, which applies to the Seller that is a party to the Purchase Contract or agreement

Bulletins expressly amend, supplement, revise or terminate specific provisions of the Guide. An amendment, supplement, revision or termination of a provision in Volume 1 or Volume 2 of the Guide is effective as of the date specified by Freddie Mac in the applicable Bulletin.

A Purchase Contract or other written agreement or Electronic agreement amends or supplements specific provisions of the Guide for purposes of such Purchase Contract or other agreement, as applicable. Such amendments or supplements to the Guide are effective as of the date specified in the Purchase Contract or other agreement. See Section 12.3(d) for information about how amendments and supplements to Volume 1 of the Guide amend or otherwise apply to a Seller's Purchase Contracts and other Purchase Documents.

5. **Publication of Guide and Bulletins.** The Guide is posted on the AllRegs® web site of Mortgage Resource Center, Inc. (MRC) which posts the Guide under license from and with the express permission of Freddie Mac. MRC is the exclusive third-party electronic publisher of the Guide. Freddie Mac makes no representation or warranty regarding availability, features or functionality of the AllRegs web site. The Guide is also posted on FreddieMac.com.

By using the web site, Seller/Servicers acknowledge and agree (individually and on behalf of the entity for which they access the Guide) neither Freddie Mac nor MRC shall be liable to them (or the entity for which they access the Guide) for any losses or damages whatsoever resulting directly or indirectly from Freddie Mac's designation of the Guide as found on the AllRegs web site as the official Electronic version, as an Electronic Record, and MRC expressly disclaims any warranty as to the results to be obtained by Seller/Servicers (and the entity for which Seller/Servicers access the Guide) from use of the AllRegs web site, and MRC shall not be liable to Seller/Servicers (and the entity for which Seller/Servicers access the Guide) for any damages arising directly or indirectly out of the use of the AllRegs web site by them (and the entity for which they access the Guide).

From time to time, Bulletins are published on AllRegs and FreddieMac.com. Sellers and Servicers with an AllRegs subscription may receive notice of Bulletins directly from AllRegs. If a Seller or Servicer does not receive notice of Bulletins through AllRegs, the Seller or Servicer must take the steps necessary to receive the applicable Freddie Mac Single-Family Update e-mails, which will notify Sellers and Servicers of Bulletin publications. A Seller or Servicer's failure to take the appropriate steps to receive notices of Bulletins does not relieve the Seller or Servicer of its legal obligations to comply with the terms of the Bulletins.

6. **Effective Date.** The effective date of each section of the Guide is located at the beginning of each section, to the right of the section number and name.

**(b) Copyright**

The Guide (including related supplements, bulletins and industry letters) is copyrighted. Limited permission to photocopy the Guide is granted to Seller/Servicers strictly for their own use in originating and selling Mortgages to, and in Servicing Mortgages for, Freddie Mac. No part of the Guide may be reproduced for any other reason (in any form or by any means) without the express written permission of Freddie Mac. Requests for such permission to reproduce the Guide must be sent to Freddie Mac **(see Directory 1)**.

Requests will be reviewed and answered by Freddie Mac in the ordinary course of business.

Freddie Mac reserves the right to revoke permission to reproduce the Guide upon 60 days' notice to any and all Sellers and Servicers. Under no circumstances will Freddie Mac permit the Guide to be reproduced by any Electronic or mechanical means, including, but not limited to, reproduction in, or as a component of, any information storage and retrieval system.

**(c) Reliance**

By entering into a Purchase Contract or into the unitary, indivisible master Servicing contract with Freddie Mac, the Seller or Servicer acknowledges that it is not relying upon Freddie Mac or any employee, agent or representative thereof, in making its decision to enter into the contract and that it has relied upon the advice and counsel of its own employees, agents and representatives as to the regulatory, business, corporate, tax, accounting and other consequences of entering into and performing its obligations under a Purchase Contract or the unitary, indivisible master Servicing contract.

**(d) Assignments; security interests**

A Seller or Servicer shall not, in whole or in part, assign or transfer or grant a security interest in, any of its obligations, rights or interest under any Purchase Contract or under the unitary, indivisible master Servicing contract, including any of its rights or obligations under this Guide or any of the Purchase Documents, without Freddie Mac's prior written consent. Any purported or attempted assignment or transfer of, or grant of a security interest in, any such obligations, rights or interest is prohibited and shall be null and void.

Notwithstanding the provisions of the immediately preceding paragraph, Freddie Mac may consent to a Servicer's grant to one or more third parties of a security interest under the Uniform Commercial Code in the conditional, nondelegable contract right of the Servicer to service Home Mortgages for Freddie Mac pursuant to the terms of the unitary, indivisible master Servicing contract ("Freddie Mac Servicing rights"). Freddie Mac will indicate its consent only by executing an Acknowledgment Agreement, which must also be executed by a Servicer and the third party to whom the Servicer grants a security interest. A Servicer may write to Freddie Mac (**see Directory 1**) for a copy of the Acknowledgment Agreement and instructions for completing and executing it.

A Servicer's grant to a third party of a security interest in the Servicer's Freddie Mac Servicing rights, as more specifically defined in the Acknowledgment Agreement, may be made only for a purpose specified in the instructions for the Acknowledgment Agreement. Any purported or attempted grant of a security interest in any other rights or interest of the Servicer under the Guide or any of the Purchase Documents, or for the purpose of securing any other type of obligation, is prohibited and shall be null and void. In addition, a Servicer's purported or attempted grant to a third party of a security interest in the Servicer's Freddie Mac Servicing rights without the Servicer and the third party also having executed the Acknowledgment Agreement is prohibited and shall be null and void.

Freddie Mac has the right to sell, assign, convey, hypothecate, pledge or in any way transfer, in whole or in part, its interest under the Purchase Documents with respect to any Mortgage it purchases.

**(e) Severability**

If any provision of this Guide shall be held invalid, the legality and enforceability of all remaining provisions shall not in any way be affected or impaired thereby, and this Guide shall be interpreted as if such invalid provision were not contained herein.

**(f) Construction of Guide**

This Guide shall not be construed against Freddie Mac as being the drafter hereof.

**(g) Entire agreement**

This Guide, including the exhibits attached to the Guide and all Purchase Documents incorporated by reference in the Guide, constitutes the entire understanding between Freddie Mac and the Seller or Servicer and supersedes all other agreements, covenants, representations, warranties, understandings and communications between the parties, whether oral or written or Electronic, with respect to the transactions contemplated by the Guide.



**(h) Governing law**

This Guide shall be construed, and the rights and obligations of Freddie Mac and the Seller or Servicer hereunder determined, in accordance with the laws of the United States. Insofar as there may be no applicable precedent, and insofar as to do so would not frustrate any provision of this Guide or the transactions governed thereby, the laws of the State of New York shall be deemed reflective of the laws of the United States.

**1.2: Legal effect of the *Single-Family Seller/Servicer Guide* (09/24/13)****ARCHIVED VERSION****(a) Status as a contract**

1. **Effect of the Guide.** The Guide governs the business relationship between a Seller/Servicer and Freddie Mac relating to the sale and Servicing of Mortgages. Each Seller/Servicer must complete and submit a Form 16SF, Annual Eligibility Certification Report, that certifies that the Seller/Servicer has access to the Electronic version of the Guide as an Electronic Record, as those terms are defined in Chapter 3, and is in compliance with all requirements of the Purchase Documents.
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A Seller/Servicer acknowledges that Freddie Mac's agreement to purchase Mortgages from the Seller/Servicer pursuant to any individual Purchase Contract is based upon the Seller/Servicer's agreement that the Mortgages purchased will be serviced by the Seller/Servicer pursuant to the unitary, indivisible master Servicing contract. The Seller/Servicer agrees that any failure to service any Mortgage in accordance with the terms of the unitary, indivisible master Servicing contract, or any breach of any of the Seller/Servicer's obligations under any aspect of the unitary, indivisible master Servicing contract, shall be deemed to constitute a breach of the entire contract and shall entitle Freddie Mac to terminate all or a portion of the Servicing. The termination of a portion of the Servicing shall not alter the unitary, indivisible nature of the Servicing contract.

If a Servicer who services Mortgages for Freddie Mac is not also the Seller of the Mortgages to Freddie Mac, the Servicer must agree to service Mortgages for Freddie Mac by separate agreement, which incorporates the applicable Purchase Documents. In such case, the separate agreement shall be deemed to be one of the "Purchase Documents" that constitute the unitary, indivisible master Servicing contract.

In addition, in certain cases, a Seller and/or Servicer who uses certain Freddie Mac services will, by virtue of the provisions of the Guide, be deemed to have agreed upon certain terms and conditions related to such services and their use.

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By using the web site, Seller/Serviceirs acknowledge and agree (individually and on behalf of the entity for which they access the Guide) neither Freddie Mac nor MRC shall be liable to them (or the entity for which they access the Guide) for any losses or damages whatsoever resulting directly or indirectly from Freddie Mac's designation of the Guide as found on the AllRegs web site as the official Electronic version, as an Electronic Record, and MRC expressly disclaims any warranty as to the results to be obtained by Seller/Serviceirs (and the entity for which Seller/Serviceirs access the Guide) from use of the AllRegs web site, and MRC shall not be liable to Seller/Serviceirs (and the entity for which Seller/Serviceirs access the Guide) for any damages arising directly or indirectly out of the use of the AllRegs web site by them (and the entity for which they access the Guide).

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Requests will be reviewed and answered by Freddie Mac in the ordinary course of business.

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**(c) Reliance**

By entering into a Purchase Contract or into the unitary, indivisible master Servicing contract with Freddie Mac, the Seller or Servicer acknowledges that it is not relying upon Freddie Mac or any employee, agent or representative thereof, in making its decision to enter into the contract and that it has relied upon the advice and counsel of its own employees, agents and representatives as to the regulatory, business, corporate, tax, accounting and other consequences of entering into and performing its obligations under a Purchase Contract or the unitary, indivisible master Servicing contract.

**(d) Assignments; security interests**

A Seller or Servicer shall not, in whole or in part, assign or transfer or grant a security interest in, any of its obligations, rights or interest under any Purchase Contract or under the unitary, indivisible master Servicing contract, including any of its rights or obligations under this Guide or any of the Purchase Documents, without Freddie Mac's prior written consent. Any purported or attempted assignment or transfer of, or grant of a security interest in, any such obligations, rights or interest is prohibited and shall be null and void.

Freddie Mac has the right to sell, assign, convey, hypothecate, pledge or in any way transfer, in whole or in part, its interest under the Purchase Documents with respect to any Mortgage it purchases.

**(e) Severability**

If any provision of this Guide shall be held invalid, the legality and enforceability of all remaining provisions shall not in any way be affected or impaired thereby, and this Guide shall be interpreted as if such invalid provision were not contained herein.

**(f) Construction of Guide**

This Guide shall not be construed against Freddie Mac as being the drafter hereof.

**(g) Entire agreement**

This Guide, including the exhibits attached to the Guide and all Purchase Documents incorporated by reference in the Guide, constitutes the entire understanding between Freddie Mac and the Seller or Servicer and supersedes all other agreements, covenants, representations, warranties, understandings and communications between the parties, whether oral or written or Electronic, with respect to the transactions contemplated by the Guide.

**(h) Governing law**

This Guide shall be construed, and the rights and obligations of Freddie Mac and the Seller or Servicer hereunder determined, in accordance with the laws of the United States. Insofar as there may be no applicable precedent, and insofar as to do so would not frustrate any provision of this Guide or the transactions governed thereby, the laws of the State of New York shall be deemed reflective of the laws of the United States.

Related Guide Bulletins	Issue Date
Bulletin 2013-18	September 24, 2013

Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 2 / Chs. 51-57: General Freddie Mac Policies / Chapter 52: Mortgage File Retention / 52.5: The Mortgage file, Mortgage data and related records (05/17/11)

## 52.5: The Mortgage file, Mortgage data and related records (05/17/11)

### ARCHIVED VERSION

**(a) Ownership** All documents in the Mortgage file, all data related to Mortgages owned or guaranteed by Freddie Mac to which the Servicer obtains access in connection with any agreement with Freddie Mac, including, without limitation, data in the documents in the Mortgage file (collectively, Mortgage data) and all other documents and records related to the Mortgage of whatever kind or description (whether prepared or originated by the Servicer or others, or whether prepared or maintained or held by the Servicer or others acting for and on behalf of the Servicer), including all current and historical computerized data files, will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

**(b) Permitted use of Mortgage data**

The Servicer may use these records and Mortgage data only for the following purposes:

- Servicing Mortgages (and, in compliance with the provisions of the Guide, retaining subservicers to service Mortgages) on behalf of, and in the interest of, Freddie Mac;
- As background information for the Servicer's use related to marketing or cross-selling of the Servicer's own primary market products and services in compliance with applicable laws, provided that such marketing and cross-selling does not involve disclosure of these records or Mortgage data to any third parties, other than vendors assisting the Servicer in its marketing activities who are themselves bound by these requirements;
- As necessary to enable a vendor to provide analytic services to the Servicer with respect to the Servicer's Servicing portfolio, for the Servicer's internal use only, provided the vendor is bound by these requirements; and
- As necessary to enable the Servicer to comply with its obligations under applicable law, including, without limitation, any disclosures required in connection with audits by regulatory agencies with jurisdiction over the Servicer's operations.

Except as expressly authorized by Freddie Mac in writing, Servicers may not use or disclose, or authorize or permit third parties to use or disclose, these records or Mortgage data for any other purpose, including, without limitation, resale or licensing of Mortgage data, either alone or with other data. See Section 53.3, Confidential Information; Privacy; Conflicts of Interest, Misuse of Material Information; Security of Information, for additional requirements related to confidentiality.

Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 1 / Chs. 4-7: Seller/Servicer Requirements and Warranties / Chapter 6: General Warranties and Responsibilities of the Seller/Servicer / 6.6: Survival of warranties; remedies (05/05/00)

#### **6.6: Survival of warranties; remedies (05/05/00)**

##### **ARCHIVED VERSION**

The warranties and representations in the Purchase Documents for any Mortgage purchased by Freddie Mac survive payment of the purchase price by Freddie Mac. The warranties and representations are not affected by any investigation made by, or on behalf of, Freddie Mac, except when expressly waived in writing by Freddie Mac.

When any party has purchased a Mortgage from Freddie Mac that Freddie Mac previously purchased from a Seller, Freddie Mac may exercise any rights or remedies at law or in equity on behalf of the party to the extent that the party does not affirmatively do so. Freddie Mac may also exercise its discretion to disqualify or suspend a Seller or a Servicer pursuant to Chapter 5 or 53.

For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac and/or its successors and assigns.

**Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 2 / Chs. 51-57: General Freddie Mac Policies / Chapter 52: Mortgage File Retention / 52.7: Transfer of file custody; security of file information (10/01/09)**

## **52.7: Transfer of file custody; security of file information (10/01/09)**

### **ARCHIVED VERSION**

Freddie Mac may at any time require the Servicer to deliver the following documents to a Document Custodian approved by Freddie Mac or a transferee designated by Freddie Mac:

- Any original Note, Security Instrument, assignment and modifying instrument still in the Servicer's custody
- Any Mortgage file, document within a Mortgage file or other related documents and records in the Servicer's or its Document Custodian's custody, whether maintained as originals or as copies in accordance with Section 52.2

The Servicer may, without Freddie Mac's prior approval, entrust custody of all or part of the Mortgage file to the Document Custodian holding Notes and assignments under Section 18.2. When requested, the Servicer must be able to identify to Freddie Mac those file items held by the Document Custodian and document to Freddie Mac the Document Custodian's acknowledgment that such file items:

- Are Freddie Mac's property
- Will be maintained by the Document Custodian according to standards at least equal to those set in this chapter
- Will be maintained in such a way as to ensure the security and confidentiality of the information; protect against anticipated threats or hazards to the security or integrity of the information; and protect against unauthorized access to or use of such information
- Will be surrendered to Freddie Mac at any time Freddie Mac may request them

The Servicer agrees to indemnify Freddie Mac and hold Freddie Mac harmless for any loss, damage or expense (including court costs and reasonable attorney fees) that Freddie Mac may incur as a result of the Document Custodian's holding all or part of the Mortgage file.

The Servicer must maintain a copy (in a form allowable under Section 52.2) of any original document that has been entrusted to the Document Custodian for safekeeping. If all or part of the Mortgage file is held by the Servicer's Document Custodian, the Servicer agrees to recover from the Document Custodian (at the Servicer's expense) and provide to Freddie Mac (at the place and within the timeframe specified by Freddie Mac) any Document Custodian-held original document requested by Freddie Mac for the postfunding quality control detailed in Chapter 47 or in conjunction with a Freddie Mac desktop or on-site review of the Servicer's Servicing operations.

Freddie Mac Single Family / Archive of Single-Family Seller/Servicer Guide / Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin / Single-Family Seller/Servicer Guide, Volume 1 / Chs. 22-28: General Mortgage Eligibility / Chapter 22: General Mortgage Eligibility / 22.14: Assignment of Security Instrument (10/01/09)

## 22.14: Assignment of Security Instrument (10/01/09)

### ARCHIVED VERSION

The Seller/Servicer is not required to prepare an assignment of the Security Instrument to the Federal Home Loan Mortgage Corporation (Freddie Mac). However, Freddie Mac may, at its sole discretion and at any time, require a Seller/Servicer, at the Seller/Servicer's expense, to prepare, execute and/or record assignments of the Security Instrument to Freddie Mac.

If an assignment of the Security Instrument to Freddie Mac has been prepared, Seller/Servicer must not record it unless directed to do so by Freddie Mac. Any statement in the assignment to the effect that the assignment is made without recourse will in no way affect the Seller/Servicer's repurchase obligations under the Purchase Documents.

Intervening Assignments must be prepared as required in Sections 22.14(a), 22.14(b) or 22.14(c) below.

Special provisions for preparing assignments for Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title are set forth in Section H33.7(c), paragraph 3. Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title may not be registered with MERS.

- (a) Preparation and completion of assignments for Mortgages not registered with MERS** For a Mortgage not registered with MERS, the Seller/Servicer must ensure that the chain of assignments is complete and recorded from the original mortgagee on the Security Instrument to the Seller. If the Seller concurrently or subsequently transfers the Servicing, an assignment to the new Servicer must be completed and recorded where required, thus keeping the chain complete.

If a State does not accept assignments for recordation, the Seller must so state in an affidavit maintained with the unrecorded assignment.

- (b) Preparation and completion of assignments for Mortgages registered with MERS**

For a Mortgage registered with MERS, if MERS is not the original mortgagee of record, the Seller/Servicer must ensure that:

- An assignment to MERS has been prepared, duly executed and recorded
- The chain of assignments is complete and recorded from the original mortgagee to MERS

If the Seller/Servicer concurrently or subsequently transfers the Servicing of a Mortgage registered with MERS, no further assignments are required if the Transferee Servicer is a MERS member. If the Transferee Servicer is not a MERS member, or if the Mortgage has not been, or is no longer, registered with MERS, the Seller/Servicer must complete the assignments in accordance with the requirements in Section 22.14(a).



**(c) Mortgages registered with MERS naming MERS as original mortgagee of record**

No assignments are required for a Mortgage registered with MERS if:

- The Mortgage is originated naming MERS as the original mortgagee of record, solely as nominee for the lender named in the Security Instrument and the Note, and the lender's successors and assigns, and
- The Seller/Servicer has ensured that the Security Instrument is properly executed, acknowledged, delivered and recorded in all places necessary to perfect a First Lien security interest in the Mortgaged Premises in favor of MERS, solely as nominee for the lender named in the Security Instrument and the Note, and the lender's successors and assigns

**(d) Concurrent Transfers of Servicing**

If the Mortgage is registered with MERS, and the Transferee Seller/Servicer is not a MERS Member, then the requirements for Mortgages not registered with MERS in the first paragraph of Section 22.14(a) must be followed.

For a Concurrent Transfer of Servicing when a Mortgage is registered with MERS:

- The Transferor Seller must notify MERS of the Transfer of Servicing
- The Transferee Seller/Servicer must follow the document custodial procedures in Section 56.9, and deliver the assignments to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 18.5, unless the Transferee Seller/Servicer has elected to retain all assignments for MERS-registered Mortgages in the Mortgage files. The Transferee Seller/Servicer must also supply its Document Custodian with any documentation necessary for the Document Custodian to determine whether the Seller/Servicer has elected to hold all assignments in the Mortgage files

For a Concurrent Transfers of Servicing when a Mortgage is not registered with MERS:

- The Transferor Seller must record any Intervening Assignments to complete the chain of assignments from the original mortgagee to the Transferor Seller, in accordance with Section 22.14(a)
- The Transferor Servicer must then assign the Security Instruments to the Transferee Servicer and record the assignments
- The Transferee Servicer must follow the document custodial procedures set forth in Section 56.9, and deliver the assignments to the Transferee Document Custodian, to be verified and certified in accordance with the requirements of Section 18.5

Special provisions for Concurrent Transfers of Servicing of Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title are set forth in Section H33.7 (c), paragraph 3.

**(e) Delivery to a Document Custodian**

The Seller/Servicer must deliver all Intervening Assignments for each Mortgage to the Document Custodian, unless the Mortgage is registered with MERS and the Seller/Servicer has elected to retain all assignments for MERS-registered Mortgages in the Mortgage files. The Seller/Servicer must also supply its Document Custodian with any documentation necessary for the Document Custodian to determine if it should expect to receive assignments for MERS-registered Mortgages.

If a recorder's office has not yet returned a recorded Intervening Assignment to the Seller/Servicer, the Seller/Servicer must deliver a certified copy of the assignment sent for recordation to the Document Custodian.

The original recorded assignment must be delivered to the Document Custodian immediately after the Seller/Servicer receives it from the recorder's office. If a jurisdiction does not accept assignments for recordation, the Seller/Servicer must so indicate in an affidavit delivered to the Document Custodian with the unrecorded Intervening Assignment.

**(f) Transfer or assignment of Freddie Mac's interests**

For transfer or assignment of Freddie Mac's interest in the Mortgage, the Seller/Servicer shall prepare at its own expense any assignment necessary to transfer the Security Instrument to Freddie Mac's assignee, designee or transferee.

**(g) Transfer of Servicing**

See Sections 56.7 and 56.9.

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## **56.7: Endorsement of Notes and assignment of Security Instruments (10/01/09)**

### **ARCHIVED VERSION**

When a Mortgage is sold to Freddie Mac, the Seller must endorse the Note in blank in accordance with Section 16.4. When a Transfer of Servicing occurs, the Transferor Servicer may not complete the blank endorsement or further endorse the Note, but must prepare and complete assignments according to the following requirements:

#### **(a) Concurrent Transfer of Servicing for a Mortgage not registered with the Mortgage Electronic Registration Systems Inc. (MERS)**

To prepare and complete assignment of the Security Instrument for a Concurrent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must:

- Record any Intervening Assignments to complete the chain of assignments to it from the original mortgagee, in accordance with Section 22.14(a)
- Assign the Security Instruments to the Transferee Servicer, and record the assignment
- Follow the document custodial procedures set forth in Section 56.9 and deliver the assignment to the Transferee Document Custodian to be verified in accordance with the requirements of Section 18.5

See Section 22.14(a) for additional information.

#### **(b) Concurrent Transfer of Servicing for a Mortgage registered with MERS**

To prepare and complete an assignment of the Security Instrument for a Concurrent Transfer of Servicing of a Mortgage that is registered with MERS:

- If the **Transferee Servicer is a MERS Member**, no further assignment is needed. The Transferor Servicer must notify MERS of the Transfer of Servicing.
- If the **Transferee Servicer is not a MERS Member**, then for a Concurrent Transfer of Servicing:
  - The Transferor Servicer must prepare and record an assignment of the Security Instrument (on behalf of MERS) from MERS to the Transferee Servicer
  - The Transferor Servicer must follow the document custodial procedures set forth in Section 56.9, and deliver the assignment to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 18.5

See Section 22.14(b) for additional information.

**(c) Subsequent Transfer of Servicing for a Mortgage not registered with MERS**

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must:

- Recover and destroy any original unrecorded assignments to Freddie Mac that may have been prepared
- Assign the Security Instrument to the Transferee Servicer and record the assignment
- Follow the document custody procedures set forth in Section 56.9, and deliver the assignment(s) to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 18.5

If an original assignment to Freddie Mac was recorded, no additional assignment need be made.

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## **56.15: Liabilities of the Transferor Servicer and Transferee Servicer (10/03/12)**

### **ARCHIVED VERSION**

#### **(a) Warranties**

Except as stated in the following paragraph, for Transfer of Servicing requests received by Freddie Mac, the Transferee Servicer is liable to Freddie Mac for all sale and Servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages and Real Estate Owned (REO) for which Servicing is transferred, whether or not the Transferor Servicer had such liability. The Transferee Servicer's assumption of responsibilities, representations, covenants and warranties upon transfer does not release the Transferor Servicer, any prior Servicer, or the original Seller of their responsibilities, representations, covenants and warranties with respect to the transferred Mortgages, their liability being joint and several with the Transferee Servicer. However, a Transferor Servicer does not assume such liability for Servicing violations occurring in all respects after the effective date of its transfer and based in all respects upon the actions or omissions of later Transferee Servicers.

For Mortgages sold through Gold Cash Xtra<sup>®</sup> and the Servicing Released Sales Process, the Seller remains solely liable to Freddie Mac for all sale representations, covenants and warranties in the Purchase Documents (sale representations and warranties) with respect to the Mortgages for which Servicing is transferred. The Transferee Servicer is liable to Freddie Mac for all servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages for which Servicing is transferred. For subsequent Transfers of Servicing of such Mortgages:

- The Seller Transferor remains solely liable to Freddie Mac for all sale representations and warranties with respect to the Mortgages for which Servicing is transferred; and
- The subsequent Transferee Servicer is liable to Freddie Mac for all Servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages and Real Estate Owned (REO) for which Servicing is transferred, but the Transferee Servicer's assumption of responsibilities, representations, covenants and warranties upon transfer does not release the subsequent Transferor Servicer or any prior Servicer of their responsibilities, representations, covenants and warranties with respect to Servicing of the transferred Mortgages, their liability being joint and several with the Transferee Servicer. However, a Transferor Servicer does not assume such liability for Servicing violations occurring in all respects after the effective date of its transfer and based in all respects upon the actions or omissions of later Transferee Servicers.

**(b) Hold harmless**

The Transferor Servicer and the Transferee Servicer, jointly and severally, fully indemnify and agree to hold Freddie Mac, its successors and assigns, harmless from and against any and all losses, claims, demands, actions, suits, damages, costs and expenses (including reasonable attorney fees) of every nature and character that may arise or be made against or be incurred by Freddie Mac as a result of the Transferor Servicer's or the Transferee Servicer's failure to comply with applicable law or failure to comply with Freddie Mac's Servicing requirements as set forth in the Purchase Documents, including, but not limited to failure to provide the notices required by Section 56.14, failure to make any payment to the appropriate parties for which Escrow is collected and failure to credit properly any payments received from Borrowers.

**(c) Servicing**

The Transferee Servicer hereby agrees to service the Mortgages in accordance with the terms of the unitary, indivisible master Servicing contract comprising the Guide, applicable bulletins, applicable *users' guides* and any other applicable Purchase Documents, all of which are fully incorporated herein by reference.

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**REVISION HISTORY 03/23/11 [HIDE]**

**REVISION NUMBER:** 03232011

**DATE:** 03/23/2011

**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

**54.4: Servicing obligations to be performed for the Servicing compensation (Effective: 03/23/11)**

**ARCHIVED VERSION**

In consideration for the Servicing Spread, a Servicer is responsible for the performance of all of its Servicing obligations described in the Guide and other Purchase Documents for each of the Mortgages purchased by Freddie Mac. The Servicer's Servicing obligations compensated by the Servicing Spread include, among other things, undertaking all activities required to protect Freddie Mac's interest in the Mortgage in the event of a foreclosure of the property or a bankruptcy of the Borrower, such as:

- Preparing and delivering foreclosure and bankruptcy referrals to attorneys or trustees
- Providing all documents and information necessary for the attorneys or trustees to prosecute foreclosure or bankruptcy cases (including, but not limited to, missing documents such as Notes, title insurance policies, and Intervening Assignments)
- When necessary, paying for the preparation and recordation of missing documents, such as Intervening Assignments, necessary for the prosecution of foreclosure or bankruptcy cases
- Resolving any title issues that are the result of the Seller's or Servicer's action or inaction
- Managing attorneys, including but not limited to:
  - Collecting, receiving, processing, reviewing and paying attorneys' and trustees' invoices
  - Supervising and providing necessary assistance to attorneys and trustees in the foreclosure and bankruptcy proceedings
  - Making available any monitoring, management, reporting, information and document delivery processes or systems, and paying the fees and costs for such processes or systems
- Continuing to work with the Borrower to resolve the delinquency through loss mitigation activities
- Handling the bankruptcy management activities specified in Chapter 67

Refer to Section 66.25 for information on connectivity and invoice processing systems and reimbursement of fees for use of such systems.

Nothing in the Guide is intended to prohibit a foreclosure or bankruptcy attorney or a trustee from assisting a Servicer by working with a Borrower to facilitate a reinstatement of the Mortgage or loss mitigation activity.

#### **54.4: Servicing obligations to be performed for the Servicing compensation (06/01/13)**

**ARCHIVED VERSION**

In consideration for the Servicing Spread, a Servicer is responsible for the performance of all of its Servicing obligations described in the Guide and other Purchase Documents for each of the Mortgages purchased by Freddie Mac. The Servicer's Servicing obligations compensated by the Servicing Spread include, among other things, undertaking all activities required to protect Freddie Mac's interest in the Mortgage in the event of a foreclosure of the property or a bankruptcy of the Borrower, such as:

- Preparing and delivering foreclosure and bankruptcy referrals to attorneys
- Providing all documents and information necessary for the attorneys to prosecute foreclosure or bankruptcy cases (including, but not limited to, missing documents such as Notes, title insurance policies, and Intervening Assignments)
- When necessary, paying for the preparation and recordation of missing documents, such as Intervening Assignments, necessary for the prosecution of foreclosure or bankruptcy cases
- Resolving any title issues that are the result of the Seller's or Servicer's action or inaction
- Managing attorneys, including but not limited to:
  - Collecting, receiving, processing, reviewing and paying attorneys' invoices
  - Supervising and providing necessary assistance to attorneys in the foreclosure and bankruptcy proceedings
  - Making available any monitoring, management, reporting, information and document delivery processes or systems, and paying the fees and costs for such processes or systems
- Continuing to work with the Borrower to resolve the delinquency through loss mitigation activities
- Handling the bankruptcy management activities specified in Chapter 67

Refer to Section 66.25 for information on connectivity and invoice processing systems and reimbursement of fees for use of such systems.

Nothing in the Guide is intended to prohibit a foreclosure or bankruptcy attorney from assisting a Servicer by working with a Borrower to facilitate a reinstatement of the Mortgage or loss mitigation activity.



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#### **18.4: Seller/Servicer responsibilities (10/01/09)**

##### **ARCHIVED VERSION**

##### **(a) Responsibility for documents and Document Custodian compliance**

The Seller/Servicer agrees to indemnify Freddie Mac and hold Freddie Mac harmless for any loss, damage or expense (including court costs and reasonable attorney fees) that Freddie Mac may incur as a result of the Seller/Servicer's Document Custodian holding Notes and any other documents.

The Seller/Servicer is responsible for ensuring that its Document Custodian complies with all applicable Freddie Mac requirements regarding Note custody. Freddie Mac's Document Custody Procedure Handbook is available to Seller/Servicers and Document Custodians on AllRegs, or at <http://www.freddiemac.com/cim/handbook.html>. Seller/Servicers and Document Custodians will find this handbook to be a useful resource in fulfilling these requirements.

##### **(b) Monitoring the eligibility status of the Document Custodian**

The Seller/Servicer is responsible for monitoring its Document Custodian for compliance with Freddie Mac's Document Custodian eligibility requirements, and must ensure that its Document Custodian is in compliance with all eligibility requirements at all times, provided, however, that Freddie Mac will perform this monitoring for the Designated Custodian.

If, at any time, the Document Custodian fails to comply with any eligibility requirement, the Seller/Servicer must contact Freddie Mac (**see Directory 1**) in writing within one day of the Seller/Servicer learning of the noncompliance. Freddie Mac, at its discretion, may allow the Seller/Servicer a period of time to work with its Document Custodian to ensure that the Document Custodian takes all necessary steps to meet the requirements. However, Freddie Mac reserves the right to immediately terminate a custodial agreement. Further, Freddie Mac may direct the Seller/Servicer to transfer the Notes to the Designated Custodian or a new Document Custodian pursuant to Sections 18.1 through 18.3, and transfer all Notes and assignments for Mortgages serviced for Freddie Mac from the old Document Custodian to the new Document Custodian, pursuant to the requirements of Section 18.6.

**(c) Transit insurance requirements**

If the Seller/Servicer has not contractually agreed with the Document Custodian to have the Document Custodian assume liability for Notes and assignments while in transit, the Seller/Servicer must obtain insurance covering physical damage or destruction to, or loss of, any Notes and assignments while such documents are in transit between the Document Custodian's vault and anywhere, regardless of the means by which they are transported. For the purpose of this insurance, Mortgage Notes are to be defined as "Negotiable Instruments" per Section 3-104 of the Uniform Commercial Code (UCC).

At a minimum, the required insurance coverage must:

- Be underwritten by an insurer that has an A- (A minus) or better rating according to the A.M. Best Company
- Be maintained in amounts that are deemed adequate for the number of Notes and assignments held in custody and that are deemed appropriate based on prudent business practice
- Each have a deductible amount no more than the greater of 5% of the Seller/Servicer's GAAP net worth or \$100,000, but in no case greater than \$10,000,000

In the event that a Seller/Servicer is covered under its parent's insurance program rather than by its own insurance:

- The acceptable deductible amount for each insurance coverage may be no more than the greater of 5% of the parent's GAAP net worth or \$100,000, but in no case greater than \$10,000,000
- The Seller/Servicer must be a named insured
- The parent's insurance policy(ies) must meet requirements as stated in this subsection

In the event of cancellation or non-renewal of any of the required insurance coverages, the Seller/Servicer or the Seller/Servicer's insurer, insurance broker or agent must provide Freddie Mac (**see Directory 1**) a minimum of 30 days advance written notice thereof.

Freddie Mac's insurance requirements as stated in this subsection do not diminish, restrict or otherwise limit the Seller/Servicer's responsibilities and obligations as stated in the Form 1035, Form 1035DC, or otherwise in the Purchase Documents.

**(d) Transfers of Servicing**

For Transfers of Servicing pursuant to Chapter 56, the Seller/Servicer must meet the document custody requirements of Section 18.7 and Section 56.9, including the transfer of the Notes from the Transferor Servicer's Document Custodian to the Transferee Servicer's Document Custodian.

**(e) Obtaining documents**

Seller/Servicers may need to request the Note or other documents held by a Document Custodian to take appropriate action in conjunction with the payoff, foreclosure, repurchase substitution, conversion, modification or assumption of a Mortgage or the recordation of the assignment of a Security Instrument to Freddie Mac.

- To obtain a Note and/or other documents from the Designated Custodian, the Seller/Servicer must make an electronic request ("Web Release Request") using the Designated Custodian's Web portal. Contact the Designated Custodian for further information **(see Directory 4)**. Unless the related Mortgage was repurchased or paid in full, the Seller/Servicer must promptly return the Note and documents when they are no longer required for servicing to the Designated Custodian. Seller/Servicers using the Designated Custodian's internet website Asset Repository and Collateral System (ARK) to request release of Notes and other documents must include a copy of the 1036 Release Receipt Report when returning such items to the Designated Custodian. The Release Receipt Report can be electronically generated from the Designated Custodian's ARK web site.
- To obtain a Note and/or other documents from a Document Custodian other than the Designated Custodian, the Seller/Servicer must complete Form 1036, Request for Release of Documents, and send the form to the Document Custodian. Unless the related Mortgage was repurchased or paid in full, the Seller/Servicer must promptly return the Notes and documents and Form 1036 when they are no longer required for servicing to the Document Custodian.

Seller/Servicers must follow prudent business practices in protecting and safeguarding all Notes and documents released to them by the Document Custodian until these documents are returned to the Document Custodian. These practices include protection from external elements, such as fire, and identification as a Freddie Mac asset and segregation from other non-related documents.

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**REVISION HISTORY 07/20/12 [HIDE]****REVISION NUMBER:** 07202012**DATE:** 07/20/2012**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.**18.6: Document Custodian's functions and duties (Effective: 07/20/12)****ARCHIVED VERSION**

**(a) General duties**

Each Document Custodian is responsible for:

1. Maintaining custody and control of the original Notes and assignments on behalf of Freddie Mac. If the Seller/Servicer delivers supplemental documents, such as original modifying instruments, the Document Custodian must place the supplemental documents with the related original Notes.
2. Holding the Notes and assignments in secure, fire-resistant facilities as described in Section 18.2(b)
3. Affixing the Freddie Mac loan number to the Note, if advised by the Seller/Servicer that Freddie Mac requires it. If the Note for a Mortgage contains the Freddie Mac loan number, changing the Freddie Mac loan number on a Note if advised in writing by the Seller/Servicer that Freddie Mac has changed the Freddie Mac loan number for the related Mortgage.
4. Making available for review by Freddie Mac (or its designee), at any time during normal business hours, with or without prior notice, the Notes and assignments and related storage facilities, maintenance and release procedures, and control and tracking mechanisms, and other evidence of compliance with eligibility requirements as requested
5. Making the custodial staff available for interview by Freddie Mac or its designee, at any time during normal business hours, with or without prior notice, for an assessment of the staff's familiarity with and adherence to Freddie Mac's custodial requirements and the Document Custodian's internal controls
6. Indemnifying Freddie Mac for such losses as may occur as a result of any negligence by the Document Custodian in the performance of its duties under the Guide pertaining to Notes and assignments held for Freddie Mac and Form 1035, Custodial Agreement: Single-Family Mortgages, and Form 1035DC, Designated Custodial Agreement: Single-Family Mortgages
7. Providing, in an electronic format acceptable to Freddie Mac, an accounting of all Notes held for Freddie Mac as described in Section 18.2 (b)

Freddie Mac may, at any time, and in its sole discretion, require a Document Custodian to segregate the Notes it holds for Freddie Mac from those held for other investors.

**(b) Verifications**

Upon receiving the Notes from the Seller/Servicer, the Document Custodian must verify that the following requirements have been met:

- Note: The information on each Note matches all corresponding information for the related Mortgage contained in the Freddie Mac Selling System ("Selling System"). The Document Custodian is not required to verify the Seller/Servicer number.
- Note endorsement: Each Note is endorsed as required by Section 16.4. If the Seller/Servicer delivering the Note is not the original payee on a Note, the Document Custodian must verify that the chain of endorsements is proper and complete from the original payee on the Note to the Seller delivering the Note to Freddie Mac — not to the Servicer.
- Assignments: The assignments of the Security Instruments from the original Mortgagee to the Seller/Servicer or to MERS® are prepared, executed and recorded where required, in accordance with Sections 22.14 and 56.7. The Seller/Servicer must provide its Document Custodian with any documentation necessary for the Document Custodian to determine whether the Seller/Servicer has elected to hold all assignments for Mortgages registered with MERS in the Mortgage files, as provided in Section 22.14.

**(c) Certification**

The Document Custodian must comply with the applicable requirements of the Purchase Documents whenever the Document Custodian is completing the certification process for Mortgages sold to Freddie Mac.

The Document Custodian consents to conduct Electronic Transactions, as defined in Chapter 3, with the Seller/Servicer and Freddie Mac in connection with its functions, duties and obligations under this Section 18.6 and Form 1035. In accordance with Form 1035, the Document Custodian adopts as its signature its Freddie Mac Document Custodian number. The Document Custodian must comply with the requirements of Chapter 3 as if each reference to the word "Seller/Servicer" were a reference to the "Document Custodian."

The Document Custodian must not execute the Custodian Certification if any of the information or documentation required to be verified does not match the specifications in Section 18.6(b) or if any discrepancy is not sufficiently justified. The Document Custodian must inform the delivering Seller/Servicer of any discrepancy for corrective action.

**(d) Duties to Freddie Mac**

Upon certification of the Notes and assignments, the Document Custodian must hold the Notes and assignments in trust for the sole benefit of Freddie Mac. The Document Custodian may not enter into any understanding, agreement, or relationship with any party by which any such party would obtain, retain or claim any interest (including an ownership or security interest) in such documents or the underlying Mortgages, unless otherwise specifically approved by Freddie Mac.

If the Document Custodian's facilities are affected by a disaster, the Document Custodian must notify Freddie Mac (**see Directory 9**) within 24 hours of the disaster.

**(e) Release of documents to the Seller/Servicer**

The Seller/Servicer may require Notes and related documents in conjunction with the maturity, prepayment, foreclosure, repurchase, substitution, conversion, modification or assumption of a Mortgage or the recordation of the assignment of a Security Instrument to Freddie Mac.

The Document Custodian will release to the Seller/Servicer any Note and related documents in the Document Custodian's custody upon receiving from the Seller/Servicer a properly completed and executed Form 1036, Request for Release of Documents, (or its equivalent, each such form, a "Request for Release"), (or in the case of the Designated Custodian, a request via its web portal (see section 18.4(e)). To use an electronic or system-generated version of the Form 1036, the Seller/Servicer must enter into an agreement with the Document Custodian that:

- Defines electronic signatures and the type of electronic transmission permitted
- States the Document Custodian's requirements for accepting electronic signatures
- States the Seller/Servicer's requirements for maintaining and controlling access to electronic signature information
- Clearly assigns liability when the terms of the agreement are violated

In addition, the Seller/Servicer must provide, and the Document Custodian must retain, a list of the individuals designated to request the release of documents electronically. The list must be signed by an authorized officer of the Seller/Servicer and contain the notarized signatures of the designees.

An electronic or system-generated Form 1036 must contain all of the information required on the paper form. A single electronic form can be used to request multiple Notes provided that the Note list is attached.

See Section 18.6(g) for additional information on imaging and retention requirements. If a document is no longer needed for the reason originally cited on the request, the Seller/Servicer must return the Note and related documents and a copy of the Form 1036 to the Document Custodian, or return the Note and any other documentation required by the Designated Custodian, which will resume its custody and update its note tracking system to reflect receipt of the documents.

See Section 18.4(e) for additional information on returning documents to the Document Custodian or Designated Custodian. Seller/Servicers must follow prudent business practices in protecting and safeguarding all documents released to them while those documents are in their possession. These practices include protection from destructive elements, such as fire, identification as Freddie Mac assets, and segregation from other non-related documents.

**(f) Release of documents to designated counsel**

Designated counsel may require Notes in conjunction with the foreclosure of a Mortgage. The Document Custodian must release to the designated counsel any Note in the Document Custodian's custody upon receipt of a properly completed and executed Form 1036DC, Designated Counsel's Request for Release of Documents, from the designated counsel.

Prior to releasing the documents, the Document Custodian must:

- Verify that the designated counsel requesting the documents using Form 1036DC is in fact Freddie Mac's designated counsel by using the list (Guide Exhibit 79, Designated Counsel/Trustee) on our web site at **[http://www.freddiemac.com/service/msp/design\\_counsel.html](http://www.freddiemac.com/service/msp/design_counsel.html)**, or by calling (800) FREDDIE.
- Verify that the information provided for each Mortgage is correct, for example, that the named Borrower corresponds to the Freddie Mac loan number. If the Document Custodian has reason to believe the information provided is incorrect, contact the Servicer or Freddie Mac's Settlement Operations at **[fmmdm@freddiemac.com](mailto:fmmdm@freddiemac.com)**, and do not release the documents.
- Fax or e-mail a copy of the Form 1036DC that accompanies any documents that are released to designated counsel to the Servicer indicated on the form and obtain "in transit" insurance coverage for the documents released to the designated counsel.
- Retain the Form 1036DC as required by Form 1035.

The Seller/Servicer will be responsible for any release fees and delivery expenses with respect to documents that the Document Custodian releases to the designated counsel.

If the foreclosure is not completed, the designated counsel will return the Note with a copy of the Form 1036DC to the Document Custodian, which will resume its custody and update its note tracking system to reflect receipt of the documents.



**(g) Imaging and retention requirements**

The Document Custodian must retain either the original or an imaged copy of each Form 1036 (or its equivalent, each such form, a "Request for Release") for at least three months after the date the Mortgage is paid off or the Note is returned to the Document Custodian. The Document Custodian need not retain a Form 1034E, or Note Delivery Cover Sheet, after the related Mortgages have been certified.

Imaged copies of the forms are permitted, provided that:

- Such copies were made in the regular course of business pursuant to Document Custodian's written policy
- Each imaged copy accurately reproduces or forms a durable medium for reproducing the original document
- There is equipment to view or read and to reproduce the imaged copies into legible documents at the location where the imaged copies are maintained

The Document Custodian may destroy:

- Original Certification Schedules after making imaged copies that meet the above criteria
- Requests for Release after making imaged copies that meet the above criteria and updating Document Custodian's note tracking system to indicate the date of release of the related documents and the reason for their release
- All original or imaged copies of Certification Schedules and Requests for Release after expiration of the retention period

In disposing of such documents, Document Custodian must have in place and follow procedures to ensure the confidentiality of Borrowers' private personal information and must use disposal methods that safeguard such confidentiality.

**18.6: Document Custodian's functions and duties (06/01/13)****ARCHIVED VERSION**

**(a) General duties**

Each Document Custodian is responsible for:

1. Maintaining custody and control of the original Notes and assignments on behalf of Freddie Mac. If the Seller/Servicer delivers supplemental documents, such as original modifying instruments, the Document Custodian must place the supplemental documents with the related original Notes.
2. Holding the Notes and assignments in secure, fire-resistant facilities as described in Section 18.2(b)
3. Affixing the Freddie Mac loan number to the Note, if advised by the Seller/Servicer that Freddie Mac requires it. If the Note for a Mortgage contains the Freddie Mac loan number, changing the Freddie Mac loan number on a Note if advised in writing by the Seller/Servicer that Freddie Mac has changed the Freddie Mac loan number for the related Mortgage.
4. Making available for review by Freddie Mac (or its designee), at any time during normal business hours, with or without prior notice, the Notes and assignments and related storage facilities, maintenance and release procedures, and control and tracking mechanisms, and other evidence of compliance with eligibility requirements as requested
5. Making the custodial staff available for interview by Freddie Mac or its designee, at any time during normal business hours, with or without prior notice, for an assessment of the staff's familiarity with and adherence to Freddie Mac's custodial requirements and the Document Custodian's internal controls
6. Indemnifying Freddie Mac for such losses as may occur as a result of any negligence by the Document Custodian in the performance of its duties under the Guide pertaining to Notes and assignments held for Freddie Mac and Form 1035, Custodial Agreement: Single-Family Mortgages, and Form 1035DC, Designated Custodial Agreement: Single-Family Mortgages
7. Providing, in an electronic format acceptable to Freddie Mac, an accounting of all Notes held for Freddie Mac as described in Section 18.2(b)

Freddie Mac may, at any time, and in its sole discretion, require a Document Custodian to segregate the Notes it holds for Freddie Mac from those held for other investors.

**(b) Verifications**

Upon receiving the Notes from the Seller/Servicer, the Document Custodian must verify that the following requirements have been met:

- Note: The information on each Note matches all corresponding information for the related Mortgage contained in the Freddie Mac Selling System ("Selling System"). The Document Custodian is not required to verify the Seller/Servicer number.
- Note endorsement: Each Note is endorsed as required by Section 16.4. If the Seller/Servicer delivering the Note is not the original payee on a Note, the Document Custodian must verify that the chain of endorsements is proper and complete from the original payee on the Note to the Seller delivering the Note to Freddie Mac — not to the Servicer.
- Assignments: The assignments of the Security Instruments from the original Mortgagee to the Seller/Servicer or to MERS<sup>®</sup> are prepared, executed and recorded where required, in accordance with Sections 22.14 and 56.7. The Seller/Servicer must provide its Document Custodian with any documentation necessary for the Document Custodian to determine whether the Seller/Servicer has elected to hold all assignments for Mortgages registered with MERS in the Mortgage files, as provided in Section 22.14.

**(c) Certification**

The Document Custodian must comply with the applicable requirements of the Purchase Documents whenever the Document Custodian is completing the certification process for Mortgages sold to Freddie Mac.

The Document Custodian consents to conduct Electronic Transactions, as defined in Chapter 3, with the Seller/Servicer and Freddie Mac in connection with its functions, duties and obligations under this Section 18.6 and Form 1035. In accordance with Form 1035, the Document Custodian adopts as its signature its Freddie Mac Document Custodian number. The Document Custodian must comply with the requirements of Chapter 3 as if each reference to the word "Seller/Servicer" were a reference to the "Document Custodian."

The Document Custodian must not execute the Custodian Certification if any of the information or documentation required to be verified does not match the specifications in Section 18.6(b) or if any discrepancy is not sufficiently justified. The Document Custodian must inform the delivering Seller/Servicer of any discrepancy for corrective action.

**(d) Duties to Freddie Mac**

Upon certification of the Notes and assignments, the Document Custodian must hold the Notes and assignments in trust for the sole benefit of Freddie Mac. The Document Custodian may not enter into any understanding, agreement, or relationship with any party by which any such party would obtain, retain or claim any interest (including an ownership or security interest) in such documents or the underlying Mortgages, unless otherwise specifically approved by Freddie Mac.

If the Document Custodian's facilities are affected by a disaster, the Document Custodian must notify Freddie Mac (**see Directory 9**) within 24 hours of the disaster.

**(e) Release of documents to the Seller/Servicer**

The Seller/Servicer may require Notes and related documents in conjunction with the maturity, prepayment, foreclosure, repurchase, substitution, conversion, modification or assumption of a Mortgage or the recordation of the assignment of a Security Instrument to Freddie Mac.

The Document Custodian will release to the Seller/Servicer any Note and related documents in the Document Custodian's custody upon receiving from the Seller/Servicer a properly completed and executed Form 1036, Request for Release of Documents, (or its equivalent, each such form, a "Request for Release"), (or in the case of the Designated Custodian, a request via its web portal (see section 18.4(e)). To use an electronic or system-generated version of the Form 1036, the Seller/Servicer must enter into an agreement with the Document Custodian that:

- Defines electronic signatures and the type of electronic transmission permitted
- States the Document Custodian's requirements for accepting electronic signatures
- States the Seller/Servicer's requirements for maintaining and controlling access to electronic signature information
- Clearly assigns liability when the terms of the agreement are violated

In addition, the Seller/Servicer must provide, and the Document Custodian must retain, a list of the individuals designated to request the release of documents electronically. The list must be signed by an authorized officer of the Seller/Servicer and contain the notarized signatures of the designees.

An electronic or system-generated Form 1036 must contain all of the information required on the paper form. A single electronic form can be used to request multiple Notes provided that the Note list is attached.

See Section 18.6(g) for additional information on imaging and retention requirements. If a document is no longer needed for the reason originally cited on the request, the Seller/Servicer must return the Note and related documents and a copy of the Form 1036 to the Document Custodian, or return the Note and any other documentation required by the Designated Custodian, which will resume its custody and update its note tracking system to reflect receipt of the documents.

See Section 18.4(e) for additional information on returning documents to the Document Custodian or Designated Custodian. Seller/Servicers must follow prudent business practices in protecting and safeguarding all documents released to them while those documents are in their possession. These practices include protection from destructive elements, such as fire, identification as Freddie Mac assets, and segregation from other non-related documents.

**(f) Imaging and retention requirements**

The Document Custodian must retain either the original or an imaged copy of each Form 1036 (or its equivalent, each such form, a "Request for Release") for at least three months after the date the Mortgage is paid off or the Note is returned to the Document Custodian. The Document Custodian need not retain a Form 1034E, or Note Delivery Cover Sheet, after the related Mortgages have been certified.

Imaged copies of the forms are permitted, provided that:

- Such copies were made in the regular course of business pursuant to Document Custodian's written policy
- Each imaged copy accurately reproduces or forms a durable medium for reproducing the original document
- There is equipment to view or read and to reproduce the imaged copies into legible documents at the location where the imaged copies are maintained

The Document Custodian may destroy:

- Original Certification Schedules after making imaged copies that meet the above criteria
- Requests for Release after making imaged copies that meet the above criteria and updating Document Custodian's note tracking system to indicate the date of release of the related documents and the reason for their release
- All original or imaged copies of Certification Schedules and Requests for Release after expiration of the retention period

In disposing of such documents, Document Custodian must have in place and follow procedures to ensure the confidentiality of Borrowers' private personal information and must use disposal methods that safeguard such confidentiality.

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**FUTURE REVISION 01/10/14 [SHOW]**

#### **66.1: Introduction (10/01/11)**

##### **ARCHIVED VERSION**

The Servicer must initiate foreclosure in accordance with this chapter only when there is no viable alternative to foreclosure. Additionally, Freddie Mac requires the Servicer to manage the foreclosure process to acquire clear and marketable title to the property in a cost-effective, expeditious and efficient manner.

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## **66.20: Obtaining the original Note (11/09/12)**

### **ARCHIVED VERSION**

If the original Note is needed to perform the foreclosure, the Servicer must request the Note from the Document Custodian holding the Note by submitting to the Document Custodian a completed Form 1036, Request for Release of Documents, or an electronic or system-generated version of the form (or, in the case of the Designated Custodian, a copy of the electronically generated 1036 Release Receipt Report) in accordance with the requirements of Section 18.4 (e).

If there is a full or partial reinstatement of the Mortgage, the Servicer must return the Note to the Document Custodian with either the original Form 1036 or a copy.

Before June 1, 2013, the designated counsel may request the Note from the Document Custodian holding the Note by submitting to the Document Custodian a completed Form 1036DC, Designated Counsel's Request for Release of Documents. The designated counsel may contact the Servicer to identify the Document Custodian holding the Note, and the Servicer must cooperate in providing the necessary information. In addition, the Servicer must pay any release fees and expenses required by the Document Custodian.

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**REVISION HISTORY 06/14/13 [SHOW]**

**REVISION HISTORY 06/01/13 [SHOW]**

**REVISION HISTORY 06/13/12 [HIDE]**

**REVISION NUMBER:** 06132012      **DATE:** 06/13/2012

**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

### **66.17: Foreclosing in the Servicer's name (Effective: 06/13/12)**

#### **ARCHIVED VERSION**

The Servicer must instruct the foreclosure counsel or trustee to process the foreclosure in the Servicer's name.

If an assignment of the Security Instrument to Freddie Mac has been recorded, then the Security Instrument must be assigned back to the Servicer before the foreclosure counsel or trustee files the first legal action. Refer to Section 66.18 for an explanation of first legal action.

To have the Security Instrument assigned back to the Servicer, the Servicer must submit a completed assignment with Form 105, Multipurpose Loan Servicing Transmittal, to Freddie Mac (**see Directory 9**). Freddie Mac will execute the assignment and return it to the Servicer within seven Business Days of receiving the documents.

If the Servicer is foreclosing on a Mortgage registered with MERS®, the Servicer must prepare and execute (using the Servicer's employee who is a MERS authorized "signing officer") an assignment of the Security Instrument from MERS to the Servicer and instruct the foreclosure counsel or trustee to foreclose in the Servicer's name and take title in Freddie Mac's name according to the requirements of Section 66.54. The Servicer must record the prepared assignment where required by State law. State mandated recordings are non-reimbursable by Freddie Mac, are not considered part of the Freddie Mac allowable attorney fees and must not be billed to the Borrower.

If the Mortgage is an FHA, Section 502 GRH or VA Mortgage, then the Servicer must follow FHA, Rural Housing Service (RHS) or VA guidelines to determine in whose name the foreclosure action should be brought.

If the Servicer is foreclosing on a property in the State of Oregon, the Servicer must destroy any unrecorded assignment to Freddie Mac no later than 10 days after the date the Servicer refers the foreclosure to its foreclosure attorney or trustee. If the Borrower subsequently reinstates his or her Mortgage, the Servicer does not need to prepare a new assignment to Freddie Mac. Refer to Section 22.14 for additional information on Freddie Mac's requirements for assignments of the Security Instrument.



**66.17: Foreclosing in the Servicer's name (10/18/13)****ARCHIVED VERSION**

The Servicer must instruct the foreclosure counsel to process the foreclosure in the Servicer's name. However, if applicable law precludes the Servicer from conducting the foreclosure in its name because it owns or services a subordinate Mortgage on the Mortgaged Premises, then the Servicer may instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name. Servicers do not need to obtain written approval (refer to Section 67.17 regarding initiating legal actions on Freddie Mac's behalf) but must notify Freddie Mac within two Business Days of the Servicer's determination to foreclose in Freddie Mac's name and record the basis of the decision in the Mortgage file. All notifications must be sent via e-mail (**see Directory 5**). When processing the foreclosure in Freddie Mac's name, all pleadings and related documents must comply with Section 67.17(c). The Servicer remains obligated to notify Freddie Mac pursuant to Section 69.12(a) in the event that any foreclosure conducted in Freddie Mac's name evolves into a non-routine litigation matter (see Section 67.17).

When a Servicer conducts the foreclosure in Freddie Mac's name, the Servicer is not permitted to have the same foreclosure counsel represent the Servicer or another lien holder in the same proceeding. Freddie Mac does not consent to dual representation of Freddie Mac and another lien holder on the same property.

If an assignment of the Security Instrument to Freddie Mac has been recorded, then the Security Instrument must be assigned back to the Servicer before the foreclosure counsel files the first legal action. Refer to Section 66.18 for an explanation of first legal action.

To have the Security Instrument assigned back to the Servicer, the Servicer must submit a completed assignment with a Request for Assistance Form (available at: <http://www.freddiemac.com/cim/docex.html>), to Freddie Mac (**see Directory 9**). Freddie Mac will endeavor to execute the assignment and return it to the Servicer within 10-12 Business Days of receiving the documents.

If the Servicer is foreclosing on a Mortgage registered with MERS®, the Servicer must prepare and execute (using the Servicer's employee who is a MERS authorized "signing officer") an assignment of the Security Instrument from MERS to the Servicer. The Servicer must record the prepared assignment where required by State law. State mandated recordings are non-reimbursable by Freddie Mac, are not considered part of the Freddie Mac allowable foreclosure counsel fees and must not be billed to the Borrower.

If the Mortgage is an FHA, Section 502 GRH or VA Mortgage, then the Servicer must follow FHA, Rural Housing Service (RHS) or VA guidelines to determine in whose name the foreclosure action should be brought.

Refer to Section 22.14 for additional information on Freddie Mac's requirements for assignments of the Security Instrument.

Related Guide Bulletins	Issue Date
Bulletin 2013-22	October 18, 2013
Bulletin 2013-10	June 14, 2013

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#### **67.6: Introduction (11/09/12)**

##### **ARCHIVED VERSION**

This part of the chapter provides Servicers with Freddie Mac's requirements for Servicing Mortgages subject to bankruptcy proceedings or litigation. The Servicer must take appropriate action to protect Freddie Mac's interest during bankruptcy proceedings in which the Borrower is the debtor or when there is litigation of either a routine or non-routine nature (Refer to Section 67.17 for information regarding routine and non-routine litigation).

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## Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters

### ARCHIVED VERSION

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### 69.1: Overview (06/01/13)

#### ARCHIVED VERSION

This chapter sets forth requirements for the Servicer's review and evaluation, selection, retention and management of law firms (referred to throughout this chapter as "firms") for Freddie Mac Default Legal Matters.

Effective June 1, 2013, all referrals of Freddie Mac Default Legal Matters must be conducted in accordance with the requirements of either Chapter 69 or A69. Chapter 69 governs the referral of Freddie Mac Default Legal Matters to law firms selected by the Servicer under the requirements of Section 69.7.

During the period of June 1, 2013 through July 31, 2013, Servicers may also refer Freddie Mac Default Legal Matters to law firms selected by Servicers pursuant to the new requirements of Chapter A69 and must comply with the requirements of Sections 69.10 through 69.14.

Effective August 1, 2013, Servicers must comply with all requirements of this chapter in order to refer Freddie Mac Default Legal Matters to law firms.

Each Servicer is responsible for retaining firms for Freddie Mac Default Legal Matters. Freddie Mac will continue to retain firms directly for REO-related legal services: eviction, REO closing, and related litigation (refer to Chapter 67 for more information relating to litigation).

Related Guide Bulletins	Issue Date
Bulletin 2013-9	May 28, 2013

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### 69.2: Review and evaluation of firms (06/01/13)

#### ARCHIVED VERSION

**(a) Due diligence**

As part of its selection process, each Servicer is responsible for obtaining and evaluating documentation and information from firms, and conducting due diligence to ensure that selected firms meet the requirements set forth in Section 69.3. As part of the process, each Servicer must:

- Obtain and review all required documentation and information submitted by each firm;
- Ensure that it selects from a pool of potentially acceptable firms that is diverse, and includes minority and women-owned firms and other diverse firms when feasible; and
- Ensure that the firm or any entity or individual performing work for the firm is not on the Freddie Mac Exclusionary List in accordance with Section 2.24

**(b) Due diligence documentation**

The Servicer must provide to Freddie Mac upon request a copy of each firm's application information and related due diligence documentation. Freddie Mac reserves the right to review the process, procedures and due diligence used by the Servicer to evaluate and select a firm.

**(c) Document retention requirements**

The Servicer must retain all information submitted by a firm in support of the firm's application and all information otherwise gathered by the Servicer regarding the firm. The Servicer must maintain any information relating to firms that are selected and retained by the Servicer for as long as the firm is providing legal services with respect to Freddie Mac-owned or guaranteed Mortgages and, thereafter, for the longer of any retention period applicable to the Servicer or seven years. The Servicer must maintain any information relating to firms that are not selected and retained by the Servicer for the longer of any retention period applicable to the Servicer or seven years.

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**69.3: Firm Minimum Requirements (06/01/13)**

**ARCHIVED VERSION**

The Servicer must ensure that all firms selected and retained to handle Freddie Mac Default Legal Matters meet the firm minimum requirements specified in this section ("Firm Minimum Requirements"), and all other applicable Freddie Mac requirements. The Firm Minimum Requirements are as follows:

**(a) Firm practice**

The firm's practice areas must include end-to-end default-related legal services: foreclosure, bankruptcy, loss mitigation (e.g., deeds-in-lieu of foreclosure), default-related litigation and Real Estate Owned (REO)-related legal services: eviction, REO closing and related litigation.

The firm must:

- Be familiar with industry standards in the State in which it practices;
- Understand the State legal processes and requirements in default-related and REO-related legal services; and
- Understand the substantive legal issues in the State (e.g., standing)

Additionally, the Servicer must consider firm experience in the following areas: foreclosure mediation, the Fair Debt Collection Practices Act, title curative issues, and general housing-related issues (e.g., rent control, Section 8, lead paint liability, health code violations, foreclosure redemption, confirmation and ratification, homeowners association, mobile home matters, and cooperative loans). The firm should also have some experience with delegation for loss mitigation.

The Servicer must also consider the firm's membership in default-related and REO-related trade and industry groups, attendance or participation in State bar associations, seminar and lecture participation and attendance, and any other activities relevant to default-related and REO-related law practice.

**(b) Presence in State**

Firms generally must have a staffed office in the State in which the firm is retained for Freddie Mac Default Legal Matters.

In addition:

- The legal work must be performed by the attorneys licensed in the State where the Mortgaged Premises is located;
- The firm must be registered, as necessary, with appropriate State authorities;
- For the States in which an appropriately staffed office is required, the firm must disclose to the Servicer the extent, if any, to which work will be performed by an office of the firm in another State;
- The Servicer must require the firm to disclose to the Servicer where the staff handling the work in the particular State is located, and to whom the staff in that office regularly reports; and
- The Servicer must obtain office addresses for each firm it seeks to retain

**1. Judicial foreclosure States**

In judicial foreclosure States, the firm must have an appropriately staffed office in the State in which the firm is retained for Freddie Mac Default Legal Matters.

**2. Non-Judicial foreclosure States**

In non-judicial foreclosure States, a firm must have an appropriately staffed office located in the State in which the firm is retained, except in the following non-judicial foreclosure States: Alaska, District of Columbia, Idaho, New Hampshire, Rhode Island, Montana, West Virginia and Wyoming. In those States, Servicers should give preference to firms that have staffed offices in those States. However, out-of-State firms may be used to handle Freddie Mac Default Legal Matters, provided that the firm is located in the same region of the country and is able to demonstrate that it has policies, procedures and processes in place to handle cases from out of State.

Servicers may use firms outside of Puerto Rico, the U.S. Virgin Islands and Guam to handle foreclosure and bankruptcy matters in those States. Servicers should give preference to firms that have staffed offices in the State, but out-of-State firms may be used, provided that they are able to demonstrate that they have policies, procedures and processes in place to handle cases from outside the State.

If a Servicer has difficulty finding a sufficient number of firms with appropriately staffed offices in States other than those listed in the exceptions above, the Servicer may contact Freddie Mac to request an exception to the requirement that a firm have an appropriately staffed office located in the State. Requests should be sent to Freddie Mac (**see Directory 1**).

**(c) State-specific industry references**

The Servicer must obtain from the firm at least two State-specific mortgage servicers or default-related references, or if the firm has been in existence less than one year, the partners or shareholders of the firm must provide at least two Servicer or default-related references in connection with work performed in the particular State.

**(d) Statewide coverage and use of local counsel**

The Servicer must ensure that the firm has the ability to cover foreclosure, bankruptcy, eviction, REO closing matters and default-related litigation throughout the State.

If the firm has partnerships or relationships with third parties (e.g., local counsel, trustee companies or title companies) that will perform or complete some aspect of the default-related and REO-related work, the Servicer must require the firm to: (i) obtain disclosure from the firm regarding such relationships and the extent to which third parties will be relied upon and (ii) determine whether the firm has a reasonable contingency plan for the loss of any of those relationships or operational processes. In evaluating any such third-party relationship, the Servicer must consider the length of time the relationship has existed and the adequacy of the firm's written policies to mitigate third-party risk.

If a firm uses local counsel to handle matters within the State, the Servicer must ensure that the firm has a process to select, manage, and review the local counsel and their work product. The process must be designed to ensure that local attorneys are qualified and adequately trained and have a satisfactory history with respect to bar complaints, sanctions and similar matters.

For a firm's contested caseload (e.g., contested foreclosures and litigated cases), the firm's reliance on local counsel must be minimal. Any use of local counsel for these matters must be structured so that the retained firm will direct and manage the local counsel on those matters.

**(e) Prior volume experience**

Servicers must confirm the firm and/or managing attorney(s) has completed a sufficient number of foreclosure, bankruptcy, loss mitigation, eviction and REO matters within the past 24 months to demonstrate that the firm has experience in representing creditors in default-related matters.

For the 24-month period, the Servicer must review the total number of matters referred, the total number of matters completed and the number of matters currently pending for each of the following areas: foreclosure, bankruptcy, loss mitigation, eviction and REO closing.

What constitutes a sufficient number of completed default-related and REO-related legal services will vary depending upon the State at issue, the volume the Servicer expects to refer to the firm, and the relative size of the firm. Servicers must consider these factors when making this determination.

**(f) Firm has adequate, relevant State-specific experience**

The Servicer must confirm that the firm has one or more managing attorney(s) or partner(s) with no less than 8 years of relevant, State-specific experience in foreclosure (including where applicable, confirmation, redemption and ratification matters), bankruptcy, loss mitigation, eviction, and REO closings and litigation. Servicers may make exceptions to this requirement for documented reasons in the event a firm is otherwise qualified.

The Servicer must obtain the names and the years of experience in each area (foreclosure, bankruptcy, eviction, REO closings and related litigation) for the firm's managing attorney(s) or partner(s) and associates.

If the principals or partners of the firm are not actively involved in the management of the firm, the Servicer must consider the level of experience of those actively involved in managing the firm.

**(g) One or more of the firm's lead attorneys has adequate, relevant litigation experience in the State**

The Servicer must determine whether the firm has at least one lead attorney to handle Freddie Mac Default Legal Matters with a minimum of five years of experience in default-related and REO-related litigation in the State. The firm's partner(s) or managing attorney(s) may act as the lead attorney for Freddie Mac Default Legal Matters. If the firm will utilize staff attorneys for Freddie Mac Default Legal Matters, one or more staff attorneys must have at least three years of experience in handling default-related and REO-related litigation in the State.

**(h) Attorney licensing**

The Servicer must confirm that the firm's attorneys who will handle Freddie Mac Default Legal Matters are licensed to practice, and in good standing, in the State in which the firm is being retained. Legal work must be performed by attorneys licensed in the State.

**(i) Staff experience**

The Servicer must determine whether the firm's non-attorney staff has reasonable experience. In determining what constitutes reasonable experience, the Servicer must consider the average years of experience, education, qualifications and demonstrated ability of the non-attorney staff in relation to their respective levels of responsibility.

**(j) Staff oversight**

The Servicer must confirm that the firm has appropriate attorney-to-staff ratios to ensure appropriate staff oversight given the size of the firm and the firm's operational structure. The Servicer must consider whether the firm practices in a judicial or a non-judicial State, the firm's case management practices, the State-specific process, attorney and staff experience, firm technology and firm infrastructure.

**(k) File oversight**

The Servicer must confirm that the firm has appropriate (i) attorney-to-file and (ii) staff-to-file ratios, given the size of the firm and the firm's operational structure. The Servicer must take into consideration whether the firm practices in a judicial or a non-judicial foreclosure State, the firm's case management practices, the State-specific processes, attorney and staff experience, firm technology and firm infrastructure.

**(l) Firm capacity**

As of the date of the submission of the Servicer Selection Form via <https://freddiemacsats.com>, the Servicer must confirm that the firm has the ability to accept additional referrals. Additionally, the Servicer must confirm that the firm is not operating at full capacity, given the existing facilities, personnel, and technology or, alternatively, the firm must outline to the Servicer's satisfaction the steps and time frame necessary to be in a position to handle additional referrals while still maintaining appropriate firm-to-file and staff-to-file ratios. The Servicer must confirm that the firm has contingency plans to deal with a contraction in the market.



**(m) Ethics and professional standards**

The firm must demonstrate a history of legal practice that comports with applicable legal and ethical standards, reflecting high professional standards. The Servicer must conclude that the firm does not, in the totality of the circumstances, pose a legal and/or reputational risk or exhibit systematic issues that may lead to reputational and/or legal risk to Freddie Mac.

The Servicer must obtain the following information from the firm in order to evaluate the sufficiency of the firm's professional standards:

- Any sanctions against the firm or any of its present or former attorneys in the past five years, including the nature of the sanctions and if they relate to a loan-level matter or systemic firm practice, and if related to firm practice, any corrective actions taken by the firm;
- Any bar complaints/reprimands against present and former firm attorneys in the past ten years and whether the complaints were closed, pending or resulted in some form of adverse action;
- Any government investigations involving firm practices in the past ten years and whether the investigations involved firm practices or are related to client investigations;
- Any damages or settlement of claims as a result of an allegation of professional negligence against the firm or its attorneys in the past five years (i) in excess of \$20,000 in any single occurrence, \$50,000 in the aggregate, or (ii) reflect a possible pattern of professional negligence, regardless of amount; and
- Any significant litigation asserting systemic issues with firm processes or legal work, such as any class action lawsuit against the firm

If the Servicer is aware of any of the above items that involve the firm's professional standards but which were not disclosed by the firm, the Servicer must disclose them to Freddie Mac in the Servicer Selection Form.

The Servicer must obtain a disclosure from the firm regarding whether the firm (or any of its partners, shareholders, or employees while acting as a partner, shareholder, or principal at another firm) has been previously terminated by Freddie Mac or Fannie Mae or had referrals suspended by Freddie Mac or Fannie Mae.

The Servicer must obtain a certification from the firm that, to the best of the firm's knowledge, the firm's documents have been and continue to be prepared, executed and/or notarized in compliance with applicable law. If the firm reports that the firm, its attorneys, notaries or third-parties that the firm relies on to perform any aspect of default-related or REO-related services have previously prepared, executed or notarized documents that have not been in compliance with applicable law, the Servicer must conclude that the firm has instituted controls, procedures, and processes to address the contributing cause(s) of the firm's failure to comply with applicable law in order to execute the Servicer Selection Form.

Freddie Mac expects Servicers to exercise sound judgment and consider the totality of the circumstances in evaluating the potential legal and reputational risks posed by a firm to Freddie Mac. The items for consideration outlined above are not intended to be exhaustive or to disqualify a firm from retention if the Servicer concludes that the firm is acceptable considering the totality of the circumstances.

**(n) Time lines**

The Servicer must review the firm's completion time lines, and confirm that the firm is able to track, monitor and complete foreclosure and bankruptcy matters in compliance with applicable law and Freddie Mac time line requirements, taking into consideration outside factors that impact compliance with Freddie Mac time lines such as new foreclosure requirements and court delays.

**(o) Information privacy**

The firm must maintain physical, technical and procedural controls and effective information security and data management to:

- Ensure the security and confidentiality of personally identifiable information (PII) and confidential information, whether in paper, electronic or other form;
- Protect against any threats or hazards to the security or integrity of such information; and
- Protect against unauthorized access to or use of such information

The firm must implement controls meeting or exceeding industry standards, including, as applicable, standards promulgated by the International Office for Standardization (ISO) or National Institute for Standards and Technology (NIST). The firm must ensure that PII that is stored on the firm's systems and workstations is encrypted at rest at all times. The firm must have secured storage for promissory notes and other original documents to prevent theft and to ensure protection against fire, flood or other damage. The firm may not perform, outsource, or send to any affiliate outside of the United States or its territories, any legal work on Freddie Mac-owned or guaranteed Mortgages, including any storage of Freddie Mac data. The firm may not send any PII underlying Freddie Mac-owned or guaranteed Mortgages, outside the United States. The firm must have written policies, procedures, and processes in place by the date of the submission of the Servicer Selection Form, related to protection of PII and fraud prevention, including policies, procedures and processes related to: background checks of all employees; protection of PII; fraud prevention and identification; and incident response and notification protocols for data breaches and other security incidents. The Servicer must review and confirm that the firm meets these requirements for information security, data management, protection of PII and fraud prevention.

**(p) Daily reporting to Freddie Mac**

The Servicer must confirm that the firm has the capability to provide daily reporting to Freddie Mac via a web-based attorney reporting system, which includes reporting of key metrics (i.e., volume, time lines, delays, loss mitigation successes, etc.). The Servicer must also ensure that the firm has staff responsible for reporting data directly to Freddie Mac.

**(q) Technology**

The Servicer must confirm that the firm has adequate technology in place or technological capabilities to provide reporting, communication and tracking of key events and milestones, including access to PACER/ECF or other similar systems to obtain case and docket information from federal appellate, district and bankruptcy court records.

Additionally, the Servicer must confirm that the firm is able to provide status reports and track significant dates and events for foreclosure, bankruptcy, evictions and REO closings and has the capability to measure the duration between various process stages, to identify process impediments (e.g., holds) and to parse holds into different categories.

If a firm is multi-jurisdictional or has partnerships or relationships with third parties (e.g., local counsel, trustee companies or title companies) that will perform or complete some aspect of the default-related or REO-related work or if the firm relies on other offices to perform some aspect of the work or provide operational support, the Servicer must confirm that the firm maintains a reliable and secure means of exchanging matter information between each office and any third party the firm relies upon.

The Servicer must require the firm to describe whether the firm currently uses a universal translation technology to communicate information between their technological system and the various Servicers' systems, or explain its method for transmitting information efficiently, accurately and securely to Servicers.

**(r) Technology staffing**

The Servicer must confirm that the firm has adequate in-house technical expertise or readily available vendor support to ensure compliance with Freddie Mac's automated reporting requirements.

**(s) Insurance requirements**

The Servicer must confirm that the firm has an appropriate level of malpractice and errors and omissions insurance coverage in place or be able to obtain an appropriate amount of insurance by the date of the submission of the Servicer Selection Form. The appropriate level of insurance coverage will depend upon the total number of Freddie Mac and Fannie Mae files the firm is managing or expects to manage when being evaluated by the Servicer. The firm must have the ability to obtain the appropriate amount of insurance coverage under the new requirements as follows:

- Tier I, volume of 0-4,499 foreclosure matters, coverage of not less than \$1 million per occurrence with an aggregate of not less than \$3 million;
- Tier II, volume of 4,500-19,999 foreclosure matters, coverage of not less than \$5 million per occurrence with an aggregate of not less than \$5 million; and
- Tier III, volume of 20,000 or more foreclosure matters, coverage of not less than \$8 million per occurrence with an aggregate of not less than \$8 million.

The required level of insurance is determined by the higher of the Freddie Mac or Fannie Mae pending foreclosure volume. By way of example, if a firm had 2,000 Freddie Mac foreclosure matters and 4,501 Fannie Mae foreclosure matters, the firm would fall within Tier II and the required coverage would be not less than \$5 million per occurrence with an aggregate of not less than \$5 million. Beginning in 2014, Servicers must conduct an updated coverage analysis annually, with the appropriate level of insurance to be determined by the number of matters being handled as of June 1 of each year. When an annual review reveals a need to increase a firm's coverage, firms will have until December 31 of each year to obtain any required increased coverage. Servicers may grant firms additional time to obtain increased coverage if necessary to reach the routine renewal date for the firm's policy, but may not grant extensions beyond June 1 of the following year.

**(t) Financial resources**

The Servicer must confirm that the firm has adequate financial resources and the financial ability to make required advances in connection with filing fees and costs necessary to process default-related and REO-related matters.

The Servicer must review the firm's financial statements and/or other firm financial documents in order to confirm that the firm has sufficient reserves or credit lines to manage operating expenses.

**(u) Business continuity**

The Servicer must confirm that the firm has business continuity and/or disaster recovery plans in place to recover critical business functions. The firm must have a documented succession/continuity plan in the event of loss of the firm owners/partners.

**(v) Quality control**

The Servicer must confirm that the firm has written policies, procedures and/or processes in place by the date of the submission of the Servicer Selection Form, to ensure the proper management and supervision of staff and the proper preparation, review, execution and notarization of default-related documents and REO-related documents. The Servicer must also confirm the firm has an escalation process for employees to raise document execution and other quality control issues to firm management.

The Servicer must obtain documentation and information related to the firm's process for ensuring compliance with its policies, procedures, processes and training, such as an internal compliance program and/or quality control reviews.

**(w) Employee training**

The Servicer must confirm that the firm has written policies for employee training, including privacy training. When determining whether a firm's employee training is adequate, the Servicer must review the frequency of training, the presence of policies and procedures and firm handbooks, manuals and job aids.

**(x) Adverse matters**

No substantial part of the firm's practice can include matters that are adverse to financial institutions, including Freddie Mac or Fannie Mae. Adverse matters to financial institutions include:

- Homeowners or condominium association foreclosures;
- Consumer debtor or mortgagor representation;
- Bankruptcy trustee representation; or
- Any other client(s) that may create a potential conflict of interest

**(y) Conflicts of interest**

Attorneys must not be affected by a conflict of interest or a potential conflict of interest when handling Freddie Mac Default Legal matters. The Servicer must retain the most qualified attorneys in compliance with Freddie Mac requirements to assist with processing Freddie Mac Default Legal Matters without regard to arrangements that could provide a financial or personal benefit directly or indirectly to the Servicer, its employees, outsource companies or third party vendors utilized by the Servicer to assist in Servicing defaulted Mortgages.

On the Servicer Selection Form, the Servicer must disclose to Freddie Mac any current, past (within the last five years), or pending personal and/or financial relationships between (i) the Servicer and the firm, including its partners and shareholders (as applicable) and (ii) the firm, including its partners and shareholders (as applicable), and any outsourcing company or other third-party vendor utilized by the Servicer to assist in Servicing defaulted Mortgages.

**(z) Disclosure of third-party service providers**

The Servicer must require the firm to disclose the identity of, and relationship with, any entities the firm relies upon to provide third-party support functions performed on the Servicer's behalf, including, but not limited to, title searches, title insurance, posting, publication, and process services.

The Servicer must also require the firm to disclose whether the firm has a process to select and regularly review costs and performance of vendors of related sources to ensure competitive pricing and high quality.

**(aa)**  
**Referrals**

The Servicer is responsible for ensuring that the firm complies with Freddie Mac requirements and applicable laws regarding referrals and payment of related fees and benefits, as further described in Sections 69.7 and 69.8.

The Servicer must not require the firm to use vendors, outsource companies or other third-parties specified by the Servicer as a condition of receiving a referral of a Freddie Mac Default Legal Matter.

**(bb)**  
**Diversity data**

The Servicer must confirm that the firm has the capability to report diversity data to the Servicer and Freddie Mac, if necessary.

Related Guide Bulletins	Issue Date
Bulletin 2013-3	February 15, 2013

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.4: Selection of firm (06/01/13)

**69.4: Selection of firm (06/01/13)**

**ARCHIVED VERSION**

**(a) Servicer selects firm**

If the Servicer determines that a firm meets the Firm Minimum Requirements specified in Section 69.3 and all other Guide requirements, then the Servicer must complete and submit a Servicer Selection Form to Freddie Mac, via <https://freddiemacsats.com> and receive Freddie Mac's "no objection" determination before entering into an agreement with a firm to handle Freddie Mac Default Legal Matters. If Freddie Mac requests additional information from the Servicer as part of this process, the Servicer must provide the requested information within the time frame requested by Freddie Mac. Servicers may not rely upon a previous submission of a Servicer Selection Form with respect to a firm by another Servicer that received a "no objection" determination. Each Servicer must conduct its own due diligence, submit a Servicer Selection Form and receive a "no objection" determination for each firm that the Servicer wishes to retain to handle Freddie Mac Default Legal Matters.

If a firm practices in multiple States, the Servicer must submit a Servicer Selection Form for each State office for which the Servicer wishes to retain the firm.

**Servicer Attorney Tracking System (SATS) registration**

Servicers must use the Servicer Attorney Tracking System (SATS), an online process, to submit a Servicer Selection Form to Freddie Mac for each law firm selected to handle Freddie Mac Default Legal Matters. To establish access to SATS, Servicers must first register to create a user ID and password at <https://freddiemacsats.com>. After completing the registration process, SATS will allow users to submit the information required in the Servicer Selection Form to Freddie Mac for review. SATS will also allow Servicers to respond to Freddie Mac's requests for additional information, as necessary, and will allow Servicers to track each submission's status during the review process.

Freddie Mac will not review any Servicer Selection Form completed and submitted to any Freddie Mac e-mail address. Guide Exhibit 99, Servicer Selection Form, is included for illustrative purposes only. Servicers must complete and submit the Servicer Selection Form via <https://freddiemacsats.com>.

**(b) Freddie Mac review of Servicer Selection Form**

After Freddie Mac receives the Servicer Selection Form, Freddie Mac will notify the Servicer via the Servicer's registered e-mail address with SATS whether Freddie Mac:

- Objects to the Servicer's retention of the firm to handle Freddie Mac Default Legal Matters;
- Has no objection to Servicer's retention of the firm to handle Freddie Mac Default Legal Matters; or
- Needs additional information or documentation, or due diligence to be conducted before deciding whether the firm may be retained. If requested, the Servicer must provide any additional information or documentation to Freddie Mac via <https://freddiemacsats.com>, and must conduct any further due diligence requested by Freddie Mac within the time period stated in Freddie Mac's request.

**(c) Freddie Mac's response to Servicer firm selection****Freddie Mac provides a "no objection" response**

The Servicer must enter into a contract with the firm (if a contract does not already exist) as further specified in Section 69.5(a), to handle Freddie Mac Default Legal Matters.

**Freddie Mac provides an "objection" response**

If the Servicer determines not to retain a particular firm, or if Freddie Mac objects to the retention of a particular firm, the Servicer must notify the firm that the firm cannot be hired for Freddie Mac Default Legal Matters.

**(d) The Servicer decides not to retain firm**

The Servicer is not obligated to inform Freddie Mac:

- If the Servicer determines that a firm does not meet the Firm Minimum Requirements; or
- If the Servicer decides not to retain a firm

**(e) Diversity**

Servicers are reminded that they must be aware of, and comply with, Freddie Mac's requirements in Sections 2.19 and 53.8. The Servicer must commit to practice the principles of equal employment opportunity and non-discrimination in all its business activities, including the retention and hiring of firms retained pursuant to this section.

Related Guide Bulletins	Issue Date
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**69.5: Retention of firm (06/01/13)****ARCHIVED VERSION****(a) Servicer contract with firm**

If the Servicer has not already entered into a contract with a selected firm and Freddie Mac has provided a "no objection" determination, then the Servicer must enter into a contract with the firm. The Servicer must notify Freddie Mac when the contract has been executed by updating the Servicer Attorney Tracking System (SATS) via <https://freddiemacsats.com>, and must provide a copy of the contract to Freddie Mac, upon request.

**(b) Freddie Mac limited retention agreement with firm**

Freddie Mac will enter into a limited retention agreement that sets forth certain key retention provisions with each selected firm for each State in which the firm has received a "no objection" determination.



**(c) Conflict between Servicer's contract and limited retention agreements; Servicer's respective consent**

The Servicer acknowledges that the limited retention agreement recognizes and reflects a joint attorney-client relationship between the law firm, Freddie Mac and the Servicer, and the Servicer consents to such joint representation. The Servicer consents, in advance, to the selected firm's representation of Freddie Mac in any Freddie Mac Default Legal Matter that is or might be adverse to the Servicer, and further agrees that the firm can use in such representation any information the firm gained in the course of jointly representing the Servicer and Freddie Mac. In the event of any inconsistency or conflict between the terms and conditions of the Servicer's contract with the selected firm and the terms and conditions of Freddie Mac's limited retention agreement with the firm, Freddie Mac's limited retention agreement shall control.

Related Guide Bulletins	Issue Date
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**69.6: Training of firms (06/01/13)**

**ARCHIVED VERSION**

**(a) Training prior to referral**

The Servicer must not refer any Freddie Mac Default Legal Matters to a firm until the Servicer verifies that the firm has executed a limited retention agreement with Freddie Mac and has completed Freddie Mac's new firm training.

A firm is only required to attend Freddie Mac's new firm training once, regardless of the number of Servicers that select and retain the firm.

**(b) Ongoing training**

The Servicer must ensure that each firm obtains appropriate training to keep the firm apprised of updated Freddie Mac requirements. If the Servicer provides its own standard training and/or other communication materials to a firm, the Servicer must include information regarding Freddie Mac's requirements.

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**69.7: Referral of Freddie Mac Default Legal Matters to firm (06/01/13)**

**ARCHIVED VERSION**

**(a) Requirements prior to referral**

Prior to referring a Freddie Mac Default Legal Matter to a firm, the Servicer must confirm that the firm is eligible to receive a referral by ensuring that:

- The firm meets the Firm Minimum Requirements, as specified in Section 69.3;
- Freddie Mac has provided a "no objection" determination, as specified in Section 69.4;
- The firm has executed a contract with the Servicer requiring the firm to comply with all applicable Freddie Mac requirements, as specified in Section 69.5(a);
- The firm has executed a limited retention agreement with Freddie Mac, as specified in Section 69.5(b);
- The firm has completed Freddie Mac training and any additional Servicer training, as specified in Section 69.6; and
- There are no conflicts of interest with respect to the retention of the firm and referral of Freddie Mac Default Legal Matters to the firm

**(b) Diversification of referrals**

The Servicer must diversify its referrals of Freddie Mac Default Legal Matters to an appropriate number of firms in each State to protect the interests of Freddie Mac and to mitigate the risks related to a high concentration of Freddie Mac files. In selecting firms for referrals, the Servicer must consider firm capacity and management of staff to file ratios.

**(c) Bankruptcy and foreclosure matters**

The Servicer must not refer foreclosure matters directly to trustees.

Refer to Section 67.15(b) for additional referral requirements.

**(d) Providing documentation to firm**

The Servicer must identify a file as a Freddie Mac Default Legal Matter when sending the file to a firm. When referring a file to a firm, the Servicer must provide all documentation required to initiate a foreclosure. If the firm requests any additional information and/or documentation upon the initial referral of the file, or at any time after such referral, the Servicer must provide such requested information and/or documents within three Business Days after receipt of the request, or such earlier time frame, if necessary to comply with timing requirements under applicable law or court rules and procedures.

For any Mortgage that the Servicer refers for foreclosure, but the Mortgage is subsequently repurchased by the Servicer, whether voluntarily or involuntarily, the Servicer must notify foreclosure and/or bankruptcy counsel within two Business Days of the completed repurchase. (See Chapter 72 for additional information about repurchases.)

**(e) Contingency plan**

All Servicers must have a contingency plan in place, either in the form of a stand-alone document or incorporated into policies and procedures, to redirect new foreclosure and bankruptcy referrals.

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**Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.8:  
Prohibitions related to Freddie Mac Default Legal Matters (06/01/13)**

**69.8: Prohibitions related to Freddie Mac Default Legal Matters (06/01/13)**

**ARCHIVED VERSION**

Servicers must not require the firm to perform any foreclosure or bankruptcy-related services on any Freddie Mac Default Legal Matter without compensation.

**(a) Prohibition against charging for, contracting for, or making arrangements to receive benefits for Servicing obligations**

A Servicer, whether acting directly or through an affiliate, service provider, vendor or outsourcing company, must not directly or indirectly:

- Charge Freddie Mac or the firm for any foreclosure or bankruptcy-related Servicing obligations, including expenses covered by the Servicing Spread; or
- Contract or make any arrangements with the firm whereby the Servicer (or its affiliate, service provider, vendor or outsourcing company) receives, directly or indirectly, any financial or other benefits (including, but not limited to, payments, the provision of employees or free or discounted services or products) from the firm in connection with any Freddie Mac Default Legal Matter or Freddie Mac-owned or guaranteed Mortgage

Refer to Section 54.4 for additional information on Servicing obligations.

**(b) Prohibitions with respect to use of specific vendors, services and/or products**

The Servicer, and not a service provider, vendor or outsourcing company assisting the Servicer in Servicing defaulted Mortgages, must select the firm to handle Freddie Mac Default Legal Matters, and Servicers must not permit service providers, vendors, outsourcing companies, or others to participate in or influence, in any way, the Servicer's referral process.

A Servicer must not, whether acting directly or through an affiliate, service provider, vendor or outsourcing company:

- Require the firm to contract with or use a particular service provider, vendor or outsourcing company, or to use, or pay for, a particular service or product;
- Refuse to refer a file to the firm because the firm chooses not to contract with or use a particular service provider, vendor or outsourcing company, or chooses not to use, or pay for, a particular service or product; or
- Charge the firm for any aspect of the file referral or management process, including, but not limited to, the use of connectivity or invoice processing systems (e.g., licensing or subscription fees, "click" charges, or any other payment) in order for the firm to provide services necessary to handle Freddie Mac Default Legal Matters (e.g., to prosecute the foreclosure or bankruptcy case)

However, a Servicer may require the firm to use certain connectivity or invoice processing systems, provided that the firm is not required to pay for the use of, or access to, such systems.

Refer to Section 69.9 for information about use of, and reimbursement for, connectivity and invoice processing systems.

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**Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.9:  
Servicer use of connectivity and invoice processing system (06/01/13)****69.9: Servicer use of connectivity and invoice processing system (06/01/13)****ARCHIVED VERSION**

A Servicer, whether acting directly or through any vendor, service provider or outsourcing company, may employ electronic monitoring, management, reporting or information and document delivery processes technology, referred to in this section as a "Connectivity System," and an invoice processing system as outlined below.

**(a) Connectivity System**

A Servicer may employ a Connectivity System to assist with fulfilling Servicing obligations such as

- Packaging and referring foreclosure and bankruptcy cases to the firm;
- Communicating information and delivering documents between the Servicer and the firm as well as any other third parties requiring access to the Connectivity System; and
- Managing and monitoring foreclosure and bankruptcy cases

If a Servicer uses a Connectivity System:

- Freddie Mac will reimburse the Servicer for the actual cost of the connectivity fee up to the maximum expense limit specified in Exhibit 57, 1- to 4-Unit Property Approved Expense Amounts;
- The Servicer must provide the firm with use of and access to the identical Connectivity System;
- The Servicer must permit, or continue to permit, the firm to integrate its own technology systems with the Connectivity System at no cost to the firm; and
- The Servicer must not pass on any Connectivity System related charges to the Borrower or the firm

**(b) Invoice processing system**

A Servicer may employ an invoice processing system for managing the submission and payment of invoices.

If a Servicer, whether acting directly or through a vendor or outsourcing company, processes firm invoices electronically:

- Freddie Mac will reimburse the Servicer for the actual cost of the invoicing fee up to the maximum expense limits specified in Exhibit 57; and
- The Servicer must not pass on any invoice processing related charges to the Borrower or the firm

The amounts specified in Exhibit 57 for connectivity and invoice processing systems are the maximum amounts for which a Servicer may seek reimbursement for the life of the default (i.e., the duration of the foreclosure, including any Freddie Mac Default Legal Matter such as bankruptcy).

For example, if a Servicer has already referred a Mortgage to foreclosure and it then becomes necessary to take action with respect to a bankruptcy related to such Mortgage, or if a Servicer has already referred a file for bankruptcy and foreclosure has commenced following the bankruptcy referral, the Servicer may be reimbursed only for one connectivity fee. Likewise in this scenario, if the Servicer is using an invoice processing system, then the Servicer may only seek reimbursement for one invoicing fee associated with the foreclosure and for one invoicing fee associated with the bankruptcy during the life of the default.

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**69.10: Reporting (06/01/13)**

**ARCHIVED VERSION**

The Servicer must provide reports related to firm performance, management of foreclosure and bankruptcy processes, oversight of firm compliance and performance and other related matters as required by Freddie Mac. Servicers must ensure that all firms retained for Freddie Mac Default Legal Matters report data required by Freddie Mac directly to Freddie Mac.

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**69.11: Servicer monitoring and management of firm (06/01/13)**

**ARCHIVED VERSION**

The Servicer is responsible for managing and monitoring all aspects of the firm performance, providing necessary assistance to the firm relating to Freddie Mac Default Legal Matters, and for undertaking all activities required to protect Freddie Mac's interest in the Mortgage. The Servicer must also ensure that the firm is in compliance with applicable Freddie Mac requirements, and that the firm receives all training and documentation relating to

applicable Freddie Mac requirements, either separately or as part of the Servicer's standard training.

**(a) Compliance processes**

The Servicer must develop and have in place policies and procedures regarding oversight and compliance of firms handling Freddie Mac Default Legal Matters. The Servicer must have policies and procedures reasonably designed to ensure that firms handling Freddie Mac Default Legal Matters are in compliance with the limited retention agreement, the applicable provisions of the Guide, and applicable law.

The Servicer's ongoing compliance monitoring must address the following minimum elements:

- Ongoing eligibility under the Firm Minimum Requirements specified in Section 69.3;
- Compliance with the limited retention agreement, including the fee and cost guidelines; and
- Firm performance and processes necessary to ensure Servicer's compliance with applicable Guide requirements

The Servicer must conduct periodic compliance reviews and training as appropriate. In determining the frequency of firm compliance reviews, the Servicer must consider the overall risk posed to Freddie Mac by the firm (legal, reputational, and financial), firm file volume, performance, any changes in staffing ratios or levels, any litigation against the firm alleging systemic issues, any media coverage regarding the firm and the prior results of any firm compliance reviews.

**(b) Freddie Mac review of compliance process**

Freddie Mac reserves the right to review the Servicer's compliance process. Freddie Mac may require Servicers to conduct additional compliance activities related to firms handling Freddie Mac Default Legal Matters, such as additional firm compliance reviews.

The Servicer must make available to Freddie Mac upon request the materials relating to its performance and compliance monitoring of firms handling Freddie Mac Default Legal Matters, including:

- Information regarding the scope and methodology of the Servicer's compliance monitoring;
- The schedule of firm compliance reviews conducted;
- The identity of any vendors used in the firm compliance reviews;
- All documentation from the firm compliance reviews; and
- All findings, reports or remediation plans resulting from the firm compliance reviews

In addition, Freddie Mac may require a Servicer to change the scope of its compliance process used to monitor firms handling Freddie Mac Mortgages.

**(c) Freddie Mac right to audit firm**

Freddie Mac also reserves the right to directly conduct firm audits and firm on-site visits as Freddie Mac deems necessary. Freddie Mac audits and visits may focus on items such as fee and cost compliance, Servicer compliance with Freddie Mac requirements, and high-risk issues, including compliance with applicable laws, reputational risk, unsatisfactory results of Servicer firm compliance reviews and conflicts of interest involving Freddie Mac-owned or guaranteed Mortgages.

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## **69.12: Escalation of issues to Freddie Mac (06/01/13)**

### **ARCHIVED VERSION**

#### **(a) Escalation of issues**

The Servicer must notify Freddie Mac via e-mail (**see Directory 1**), within two Business Days of discovery or sooner if circumstances warrant, if the Servicer becomes aware of any issues or concerns relating to a firm (including a specific employee or vendor of a firm), or a Freddie Mac Default Legal Matter, including, but not limited to:

- Any information regarding a firm that may warrant a firm's suspension, termination or Servicer request to transfer Freddie Mac Default Legal Matters to another firm;
- Information suggesting legal or reputational risk posed by the firm such as bar complaints, sanctions, or litigation alleging systemic issues with the firm, firm attorney, or the firm's practices;
- Security incidents that compromise the security, confidentiality or integrity of "sensitive customer information" and that security incident is related to Freddie Mac-owned or guaranteed Mortgages (refer to Sections 6.2(c), and 53.8(b));
- Actual or alleged fraud on the part of the firm;
- Federal, State, or local governmental inquiries, including congressional inquiries, regarding a firm, Freddie Mac-owned or guaranteed Mortgages, or Freddie Mac or Servicer practices affecting Freddie Mac-owned or guaranteed Mortgages;
- Non-routine litigation (as described in Section 67.17);
- Media inquiries relating to Freddie Mac, a firm, or Freddie Mac-owned or guaranteed Mortgages;
- Volume or capacity issues with the firm;
- Breach of the limited retention agreement between the firm and Freddie Mac, or the contract between the firm and the Servicer;
- Legal matters such as regulatory updates and specific reporting on certain matters (e.g., transfer tax matters);
- Any systemic issues with the firm;
- Systemic Servicer issues related to file suspensions and foreclosure holds (e.g., failure to properly implement new statutory changes); and
- Any material change in the ownership, partnership, or organization of the firm after executing the limited retention agreement. Such notifications should include instances where a named partner leaves the firm or a major practice group separates from the firm.

#### **(b) Procedures relating to issues and concerns**

When a Servicer provides Freddie Mac notice of an issue requiring Freddie Mac's attention, the Servicer must designate in its e-mail one or more points of contact. Freddie Mac may request that the Servicer obtain additional information from the firm regarding the issue that was escalated to Freddie Mac, and the Servicer must promptly provide the requested information to Freddie Mac.

**(c) Freddie Mac rights**

Freddie Mac reserves the right to issue direction to Servicers and firms regarding escalated issues. Refer to Section 69.15 for more information about Freddie Mac's reservation of rights

**(d) Escalated issue – confidential information**

Any issue that is identified and escalated to or by Freddie Mac pursuant to this section (other than non-routine litigation) is considered to be "confidential information" as defined in Sections 2.16 and 53.3. The Servicer must comply with the requirements of such sections with respect to treatment of any escalated issue.

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**69.13: Termination and suspension of firms (06/01/13)****ARCHIVED VERSION****(a) Servicer-directed suspension of referrals, Freddie Mac Default Legal Matter transfers and terminations**

If a Servicer becomes aware of information regarding a firm's handling Freddie Mac Default Legal Matters that might warrant a suspension of referrals of new Freddie Mac Default Legal Matters, the transfer of Freddie Mac Default Legal Matters to another firm, and/or termination of the firm (such as for legal, reputational, or operational risk), the Servicer must:

- Notify Freddie Mac within two Business Days via e-mail (**see Directory 1**) or sooner if circumstances warrant, as set forth in Section 69.12; and
- Conduct due diligence with respect to the issue

If the Servicer intends to suspend referrals of new Freddie Mac Default Legal Matters, transfer Freddie Mac Default Legal Matters, and/or terminate a firm, the Servicer must provide Freddie Mac with at least five Business Days' notice (**see Directory 1**) prior to implementing the decision. In addition, the Servicer must:

- Provide Freddie Mac with the implementation plan for the course of action chosen by the Servicer;
- Upon request, provide Freddie Mac with the reason for the decision and the due diligence materials or other information supporting the decision;
- Inform the firm of the decision; and
- Keep Freddie Mac periodically updated with respect to the status of implementation of the decision

Refer to Section 69.14 for additional information relating to implementation of terminations, transfer of Freddie Mac Default Legal Matters and suspensions.



**(b) Freddie Mac-directed suspension of referrals, matter transfers and terminations**

Freddie Mac may direct the Servicer to initiate an investigation of a firm if Freddie Mac becomes aware of information that might warrant a suspension of referrals of new Freddie Mac Default Legal Matters, the transfer of Freddie Mac Default Legal Matters, or termination of the firm. Freddie Mac also may conduct due diligence and investigations as necessary. Freddie Mac may instruct Servicers to suspend some or all referrals of new Freddie Mac Default Legal Matters, to transfer some or all existing Freddie Mac Default Legal Matters, or to terminate a firm.

In the event of a decision by Freddie Mac to suspend referrals of new Freddie Mac Default Legal Matters, transfer Freddie Mac Default Legal Matters, or terminate a firm, Freddie Mac will:

- Inform the Servicer of the decision and provide direction with respect to required Servicer actions, including direction with respect to transfers of Freddie Mac Default Legal Matters;
- Inform the firm of the decision and provide direction to the firm with respect to required firm actions; and
- Terminate the limited retention agreement between Freddie Mac and the firm, as appropriate

**(c) Documentation of due diligence review**

The Servicer must maintain documentation of the due diligence review, the Servicer's decision, and all other information supporting the decision for a period of seven years after such decision.

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**69.14: Implementing the termination and suspension of firms (06/01/13)**

**ARCHIVED VERSION**

**(a) Implementation plan**

Prior to implementing any decision to terminate a contract with a firm, suspend referrals of new Freddie Mac Default Legal Matters and/or transfer Freddie Mac Default Legal Matters from a firm, the Servicer must develop an implementation plan which addresses:

- File transfers
- The capacity of other eligible firms in the State to handle additional Freddie Mac Default Legal Matters and/or transferred Freddie Mac Default Legal Matters
- Proration of fees and costs between the transferor and transferee firms
- Contract provisions during any transition period, including insurance; and
- Other issues as necessary

The implementation plan must take into account any legal, operational or reputational risks that may arise during the transition period, and must address these risks in the most cost-efficient and effective manner. Freddie Mac reserves the right to require the modification of the implementation plan, and provide additional Servicer requirements relating to the termination of any firm, the suspension of referrals of new Freddie Mac Default Legal Matters and the transfer of Freddie Mac Default Legal Matters.

**(b) Servicer monitoring of implementation plan**

The Servicer must take all necessary steps to ensure that the implementation plan proceeds in an orderly manner and that all Freddie Mac interests are protected during the implementation. Such steps include, but are not limited to:

- Transferring files relating to Freddie Mac Default Legal Matters to eligible firms;
- Addressing any issues arising from the transfer of files, the suspension of referrals and the termination of a firm;
- Reporting periodically to Freddie Mac on the status of the plan, including such details as how many files are transferred to each new firm, which new firms receive the files and the timing of transfers; and
- Such other details as requested by Freddie Mac

Servicers may not charge Freddie Mac or Borrowers for any fees or costs associated with transferring Freddie Mac Default Legal Matters, and such amounts may not be added to Borrower Mortgage balances.

**(c) Freddie Mac's rights to manage termination, suspension and/or file transfers**

Freddie Mac may decide, in its sole discretion, that the legal, operational or reputational risks necessitate Freddie Mac's management of the:

- Termination of any firm with respect to its handling of Freddie Mac Default Legal Matters;
- Suspension of referrals of Freddie Mac Default Legal Matters to a firm; and/or
- Transfers of files relating to Freddie Mac Default Legal Matters

In such case, the Servicer must cooperate with Freddie Mac in such management and provide all necessary documentation, files and information as requested by Freddie Mac.

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family

**Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter 69: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/69.15: Reservation of Rights and remedies for non-compliance (06/01/13)**

## **69.15: Reservation of Rights and remedies for non-compliance (06/01/13)**

### **ARCHIVED VERSION**

Freddie Mac reserves the right to direct and control all litigation involving a Freddie Mac loan. The Servicer and firm handling the litigation must cooperate fully with Freddie Mac in the prosecution, defense or handling of the matter.

In addition, Freddie Mac reserves the right to:

1. Select the foreclosure counsel for a particular case, whether the case is routine or non-routine litigation;
2. Direct and manage the actions taken by the foreclosure counsel, on a case-by-case or individual State basis;
3. Assess additional compensatory fees against the Servicer and/or seek repayment of losses, costs or damages from the Servicer sustained due to errors, omissions or delays by the Servicer or its agent; and
4. Direct and manage the actions taken by Servicers and firms relating to escalated issues specified in Section 69.12

### **Remedies for non-compliance**

If a Servicer fails to comply with the provisions under Chapter 69, Freddie Mac, in its sole discretion, and in addition to any other remedies specified in the Guide or the Servicer's other Purchase Documents, reserves the right to:

- Refuse to reimburse the Servicer for any legal fees and costs;
- Offset the entire legal fee from future foreclosure expenses otherwise eligible for reimbursement from Freddie Mac or seek the Servicer's reimbursement of the entire legal fee with interest, if Freddie Mac has already reimbursed the Servicer for the costs involved in the particular foreclosure or bankruptcy;
- Require the Servicer to reimburse the firm or Freddie Mac for any prohibited payments or other financial benefits;
- Prohibit the Servicer from contracting, directly or through any service provider, vendor or outsourcing company, with a firm with respect to products or services ancillary to a foreclosure or bankruptcy case;
- Prohibit the Servicer from contracting with the service provider, vendor or outsourcing company involved in the prohibited activities with respect to Freddie Mac-owned or guaranteed Mortgages;
- Seek Servicer repayment of losses, costs or damages sustained by Freddie Mac due to errors by the Servicer or its agent; and/or
- Require repurchase of impacted Mortgages

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2013-3	February 15, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family**

**Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013**

## **Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013**

**ARCHIVED VERSION**

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.1: Overview (06/01/13)**

### **REVISION HISTORY 11/09/12 [HIDE]**

**REVISION NUMBER:** 11092012      **DATE:** 11/09/2012  
**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

#### **A69.1: Overview (Effective: 11/09/12)**

**ARCHIVED VERSION**

If a Freddie Mac Default Legal Matter is referred to a law firm prior to June 1, 2013, the Servicer must comply with the requirements relating to the selection and retention of counsel as set forth in this chapter rather than the requirements of Chapter 69. However, Servicers must comply with the requirements in Chapter 69 related to the monitoring and management of a law firm, reporting, escalation of issues and termination and suspension of law firms for matters referred to counsel prior to June 1, 2013.

#### **A69.1: Overview (06/01/13)**

**ARCHIVED VERSION**

If a Freddie Mac Default Legal Matter is referred to a law firm prior to August 1, 2013, the Servicer must comply with the requirements relating to the selection and retention of counsel as set forth in this chapter rather than the requirements of Chapter 69. However, Servicers must comply with the requirements in Chapter 69 related to the monitoring and management of a law firm, reporting, escalation of issues and termination and suspension of law firms for matters referred to counsel on or after June 1, 2013.

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2013-9	May 28, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.2: Litigation counsel eligibility criteria (06/01/13)**

**REVISION HISTORY 11/09/12 [HIDE]****REVISION NUMBER:** 11092012**DATE:** 11/09/2012**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.**A69.2: Litigation counsel eligibility criteria (Effective: 11/09/12)****ARCHIVED VERSION**

Having a single law firm handle a Mortgage from foreclosure through eviction, including bankruptcy, increases efficiency and effectiveness by eliminating learning curve problems and delays caused by hand-offs and duplicative title work. Therefore, Servicers are required to ensure that counsel retained for Freddie Mac's Mortgage foreclosures, evictions, deeds-in-lieu of foreclosure and bankruptcies meet the following criteria:

- The law firm retained as litigation counsel must have expertise in all four of the following areas: residential foreclosures, deeds-in-lieu of foreclosure, evictions and secured creditor representation in bankruptcy cases. For foreclosures or evictions on 2- to 4-unit properties, the law firm must also have experience in handling litigation matters on income-producing properties, including appointing receivers and enforcing assignment of rents.
- The attorneys at the law firm who are actually handling Freddie Mac's cases must have a minimum of three years' experience in their particular areas of expertise. For example, an attorney handling a bankruptcy case must have at least three years' experience representing secured creditors in bankruptcy cases. In the event that the attorney handling a matter for Freddie Mac is unavailable, the firm must have an attorney with similar relevant experience who can substitute for the absent attorney without causing a delay.

In addition, when selecting a law firm to handle foreclosures and bankruptcies, Servicers should consider the reputation of the firm as well as whether the firm's attorneys, principals, or managers are, or have been, subject to:

- Disciplinary action by any regulatory authority
- Sanctions imposed by a court or licensing authority
- Legal action by any governmental or regulatory authority resulting from the firm's involvement in single-family loan-level foreclosure, bankruptcy, eviction or property closing activities
- Legal action by consumers resulting from the firm's involvement in single-family loan-level foreclosure, bankruptcy, eviction or property closing activities

Freddie Mac may, at its option, designate counsel to perform specific duties. Refer to Section A69.3 regarding selecting foreclosure counsel.

Refer to Sections 67.10 through 67.15 regarding when to refer a bankruptcy case to counsel and our requirements for bankruptcy counsel, Sections 67.17 through 67.18 regarding litigation, and Exhibit 79, Designated Litigation Counsel/Trustee, which identifies our designated counsel.

**A69.2: Litigation counsel eligibility criteria (06/01/13)**

### **ARCHIVED VERSION**

Having a single law firm handle a Mortgage from foreclosure through eviction, including bankruptcy, increases efficiency and effectiveness by eliminating learning curve problems and delays caused by hand-offs and duplicative title work. Therefore, Servicers are required to ensure that counsel retained for Freddie Mac's Mortgage foreclosures, evictions, deeds-in-lieu of foreclosure and bankruptcies meet the following criteria:

- The law firm retained as litigation counsel must have expertise in all four of the following areas: residential foreclosures, deeds-in-lieu of foreclosure, evictions and secured creditor representation in bankruptcy cases. For foreclosures or evictions on 2- to 4-unit properties, the law firm must also have experience in handling litigation matters on income-producing properties, including appointing receivers and enforcing assignment of rents.
- The attorneys at the law firm who are actually handling Freddie Mac's cases must have a minimum of three years' experience in their particular areas of expertise. For example, an attorney handling a bankruptcy case must have at least three years' experience representing secured creditors in bankruptcy cases. In the event that the attorney handling a matter for Freddie Mac is unavailable, the firm must have an attorney with similar relevant experience who can substitute for the absent attorney without causing a delay.

In addition, when selecting a law firm to handle foreclosures and bankruptcies, Servicers should consider the reputation of the firm as well as whether the firm's attorneys, principals, or managers are, or have been, subject to:

- Disciplinary action by any regulatory authority
- Sanctions imposed by a court or licensing authority
- Legal action by any governmental or regulatory authority resulting from the firm's involvement in single-family loan-level foreclosure, bankruptcy, eviction or property closing activities
- Legal action by consumers resulting from the firm's involvement in single-family loan-level foreclosure, bankruptcy, eviction or property closing activities

Refer to Sections 67.10 through 67.15 regarding when to refer a bankruptcy case to counsel and our requirements for bankruptcy counsel, Sections 67.17 through 67.18 regarding litigation.

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2013-9	May 28, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.3: How to select foreclosure counsel (06/01/13)**

#### **REVISION HISTORY 11/09/12 [HIDE]**

<b>REVISION NUMBER:</b> 11092012 <b>DATE:</b> 11/09/2012 <b>REVISION REMARKS:</b> THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.
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**A69.3: How to select foreclosure counsel or trustee (Effective: 11/09/12)****ARCHIVED VERSION**

The Servicer is responsible for selecting attorneys and trustees, and its selection decisions must not be influenced by inappropriate considerations. Refer to Section A69.6 for additional information on prohibitions relating to foreclosure and bankruptcy referrals.

When making foreclosure and bankruptcy referrals, the Servicer must ensure that it is diversifying referrals by engaging in a relationship with at least two law firms, or trustees, in higher-volume States (States in which the Servicer has 250 or more Freddie Mac foreclosure and bankruptcy referrals in a calendar year).

In higher-volume States, the Servicer must take one of the following approaches to diversifying foreclosure and bankruptcy referrals:

1. The Servicer must make foreclosure and bankruptcy referrals on Mortgages it services on behalf of Freddie Mac to at least two law firms or trustees, ensuring that at least a substantial minority of the referrals are made to the law firm that receives the fewest referrals; or
2. The Servicer must make foreclosure and bankruptcy referrals to at least two law firms or trustees, with respect to its entire Servicing portfolio, ensuring that at least a substantial minority of the referrals are made to the law firm that receives the fewest referrals

In addition, all Servicers must have a contingency plan in place, either in the form of a stand-alone document or incorporated into policies and procedures, to redirect new foreclosure and bankruptcy referrals in the event a law firm the Servicer is using is no longer able to accept new referrals.

The Servicer must use the same entity that it retains to represent it in a bankruptcy action on a Mortgage to process the foreclosure.

The foreclosure counsel or trustee must be free from any conflict of interest with the Borrower.

**(a) Foreclosure on a property in a State where Freddie Mac has designated counsel**

Freddie Mac has designated counsel in the following selected States:

1. Arizona
2. California
3. Connecticut
4. District of Columbia
5. Florida
6. Georgia
7. Illinois
8. Indiana
9. Kentucky

10. Maryland
11. Massachusetts
12. Michigan
13. Minnesota
14. Nevada
15. New Jersey
16. New York
17. North Carolina
18. Ohio
19. Pennsylvania
20. South Carolina
21. Texas
22. Virginia
23. Washington
24. West Virginia

The Servicer must use one of Freddie Mac's designated counsel for the foreclosure (unless the Mortgage on which the Servicer is foreclosing was sold to Freddie Mac with recourse or it is an FHA Mortgage, VA Mortgage, or Section 502 GRH Mortgage) if the Mortgage is secured by a:

1. 2- to 4-unit property in Arizona, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington or West Virginia
2. A Manufactured Home in Arizona, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington or West Virginia
3. 1- to 4-unit property in Texas and the Mortgage was a Texas Equity Section 50(a)(6) Mortgage

Additionally, Freddie Mac may require the Servicer to use Freddie Mac's designated counsel on 1-unit properties in one or more of the selected States based on Freddie Mac's evaluation of the Servicer's foreclosure performance. Freddie Mac will notify the Servicer in writing if the Servicer must use designated counsel in any of the selected States.



**(b) Foreclosure on a property in a State where Freddie Mac does not have designated counsel or when the Servicer is not required to use designated counsel**

Unless the Servicer uses Freddie Mac's designated counsel as required under this chapter, the Servicer must select either a foreclosure counsel or trustee, as appropriate under applicable law, to represent the Servicer in the foreclosure action.

The Servicer must use the same entity to conduct a foreclosure and any bankruptcy pertaining to a particular Mortgage. In those States where it may be common practice to use a trustee to conduct a foreclosure, the trustee must be associated with a bankruptcy law firm meeting the criteria specified in Section A69.2. Any bankruptcy filed on a Mortgage in foreclosure being processed by a trustee, must be handled by the trustee's associated bankruptcy law firm. The trustee and the associated bankruptcy law firm must transfer information regarding the case seamlessly and must not in any way increase the bankruptcy or State foreclosure time lines.

The foreclosure counsel or trustee the Servicer chooses must meet the eligibility requirements in Section A69.2.

When selecting the foreclosure counsel or trustee, the Servicer must base the selection on the prior performance of the foreclosure counsel or trustee in the following areas:

1. Completing foreclosures
2. Delivering clear and marketable title to Freddie Mac
3. Facilitating reinstatements and workouts with Borrowers
4. Resolving litigation delays (foreclosure counsel only)

The Servicer must communicate Freddie Mac's State foreclosure time line expectations and Freddie Mac's allowable fee schedule to the foreclosure counsel whom the Servicer selects. The Servicer must also communicate to the attorney or trustee that if they pay the Servicer or its vendor, either directly or indirectly, for any of the Servicing obligations covered by the Servicing Spread or any expenses itemized in Section 71.24, Freddie Mac may preclude the attorney or trustee who pays any such expenses on Freddie Mac Mortgages from processing future foreclosures or bankruptcies for Freddie Mac.

**A69.3: How to select foreclosure counsel (06/01/13)**

**ARCHIVED VERSION**

The Servicer is responsible for selecting counsel, and its selection decisions must not be influenced by inappropriate considerations. Refer to Section A69.6 for additional information on prohibitions relating to foreclosure and bankruptcy referrals.

When making foreclosure and bankruptcy referrals, the Servicer must ensure that it is diversifying referrals by engaging in a relationship with at least two law firms in higher-volume States (States in which the Servicer has 250 or more Freddie Mac foreclosure and bankruptcy referrals in a calendar year).

In higher-volume States, the Servicer must take one of the following approaches to diversifying foreclosure and bankruptcy referrals:

1. The Servicer must make foreclosure and bankruptcy referrals on Mortgages it services on behalf of Freddie Mac to at least two law firms, ensuring that at least a substantial minority of the referrals are made to the law firm that receives the fewest referrals; or
2. The Servicer must make foreclosure and bankruptcy referrals to at least two law firms, with respect to its entire Servicing portfolio, ensuring that at least a substantial minority of the referrals are made to the law firm that receives the fewest referrals

In addition, all Servicers must have a contingency plan in place, either in the form of a stand-alone document or incorporated into policies and procedures, to redirect new foreclosure and bankruptcy referrals in the event a law firm the Servicer is using is no longer able to accept new referrals.

The Servicer must use the same entity that it retains to represent it in a bankruptcy action on a Mortgage to process the foreclosure.

The foreclosure counsel must be free from any conflict of interest with the Borrower.

The foreclosure counsel the Servicer chooses must meet the eligibility requirements in Section A69.2.

When selecting the foreclosure counsel, the Servicer must base the selection on the prior performance of the foreclosure counsel in the following areas:

1. Completing foreclosures
2. Delivering clear and marketable title to Freddie Mac
3. Facilitating reinstatements and workouts with Borrowers
4. Resolving litigation delays (foreclosure counsel only)

The Servicer must communicate Freddie Mac's State foreclosure time line expectations and Freddie Mac's allowable fee schedule to the foreclosure counsel whom the Servicer selects. The Servicer must also communicate to the counsel that if they pay the Servicer or its vendor, either directly or indirectly, for any of the Servicing obligations covered by the Servicing Spread or any expenses itemized in Section 71.24, Freddie Mac may preclude the counsel who pays any such expenses on Freddie Mac Mortgages from processing future foreclosures or bankruptcies for Freddie Mac.

Related Guide Bulletins	Issue Date
Bulletin 2013-9	May 28, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.4: Selecting bankruptcy counsel (06/01/13)**

#### REVISION HISTORY 11/09/12 [HIDE]

<b>REVISION NUMBER:</b> 11092012 <b>DATE:</b> 11/09/2012 <b>REVISION REMARKS:</b> THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.
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**A69.4: Selecting bankruptcy counsel (Effective: 11/09/12)****ARCHIVED VERSION**

The Servicer must diversify foreclosure and bankruptcy referrals in higher-volume States (States in which the Servicer has 250 or more Freddie Mac foreclosure and bankruptcy referrals in a calendar year). In addition, the Servicer must have a contingency plan to redirect new foreclosure and bankruptcy referrals in the event a law firm or trustee that the Servicer is using is no longer able to accept new referrals (see Section A69.3).

Bankruptcy counsel must be free from any conflict of interest with the Borrower.

Servicers must use the same entity retained in a foreclosure action on a Mortgage to represent the Servicer in a subsequent bankruptcy. (For example, if the Servicer retained foreclosure counsel that is not a designated counsel, then the Servicer must use that same law firm for any bankruptcy. Servicers must not refer the bankruptcy to one of Freddie Mac's designated counsel.) Likewise, if at the dismissal or completion of the bankruptcy the Mortgage progresses to foreclosure, the Servicer must use the same law firm to handle the foreclosure as it used for the bankruptcy.

If the Servicer does not use the same entity representing the Servicer in a foreclosure action to represent it in a subsequent bankruptcy, Freddie Mac may, in its sole discretion, elect not to reimburse the Servicer. See Chapter 71 for more details on reimbursement for bankruptcy costs and fees.

If a Servicer determines that special circumstances exist that require case management by counsel on a current Mortgage, then the Servicer must obtain Freddie Mac's prior written approval to obtain counsel in accordance with the requirements in Section A69.2 and incur the legal expense by submitting a request for pre-approval via the Reimbursement System.

**(a) Selecting bankruptcy counsel in a State where Freddie Mac has designated counsel**

Freddie Mac has designated counsel in the following selected States:

1. Arizona
2. California
3. Connecticut
4. District of Columbia
5. Florida
6. Georgia
7. Illinois
8. Indiana
9. Kentucky
10. Maryland
11. Massachusetts
12. Michigan
13. Minnesota

14. Nevada
15. New Jersey
16. New York
17. North Carolina
18. Ohio
19. Pennsylvania
20. South Carolina
21. Texas
22. Virginia
23. Washington
24. West Virginia

Servicers must use Freddie Mac's designated counsel for the bankruptcy (unless the Mortgage on which the bankruptcy was filed was sold with recourse or it is an FHA Mortgage, VA Mortgage, or Section 502 GRH Mortgage) if the Mortgage is secured by a:

1. 2- to 4-unit property in Arizona, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington or West Virginia
2. Manufactured Home in Arizona, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington or West Virginia
3. 1- to 4-unit property in Texas and the Mortgage was a Texas Equity Section 50(a)(6) Mortgage
4. Servicers must also use designated bankruptcy counsel in a designated counsel State for a Mortgage regardless of property type if Freddie Mac has sent written notification to the Servicer of such a requirement

**(b) Selecting bankruptcy counsel in a State where Freddie Mac does not have designated counsel**

Servicers must choose bankruptcy counsel that meet the eligibility requirements in Section A69.2. In addition, Servicers must base the selection on the prior performance of the bankruptcy counsel in the following areas:

1. Timely filings of motion for relief
2. Length of time to obtain automatic stay or case dismissal
3. Facilitation of loss mitigation options where appropriate

If at the dismissal or completion of the bankruptcy the Mortgage progresses to foreclosure, the Servicer must use the same law firm to handle the foreclosure that was used for the bankruptcy. However, in those States where it may be common practice to use a trustee to conduct a foreclosure, the Servicer must use a trustee that is associated with the law firm that handled the bankruptcy.

**A69.4: Selecting bankruptcy counsel (06/01/13)**

**ARCHIVED VERSION**

The Servicer must diversify foreclosure and bankruptcy referrals in higher-volume States (States in which the Servicer has 250 or more Freddie Mac foreclosure and bankruptcy referrals in a calendar year). In addition, the Servicer must have a contingency plan to redirect new foreclosure and bankruptcy referrals in the event a law firm that the Servicer is using is no longer able to accept new referrals (see Section A69.3).

Bankruptcy counsel must be free from any conflict of interest with the Borrower.

Servicers must use the same entity retained in a foreclosure action on a Mortgage to represent the Servicer in a subsequent bankruptcy. (For example, if the Servicer retained foreclosure counsel that is not a designated counsel, then the Servicer must use that same law firm for any bankruptcy. Servicers must not refer the bankruptcy to one of Freddie Mac's designated counsel.) Likewise, if at the dismissal or completion of the bankruptcy the Mortgage progresses to foreclosure, the Servicer must use the same law firm to handle the foreclosure as it used for the bankruptcy.

If the Servicer does not use the same entity representing the Servicer in a foreclosure action to represent it in a subsequent bankruptcy, Freddie Mac may, in its sole discretion, elect not to reimburse the Servicer. See Chapter 71 for more details on reimbursement for bankruptcy costs and fees.

If a Servicer determines that special circumstances exist that require case management by counsel on a current Mortgage, then the Servicer must obtain Freddie Mac's prior written approval to obtain counsel in accordance with the requirements in Section A69.2 and incur the legal expense by submitting a request for pre-approval via the Reimbursement System.

Related Guide Bulletins	Issue Date
Bulletin 2013-9	May 28, 2013

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69:**

**Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.5: Foreclosure time line compensatory fee protection for use of designated counsel when required (11/09/12)**

**A69.5: Foreclosure time line compensatory fee protection for use of designated counsel when required (11/09/12)**

**ARCHIVED VERSION**

For Mortgages referred to foreclosure prior to October 1, 2011:

The Servicer will not be subject to compensatory fees for a foreclosure and/or bankruptcy handled by a designated counsel that is not completed within Freddie Mac's required time lines, as long as the delay was not caused by the Servicer's failure to refer the Mortgage to foreclosure in accordance with the Guide requirements and/or send all of the documentation, information, signatures and/or funds to the designated counsel as required.

If the Servicer elects to use Freddie Mac's designated counsel, and the Servicer does not use that same designated counsel for both foreclosure and bankruptcy, Freddie Mac will not give the Servicer credit for using designated counsel for purposes of foreclosure time line compensatory fee protection.

**Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69: Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.6: Prohibitions relating to foreclosure and bankruptcy referrals; Freddie Mac remedies for non-compliance (06/01/13)**

**REVISION HISTORY 11/09/12 [HIDE]**

**REVISION NUMBER:** 11092012

**DATE:** 11/09/2012

**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

**A69.6: Prohibitions relating to foreclosure and bankruptcy referrals; Freddie Mac remedies for non-compliance (Effective: 11/09/12)**

**ARCHIVED VERSION**

Freddie Mac requires that all foreclosure and bankruptcy-related Servicing obligations, and all services and products purchased in connection with such Servicing obligations, be done in the most effective, efficient and cost-conscious manner. Servicers must not require the law firm to perform any foreclosure or bankruptcy-related services on any Freddie Mac Legal Matter without compensation.

**(a) Prohibition against charging for, contracting for, or making arrangements to receive benefits for Servicing obligations**

A Servicer, whether acting directly or through an affiliate, service provider, vendor or outsourcing company, must not directly or indirectly:

- Charge Freddie Mac, the trustee or attorney for any foreclosure or bankruptcy-related Servicing obligations, including expenses covered by the Servicing Spread; or
- Contract or make any arrangements with attorneys or trustees whereby the Servicer (or its affiliate, service provider, vendor or outsourcing company) receives, directly or indirectly, any financial or other benefits (including, but not limited to, payments, the provision of employees, or free or discounted services or products) from the attorneys or trustees in connection with any Freddie Mac Mortgage

Refer to Section 54.4 for additional information on Servicing obligations.

**(b) Prohibition against Servicers requiring attorneys and trustees to use specific vendors, services and/or products**

A Servicer must not, whether acting directly or through an affiliate, service provider, vendor or outsourcing company:

- Require an attorney or trustee to contract with or use a particular service provider, vendor or outsourcing company, or to use, or pay for, a particular service or product;
- Refuse to refer a file to an attorney or trustee because the attorney or trustee chooses not to contract with or use a particular service provider, vendor or outsourcing company, or chooses not to use, or pay for, a particular service or product; or
- Charge an attorney or trustee for any aspect of the file referral or management process, including, but not limited to, the use of connectivity or invoice processing systems (e.g., licensing or subscription fees, "click" charges, or any other payment) in order for an attorney or trustee to provide services necessary to prosecute the foreclosure or bankruptcy case

However, a Servicer may require an attorney or trustee to use certain connectivity or invoice processing systems provided that the attorney or trustee is not required to pay for the use of, or access to, such systems.

**(c) Prohibition against service providers, vendors, outsourcing companies or others influencing selection of foreclosure counsel and trustees**

The Servicer, and not a service provider, vendor or outsourcing company assisting the Servicer in Servicing defaulted Mortgages, must select the attorneys and trustees to work on Freddie Mac Mortgages, and Servicers must not permit service providers, vendors, outsourcing companies, or others to participate in or influence, in any way, the Servicer's selection process.

**(d) Remedies for non-compliance**

If a Servicer fails to comply with the provisions of Section A69.6(a), (b), or (c), Freddie Mac may, in its sole discretion and in addition to any other remedies specified in the Guide or the Servicer's other Purchase Documents:

- Refuse to reimburse the Servicer for any attorney or trustee fees and costs;
- Offset the entire legal fee from future foreclosure expenses or seek reimbursement of the entire legal fee with interest, if Freddie Mac has already reimbursed the Servicer for the costs involved in the particular foreclosure or bankruptcy;
- Require the Servicer to reimburse the attorney, trustee or Freddie Mac for any prohibited payments or other financial benefits;
- Prohibit the Servicer from contracting, directly or through any service provider, vendor or outsourcing company, with an attorney or trustee with respect to products or services ancillary to a foreclosure or bankruptcy case; and/or
- Prohibit the Servicer from contracting with the service provider, vendor or outsourcing company involved in the prohibited activities with respect to Freddie Mac Mortgages

**A69.6: Prohibitions relating to foreclosure and bankruptcy referrals; Freddie Mac remedies for non-compliance (06/01/13)****ARCHIVED VERSION**

Freddie Mac requires that all foreclosure and bankruptcy-related Servicing obligations, and all services and products purchased in connection with such Servicing obligations, be done in the most effective, efficient and cost-conscious manner. Servicers must not require the law firm to perform any foreclosure or bankruptcy-related services on any Freddie Mac Legal Matter without compensation.

**(a) Prohibition against charging for, contracting for, or making arrangements to receive benefits for Servicing obligations**

A Servicer, whether acting directly or through an affiliate, service provider, vendor or outsourcing company, must not directly or indirectly:

- Charge Freddie Mac, the counsel for any foreclosure or bankruptcy-related Servicing obligations, including expenses covered by the Servicing Spread; or
- Contract or make any arrangements with counsel whereby the Servicer (or its affiliate, service provider, vendor or outsourcing company) receives, directly or indirectly, any financial or other benefits (including, but not limited to, payments, the provision of employees, or free or discounted services or products) from the counsel in connection with any Freddie Mac Mortgage

Refer to Section 54.4 for additional information on Servicing obligations.



**(b) Prohibition against Servicers requiring firms to use specific vendors, services and/or products**

A Servicer must not, whether acting directly or through an affiliate, service provider, vendor or outsourcing company:

- Require counsel to contract with or use a particular service provider, vendor or outsourcing company, or to use, or pay for, a particular service or product;
- Refuse to refer a file to counsel because the attorney chooses not to contract with or use a particular service provider, vendor or outsourcing company, or chooses not to use, or pay for, a particular service or product; or
- Charge counsel for any aspect of the file referral or management process, including, but not limited to, the use of connectivity or invoice processing systems (e.g., licensing or subscription fees, "click" charges, or any other payment) in order for an attorney to provide services necessary to prosecute the foreclosure or bankruptcy case

However, a Servicer may require counsel to use certain connectivity or invoice processing systems provided that the attorney is not required to pay for the use of, or access to, such systems.

**(c) Prohibition against service providers, vendors, outsourcing companies or others influencing selection of foreclosure counsel**

The Servicer, and not a service provider, vendor or outsourcing company assisting the Servicer in Servicing defaulted Mortgages, must select counsel to work on Freddie Mac Mortgages, and Servicers must not permit service providers, vendors, outsourcing companies, or others to participate in or influence, in any way, the Servicer's selection process.

**(d) Remedies for non-compliance**

If a Servicer fails to comply with the provisions of Section A69.6(a), (b), or (c), Freddie Mac may, in its sole discretion and in addition to any other remedies specified in the Guide or the Servicer's other Purchase Documents:

- Refuse to reimburse the Servicer for any counsel fees and costs;
- Offset the entire legal fee from future foreclosure expenses or seek reimbursement of the entire legal fee with interest, if Freddie Mac has already reimbursed the Servicer for the costs involved in the particular foreclosure or bankruptcy;
- Require the Servicer to reimburse the counsel or Freddie Mac for any prohibited payments or other financial benefits;
- Prohibit the Servicer from contracting, directly or through any service provider, vendor or outsourcing company, with counsel with respect to products or services ancillary to a foreclosure or bankruptcy case; and/or
- Prohibit the Servicer from contracting with the service provider, vendor or outsourcing company involved in the prohibited activities with respect to Freddie Mac Mortgages

Related Guide Bulletins	Issue Date
Bulletin 2013-9	May 28, 2013

Freddie Mac Single Family/Archive of Single-Family Seller/Servicer Guide/Archive of Single-Family Seller/Servicer Guide Published as of the Date of the Last 2013 Bulletin/Single-Family Seller/Servicer Guide, Volume 2/Chs. 63-A69: Servicing Nonperforming Mortgages/Chapter A69:

Retention of counsel for Freddie Mac Default Legal Matters Referred Prior to August 1, 2013/A69.7: Providing information to the foreclosure counsel; Servicer use of connectivity and invoice processing systems (06/01/13)

**REVISION HISTORY 11/09/12 [HIDE]**

**REVISION NUMBER:** 11092012

**DATE:** 11/09/2012

**REVISION REMARKS:** THIS CONTENT HAS CHANGED. CURRENT REQUIREMENTS APPEAR UNSHADED BELOW.

**A69.7: Providing information to the foreclosure counsel or trustee; Servicer use of connectivity and invoice processing systems (Effective: 11/09/12)**

**ARCHIVED VERSION**

**(a) Responsibility to provide information to foreclosure counsel or trustee**

For any Mortgage that the Servicer refers for foreclosure, the Servicer must provide complete written reinstatement or payoff figures to the attorney, trustee, workout specialist, or outsourcing vendor requesting the information. This information must be provided within two Business Days of the date on which a written request is received. The Servicer may provide the written reinstatement or payoff figures via a paper document, facsimile or e-mail.

If the foreclosure counsel requests additional documentation from the Servicer (such as certificates of judgment or proofs of claim) while a case is pending, the Servicer must provide the additional documentation within two Business Days of receiving the request.

For any Mortgage that the Servicer refers for foreclosure, but the Mortgage is subsequently repurchased by the Servicer, whether voluntarily or involuntarily, the Servicer must notify foreclosure and/or bankruptcy counsel within two Business Days of the completed repurchase. (See Chapter 72 for additional information about repurchases.)

**(b) Connectivity and invoice processing systems**

A Servicer, whether acting directly or through any vendor, service provider or outsourcing company, may employ electronic monitoring, management, reporting or information and document delivery processes technology, referred to here as a "Connectivity System," and an invoice processing system as outlined below.

**i) Connectivity System**

A Servicer may employ a Connectivity System to assist with fulfilling Servicing obligations such as:

- Packaging and referring foreclosure and bankruptcy cases to attorneys and trustees;
- Communicating information and delivering documents between the Servicer and its attorneys and trustees as well as any other third parties requiring access to the Connectivity System; and
- Managing and monitoring foreclosure and bankruptcy cases

**If a Servicer uses a Connectivity System:**

- Freddie Mac will reimburse a Servicer for the actual cost of the connectivity fee up to the maximum expense limit specified in Exhibit 57, 1- to 4- Unit Property Approved Expense Amounts;
- The Servicer must provide all attorneys and trustees the use of and access to the identical Connectivity System;
- The Servicer must permit, or continue to permit, attorneys and trustees to integrate their own technology systems with the Connectivity System at no cost to the attorneys or trustees; and
- The Servicer must not pass on any Connectivity System related charges to the Borrower or the attorney or trustee

**ii) Invoice processing system**

A Servicer may employ an invoice processing system for managing the submission and payment of invoices.

If a Servicer, whether acting directly or through a vendor or outsourcing company, processes attorney or trustee invoices electronically:

- Freddie Mac will reimburse the Servicer for the actual cost of the invoicing fee up to the maximum expense limits specified in Exhibit 57; and
- The Servicer must not pass on any invoice processing related charges to the Borrower or the attorney or trustee

The amounts specified in Exhibit 57 for connectivity and invoice processing systems are the maximum amounts for which a Servicer may seek reimbursement for the life of the default (i.e., the duration of the foreclosure, including any related bankruptcy referral).

For example, if a Servicer has already referred a file to foreclosure and it then becomes necessary to take action with respect to a bankruptcy related to such Mortgage, or if a Servicer has already referred a file for bankruptcy and foreclosure has commenced following the bankruptcy referral, the Servicer may be reimbursed only for one connectivity fee. Likewise in this scenario, if the Servicer is using an invoice processing system, then the Servicer may only seek reimbursement for one invoicing fee associated with the foreclosure and for one invoicing fee associated with the bankruptcy during the life of the default.

**A69.7: Providing information to the foreclosure counsel; Servicer use of connectivity and invoice processing systems (06/01/13)****ARCHIVED VERSION****(a) Responsibility to provide information to foreclosure counsel**

For any Mortgage that the Servicer refers for foreclosure, the Servicer must provide complete written reinstatement or payoff figures to the counsel workout specialist, or outsourcing vendor requesting the information. This information must be provided within two Business Days of the date on which a written request is received. The Servicer may provide the written reinstatement or payoff figures via a paper document, facsimile or e-mail.

If the foreclosure counsel requests additional documentation from the Servicer (such as certificates of judgment or proofs of claim) while a case is pending, the Servicer must provide the additional documentation within two Business Days of receiving the request.

For any Mortgage that the Servicer refers for foreclosure, but the Mortgage is subsequently repurchased by the Servicer, whether voluntarily or involuntarily, the Servicer must notify foreclosure and/or bankruptcy counsel within two Business Days of the completed repurchase. (See Chapter 72 for additional information about repurchases.)

**(b) Connectivity and invoice processing systems**

A Servicer, whether acting directly or through any vendor, service provider or outsourcing company, may employ electronic monitoring, management, reporting or information and document delivery processes technology, referred to here as a "Connectivity System," and an invoice processing system as outlined below.

**i) Connectivity System**

A Servicer may employ a Connectivity System to assist with fulfilling Servicing obligations such as:

- Packaging and referring foreclosure and bankruptcy cases to counsel;
- Communicating information and delivering documents between the Servicer and its counsel as well as any other third parties requiring access to the Connectivity System; and
- Managing and monitoring foreclosure and bankruptcy cases

**If a Servicer uses a Connectivity System:**

- Freddie Mac will reimburse a Servicer for the actual cost of the connectivity fee up to the maximum expense limit specified in Exhibit 57, 1- to 4- Unit Property Approved Expense Amounts;
- The Servicer must provide all attorneys the use of and access to the identical Connectivity System;
- The Servicer must permit, or continue to permit, counsel to integrate their own technology systems with the Connectivity System at no cost to the counsel; and
- The Servicer must not pass on any Connectivity System related charges to the Borrower or the counsel

**ii) Invoice processing system**

A Servicer may employ an invoice processing system for managing the submission and payment of invoices.

If a Servicer, whether acting directly or through a vendor or outsourcing company, processes counsel invoices electronically:

- Freddie Mac will reimburse the Servicer for the actual cost of the invoicing fee up to the maximum expense limits specified in Exhibit 57; and
- The Servicer must not pass on any invoice processing related charges to the Borrower or the counsel

The amounts specified in Exhibit 57 for connectivity and invoice processing systems are the maximum amounts for which a Servicer may seek reimbursement for the life of the default (i.e., the duration of the foreclosure, including any related bankruptcy referral).

For example, if a Servicer has already referred a file to foreclosure and it then becomes necessary to take action with respect to a bankruptcy related to such Mortgage, or if a Servicer has already referred a file for bankruptcy and foreclosure has commenced following the bankruptcy referral, the Servicer may be reimbursed only for one connectivity fee. Likewise in this scenario, if the Servicer is using an invoice processing system, then the Servicer may only seek reimbursement for one invoicing fee associated with the foreclosure and for one invoicing fee associated with the bankruptcy during the life of the default.

Related Guide Bulletins	Issue Date
Bulletin 2013-9	May 28, 2013

## EXIHIBIT 7

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1100: The Guide / Chapter 1101: The Guide / 1101.2: Legal effect of the Guide and other Purchase Documents (03/02/16)

## **1101.2: Legal effect of the Guide and other Purchase Documents (03/02/16)**

### **(a) Status as a contract**

#### **(i) Effect of the Guide and other Purchase Documents**

The Guide governs the business relationship between a Seller/Servicer and Freddie Mac relating to the sale and Servicing of Mortgages. Each Seller/Servicer must complete and submit a Form 16SF, Annual Eligibility Certification Report, that certifies that the Seller/Servicer has access to the Electronic version of the Guide as an Electronic Record, as those terms are defined in Chapter 1401, and is in compliance with all requirements of the Purchase Documents.

In connection with the sale of Mortgages to Freddie Mac, the Seller/Servicer agrees that each transaction is governed by the Guide, the applicable Purchase Contract and all other Purchase Documents.

A Seller/Servicer must service all Mortgages that the Seller/Servicer has sold to Freddie Mac and/or has agreed to service for Freddie Mac in accordance with the standards set forth in the Seller/Servicer's Purchase Documents. All of a Seller/Servicer's obligations to service Mortgages for Freddie Mac are considered to constitute, and must be performed pursuant to a unitary, indivisible master Servicing contract, and the Servicing obligations assumed pursuant to any contract to sell Mortgages to Freddie Mac are deemed to be merged into, and must be performed pursuant to, such unitary, indivisible master Servicing contract.

A Seller/Servicer acknowledges that Freddie Mac's agreement to purchase Mortgages from the Seller/Servicer pursuant to any individual Purchase Contract is based upon the Seller/Servicer's agreement that the Mortgages purchased will be serviced by the Seller/Servicer pursuant to the unitary, indivisible master Servicing contract. The Seller/Servicer agrees that any failure to service any Mortgage in accordance with the terms of the unitary, indivisible master Servicing contract, or any breach of any of the Seller/Servicer's obligations under any aspect of the unitary, indivisible master Servicing contract, shall be deemed to constitute a breach of the entire contract and shall entitle Freddie Mac to terminate all or a portion of the Servicing. The termination of a portion of the Servicing shall not alter the unitary, indivisible nature of the Servicing contract.

If a Servicer who services Mortgages for Freddie Mac is not also the Seller of the Mortgages to Freddie Mac, the Servicer must agree to service Mortgages for Freddie Mac by separate agreement, which incorporates the applicable Purchase Documents. In such case, the separate agreement shall be deemed to be one of the "Purchase Documents" that constitute the unitary, indivisible master Servicing contract.

In addition, in certain cases, a Seller and/or Servicer who uses certain Freddie Mac services will, by virtue of the provisions of the Guide, be deemed to have agreed upon certain terms and conditions related to such services and their use.

#### **(ii) Amendments to the Guide**

Freddie Mac may, in its sole discretion, amend or supplement the Guide from time to time. Amendments to the Guide may be a paper Record or an Electronic Record, as those terms are defined in Chapter 1401. The Guide may not be amended orally. Freddie Mac may amend the Guide by:

- Publishing Bulletins, which apply to all Sellers/Servicers, or
- Entering into a Purchase Contract or other written or Electronic agreement, which applies to the Seller/Servicer that is a party to the Purchase Contract or agreement

Bulletins expressly amend, supplement, revise or terminate specific provisions of the

Guide. An amendment, supplement, revision or termination of a provision in the Guide is effective as of the date specified by Freddie Mac in the applicable Bulletin.

A Purchase Contract or other written agreement or Electronic agreement amends or supplements specific provisions of the Guide for purposes of such Purchase Contract or other agreement, as applicable. Such amendments or supplements to the Guide are effective as of the date specified in the Purchase Contract or other agreement. See Section 1501.2(d) for information about how amendments and supplements to the Guide amend or otherwise apply to a Seller's Purchase Contracts and other Purchase Documents.

### **(iii) Publication of Guide and Bulletins**

The Guide is posted on the AllRegs® web site of Ellie Mae, Inc., which operates the AllRegs brand ("AllRegs") and which posts the Guide under license from and with the express permission of Freddie Mac. AllRegs is the exclusive third-party electronic publisher of the Guide. Seller/Serviceirs also can access the Guide on the AllRegs web site by using the link on FreddieMac.com.

Freddie Mac makes no representation or warranty regarding availability, features or functionality of the AllRegs web site.

By using the web site, Seller/Serviceirs acknowledge and agree (individually and on behalf of the entity for which they access the Guide) neither Freddie Mac nor AllRegs shall be liable to them (or the entity for which they access the Guide) for any losses or damages whatsoever resulting directly or indirectly from Freddie Mac's designation of the Guide as found on the AllRegs web site as the official Electronic version, as an Electronic Record, and AllRegs expressly disclaims any warranty as to the results to be obtained by Seller/Serviceirs (and the entity for which Seller/Serviceirs access the Guide) from use of the AllRegs web site, and AllRegs shall not be liable to Seller/Serviceirs (and the entity for which Seller/Serviceirs access the Guide) for any damages arising directly or indirectly out of the use of the AllRegs web site by them (and the entity for which they access the Guide).

Bulletins are published on AllRegs and FreddieMac.com. A Seller/Serviceir with an AllRegs subscription may receive notice of Bulletins directly from AllRegs. If a Seller/Serviceir does not receive notice of Bulletins through AllRegs, the Seller/Serviceir must take the steps necessary to receive the applicable Freddie Mac Single-Family Update e-mails, which will notify Seller/Serviceir of Bulletin publications. A Seller/Serviceir's failure to take the appropriate steps to receive notices of Bulletins does not relieve the Seller/Serviceir of its legal obligations to comply with the terms of the Bulletins.

### **(iv) Effective Date**

The effective date of each section of the Guide is located at the beginning of each section, to the right of the section number and name.

## **(b) Reliance**

By entering into a Purchase Contract or into the unitary, indivisible master Servicing contract with Freddie Mac, the Seller/Serviceir acknowledges that it is not relying upon Freddie Mac or any employee, agent or representative thereof, in making its decision to enter into the contract and that it has relied upon the advice and counsel of its own employees, agents and representatives as to the regulatory, business, corporate, tax, accounting and other consequences of entering into and performing its obligations under a Purchase Contract or the unitary, indivisible master Servicing contract.



**(c) Assignments; security interests**

A Seller/Servicer shall not, in whole or in part, assign, sell, convey, hypothecate, pledge or in any other way or transfer, conditionally or otherwise, or grant a security interest in, any of its obligations, rights or interest under any Purchase Contract or under the unitary, indivisible master Servicing contract, including any of its rights or obligations under this Guide or any of the Purchase Documents, without Freddie Mac's prior written consent. Any purported or attempted assignment or transfer of, or grant of a security interest in, any such obligations, rights or interest is prohibited and shall be null and void.

Freddie Mac has the unconditional right to sell, assign, convey, hypothecate, pledge or in any way transfer, in whole or in part, its rights and interest under the Purchase Documents with respect to any Mortgage it purchases. Freddie Mac has the right to direct the Servicer to send remittances, notices, reports and other communications to any party designated by Freddie Mac and may designate any such party to exercise any and all of Freddie Mac's rights hereunder.

**(d) Notice****(i) Seller/Servicer notices to Freddie Mac**

Except as otherwise provided in the Guide or other Purchase Documents, any communication, advice, consent, document, notice or direction given, made, sent or withdrawn by the Seller/Servicer pursuant to the Purchase Documents must be in writing and will be deemed to have been duly given to and received by Freddie Mac on the day such communication, advice, consent, document, notice or direction is actually received by Freddie Mac at the address specified below:

Address: In writing to Freddie Mac **(see Directory 1)** by first class mail

Other addresses may be substituted for the above upon notice of the substitution.

**(ii) Freddie Mac notices to Seller/Servicer**

Any communication, advice, consent, document, notice or direction given, made, sent or withdrawn by Freddie Mac pursuant to the Purchase Documents may be in writing or may be in electronic form in accordance with Chapter 1401. Such notice will be deemed to have been duly given to the Seller/Servicer on the date such communication, advice, consent, document, notice or direction is:

- Received in writing by first class mail by the Seller/Servicer at the address set forth in the Purchase Documents, or
- Received in electronic form (e-mail) as an Electronic Record by the Seller/Servicer's computer information processing system at its Internet e-mail address provided to Freddie Mac by the Seller/Servicer, or
- Received in electronic form (facsimile) as a Record or Electronic Record by the Seller/Servicer's electronic facsimile machine or system at the facsimile telephone number provided to Freddie Mac by the Seller/Servicer

Other addresses may be substituted for the above upon notice of the substitution.

**(e) Severability**

If any provision of this Guide shall be held invalid, the legality and enforceability of all remaining provisions shall not in any way be affected or impaired thereby, and this Guide shall be interpreted as if such invalid provision were not contained herein.

**(f) Defined terms**

Initial capitalization of words in the Guide generally denotes terms that are defined in (i) the Glossary, (ii) the chapter in which capitalized words appear, or (iii) an expressly referenced chapter.

**(g) Construction of the Guide**

This Guide shall not be construed against Freddie Mac as being the drafter hereof.

**(h) Entire agreement**

This Guide, including the exhibits attached to the Guide and all Purchase Documents incorporated by reference in the Guide, constitutes the entire understanding between Freddie Mac and the Seller/Servicer and supersedes all other agreements, covenants, representations, warranties, understandings and communications between the parties, whether oral or written or Electronic, with respect to the transactions contemplated by the Guide.

**(i) Governing law**

This Guide shall be construed, and the rights and obligations of Freddie Mac and the Seller/Servicer hereunder determined, in accordance with the laws of the United States. Insofar as there may be no applicable precedent, and insofar as to do so would not frustrate any provision of this Guide or the transactions governed thereby, the laws of the State of New York shall be deemed reflective of the laws of the United States.

**(j) Copyright**

The Guide (including related supplements and Bulletins) and Industry Letters are copyrighted. Limited permission to reproduce the Guide is granted to Seller/Servicers strictly for their own use in originating and selling Mortgages to, and in Servicing Mortgages for, Freddie Mac. No part of the Guide may be reproduced for any other reason (in any form or by any means) without the express written permission of Freddie Mac. Requests for such permission to reproduce the Guide must be sent to Freddie Mac **(see Directory 1)**.

Requests will be reviewed and answered by Freddie Mac in the ordinary course of business.

Freddie Mac reserves the right to revoke permission to reproduce the Guide upon 60 days' notice to any and all Seller/Servicers. Under no circumstances will Freddie Mac permit the Guide to be reproduced by any Electronic or mechanical means, including, but not limited to, reproduction in, or as a component of, any information storage and retrieval system.

**(k) Headings and design features**

Headings and design features are written for convenience of reference only and do not constitute a part of this Purchase Document.

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1200: General Freddie Mac Policies / Chapter 1201: General Freddie Mac Policies / 1201.9: The Mortgage file, Mortgage data and related records (03/02/16)

## **1201.9: The Mortgage file, Mortgage data and related records (03/02/16)**

### **(a) Ownership**

All documents in the Mortgage file, all data related to Mortgages owned or guaranteed by Freddie Mac to which the Servicer obtains access in connection with any agreement with Freddie Mac, including, without limitation, data in the documents in the Mortgage file (collectively, Mortgage data) and all other documents and records related to the Mortgage of whatever kind or description (whether prepared or originated by the Servicer or others, or whether prepared or maintained or held by the Servicer or others acting for and on behalf of the Servicer), including all current and historical computerized data files, will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

### **(b) Permitted use of Mortgage data**

The Servicer may use these records and Mortgage data only for the following purposes:

- Servicing Mortgages (and, in compliance with the provisions of the Guide, retaining subservicers to service Mortgages) on behalf of, and in the interest of, Freddie Mac
- As background information for the Servicer's use related to marketing or cross-selling of the Servicer's own primary market products and services in compliance with applicable laws, provided that such marketing and cross-selling does not involve disclosure of these records or Mortgage data to any third parties, other than vendors assisting the Servicer in its marketing activities who are themselves bound by these requirements
- As necessary to enable a vendor to provide analytic services to the Servicer with respect to the Servicer's Servicing portfolio, for the Servicer's internal use only, provided the vendor is bound by these requirements, and
- As necessary to enable the Servicer to comply with its obligations under applicable law including, without limitation, any disclosures required in connection with audits by regulatory agencies with jurisdiction over the Servicer's operations

Except as expressly authorized by Freddie Mac in writing, Servicers may not use or disclose, or authorize or permit third parties to use or disclose, these records or Mortgage data for any other purpose, including, without limitation, resale or licensing of Mortgage data, either alone or with other data. See Section 8101.8, for additional requirements related to confidentiality.

**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 1000: General Contract Terms / Topic 1300: General Responsibilities of the Seller/Servicer / Chapter 1301: General Responsibilities of the Seller/Servicer / 1301.10: Survival of warranties; remedies (03/02/16)**

### **1301.10: Survival of warranties; remedies (03/02/16)**

The warranties and representations in the Purchase Documents for any Mortgage purchased by Freddie Mac survive payment of the purchase price by Freddie Mac. The warranties and representations are not affected by any investigation made by, or on behalf of, Freddie Mac, except when expressly waived in writing by Freddie Mac.

When any party has purchased a Mortgage from Freddie Mac that Freddie Mac previously purchased from a Seller, Freddie Mac may exercise any rights or remedies at law or in equity on behalf of the party to the extent that the party does not affirmatively do so. Freddie Mac may also exercise its discretion to disqualify or suspend a Seller or a Servicer pursuant to Chapter 2301 or Section 9102.1.

For each Mortgage purchased by Freddie Mac, the Seller and the Servicer agree that Freddie Mac may, at any time and without limitation, require the Seller or the Servicer, at the Seller's or the Servicer's expense, to make such endorsements to and assignments and recordations of any of the Mortgage documents so as to reflect the interests of Freddie Mac and/or its successors and assigns.

**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Freddie Mac - Seller/Servicer Relationship / Series 3000: Risk Management and Remedies / Topic 3300: Mortgage File Contents and Retention / Chapter 3302: Mortgage File Retention / 3302.5: Transfer of file custody; security of file information (03/02/16)**

### **3302.5: Transfer of file custody; security of file information (03/02/16)**

Freddie Mac may at any time require the Servicer to deliver the following documents to a Document Custodian approved by Freddie Mac or a transferee designated by Freddie Mac:

- Any original Note, Security Instrument, assignment and modifying instrument still in the Servicer's custody
- Any Mortgage file, document within a Mortgage file or other related documents and records in the Servicer's or its Document Custodian's custody, whether maintained as originals or as copies in accordance with Section 3302.2

The Servicer may, without Freddie Mac's prior approval, entrust custody of all or part of the Mortgage file to the Document Custodian holding Notes and assignments under Section 2202.2. When requested, the Servicer must be able to identify to Freddie Mac those file items held by the Document Custodian and document to Freddie Mac the Document Custodian's acknowledgment that such file items:

- Are Freddie Mac's property
- Will be maintained by the Document Custodian according to standards at least equal to those set in this chapter
- Will be maintained in such a way as to ensure the security and confidentiality of the information; protect against anticipated threats or hazards to the security or integrity of the information; and protect against unauthorized access to or use of such information
- Will be surrendered to Freddie Mac at any time Freddie Mac may request them

The Servicer agrees to indemnify Freddie Mac and hold Freddie Mac harmless for any loss, damage or expense (including court costs and reasonable attorney fees) that Freddie Mac may incur as a result of the Document Custodian's holding all or part of the Mortgage file.

The Servicer must maintain a copy (in a form allowable under Section 3302.2) of any original document that has been entrusted to the Document Custodian for safekeeping. If all or part of the Mortgage file is held by the Servicer's Document Custodian, the Servicer agrees to recover from the Document Custodian (at the Servicer's expense) and provide to Freddie Mac (at the place and within the time frame specified by Freddie Mac) any Document Custodian-held original document requested by Freddie Mac for the postfunding quality control detailed in Chapter 3301 or in conjunction with a Freddie Mac desktop or on-site review of the Servicer's Servicing operations.

**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Selling / Series 6000: Selling and Delivery / Topic 6300: Delivery of All Mortgages / Chapter 6301: Documentation Delivery / 6301.6: Assignment of Security Instrument (03/02/16)**

### **6301.6: Assignment of Security Instrument (03/02/16)**

The Seller/Servicer is not required to prepare an assignment of the Security Instrument to Freddie Mac. However, Freddie Mac may, at its sole discretion and at any time, require a Seller/Servicer, at the Seller/Servicer's expense, to prepare, execute and/or record assignments of the Security Instrument to Freddie Mac.

If an assignment of the Security Instrument to Freddie Mac has been prepared, the Seller/Servicer must not record it unless directed to do so by Freddie Mac. Any statement in the assignment to the effect that the assignment is made without recourse will in no way affect the Seller/Servicer's repurchase obligations under the Purchase Documents.

For transfer or assignment of Freddie Mac's interest in the Mortgage, the Seller/Servicer shall prepare at its own expense any assignment necessary to transfer the Security Instrument to Freddie Mac's assignee, designee or transferee.

Intervening Assignments must be prepared in accordance with the requirements of this section.

NOTE: Special provisions for preparing assignments for Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title are set forth in Section 5703.7(c), paragraph 3. Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title may not be registered with MERS®.

#### **(a) Mortgages not registered with MERS**

For a Mortgage not registered with MERS, the Seller/Servicer must ensure that the chain of assignments is complete and recorded from the original mortgagee on the Security Instrument to the Seller. If the Seller concurrently or subsequently transfers the Servicing, an assignment to the new Servicer must be completed and recorded where required, thus keeping the chain complete.

If a State does not accept assignments for recordation, the Seller must so state in an affidavit maintained with the unrecorded assignment.

#### **(b) Mortgages registered with MERS**

For a Mortgage registered with MERS, if MERS is not the original mortgagee of record, the Seller/Servicer must ensure that:

- An assignment of the Security Instrument to MERS has been prepared, duly executed and recorded in all places necessary to perfect a First Lien security interest in the Mortgaged Premises in favor of MERS, solely as nominee for the lender named in the Security Instrument and the Note, and the lender's successors and assigns. Mortgages subsequently assigned to MERS in the States of Montana, Oregon and Washington are not eligible for sale to Freddie Mac.
- The chain of assignments is complete and recorded from the original mortgagee to MERS

If the Seller/Servicer concurrently or subsequently transfers the Servicing of a Mortgage registered with MERS, no further assignments are required if the Transferee Servicer is a MERS Member. If the Transferee Servicer is not a MERS Member, or if the Mortgage has not been, or is no longer, registered with MERS, the Seller/Servicer must complete the assignments in accordance with the requirements in Section 6301.6(a).

**(c) Mortgages registered with MERS naming MERS as original mortgagee of record**

No assignments are required for a Mortgage registered with MERS if:

- The Mortgage is originated naming MERS as the original mortgagee of record, solely as nominee for the lender named in the Security Instrument and the Note, and the lender's successors and assigns, and
- The Seller/Servicer has ensured that the Security Instrument is properly executed, acknowledged, delivered and recorded in all places necessary to perfect a First Lien security interest in the Mortgaged Premises in favor of MERS, solely as nominee for the lender named in the Security Instrument and the Note, and the lender's successors and assigns

**(d) Concurrent Transfers of Servicing**

If the Mortgage is registered with MERS, and the Transferee Seller/Servicer is not a MERS Member, then the requirements for Mortgages not registered with MERS must be followed.

For a Concurrent Transfer of Servicing when a Mortgage is registered with MERS:

- The Transferor Servicer must notify MERS of the Transfer of Servicing and reflect such Transfer of Servicing on the MERS System
- The Transferee Seller/Servicer must follow the document custodial procedures in Section 7101.9, and deliver the assignments to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 6304.2, unless the Transferee Seller/Servicer has elected to retain all assignments for MERS-registered Mortgages in the Mortgage files. The Transferee Seller/Servicer must also supply its Document Custodian with any documentation necessary for the Document Custodian to determine whether the Seller/Servicer has elected to hold all assignments in the Mortgage files.

For a Concurrent Transfer of Servicing when a Mortgage is not registered with MERS:

- The Transferor Seller must record any Intervening Assignments to complete the chain of assignments from the original mortgagee to the Transferor Seller, in accordance with Section 6301.6(a)
- The Transferor Servicer must then assign the Security Instruments to the Transferee Servicer and record the assignments
- The Transferee Servicer must follow the document custodial procedures set forth in Section 7101.9, and deliver the assignments to the Transferee Document Custodian, to be verified and certified in accordance with the requirements of Section 6304.2

Special provisions for Concurrent Transfers of Servicing of Mortgages secured by Manufactured Homes located in certificate of title States where there is no provision for surrender and cancellation of the certificate of title are set forth in Section 5703.7(c), paragraph 3.

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### **7101.6: Endorsement of Notes and assignment of Security Instruments related to Transfers of Servicing (03/02/16)**

When a Mortgage is sold to Freddie Mac, the Seller must endorse the Note in blank in accordance with Section 6301.3. When a Transfer of Servicing occurs, the Transferor Servicer may not complete the blank endorsement or further endorse the Note, but must prepare and complete assignments according to the following requirements:

#### **(a) Concurrent Transfer of Servicing for a Mortgage not registered with MERS®**

To prepare and complete assignment of the Security Instrument for a Concurrent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must:

- Record any Intervening Assignments to complete the chain of assignments to it from the original mortgagee, in accordance with Section 6301.6(a)
- Assign the Security Instruments to the Transferee Servicer, and record the assignment
- Follow the document custodial procedures set forth in Section 7101.9 and deliver the assignment to the Transferee Document Custodian to be verified in accordance with the requirements of Section 6304.2

See Section 6301.6(a) for additional information.

#### **(b) Concurrent Transfer of Servicing for a Mortgage registered with MERS**

To prepare and complete an assignment of the Security Instrument for a Concurrent Transfer of Servicing of a Mortgage that is registered with MERS:

- If the **Transferee Servicer is a MERS Member**, no further assignment is needed. The Transferor Servicer must notify MERS of the Transfer of Servicing.
- If the **Transferee Servicer is not a MERS Member**, then for a Concurrent Transfer of Servicing:
  - The Transferor Servicer must prepare and record an assignment of the Security Instrument (on behalf of MERS) from MERS to the Transferee Servicer
  - The Transferor Servicer must follow the document custodial procedures set forth in Section 7101.9, and deliver the assignment to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 6304.2

See Section 6301.6(b) for additional information.

#### **(c) Subsequent Transfer of Servicing for a Mortgage not registered with MERS**

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must:

- Recover and destroy any original unrecorded assignments to Freddie Mac that may have been prepared
- Assign the Security Instrument to the Transferee Servicer and record the assignment
- Follow the document custody procedures set forth in Section 7101.9, and deliver assignment(s) to the Transferee Document Custodian to be verified and certified in accordance with the requirements of Section 6304.2

If an original assignment to Freddie Mac was recorded, no additional assignment need be made.



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## **7101.15: Liabilities of the Transferor Servicer and Transferee Servicer (03/02/16)**

### **(a) Warranties**

Except as stated in the following paragraph, for Transfer of Servicing requests received by Freddie Mac, the Transferee Servicer is liable to Freddie Mac for all sale and Servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages and REO for which Servicing is transferred, whether or not the Transferor Servicer had such liability. The Transferee Servicer's assumption of responsibilities, representations, covenants and warranties upon transfer does not release the Transferor Servicer, any prior Servicer, or the original Seller of their responsibilities, representations, covenants and warranties with respect to the transferred Mortgages, their liability being joint and several with the Transferee Servicer. However, a Transferor Servicer does not assume such liability for Servicing violations occurring in all respects after the effective date of its transfer and based in all respects upon the actions or omissions of later Transferee Servicers.

For Mortgages sold through Gold Cash Xtra<sup>®</sup> and the Servicing Released Sales Process, the Seller remains solely liable to Freddie Mac for all sale representations, covenants and warranties in the Purchase Documents (sale representations and warranties) with respect to the Mortgages for which Servicing is transferred. The Transferee Servicer is liable to Freddie Mac for all servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages for which Servicing is transferred. For subsequent Transfers of Servicing of such Mortgages:

- The Seller Transferor remains solely liable to Freddie Mac for all sale representations and warranties with respect to the Mortgages for which Servicing is transferred; and
- The subsequent Transferee Servicer is liable to Freddie Mac for all Servicing responsibilities, representations, covenants and warranties in the Purchase Documents with respect to the Mortgages and REO for which Servicing is transferred, but the Transferee Servicer's assumption of responsibilities, representations, covenants and warranties upon transfer does not release the subsequent Transferor Servicer or any prior Servicer of their responsibilities, representations, covenants and warranties with respect to Servicing of the transferred Mortgages, their liability being joint and several with the Transferee Servicer. However, a Transferor Servicer does not assume such liability for Servicing violations occurring in all respects after the effective date of its transfer and based in all respects upon the actions or omissions of later Transferee Servicers.

Note: For provisions applicable to the concurrent transfer of servicing rights of Mortgages sold to Freddie Mac through Gold Cash Xtra, see Exhibit 28, Loan Servicing Purchase and Sale Agreement.

### **(b) Hold harmless**

The Transferor Servicer and the Transferee Servicer, jointly and severally, fully indemnify and agree to hold Freddie Mac, its successors and assigns, harmless from and against any and all losses, claims, demands, actions, suits, damages, costs and expenses (including reasonable attorney fees) of every nature and character that may arise or be made against or be incurred by Freddie Mac as a result of the Transferor Servicer's or the Transferee Servicer's failure to comply with applicable law or failure to comply with Freddie Mac's Servicing requirements as set forth in the Purchase Documents, including, but not limited to failure to provide the notices required by Section 7101.14, failure to make any payment to the appropriate parties for which Escrow is collected and failure to credit properly any payments received from Borrowers.

### **(c) Servicing**

The Transferee Servicer hereby agrees to service the Mortgages in accordance with the terms of the unitary, indivisible master Servicing contract comprising the Guide, applicable Bulletins, applicable users' guides and any other applicable Purchase Documents, all of which are fully incorporated herein by reference.



**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 8000: Servicing All Mortgages / Topic 8100: General Freddie Mac Servicing Policies / Chapter 8105: Servicing Compensation / 8105.3: Servicing obligations to be performed for the Servicing compensation (03/02/16)**

### **8105.3: Servicing obligations to be performed for the Servicing compensation (03/02/16)**

In consideration for the Servicing Spread, a Servicer is responsible for the performance of all of its Servicing obligations described in the Guide and other Purchase Documents for each of the Mortgages purchased by Freddie Mac. The Servicer's Servicing obligations compensated by the Servicing Spread include, among other things, undertaking all activities required to protect Freddie Mac's interest in the Mortgage in the event of a foreclosure of the property or a bankruptcy of the Borrower, such as:

- Preparing and delivering foreclosure and bankruptcy referrals to attorneys
- Providing all documents and information necessary for the attorneys to prosecute foreclosure or bankruptcy cases (including, but not limited to, missing documents such as Notes, title insurance policies, and Intervening Assignments)
- When necessary, paying for the preparation and recordation of missing documents, such as Intervening Assignments, necessary for the prosecution of foreclosure or bankruptcy cases
- Resolving any title issues that are the result of the Seller's or Servicer's action or inaction
- Managing attorneys, including but not limited to:
  - Collecting, receiving, processing, reviewing and paying attorneys' invoices
  - Supervising and providing necessary assistance to attorneys in the foreclosure and bankruptcy proceedings
  - Making available any monitoring, management, reporting, information and document delivery processes or systems, and paying the fees and costs for such processes or systems (refer to Section 9501.9 for information on connectivity and invoice processing systems)
- Continuing to work with the Borrower to resolve the delinquency through loss mitigation activities
- Handling the bankruptcy management activities specified in Chapter 9401

Nothing in the Guide is intended to prohibit a foreclosure or bankruptcy attorney from assisting a Servicer by working with a Borrower to facilitate a reinstatement of the Mortgage or loss mitigation activity.

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**8107.1: Servicer responsibilities related to document custody (03/02/16)**

**(a) Delivery of modifications to a Document Custodian**

If a Note is subsequently modified, pursuant to the requirements of the Guide, the original modifying instrument must be delivered to the Document Custodian holding the original Note.

**(b) Obtaining physical or constructive possession of documents**

Seller/Servicers may need to obtain physical or constructive possession of a Note or other documents from a Document Custodian to take appropriate action in conjunction with the payoff, foreclosure, repurchase, substitution, conversion, modification or assumption of a Mortgage:

- To obtain physical or constructive possession of a Note and/or other documents from the Designated Custodian, the Seller/Servicer may complete and send the Form 1036, Request for Physical or Constructive Possession of Documents, or make an electronic request ("Web Release Request") using the Designated Custodian's specified Internet web site. Contact the Designated Custodian for further information (**see Directory 4**). The Seller/Servicer must promptly: (i) if physical possession was obtained by Seller/Servicer, return the Note and any other documents to the Designated Custodian when the reason for having physical possession is no longer required for Servicing the Mortgage (do not return the Note and any other documents to the Designated Custodian if the related Mortgage was repurchased or paid in full), or (ii) if constructive possession was obtained, send notice (a copy of the original Form 1036 with a notice of termination of constructive possession or otherwise as instructed by the Designated Custodian's specified Internet web site) to the Designated Custodian, when the reason for constructive possession is no longer required for Servicing the Mortgage. Seller/Servicers using the Designated Custodian's Internet web site Asset Repository and Collateral System (ARK) to request physical or constructive possession of Notes and other documents must include a copy of the 1036 Release Receipt Report when returning such items to the Designated Custodian. The Release Receipt Report can be electronically generated from the Designated Custodian's ARK web site.
- To obtain physical or constructive possession of a Note and/or other documents from a Document Custodian (excluding the Designated Custodian), the Seller/Servicer must complete Form 1036, and send the Form 1036 to the Document Custodian. The Seller/Servicer must promptly: (i) if physical possession was obtained by the Seller/Servicer, return the Note and any other documents to the Document Custodian when the reason for having physical possession is no longer required for Servicing the Mortgage (do not return the Note and any other documents to the Document Custodian if the related Mortgage was repurchased or paid in full), or (ii) if constructive possession was obtained by the Seller/Servicer, send notice (copy of the original Form 1036 with a request for termination of constructive possession) to the Document Custodian, when constructive possession is no longer required for Servicing the Mortgage.

Seller/Servicers must follow prudent business practices in protecting and safeguarding all Notes and documents physically transferred and delivered to them by the Document Custodian until these documents are returned to the Document Custodian. These practices include protection from external elements, such as fire, and identification as a Freddie Mac asset and segregation from other non-related documents.

See Section 8107.2(b) when Servicing a Mortgage with respect to which the Seller/Servicer is required to be in physical or constructive possession of the Note to take legal action, such as a Freddie Mac Default Legal Matter or other litigation (collectively, "Legal Action"), and the Document Custodian has physical custody of the Note.

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**8107.2: Document Custodian's custodial functions (03/02/16)**

**(a) General duties**

Each Document Custodian is responsible for maintaining custody of the original Notes and assignments, in trust, for the benefit of Freddie Mac by:

- Storing the original Notes and assignments in secure, fire-resistant facilities as required by Section 2202.2(b). If the Seller/Servicer delivers supplemental documents, such as original modifying instruments, the Document Custodian must place the supplemental documents with the related Note.
- Affixing the Freddie Mac loan number to the Note, if advised by the Seller/Servicer that Freddie Mac requires it. If the Note for a Mortgage contains the Freddie Mac loan number, changing the Freddie Mac loan number on a Note if advised in writing by the Seller/Servicer that Freddie Mac has changed the Freddie Mac loan number for the related Mortgage.

**(b) Physical or constructive possession to take legal action**

The Seller/Servicer may be required to be in physical or constructive possession of the Note to take legal action, such as a Freddie Mac Default Legal Matter or other litigation (collectively, "Legal Action"), in connection with Servicing a Mortgage. If the Seller/Servicer concludes that constructive possession is the appropriate type of possession for the Legal Action, the Seller/Servicer shall automatically, immediately and conclusively be deemed to be in constructive possession of the Note upon the earlier of: (i) that date such Legal Action commences, or (ii) the date the Document Custodian receives the Seller/Servicer's Form 1036 requesting constructive possession of the Note, until the Legal Action is concluded.

When the Document Custodian, during any such Legal Action, maintains physical custody of the Note, it does so in trust for the benefit of the Seller/Servicer. For the duration of the Legal Action, the Seller/Servicer shall be: (i) in constructive possession of the Note, (ii) the holder of the Note, (iii) entitled to enforce the Note, and (iv) duly authorized by Freddie Mac to take Legal Action in connection with Servicing the related Mortgage. When the Legal Action is concluded, the Document Custodian shall automatically and immediately cease maintaining physical custody of the Note, in trust, for the benefit of the Seller/Servicer and resume maintaining physical custody of the Note, in trust, for the benefit of Freddie Mac.

The Seller/Servicer must complete, sign and submit a Form 1036, or its equivalent, including the Designated Custodian's Web Release Request described in Section 8107.1(b) (Form 1036 and such the Designated Custodian's Web Release Request, collectively referred to herein as "Form 1036") requesting constructive possession from the Document Custodian or Designated Custodian, as applicable. The date that the constructive possession commences shall be the earlier of the date: (i) the Document Custodian receives the Form 1036 from the Seller/Servicer requesting constructive possession, or (ii) the Seller/Servicer commences the Legal Action. A single Form 1036 may be used to request multiple Notes, provided that each Note is separately listed and identified.

**(c) Delivery of possession of documents to the Seller/Servicer**

The Seller/Servicer may require physical possession of a Note and other documents in connection with Servicing a Mortgage, including, but not limited to, bringing or defending a Legal Action or conducting a foreclosure or in connection with the maturity, prepayment, repurchase, substitution, conversion, modification or assumption of a Mortgage. In such circumstances, Freddie Mac will deliver physical possession of the Note to the Seller/Servicer as set forth in this Section 8107.2(c)

When Servicing a Mortgage with respect to which the Seller/Servicer is required to be in physical possession of the Note, the Seller/Servicer shall deliver a Form 1036 to the Document Custodian.

To use an Electronic, as defined in Chapter 1401 or system-generated version of the Form 1036, the Seller/Servicer must enter into an electronic transaction agreement with the Document Custodian that:

- Defines Electronic Signature and the type(s) of electronic transmission(s) permitted
- States the Document Custodian's requirements for accepting an Electronic Signature
- States the Seller/Servicer's requirements for maintaining and controlling access to Electronic Signature information
- Clearly assigns liability when the terms of the agreement are violated

In addition, the Seller/Servicer must provide, and the Document Custodian must retain, a list of the individuals designated by the Seller/Servicer to request the release of documents electronically. The list must be signed by an authorized officer of the Seller/Servicer and contain the notarized signatures of the Seller/Servicer's designated individuals.

An Electronic or system-generated Form 1036 must contain all of the information required on the paper Form 1036. A single electronic form may be used to request multiple Notes, provided that the Note is separately listed and identified.

Upon receipt of a signed Form 1036 from the Seller/Servicer, the Document Custodian maintaining physical custody of the Note, in trust, for the benefit of Freddie Mac, shall transfer and deliver physical possession of the Note to the Seller/Servicer. Upon receipt of the Note, the Seller/Servicer shall automatically, immediately and conclusively be deemed to be: (i) in physical possession of the Note, (ii) the holder of the Note, (iii) entitled to enforce the Note, and (iv) duly authorized by Freddie Mac to take Legal Action in connection with Servicing the related Mortgage.

If a document is no longer needed for the reason originally cited on the request, or when the Legal Action is concluded, the Seller/Servicer must promptly return the Note and related documents and a copy of the Form 1036 to the Document Custodian, or return the Note and related other documents required by the Designated Custodian. Upon receipt of the returned Note, the Document Custodian and/or Designated Custodian, as applicable, shall immediately resume maintaining physical custody of the Note, in trust, for the benefit of Freddie Mac, as set forth in the Custodial Agreement, and update its note tracking system to reflect receipt of the Note and any other documents.

Notes and related documents may be transported only by a nationally recognized commercial or bonded carrier or courier service.

See Section 8107.1(b) for additional information on returning Notes to the Document Custodian.

**(d) Form imaging and retention requirements**

The Document Custodian must retain either the original or an imaged copy of the Form 1036 or its equivalent for at least three months after the date the Mortgage is paid off. The Document Custodian need not retain a Form 1034E, or Note Delivery Cover Sheet, after the related Mortgages have been certified.

Imaged copies of the forms are permitted, provided that:

- Such copies were made in the regular course of business pursuant to Document Custodian's written policy
- Each imaged copy accurately reproduces or forms a durable medium for reproducing the original document
- There is equipment to view or read and to reproduce the imaged copies into legible documents at the location where the imaged copies are maintained

The Document Custodian may destroy:

- Original Certification Schedules after making imaged copies that meet the above criteria
- Requests for Release after making imaged copies that meet the above criteria and updating Document Custodian's Note tracking system to indicate the date of and reason for release of the related documents
- All original or imaged copies of Certification Schedules and Requests for Release after expiration of the retention period

In disposing of such documents, the Document Custodian must have in place and follow procedures to ensure the confidentiality of Borrowers' private personal information and must use disposal methods that safeguard such confidentiality.

**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.1: Foreclosures on Freddie Mac Mortgages (03/02/16)**

### **9301.1: Foreclosures on Freddie Mac Mortgages (03/02/16)**

The Servicer must refer to, manage and complete foreclosure in accordance with this chapter when there is no available alternative to foreclosure. Additionally, Freddie Mac requires the Servicer to manage the foreclosure process to acquire clear and marketable title to the property in a cost-effective, expeditious and efficient manner.



**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.11: Obtaining the original Note (03/02/16)**

### **9301.11: Obtaining the original Note (03/02/16)**

If physical or constructive possession of the original Note is needed to perform the foreclosure, the Servicer must request the Note from the Document Custodian maintaining the Note by submitting to the Document Custodian a completed Form 1036, Request for Physical or Constructive Possession of Documents, or an electronic or system-generated version of the form (or, in the case of the Designated Custodian, a copy of the electronically generated 1036 Release Receipt Report) in accordance with the requirements of Section 8107.1(b).

If there is a full or partial reinstatement of the Mortgage, the Servicer must return the Note to the Document Custodian with either the original Form 1036 or a copy.

**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9300: Foreclosure / Chapter 9301: Foreclosure / 9301.12: Foreclosing in the Servicer's name (03/02/16)**

**9301.12: Foreclosing in the Servicer's name (03/02/16)**

**(a) Conducting the foreclosure**

The Servicer must instruct the foreclosure counsel to process the foreclosure in the Servicer's name and in a manner that would avoid any obligation to pay a transfer tax. However, the Servicer may instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name if applicable law:

- Precludes the Servicer from conducting the foreclosure in its name because it owns or services a subordinate Mortgage on the Mortgaged Premises, or
- Requires the foreclosure to be processed in Freddie Mac's name to avoid any obligation to pay a transfer tax and foreclosure counsel could not otherwise process the foreclosure in a manner that would successfully avoid imposition of the transfer tax obligation

For these special circumstances, the Servicer does not need to obtain written approval but must notify Freddie Mac within two Business Days of the Servicer's determination to foreclose in Freddie Mac's name and record the basis of the decision in the Mortgage file. All notifications must be sent via e-mail (**see Directory 5**). For all other circumstances in which the Servicer may need to instruct foreclosure counsel to conduct the foreclosure in Freddie Mac's name, the Servicer must obtain written approval from Freddie Mac (refer to Section 9402.2 regarding initiating legal actions on Freddie Mac's behalf).

When processing the foreclosure in Freddie Mac's name, all pleadings and related documents must comply with Section 9402.2(c). The Servicer remains obligated to notify Freddie Mac pursuant to Section 9501.12 in the event that any foreclosure conducted in Freddie Mac's name evolves into a non-routine litigation matter (see Section 9402.2).

When a Servicer conducts the foreclosure in Freddie Mac's name, the Servicer is not permitted to have the same foreclosure counsel represent the Servicer or another lien holder in the same proceeding. Freddie Mac does not consent to dual representation of Freddie Mac and another lien holder on the same property.

**(b) Executing documents**

If Freddie Mac needs to execute a document for the Servicer to process the foreclosure, or execute a document related to a foreclosure sale, the Servicer must submit Form 105, Multipurpose Loan Servicing Transmittal, to Freddie Mac **(see Directory 5)** with all supporting documentation, which may include, but is not limited to, the last recorded document in the chain of title, and include the document Freddie Mac needs to execute.

If an assignment of the Security Instrument to Freddie Mac has been recorded and the Servicer is conducting the foreclosure in its name, then the Security Instrument must be assigned back to the Servicer before the foreclosure counsel files the first legal action. Refer to Section 9301.16 for an explanation of first legal action.

To have the Security Instrument assigned back to the Servicer, the Servicer must submit a completed assignment with a Request for Assistance Form (available at: **<http://www.freddiemac.com/cim/docex.html>**), to Freddie Mac **(see Directory 9)**. Freddie Mac will endeavor to execute the assignment and return it to the Servicer within 10-12 Business Days of receiving the documents.

If the Servicer is foreclosing on a Mortgage registered with MERS®, the Servicer must prepare and execute (using the Servicer's employee who is a MERS authorized "signing officer") an assignment of the Security Instrument from MERS to the Servicer. The Servicer must record the prepared assignment where required by State law. State mandated recordings are non-reimbursable by Freddie Mac, are not considered part of the Freddie Mac allowable foreclosure counsel fees and must not be billed to the Borrower.

If the Mortgage is an FHA, Section 502 GRH or VA Mortgage, then the Servicer must follow FHA, RHS or VA guidelines to determine in whose name the foreclosure action should be brought.

Refer to Section 6301.6 for additional information on Freddie Mac's requirements for assignments of the Security Instrument.

**Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9400: Bankruptcy and Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / Chapter 9401: Bankruptcy / 9401.1: Bankruptcy (10/12/16)**

### **9401.1: Bankruptcy (10/12/16)**

This chapter provides Servicers with Freddie Mac's requirements for Servicing Mortgages subject to bankruptcy proceedings or litigation. The Servicer must take appropriate action to protect Freddie Mac's interest during bankruptcy proceedings in which the Borrower is the debtor.

(Refer to Chapter 9402 for requirements for Servicing Mortgages subject to other litigation).

<b>Related Guide Bulletins</b>	<b>Issue Date</b>
Bulletin 2016-13	July 13, 2016

Freddie Mac Single Family / Single-Family Seller/Servicer Guide / Single-Family Seller/Servicer Guide / Servicing / Series 9000: Servicing Default Management / Topic 9400: Bankruptcy and Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / Chapter 9402: Other Litigation Involving Freddie Mac-Owned or Guaranteed Mortgages / 9402.2: Routine and non-routine litigation (07/13/16)

## 9402.2: Routine and non-routine litigation (07/13/16)

### (a) Definition of routine and non-routine litigation

- **Routine litigation** generally is a contested action in which the Borrower alleges case-specific defenses or issues which, if successful, would not create negative legal precedent beyond the immediate case
- **Non-routine litigation** generally is a contested action in which the Borrower alleges case-specific defenses or issues, which, if successful, would create negative legal precedent beyond the immediate case

Examples of non-routine litigation that must be reported to Freddie Mac as non-routine litigation include, but are not limited to, the following:

- Actions that name Freddie Mac as a party
- Action that seeks monetary relief against Freddie Mac, including any claim (including counterclaims, cross-claims, or third-party claims in foreclosure or bankruptcy actions) for damages against Freddie Mac or its officers, directors, or employees
- Actions that challenge the validity, priority, or enforceability of a Freddie Mac-owned or guaranteed Mortgage or seek to impair Freddie Mac's interest in an REO including, by way of example:
  1. An action seeking to demolish a structure on the property or the property as a result of a code violation
  2. An action seeking to avoid a lien based on a failure to comply with a law or regulation
  3. An attempt by a junior lienholder to assert priority over a Freddie Mac-owned or guaranteed Mortgage or extinguish Freddie Mac's interests
  4. A quiet title action seeking to declare Freddie Mac's lien void; and
  5. An attempt by a Borrower to effect a cramdown of a Mortgage in bankruptcy as to which Freddie Mac has not delegated authority to the Servicer or law firm to address
- Actions that present an issue that may pose significant legal or reputational risk to Freddie Mac include, by way of example:
  1. Any issue involving Freddie Mac's conservatorship, its conservator, FHFA, Freddie Mac's status as a federal instrumentality, or an interpretation of Freddie Mac's charter
  2. Any assertion that Freddie Mac is a federal agency or otherwise part of the United States Government
  3. Any "due process" or other constitutional challenge
  4. Any challenge to the methods by which Freddie Mac does business
  5. Any putative class actions involving a Freddie Mac-owned or guaranteed Mortgage

6. Challenges to the standing of the Servicer to conduct foreclosures or bankruptcies which, if successful, could create negative legal precedent with an impact beyond the immediate case
7. Challenges to the methods by which MERS® does business or its ability to act as nominee under a Mortgage
8. Any "show cause orders" or motions for sanctions relating to a Freddie Mac-owned or guaranteed Mortgage, whether against Freddie Mac, the Servicer, a law firm, or a vendor of the Servicer or law firm
9. Any appellate or other action for post-judgment relief in any foreclosure, bankruptcy or legal action in which Freddie Mac is a named party
10. Foreclosures on HUD-Guaranteed Section 184 Native American Mortgages
11. Any environmental litigation relating to a Freddie Mac-owned or guaranteed Mortgage
12. A need to foreclose judicially in a State where non-judicial foreclosures predominate
13. Any claim invoking Home Affordable Modification Program (HAMP®) as a basis to challenge a foreclosure
14. Any claim brought by a governmental body
15. Cross-border insolvency proceedings under Chapter 15 of the Bankruptcy Code
16. Any claim of predatory lending or discrimination in Mortgage origination or Servicing; and
17. Any claim implicating the interpretation of the terms of the Fannie Mae/Freddie Mac Uniform Mortgage Instruments

Given the evolving nature of default-related litigation, it is not possible to provide an exhaustive list of non-routine litigation. Each contested action presents unique circumstances, and the Servicer should evaluate each action on a case-by-case basis to determine whether a contested action is routine or non-routine.

**(b) Legal actions and strategies initiated by the Servicer**

A Servicer must obtain written approval **(see Directory 5)** from the Freddie Mac Legal Division prior to initiating the following legal actions and strategies:

- Filing a new legal action, other than a Freddie Mac Default Legal Matter, on behalf of Freddie Mac
- Filing a motion to intervene in a pending legal action on behalf of Freddie Mac
- Appealing or otherwise challenging a judgment in any foreclosure or bankruptcy proceeding, or any legal action in which Freddie Mac is a named party
- Filing a notice of removal to federal district court for any legal action in which Freddie Mac is a named party
- Asserting any position in a legal action that relates to Freddie Mac's status as a Government Sponsored Enterprise (GSE), its conservatorship, or its conservator, FHFA
- Propounding discovery requests or otherwise serving or providing any discovery responses on behalf of Freddie Mac

**(c) Referring to Freddie Mac in litigation**

Freddie Mac must be described in legal proceedings as "Federal Home Loan Mortgage Corporation ("Freddie Mac"), a corporation organized and existing under the laws of the United States of America." Freddie Mac may not be referred to as a "government agency."

**(d) MERS-registered Mortgages**

See Section 8101.12(b) for additional requirements relating to notices from MERS and MERS-registered Mortgages.

Related Guide Bulletins	Issue Date
Bulletin 2016-13	July 13, 2016

**Freddie Mac Single Family/Single-Family Seller/Servicer Guide/Single-Family Seller/Servicer Guide/Servicing/Series 9000: Servicing Default Management/Topic 9500: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/Chapter 9501: Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters/9501.1: Servicer's management of law firms for Freddie Mac Default Legal Matters (03/02/16)**

### **9501.1: Servicer's management of law firms for Freddie Mac Default Legal Matters (03/02/16)**

This chapter sets forth requirements for the Servicer's review and evaluation, selection, retention and management of law firms (referred to throughout this chapter as "firms") for Freddie Mac Default Legal Matters.

Effective June 1, 2013, all referrals of Freddie Mac Default Legal Matters must be conducted in accordance with the requirements of Chapter 9501. Chapter 9501 governs the referral of Freddie Mac Default Legal Matters to law firms selected by the Servicer under the requirements of Section 9501.7.

Effective August 1, 2013, Servicers must comply with all requirements of this chapter in order to refer Freddie Mac Default Legal Matters to law firms. Refer to Chapter 9502 for requirements related to Default Legal Matters referred prior to the August 1, 2013 effective date.

Each Servicer is responsible for retaining firms for Freddie Mac Default Legal Matters. Freddie Mac will continue to retain firms directly for REO-related legal services: eviction, REO closing, and related litigation (refer to Chapters 9401 and 9402 for more information relating to litigation).

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### **9501.2: Review and evaluation of firms (03/02/16)**

#### **(a) Due diligence**

As part of its selection process, each Servicer is responsible for obtaining and evaluating documentation and information from firms, and conducting due diligence to ensure that selected firms meet the requirements set forth in Section 9501.3. As part of the process, each Servicer must:

- Obtain and review all required documentation and information submitted by each firm
- Ensure that it selects from a pool of potentially acceptable firms that is diverse, and includes minority and women-owned firms and other diverse firms when feasible; and
- Ensure that the firm or any entity or individual performing work for the firm is not on the Freddie Mac Exclusionary List in accordance with Section 3101.1

#### **(b) Due diligence documentation**

The Servicer must provide to Freddie Mac upon request a copy of each firm's application information and related due diligence documentation. Freddie Mac reserves the right to review the process, procedures and due diligence used by the Servicer to evaluate and select a firm.



**(c) Document retention requirements**

The Servicer must retain all information submitted by a firm in support of the firm's application and all information otherwise gathered by the Servicer regarding the firm. The Servicer must maintain any information relating to firms that are selected and retained by the Servicer for as long as the firm is providing legal services with respect to Freddie Mac-owned or guaranteed Mortgages and, thereafter, for the longer of any retention period applicable to the Servicer or seven years. The Servicer must maintain any information relating to firms that are not selected and retained by the Servicer for the longer of any retention period applicable to the Servicer or seven years.

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**9501.3: Firm Minimum Requirements (06/29/16)**

The Servicer must ensure that all firms selected and retained to handle Freddie Mac Default Legal Matters meet the firm minimum requirements specified in this section ("Firm Minimum Requirements"), and all other applicable Freddie Mac requirements. The Firm Minimum Requirements are as follows:

**(a) Firm practice**

The firm's practice areas must include end-to-end default-related legal services: foreclosure, bankruptcy, loss mitigation (e.g., deeds-in-lieu of foreclosure), default-related litigation and REO-related legal services: eviction, REO closing and related litigation.

The firm must:

- Be familiar with industry standards in the State in which it practices
- Understand the State legal processes and requirements in default-related and REO-related legal services; and
- Understand the substantive legal issues in the State (e.g., standing)

Additionally, the Servicer must consider firm experience in the following areas: foreclosure mediation, the Fair Debt Collection Practices Act, title curative issues, and general housing-related issues (e.g., rent control, Section 8, lead paint liability, health code violations, foreclosure redemption, confirmation and ratification, homeowners association, mobile home matters, and cooperative loans). The firm should also have some experience with delegation for loss mitigation.

The Servicer must also consider the firm's membership in default-related and REO-related trade and industry groups, attendance or participation in State bar associations, seminar and lecture participation and attendance, and any other activities relevant to default-related and REO-related law practice.

**(b) Presence in State**

Firms generally must have a staffed office in the State in which the firm is retained for Freddie Mac Default Legal Matters.

In addition:

- The legal work must be performed by the attorneys licensed in the State where the Mortgaged Premises is located
- The firm must be registered, as necessary, with appropriate State authorities
- For the States in which an appropriately staffed office is required, the firm must disclose to the Servicer the extent, if any, to which work will be performed by an office of the firm in another State
- The Servicer must require the firm to disclose to the Servicer where the staff handling the work in the particular State is located, and to whom the staff in that office regularly reports; and
- The Servicer must obtain office addresses for each firm it seeks to retain

**1. Judicial foreclosure States**

In judicial foreclosure States, the firm must have an appropriately staffed office in the State in which the firm is retained for Freddie Mac Default Legal Matters.

**2. Non-Judicial foreclosure States**

In non-judicial foreclosure States, a firm must have an appropriately staffed office located in the State in which the firm is retained, except in the following non-judicial foreclosure States: Alaska, District of Columbia, Idaho, New Hampshire, Rhode Island, Montana, West Virginia and Wyoming. In those States, Servicers should give preference to firms that have staffed offices in those States. However, out-of-State firms may be used to handle Freddie Mac Default Legal Matters, provided that the firm is located in the same region of the country and is able to demonstrate that it has policies, procedures and processes in place to handle cases from out of State.

Servicers may use firms outside of Puerto Rico, the U.S. Virgin Islands and Guam to handle foreclosure and bankruptcy matters in those States. Servicers should give preference to firms that have staffed offices in the State, but out-of-State firms may be used, provided that they are able to demonstrate that they have policies, procedures and processes in place to handle cases from outside the State.

If a Servicer has difficulty finding a sufficient number of firms with appropriately staffed offices in States other than those listed in the exceptions above, the Servicer may contact Freddie Mac to request an exception to the requirement that a firm have an appropriately staffed office located in the State. Requests should be sent to Freddie Mac **(see Directory 1)**.

**(c) State-specific industry references**

The Servicer must obtain from the firm at least two State-specific mortgage servicers or default-related references, or if the firm has been in existence less than one year, the partners or shareholders of the firm must provide at least two Servicer or default-related references in connection with work performed in the particular State.